

**COMMUNICATIONS
ALLIANCE LTD**



**ACCC COMMUNICATIONS SECTOR MARKET STUDY
DRAFT REPORT**
COMMUNICATIONS ALLIANCE SUBMISSION
DECEMBER 2017

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INTRODUCTION

Communications Alliance welcomes the opportunity to provide this submission in response to the draft report from the ACCC on its *Communications Sector Market Study* (the draft report).

Communications Alliance agrees that the sector is undergoing a period of significant and complex change. We acknowledge that there are challenges during this time, and Industry will continue to work with the ACCC, regulators, and government through a number of activities and consultations, some of which are identified in the draft study and discussed in our response. We also note and support the ACCC's view that current co-regulatory arrangements are fit for purpose, as this allows for flexibility in a dynamic industry environment, and Communications Alliance works closely and collaboratively with government and regulators.

During this time of disruption, it is important to consider the possibility of unintended consequences flowing from regulatory interventions, and along those lines we note the ACCC's acknowledgement of the appropriateness of allowing emerging markets such as the Internet of Things to develop naturally, as discussed in section 1.8 of the draft report.

We also note references in the draft report to the need for further consultation on certain topics and recommendations, and we look forward to contributing to those consultations.

Communications Alliance represents a diverse swathe of the telecommunications industry. We have provided comment on select recommendations where there is convergence among member views, and are available for any questions or further discussion.

About Communications Alliance

Communications Alliance is the primary telecommunications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, equipment vendors, IT companies, consultants and business groups.

Its vision is to provide a unified voice for the telecommunications industry and to lead it into the next generation of converging networks, technologies and services. The prime mission of Communications Alliance is to promote the growth of the Australian communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance. For more details about Communications Alliance, see <http://www.commsalliance.com.au>.

SECTION 2 – RESPONSE TO ACCC PROPOSED ACTIONS

NO.	PROPOSED ACTION FROM DRAFT REPORT	RESPONSE
6	<p>We propose to examine the non-price terms of access, particularly the service standards being proposed for access to NBN services, and the impact that these may be having on delivering positive consumer experiences on the NBN. The allocation of responsibility for connections and service faults between NBN Co and service providers is an issue that will affect consumer experiences, especially where consumers suffer detriment.</p> <p>In particular, we will examine whether there are appropriate incentives for NBN Co to remedy service failures and consider the adequacy of compensation available to service providers to enable them to provide appropriate consumer redress. As NBN Co is moving from the rollout phase to delivery of services, risk allocation must also shift to ensure services are delivered to consumers that meet expectations of quality.</p> <p>We will consider whether the proposed allocation of responsibility is appropriate and whether regulatory intervention is necessary, for example, by including service level terms within NBN Co's regulated terms of access.</p>	<p>On this and other NBN related recommendations, we note that Communications Alliance is continuing its work with nbn and service providers on several areas related to the customer experience on the NBN.</p> <p>This includes:</p> <ul style="list-style-type: none"> - Developing industry processes for customers migrating from the PSTN to the NBN; - Participation in the Minister's roundtable. - Revision of the Telecommunications Consumer Protections Code, which includes in its terms of reference a mandate to "<i>Adapt the code to ensure it is fit for purpose for nbn and other new services</i>".
13	<p>The Telecommunications Consumer Protection (TCP) Code review provides an opportunity to assess whether service providers meet their Critical Information Summary (CIS) obligations under the TCP Code and how this can be addressed.</p>	<p>As noted in the draft report, the ACCC is part of the Communications Alliance working committee that is revising the TCP Code, and we welcome the ACCC's ongoing input and active participation.</p> <p>A part of this revision is a consideration of the provisions on CIS, including commissioned research on consumer preferences on the information included in and format of the CIS.</p> <p>However, the revision of the CIS provisions of Code and compliance with those provisions are separate matters. A code review is not an appropriate place for a compliance audit, nor</p>

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		<p>will additional code rules change whether providers are complying with a code.</p> <p>The ACMA is responsible for enforcement of the Code, and regularly undertakes compliance audits against CIS requirements, taking enforcement action as necessary.</p> <p>The draft report does not mention the work of Communications Compliance, which also works with providers on TCP Code compliance and has achieved great results in education providers, especially smaller providers on TCP Code requirements. This has led to many more providers lodging compliance attestations with Communications Compliance over the last few years. See http://commcom.com.au/news/ for some of the statistics since 2013 of providers submitting attestations.</p> <p>Information from the ACMA and Communications Compliance show historically positive trends of supplier compliance with the CIS requirements. As noted in the draft report, in recent years, with rising numbers of small suppliers entering the market due to the NBN, there has been a period of adjustment, but past successes in CIS compliance demonstrate that this can likely be overcome in short order as these new providers become familiar with their diverse obligations.</p> <p>We recommend further discussions with the ACMA and Communications Compliance before finalising this recommendation, and a consideration of the separation of the review of CIS provisions in the Code and compliance with those provisions.</p>

