ACCC unfair contract terms crackdown – which terms failed the sniff test

MARQUE

Unfair contract terms (UCT) are on the ACCC's radar in a big way. As in 'tackling it industry by industry' and 'pushing for legislative change' big.

An ACCC inquiry and report into the dairy industry led to a series of one on one chats between the ACCC and individual dairy processors and – BAM – widespread changes to contract terms making them fairer for farmers. And an ACCC investigation into the waste management industry just led to three of the biggest players in the game changing up their standard terms. Right behind that came a prosecution against TPG Internet over unfair contract terms.

There's also the fact that the ACCC is now pushing for courts to be able to add penalties and compensation to its toolkit for dealing with UCT. Which means that the cost to business could suddenly be a lot more than the careful redraft of a problematic contract.

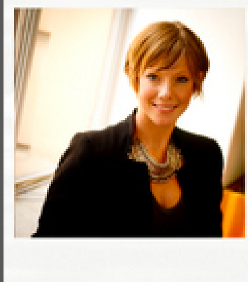
It's not always easy to assess when a term crosses over from smart business to the dark side. Here are some examples of the kinds of terms that the ACCC says are unfair from the recent crackdown.

- Terms allowing dairy processors to vary price or quality without giving corresponding termination rights to farmers. Price variation rights with no corresponding termination right for the other party are a common contender for unfairness.
- Visy Recycling had a similar problem, not allowing a customer to terminate their contract if they were unhappy about price increases.
- Dairy processors imposing terms restricting a farmer's ability to lease a farm or sell their cattle.
- Cleanaway and Suez including a liquidated damages clause requiring small businesses to pay 30% of the payments remaining over the life of the contract if they left early.
- TPG taking a $20 prepayment for costs that the customer *might* incur, that was non-refundable even if not used, and where at least $10 is kept by TPG when a customer cancels their plan.

The common thread is unreasonable costs to the little guy; price hikes, exit penalties, fees for no service.

The ACCC's stance is sending a strong message to business: time for everyone to review those standard contract terms and think seriously about UCT.

Questions? Give us a call.



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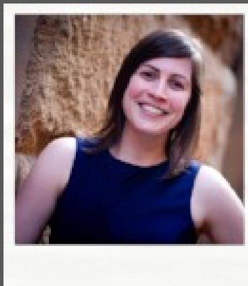

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