



Australian Government

**Department of Infrastructure, Transport,
Regional Development, Communications and the Arts**

Registration or Licensing Scheme for Carriage Service Providers

Discussion Paper

September 2023

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Executive Summary

The Minister for Communications, the Hon Michelle Rowland MP, is considering the existing telecommunications consumer protections framework to determine whether it remains fit for purpose. The Australian Government is committed to doing what is necessary to ensure that telecommunications services enrich the lives of all Australians rather than cause them inconvenience, frustration or detriment.

This discussion paper seeks views on whether, and how, a registration or licensing scheme should be developed for Carriage Service Providers (CSPs) – i.e. telecommunications retailers. It seeks to clarify objectives, investigate possible approaches, and consider whether the same objectives can be achieved through other mechanisms or regulatory powers. We welcome views on counterarguments - such as costs associated with implementing and enforcing a scheme, any potential barriers a scheme may create for entry into the market, or impact on competition - and whether these outweigh the benefits.

Consumer groups, the Australian Communications and Media Authority (ACMA), the Australian Competition and Consumer Commission (ACCC), the Telecommunications Industry Ombudsman (TIO) and Communications Alliance have expressed support for a registration, licensing or authorisation scheme for CSPs. The Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) is now consulting to rigorously investigate this proposal.

The Australian Government has not made any decisions about a registration or licensing scheme. This paper is exploratory in nature and your feedback will inform considerations. We encourage stakeholders to comment on any aspect of the paper including underlying assumptions.

Arguments put forward by stakeholders in favour of a registration/licensing scheme generally focus on the following overarching objectives:

- 1) Increasing visibility of CSPs operating in the market, for example to support the ACMA's work to educate providers about their obligations and target enforcement activities;
- 2) Facilitating an effective mechanism the ACMA can use to stop CSPs operating in the market who pose unacceptable risk to consumers, or cause significant consumer harm.

Noting this requires an accompanying obligation on CSPs to be registered/licenced in order to sell services to customers and a power for the ACMA to revoke a registration or licence.

We note that discussion in this paper of a possible model/approach focusses on 'registration' with minimal pre-registration information provision and assessment. A number of stakeholders - including industry peak body Communications Alliance, and consumer peak body the Australian Communications Consumer Action Network (ACCAN) - have shown a preference for this approach. Another option is that of 'licensing'. The Department considers 'licensing' to involve a more detailed pre-entry process, similar to 'authorisation' in the energy sector. The Department welcomes discussion of any model and terminology.

Contents

The paper is set out in four parts, summarised below:

1. Background and identified issues

There is currently no comprehensive list of CSPs, which hampers the ACMA's efforts to proactively educate CSPs about their obligations and target compliance and enforcement activity.

There is also no mechanism for the ACMA to efficiently remove a CSP from the telecommunications market for repeated or egregious failures to meet relevant regulatory obligations. Additionally, there is no effective mechanism for the ACMA to prevent a CSP entering the market, or re-entering after restructuring and renaming their business to avoid regulatory scrutiny (phoenixing). A registration or licensing scheme is seen by a range of stakeholders (listed above) as a potential solution to these issues.

2. Design considerations for a registration scheme

Maintaining low barriers to entry for the telecommunications market is often considered fundamental for competition and market efficiency. Minimising the effort required of CSPs to register should drive the process of designing a scheme for Government consideration.

Design considerations canvassed in this discussion paper include:

a) Information requirements:

Simple information requirements can disrupt illegal activities, such as phoenixing, and help keep CSPs informed about their obligations.

b) Scope of CSPs required to register:

Should a registry utilise the existing definition of an 'eligible CSP' used for the TIO scheme, or another definition?

c) Integrating registration with other CSP processes:

To minimise regulatory burden, a scheme would ideally integrate with existing obligations and related processes, such as the obligation to join the TIO Scheme.

d) Mechanisms to ensure registration:

Mechanisms to compel CSPs to register may be necessary to ensure the scheme is accurate and up-to-date. Mechanisms could include obliging carriers and wholesale CSPs to verify CSPs are registered in order to provide services to them, and limiting unregistered CSPs from exercising and enforcing their contractual rights with carriers.

