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## **TELSTRA GROUP LIMITED**

# **Telstra response – Potential introduction of a registration or licensing scheme for CSPs**

## **Public Version**

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## 1 Introduction

Telstra supports the introduction of a registration scheme for Carriage Service Providers (CSPs). Telecommunications services are critical for all Australians and as such, it is important that those who supply residential services to end customers are known to regulators and adhere to the current regulatory processes. Having one, complete register of market participants would benefit the industry by helping to ensure all CSPs comply with the law and limit examples of poor industry behaviour such as those described in the Discussion Paper.

The primary objective of the scheme must be to drive better outcomes for end customers. The Australian telco landscape is highly competitive, characterised by numerous market participants and improving levels of service.<sup>1</sup> Against this backdrop, it is important that any new regulatory intervention is proportionate to the problem it seeks to address. Telstra therefore considers it is important that a registration scheme is balanced and does not create unnecessary regulatory burden for market participants.

To that end, we consider that:

- A register should be introduced as it will strengthen compliance and performance of all participants in the industry. In the absence of the Government pursuing such a scheme, there is merit in improving consolidated lists such as that of the TIO to ensure regulators have the most up to date view of market participants.
- Regulatory imposts should be minimised, so any registration scheme must be light touch and leverage existing processes, to the extent possible. Our preference, therefore, is that a registration scheme, rather than a more onerous licensing scheme, be adopted.
- The registration scheme must be solely administered by the ACMA, including registration (and deregistration). There should be no expectation that wholesale CSPs review registration status or undertake any administrative activity on behalf of the regulator. Doing so would unnecessarily impose costs on those CSPs.
- Penalties should be used in instances where CSPs do not participate in the registration process. Deregistration should only be pursued as a last resort measure.
- As with the introduction of any new regulation, we recommend the scheme be reviewed in five years to ensure it remains fit for purpose.

## 2 Improved market transparency will strengthen compliance and performance within the industry

Telstra agrees that the lack of a comprehensive list of CSPs is hampering ACMA's efforts to proactively educate CSPs about their obligations and target compliance and enforcement (specifically the ability to remove a CSP or prevent a CSP from re-entering the market). Accordingly, Telstra concurs with stakeholders such as TIO<sup>2</sup>, Comms Alliance and ACCAN that a registration scheme will provide for greater transparency of market participants, which in turn, will drive greater compliance by CSPs, and most importantly, better consumer outcomes.

CSPs are already subject to significant requirements under consumer law and the TCP code, including the requirement to lodge annual attestations with Communications Compliance (CommCom) about their compliance with their TCP Code, and to join the TIO and have the appropriate dispute resolution processes in place. A registration process which captures all eligible CSPs will further strengthen compliance across all these existing processes and allow the ACMA the ability to appropriately monitor industry conduct. This is a positive and welcome step.

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<sup>1</sup> TIO Q1 Complaints Data 2023, [Quarter 1 Complaints Data | The Telecommunications Industry Ombudsman](#) (as measured YOY)

<sup>2</sup> TIO, [A time for change - Three years of systemic investigations in review June 2023](#)



### **3 A Light Touch approach is appropriate**

Telstra supports a 'light touch' CSP registration scheme.

#### **3.1 A licensing scheme is not necessary**

Whilst Telstra supports the introduction of a light touch registration scheme, at this stage, we do not consider that the case for more onerous licensing arrangements, such as those used by the AER in granting authorisations for energy retailers, has been made. The primary responsibility for the registration scheme should rest with the ACMA. Whilst we appreciate the Consultation Paper does not explicitly define the scope of a registration scheme, we consider that once a CSP is registered (once off only), there should be no further requirements on the CSP. ACMA, as the primary regulator, should be responsible for the registration process, promoting the registration process, maintaining, and publicising the register and managing any de-registration process.

It is unclear (and difficult to quantify) the extent of consumer detriment that is being caused by CSPs not known to the ACMA. In the absence of specific and detailed evidence, we recommend the Department introduce any regulatory intervention in a cautious way. Therefore, Telstra considers a 'light touch' model such as that proposed in the Discussion Paper appears generally appropriate.

