

Enforceable Undertaking

Given to the Australian Communications and Media Authority by TPG Telecom Limited (formerly Vodafone Hutchison Australia Pty Limited) (trading as Lebara Australia, Lebara, Lebara Mobile) (ACN 096 304 620) under section 572B of the *Telecommunications Act 1997 (Cth)*

1. Person/s giving the Undertaking

This Undertaking is given to the Australian Communications and Media Authority by TPG Telecom Limited (trading as Lebara Australia, Lebara, Lebara Mobile) of 177 Pacific Highway, North Sydney, NSW, 2060 for the purposes of section 572B of the Telecommunications Act (**the Act**).

2. Definitions

2.1. In this Undertaking:

ACMA means the Australian Communications and Media Authority;

Business Day means a day that is not a Saturday, Sunday or a public holiday in New South Wales;

Commencement Date has the meaning given to that term at paragraph 3.1;

Compliance Plan means the joint compliance plan approved under section 5.5(1)(b) of the Determination by the ACMA on 11 October 2018;

Determination means the Telecommunications (Service Provider – Identity Checks for Prepaid Mobile Carriage Services) Determination 2017;

Independent Auditor means a person who has expertise and is qualified to conduct audits relating to risk and compliance, policies, processes, procedures, systems and controls, and who is independent of Lebara and its associated companies;

Lebara means TPG Telecom Limited (formerly Vodafone Hutchison Australia Pty Limited), ACN 096 304 620, trading as Lebara Australia, Lebara, Lebara Mobile;

Lebara Prepaid Customer means a customer of the Lebara-branded prepaid mobile carriage service;

Potential Lebara Prepaid Customer means a potential customer of the Lebara-branded prepaid mobile carriage service;

Real-Time Financial Transaction Method means the method of verifying identity specified in item 4 in Schedule 1 to the Determination;

Telecommunications Act means the *Telecommunications Act 1997*;

Time-Delayed Financial Transaction Method means the method of verifying identity specified in item 5 in Schedule 1 to the Determination; and

Undertaking means this Enforceable Undertaking.

2.2. Unless the contrary intention appears, terms that are defined in the Telecommunications Act or the Determination have the same meaning in this Undertaking as they have in the Telecommunications Act or the Determination.

3. Term of the Undertaking

- 3.1. This Undertaking, having been executed by Lebara, commences on the day it is executed by the ACMA (the **Commencement Date**).
- 3.2. This Undertaking ceases to have effect 24 months after the Commencement Date, unless:
 - (i) the ACMA consents in writing to the earlier withdrawal of the Undertaking in accordance with subsection 572B(3) of the Act, in which case the Undertaking ceases to have effect from the day specified by the ACMA in its written consent; or
 - (ii) the ACMA gives written notice to Lebara cancelling the Undertaking in accordance with subsection 572B(4) of the Act, in which case the Undertaking ceases to have effect on the day specified by the ACMA in its written notice.

4. Background

- 4.1. The ACMA is responsible for monitoring and enforcing compliance by carriage service providers with their obligations under the Telecommunications Act and the Determination.
- 4.2. As a carriage service provider that supplies prepaid mobile carriage services, Lebara is required to comply with the Determination, in accordance with section 101(1) of the Telecommunications Act.
- 4.3. The ACMA commenced an investigation into alleged contraventions of the Determination (relating to Lebara's prepaid identity checking processes for Lebara Prepaid Customers) on 14 January 2020.
- 4.4. Based on the documents and information obtained during its investigation, the ACMA found that Lebara contravened section 2.3(1) of the Determination and section 101(1) of the Telecommunications Act on 26,323 occasions because it activated Lebara-branded prepaid mobile carriage services without complying with the rules set out in Parts 4 or 5 of the Determination.
- 4.5. Lebara acknowledges that its conduct contravened section 2.3(1) of the Determination and section 101(1) of the Telecommunications Act.
- 4.6. In response to the ACMA's investigation and concerns regarding Lebara's future compliance, Lebara offers this Undertaking.
- 4.7. Lebara has, prior to offering this Undertaking, already taken the following steps in respect of Lebara Prepaid Customers:
 - (i) sought to re-verify the identity of all Lebara Prepaid Customers identified by the ACMA in its Investigation Report that were active as of 18 June 2020;
 - (ii) implemented a new payment processing system for Lebara Prepaid Customers which only accepts credit and debit cards from authorised deposit taking institutions;
 - (iii) discontinued use of the Compliance Plan for verification of the identity of Lebara Prepaid Customers; and
 - (iv) commenced consideration of potential changes that may be made to Lebara's systems and processes in order to identify and prevent activation of prepaid mobile carriage services of Potential Lebara Prepaid Customers who have provided a name that features any of the characteristics set out in paragraphs 5.2 (a) to (f) that would make the name reasonably unlikely to be that of an actual person.

