

11 May 2010  
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Dear John

### Telecommunications Consumer Protection Code (the TCP Code) Review

I refer to your thoughtful letter of 4 May indicating that you plan to meet with key stakeholders on 21 May to prepare for CA's review of the TCP Code. As you're aware, I outlined at the CommsDay Summit in Sydney recently the ACMA's *Reconnecting the Customer* strategy and indicated that the ACMA would provide strong ex ante guidance for the TCP Code review.

The ACMA recognises that the telecommunications regulatory landscape currently has a number of moving pieces as a result of a number of legislative and policy reviews, including the recommendations arising from the Department of Broadband Communications and the Digital Economy's (DBCDE's) Review of consumer-related code development processes, the National Broadband Network developments, ongoing changes to national consumer laws and the formation of the peak consumer representative body, ACCAN. Together with significant increases in complaints to the TIO in relation to customer service and complaints-handling, the role and content of codes and co-regulation is under particular scrutiny and pressure.

I see the main challenge for this Code Review and indeed for co-regulation in the telco sector to be the development of enforceable, measurable code provisions that will, regardless of the product or service being offered and delivered, provide the customer with the following core protections:

1. The clear and accurate **advertising** of a product or service.
2. Products and services will be provided under clear and **fair terms** and be set out succinctly.
3. **Costs** associated with a product or service will be clear and unambiguous.
4. **Assistance** for the consumer will be readily accessible and provided in a timely manner should a problem be encountered.
5. Avenues for **redress** will be clearly identified for the consumer in the event that **problems** are unable to be rectified satisfactorily.

While these core protections are broad and principles-based, I envisage that the articulation and expansion of these principles as enforceable code provisions would provide an effective basis on which to build a strong and incisive regulatory instrument.

In addition to these core principles, I foreshadowed in my speech at the CommsDay Summit that the ACMA had identified a number of specific areas within the TCP code which, it had concluded, required addressing. Some of these bear the imprimatur of other agencies (e.g. arising from legislative changes and the recommendations of the House of Representatives Inquiry into International Mobile Roaming) while others are issues that the ACMA has identified through its compliance and enforcement activities and the research it has conducted.

At Attachment A I have outlined the issues of priority for the ACMA. It is my expectation that the draft code provided to the ACMA for registration will incorporate the requisite improvements in these areas to ensure appropriate community safeguards.

The ACMA also particularly wishes to see a demonstration of industry's commitment to code improvements that will encourage and facilitate internal resolution of complaints without recourse to the TIO. This alone should go some way towards generating goodwill with consumers and an enhanced reputation for the sector.

### **Customer Service Inquiry**

As part of the *'Reconnecting the Customer'* Strategy, I also announced the launch of a Customer Service Inquiry. I expect that the Inquiry will have particular relevance and synergy with the review of the Complaints Handling chapter of the TCP Code. I suggest that it would therefore be prudent to first address other chapters of the Code before consideration of complaints-handling and ancillary customer service matters in the Code until after the 'hard yards' of the Inquiry are complete. I expect that the Inquiry will be substantially completed by February 2011.

In this regard, I am also seeking the collective cooperation of the CEOs of the larger telecommunications companies in working towards an enforceable strategy for reducing complaints about complaints-handling and customer service matters. These dialogues should enrich our understanding of the changes necessary to improve consumer outcomes.

### **Consumer consultation**

The ACMA expects that the CA's TCP Code review and revision processes will ensure full opportunity for consumer representation, consultation and participation in each stage of the process and that CA will be able to clearly demonstrate how it gave meaningful consideration to any submissions from consumer parties during the review. In my CommsDay summit speech I observed that recent experience suggested that the approach to the consumer representation and consultation piece had been 'fractured.'

## Regulator's Forum

Finally, at the CommsDay summit, I also announced the establishment of a Regulator's Forum with membership consisting of the ACMA, the ACCC and the DBCDE. The Forum will also seek the advice of consumer, user and industry groups. It is intended that the Forum will identify emerging issues in telecommunications and develop appropriate regulatory responses. I have flagged that a useful starting point for the Forum at its first meeting will be a discussion on the expectations of the review of the TCP Code.

## Forward agenda

I am on the record as acknowledging the role the telecommunications sector has played in the successful underpinning of a remarkable generation of Australian growth. I also recognise the industry's recent efforts to slow complaint growth through the TIO's connect.resolve campaign.

However, I see this code review as a critical juncture for industry to now demonstrate its commitment to co-regulation. As part of the review, I anticipate discourse about the future of co-regulation in the new service environment, including whether the industry and CA continue to want to self-regulate in the first instance, given the shifting industry landscape.

In this context, the ACMA is seeking a comprehensive approach to this review rather than simply ad-hoc incremental improvements to the Code. Our preferred approach is to work in partnership with CA and industry. However, the ACMA is determined that a stronger, more enforceable code be developed through the review process and we do not resile from my commitment to move to the making of a standard or standards should expectations not be met.

I look forward to discussing these issues with you in greater detail tomorrow.

