

Consumer Safeguards Review consultation – Part C: Choice and Fairness

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Thank you for the opportunity to make a submission about aspects of consumer choice and fairness that might not be adequately addressed by the telecommunications market in the post-2020 environment. My submission sets out an illustration of how existing market mechanisms and regulatory settings provide both inadequate incentives and perverse disincentives for telco providers to provide meaningful and effective 'front end' contact, as contemplated in Recommendation 2.1 of the report on Part A of the Consumer Safeguards Review. This, in turn, limits meaningful choice available to consumers and undermines fairness, giving providers a regulatory 'free ride'.

Regulatory context

Free market policies are believed by their proponents to empower consumers to choose products and services that best meet their needs and preferences, and encourage providers to improve efficiency, innovation and quality at a price that consumers are willing to pay. This assumes:

- access by consumers to comprehensible, pertinent and credible information about providers and their products and services, as a necessary precondition of informed choice
- availability of choice for consumers, and
- relative symmetry of knowledge and power as between consumers and providers.

In the past decade, numerous Royal Commissions have investigated mistreatment, by powerful institutions, of individuals who were in positions of yawning asymmetries in knowledge and power. Three of the most recent (into financial services, aged care services, and treatment of Australians with disability) were resisted fiercely. It was said that Royal Commissions were unwarranted because:

- those causing harm were a 'few bad apples'
- existing regulators were 'tough cops on the beat' who provided adequate oversight, and
- the statute books provided adequate accountability, compliance, enforcement and remedial mechanisms.

However, regulators in those contexts were beholden for funding to those whom they regulated and 'co-regulation' practices were pursued as a necessity occasioned by chronic under-funding, while being justified by reference to high principle. Findings of the financial services Royal Commission, and the evidence presented in the aged care Royal Commission's interim report, demonstrated that free market principles, in markets characterised by substantial asymmetries of knowledge and power, have not afforded consumers informed choices, or encouraged provision of services that are safe, reasonably fit for the purpose, and of acceptable quality.

The level of distrust and dissatisfaction identified throughout this consultation process strongly suggests that the application of free market principles, and the absence of a 'well-resourced and willing 'cop on the beat' have, predictably, yielded similar outcomes for telco consumers.

Part A of the CSR

Recommendation 1.3 of the report from Part A of this consultation process suggests that the TIO should be empowered (and required) to undertake internal merits review of any proposed resolution of a consumer complaint. This would, I suggest, give the TIO a more meaningful role in developing and enforcing norms around provider responses. In my dealings with the TIO, officers seemed to view their role as little more than an intermediary between the provider and the consumer.

Recommendation 2.1 refers to enhanced 'front end' contact provision. A key difficulty in the experiences I have set out below was simply finding a way to alert Telstra to a glitch in their online ordering system which had, I understand, led to two distinct orders being merged. I was repeatedly directed, by phone and through Telstra's website, to the Telstra app as a means by which I could communicate with Telstra about this (time sensitive) issue. Yet the app was not designed to register such an issue, or enable its communication to someone who could disentangle the merged orders. In light of the experience detailed below, I respectfully support Recommendation 2.2, which suggests a refinement of rules to provide a one-click link, on provider websites, to the relevant CHP and relevant information on raising and progressing complaints. This is conspicuously not a feature of Telstra's landing page, their app or the recorded messages that one is confronted with if one should have the temerity to try and talk to Telstra staff.

Part C of the CSR - case study of poor customer contact arrangements and an EDR scheme that undermines choice and fairness for customers

On 27 July 2020, I lodged an online order with Telstra, seeking to connect to the NBN. I have been a Telstra customer since 1994 and pay for a 'premium' service. My deadline to do so was 11 September 2020. Late on the afternoon of 28 July, Telstra sent me an email advising a connection date for services at an address in New South Wales. It was an address with which I have no connection. It later transpired that Telstra had processed my order as if I were moving to that address, rather than as if I were merely seeking to connect to the NBN at my existing address. The email advised that, in implementing the order, my existing internet connection at my residential address would be connected on 10 August – and so would the internet connection of the residents at the other address. The email provided certain details about consumers at that address (which, *prima facie*, seem to be a breach of Telstra's privacy obligations).