3. Approaches to excluding CSPs from the market

The introduction of a mechanism for the ACMA to disrupt CSPs who fail to meet key regulatory obligations has been identified by some stakeholders as necessary to protect consumers.

It has been observed that existing court processes that can be used to ban CSPs (under the Australian Consumer Law or the Corporations Act) have not achieved desired outcomes in a timely manner. This has left consumers vulnerable to providers who do not fulfill their regulatory obligations and thereby (negligently or deliberately) expose consumers to harm.

Issues canvassed in this discussion paper include:

a) Threshold for registration refusal or deregistration:

The parameters that guide decisions on registration and deregistration need to be well defined given the severity of those decisions. These should be measures of last resort, considered after all reasonable alternative compliance approaches are exhausted.

- b) Fairness and avenues for review of decisions:
ACMA decisions that impact a CSP's registration are expected to be transparent and fair, and provide for accessible avenues of internal or external review.
- c) Alternative mechanisms to exclude CSPs with a history of non-compliance:
Consideration is given to whether other regulatory powers could achieve the same desired regulatory outcomes should the establishment of a registration/licensing scheme not be pursued.

4. What registration might look like

A model for registration is set out to help stakeholders conceptualise and understand how registration might look from a practical perspective.

Ongoing Consultation

Feedback on this discussion paper will guide advice to the Australian Government. If a registration or licensing scheme for CSPs is considered further, stakeholders will have additional opportunities to engage – including on the regulatory impact of options (through the usual Impact Analysis process) and on any draft legislation or instruments.

1. Background and identified issues

While telecommunications carriers must hold a carrier licence, CSPs are not subject to any formal registration or licensing requirements, though they must comply with various laws and regulations. A CSP registry would facilitate market transparency and strengthen compliance with consumer obligations. The regulator would be able to better monitor the market, ensure providers meet certain benchmarks, and exclude unscrupulous operators.

Numerous stakeholders have supported implementation of a registration or licensing/authorisation scheme for CSPs, including:

- The TIO
- The ACMA
- The ACCC
- The ACCAN
- The Consumer Action Law Centre; and
- Communications Alliance

By design, there has traditionally been a low barrier to enter the telecommunications market as a CSP. This low barrier has enabled a large and diverse market for the supply of telecommunications services. However, some stakeholders have argued it has also allowed some providers to operate in a manner that causes significant consumer detriment. Licensing or authorisation schemes are commonplace in other essential services sectors such as banking and energy.

What is accepted, is that the telecommunications sector and use of telecommunications services have changed dramatically over the past 25+ years since the *Telecommunications Act 1997* came into force. The market is open and competitive, with a significant number of CSPs – with estimates there may be approximately 1,500 ‘eligible CSPs’ and a much larger number of general CSPs.¹ Telecommunications have become firmly entrenched as an essential service in general life and commerce. Against this backdrop, it is appropriate to revisit fundamental aspects of the framework, including whether CSPs should be covered by a registration or licensing scheme.

International Approach

Internationally, registration or licensing schemes for telecommunications providers are not common. Canada and Singapore are two of a limited number of countries that require telecommunications providers to register or obtain a licence from a regulatory body. In Canada, those who offer or provide telecommunication services must register with the Canadian Radio-television and Telecommunications Commission. The Canadian framework for registration is implemented through conditions being placed upon carriers that mean non-carriers cannot receive services from carriers until they register with the regulator. In Singapore, those operating and providing telecommunication systems and services have to obtain a services-based operations licence from the Infocomm Media Development Authority.

¹ See section 2(b) for an explanation of these definitions.

Issues identified

Stakeholders have argued that a CSP registration or licensing scheme would help address two key problems:

- There is no comprehensive list of CSPs:
 - This hampers the ACMA's efforts to educate CSPs about their consumer safeguards obligations and to target possible future compliance and enforcement activity;
 - It also limits the ability of government agencies (for example, this Department, the Department of Home Affairs or the Attorney General's Department) to advise CSPs on their other obligations and notify them of relevant policy work and changes to regulations².
 - It creates administrative burden for the ACMA, the TIO and others to contact relevant people within CSPs for complaints handling and other functions.
- The ACMA does not have an effective mechanism to exclude a CSP from the telecommunications market that poses undue harm or risk to consumers (for example, for repeatedly failing to meet its relevant obligations).

