

6 January 2016

Mr John Stanton
Chief Executive Officer
Communications Alliance Limited
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Dear Mr Stanton

Draft Chapter 9 of the Telecommunications Consumer Protections Code (DR C628:2015)

The Telecommunications Industry Ombudsman (TIO) welcomes the opportunity to comment on the proposed amendments to Chapter 9 of the Telecommunications Consumer Protections (TCP) Code DR C628:2015 (draft Chapter 9).

The TIO notes that draft Chapter 9 proposes to introduce several key changes to the existing code compliance and monitoring provisions, including:

- the obligation on suppliers to register with Communications Alliance
- distinct arrangements for small suppliers, and
- the introduction of Partial Confirmation.

We set out below some specific comments on these matters, for the consideration of the Working Committee.

Registration of providers with Communications Alliance

Clause 9.1.1(b) of draft Chapter 9 introduces mandatory registration with Communications Alliance for suppliers with one or more customers, within two months of registration of the TCP Code or one month after suppliers first acquire customers (whichever occurs later). Draft Chapter 9 provides that registration with Communications Alliance is for compliance purposes.

We understand that the purpose of Chapter 9 of the TCP Code is to set out a self-regulatory compliance framework, overseen by Communications Compliance. Communications Compliance has been established as an independent body under the Code, with the primary function of monitoring Code compliance by suppliers. While a registration process will no doubt assist the task of monitoring compliance in a large and diverse sector like telecommunications, a process which is administered by the industry association (Communications Alliance) may not align with the stated role of Communications Compliance as an independent body.

To preserve the independence of Communications Compliance in its role overseeing industry Code compliance, the TIO recommends that the responsibility for the proposed registration process be reconsidered to determine if it would more appropriately rest with the compliance monitoring body. In making this

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recommendation, we acknowledge that the coordination of a registration process would of course have resource impacts for Communications Compliance, given it would be an additional function over and above the body's current responsibilities.

Requiring suppliers to register with one body (Communications Alliance) and having to submit prescribed statements under Chapter 9 to another body (Communications Compliance) may also cause confusion for suppliers.

Distinct arrangements for small suppliers

Draft Chapter 9 proposes to introduce different arrangements for small providers, which the TIO understands would be defined as those with fewer than 3,000 services in operation (SIOs). One of the key changes from the existing Chapter 9 arrangements is to remove the requirement for small suppliers to complete a compliance plan in accordance with the Australian Standard, in favour of a compliance attestation in respect of the supplier's processes and systems (clause 9.4.1(b)(ii)). The draft amendments also provide for small suppliers to be able to defer lodgement of compliance attestations, providing an additional six months if an attestation deferral notice has been submitted (clause 9.8.1(b)).

Noting that the obligations for providers under draft Chapter 9 differ depending on supplier size, it will be important for Communications Compliance to have up to date information about the size of suppliers submitting compliance statements. The registration scheme proposed in draft Chapter 9 (notwithstanding the question of which body would be best placed to own such a scheme), would perhaps be an efficient mechanism for capturing information about supplier SIOs in order that Communications Compliance can effectively monitor compliance in the respective categories of supplier size.

Incorporating SIO data as part of a registration process would also assist in circumstances where suppliers may transition from one size category to another. Draft Chapter 9 is silent on what steps, if any, suppliers need to take if they transition from being a small supplier to a larger one or vice versa, recognising that their obligations under the Code will change. A registration process which confers responsibility on suppliers to update their information in writing (clause 9.1.1(c)) could be a useful way to address this matter if the registration process included SIO information.

Introduction of Partial Confirmation

Clause 9.4.1(b)(ii) of draft Chapter 9 provides for small suppliers who are not fully compliant with the TCP Code to attest partial compliance by identifying gaps in compliance, on condition they also submit a Compliance Achievement Plan (clause 9.5). While noting the potential benefits for smaller providers in being able to attest partial compliance, there may be the potential for an increase in the number of Compliance Achievement Plans that are submitted to Communications Compliance, and which it will have to assess.

Noting that suppliers who submit a Compliance Achievement Plan must continue to report regularly on progress under the plans (clause 9.5.1(c)), it will be necessary to ensure that Communications Compliance has robust processes and the relevant resources in place to ensure that this compliance monitoring activity can be conducted effectively.

Further information

We trust our comments are of assistance to Communications Alliance as it finalises Chapter 9 of the TCP Code.

If you require any further information from the TIO, please do not hesitate to contact Shobini Mahendra, Manager – Policy, Research and Systemic Issues on (03) 8600 8700.

Yours sincerely



David Brockman

Executive Director – Industry, Community and Government