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14	<p>We will review the scope, transparency, and ease of use of comparator websites for communications services and consider the need for further intervention in addition to our existing guidance for comparator websites. If intervention is needed, we will consult with industry and government to develop an appropriate course of action.</p>	<p>Communications Alliance notes the ACCC concerns about comparator websites but that these operate independently of its members.</p> <p>Communications Alliance members typically provide details of the plans and service they offer on their own websites, allowing consumers to make decisions based on information provided directly by the supplier.</p>
15	<p>We will monitor consumer complaints about unfair terms in communications contracts. We will also work with industry and government stakeholders to ensure consumers are informed about the potential benefits of short-term or no contract options when migrating to the NBN. We will also consider whether service providers should be obliged to more clearly identify the contract end date to consumers.</p>	<p>The draft report correctly identifies that “<i>contracts may limit consumers’ ability to easily switch service providers in the short-term</i>”.</p> <p>The draft report does not appear to mention that a contract typically involves a commitment to a service from the customer for the contract duration in return for some benefit e.g. the supply of equipment at a subsidised rate or at no charge. If the contract duration is shortened via early termination by the customer then the cost of that subsidy needs to be recovered, usually as an agreed termination charge.</p> <p>There is a range of types of plans available to consumers which are not long-term contracts, including pre-paid, month-to-month post-paid, and included-value plans. By offering this range of plans, including long term contracts with significant savings, providers are increasing the choices available to consumers.</p> <p>Communications Alliance suggests the final report from the ACCC should reflect this element of contracting for services and not just focus on the consequence of early termination fees. At present the draft report risks presenting unbalanced information on this topic.</p> <p>Additionally, the TCP Code has requirements to include information on the minimum period of an offer and early</p>

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		<p>termination charges in the CIS. Standard Forms of Agreement, Critical Information Summaries, and other documentation are transparent about early termination charges.</p> <p>While the 'level of the fee' is not included in the TCP Code, it is covered by the Australian Consumer Law, as mentioned on page 160 of the draft report, and should not be duplicated in the TCP Code.</p>
16	<p>We will review the email retention options that service providers offer to consumers and determine whether the charges they impose are reflective of the underlying cost of providing the standalone email service. As part of this review, we propose to consider the potential costs and benefits of introducing an email portability regime.</p>	<p>Communications Alliance notes the ACCC may review charges for "<i>email retention options</i>".</p> <p>The ACCC proposal to "<i>consider the potential costs and benefits of introducing an email portability regime</i>" is flawed and should be removed.</p> <p>The proposal appears to rely on the example of the successful operation of portability of telecommunications numbers in Australia as a reason to consider email portability.</p> <p>This appears to ignore the differences between public numbers included in the Numbering Plan used for telecommunications services and web domains used for email services.</p> <p>Telecommunications numbers are a public resource owned by the Commonwealth of Australia, regulated under Australian jurisdiction by the Australian Communications and Media Authority (ACMA) and where an end user is granted 'rights of use' of that public number while associated with an active telecommunications service.</p> <p>Communications Alliance notes that the <i>Communications Legislation Amendment (Deregulation and Other Measures) Bill 2017</i>, currently before Federal Parliament would make possible an industry managed numbering scheme in place of management and enforcement of numbering regulation by ACMA. This would not change the jurisdiction for the regulation</p>

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		<p>of telecommunications numbering i.e. within Australia, nor would it change the arrangement whereby a customer had a 'right of use' of that public number and which is supported by number portability processes for each portable number type.</p> <p>This contrasts with a domain for a private email service which may or may not be managed within Australia and competes with global businesses i.e. one can choose an email address from a supplier outside of Australia. This would make the imposition of a proposed "email portability" obligation unworkable, imposing costs on Australian businesses that are not incurred by businesses outside of Australia offering email services. There is no precedent for enabling portability of a resource across international boundaries.</p> <p>The proposal also fails to mention the negative consequences of forcing a provider to cede control of the email. If a former customer is using an ISP email address to send spam, threats, or anything of an illegal nature, but the provider no longer owns the email address, it may not be possible to track who does 'own' the email address, and there would be no method to take any action to halt those emails. This also means the provider has ceded control of their brand name, and is not able to enforce their terms of agreement.</p> <p>Finally, given the number of email service providers in existence, negating the need for customers to use the email address provided by their ISP, this proposal is unnecessary.</p>

