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Dear Mr Stanton

C 628:2007 Telecommunications Consumer Protections Code Review

I refer to the Communications Alliance's call for comments for the scheduled review of the Telecommunications Consumer Protections Code (TCP) and Guideline and the TCP Code Issues Paper that was released on 1 July 2010. I refer also to the discussions that have taken place about the TCP Code Review (Code Review) in the context of recent Communications Alliance TCP Code Steering Group meetings and previous communication on TCP Code review matters, including Marcus Bezzi's letter to you dated 11 May 2010, which I note is included as an attachment to the TCP Code Issues paper.

The ACCC welcomes the opportunity to comment on the TCP Code Issues Paper and participate in the Code Review process more generally.

As you are aware, the ACCC is responsible for promoting compliance with and enforcing the *Trade Practices Act 1974* (the 'TPA'). The object of the TPA is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.

As outlined in the letter to you of 11 May 2010, the ACCC considers that the Review provides an opportunity to address consumer protection issues in the telecommunications industry in a manner which complements the consumer protection provisions of the TPA and other legislation.

That letter outlined the key reasons that the ACCC considers warrant the review of the Code. In summary, the ACCC considers that the Code Review is timely in light of:

- high number of industry wide complaints that indicate that the current Code priorities are unlikely to be providing consumers with adequate protection
- several Code chapters not having been reviewed for several years, notwithstanding their incorporation into the Code in 2007
- the introduction of provisions dealing with unfair contract terms in standard form consumer contracts under the *Australian Consumer Law* that operates from 1 July 2010. The Code's *Consumer Contracts* chapter will need to be reviewed to

ensure consistency with the law and that the Code supports industry compliance with legal obligations

- Industry advertising practices continuing to attract significant numbers of complaints to the ACCC, indicating the need to review the adequacy of the Code's chapter on *Customer information Prices, Terms and Conditions* to be able to address deficiencies in advertising practices and information provision.
- The Australian Communications and Media Authority's (ACMA) Public Inquiry into customer service and complaints handling, which would inform the review of the Code's Complaint handling chapter.
- The impact of poor industry practices on disadvantaged and vulnerable consumers, indicating the need to review Code chapters on *Billing and Credit Management*.

Issues Paper

The ACCC notes that the Issues Paper provides the background to the Code and review, areas of focus and the views of industry, regulators and consumer representatives on the review.

The Issues paper correctly notes that the ACCC considers that the Code in its current form is not effective in achieving acceptable levels of consumer protection.

The ACCC considers that the Code Review must seek to deliver outcomes that will provide a tangible net benefit to telecommunications consumers. These outcomes must include the development of robust processes and protections that will seek to prevent and minimise consumer detriment.

In this regard, the ACCC supports the aims of the Review identified in at section 2 – *Context of the 2010 Review* and considers these to provide a sound basis upon which to commence the review of the Code.

The ACCC considers that the Code Review should seek to build a telecommunications compliance and enforcement framework capable of delivering strong consumer protection outcomes. This will require a thorough examination of the effectiveness of current mechanisms relating to Code monitoring, measurement and enforcement. As part of this process, the Code Review must consider the adequacy of the compliance measures outlined in Chapter 10 of the Code – *Code Administration and Compliance*; and more specifically, the effectiveness of the processes contained in the *Code Administration and Compliance Scheme* (G514:2003) Industry Guideline.

The implementation of effective and transparent Code monitoring, compliance and enforcement mechanisms, some of which are outlined at 3.3 of the Issues paper, are key requirements that are necessary to enhance the capability of a revised Code to minimise consumer detriment.

The ACCC also considers that the Code compliance and enforcement framework must provide Industry participants with strong commercial and regulatory incentives to fix individual consumer problems and address systemic failures which lead to broader consumer detriment.

As noted in the Issues Paper, the development of an effective self- or co-regulatory instrument will require serious industry commitment to Code improvements and to behavioural changes within the industry that will serve to enhance customer satisfaction and minimise consumer detriment. The ACCC acknowledges the commitment from the Communications Alliance carriage service provider members to an active and constructive participation in the review of the Code as noted in the paper.

In conclusion, I would like to restate the ACCC's support for the Code Review. As previously indicated, the ACCC considers the Code to be a potentially useful tool to facilitate industry compliance with its TPA obligations, and a mechanism that may also help to enhance consumer welfare in the telecommunication sector. However, it must be supported by effective enforcement and compliance mechanisms with clear incentives for the signatories to comply.

The ACCC looks forward to actively working with the Communications Alliance and industry participants during the review of the Code.

Yours sincerely



Nigel Ridgway
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