

15 July 2016

Project Office  
Department of Communications and the Arts  
GPO Box 2154  
Canberra ACT 2601

Dear Sir/Madam

### **ACMA Review draft report**

The Telecommunications Industry Ombudsman (TIO) welcomes the opportunity to comment on the Department of Communications and the Arts' draft report on the Review of the Australian Communications and Media Authority (the draft report).

The TIO is a free, independent external dispute resolution service for small business and residential consumers who have a complaint about their telecommunications service in Australia. We work closely with the Australian Communications and Media Authority (ACMA) by providing information on telecommunications complaint trends and compliance with industry-specific codes such as the Telecommunications Consumer Protections Code (the TCP Code). Both the TIO and the ACMA serve an important role in improving the telecommunications industry's responsiveness to consumer issues.

### **TIO recommendations**

The draft report proposes a number of key reforms to ensure the ACMA remains fit-for-purpose in the rapidly changing communications environment.

The TIO has several recommendations to enhance the effectiveness of the ACMA as a regulator in the telecommunications sector:

1. Expand the ACMA's remit to all suppliers in the telecommunications supply chain.
2. Broaden the ACMA's powers to allow it to take enforcement action against a telecommunications provider that has not complied with its obligations while still a member of the TIO, irrespective of its current activity.
3. Maintain a register of telecommunications industry participants to oversee the industry and ensure continuity of telecommunications services.
4. Retain the current roles of the ACMA and the Australian Competition and Consumer Commission (ACCC) in the interests of consumer protection.

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### **1. Expand the remit of the ACMA to all suppliers in the telecommunications supply chain**

The TIO believes the ACMA's remit should cover all participants in the telecommunications supply chain. This includes carriers, wholesalers as well as retail service providers.

Having responsibilities for all participants in the supply chain is particularly important in the telecommunications industry where there are complex supply arrangements. It is not uncommon for one or more wholesalers to exist in the supply chain between a carrier and a consumer's retail service provider. To ensure the ACMA can effectively regulate the telecommunications sector, it is important that it has visibility and authority across all participants.

The Department, in its draft proposal 1, proposes the ACMA's remit cover all the layers of the communications market, including infrastructure, transport, devices, content and applications. The TIO supports draft proposal 1 if it means the ACMA's remit would include all participants in the telecommunications supply chain. An expanded remit would be in the public interest.

### **2. Broaden the ACMA's remit to allow enforcement action against former TIO members**

The TIO believes the ACMA should have authority to take enforcement action against companies that were formerly TIO members, but which have since transitioned their assets (including their customer base). Such companies may not have complied with their obligations as members of the TIO scheme and may also not have complied with Industry customer transfer rules in both establishing and transferring their customer bases. Currently, the ACMA faces barriers in being able to take enforcement action against a company that is no longer delivering carriage services. Unfortunately, these companies may have transferred their customer base to a new corporate entity, sometimes referred to as 'phoenix activity'.

Phoenix activity relates to the intentional transfer of assets from an indebted company to a new company for the purposes of avoiding creditors, tax obligations, or financial employee obligations. This activity is not uncommon in the telecommunications industry and causes significant consumer detriment as well as damage to the reputation of the industry.

We acknowledge the Department has in draft proposal 18 recommended the ACMA should apply a risk-based approach to regulation, compliance and enforcement activities. Expanding the ACMA's remit to allow enforcement action against companies that have engaged in phoenix activity would be consistent with the risk-based approach referred to in the Department's draft proposal 18.

### **3. Maintain a register of telecommunications industry participants**

To facilitate effective regulatory oversight of the telecommunications sector, the TIO believes the ACMA should maintain a register of industry participants which

includes details of the supply relationships between them. A live register would give the ACMA visibility of all industry participants, and enable the ACMA to co-ordinate the actions of participants to prevent disruption and to ensure continuity of telecommunications services to consumers and businesses. This is particularly significant in circumstances where a company in a telecommunications supply chain becomes insolvent. The implications for consumers and their services in these circumstances can be detrimental.

Registration of telecommunications service providers with the ACMA would also act as a deterrent to companies engaging in phoenix activity.

We acknowledge the Department has in draft proposal 18 recommended the ACMA ensures its regulatory settings do not unnecessarily hinder competition, innovation or efficient investment, unless this is unavoidable in fulfilling its statutory responsibilities. This is one of the four regulatory principles in the ACMA's enabling legislation.

While maintaining a register may be considered further regulation that imposes additional technical and resource obligations, it serves towards improving the efficiency of the ACMA to undertake its enforcement activities. The ACMA would be able to more quickly identify industry participants, make contact and take action if appropriate.

The register would also serve as a detailed contact list of all telecommunications participants in Australia. The ACMA would be in a position to easily provide important information to all participants from other regulatory and government agencies organisations such as the Attorney-General's department and the Office of the Australian Information Commissioner.

#### **4. Retain the current roles of the ACMA and the ACCC in the interests of consumer protection**

The TIO supports the retention of the individual roles and functions of the ACMA and the ACCC in the interests of consumer protection as outlined in draft proposal 11 of the draft report. The ACMA and the ACCC currently perform complementary yet distinct functions that support consumer protections within a complex environment involving a varied range of communications products, services and devices. Retaining the current roles of the two agencies has the added advantage of already existing constructive and consultative arrangements between the ACMA and the ACCC, and with the TIO.

As identified in the report, the TIO's functions complement the telecommunications consumer safeguards and practices that are enforced by the ACMA and the ACCC. These include the Telecommunications Consumer Protections (TCP) Code (and other industry codes) and the Australian Consumer Law (ACL), respectively.

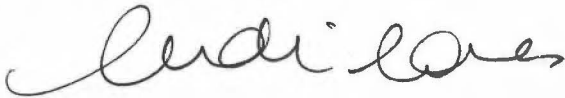
The ACMA registers industry Codes, which provide detailed requirements and guidance for telecommunications service providers on matters that include consumer contracts, billing, credit and debt management, supplier transfers, and

complaint handling. The TCP Code and other industry codes promote telecommunications-specific consumer protections by complementing and building on the core rights and obligations set out in the ACL. The ACCC is responsible for general consumer protections across various industries and for enforcing the ACL. The TIO handles consumer complaints about these issues, relying on the industry-specific TCP Code, in conjunction with the ACL and other relevant legislation, regulation or codes, to resolve telecommunications disputes.

**Further information**

If you require further information, please contact the TIO's Executive Director – Industry, Community & Government, David Brockman, on 03 8600 8700.

Yours sincerely



Judi Jones  
**OMBUDSMAN**