Improving visibility of CSPs

Proponents of a registration scheme for CSPs argue regulators should have full visibility of the market noting telecommunications services have become more widely regarded as essential. The ACMA argues that limited visibility of CSPs, as a key part of the telecommunications supply chain, has led to challenges in its role as a regulator.

Full visibility would provide the ACMA with greater opportunity to educate CSPs about their obligations, including when obligations change. Supporting the ACMA's educative capacity allows the ACMA to take a more proactive stance in addressing consumer harm and improving compliance before harms take place.

Further, full visibility would improve the ACMA's ability to identify providers and activities that cause consumer detriment, and take any associated compliance action. For example, an exhaustive list of relevant CSPs in the market would facilitate the ACMA's enforcement of the obligation that CSPs lodge annual attestations with Communications Compliance (CommCom) about their compliance with the TCP Code (C628:2019). It would also improve the ability of other government agencies (for example, the Department of Home Affairs or the Attorney General's Department) to advise and assist CSPs with some of their other obligations and liaise with them about changes to regulations.

The TIO has argued that an exhaustive list of CSPs would provide both the ACMA and the TIO with the necessary information to ensure relevant CSPs comply with the requirement to join the TIO Scheme and abide by associated dispute resolution processes.

We note that the obligation to be a member of the TIO Scheme and submit compliance attestations with CommCom both provide some visibility of CSPs operating in the market. Both the TIO and CommCom publicly identify the CSPs who meet these obligations (for example, the TIO website allows anyone to check if a CSP is a TIO member). Unfortunately these lists cannot be relied upon as comprehensive. The TIO, for example, has stated that it usually only learns about CSPs who

² CSPs have security obligations under Part 14 of the *Telecommunications Act 1997*, and eligible CSPs have obligations to register their assets and report cyber security incidents under the *Telecommunications (Carriage Service Provider– Security Information) Determination 2022*.

should be members of the TIO Scheme when a customer contacts the TIO or ACMA to complain about the relevant CSP.

More broadly, it has been argued that the ACMA, as the telecommunications regulator, should have the power and authority to hold the master list of participants in the market they regulate.

Excluding CSPs from the market

Economy-wide mechanisms exist for disqualifying directors and restraining people and corporations from carrying on a business or supplying services, including in connection with the telecommunications market.

The ACCC has used powers in the *Competition and Consumer Act 2010* to seek a court order effectively banning people and CSPs from operating in the telecommunications market for breaches of the Australian Consumer Law.³ ASIC can also ban people from managing a corporation, or seek a court order banning a person from managing corporations in certain circumstances.⁴

While these serve to protect consumers, these mechanisms are not bespoke to the telecommunications context or focussed on breaches of telecommunications-specific consumer safeguards. These mechanisms generally also require slow and expensive court processes. This delay does not prioritise the immediate protection or interests of consumers.

As set out in the case study below, the decision by the Australian Energy Regulator (AER) to refuse Spark Energy's application for a retailer authorisation is illustrative of how companies that breach telecommunications-specific safeguards can resurface and how a registration/licensing scheme can be used to quickly prevent harmful businesses operating in a sector. Unlike the energy sector there is no similar mechanism in the telecommunications sector for the ACMA to prevent such companies from entering or re-entering the market after being found to have breached their regulatory obligations.

Case study: Spark Energy⁵

In July 2020, the AER refused Spark Energy's application for a retailer authorisation because its application did not satisfy the entry criteria in section 90(1) of the National Energy Retail Law.

In coming to that decision, the AER had regard to the finding that two of Spark Energy's senior managers held senior positions in entities that were found to have contravened laws in the telecommunications and energy sectors. The AER also gave significant weight to the fact that none of these compliance issues were disclosed by Spark Energy in its initial application to the AER.

The contraventions of law referred to by the AER related to involvement of two of Spark Energy's senior managers with Business Service Brokers. In August 2019, ACMA took action against Business Service Brokers relating to the presentation of pricing information on TeleChoice's website. In October 2019, the ACMA issued a remedial direction to Business Service Brokers for breaching the *Telecommunications Act 1997*, and a formal warning for breaching the Integrated Public Number Database Code.

³ See s.232 and s.248 of the Australian Consumer Law (Schedule 2, *Competition and Consumer Act 2010*).

