

Optus submission to the TCP Code Review Steering Group – July 2010

Optus is a leading integrated national telecommunications provider, delivering innovative communications, information technology and entertainment services to our customers.

We look forward to an opportunity to engage with the upcoming Code review as it relates to matters that are fundamental to Optus and its corporate ethos - the experience of our customers with their communications services and service provider.

A focus on our customers and our drive to be the industry leader in customer experience is at the heart of Optus' corporate objectives. It is Optus' number one strategic objective for 2010 and beyond, and will guide our investment, technology choice, product design and marketing, and customer care in coming years.

Optus is the only full service provider to be a signatory to the current Code (and was previously a signatory to four of the Codes that now form chapters of the TCP Code). The public commitment of signing up to the Code is indicative of Optus' attitude to customer experience and reflects well over 12 months work across Optus' commercial and business units – a major achievement because Optus has over 10,000 employees, a full suite of products on offer and a national footprint.

Our commitment to sign up to the Code is supported by a substantial internal compliance audit program; we have made, and will continue to make, significant investments in developing robust systems and processes to achieve ongoing compliance.

Code review scope and approach

We believe that the regulatory philosophy adopted for the Code review needs to be that competition in customer service should be able to flourish, and that regulation should not prevent this competition from acting as a market differentiator that drives customer choice and enhances customer sovereignty.

In determining the scope of matters to be considered for review in any particular chapter of the Code, appropriate weight should be given to whether the drivers for change are inadequacies with the current rules, or whether the issue of concern really relates to inadequate compliance or enforcement.

In many instances the existing set of rules, if properly complied with and diligently enforced, provide substantial coverage and suitable levels of protection. Writing more rules should not be the default (and “easy”) option that is undertaken instead of better compliance and enforcement.

The Steering Group should adopt realistic expectations about what can be achieved within the Code framework. The Code sits within a pre-existing regulatory and co-regulatory framework, which include obligations for suppliers, the Ombudsman and

regulators. Even with the best will in the world, the TCP Code is unlikely to be the panacea for all perceived ills in the communications sector and this needs to be acknowledged during the review process.

Optus believes that the review should adopt a technique for circumstances where there is a common view that a particular matter needs to be addressed but that the Code is not the appropriate vehicle. The Steering Group should consider developing a constructive “escalation” list for valid and important matters that need to be brought to the attention of policy makers or regulators for action.

With respect to the broader issue of Code monitoring and enforcement, Optus’ overarching view is that any consideration should be driven by the outcomes being sought and, regarding any specific measures under consideration, must take account of costs as well as benefits.

We believe that there could be merit in industry benchmarks being developed such that a contextual understanding of consumer protection dynamics can be achieved and areas of concern can be identified.

Comments on particular Code matters

We offer the following comments to the Steering Group as our initial high-level input into the Code review process:

- 1) It needs to be acknowledged that there can be costs as well as benefits to both providers and consumers in making changes to the Code, such as costs associated with redesigning and restructuring systems and processes. The Code review should consciously and genuinely take into account in its decision-making the benefits and the costs of all potential changes to the Code.
- 2) Optus agrees that the review should consider appropriate ways in which the Code could be simplified and/or shortened, and that it should be drafted in a technology neutral manner, in plain English and comprehensible.
 - a) We also note though that Code rules are written primarily to be implemented by providers and used to inform compliance and enforcement. As such, the rules need to be expressed in this way. To the extent that consumer friendly interpretations or summaries are required this should be dealt with in associated and targeted documentation.
- 3) Where it is contemplated that the Code includes rules which duplicate existing law or regulations, before proceeding, it should be carefully considered whether such duplication could result in greater complexity for industry, regulators and/or consumers.
 - a) Although Optus sees some merit in incorporating into the Code the advertising undertakings given by VHA, Telstra and Optus to the ACCC in September 2009, we refer to our concerns noted above.

- b) Code rules which duplicate existing law or regulations should also be carefully considered as they carry the inherent risk of internal inconsistency and heightened regulatory uncertainty; as well as the potential complexity of the same issue being dealt with differently in different jurisdictions.
- 4) The output of the Code review needs to be consistent with recent legal and regulatory developments, such as the credit law reforms and the new *Competition and Consumer Act 2010*. It also needs to take account of the fact that whilst the new regime relating to unfair terms came into force on 1 July 2010, the new regimes relating to matters such as the consumer guarantees, national product safety and unsolicited sales, although enacted, are not due to come into force until January 2011.
- a) In the circumstances, although the statutory framework for these regimes has been determined, there is still a question as to their practical application and as such there may be some limitations to areas of the Code that can be meaningfully reviewed until it can be seen how the practical application of the new regimes play out.
 - b) For example, it is yet to be seen whether there will be any further regulation or ministerial determination on the application of the regimes to telecommunications services, in relation to prescribed requirements for warranties and repairers or in relation to display notices.
- 5) Optus supports our customers being well informed and we seek to ensure that they are. However, we are also conscious that we are already required to provide a significant amount of information to our customers at several different points in the customer lifecycle, yet from research and anecdotal feedback we know that many consumers remain confused and overwhelmed by the information they are already provided with.
- a) With respect to Code rules related to customer information, the review should ensure that rules are tightly targeted and outcomes-orientated. Any new customer information-related rules under review need to be considered within a cost/benefit framework; ensure that they do not duplicate any existing regulations; and should only be introduced along with a coordinated withdrawal of other related obligations.
 - b) For example, consideration of specific measures such as providing customers with a “Telecommunications Product Statement” and/or information on the potential costs of mobile roaming may be reasonable in principle, but need to be considered within the above context (as to whether they are necessary given other existing obligations, such as the requirement in the *Telecommunications (Standard Form of Agreement Information) Determination* to provide all new customers with a Summary SFOA) and the practicalities of implementation.

- 6) The Code review needs to ensure that any new rules related to complaint handling are outcomes-orientated and not unnecessarily prescriptive; and that any new rules under consideration do not overlap with existing rules.