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A Collaborative Approach to TCP Code Enforcement: Will it be Enough?

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Overview

The Australian Communications and Media Authority (ACMA) and Communications Compliance (CommCom) entered into a five year Memorandum of Understanding (MOU) last week. CommCom is the telecommunications industry compliance body established late last year to monitor telecommunications service providers' compliance with the Telecommunications Consumer Protections Code (TCP Code), with the power to refer non-compliance to the ACMA for investigation and enforcement. The MOU is not legally binding, but establishes a regime under which CommCom and the ACMA will cooperate, and sets out timeframes for the parties to comply with their respective obligations.

The TCP Code

The revised TCP Code was prepared and submitted for registration by the Australian telecommunications industry body, Communications Alliance, early in 2012 and registered by the ACMA with effect from 1 September 2012, replacing the previous version of the Code which was registered in 2007.

The new TCP Code is aimed at rectifying a range of consumer issues which have plagued the telecommunications industry over several years.

New measures include a requirement, commencing on 1 March 2013, for suppliers to issue a summary of offer prior to sale from to help clarify confusion over product offerings, and a requirement, commencing on 1 September 2013, for suppliers to provide their customers with compulsory usage updates to help minimise instances of "bill shock".

As part of the reforms, the new TCP Code also established CommCom as an independent body to monitor compliance with the new Code beginning on 1 March 2013. Under the Code, suppliers are required to supply CommCom with annual Compliance Attestations, comply with Monitoring Requests issued by CommCom and, if the Monitoring Request indicates that the supplier cannot comply with the Code, provide an Action Plan detailing what actions the supplier will take to address its compliance failure. Suppliers are also required to comply with CommCom's directions under the Code and do all things reasonably necessary to assist CommCom to perform its functions.

Consumer group, the Australian Communications Consumer Action Network (ACCAN) expressed fears over the independence of CommCom because it sits under the Communications Alliance, a body whose membership is comprised of and funded by telecommunications service providers. However, the ACMA believes the establishment of CommCom and the staffing appointments it has made to be "tangible evidence of the commitment of the telecommunications industry to change its attitude to compliance".

The Code requires CommCom to establish memoranda of understanding with key regulatory stakeholders: the Telecommunications Industry Ombudsman, the ACMA and the Australian Competition and Consumer Commission.

The MOU

The Memorandum of Understanding (MOU) between the ACMA and CommCom establishes timetables for CommCom's submission of reports to the ACMA and ACMA's investigation activities. It requires CommCom to submit an annual report by 30 July each year and to report on industry wide systemic compliance issues it identifies by 1 September each year.

The MOU also sets timeframes around CommCom's referral of instances of non-compliance to the ACMA, including reporting instances:

- where a supplier fails to respond within 20 days of a written warning from CommCom stating that it is not satisfied with a supplier's compliance plans
- where a supplier fails to submit their required statements of compliance 20 days after a failure to respond to a written warning
- where a supplier fails to comply with a Monitoring Request no later than 30 days after the failure
- where CommCom has provided a supplier with a written warning stating that it has found unsatisfactory progress with an Action Plan within 30 days of providing the warning.

The ACMA in turn, commits to endeavour to finalise its investigation into referred instances of non-compliance within 60 days of the date of referral, or to explain why it will not investigate a matter within 20 days of the referral. The ACMA's process will also be public, with the ACMA committing to publish the outcomes of all investigation on its website within 14 days of completing its investigation.

The MOU also sets out a timetable under which CommCom and the ACMA will meet to discuss compliance issues, as well as their compliance and industry education activities.

Time will tell whether the collaborative and public nature of the compliance process will lead to increased Code compliance and help to fix the issues that have caused significant frustration for consumers over a number of years.

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