Telecommunications complaint handling procedures: Still failing consumers in the most fundamental ways

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A familiar and constant theme in consumer comment on the telecommunications industry is the lack of adequate, accessible, reliable complaint handling mechanisms. I wish I could present a different picture today, or outline a case for optimism that things are improving. Sadly however that is not possible. If anything, in agencies that work directly with low income and disadvantaged consumers, there is evidence that the situation is getting worse[1].

I would like to use the brief time available today to summarise several key reasons why the current problems exist. They should not be news to anyone, least of all to an industry that has turned the pretence of a self-regulatory framework into a highly complicated but ultimately impotent exercise. My employer, Care Inc Financial Counselling Service, like many other consumer groups around Australia has chosen not to take part in the Code development process overseen by the Australian Communications Industry Forum. Whilst we have great respect for the consumer advocates who patiently battle on with that flawed framework, the consumers who rely on it the most to deliver a decent, fair and accessible market are sick and tired of failed promises of improvement.

A national consumer protection policy vacuum:

Policy attention in telecommunications for the last decade has been largely dominated by the sale of Telstra. Even now that the question of whether to sell or not to sell has been resolved, the timing and manner of the sale process still dominate. Conversations about every conceivable issue in telecommunications service delivery from access in the bush to the euphemistically titled "unexpectedly high bills" debate, has at one point or another raised questions about the impact on the Telstra sale process and the company's share price.

[1] For example, when Care reports to its main funding body the ACT Department of Disability, Housing and Community Services every 6 months, it produces a list of the top 10 reasons our clients report for seeking assistance. Telecommunications access or account problems regularly figure in the list, but tracking recent moves in proportions is interesting:

- July to December 2005, telephone problems were reported in 13% of new contacts - made up of land line problems at 7% and mobile telephones at 6%,
- January to June 2005, telephone problems were reported in 12% of matters (7% land line, 5% mobiles),
- July to December 2004, telephone problems were reported in 11% of new matters (7% land line, 4% mobile).

The increases over the last 18 months referred to above are not dramatic. Across new intake of between 2000 and 2500 new contacts per year they are not insignificant either.

Little wonder in such a landscape that basic consumer protection issues have run a distant second. Actually that is probably rating them a little higher than has really been the case.

The number, range and depth of problems that should be receiving proper policy attention is enormous. There is one however that should be sounding alarm bells, when it would appear that industry is content for it to be presented as a positive. It is the now clear shift in telecommunications access and usage from land line to mobile services[2]. At the bottom end of the market, there appear to be similarities with the wholesale "shedding" of non-profitable customers that went on in the banking sector about a decade ago. Across the market more broadly it looks and feels like industry dictating where it wants to compete, rather than a true reflection of what consumers want or need.

A regulator unable or unwilling to regulate:

The main regulator in the telecommunications space is the Australian Communications and Media Authority. Before making some observations about ACMA's role and capacity, it is worth noting it does not have the regulatory space to itself.

The ACCC also has telecommunications responsibilities in administering:

- telecommunications specific competitive safeguards under Part XIB of the Trade Practices Act,
- the network access regime under Part XIC of the Trade Practices Act and
- various other legislative provisions including price control of Telstra's retail services, international conduct rules, number portability and so on.

It is however what the ACCC does not, cannot or will not do that draws greatest attention to the areas in which ACMA is most lacking. Telecommunications complaints are the single biggest reason for consumers making complaint to the ACCC's national info-centre and have been for many years. The complaints are about basic day-to-day issues that might otherwise arise under Part V of the Trade Practices Act. They include for example complaints about poor or inaccurate descriptions of products and services, failures to provide or maintain service and, a consistent and recurring theme, problems with bills.

That the ACCC receives the bulk of every day consumer complaints about telecommunications is perhaps more a comment on its relative visibility and public profile. The nature of the complaints however represents the heartland of what the telecommunications self-regulatory codes are supposed to cover. Most of the codes dealing with the basics that underpin the bulk of complaints to the ACCC (not to mention consumer agencies like Care all around Australia) are registered and overseen by ACMA. That rather begs the question why there is no apparent activity to get to the bottom of such consistently and unacceptably high levels of complaint – made to and through another regulator.

