

## 2010 ACCAN Conference

### Panel session:

### *How do we get to a market that works*

Remarks by Chris Cheah

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Can I first pass on the apologies of our Chairman Chris Chapman who is unable to join us today. He was looking forward to being here, but had a commitment overseas this week. That said, I am very happy to be here for several reasons, including the fact that I chair the ACMA's Consumer Consultative Forum (CCF) and take a strong personal interest in telecommunications consumer matters.

And my second opening remark is to thank ACCAN for hosting this conference, and for this session with its question, which is, needless to say, very interesting and important from the perspective of a regulator at the best of times. While consumer perspectives inform everything the ACMA does, the ACMA has announced that 2010 is going to be a year of particular focus on telecommunications issues. At this year's Communications Day Summit, our Chairman, Chris Chapman, announced a range of initiatives under the general rubric of 'Reconnecting the Customer'.

Let's now turn to that question about getting to a working market. Just what role regulation, and a regulator—or regulators—should play in the kind of market that the rapidly converging communications market is turning into, is a somewhat open and interesting one. As is the question of how we should play that role.

A really interesting, and telling, recent example is that of mobile premium services. This was important as a service, and consumer issue, in its own right, but MPS is even more interesting as a pointer to where the world is headed.

Here we had products, technologies, services and a market that evolved rapidly. It had lots of potential upside for everyone, including consumers getting genuinely interesting and useful services—Apple has perhaps proved that better than anyone so far with its iPhone App Store, which has over 200,000 apps. But it also had significant potential for rip-offs and unexpected bills. But maybe most importantly it introduced complex supply chains with suddenly content providers and aggregators becoming important, and with many of those offshore. Throw in the fact that parents were buying phones for tech but maybe not always market savvy kids, and it is maybe not surprising that there was a major issue brewing.

Those issues of fast change, complex supply chains, blurred industry boundaries, and furry contractual situations are a growing feature of the communications environment.

It is tempting to reach for: *well, just regulate it!* as the 'solution'. But if regulation is going to work in practice and make a difference, it needs to work with market dynamics. Bad regulation can make things worse, and the market can surprise us. Even here the MPS experience is interesting.

We did end up with what we think has been a much improved position. Industry has genuinely come to the party with some clear and explicit rules about important issues such as service provider identification, advertising and complaints handling. The ACMA has backed this up with hard regulation that essentially requires content provider registration, and rules around channels for complaint. While it is too early to declare victory in dealing with this issue, on any of the relevant ways of measuring this, it is clear that at the very substantial progress has been made from the somewhat wild west era.

Whatever one's views on the 'best' approach to dealing with this issue (and there are a number of views out there), and how long it took (which everyone agrees was too long) you would have to say that a mix of self-regulation and co-regulation has at the least been fairly successful thus far. Teasing this out and thinking about what happens next will be a task for the upcoming one-year in review of the MPS code.

But most interesting of all to my mind in considering Allan Asher's question was the fact that, just as the ink was drying on this package, along came the iPhone, and its new business model, the AppStore. What is interesting about the iPhone is that it does

many of the things that MPS services do, and many more besides, and some would say better than a more traditional mobile phone. It also set up a whole parallel set of content supplier relationships that had nothing to do at all with the mobile phone carriers. Essentially, an IT company, with a very slick device, has managed to eat quite a bit of the lunch of the mobile phone companies.

One of the reasons that Apple has been so successful, I think, is that they set up a very clear and transparent way to allow consumers to access apps. It is clear who is supplying what service (in particular it is clear who the app provider is). The interface is easy to use, transparent and informative. The terms are clear (and mainly one off). There is a good billing mechanism. There are clear complaint handling channels which generally seem to be taken seriously. And Apple, with the downside of being accused of censoriousness, has been fairly ruthless at weeding out apps for which there are complaints. In other words, Apple has done commercially many of the things that regulators would like providers to do. And guess what ... consumers actually seem to like this!

Needless to say, I am not here to promote Apple. My real point is that this market has continued to evolve very quickly. It is also fascinating that the market, quite unexpectedly, came up with a completely new alternative to a troublesome service and within an almost unbelievably short space of time has created something of a game changer for everyone. Apple has kind of proven that if the conditions are right, including those of consumer trust, then there is indeed huge potential in mobile data services. I imagine that some in the carrier community maybe kicking themselves for allowing short term revenue targeting to have overshadowed strategic thinking for that industry as to how to position it for the future.

And for a regulator, this poses a number of interesting issues.

If we intervene too early, or in the wrong way, then we will either just miss the boat, or worse, kill of the opportunities for the market to sort a problem out. In fact, economic purists would probably say that letting the market do its thing would solve this issue: if the mobile industry did not respond to consumers, including the whole trust thing, then they will just be hastening their own demise as the new 'app' way of doing things actually delivers. Markets should be about putting sustained pressure on suppliers to improve quality of service, to increase the range of products they offer, to reduce prices, to encourage innovation and so on. They are also among the best ways of allowing suppliers and consumers to have an ongoing conversation with feedback loops about what consumers actually want. Oddly enough, some of that dynamic is happening.

