

Commerce Commission

Vodafone New Zealand Limited

SETTLEMENT AGREEMENT

**COMMERCE COMMISSION INVESTIGATION INTO VODAFONE NEW ZEALAND LIMITED
BROADBAND LITE PROMOTION**

December 2013

AGREEMENT DATED 20th day of December 2013

Parties

Vodafone New Zealand Limited (Vodafone) a duly incorporated company having its registered office in Auckland

Commerce Commission (the Commission) a body corporate established under section 8 of the Commerce Act 1986 having its head office in Wellington

Purpose of agreement

1. The Commission has investigated alleged contraventions of the Fair Trading Act 1986 (the Act) by Vodafone (a telecommunications services provider) in relation to the promotion and sale of a service known as Broadband Lite.
2. This agreement records the background to the investigation, the Commission's views, and the means by which the investigation is to be resolved.
3. This agreement records that:
 - 3.1 The Commission considers that Vodafone has engaged in conduct that contravenes sections 11, 13(c), 13(e) and 13(i) of the Act.
 - 3.2 Vodafone agrees that it is likely to have contravened the Act in the manner alleged by the Commission.
 - 3.3 Vodafone has refunded affected customers in the manner set out in this agreement, and agrees to satisfy the Commission that payment has been made in accordance with this agreement.
 - 3.4 Provided that Vodafone adheres to the terms of this agreement, the Commission agrees that it will not issue civil or criminal proceedings against Vodafone in relation to the Broadband Lite promotion.

Interpretation

4. For the purposes of this agreement:
 - 4.1 **Vodafone** means Vodafone New Zealand Limited.

- 4.2 **Broadband Lite** means the Broadband Lite mobile data add on service provided by Vodafone between July 2009 and September 2011 under which customers received 100MB of mobile data for \$10 per month.
- 4.3 **Notification text** means the text message to be sent to customers advising them of the need to opt out of Broadband Lite. Notification texts were sent by a company engaged by Vodafone ("Vodafone's agent").
- 4.4 **Affected customer** means any person who received Broadband Lite who:
- 4.4.1 Did not receive the notification text; or
 - 4.4.2 Was charged for the Broadband Lite service after notifying Vodafone's agent that they no longer wanted the service (either by cancelling the service or by choosing not to opt-in to the service at the end of the free period) either because Vodafone's agent failed to pass on those responses to Vodafone, or Vodafone did not cancel the add-on quickly enough to avoid a customer receiving the charge.

Broadband Lite

5. Between July 2009 and September 2011, Vodafone promoted Broadband Lite to its customers through a variety of channels including direct mail fliers, in-store signage and the Vodafone website.
6. Vodafone promoted Broadband Lite to customers on the basis that it provided customers access to data on their mobile phones for free for three months ('the Broadband Lite promotion' and 'the free period'). Advertising used descriptions such as 'Free internet on your mobile for three months' and 'Get three months free mobile internet'.
7. Vodafone published relevant terms and conditions for the Broadband Lite promotion on its website. Those terms and conditions included:
 - 7.1 That after the free period, customers would automatically be charged ten dollars per month for the service unless the service was cancelled by the customer by responding 'CANCEL' to a text prompt sent by Vodafone's agent, or visiting a Vodafone store, or calling Vodafone's customer service line.
 - 7.2 That Vodafone will send a text message to Eligible Customers notifying them before their Broadband Lite Add-On becomes chargeable.
8. Some Vodafone advertising for the promotion referred customers to the terms and conditions, some did not.