⁴ See s.206C, s.206F in conjunction with s180-183, s.588G and s.1317E of the *Corporations Act 2001*.

⁵ Australian Energy Regulator, *Spark Energy - Reasons for refusal of retailer authorisation*.

Question for feedback:

Question 1. Do you think a CSP registration or licensing scheme should be implemented in the telecommunications sector and what are the key arguments for and against?

Question 2. Are current issues with transparency and enforcement (as raised by stakeholders) substantial enough to warrant the creation of a registration or licensing scheme, and do these outweigh possible impacts (for example, any barriers to market entry and competition impacts)?

2. Design considerations for a scheme

Light Touch Approach

A 'light touch' CSP registration scheme has been proposed by various stakeholders. Such a scheme could be based on the following key features:

- Maintains an appropriate low barrier to entry into the telecommunications retail market. Including minimal impost and cost for CSPs to register.
- Integrates with existing requirements to the extent possible, for example, joining the TIO Scheme.
- Does not create new rules for dealing with customers.
- Includes appropriate transparency, appeal and review mechanisms.
- Allows the ACMA to deregister CSPs (or possibly refuse registration) in limited circumstances:
 - to disrupt 'phoenixing' activity; and
 - in response to repeated or egregious failures to meet regulatory obligations.
- Creates a more exhaustive list of CSPs (possibly supported by, for example, an obligation on carriers and wholesale CSPs to periodically validate registration of CSPs they engage with).

Basic information could be provided on registration, enabling ACMA to refuse registration in limited circumstances, for example, if a director or other key senior personnel have a history of breaching consumer safeguards. The ACMA could conduct detailed reviews of CSPs that are later identified as high-risk (for example, through their actions or tip offs) resulting in registration being revoked in limited circumstances.

This approach would impose minimal additional regulatory requirements on low-risk CSPs, while introducing regulatory tools to target higher-risk CSPs. It would be a risk-based approach, and arguably a proportionate approach, noting the ACMA would only exercise its ability to refuse registration or deregister in limited and defined circumstances.

2a) Information requirements for registration

To keep registration simple and efficient, information provision requirements on registration could be minimised - allowing, for example, easy identification of the legal entity, management and ownership of a CSP.

Information that would support the ACMA in making a quick and objective assessment of a CSP includes 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.

Some stakeholders have proposed that a range of other suitability criteria could be assessed at the point of registration, akin to the 'licensing' or 'authorisation' style of assessment undertaken in the energy sector, which includes:

- organisational and technical capacity; and
- financial resources.

Incorporating this form of detailed, up front assessment into a CSP scheme may be overly burdensome on CSPs thereby creating a barrier to entry. It would also increase the time and cost of both implementing and administering the scheme which may be disproportionate – noting the low number of CSPs likely to be declined for registration.

We welcome views on this, and whether additional information or assessment should be required at the point of registration, noting consideration should be given to:

- whether that information can be otherwise sourced by the regulator;
- the burden imposed in providing that information; and
- how that information would facilitate the enforcement of existing consumer safeguards.

Question for feedback:

Question 3. What information or assessments should be required at the point of registration?

Disrupting illegal activities such as phoenixing

As above, minimal information requirements would allow for a basic assessment to be undertaken around the suitability of directors or other senior staff involved in a CSP. That information could also provide an effective tool to help disrupt activity such as phoenixing.

Information requirements based around identifying the legal entity, management and ownership of CSPs, would appear to enable the regulator to trace CSPs that enter and exit the industry, and thereby reduce the risk that harmful operators enter/re-enter the industry. The ACCC's case against providers SoleNET and Sure Telecom are examples of 'phoenixing' behaviour causing detriment to telecommunications consumers.

Case study: SoleNET and Sure Telecom⁶

In 2016, the ACCC took action in the Federal Court against SoleNET and Sure Telecom. The Court found that these providers had engaged in unconscionable conduct in the supply of telecommunications services by the following conduct:

- Between 2013 and 2015, restructuring these companies in part to avoid regulatory sanctions and unpaid debts to regulators;
- Transferring customers from one SoleNET/Sure Telecom Company to another without their knowledge or informed consent; and
- Demanding payment from these customers for early termination or cancellation fees, when there was no contractual basis for the SoleNET/Sure Telecom Company to demand the payment.

