

Temporary exemption from compliance with the Customer Service Guarantee (CSG) Standard obligations



Australian Government
Australian Communications and Media Authority

In accordance with the *Telecommunications (Customer Service Guarantee) Standard 2004 (No. 1)* (the Standard)

Instructions for applicants

Introduction

The Australian Communications and Media Authority (ACMA) may grant a carriage service provider (CSP) a temporary exemption from compliance with the CSG performance standards set out under section 115 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

The temporary exemption scheme (the Scheme) is intended to facilitate competition in the telecommunications market by enabling a CSP with a small share in the market for CSG services in a geographic area to apply to ACMA for a temporary exemption from complying with performance standards in that area.

How to apply

Eligibility—The Scheme is open to CSPs that:

- (a) are not a primary universal service provider; and
- (b) supply, or propose to supply, CSG services to residential and small business customers.

Applicants are advised to refer to the

Granting of exemptions

ACMA may grant or refuse to grant a temporary exemption from the CSG performance standards. ACMA will provide written notice stating whether a temporary exemption has been granted.

If ACMA refuses to grant an application it will notify the applicant of the procedures for reconsideration of the decision by ACMA, or subsequently by the Federal Court under the *Administrative Decisions Judicial Review Act 1977*.

Competed applications should be forwarded to:

Manager, Industry Monitoring Section
Australian Communications and Media Authority
PO Box 13112, Law Courts
MELBOURNE VIC 8010

Contact us—enquiries about the Scheme or the Application Form may be directed to:

Industry Monitoring Section
Telecommunications Analysis Branch
Australian Communications and Media Authority

attached Industry Guidelines (Part B) for information regarding the criteria applicants must satisfy under the Scheme.

Telephone: (03) 9963 6800

Facsimile: (03) 9963 6899

Email: service.guarantee@acma.gov.au

Information required—The attached Application Form (Part A) must be completed. Applicants are advised to provide as much detail as is necessary to justify the application.

Part A - Application form

Information required for all applicants

Registered business name of applicant

Trading name of applicant (if applicable)

ACN

ARBN

ABN (as applicable)

Postal address

Registered office address (if different)

Primary Contact

Name _____

Position _____

Telephone

Facsimile

Email address

1. Tick the status of the applicant

Please indicate whether the applicant is:

- a licensed carrier
- a carriage service provider
- a primary universal service provider
- a member of the Telecommunications Industry Ombudsman Scheme

2. Market share for CSG services in the geographic area

Applicants are requested to provide the following information as an attachment to their application. In providing this information applicants are advised to refer to section 2 of the Industry Guidelines (Part B). Applicants should note that the following is not intended as an exhaustive list and should provide as much detail as is thought necessary to satisfy this criterion.

The application must:

- (a) include an Australian postcode based description of the geographic area for which the exemption is sought;
- (b) specify the number of CSG services the provider is currently supplying in the geographic area;
- (c) specify the number of CSG customers the provider is currently supplying to in the geographic area; and
- (d) provide an assessment of the number of CSG services currently supplied by other providers in the geographic area.

3. Net benefit to end-users

Applicants are requested to provide the following information as an attachment to their application. In providing this information applicants are advised to refer to section 3 of the Industry Guidelines (Part B). Applicants should note that the following is not intended as an exhaustive list and should provide as much detail as is thought necessary to satisfy this criterion.

The application must:

- (a) demonstrate the extent to which the proposed exemption will lower the cost of competing in or entering the market for CSG services in the geographic area for which the exemption is sought;
- (b) demonstrate the extent to which an exemption is likely to result in a net benefit for end-users in the areas of, but not limited to, price, quality, choice and innovation;
- (c) describe the type of service the provider is offering, or proposes to offer, to customers in the geographic area over the period of time sought;
- (d) describe the type of technology the provider will use to deliver service, and whether it is a new or innovative service or use of technology;

- (e) provide an assessment of the type of CSG services currently supplied by other providers in the geographic area; and
- (f) describe how the provider will deal with any complaints made by customers in respect of the CSG services caught by the proposed exemption.

4. Exemption Period

Applicants are requested to provide the following information as an attachment to their application. In providing this information applicants are advised to refer section 4 of the Industry Guidelines (Part B). Applicants should note that the following is not intended as an exhaustive list and should provide as much detail as is thought necessary to satisfy this criterion.