9. Customers who signed up to eligible Vodafone mobile phone plans online automatically received the Broadband Lite promotion and were subscribed to the Broadband Lite service.
10. As part of its administration of the Broadband Lite promotion, Vodafone's agent was engaged to provide the following services:
 - 10.1 Sending notification text messages to customers that received the Broadband Lite promotion advising that they would begin to be charged for Broadband Lite unless they cancelled that service. Customers were to receive two text messages. The first was to be received eight to ten days prior to the expiry of the free period. The second reminder text was to be sent three days before the end of that period.
 - 10.2 Receiving responses (including no response) from customers to whom they had sent notification texts and reporting those responses to Vodafone by way of a spreadsheet sent by the agent to a specialist Vodafone team once a week. It was proposed that, upon receipt of the spreadsheet, Vodafone would remove the Broadband Lite add-on from all customers who did not wish to continue with the service, including those who had not responded to notification texts.
11. From February 2011, customers who received the Broadband Lite promotion and used less than 100 kilobytes of data per month were unsubscribed from the service by Vodafone prior to the expiry of the free period. These customers received notification text messages requiring them to send a reply text to opt in and continue with the Broadband Lite service.
12. More than 146,000 customers took advantage of the Broadband Lite promotion.

Commission Investigation

13. The Commission subsequently received several complaints from customers about the Broadband Lite promotion. Complaints received by the Commission alleged that:
 - 13.1 Some Vodafone customers thought they had only agreed to receive Broadband Lite for three months. They did not understand themselves to have agreed to receive the service after that three month period.
 - 13.2 Some Vodafone customers who signed up to an eligible plan via Vodafone's website automatically signed up to the Broadband Lite promotion and had Broadband Lite added to their subscribed services. They could not remove Broadband Lite from their subscribed services when they signed up to the

plan online and were not directly alerted to the ongoing nature of Broadband Lite after the free period or other relevant terms and conditions.

- 13.3 Some customers did not receive text messages alerting them that charges for Broadband Lite would commence unless they cancelled the service.
- 13.4 Some customers either chose not to continue with Broadband Lite and tried to cancel it, or did not opt in to receive the service, but Vodafone failed to remove Broadband Lite as an add-on in time and so they were charged \$10 for an extra month.

14. The Commission has investigated these complaints. Relevant facts established during this investigation include:

- 14.1 The terms and conditions on Vodafone's website did explain the need to 'opt out' of the Broadband Lite service at the end of the free period. However, the requirement to opt out was not consistently or adequately disclosed across all marketing channels. For example:
 - 14.1.1 The requirement to opt out was not disclosed at all in print advertising. Some print advertising referred to the existence of the terms and conditions, some did not.
 - 14.1.2 Vodafone's policy for all staff was that they must inform customers of the terms and conditions at the point of sale. However, that did not always occur. The offer terms and conditions were not adequately disclosed to customers who received the Broadband Lite Add-on via the on-line sign up process.
- 14.2 Vodafone's agent failed to send 6,163 text messages to customers advising them that they would begin paying for Broadband Lite if they did not opt out of the service and did not alert Vodafone to this issue. A further 1762 customers were not sent text messages as a result of a one-off failure within Vodafone's communications team to provide its agent with the details of those customers in order for the text notifications to be sent.
- 14.3 3,050 customers were charged for the Broadband Lite service after those customers had either opted out of the service, or had chosen not to opt in to the service at the end of the free period because they did not have the add-on removed quickly enough from their accounts.

The Commission's view

15. The Commission has completed its investigation. It has concluded that the facts set out above give rise to likely breaches of sections 11, 13(c), 13(e) and 13(i) of the Fair Trading Act 1986. This is on the basis that:
- 15.1 Vodafone is likely to have misled some customers as to the nature and characteristics of the service in breach of section 11 of the Act and as to the benefits arising from Broadband Lite in breach of section 13(e) of the Act. Some customers were led to believe that the service was time bound (three months) and free. Some customers were not adequately advised of the terms and conditions that applied or of the positive steps that customers were required to take to opt out of the ongoing service after the free period had expired.
 - 15.2 Vodafone is likely to have misled some customers that they had agreed to acquire the ongoing Broadband Lite service in breach of section 13(c) of the Act. Our enquiries established that some customers thought they had agreed to acquire a free service for three months only. They did not understand that they had agreed to acquire the ongoing service.
 - 15.3 Vodafone is likely to have misled some customers as to its right to require payment for the Broadband Lite service in breach of section 13(i) of the Act where:
 - 15.3.1 Its agent failed to send notification texts to 7,925 customers.
 - 15.3.2 3,050 customers had either cancelled the service or chosen not to opt-in to the service at the end of the free period, but were charged for Broadband Lite because the add-on was not removed from customers' accounts on time.