5. Undertakings

5.1. Under section 572B of the Act, Lebara undertakes to carry out the actions specified in paragraphs 5.2 to 5.18 below within the timeframes specified.

Checking of names of service activators

5.2. For the purposes of Lebara satisfying its obligations under section 4.2 of the Determination to obtain the name of a Potential Lebara Prepaid Customer who is a service activator as set out in Item 2(a) of Table 2 in section 4.3 of the Determination, Lebara undertakes (on and from the relevant implementation dates specified in paragraph 5.3 below) to only activate the prepaid mobile carriage service of Potential Lebara Prepaid Customers:

- (i) who attempt to activate a prepaid mobile carriage service following the Commencement Date; and
- (ii) whose identity is verified using the Real-Time Financial Transaction Method or the Time-Delayed Financial Transaction Method in Schedule 1 to the Determination,

if the name provided by the Potential Lebara Prepaid Customer does not feature any of the following characteristics that would make the name reasonably unlikely to be that of an actual person:

- a) a series of random symbols;
- b) numerical digits;
- c) superfluous punctuation such as full stops or commas (but not hyphens);
- d) obscene or offensive wording identified in a Lebara managed list;
- e) a series of meaningless letters; or
- f) describing obviously fictional characters (e.g., Darth Vader, Daffy Duck) which are not otherwise names commonly used in Australia and are identified in a Lebara managed list.

5.3. Lebara undertakes to provide the ACMA, within two months of the Commencement Date, written details of the systems and processes it uses, or plans to use (along with applicable implementation dates, which must be within four months of the Commencement Date for items 5.2 (a) – (c) and six months of the Commencement Date for items 5.2 (d) – (f)), to assess whether a name has any of the characteristics specified in paragraph 5.2 and what actions it takes where it assesses that a name has these characteristics, to provide assurance that the name is reasonably likely to be a name of an actual person.

5.4. For the purposes of Lebara satisfying its obligations under section 4.2 of the Determination to obtain the name of a Potential Lebara Prepaid Customer who is a service activator as set out in Item 2(a) of Table 2 in section 4.3 of the Determination, Lebara undertakes (on and from the Commencement Date until the date of completion of the implementation of systems and processes identified in paragraph 5.3), to do the following:

- (i) conduct a review (whether on a manual or automated basis) of the names submitted by Lebara Prepaid Customers, who meet the criteria specified in paragraphs 5.2(i) and (ii) (***Applicable Lebara Prepaid Customers***), in order to identify any such names that satisfy one or more of the characteristics specified in paragraphs 5.2 (a) to (f), and in relation to which, a reasonable individual would conclude that the name submitted by the Applicable Lebara Prepaid Customer would be reasonably unlikely to be that of an actual person;
- (ii) undertake the review described in sub-paragraph (i) at least twice a week and each such review will be undertaken in respect of Applicable Lebara Prepaid Customers whose services have been activated in the period since the date of the previous such review; and

- (iii) in relation to any names that are identified as being reasonably unlikely to be that of an actual person following completion of each review in sub-paragraph (i), suspend, on the same day that the review in sub-paragraph (i) takes place, the service of such Applicable Lebara Prepaid Customer until such time as the name can be corrected or validated or cancel the service.

5.5. Lebara undertakes to provide the ACMA with written details of the systems and processes referred to in paragraph 5.3 within one month of any changes to them while this Undertaking remains in force.