I immediately sought to contact Telstra to draw their attention to the error. Neither *via* the app nor the website offered options by which I could do this, so I tried to contact Telstra by phone. The recorded message kept insisting that I should self-manage my order using the app and/or their 'order tracker'. By selecting an increasingly random number of options through the telephone line, I eventually got through (at about 4.43pm) to a staff member of an offshore call centre ('A'), who transferred me (after 18 minutes on hold) to 'N' (name excluded for privacy reasons). N and I spoke until 5.55pm. During that time, N advised me that she had cancelled the erroneous order and placed a new order for a new 'in market' plan (in this regard, I note the misleading nature of Telstra's promises online and in written communication about connecting to the NBN, which represent that you get to keep your existing plan, at existing charges – this was clearly wrong in my case, and I am now paying about \$20 per month more on a different plan than I was previously on, and for lower speeds than promised). I asked, during my call with N, for my number to be unlisted and for caller id to show me only as a private number. N assured me that I would be connected, at my current address, by the end of the following week

(ie the week commencing 3 August), with Fibre to the Node class 12, that my number would be unlisted and that call id would show me only as a private number. N also advised that I would receive a phone call or SMS within the following five days to arrange an appointment (I didn't).

Having heard nothing, I called Telstra again on 3 August; again, I needed to try multiple combinations of options to get through to someone to talk to, rather than the numerous prompts to use the app to self-manage my problem. I had also tried using the online 'order tracker', which still showed me as moving house to the other address on 10 August, demonstrating that nearly 90 minutes on the phone to the call centre and N had achieved – nothing. After 19 minutes on hold, I got through to 'J', who also tried to tell me that order tracker would answer my questions. He agreed that the erroneous order had not, in fact, been cancelled by N, and could not explain why. He further advised that he could not create a new order until the old (ie erroneous order) had been cancelled, and that 'the system' would take five or six hours to achieve this. He said he would call me back. He didn't. I asked him for a reference number and he said he could 'make one up' for me. I was on the phone to J for 50 minutes.

I called the TIO to make a verbal complaint at 9.29am on 4 August.

At 3.30pm on 4 August, 'M' called me from Telstra to advise me that a case manager had been appointed by Telstra for me, and that I would hear from that person within two days. I didn't. In fact, the first contact from my case manager was on 12 August – over a week after M's call.

On 6 August, and getting perilously close to the date on which both I, and the hapless occupants of the New South Wales residence were to be disconnected, I called Telstra again, and again went through a random mix of options on the complaints line, which led me down a strange rabbit hole concerning a 'PUK code'. I note at this point that the page on the 'Telstra complaints handling process' says that you can follow up to check on the progress of a complaint by pressing option 1. This is, I assure you, incorrect. At 4.26pm, I got through to 'J2', to whom I recounted this ridiculous farrago. He advised at 4.45pm that everything about the erroneous order was still active and that there was an order for a house move still on 'the system', and that there was 'an appointments tab' for 13 August. J2 put me on hold. At 4.52pm, he said that it was 'all good' and that he could now set up my connection order. I was back on hold until 5.07pm, when he advised that Telstra would send me out a conversion kit, which would arrive in 7-10 days. He confirmed, to my enormous relief, that no imminent disconnection was now on 'the system' for me or for the consumers at the New South Wales residence, who had been unwittingly dragged into my NBN arrangements. At 5.14, J2 advised that a technician would come and would need access to my home, and that this could happen on 17 August 2020, between 7am and 2pm. J2 said I would need to go on hold again, because he needed to refer to a colleague. At 5.57pm, J2 came back and said I would need to transition to an 'in market' plan. He said that placing the new order would take till 'tomorrow morning' to register on 'the system', and that he would contact me shortly after lunch, Canberra time (J2 was based in Adelaide and started work at 10.30am). Unlike J and N, he proactively gave me an interaction notice and his employee number. The call ended after one hour and forty-one minutes.

J2 called me back at 5.03pm on 7 August, advising me that the transition to a new order had gotten through the previous night, and confirming the appointment dates and delivery of the conversion kit, as well as the need for me to be at home. I subsequently received a communication from Telstra saying I didn't need to be at home, which proved to be the case, although I had arranged to be at home just in case.