Steps taken by Vodafone

16. Vodafone has cooperated with the Commission, conducted its own investigation into the system failures which led to the issues with Broadband Lite set out below, contacted customers to explain the issues and how they were affected, and fully refunded all customers that it was able to contact.
17. Vodafone initiated its own investigation into the Broadband Lite promotion as soon as customer complaints were raised by the Commission. Vodafone concluded that:
- 17.1 7,925 customers were not sent a notification text message. 6,163 of these errors were caused by its agent failing to send a notification text message to customers. The remaining 1,762 errors were due to the failure of a

communications team within Vodafone to provide its agent with the details of those customers in order for text messages to be sent to them.

- 17.2 3050 customers were charged for the Broadband Lite service despite having cancelled the service or not opting in to the service at the end of the free period because a failure within Vodafone's system meant that the add-on was not removed on time.

18. In response to the investigation, Vodafone has:

- 18.1 Identified each of the system failures which led to customers not being notified that the Broadband Lite free period was coming to an end, including those that occurred by Vodafone's agent.
- 18.2 Contacted customers who were affected by system failures in the Broadband Lite promotion that it was able to contact.
- 18.3 Made all reasonable attempts to identify, locate and establish contact details for all affected customers.
- 18.4 Paid a total of \$268,231.38 to affected customers as compensation for charges they had paid for the Broadband Lite service. Compensation has been paid irrespective of whether the customer used the mobile data (in most cases they had).
- 18.5 Agreed to make compensation payments for any other affected customers as set out below.
- 18.6 Introduced an online training programme for all staff to assist in compliance with Vodafone's obligations under the Act.

Compensation process

19. To the extent it has not already done so Vodafone undertakes to:

19.1 Make all reasonable efforts to contact each affected customer and:

- 19.1.1 For each of the 3,050 customers who have either cancelled the Broadband Lite service or who chose not to opt-in to the service at the end of the free period, refund all amounts charged to those customers for the Broadband Lite service.
- 19.1.2 For all other affected customers who still receive the Broadband Lite service, give those customers the option to:
- (a) continue with the Broadband Lite service; or

(b) discontinue the Broadband Lite service, and accept a refund of all amounts charged to those customers for the Broadband Lite service.

19.1.3 For all other affected customers who no longer receive the Broadband Lite service, refund all amounts charged to those customers for the Broadband Lite service;

19.2 Conduct those refunds in accordance with clauses 19 to 23 of this agreement; and

19.3 Report to the Commission on the settlement process as set out in clauses 24 to 26 of this settlement agreement; and

20. Engage an independent reviewer to conduct an independent review of the settlement process as set out in clauses 27 and 28 of this settlement agreement. Where any affected customer is entitled to a refund under this agreement and has a current account with Vodafone, the amount of the refund shall, at the customer's election, be applied against that account or paid into a bank account nominated by the customer.
21. Where any affected customer is entitled to a refund under this agreement and does not have a current account with Vodafone, Vodafone will provide the refund as follows:
- 21.1 If the affected customer owes no outstanding debt to Vodafone, the refund will be paid into a bank account nominated by the affected customer;
- 21.2 If the affected customer owes an outstanding debt to Vodafone:
- 21.2.1 The amount of the refund shall first be applied against any money owed by that customer to Vodafone.
- 21.2.2 If the amount of refund exceeds the amount owed to Vodafone, the difference (the remaining refund) will be paid into a bank account nominated by the customer.
22. Vodafone agrees to ensure that all reasonable endeavours are undertaken to identify and locate those affected customers who no longer have an account with Vodafone and to notify them of their entitlement to a payment under this agreement.
23. Where Vodafone becomes aware that the contact details recorded for any affected customer are incorrect or out of date, Vodafone must ensure that all reasonable endeavours are undertaken to locate and establish contact details for those customers.

