



Direction to comply with industry code

(Subsection 121(1) of the *Telecommunications Act 1997*)

TO: Nine Network Australia Pty Limited
ACN 008 685 407

OF: Level 9
54 Park St
SYDNEY NSW 2000

Attention: Company Secretary

I, Nerida O'Loughlin, delegate of the Australian Communications and Media Authority (**the ACMA**), being satisfied in accordance with subsection 121(1) of the *Telecommunications Act 1997* (**the Act**) that the Nine Network Australia Pty Limited (ACN: 008 685 407) (**Nine Network**):

- (a) is a participant in a particular section of the telecommunications industry; and
- (b) has contravened clause 3.1.2(d)(i) of the *Mobile Premium Services Code* (C637:2009) (**the Code**), an industry code registered under Part 6 of the Act which applies to participants in that section of the industry;

HEREBY give notice under subsection 121(1) of the Act, directing the Nine Network to take such steps as are necessary to ensure that the Nine Network complies with the Code, in particular clause 3.1.2(d)(i) of the Code by no later than **close of business 27 September 2010**.

Details of the contraventions

1. Nine Network is a “content service provider” within the meaning of section 97 of the Act.
2. As a content service provider, Nine Network is a “participant in a section of the telecommunications industry” within the meaning of section 111 of the Act (relevantly, section 110 of the Act defines “section of the telecommunications industry” and section 7 of the Act defines “telecommunications industry”).

3. The Code was developed by Communications Alliance Ltd (ACN: 078 026 507), being a body or association that represents a section of the telecommunications industry, and registered with the ACMA under section 117 of the Act on 14 May 2009.
4. Clause 1.3.1(b) of the Code states that the Code applies to the content service providers section of the telecommunications industry under section 110 of the Act.
5. The Code applies to Nine Network as a content service provider and a participant in a section of the telecommunications industry.
6. For the purposes of the Code, Nine Network is considered a “Content Supplier” as defined in clause 2.2, as the content service supplied by Nine Network is a Mobile Premium Service (Premium SMS or MMS Service), being a content service supplied by way of a call to or from a Short Code with the prefix ‘199’.
7. On 29 October 2009, the ACMA commenced an investigation under paragraph 510(1)(c) of the Act into whether Nine Network was acting in compliance with the Code.
8. The investigation results indicated that Nine Network was in contravention of clause 3.1.2(d)(i) of the Code.
9. Nine Network contravened clause 3.1.2(d)(i) of the Code by failing to clearly and legibly state a customer helpline number in the advertisements for the Mobile Premium Services:
 - “the Keno Million Dollar Comp service” supplied using the Short Code 1995 9888, aired during the NRL Footy Show on 24 July 2009; and
 - “the Getaway Moccona Competition” supplied using the Short Code 1995 9222, aired during the Getaway programme on 6 May 2010. (“**the Advertisements**”)
10. Based on the material before me, I am satisfied that Nine Network was in contravention of clause 3.1.2(d)(i) of the Code by failing to clearly and legibly state a customer helpline number in the Advertisements.

TAKE NOTE:

Under subsection 121(2) of the Act, Nine Network must comply with a direction under subsection 121(1) of the Act.

Under subsection 121(3) a person must not:

- (a) aid, abet, counsel or procure,
- (b) induce, whether by threats or promises or otherwise,
- (c) be in any way, directly or indirectly, knowingly concerned in, or party to; or
- (d) conspire with others to effect;

a contravention of the requirement in subsection 121(2).

Subsection 121(4) states that subsections 121(2) and (3) of the Act are civil penalty provisions.

If Nine Network does not comply with this Direction, the ACMA may take civil action in the Federal Court to recover a pecuniary penalty against Nine Network in accordance with section 571 of the Act.

Section 570 of the Act sets out the matters which the Federal Court must consider in determining pecuniary penalties. The maximum pecuniary penalty payable under subsection 570(1) by a body corporate is \$250,000 for each contravention.

REVIEW RIGHTS

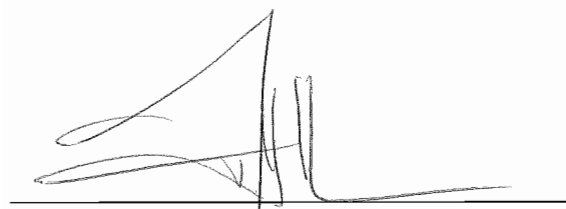
As a person affected by the decision, if you are dissatisfied with my decision to direct Nine Network under subsection 121(1) of the Act, you may apply to the ACMA for reconsideration of the decision by the ACMA under subsection 558(1) of the Act.

An application for reconsideration must be made **within 28 days** after you are informed of the delegate's decision to issue the Direction (subsection 558(3) of the Act).

If you are dissatisfied with the ACMA's decision on the reconsideration of my decision:

- (a) subject to the *Administrative Appeals Tribunal Act 1975 (the AAT Act)*, application may be made to the Administrative Appeals Tribunal for review of the decision on that reconsideration; and
- (b) you may request a statement under section 28 of the AAT Act in relation to the decision on that reconsideration.

Dated this 14th day of September 2010



Nerida O' Loughlin

Delegate of the Australian Communications and Media Authority