

MEMORANDUM OF UNDERSTANDING

Between

**Australian Competition and Consumer Commission
("ACCC")**

AND

**Telecommunications Industry Ombudsman Limited
("TIO")**

April 2020

1. BACKGROUND

- 1.1. This Memorandum of Understanding (**MOU**) sets out a framework for cooperation between the ACCC and the TIO (together, the **Parties**) to facilitate liaison, collaboration, assistance and the exchange of information between the Parties, including with respect to systemic issues. A systemic issue has the meaning in the TIO's Terms of Reference (**Systemic Issue**).
- 1.2. Nothing in this MOU affects the obligations of either Party to comply with any order or direction of a court or compliance with their legal obligations.
- 1.3. In addition to matters covered by this MOU, the Parties acknowledge that from time to time they may enter into specific arrangements for cooperation. Such arrangements may be bilateral or multilateral and include the sharing of information, intelligence and any other matters as agreed by the Parties.
- 1.4. The Parties acknowledge that independent of this MOU, a general level of cooperation and communication exists between the Parties (including officer-to-officer contact for day-to-day matters and attendance at common industry and community forums). The Parties agree these are consistent with the intention behind this MOU and should be encouraged.
- 1.5. The Parties agree that neither Party is required to discharge its responsibilities under this MOU in the event of any major or unforeseen demands on their resources.
- 1.6. This MOU does not create legally binding obligations between the Parties.

2. PURPOSE

- 2.1. The Parties recognise the need for collaboration and cooperation to discharge their respective telecommunications functions. They agree to work with each other in the exchange of information (including with respect to Systemic Issues), the referral of matters, and to cooperate on compliance, education and enforcement activities within the framework of this MOU as required.
- 2.2. The Parties will, in the spirit of cooperation, afford such assistance to each other as is practicable taking into consideration each Party's level of resources and priorities.
- 2.3. There are no funding arrangements or costs involved in this MOU.

3. PARTIES TO THE UNDERSTANDING

Australian Competition and Consumer Commission (ACCC)

- 3.1. The ACCC is Australia's peak regulator for competition, fair trading and consumer protection. The ACCC also plays a vital role in regulating communications infrastructure services.

3.2. The ACCC's regulatory roles under the *Competition and Consumer Act 2010* (Cth) and other relevant legislation include:

- a) facilitating and encouraging compliance with competition, fair trading and consumer protection laws;
- b) taking appropriate enforcement action in response to contraventions of those laws;
- c) adjudicating on competition and access issues, including merger assessments; and
- d) educating the community in relation to these matters.

Telecommunications Industry Ombudsman Limited (TIO)

3.3. The TIO is the external dispute resolution scheme for the Australian telecommunications industry. The TIO provides a free dispute resolution service for residential consumers, small businesses and not-for-profit organisations that are unable to resolve complaints with their provider. The TIO delivers an external dispute resolution service that is accessible, independent, fair, accountable, efficient and effective.

3.4. Providers across the supply chain (including carriers, wholesalers, aggregators, and retail carriage service providers) must be members of the TIO scheme and comply with the scheme unless declared exempt by the ACMA.

3.5. The TIO also has jurisdiction to consider land access objections from landowners and occupiers in accordance with the *Telecommunications Act 1997* (Cth) and relevant subordinate legislation. The TIO can give binding directions to carriers in response to land access objections from landowners or occupiers in relation to carriers accessing their land to inspect, install or maintain certain network infrastructure.

3.6. As part of supporting improvements in industry practice and policy, the TIO:

- a) reports on the consumer experience of telecommunications services through complaint data and trends;
- b) identifies and investigates Systemic Issues, including those that may need to be referred to the ACCC or other regulators for enforcement action; and
- c) contributes to policy debates.

4. LIAISON

4.1. The Parties will attend meetings as follows:

- a) regular meetings between senior leadership at the ACCC and the TIO; and

- b) other strategic and operational meetings between the Parties as required.

The purpose of these meetings is to provide information on issues covered in this MOU as well as any other issues which may be of interest to each Party, for example policy and regulatory developments.

- 4.2. Each Party will ensure that it has a designated liaison officer, known to the other Party, for the purpose of communication and exchange of information between the Parties under this MOU.
- 4.3. At the date of this MOU, the liaison officers for the ACCC and the TIO are listed in a separate document (the ACCC and TIO MOU Liaison Officers Schedule), to be updated regularly by the Parties.
- 4.4. A Party may change its liaison officer(s) by providing written notice to the listed contact officer of the other Party.
- 4.5. The Parties may also identify relevant project officers to facilitate coordination in relation to particular matters.