24. Vodafone agrees that, where it has been unable to locate an identified affected customer, it will treat any amounts owed to that customer under this agreement pursuant to section 5 of the Unclaimed Money Act 1971.

Report Requirement

25. Vodafone shall provide a Report to the Commission of the refund process as set out in clauses 18 to 23 of this agreement. This Report shall specify the date and the amount of the refunds made to affected customers.
26. The Report shall be provided six months after the date of this agreement, or when refunds have been made to all affected customers, whichever is the earlier.
27. Vodafone shall, on the Commission's request, provide the Commission with:
- 27.1 copies of all letters sent to affected customers; and
 - 27.2 any document held by Vodafone relating to the refund process set out in clauses 19 to 24 above.

Review Requirement

28. Vodafone shall at its own cost engage an independent reviewer, approved by the Commission, to verify the payment of refunds as set out in this Deed.
29. That independent reviewer shall verify and provide a comment on the Report to be provided by Vodafone to the Commission as described at clause 23 above, and provide a view as to whether the process has been satisfactorily completed in accordance with the terms of this Deed.

Compliance Programme and Complaints Process

30. Vodafone has instituted an online compliance training programme for all staff on the Act.
31. Vodafone will provide the Commission with a report (the **compliance programme report**) verifying that Vodafone has:
- 31.1 Put in place a compliance programme that ensures effective compliance with the Act, including, but not limited to, the incorporation of an effective system for notifying customers of all material terms and conditions that attach to promotional offers that Vodafone provide prior to customers being committed to those promotional offers; and

31.2 Put in place a complaints management process that includes objective measures to ensure that complaints are adequately received, monitored and effectively dealt with.

32. The compliance programme report must be provided to the Commission. Any issue or concerns raised by the Commission must be reasonably considered by Vodafone.

No further action by Commission

33. The Commission will close its investigation into the Broadband Lite promotion upon execution of this agreement. The Commission undertakes not to issue any civil or criminal legal proceeding in relation to the Broadband Lite promotion that was the subject of its investigation unless there is a material breach of this agreement by Vodafone or this agreement becomes void.
34. Nothing in this deed shall limit or affect the ability of the Commission to bring proceedings against Vodafone in respect of any conduct that was not the subject of the investigation or which falls outside the matters referred to in paragraphs 5 to 12 above.

Unaffected rights

35. If there is any material breach by Vodafone in fulfilment of this agreement (such breach to be determined solely by the Commission in its reasonable opinion), the Commission may in its complete discretion bring proceedings jointly or severally against Vodafone for breach of the terms of this agreement.
36. Nothing in this agreement will limit or affect the ability of any affected customer from pursuing any legal rights available to him, her or it against Vodafone.

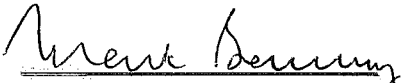
Giving effect to agreement

37. The parties agree to take such steps as are necessary or desirable to give full effect to the terms of this agreement.

Public statements about settlement

38. The Commission will publicise the settlement agreement and the parties may make public statements about it after the settlement agreement has been executed.
39. Vodafone agrees that it will not make any public comment about this agreement until after the Commission has issued a media release notifying the public of this agreement.
40. Any party may release or publish this agreement, including to the public at large, at any time after the Commission has made its initial written media statement.

EXECUTED by and under the name of the **COMMERCE COMMISSION** by:



Dr Mark Berry, Chair

EXECUTED by **VODAFONE NEW ZEALAND LIMITED** by:



Director/ Authorised Signature

Director/ Authorised Name