The Court also found that in the case of four customers, the SoleNET/Sure Telecom companies engaged in undue harassment in connection with the supply of services and payment for services by persistently pursuing them for debts they did not owe.

In delivering the judgment, the Court noted that "the contravening conduct was serious, deliberate and extended over a period of about two to three years" and "was not ad hoc, but systemic and planned." The Court ordered (among other things) that SoleNET and Sure Telecom and sole director Mr James Harrison pay penalties of \$250,000 and be restrained from carrying on a business or supplying services in connection with telecommunications for a period of 2 years.

Question for feedback:

Question 4. What other harmful activities could potentially be disrupted through registration?

⁶ Australian Competition and Consumer Commission, *ACCC submission to Part C of the Consumer Safeguards Review*, available at <https://www.communications.gov.au/sites/default/files/submissions/csr-part-c-acc.pdf>.

Registration to help keep CSPs informed about their obligations

As mentioned, a registration (or licensing) scheme could be leveraged by regulators and policy makers as a communication tool to educate CSPs on their obligations at the point of registration and on an ongoing basis.

The Canadian telecommunications regulator, Canadian Radio-television and Telecommunications Commission, has stated that its registration obligation is a key tool that facilitates communication with telecommunications providers unfamiliar with its regulatory activities and processes.⁷ This may assist in improving compliance with consumer safeguards, especially for smaller entities who may not be properly aware of these, and other, regulatory obligations on CSPs (for example, security and assistance with law enforcement).

2b) Scope of CSPs required to register

The definition of a CSP in the Telecommunications Act is broad. The Department is considering which CSPs should be required to register. One option is that the registration scheme for CSPs cover the same subset of CSPs that are required to join the TIO Scheme, that is 'eligible CSPs'.

The legislative definition of an 'eligible CSP' is found in the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (TCPSS Act).

The TCPSS Act defines an eligible CSP as:

- (a) a carriage service provider who supplies:
 - (i) a standard telephone service, where any of the customers are residential customers or small business customers; or
 - (ii) a public mobile telecommunications service; or
 - (iii) a carriage service that enables end-users to access the internet; or
- (b) a carriage service intermediary who arranges for the supply of a service referred to in subparagraph (a)(i), (ii) or (iii).⁸

Some stakeholders consider the registration scheme should encompass all types of CSPs to provide visibility of all CSPs operating in the market.

Question for feedback:

Question 5. Which CSPs should be required to register, and what are the advantages or disadvantages of different approaches?

2c) Integrating registration with other CSP processes

There are a number of existing obligations which require CSPs to provide their information for regulatory purposes. Where possible, a registration scheme should be integrated with these existing obligations and related processes to minimise regulatory burden. Existing obligations with similar information provision requirements include: being a member of the TIO Scheme; registering with CommCom; and providing information to the Register of Critical Infrastructure Assets.

⁷ Canadian Radio-television and Telecommunications Commission, *Telecom Regulatory Policy CRTC 2017-11*, available at <https://crtc.gc.ca/eng/archive/2017/2017-11.htm>.

⁸ Section 127 of the TCPSS Act.

Membership of the TIO

As mentioned above, the TCPSS Act requires eligible CSPs to be members of, and comply with, the TIO Scheme. Exemptions can be sought from the ACMA, or by Ministerial Determination, from the obligation to join the TIO Scheme.⁹ A CSP registration scheme might also allow for exemptions to be obtained from the ACMA or the Minister. This could leverage off existing processes in place regarding a request for an exemption to join the TIO Scheme.

Obligations regarding CommCom

CommCom is an independent compliance monitoring body established under the TCP Code (C628:2019). The TCP Code obliges telecommunications providers to lodge an annual Compliance Attestation with CommCom. CommCom requires CSPs to register with its CSP Portal to ensure that they receive any important information and correspondence regarding their annual lodgement obligations. CommCom publishes the names of CSPs that have lodged the required compliance documents on its website.¹⁰

Register of Critical Infrastructure Assets

The Cyber and Infrastructure Security Centre (the CISC) maintains a Register of Critical Infrastructure Assets which is a database of information about critical infrastructure assets. Eligible CSPs are required to provide operational, and interest and control information about certain assets to the Register.¹¹

Question for feedback:

Question 6. How could a registration scheme best integrate with existing obligations and processes?