#### **3.2 Information requirements for registration should be minimised**

The approach to information requirements as outlined in the Discussion Paper is a sensible and pragmatic starting approach. The information noted in the Discussion Paper, which would allow the ACMA to make a quick and objective assessment of CSPs including whether a CSP's directors have been associated with breaches of safeguards made by other corporations and/or in other sectors or are on a list of persons disqualified from managing corporations by the ACCC or ASIC, is sufficient. Telstra agrees with the Department's initial view that the above list is likely appropriate to enable the ACMA to register or deny registration to a CSP.

It is imperative that the registration process be kept simple and efficient and thus, information provision requirements on registration should be kept to a minimum. The regulator could then make further inquiries if necessary, to inform a CSP registration, however this should be by way of exception. Adopting such an approach will allow for a more expeditious registration scheme and keep costs of administering the scheme low.

#### **3.3 'Eligible CSPs' should be required to register**

Telstra agrees that the registration scheme should cover the same subset of CSPs that are required to join the TIO Scheme, that is 'eligible CSPs'. This is a familiar definition to CSPs and is broad enough to capture the breadth of the marketplace. Having materially different eligibility criteria will add complexity to the regulatory framework and will generally act as a disincentive to the registration process. To ensure maximum compliance, the scheme must be designed in such a way that makes it easy and seamless for CSPs to comply.

It is imperative that there be no secondary obligation on Carriers or CSPs who resell services to manage registration for their wholesale customers. Telstra proposes an explicit exclusion in any drafting to provide sufficient clarity to the industry that those CSPs who provide only wholesale services are to be excluded. Only the CSP who has the primary relationship with retail customer should be captured. Similarly, we consider the scope of the registration scheme to be limited to those CSPs who supply residential customers only.

#### **3.4 The ACMA should enforce penalties for non-registration**

Telstra supports the adoption of penalties should an eligible CSP be found not to be registered. Such a penalty needs to be punitive enough to appropriately drive compliant behaviour. Telstra considers it necessary that we learn from existing regimes, such as the TIO regime, where eligible CSPs are required



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to register but there are no substantive penalties for CSPs who do not register and compliance, to date, is imperfect.

However, adopting rights for the regulator that will limit unregistered CSPs from exercising their contractual rights with Carriers/CSPs (that are registered) as a method of compelling CSPs to join the register should be avoided. This will lead to bad outcomes for any retail customers denied service and represent significant regulatory over-reach. The focus must be on getting CSPs to do the right thing first time, not indirectly penalising Wholesale CSPs or end customers.

### **3.5 Wholesale CSPs should not bear the burden of administering the scheme**

Telstra does not support any obligation that requires carriers or CSPs who wholesale services to periodically confirm a CSP's registration to provide (or continue to be provide) services to and/or engage with them in the supply of telecommunications services. Requiring this unfairly and unnecessarily shifts the burden of regulation to CSPs. The registration scheme must be administered solely by the regulator, and they must always have line of sight as it is not always clear which wholesale customers would meet the definition of eligible CSP.

### **3.6 Approaches to excluding CSPs for non-performance should be a matter of last resort**

Telstra agrees with the principle reflected in the Discussion Paper that deregistration is a mechanism of last resort and concurs with stakeholders that the ability to remove CSPs with a history of non-compliance will act as an effective deterrent and will drive all market participants to improve performance and conduct. Such a mechanism will be an important element of the registration scheme, particularly given that preventing a CSP from operating can currently only occur through the legal process, which is costly and takes significant time, effort and resource to achieve.

However, given the prospect of deregistration carries significant consequences, it will be important that the registration scheme recognises that not all breaches carry the same consequence to the customer, therefore minor breaches of Codes and non-compliance with these must be treated differently to more significant breaches, such as persistent poor behaviour or conduct that significantly impairs the end customer. There will need to be clarity and transparency regarding what actions warrant deregistration. We agree in principle with the views represented in the Discussion Paper but consider further consultation on these issues will need to occur once the details of any prevailing regulatory instrument are established.

Deregistration should only be a measure of last resort and after extensive engagement between the parties to improve CSP performance has occurred. We agree with the views put forward in the Discussion Paper, including allowing CSPs the ability to genuinely respond to concerns, and providing accessible grounds for review for the CSPs are necessary mechanisms to ensure a transparent and fair process in the event of deregistration.