The application must:

- (a) state the period of time for which the exemption is sought and the provide supporting reasons for that period; and
- (b) provide an estimate of the number of CSG services the provider will supply in the geographic area over the period of time sought.

5. Additional information

Applicants are requested to provide the following information as an attachment to their application. Applicants are advised that in completing this application, regard should be had to the general principles of the Temporary Exemption Scheme (as set out in the Industry Guidelines (Part B)) and attach any additional information that will assist ACMA in its assessment of their application.

The application must:

- (a) detail how the provider will inform customers, including prospective customers, that it has been granted a temporary exemption from compliance with the performance standards and the implications of that exemption;
- (b) provide a geographic overview of the CSG services currently supplied by the provider within Australia; and
- (c) include any other information as may assist ACMA in its assessment of the application.

6. Declaration

I declare that:

- I the details provide in this form and in the attached supplementary sheets are true and correct in every detail; and
- II I have attached an independent audit report from _____ (accountant/auditor) which confirms the accuracy of the information that accompanies this application insofar as it relates to section 2(a) to 2(c) (inclusive); and
- III I am aware that a temporary exemption may be revoked by ACMA at any time if circumstances warrant it; and
- IV I have the authority to sign this application on behalf of the applicant; and
- V I am aware that it is an offence under section 136.1 of the *Criminal Code Act 1995* to wilfully or recklessly give a false or misleading statement in an application to ACMA where that statement is false or misleading in a material particular, or omits from a statement made to ACMA any matter or thing without which the statement is misleading in a material particular.

Signature of authorised person

Name

Position

Date

Note: The information that must be provided on or with this form is being sought for the purpose of considering applications for a temporary exemption from the Customer Service Guarantee scheme under the Standard. Applicants should note that the name of successful applicants will be included on a register to be maintained by ACMA and that the register will be open to inspection by the public.

PART B — INDUSTRY GUIDELINES FOR APPLICATIONS FOR A TEMPORARY EXEMPTION FROM THE CUSTOMER SERVICE GUARANTEE STANDARD

Introduction

The purpose of these guidelines is to provide assistance to carriage service providers (CSPs) in applying for a temporary exemption from the performance standards under the *Telecommunications (Customer Service Guarantee) Standard 2004 (No. 1)* (the Standard).

These guidelines should be read in conjunction with the Standard, the *Guide to the Telecommunications (Customer Service Guarantee) Standard 2004 (No. 1)* (the Guide) and the Explanatory Statement to the *Telecommunications (Customer Service Guarantee) Direction No. 1 of 1999 (Amendment No. 1 of 2003)* (the Amending Direction).

Note: This document is intended as a guide only and should not be relied on as legal advice.

The Temporary Exemption Scheme

Section 27A of the Standard enables a CSP to apply to the Australian Communications and Media Authority (ACMA) for a temporary exemption from compliance with the performance standards in a specific geographic area. This is known as the Customer Service Guarantee (CSG) Temporary Exemption Scheme (the Scheme).

The aim of the Scheme is to mitigate negative outcomes for both industry and consumers of a general application of the performance standards. The Scheme has been devised to facilitate competition in the market by enabling a CSP with a small share in the market for CSG services in a geographic area to apply to ACMA for a temporary exemption from complying with the performance standards in that area.

In general terms, ACMA can grant a CSP (other than a primary universal service provider) a temporary exemption from compliance with the performance standards if it is satisfied that the proposed exemption is likely to result in a net benefit to end-users in the geographic area for which the exemption is sought. The other key criterion that needs to be met is that the CSP has a small share in the market for CSG services in the geographic area for which it is seeking the exemption.

It is important to note that the onus of satisfying the criteria is on the CSP, who will need to demonstrate that it meets each of the criteria to the satisfaction of ACMA. If an applicant fails to satisfy one or more of the specified criteria, ACMA will not grant an exemption.

Charges

There are no administrative charges associated with an application for a temporary exemption under the Scheme.

Criteria

Subsection 27A (3) of the Standard sets out the key criteria that ACMA must be satisfied prior to granting a temporary exemption to a CSP. These are:

1. the CSP is not a primary universal service provider;
2. the CSP has a small share in the market for CSG services in the geographic area for which it is seeking an exemption; and
3. the proposed exemption is likely to result in a net benefit for end-users in the geographic area for which the exemption is sought.