2d) Mechanisms to ensure registration

The creation of a new requirement for CSPs to register with the ACMA, on its own, may not provide a sufficiently rigorous list of CSPs – for example, CSPs that are not inclined to join the TIO Scheme may be similarly disinclined to register with the ACMA. Some buttressing may be required to facilitate compliance with the requirement to register. Examples include the imposition of penalties for non-registration, requiring carriers or wholesale CSPs to periodically confirm a CSP's registration in order to provide (or continue to provide) services to them and/or engage with them in the supply of telecommunications services, or only allowing CSPs to exercise their contractual access rights if they are registered.

Consideration should also be given to what mechanisms are necessary to ensure a CSP's initial registration information is correct and then remains up-to-date.

Question for feedback:

Question 7. What processes could be used to ensure and maintain a rigorous list of CSPs?

⁹ Section 95 of the *Telecommunications Act 1997*, and section 129 of the TCPSS Act.

¹⁰ For CommCom's list of CSPs who have lodged TCP Code Compliance Attestation documents, see <https://commcom.com.au/compliance/>.

¹¹ For further information on the Register of Critical Infrastructure Assets, see <https://www.cisc.gov.au/critical-infrastructure-centre-subsite/Files/register-critical-infrastructure-assets.pdf>

3. Approaches to excluding CSPs from the market

As noted, there is no mechanism to effectively and quickly stop a CSP from trading, or prevent it from re-entering the market, where it has engaged in repeated or egregious non-compliance with relevant consumer safeguards. Stakeholders argue that the implementation of a registration or licensing scheme would provide the necessary mechanism to do this, where appropriate.

As noted above, there are mechanisms to ban CSPs and directors under the Australian Consumer Law and Corporations Act, however, these are not focused on breaches of telecommunications-specific safeguards and can involve lengthy court processes. In the above-mentioned SoleNET and Sure Telecom case study, the court order which restrained the relevant offending director and companies from future involvement in the supply of telecommunications services (for Australian Consumer Law breaches) was obtained nearly four years after some of the offending conduct was committed.

The ACCC and ACMA have argued that the ability to remove CSPs with a history of non-compliance acts as an effective deterrent and will drive the market to improve its performance. The possibility of deregistration could potentially motivate some CSPs to remediate consumer issues. There will likely be benefits for the sector as a whole by reinforcing the community's expectations regarding compliance with consumer safeguards, and increasing consumer confidence.

3a) Threshold for deregistration

Deregistering a CSP would be a measure of last resort and the ACMA would be expected to have exhausted all reasonable enforcement and compliance approaches, and be satisfied to a high degree of certainty that the circumstances warrant such a significant regulatory intervention.

There is a range of existing actions the ACMA can take to address non-compliance with telecommunications-specific consumer safeguards, including: issuing infringement notice penalties, enforceable undertakings and seeking the imposition of civil penalties by the Federal Court. It would generally be expected that the ACMA would utilise this suite of options prior to deregistration unless special circumstances apply – for example, evidence of phoenixing. It would be expected that there be a graduated pathway towards de-registration/loss of licence. Additional tools might also be considered in this respect, for example, permitting the ACMA to impose licence conditions on a CSP, or the option for licences to be suspended.

In assessing whether deregistration is warranted the ACMA could consider:

- **a CSP's history of compliance** – including the seriousness of previous non-compliance and whether a CSP has demonstrated understanding of the ACMA's concerns and a willingness to act. This extends to a company's history with other obligations and in other sectors.
- **the impact of any regulatory decision on the CSP's customers** – given the importance of remaining connected to telecommunication services, consideration could be given to how any regulatory decision impacts upon a CSP's customers.
- **the need to prevent actual or potential consumer harm** – conduct that is deliberate and repeated arguably creates a need for more significant regulatory intervention.
- **whether alternatives to deregistration could achieve the same outcome** – for example, could a CSP agree to abide by conditions to address non-compliance and agree to put in place systems to monitor and ensure ongoing compliance?

The following case study shows how a regulator could take some of these considerations into account before removing a CSP, by exhausting all alternatives before removing a CSP.