Yours sincerely



**Chris Chapman**

Chairman

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Attachment:

Attachment A

Code Chapter	Current clause	Issue for address during Code review	Expected outcomes
Prices, terms and conditions	4.1	Prohibition of certain terms in advertising consistent with enforceable undertakings given by Vodafone Hutchinson Australia, Telstra and Optus to the ACCC in September 2009.	Codification of fair advertising principles to be met by the sector.
	4.2	<p>Require a supplier to provide a <i>Telecommunications Product Statement</i> to customers on entering a contract. The Statement should include information about:</p> <ol style="list-style-type: none"> <li>1. Total minimum costs</li> <li>2. Minimum contract period or length of contract</li> <li>3. Exit and termination fees</li> <li>4. Bundling of services and products</li> <li>5. Call and data charges</li> <li>6. Credit rollover or expiry of credits</li> <li>7. Excluded calls or services</li> <li>8. Network provider</li> </ol>	Better understanding by customers of terms and conditions resulting in less cause for complaint including recourse to the TIO.
	n/a	Develop an information mechanism about potential costs for roaming, in line with Recommendation 3 of the report by the House of Representatives Standing Committee on Communications following its Inquiry into international mobile roaming.	Better understanding by customers of potential roaming charges resulting in less cause for complaint.

Customer Contracts	n/a	Ensure the code rules are consistent with the Trade Practices Amendment (Australian Consumer Law) Act 2010 and maintain aspects of the existing customer contracts chapter in the Code to the extent that it affords more specific protections for telecommunications customers.	Protection for customers against aspects of unfair contracts that are particular to telecommunications products and services.
Billing	n/a	Ensure the Code is consistent with the International Standard on billing currently being developed by the International Organization for Standardization.	Conformity with contemporary standards for billing practices.
	6.3.1	Specify the types of items and categories to be described in a bill.	Better understanding by customers of bills resulting in less cause for complaint including recourse to the TIO.
	6.3.2	Develop a sectoral approach to explaining pro-rated bills and include in the Code.	Better appreciation by customers of pro-rated bills resulting in less cause for complaint, particularly concerning first bills.
	6.4.4	Require a supplier to provide customer access to itemised details for all charges, for landline, mobile and internet customers.	Access to more detailed information by customers about charges resulting in less cause for complaint including recourse to the TIO.
	6.5.3 6.6	Require a supplier to give a customer a specified, minimum reasonable period of notice before applying a direct debit. The notice should inform the customer of the date the direct debit will take place and the dollar amount.  Where the dollar amount would vary according to usage, the bill should also be provided within the specified timeframe.  Consolidate provisions relating to direct debit into a single rule.	Ensure that customers have adequate time to verify the accuracy of a bill and have funds available in the nominated account for payment.

Credit Management	7.1.1	Require a supplier to make information available to customers about credit control and usage monitoring tools, including the number of days customers should allow for delays in updating call and data information.	Enable customers to readily access timely information to manage usage.
	7.3.4		
	7.2.2	Restrict a supplier from accessing deposits for payment, where the deposit is not a security bond, unless a minimum period of notice is provided to a customer to allow an opportunity to pay an outstanding bill.	Ensure a customer is provided reasonable opportunity to pay a bill without recourse to reducing its deposit.
	7.5	Require a supplier to make available its financial hardship policy in a prominent position on its website (e.g. no more than two clicks from the home page).	Enable customers to readily access financial hardship policies.
	9.1.1(f)	Require a supplier to record details of an undertaking made to a customer and to meet an undertaking within 30 days.	Reduce volume of complaints to the TIO about failure to action undertakings, which is the major category of complaint concerning complaint handling.
Complaint Handling	9.1.8	Require a supplier to keep documentary evidence of analysis and classification of complaints, including TIO complaints relating to its operation.	Ensure that a supplier can verify the steps it takes to analyse and classify complaints.  Require suppliers to address systemic issues that result in complaints to the TIO, in turn reducing TIO complaints over time.
	9.2.2	Require a supplier to accept complaints via e-mail, telephone or by post.	Clarify the avenues for customers to make complaints to a supplier.
	9.2.4	Require a supplier to provide a reference number to each customer for each complaint.	Reduce the incidence of a customer having to re-authenticate or recall a complaint, in turn reducing cause for complaint about a supplier's complaint handling procedures.
	9.2.5	Require a supplier to resolve a complaint and notify a customer within 30 days of the outcome, unless there are circumstances outside the supplier's control (eg. waiting on third party information).	Reduce the incentive for a customer to complain to the TIO by dealing with complaints more promptly.

Code administration and compliance	9.2.8	Require a supplier to keep a record of how a complaint was finalised and when the customer was informed of the outcome.	Reduce complaints to the TIO about failure to advise outcomes, which is the TIO's second highest category of complaints about complaint handling.
	9.3	Prohibit complaint handling charges other than for vexatious circumstances or complaints that are unduly onerous. Require a supplier to explain when complaint handling charges will be applied in its terms and conditions.	Ensure that complaint handling charges are only applied in circumstances when it is reasonable to do so.
	9.4.2	Require a supplier to advise the customer of its external avenues of recourse (including the TIO) at a prescribed point in the complaint process.	Ensure a customer is made aware of its options of external recourse at a point in the complaint handling process when there is not a reasonable prospect of resolving the complaint promptly.
General		Require a supplier to comply with requests for information by the ACMA within the prescribed timeframe.	Ensure that suppliers provide timely information to the ACMA to assist it in addressing systemic issues.
		Require a supplier to apply informed consent principles to any unsolicited approach to sell a product or service.	Extend informed consent principles to all selling conduct in the sector.