[2] This switch from land line to mobile access is referred to in a report on a survey of financial counsellors that AFCCRA undertook, with resources provided by the Telstra Consumer Consultative Council research budget. The report was completed in March 2006 and is as yet unpublished. It will however become available via the AFCCRA web-site (www.afccra.org) in the coming months.

ACMA has lifted its game in relation to recognising consumer issues as core to its roles. There has been considerable energy put into activities aimed at improving consumer consultation. In spite of this activity ACMA still does not behave sufficiently like a regulator. It does not monitor compliance of the industry with sufficient vigour and commitment and, the big one - there is no credible threat of sanction in the event of non-compliance[3]. ACMA has consulted about how it might undertake its supervision and enforcement roles. Recently ACMA released guidelines for the use of enforceable undertakings – a power it has recently received and that other regulators have been using to good effect for years[4].

The problem is that talking about taking action has to turn into actually taking meaningful action at some point. The need for ACMA to act has been urgent and immediate for a long time. A good starting point for such action might be reviewing the ACCC complaint data from say the last 5 years and launching a compliance audit blitz. That information alone points to a self-regulatory shambles.

Another example of information that requires immediate investigation can be found in ACMA's own reporting material. In a snapshot of key telecommunications indicators, ACMA reported a staggering increase of 63% in the number of credit listings with Baycorp Advantage by Carriage Service Providers and Internet Service Providers from 30 June 2004 to 30 June 2005 (from 365,000 to 595,000)[5]. Little wonder financial counselling services are reporting greater numbers of clients presenting with telecommunications related debt problems. On the ACMA figures alone the problems are likely to increase further with more dramatic impacts at community service delivery level. It would be nice to think that the regulator was capable of recognising this as an unfolding crisis in the safety and affordability of the market it regulates.

Self regulation that lacks a compliance culture:

A lot of time and effort has been committed to reviewing the effectiveness of the Australian Communications Industry Forum and its role in the development and delivery of self regulatory Codes for the telecommunications industry. There is no better gauge than to look to the experiences of consumer agencies in their day-to-day work assisting the most vulnerable and disadvantaged consumers.

In my 11 years as a consumer advocate I have never once seen a telecommunications complaint resolved because of reference to an ACIF developed Code, registered or otherwise. Indeed, I can think of only a handful of matters in which I have been involved, or that I have become aware of at Care, where the potential application of a telecommunications Code has been conceded, even acknowledged, by the relevant

[3] A good example of the failure to engage with the compliance and enforcement responsibilities can be found on ACMA's web-site (www.acma.gov.au) in the description of its consumer brief:
Consumer codes are registered by ACMA, making them enforceable, while ACMA monitors compliance and strategies used to raise consumer awareness.
There is no reference in this lead statement to what if anything ACMA will do in the event of non-compliance.

[4] The Guidelines can be found on ACMA's web-site, as can the media release related to their issue (the release reference is MR 31/2006).

[5] This information and references to the full report can be found in the Communications Minister's Media Release dated 7 December 2005 (ref: MR 60/2005). An archive of media releases can be found on the ACMA web-site.

telco. As current Chair of the national peak body for financial counsellors and a previous Chair of the Consumers' Federation of Australia, the feedback from other consumer groups around Australia is entirely consistent.

With this as background, it is not only difficult to have faith in the ACIF process it is hard to find any practical reason why the process should exist. The blame for such abject failure however sits less directly with the development vehicle than it does with the telecommunications industry itself. It is an industry without a clear or reliable compliance culture. I do not mean that in the sense that industry is unaware of the legal and technical compliance framework in which it operates. I mean that there is virtually no evidence amongst telecommunications companies, from the largest to the smallest, that they are seeking to raise the standards of conduct or expectations of industry best practice in any meaningful way.

