15 February 2013



Telecommunications Industry Ombudsman

Simon Cohen Ombudsman

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Dear Sir/Madam

Issues Paper: App purchases by Australian consumers on mobile and handheld devices

Thank you for giving the Telecommunications Industry Ombudsman (TIO) the opportunity to comment on the *Issues Paper: App purchases by Australian consumers on mobile and handheld devices* issued by the Commonwealth Consumer Affairs Advisory Council (the CCAAC).

We enclose our submission on the Issues Paper. Our submission comments on each of the five topics canvassed in the Terms of Reference and Issues Paper:

- Features and trends of apps markets
- Consumer experiences
- Adequacy of the information being disclosed before and after the application is downloaded
- Adequacy of current protections available to consumers
- Actions that can be taken by consumers, industry and governments to help improve consumer experiences.

If you require any further information, please contact David Brockman, the TIO's Executive Director – Industry, Community and Government, on 03 8600 8700.

Yours sincerely

Simon Cohen

Ombudsman

"... providing independent, just, informal and speedy resolution of complaints"

Telecommunications Industry Ombudsman Ltd ABN 46 057 634 787



Telecommunications Industry Ombudsman – Submission on the Issues Paper: App purchases by Australian consumers on mobile and handheld devices

February 2013

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About the TIO

The Telecommunications Industry Ombudsman (TIO) is a free and independent alternative dispute resolution (ADR) service for small business and residential consumers in Australia who have a complaint about their telecommunications service, including mobile internet and telephone services.

We are the busiest industry Ombudsman Scheme in Australia – we receive thousands of calls each week, recording around 193,000 new complaints in the 2011-12 financial year, and around 38,000 new complaints in the first quarter of 2012-13.

We aim to resolve these complaints quickly in a fair, independent and informal way, having regard not only to the law and to good industry practice, but also to what is fair and reasonable in all the circumstances. Before the TIO becomes involved in a complaint, the consumer is required to have firstly given their service provider an opportunity to consider the complaint.

We are independent of telecommunications companies, consumer groups and government.

For most complaints we receive, we establish the issues in the dispute and the resolution sought, and then refer the consumer or small business to a designated point of contact at their relevant telephone or internet service provider. The provider is given a final opportunity to resolve the matter directly with the consumer, without the TIO's direct involvement. Around 90% of complaints we receive each year are resolved at this stage of the process.

Where the consumer and service provider do not reach an agreement at this early stage, the TIO becomes more directly involved by seeking to conciliate an agreed resolution between the parties. Around 7% of complaints are resolved using this conciliation process.

Complaints that cannot be resolved by conciliation are escalated for formal investigation by the TIO. If the complaint remains unresolved after formal investigation and the TIO is of the view that it would be fair and reasonable to do so, the TIO can make binding determinations up to a value of \$50,000 and non-binding recommendations up to a value of \$100,000 in respect of each complaint.

We are guided by and committed to the principles of Accessibility, Independence, Fairness, Accountability, Efficiency, and Effectiveness as set out in the <u>Benchmarks for Industry based Customer Dispute Resolution Schemes</u>. Further information about the legislative framework underpinning the TIO and our governance arrangements are set out in the *Appendix*.

Further information about the TIO is available at www.tio.com.au.

TIO submission

Our submission to the Commonwealth Consumer Affairs Advisory Council (CCAAC) on its *Issues Paper: App purchases by Australian consumers on mobile and handheld devices* comments on each of the five topics canvassed in the Terms of Reference and Issues Paper:

- Features and trends of apps markets
- Consumer experiences
- Adequacy of the information being disclosed before and after the application is downloaded
- Adequacy of current protections available to consumers
- Actions that can be taken by consumers, industry and governments to help improve consumer experiences.

1. Features and trends of apps markets

We concur with the analysis contained in the Issues Paper, especially its observations about the rapidly increasing size and dynamism of the mobile apps market, and its global reach. However, we would like to highlight the following additional features of the mobile apps market, not mentioned in the Issues Paper, which potentially impact on consumer experience¹.

1.1 Supply chain complexity

The supply chain to the end-user of mobile apps is complex and includes the entities shown in Table 1 and Figure 1 below.

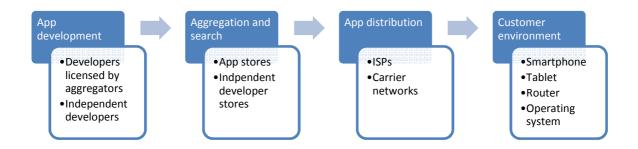
Table 1: Supply chain entities for mobile app market

| Entity | Function | Characteristics |
|-------------|---|---|
| Developer | Produces app | Very large number of independent developers, located in different jurisdictions (e.g. Apple's US iTunes app store had approximately 210,000 active developers in January 2013) ² . Aggregators may also be developers. |
| Aggregator | Markets and sells app via online store | Small number of multi-national entities (i.e. Google, Apple, Blackberry and Microsoft) dominate the market. Also manufacture mobile devices and operating systems. |
| Distributor | Provides network over which app is downloaded and run | Primarily network operators, and may also develop and aggregate some apps (though market share is minimal). |

¹ Except where noted, our analysis in this section is drawn from a discussion paper prepared by the Australian Communications and Media Authority in 2011: *Emerging business models in the digital economy – The mobile applications market* (see http://www.acma.gov.au/scripts/nc.dll?WEB/STANDARD/1001/pc=PC_312545).