Case study: Suspension of Zero Mobile’s Licence to provide Mobile Virtual Network Operator Services¹²

In March 2020, Singapore’s Infocomm Media Development Authority (IMDA) suspended Zero Mobile’s licence to provide Mobile Virtual Network Operator services with immediate effect, and blacklisted the company and its Directors. In coming to this decision, IMDA took into account Zero Mobile’s failure to address outstanding billing disputes with ex-subscribers in spite of IMDA’s reminders, following the cessation of Zero Mobile’s service plans in December 2019.

In its decision, IMDA also directed Zero Mobile to resolve its billing issues with ex-subscribers, and advise affected ex-subscribers to stop their recurring auto-payment arrangements, if any, with Zero Mobile. IMDA stated if Zero Mobile failed to comply with its direction to resolve all billing disputes, IMDA would cancel Zero Mobile’s licence.

Questions for feedback:

Question 8. What factors should be considered before deregistering a CSP, and what alternatives should the ACMA consider?

Question 9. How can deregistration be best leveraged to facilitate compliance and enforcement of existing regulatory obligations?

3b) Fairness and avenues for review in decisions regarding registration

Decisions that impact a CSP’s registration would need to be transparent and fair, and provide for accessible and timely avenues for internal or external review.

A transparent and fair framework for registration decisions arguably should provide:

- **CSPs with genuine early opportunities to engage and respond** — this includes CSPs being afforded the opportunity to consider the reasons for a regulator’s concern, address outstanding areas of non-compliance and submit information to inform decisions.
- **Published reasons for decisions** — this would support accountability of the decision-making process and provide market participants with further insights and guidance on registration decisions.
- **Confidence for all stakeholders** — the process of decision-making should provide all stakeholders with confidence in registration decisions.
- **Accessible avenues for review** — provide avenues of review for those that are dissatisfied with a decision. This includes the availability of internal review of decisions, where the regulator reviews the evidence that led to the original decision and any new evidence that is available. Other avenues of review include merits review by the Australian Administrative Tribunal, judicial review by the Federal Court of Australia, and review by the Commonwealth Ombudsman.

The ACMA’s [compliance and enforcement policy](#) already safeguards many of these objectives.

Question for feedback:

Question 10. What transparency and review measures should be implemented?

¹² Infocomm Media Development Authority, *IMDA Suspends Zero Mobile’s Licence*, available at <https://www.imda.gov.sg/news-and-events/Media-Room/Media-Releases/2020/IMDA-Suspends-Zero-Mobiles-Licence>.

3c) Alternative mechanisms for excluding CSPs from the market

A registration/licensing scheme and a mechanism to remove CSPs with a history of non-compliance are regulatory powers that complement each other. The effectiveness of each is improved by the existence of the other.

For example, a registration scheme provides a useful 'gate' to ensure CSPs, whose compliance history warrants deregistration, do not re-enter the telecommunications market. Conversely, the power to remove CSPs improves the robustness and quality of the registration scheme by setting a benchmark to operate in the telecommunications sector.

However, the framework enabling a regulator to remove CSPs from the telecommunications sector can stand alone and need not rely on the establishment of a registration scheme. This option should be considered in the event a registration scheme is not pursued, but merit is seen in a mechanism to remove providers from the market.

The Government could consider establishing a framework for the ACMA to make a determination, banning a CSP or directors from carrying on a business or supplying services in connection with telecommunications. Banning a CSP or directors would still send a clear message of the consequences of failing to comply with telecommunications-specific regulatory obligations.

It should be noted, the design issues considered in this section remain relevant. Government would still need to ensure there is an appropriate threshold to ban a CSP or Director, and fairness and avenues for review are embedded into any banning decisions.

A 'banning' or injunction mechanism would not achieve market visibility objectives of a registration or licensing scheme, however, there may be other ways to achieve those objectives also – for example, improving the rigour of existing lists of CSP such as the list of TIO members.

Question for feedback:

Question 11. What would be the advantages or disadvantages of establishing a mechanism to remove CSPs with a history of non-compliance without also having a complementary registration scheme?

4. What registration might look like

To support discussion, an indicative model for registration is set out below to help stakeholders understand what registration might look like in practice. We seek views on other models, including those more akin to licensing.

