

Regulator hits ground running on new unfair contract terms

March 2015

Speed read

In issuing its finalised [new guidelines](#)¹ described by us [here](#), the Commerce Commission has telegraphed that:

- it won't be giving a grace period on enforcing the new law, which applies from 17 March;
- it will focus on particular industries including telecommunications, rental cars, online trading, fitness, airlines, and loans; and
- terms limiting competition between providers will be a key focus (we think that will include early termination charges for Telcos).



The Detail

Of course the new guidelines are valuable for informing B2C suppliers how best to comply with the new regime. Also useful is the Commission's statement from 25 October around how it will enforce the requirements.

No Grace Period

Said the Commerce Commission Chair, Dr Berry, when releasing the new guidelines:

Parliament delayed the introduction of these laws for 15 months to give businesses time to prepare for them. We have taken steps to inform businesses about these new laws, including through public presentations and publishing our Guidelines. But it is important that businesses note that there will be no grace period. The Commission will be actively enforcing these new laws.

The industry focus follows Australian experience

The above list of industries on which there will be focus is not surprising, for it reflects where the Australian regulator has focused its activity. While all industries are at risk, those industries should be super-careful.

Provisions reducing competition

The Commission has telegraphed that it will also focus on terms that limit competition. Mainly this is around terms that limit churn to new providers and therefore limit competition. As Dr Berry says:

The types of terms that concern us include those that have the effect of limiting competition, such as automatic 'rollover' or renewal terms and terms that lock consumers into contracts that they wish to exit, preventing them switching to a competitor. We will also look closely at any term that allows a business to increase the price it charges for goods or services without the customer being allowed to terminate the contract with no penalty.

For providers such as Telcos, we expect that early termination charges will be in the sights, for the same reasons.

1. *Unfair Contract Terms Guidelines* (February 2015) Commerce Commission.

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