² See http://148apps.biz/app-store-metrics/ (viewed 31 January 2013).

Figure 1: Supply chain for mobile app market



We note that two separate supply chain models currently dominate the app market:

- 1. A device manufacturer app store business model, in which device users are constrained to purchase apps from the manufacturer's app store (e.g. the Apple model).
- 2. An operating system app store business model, in which device users may purchase apps either from an app store operated by the developer of the operating system which runs on their device, or from other stores which offer apps compatible with the operating system (e.g. the Google/Android model).

While many apps are written by Apple and Google and pre-installed on mobile and handheld devices, most are created by communities of independent developers. Apple and Google offer these apps for sale via their respective online app stores, usually taking a percentage of sales. Users can also purchase and download Android-compatible apps directly from developers.

Network operators can also capture a percentage of the mobile app purchase price as well as the revenue raised from data use. For example, Vodafone develops the 'Vodafone Guardian' antimalware app, distributes it through the Vodafone Central online app store (and via Google Play), and supplies the mobile service on which it is run. However, in the context of the overall app market, the proportion of apps sold this way is currently minimal.

The complexity in the supply chain means that consumers may have difficulty identifying who the responsible party is for any issue that arises, and this may vary according to which aspect of the mobile application purchase or use is problematic.

1.2 Pricing and payment

The purchase price of mobile applications can range widely, from free to \$999. As noted in the CCAAC Issues Paper, some apps, such as gaming apps, may be downloaded for free but require 'inapp' payments to continue using the app. In-app payments can be made once only or via subscription. Other apps are free 'light' versions of paid versions with more sophisticated functionality. 'Light' apps sometimes feature advertising, with the full-featured (paid) version offering an ad-free environment. The complexity of the different pricing models has the potential to lead to consumer confusion.

There are also a range of payment options for one-off transactions or ongoing subscriptions to mobile apps, including:

- Credit card—this is the most prevalent method in Australia. The interface is established
 through a consumer account (for example, an iTunes account for Apple or a Google account
 for Android).
- Carrier billing—this method is common for mobile commerce transactions, but is currently
 not common in app store arrangements in Australia. Payment appears on a consumer's bill
 or in the form of a call-credit deduction or charge. This is similar to current payment
 arrangements for mobile premium services.
- Voucher redemption—app store-specific vouchers (e.g. iTunes gift cards) are available at
 multiple commercial outlets. These may be redeemed for credit via a user account. Credit
 card companies also provide gift vouchers that may be used for the same purpose.

External dispute resolution for each option may fall into different jurisdictions, potentially leading to consumer confusion. For example, in general, disputes about credit card payments are handled by the Financial Ombudsman Service, disputes about carrier billing by the TIO, and disputes about vouchers by State-based Offices of Fair Trading and Consumer Affairs.

1.3 Data use costs

A hidden cost of the use of individual mobile applications is the transfer (download and upload) of data. Data use by individual mobile applications can be incurred in three ways:

- 1. Initial download—installation uses data to download.
- 2. Ongoing—data is used in ongoing game play or other functionality.
- 3. Updating—data is used to download updated versions or to fix bugs.

A consumer's mobile app-related data is subject to a separate service contract between them and their carriage service provider. Data used in accessing mobile apps may form part of the overall service contract that consumers have, such as voice, text, and data packages for smartphones using a digital mobile network. Alternatively, it may be through a separate service contract they have entered into with a broadband data provider.

Unlike other digital purchases that have one-off data costs, such as music and movies, mobile applications may incur additional ongoing and updating costs. There is a potential lack of transparency about the amount of data individual mobile applications use, in particular where the billing arrangements used by service providers for smartphones, bundled data, voice and SMS services. This can result in consumers experiencing unusually high bills through unintentionally excessive data use via mobile applications.

1.4 Current TIO jurisdiction regarding mobile apps

In general, the TIO deals with complaints about the carriage of telecommunications services – the technical, performance and commercial/billing aspects of the service – rather than the 'content' of those services. However, in certain circumstances we have a function to receive and deal with

disputes which relate to products purchased using a telecommunications service; this includes dealing with complaints about mobile premium services, and some complaints about app services.

TIO membership

The TIO can only consider disputes which involve members of the TIO Scheme. TIO membership is a mandatory for carriers and eligible carriage service providers (CSPs) under the *Telecommunications* (Consumer Protection and Service Standards) Act 1999. At present, the majority of mobile apps are purchased from independent developers via Google Play, Apple, Blackberry and Microsoft – none of whom are carriers or CSPs³. Consequently, the proportion of complaints about mobile apps that currently fall within the TIO's jurisdiction is relatively small.