Written arrangements

5.6. Lebara acknowledges its obligation to keep a written description of the arrangements it has in place to comply with the Determination in respect of Lebara Prepaid Customers, as required by section 6.3 of the Determination. Lebara undertakes to provide to the ACMA a copy of its written description of arrangements within one month of the Commencement Date. The written arrangements will include detailed information about how Lebara, when using the Real-Time Financial Transaction Method, satisfies itself that a specified financial account is held by the service activator in accordance with clause 2(a) of item 4 in Schedule 1 of the Determination and therefore that this is an available method of identity verification in the circumstances.

5.7. Lebara undertakes, for the duration of this Undertaking, to also provide to the ACMA a copy of the written descriptions specified in paragraph 5.6 within 10 business days of any changes to them.

Re-verification

5.8. For the purposes of ensuring compliance with section 4.5 of the Determination, within six months of the Commencement Date, Lebara undertakes to re-verify, using a method specified in Part 4 of the Determination, the identity of Lebara Prepaid Customers of any prepaid mobile carriage service activated by Lebara which meets all the following criteria:

- (i) it is active at the time the re-verification occurs;
- (ii) it was verified in accordance with section 4.5 of the Determination using the Real-Time Financial Transaction Method; and
- (iii) it was activated prior to 1 July 2019.

5.9. Within 10 business days following completion of the re-verification process in paragraph 5.8, Lebara undertakes to report to the ACMA on the number of Lebara Prepaid Customers:

- (i) that were identified as requiring re-verification;
- (ii) that were re-verified; and
- (iii) whose services were cancelled or suspended.

Independent Audit

5.10. Lebara undertakes to appoint, in accordance with paragraph 5.11, an Independent Auditor to:

- (i) assess the extent to which Lebara's policies, processes, procedures (including the written arrangements in paragraph 5.6), systems and controls in relation to the remedial actions specified in paragraph 4.7 and the arrangements specified in paragraphs 5.3 and 5.4 are achieving compliance with section 2.3 of the Determination for activations using the Real-Time Financial Transaction Method; and
- (ii) review the first 10 percent of activations that occur in each month for the period between the Commencement Date and 6 months from the Commencement Date, to assess whether the identity of each of those service activators has been verified correctly in accordance with

the Real-Time Financial Transaction Method and the arrangements specified in paragraph 5.3 (the **first audit**).

- 5.11. Lebara undertakes to obtain ACMA approval of the Independent Auditor, having supplied details of that person's experience and qualifications, before that person's appointment. If the ACMA does not approve Lebara's first choice of Independent Auditor, Lebara undertakes to repeat this process until it has obtained that approval.
- 5.12. Lebara undertakes to commence the audit within 7 months from the Commencement Date and will use its best endeavours to ensure that the Independent Auditor completes the audit within 15 business days of the audit's commencement. If, despite Lebara's best endeavours, the Independent Auditor is unable to complete the audit within the required time frame, Lebara will use its best endeavours to ensure the Independent Auditor completes the audit as soon as possible thereafter.
- 5.13. Lebara undertakes to provide to the ACMA, within 20 business days of completion of the audit, a copy of the auditor's report which report should contain at least the following:
- (i) details of any potential contraventions of the Determination identified in the scope of the audit described in paragraph 5.10;
 - (ii) a description of the cause (or likely cause) of each contravention;
 - (iii) details of the actions already taken or planned to be taken by Lebara to remedy those contraventions;
 - (iv) in respect of the period of the audit following completion of the implementation of systems and processes identified in paragraph 5.3:
 - (A) recommendations as to improvements or maintenance of policies, processes, procedures, systems and controls; and
 - (B) the timing of actions already taken or planned to be taken to implement those recommendations; and
 - (v) in respect of the issues relating to paragraph 4.7 covered by the audit:
 - (A) recommendations as to improvements or maintenance of policies, processes, procedures, systems and controls; and
 - (B) the timing of actions already taken or planned to be taken to implement those recommendations.