5. NOTIFICATION AND CONSULATION

- 5.1. Where appropriate, the Parties will consult with each other in relation to arrangements for joint publications and joint contact with stakeholder groups.
- 5.2. Each Party will use its best endeavours to notify the other Party prior to publishing a media release or report on matters of concern or relevance for the other Party or that may lead to a significant increase in consumer, stakeholder or media contact with the other Party.

6. INFORMATION & INTELLIGENCE SHARING

- 6.1. Each Party is subject to legal obligations relating to privacy and confidentiality, which govern the collection, use and disclosure of confidential or personal information. Each Party may specify confidentiality conditions for information shared with the other.
- 6.2. The TIO will only provide data to the ACCC in accordance with the TIO's privacy policy. The ACCC will only provide data to the TIO in accordance with the ACCC/AER Information Policy. The ACCC/AER Information Policy may be changed from time to time.
- 6.3. The Parties agree that, unless otherwise required by law, information provided pursuant to the arrangements set out in this MOU will be used only in fulfilment of each Party's responsibilities, and only for any limited purpose that has been specified in writing.
- 6.4. Recognising the proactive sharing of information and intelligence between the Parties assists each Party to fulfil its respective functions, the Parties agree to share and exchange information as permitted by law and in accordance with this MOU, including, but not limited to:

- a) regular reporting of TIO complaint data, including complaint trends and industry non-compliance with codes or legislation by TIO members, such as fraud and scam-related activity;
 - b) issues the TIO has identified as being issues that are not satisfactorily captured by the ACCC's enforcement jurisdiction;
 - c) systemic and emerging issues;
 - d) issues or matters arising from the Australian Consumer Law and regulation of the telecommunications sector, including misrepresentation and unfair, unconscionable or unilateral conduct which causes detriment to consumers, unfair contract terms provisions and unsolicited consumer agreement provisions;
 - e) issues or matters arising in respect of a merger assessment or competition matter arising in relation to the telecommunications industry under Parts IV, XIB and XIC of the *Competition and Consumer Act 2010* (Cth);
 - f) mutual assistance to monitor and enforce compliance with relevant legislation; and
 - g) trend analysis and insights into the consumer experience from complaints.
- 6.5. In addition to proactive information sharing, either Party will endeavour to respond to reasonable requests for information from the other Party. Either Party may direct a written request for information and advice to the other Party's liaison officers, for referral to the appropriate areas of each agency for advice and response.
- Requests for information and advice will be considered in the context of:
- a) each Party's legislative obligations, the TIO Constitution and Terms of Reference and this MOU; and
 - b) whether it is feasible, having regard to factors such as cost or systems limitation, to provide the information or advice requested.
- 6.6. Where information is shared by one Party, the receiving Party will advise how this information is to be used and agrees not to publish the information until it has been made publicly available by the Party providing the information.
- 6.7. Where this information is confidential:
- a) the Party providing the information will identify the relevant part of the information that is confidential, and any conditions attached to its disclosure; and
 - b) the receiving Party will comply with any confidentiality conditions and will only use and disclose that information to the extent permitted by law.
- 6.8. Each Party acknowledges that disclosure of information provided pursuant to this MOU may be required, authorised or permitted by law.

- 6.9. Where the receiving Party is required by law to disclose information provided pursuant to this MOU, the receiving Party will notify the Party that provided the information prior to disclosure unless legal requirements or other circumstances make such notification impermissible.
- 6.10. The ACCC may use its statutory powers to compel the production of documents from the TIO on specific investigations or matters as necessary.

7. AVOIDING DUPLICATION

- 7.1. In the interests of avoiding duplication of effort and ensuring consistency of advice and complaint resolution outcomes the TIO and the ACCC agree:
- a) the ACCC will direct consumers to the TIO in relation to matters which, in the view of the ACCC, fall within the TIO's jurisdiction;
 - b) where the ACCC has commenced an investigation into a matter referred by the TIO, the TIO will use its best endeavours to assist the ACCC to collate material to assist the ACCC in its investigation, subject to legal constraints;
 - c) where the ACCC has received a referral from the TIO, the ACCC will, subject to any conflicting legal obligation or confidentiality considerations, provide the TIO with updates relating to the referral when appropriate; and
 - d) recognising that both Parties have statutory and regulatory obligations that mean it may not always be appropriate to discuss the details of its activities, both Parties may provide an overview of matters that may be of interest to the other in performing its functions.