Let me provide a recent example of the mindset that seeks to shift responsibility elsewhere. ACIF has observed that a system based approach to dealing with consumer complaint handling failures is necessary. I have no difficulty with the observation to that point. ACIF then suggests however that the Telecommunications Industry Ombudsman scheme (TIO) needs to change the way that it interacts with industry to facilitate such a systemic approach[6]. Wrong, or at least not the full picture. Industry must first work harder to deliver reasonable, reliable internal dispute resolution that meets some basic standards of quality and credibility. At least then we could all get something approaching an accurate read on what the real issues are – rather than the overwhelming volume of complaints created by an industry willing to defer to external escalation matters that should and could be dealt with internally. That is a good point to shift to the final issue I will raise today.

An overworked and under respected Ombudsman Scheme:

When I first arrived at Care in 1995, the agency regularly saw clients who had problems with telephone bills – but nowhere near the volumes that it sees today. Similarly we might have sent the odd complaint to the TIO, but that was rare - perhaps one or two referrals a year. As an agency we now refer to the TIO all of the time. In fact, it is now more usual for Care and the co-located Consumer Law Centre to have half a dozen TIO referrals on foot at any given time.

As a small regional agency Care will have negligible impact on the TIO's work volume, but our experience of the need for and frequency of referral bears some similarities to the explosion of demand that the TIO is reporting more broadly. Last year the TIO received over 100,000 fixed line, mobile and internet referrals – an increase of 32,000 on the previous year. Of those contacts it investigated almost 79,000 as complaints in comparison to around 60,000 the previous year – an increase of nearly 32%[7]. Breaking that down to an average per week over 52 weeks produces an increase in referrals from just over 1300 a week, to over 1900. The number is still going up and just as dramatically. My understanding is that weekly referrals have

[6] Communications Day, *TIO complaints system not suited to industry, says ACIF*, Issue 2742 Monday 20 March 2006, pages 1 and 2.

[7] Data can be found in the TIO's Annual Reports, available on the web-site www.tio.com.au. A summary of this information can be found in the TIO's media release of 26 October 2005, entitled *Mobiles lead the rise in complaints to Ombudsman.*

topped 3000 on a number of occasions. Is the TIO surfing a demand wave that points to a much bigger issue? How can movements of this type not set alarm bells ringing? And, more importantly, what does it say about industry's real engagement with proper internal dispute resolution? Industry might claim the changes are related to market growth. It looks more like a market that is not meeting the needs and capacities of its customers.

The TIO is independent and free. That is important to our clients. It is also able and willing to make decisions where necessary. From the perspective of a consumer advocate who has used the scheme over many years however, the TIO is being called upon more and more because the problems in self regulation and the lack of regulatory leadership are getting worse not better. That is already having an impact at the TIO in the time it takes for complaints to navigate the system. It is also impacting the ability of the scheme to tackle problems that require different, broader outcomes. When the TIO seeks to raise issues as systemic, my observation is that only serves to underline the failures in other areas of the regulatory landscape. Typically, industry denies there is a problem and ACMA conducts an "investigation" (which up to now has meant asking industry to explain in more detail why there is no problem).

A recent article in which ACIF and the TIO exchanged views about how complaints are being handled was titled "TIO complaints system not suited to industry, says ACIF". Never did a title more accurately reflect the true nature of the issue. The telecommunications industry only wants complaints to be considered within its definitional framework. That is not exactly news. It is already clear from the TIO complaints data!

Conclusion:

The outline I have provided today is a fairly bleak one. It is not presented that way however for shock value. It is based on my personal experiences in an agency providing assistance to some of the most vulnerable consumers in the telecommunications market over an extended period of time. All markets, even relatively safe and fair ones will produce weird and troubling examples of failure from time to time. Sometimes the failures are systemic and can be dealt with as such. The current operation of the telecommunications market feels fundamentally different. It is failing in most fundamental ways that are predictable and preventable and key players that could act to fix the problems either have a stake in not wanting to, or are just not acting.

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