If ACMA is satisfied that an application for an exemption satisfies the above criteria, ACMA must then consider:

4. the period of time for which the exemption is sought; and
5. the terms and conditions for the exemption, including in relation to its cessation, as ACMA considers appropriate.

The matters ACMA will have regard to when forming an assessment against each of the above criteria are set out below. The process of deciding whether to grant a CSP a temporary exemption under the Scheme will involve ACMA giving appropriate weight to each of the listed matters according to the particulars of the application.

The matters ACMA may have regard to are not limited to the matters set out below—ACMA can request an applicant to provide further information about an application as considered necessary. Each application will be considered on a case-by-case basis.

1. Primary Universal Service Provider

Paragraph 27A (3) (a) of the Standard provides that a carrier or carriage service provider that has been determined by the Minister as a primary universal service provider cannot be granted a temporary exemption from the performance standards.

This prohibition is based on the view that primary universal service providers, as carriers of last resort under the universal service obligation, should, at a minimum, be subject to the same performance requirements as the rest of the industry for CSG services.

2. *Small share in the market for CSG services*

Paragraph 27A (3) (b) of the Standard provides that ACMA will grant a temporary exemption from the performance standards if, subject to other criteria, ACMA is satisfied that the CSP has a small share in the market for CSG services in the geographic area for which it is seeking an exemption.

The Explanatory Statement to the Amending Direction states that an exemption will not be granted to a CSP holding a moderate or large share in the market for CSG services in the geographic area for which it is seeking an exemption. The following benchmark is therefore offered as a guideline to assist prospective applicants assess the extent to which they can satisfy this criterion:

- small share in the market — less than approximately 10 per cent.

It should be noted that in determining whether it considers a CSP to have a ‘small share in the market’, ACMA will have regard to the overall objective of the scheme to minimise barriers to entering the market for CSG services and to promote consumer benefits derived from competition.

Applicants are required to provide the following information to enable ACMA to form an accurate assessment for the purposes of this criterion:

- (a) the number of CSG services they are currently supplying in the geographic area for which the exemption is sought;
- (b) the number of CSG customers they are currently supplying to in the geographic area for which the exemption is sought; and
- (c) an assessment of the number of CSG services currently supplied by other CSPs in the geographic area for which the exemption is sought.

Applicants are also required to provide a description of the geographic area for which the exemption is sought using Australian postcodes as defined by Australia Post. This information will inform the boundaries of the CSG market to be defined. The use of postcodes to describe a geographic area will enable ACMA, consumers and other CSPs to readily comprehend the description of the area for which an exemption is sought.

The area for which a temporary exemption may be sought is not restricted, and it is possible for a CSP to apply for an exemption in relation to a large geographic area (for example, a State or Territory), or conversely, in relation to a small geographic area (for example, a local government area). However, the geographic area described in an application must be contiguous. Non adjoining areas will require separate applications accordingly.

3. *Net benefit to end-users*

Paragraph 27A (3) (c) of the Standard provides that ACMA will grant a temporary exemption from the performance standards if, subject to certain criteria, ACMA is satisfied that the proposed exemption is likely to result in a net benefit to end-users in the geographic area for which the exemption is sought.

The Explanatory Statement to the Amending Direction states that it is important that a temporary exemption have a positive effect for end-users and not be used to reduce compliance costs if there are no countervailing benefits for the community. ACMA's assessment of the net benefits that may be delivered by the proposed exemption must therefore extend to all end-users, not simply those who may be potential customers.

In assessing whether the proposed exemption is likely to result in a net benefit to end-users in the geographic area for which the exemption is sought ACMA is required to have regard to each of the following matters;

- (a) the extent to which the exemption would lower the cost of entering or competing in the market for CSG services in the geographic area for which the exemption is sought;
- (b) the extent to which the exemption is likely to promote sustainable competition for CSG services nationally and in the geographic area for which the exemption is sought;
- (c) the extent to which the exemption is likely to result in service improvements for end-users including, but not limited to, lower prices, increased quality of service, and increased choice of service;
- (d) the number of CSG services affected, or likely to be affected, by the exemption;
- (e) the estimated proportion of the market for CSG services in the geographic area for which the exemption is sought that would be affected;
- (f) the estimated proportion of the market for CSG services in Australia generally that would be affected;
- (g) the proposed exemption period; and
- (h) such other matters as ACMA considers relevant.