Additional Audits

- 5.14. Lebara undertakes to conduct additional audits:
- (i) of the first 10 percent of records (the **audit sample size**) of Lebara Prepaid Customers whose prepaid mobile carriage services are activated using the Real-Time Financial Transaction Method in each month within the following periods:
 - a) the period 7 to 14 months from the Commencement Date (the **Second Audit**);
 - b) the period 15 to 21 months from the Commencement Date (the **Third Audit**)
 - (ii) for any contravention identified in relation to subparagraph 5.14(i), to assess the extent to which Lebara's policies, processes, procedures (including the written arrangements in paragraph 5.6), systems and controls are achieving compliance with section 2.3 of the Determination for activations using the Real-Time Financial Transaction Method.

- 5.15. Lebara undertakes not to reduce the audit sample size specified in paragraph 5.14 without the ACMA's approval. In the event that Lebara wishes to seek such approval it must do so, and must provide reasons for the proposed reduction, at least 10 business days before the commencement of the relevant audit.
- 5.16. Lebara undertakes to commence the:
- (i) Second Audit, within 15 months from the Commencement Date; and
 - (ii) Third Audit, within 22 months from the Commencement Date,
- and to complete the additional audits within 15 business days of their respective commencement.
- 5.17. Lebara undertakes to provide to the ACMA, within 20 business days of completion of each additional audit, a copy of the auditor's report which report should contain at least the following:
- (i) details of any potential contraventions of the Determination identified in the scope of each audit described in paragraph 5.14;
 - (ii) a description of the cause (or likely cause) of each contravention;
 - (iii) details of the actions already taken or planned to be taken by Lebara to remedy those contraventions;
 - (iv) recommendations for further improvements or maintenance of policies, processes, procedures, systems and controls; and
 - (v) the timing of actions already taken or planned to be taken to implement those recommendations.

Record keeping

- 5.18. Lebara undertakes to retain any documents and information demonstrating compliance with this Undertaking and provide these to the ACMA upon request within 5 business days for the purpose of assessing compliance with the terms of this Undertaking.

6. Extension of timeframes

- 6.1. In the event that Lebara wishes to extend any time limit specified in paragraphs 5.2 to 5.18 it may do so only with the ACMA's approval, which approval must be sought, providing reasons for the proposed extension, at least 5 business days prior to the expiry of the time limit.

7. Notices and approvals

- 7.1. Any notice or approval required or permitted to be given by the ACMA under this undertaking must be in writing and may be given or made by any ACMA Authority member or by any ACMA staff member who is a member of the Senior Executive Service.

8. Acknowledgements

- 8.1. Lebara acknowledges that:

- (i) The ACMA will, following notice to Lebara, make this Undertaking publicly available including by publishing it on the ACMA's website.
- (ii) The ACMA may, from time to time, make public comment about this Undertaking and its terms which includes, following notice to Lebara, issuing a media release.
- (iii) The ACMA may, from time to time, publicly report on compliance with this Undertaking.

8.2. Lebara also acknowledges that:

- (i) The ACMA's acceptance of this Undertaking does not affect the ACMA's power to investigate and take compliance and enforcement action arising from conduct that is not the subject of this Undertaking or arising from future conduct.
- (ii) This Undertaking in no way derogates from the rights and remedies available to any other person or entity arising from the alleged conduct, the subject of this Undertaking.

Execution of the Undertaking

Signed/Executed by TPG Telecom Limited (trading as Lebara Australia, Lebara, Lebara Mobile) (ACN: 096 304 620) pursuant to section 127(1) of the *Corporations Act 2001* by:

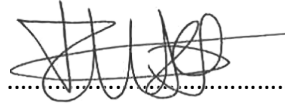
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Signature
Trent Czinner

Name (insert title if relevant/appropriate (print))

~~Director~~/Secretary

Date 12 August 2021

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Signature
Iñaki Berroeta, CEO

Name (insert title if relevant/appropriate (print))

~~Director~~/Secretary

Date 12 August 2021

Accepted by the Australian Communications and Media Authority under section 572B of the Telecommunications Act:

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Signature
Nerida O'Loughlin

Name, Member (print)

16 August 2021

Date

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Signature
Brendan Byrne (Aug 16, 2021 11:26 GMT+10)

Name, ~~Member~~/General Manager (print))