Some of the issues are age old ones, but with a new spin. Things like how we balance the benefits of choice for those who know how to take advantage of that and who will help services to innovate, with simplicity, both for general consumers, but particularly for those who face disadvantages.

And the whole MPS and app thing also points to another issue about blurring regulatory boundaries. Many of the new services raise issues that the ACCC and even ASIC are potentially interested in. And the hybrid content/carriage/onshore/offshore nature of these services raises issues around how complaints are handled institutionally. The TIO and TISCC have an interest in different aspects, as well as the ACMA—noting that under other legislation we handle escalated complaints about broadcasting and direct complaints about internet content and spam.

I have gone on about MPS because it is just the beginning. As we move into a broadband world, these kinds of issues around multiple providers, complex supply chains, evolving products, and everything become a feature of a software application is likely to become more, not less the norm. It is important that we all reflect on this.

At this point I am sure that Chris Chapman would like me to tell you all of the things we are doing in this space to help consumers, and there is a lot, actually. I am not going to go through the full range of initiatives that Chris announced at the Comms Day Summit, but I would encourage you to track it down a copy on the ACMA website if you have not seen it.

Today, I will just mention three things that bear on this question about thinking about the nature of regulation in the emerging environment and how it might support the right kinds of market based solution.

The first thing I want to mention is that this morning the ACMA released a paper that captures some internal thinking we have been doing about self-regulation and co-regulation and what are some of the success factors that are likely to support or undermine the different styles of response. We have partly been doing that work for selfish reasons because we are the ones who often have to choose the response—albeit within a legislative framework that strongly preferences self regulation. As I noted earlier, MPS ended up as a hybrid. We thought at that time that there were certain aspects of that scheme that really did need at the very least regulatory ‘buttressing’ (to use the term coined by Andree Wright, one of our branch heads).

However, our paper has been positioned a bit more broadly so that it can also hopefully function as a contribution to the broader debate and discussion around self- and co-regulation.

The second initiative I want to mention today is the ACMA’s inquiry into Complaints Handling and Customer Service that Chris Chapman announced at the Communications Day Summit. The ACMA has been engaged in discussions with a number of interested stakeholders, including ACCAN and a number of industry CEOs to optimise the usefulness of this exercise for everyone, and for the future.

As you know, the ACMA’s decision to conduct this inquiry was triggered by the big rise in TIO complaints about the way the industry was handling complaints, for which there is a chapter in the TCP Code. At the same time we noted that there was also a 72 per cent rise in complaints for another family of issues for which there is not a code—what the TIO called ‘customer service issues’. Things like being able to contact the supplier, living up to agreements, courtesy, and so on.

Given that the TIO’s Connect.Resolve campaign had not made significant inroads into these categories, and given our experience with MPS, the ACMA took a strategic decision that it was time to have a long hard look at this whole area. The substantive issues are important, and we want to find out whether or not there is a systemic problem here, and if so what it is, and what is causing it. But the area is also important more broadly for the reasons I have been describing. Just how the sector ends up by handling complaints, and manages its interactions with customers is going to be important for us all to think about giving the emerging environment. We are hoping that this inquiry will not only get to the bottom of the current situation, but that it will also give us a body of empirical data and a framework for thinking about the which are the best levers to use to address different kinds of issues.

We are also going to be actively involved in Communications Alliance’s review of the TCP Code and, as I mentioned, the review of the MPS Code. These will provide further thoughts for us all on the optimal approach to regulation to best protect consumers while promoting effective markets.

And on that score, we have articulated five core principles that we have indicated to CA will need to be adequately addressed in their review—these are the bedrock so to speak of the codes. Those five principles are:

1. The clear and accurate advertising of a product or service.
2. Products and services will be provided under clear and fair terms set out succinctly.
3. Costs associated with a product or service will be clear and unambiguous.
4. Assistance for the consumer will be readily accessible and provided in a timely manner should a problem be encountered.
5. Avenues for redress will be clearly identified for the consumer in the event that problems are unable to be rectified satisfactorily.

Of course the ACMA will be participating in discussions with the Department and the ACCC about a range of matters, among which will importantly be the NBN and associated legislative change. The minister has already alluded to some of the changes the Government is intending or considering. This is likely to remain a fertile field.

Can I summarise by again giving my theory that at least one of the roles of a regulator is to try and create the conditions for a healthy ecosystem. Some of the things that make up such an ecosystem include suppliers, institutions, ex ante rules, and incentives including clarity around unacceptable behaviours and expectations around consequences.

But perhaps the most important of all is consumers, because it is empowered consumers who, as the iPhone experience is showing, can provide the best way of getting suppliers to respond. We also have to think about the best ways of empowering consumers in this new environment, and this is another whole area that the ACMA is involved with.

Thank you.