Applicants are required to demonstrate how the proposed exemption is likely to result in a net benefit to end-users in the geographic area for which the exemption is sought. Applicants must have regard to each of the above criteria when providing information in support of this criterion and provide as much detail as is thought necessary to justify the application.

While the following is not intended as an exhaustive list, applicants are required (as a minimum) to:

- demonstrate the extent to which an exemption would lower the cost of competing in or entering the market for CSG services (for example, estimated savings per CSG service);
- demonstrate the extent to which an exemption is likely to result in a net benefit for end-users (for example, price, quality, choice and innovation);
- provide a description of the type of service the provider is offering, or is proposing to offer, to customers in the geographic area for the period of time sought;
- provide a description of the type of technology the provider will use to deliver service, and whether it is a new or innovative service or uses existing technology;
- provide an assessment of the type of CSG services being supplied by other CSPs in the geographic area for which the exemption is sought; and
- detail how the provider will deal with any complaints made by customers in respect of any CSG services that will be caught by the proposed exemption.

4. Exemption Period

Paragraph 27A (5) (d) of the Standard provides that the period of time for which a temporary exemption may be granted cannot exceed five years. If granted, the exemption will take effect from the date ACMA approves the application (or as otherwise specified by ACMA) and will remain in force until the end of the period specified in the notice of grant. Where an exemption has been granted by ACMA, the exemption may be renewed for an additional period up to five years. An application for the renewal of a temporary exemption must satisfy the requirements of an original application for an exemption.

It should be noted that while an application may be made for a particular period, ACMA may grant an exemption for a lesser period if it considers this appropriate. Applicants are therefore required to indicate the period of time for which an exemption is sought and provide a statement of reasons in support of the period nominated accordingly.

Applicants are also required to provide an estimate of the number of CSG services and the number of CSG customers that will be supplied by the provider in the geographic area over the period of time sought in the application. For example, if a CSP is seeking an exemption for a period of three years, the application should include an estimate of how many CSG services and CSG customers the CSP anticipates supplying in the geographic area for each 12 month period within the total period sought. This information may inform the period for which ACMA will grant the proposed exemption.

Successful applicants are advised that they will be required to report annually, or as otherwise determined by ACMA, against the eligibility criteria.

5. Information provisioning arrangements

Subsection 27A (8) of the Standard provides that a CSP that has been granted a temporary exemption from compliance with the performance standards in a geographic area must inform its customers, as well as prospective customers, that it has been granted an exemption and the implications of that exemption.

Applicants are required to provide an outline of the type of promotional material it intends to make available to customers if granted an exemption and detail the manner in which it proposes to distribute this information.

Additional information

To assist ACMA in its assessment of an application for a temporary exemption from the performance standards, applicants are also required to provide a geographic overview of the CSP's operations within Australia (for example, a business plan or similar document that describes the location and types of services the CSP is supplying elsewhere within Australia).

Applicants should note that ACMA may request an applicant to provide further information about an application as considered necessary.

Grant of Exemptions

ACMA may grant or refuse to grant a CSP a temporary exemption from the performance standards. ACMA will give written notice of its decision to the applicant and it is important to note that ACMA decisions under the scheme are not subject to any statutory timeframes.

A CSP that has been granted a temporary exemption from the performance standards will be listed on ACMA's website together with a description of the geographic area and the period for which the exemption applies.

If ACMA refuses to grant the proposed exemption it will notify the applicant of the procedures for reconsideration of the decision by ACMA. An application for review may also be lodged with the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977*.

Further Information

Enquiries about a proposed exemption or the application form may be directed to:

Industry Monitoring Section
Telecommunications Analysis Branch
Australian Communications and Media Authority
PO Box 13112
Law Courts
MELBOURNE VIC 8010

Telephone: (03) 9963 6800
Facsimile: (03) 9963 6899
Email: service.guarantee@acma.gov.au

Completed applications should be forwarded to the Manager, Industry Monitoring Section, at the ACMA address listed above.

References

A copy of the Standard and the Guide can be downloaded from ACMA's website at www.acma.gov.au.

A copy of the Explanatory Statement to the Amending Direction can be downloaded from the Department of Communications, Information Technology and the Arts' website at www.dcita.gov.au.