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17	We will monitor consumer complaints about bundling and take enforcement action where necessary. We will also consider issuing guidance to consumers regarding bundled telecommunications products.	<p>Communications Alliance submits that Critical Information Summaries that are required under the TCP Code are a response to customer concerns about the comparability of service offerings.</p> <p>The range of bundled offers are a consequence of industry innovation to address a competitive market, offering a greater selection from which customers can choose.</p> <p>Communications Alliance supports the ACCC taking enforcement action against any illegal behaviour.</p>
18	We support the recent amendments to the Telecommunications Industry Ombudsman's (TIO) terms of reference which empower it to require all relevant parties in the supply chain, including NBN Co, to cooperate with the TIO in order to resolve consumer complaints. To further improve the effective operation of the TIO Scheme we recommend that the TIO collect and report on a clear data set of NBN-related complaints and collect NBN complaint data according to technology type.	<p>Communications Alliance members remain committed to managing their customers' experience to achieve the best outcomes for their customers.</p> <p>We acknowledge the challenges presented by complex service relationships, and the terms of reference for the revision of the TCP Code includes "<i>to address complex complaints involving multiple parties</i>" e.g. NBN wholesalers and retailers.</p>
19	We will work with the Telecommunications Industry Ombudsman (TIO), the ACMA and other government agencies to improve information provision to consumers, particularly complaints data.	<p>The revision of the TCP Code by the Communications Alliance Working Committee is continuing its work with all stakeholders, including on information provision to consumers.</p> <p>As noted previously, Communications Alliance is participating actively in the Minister's Roundtable and other activities to examine and improve the consumer experience on the NBN.</p>

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20	<p>We will address concerns about the performance of broadband services on the NBN through our broadband performance monitoring and reporting program, broadband speed claims guidance, and enforcement action in response to practices that contravene the Australian Consumer Law. We propose to review the broadband speed claims guidance in August 2018 to determine whether it has been effective in addressing consumer concerns about broadband speed claims.</p>	<p>Communications Alliance has and will continue to engage with the ACCC on the Broadband Monitoring Program and speed claims guidance.</p> <p>We note the ACCC intent to review the broadband speed claims guidance in August 2018.</p>
25	<p>We will:</p> <ul style="list-style-type: none"> <input type="checkbox"/> continue our involvement in relevant external processes in relation to Internet of Things (IoT) spectrum, NBN and consumer/data issues run by the ACMA, the Internet of Things Alliance Australia (IoTAA) and other government departments <input type="checkbox"/> continue to work with IoTAA in its various work streams and engagement with NBN Co on IoT product issues <input type="checkbox"/> explore concerns regarding restrictions associated with the e-SIM model which are impeding the ability of Mobile Virtual Network Operators (MVNOs) to compete with the mobile network operators <input type="checkbox"/> more generally, periodically examine the development of competition in key IoT sectors for signs of concentration or conduct of concern. This would involve monitoring features of the market including the number of market participants and their market shares; the degree of interoperability at the network and service layers; and availability of suitable wholesale access products. We will consider the value of incorporating this monitoring activity as part of our annual telecommunications report. 	<p>Communications Alliance supports the ACCC working with the IoTAA on emerging issues, and emphasises the importance of considering constraints regulation could impose on innovation during this time of change.</p>

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27	The ACCC strongly recommends that the radiocommunications regime explicitly recognise, and do more to promote, competition in relevant markets.	Communications Alliance would appreciate additional information from the ACCC on its suggested methods for the explicit recognition in the radiocommunications regime and which markets it considers relevant.
28	The proposals of the Productivity Commission's Inquiry into Data Availability and Use should be implemented to facilitate consumers having access to relevant data about themselves.	Communications Alliance notes " <i>The Australian Government has established a cross-portfolio taskforce in response to the Productivity Commission's public Inquiry into Data Availability and Use</i> " (source: https://www.pmc.gov.au/public-data/data-availability-and-use-taskforce) and looks forward to participating actively in the related discussions. As stated in our recent media release (http://www.commsalliance.com.au/Documents/releases/2017-media-release-36), Industry supports the top-line objectives of the Productivity Commission recommendations, but further clarity and discussions are needed before moving forward to avoid unintended consequences.



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