The top row of the diagram sets out headings for the process of registration, compliance and regulatory decision-making. The dot points below each heading set out some of the key issues this discussion paper has sought feedback on, and where existing compliance and enforcement processes are already in place and would be unchanged under a registration scheme.

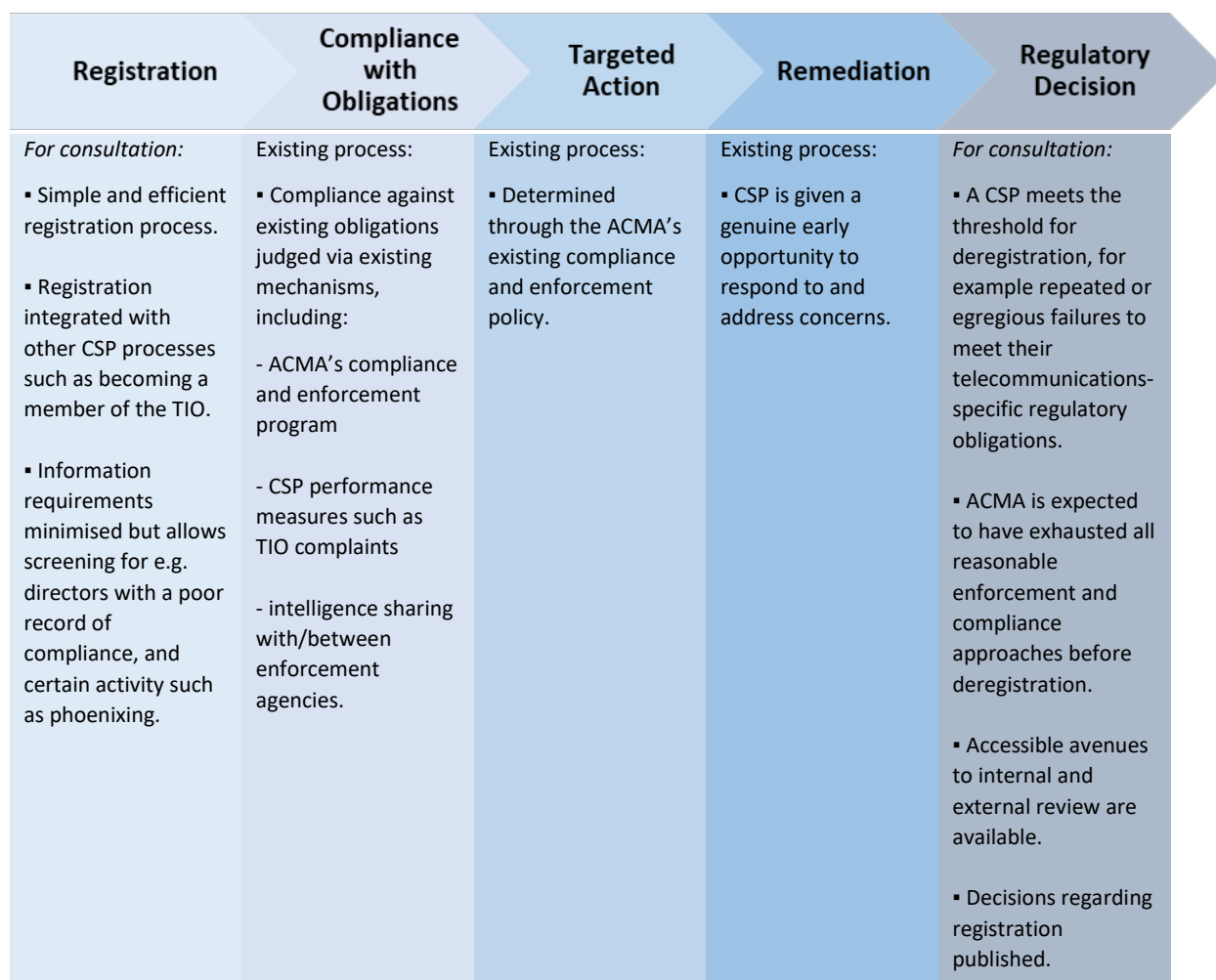


Diagram. 1 Conceptual diagram of risk-based approach to registration/de-registration