On 20 August, I followed up with my first case manager at Telstra ('D'), having missed some calls which I think were from him, although no message was left. He advised that, despite my initial requests to N, private caller id and no call listing had not been actioned. He undertook to fix this.

In summary:

- a random address and phone number were linked to my connection order, potentially breaching privacy towards two of customers and there was no straightforward and transparent way of alerting Telstra to the error, and getting it fixed
- repeated, lengthy and detailed discussions with Telstra were apparently not recorded by Telstra, and did not progress towards resolution or giving effect to my instructions (ie around private caller id and no listing of my number)
- progress occurred only after escalating this to the TIO – this is surely wasteful of Telstra's resources (involving at least six employees/contractors of Telstra – A, N, J, J2, and at least two case managers, D and 'A2'); it functions as a disincentive to providers to resolve complaints quickly and proportionately by conditioning them to await action by the TIO before it moves to rectify a problem
- Telstra has published, and continues to publish, material about transition to the NBN that is misleading (ie the same plan/same cost representations)
- Telstra has erected multiple barriers to deter and hinder customers from raising or resolving even very simple matters – the mixing up of a couple of orders in 'the system'
- in forcing customers with concerns to go to 'the app', 'the order tracker' etc, Telstra is seeking to displace the burden of customer service onto – the customer.

These all point to a regulatory framework that undermines, rather than enables, fairness.

Telstra has, earlier this month, offered me credit on my account, as a 'goodwill gesture'. I have accepted that offer by email, but I have not received any further communication from Telstra, to confirm that this will occur. My complaint with the TIO has been closed, although TIO advise that they can re-open the complaint if Telstra does not follow through with their offer.

This entire sequence of events could have been easily and inexpensively avoided if Telstra's website or app (or both) offered a facility to identify an error and have it actioned. This cannot be regarded as an onerous requirement of telcos.

The powers conferred on the TIO and the ACMA, in the context of current market dynamics, fail to provide:

- telcos with adequate incentives to afford consumers choice and fairness, and
- consumers with adequate safeguards to compel choice and fairness.

As a result, Telstra could, with impunity, make a series of errors in processing my order, and outsource to me the burden of fixing those errors. I would add that the quantum by which Telstra has proposed to credit to my account bears no reasonable or fair relation to the cost in my time and effort. Perhaps, if providers were liable to pay on a timed rate for their customers' time in rectifying problems created by the providers, there would have been a greater incentive for N to have cancelled the problematic order on first contact.

Conclusion

The consultation paper for Part C acknowledges that 'commercial incentives may be weaker' and that there may be 'limits to market mechanisms.' The test for whether market mechanisms and regulatory settings are adequate and fit for purpose should take into account whether they mitigate the asymmetries of power and knowledge as between consumer and provider, including by offering timely, transparent, inexpensive dispute resolution.

To support choice and fairness in a society in which telco connection is increasingly a prerequisite for participation, the regulatory framework for telcos must:

- offer consumers easy front end contact to raise issues and resolve them quickly
- encourage providers to resolve disputes quickly and proportionately, without placing on consumers the bulk of the administrative burden
- avoid conditioning consumers and providers from treating the TIO as a default 'first step' (it has previously been acknowledged, in this consultation, that current arrangements effectively gift providers an additional 15 working days to procrastinate in resolving a consumer's complaint)
- provide redress that is reasonable, proportionate to the detriment suffered by consumers (whether from the conduct giving rise to the complaint or from the work required of consumers to rectify issues) and enforceable, and
- provide for early identification and escalation of systemic issues.

The ACMA Complaints Handling Standards have now been in force for over two years, but appear not to have had an effect in improving the manner in which providers respond to consumer complaints.

Giving effect to a regulatory framework that enhances clarity and transparency for consumers to raise and resolve complaints, with clear and enforceable regulatory safeguards for consumers, will in fact better enable application of free market mechanisms by mitigating the existing asymmetries of knowledge and power between telcos and their customers. I would, lastly, add that this has never been as urgent an issue as in the COVID-19 environment, when the inequities of the digital divide compound existing socio-economic inequities for customers less able than I to engage in a process of consultation around choice and fairness.

Thank you for your consideration of this submission.

Kind regards



Susan F Cochrane

