

27 February 2023

Mr John Stanton
Chief Executive Officer
Communications Alliance Ltd
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ACMA file reference: ACMA2022/176

Dear John

TCP Code Review Process

Thank you for your letter of 16 February 2023, providing further details about the process envisaged by Communications Alliance (CA) for conducting the next review of the Telecommunications Consumer Protections (TCP) Code.

Considering the key role of the TCP Code in providing appropriate safeguards for all community members to access and use essential telecommunications services, the review process will need to be wide-ranging and accessible to key stakeholders.

The ACMA recognises that this is an industry-led activity. We do, however, have overarching expectations about how the Code review process should occur. We would expect that it will incorporate, and the outcome demonstrate, genuine, ongoing and transparent consultation with all relevant stakeholders.

We also expect there to be a measure of independence in the process to support a fair and balanced outcome for both consumers and industry. To that end, we welcome CA taking steps to engage an independent adviser (IA). I note that consumer representative bodies who have contributed to previous TCP Code reviews have expressed persistent frustrations to the ACMA that the outcomes have favoured industry, to the detriment of consumers. We consider ongoing consultation with consumer groups to be imperative through this iterative process, noting that the extent to which consumer groups support any proposed revisions will be a relevant input to the ACMA's ultimate decision to register a revised Code.

The multi-stage review process that you have set out appears to accommodate our broad expectations, particularly with the presence of an IA. I have outlined our thoughts below.

Consultation and drafting

In terms of helping to identify relevant stakeholders, the ACMA can certainly provide CA with this assistance. We would also like to know the intended

make-up of the Review Committee to draft the Code, including how non-CA industry members will be included in the review process. We understand the ACMA will be participating as an observer on this committee.

We note Stage 1 of your plan involves some pre-code-drafting information-gathering which consists of a public discussion paper and one-on-one stakeholder meetings. As mentioned above, we consider the review of the Code to be an iterative process, a critical phase of which is the drafting process. We would appreciate knowing more clearly how this stage is expected to work in practice.

Transparency and the independent advisor

Transparency and ensuring that relevant stakeholders have been heard during the code review process will be an important consideration for the ACMA at the time it considers whether to register a new TCP Code. The IA will be important to this part of the process.

While some of the IA's role and functions appear clear, we would appreciate more detail. As we previously discussed, we would appreciate seeing a copy of the proposed terms of reference for the IA. It would also be helpful to know:

- > the credentials CA have in mind for the IA;
- > where a nominee for the role has been identified, who it is CA propose to appoint as IA;
- > whether the IA would have the ability, if they so choose, to observe meetings of the Review Committee and stakeholder engagement meetings to supplement the monthly report they receive from the Review Committee – we think that is an important inclusion that should be reflected in the Terms of Reference;
- > what it is intended the IA's '*accompanying note and any observations*' to the ACMA would include – we think it would be useful for the Terms of Reference to require the IA to prepare a report for the ACMA to accompany the application for registration and to identify the key issues that should be included in the report, including the IA's views on the consultation process, and the manner in which the final drafting addresses key issues identified during the process. .

The ability for the ACMA to engage with the IA both through observing the monthly meetings between the IA and the Review Committee, and directly, is welcomed.

CA has also outlined several steps to promote transparency, which include documenting details of stakeholder meetings at each stage of the process and showing how key issues are being managed. We will be interested to see the outcomes of these meetings.

There is reference to a possible role for a different independent party to provide neutral and considered advice on drafting and expertise on other Code matters. The Authority is interested to know further details about this potential party and their purpose in the Code review process. The clarity of code drafting has been an area of concern for the ACMA in the past and the intended engagement between this independent party with the ACMA on these issues would be appreciated.

While I am aware that there have previously been discussions on the matter of an outcomes-based regulatory approach in the TCP Code, we would appreciate knowing whether this is likely to be one of the issues raised in CA's public discussion paper. If this approach is to be advocated, the ACMA would expect that industry would have clear ideas about compliance metrics and reporting to assess outcomes-based regulation before we could consider registering such a Code.

As you know, we invited industry to consider the opportunity to demonstrate how this approach could work in response to our *Consumer vulnerability: Expectations for the telecommunications industry* published in May 2022. To date we have not seen any indications this has been done in relation to that set of expectations, or other aspects of telco consumer protection. Therefore, the Authority would need to be persuaded that the telco industry and the ACMA shares a common understanding of what outcomes-based regulation means and that all relevant industry participants have the capacity to operate within that framework before approving a Code with any such provisions.

I also understand that there are calls among Industry to return the Complaints Handling Standard rules to the TCP Code. We are interested to know CA's likely position on this issue.

While it is correct to say that complaint numbers have been steadily falling, we are of the view that there are still too many complaints in the telecommunications industry. In particular, as reported by the TIO in its December quarter 2022 complaint report, complaints have increased by close to 10% during the quarter. Of these complaints, it appears mobile services are still problematic with a 19% increase in complaints for the quarter. Our data also shows that complaints relating to customer service issues, particularly complaints about no or delayed action by a telco continue to appear as the number one consumer issue. Given these matters, it may be premature for the complaints chapter to return to the Code.

Finally, the Authority is planning to take a wide approach to this Code review. In preparing to provide advice to CA about our expectations for the TCP Code review, we are collecting and analysing data to help us understand telco customer's experience of their telco providers and what this means for establishing an effective consumer protection framework, of which the TCP Code forms an important component, moving forward.

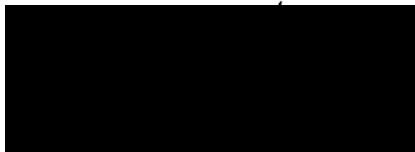
This approach aligns with the Minister for Communications' Statement of Expectations for the ACMA (issued 7 December 2022), which includes "being more directive in setting expectations for the development of industry codes, utilising existing powers to make standards and service provider determinations as appropriate".

Our work remains on track for the Authority to settle its views on what we would like to see canvassed in the upcoming review during May 2023. In the meantime, indicative results indicate the following issues are of concern to consumers:

- The availability and utility of critical information summaries and the information provided at point of sale
- Responsible selling
- Credit assessments and affordability checks
- Customer service
- Needs of consumers in vulnerable circumstances
- Payment options and billing issues
- Financial Hardship.

We would be pleased to discuss and should you wish to do so, please contact me to arrange a meeting.

Yours sincerely



Chris Jose