8. COLLABORATION ON TIO SYSTEMIC ISSUES INVESTIGATIONS

- 8.1. The Parties will work together to identify and address Systemic Issues in the telecommunications industry.
- 8.2. Notifications or referrals by the TIO to the ACCC about Systemic Issues can be made at any time but should be timely in relation to the issues occurring.
- 8.3. Where the TIO becomes aware of:
- a) a potential Systemic Issue in relation to one or more of its members; or
 - b) a potential issue or activity in relation to one or more of its members which the TIO believes to be causing consumer detriment and to be within the ACCC's responsibilities,

it may notify or refer to the ACCC its concerns in relation to such an issue or activity. The ACCC will decide in its absolute discretion whether to investigate

any referred issue or activity, and will notify the TIO of the decision within timeframes set out in Schedule 1.

- 8.4. When deciding whether to refer a Systemic Issue to the ACCC, the TIO will take into account the following considerations:
- a) whether the Systemic Issue is unlikely to be resolved with the provider; and
 - b) whether the conduct is more appropriate for the ACCC to investigate using its regulatory and enforcement powers.
- 8.5. Where the TIO refers a Systemic Issue to the ACCC, the TIO will normally notify any TIO member that has been named in the Systemic Issue.
- 8.6. Where the ACCC receives a referral from the TIO about a Systemic Issue, the ACCC will respond to the TIO within the timeframes set out in Schedule 1 as to how it will deal with that referral.
- 8.7. Where the ACCC decides to investigate a Systemic Issue referred by the TIO, the TIO agrees, subject to any privacy or confidentiality considerations relating to individual complaints, to provide any relevant information to the ACCC about the matter referred. The TIO will use its best endeavours to assist the ACCC in collating evidence required for the ACCC's investigation.
- 8.8. The Parties agree to collaborate to ensure that each agency is separately and jointly working to identify and address Systemic Issues. This involves:
- a) sharing information with the other Party on environmental scanning and complaint data review activities to identify potential Systemic Issues;
 - b) referral by the TIO of potential Systemic Issues to the ACCC to complete an investigation where appropriate;
 - c) enforcement action by the ACCC if a TIO member does not cooperate with a TIO investigation into a potential Systemic Issue and the ACCC considers the conduct warrants enforcement action; and
 - d) sharing information on upcoming publications on Systemic Issues.

9. ILLEGAL PHOENIXING

- 9.1. The Parties will work together and with other government agencies to identify and address illegal phoenixing activity in the telecommunications industry.
- 9.2. Illegal phoenixing activity is when a new company is created to continue the business of a company that has been deliberately liquidated to avoid paying its debts, including taxes, creditors and employee entitlements.
- 9.3. Notifications by either Party to the other Party about illegal phoenixing can be made at any time. The TIO may also notify the ACCC of illegal phoenixing activity (or suspected illegal phoenixing activity) as part of a Systemic Issue notification under clause 8.

10. RESOLUTION OF DIFFERENCES

10.1. The Parties will use reasonable endeavours to resolve any differences arising out of the interpretation of this MOU by consultation.

11. VARIATION

11.1. This MOU may be varied at any time with the mutual written consent of each Party.

12. COMMENCEMENT AND REVIEW

12.1. This MOU will commence from the date it is signed by both Parties and remain in place until it is terminated by either Party in accordance with clause 13.

12.2. The Parties will review the operation and effectiveness of this MOU every two years, or as agreed by the Parties.

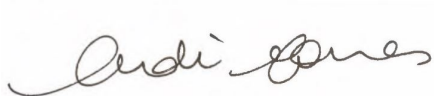
13. TERMINATION

13.1. A Party may terminate this MOU by giving 25 working days written notice to the other Party. The Parties may also terminate this MOU upon their mutual written consent.

13.2. In the event that a Party gives notice of termination, this MOU shall continue to have effect with respect to all referrals and/or information sharing which occurred during its term until the expiration of the notice period in clause 13.1.

SIGNATURES

Signed for and on behalf of
Telecommunications Industry
Ombudsman Limited:



Ombudsman

Date of signature: 22 April 2020

Signed for and on behalf of the
Australian Competition and
Consumer Commission:



Chair

Date of signature: 9 April 2020

Schedule 1 - Timeframes

- 1.1. Where the ACCC receives a referral from the TIO about a Systemic Issue, the ACCC will respond to the TIO within one month outlining expected timeframes for the investigation phase or if determined at that time a decision not to investigate the Systemic Issue.
- 1.2. The ACCC will provide regular updates at intervals of no more than two months to a person nominated within TIO as the relevant contact person of the progress of the investigation and when decision milestones within the ACCC are expected to occur.
- 1.3. The ACCC will advise the TIO as soon as practicable of any decisions made by the ACCC on any intended enforcement actions including any decision to cease an investigation.