TIO Constitution

The TIO operates in accordance with the roles, functions, powers and obligations set out in the TIO Constitution. Sub-clause 3.1(1)(b) of the Constitution provides that we may 'investigate, make determinations relating to, and give directions relating to complaints about ... billing by members for the supply of content services provided by means of a carriage service ... by end-users of those services'. This clause is usually interpreted to refer to our jurisdiction regarding complaints about mobile premium services (MPS).

A recent ACMA discussion paper, *Emerging business models in the digital economy – The mobile applications market*, noted that:

Mobile premium services have some similarities with mobile applications in relation to the devices employed to access and use them, although mobile application providers do not fall within the provisions of this code. Notwithstanding significant differences between mobile premium services and mobile applications in terms of their respective business models and value chains, consumers may have expectations that the protections and values present in the mobile premium services environment are also represented in the mobile applications market⁴.

General statement of jurisdiction

Having regard to the above matters, the TIO will generally have jurisdiction to consider complaints about an app service where:

- a consumer has been billed by a TIO member for purchase or use of the app (which could include purchase of an app directly from the TIO member), and
- the app was provided by means of a carriage service (e.g. downloaded via the internet).

This includes complaints about the following:

 Pre-installed third-party apps on a bundled device and service offer purchased from a TIO member (where the app provides functionality advertised as part of the bundled offer).

³ Carriers and eligible carriage service providers (CSPs) are referred to in the *Telecommunications Act 1997* as suppliers of 'carriage services', defined as 'service for carrying communications by means of guided and/or unguided electromagnetic energy'.

⁴ Australian Communications and Media Authority, May 2011.

- Free or paid apps downloaded from a TIO member via their online app store (including apps which monitor consumer spending on telecommunications services).
- Free or paid apps which generate disputed charges for data transfer via an account with a TIO member.
- Paid apps downloaded via a telecommunications service where charges are billed to the consumer's account with a TIO member.

Where these circumstances are not satisfied, the TIO will generally not have a role in dealing with a complaint.

Some particular situations

Below is a description about some of the common considerations we take into account in dealing with a complaint, applied to a complaint about an app service.

Misleading or deceptive conduct

In considering complaints, the TIO has regard to provisions in the Australian Consumer Law about misleading and deceptive conduct. We are able to investigate cases where terms and conditions are not accurately disclosed prior to entering a contract. Our position statement on 'Information provided during a sales transaction' reflects this legal requirement and states:

The TIO takes the view that telecommunications providers should provide consumers with sufficient information about a product to allow them to make an informed purchase or to give their informed consent when they agreed to buy the product.

A TIO complaint investigation will consider, where a complaint about an app service is within jurisdiction, whether the pre-sale information would have 'been likely to lead a reasonable and ordinary member of the public with little or no knowledge about a product to either form an incorrect impression of a product or be misled about it'. Situations which may arise in this regard could include:

- An app not performing in accordance with pre-sale information
- Unexpected or excessive charges for 'in-app' purchases
- An app damaging other software or the host device, or
- An app capturing or revealing private information without authorisation.

Excess usage charges

We take the view that consumers have a responsibility to manage their data usage where there are reasonable means available to do so. To assist consumers, the new Telecommunications Consumer

⁵See TIO Position Statement *Information provided during a sales transaction* (http://www.tio.com.au/__data/assets/pdf_file/0014/9050/Information-provided-during-a-sales-transaction.pdf).

Protection Code (TCP Code 2012) requires providers to offer tools to manage their consumption of services, including data⁶.

When handling a complaint, we also take the view that providers have an obligation, reflected in the TCP Code 2012, to assist consumers in avoiding financial over-commitment resulting from excess use of services which are billed in arrears⁷.

Mobile applications have the potential to consume large amounts of data without consumers necessarily taking any action to enable this; for example, when running automatically in 'background' mode.

The majority of complaints and enquiries we receive about mobile apps concern unexpectedly high levels of data transfer, resulting in unusually high charges for the consumer. In many cases, the purpose for which data has been transferred may not be immediately apparent to either consumers or service providers. For example, data may be transferred either by a third party app downloaded post-purchase, by an app downloaded from the provider, by an app pre-installed on the mobile device, or by the device operating system.

Our stated position includes that a provider should take steps to bring to the consumer's attention excess data usage and potential high charges, and the provider should be in a position to substantiate data charges, especially when such usage exceeds a monthly limit specified in their contract⁸.

2. Consumer experience

2.1 TIO enquiries and complaints about mobile apps

The TIO is able to provide an indicator of the consumer experience with particular products and services in the telecommunications sector through analysis of the volume and nature of the enquiries and complaints⁹ it receives from consumers.

Given the complexity of the jurisdictional issues and the relatively small numbers of app-related enquiries and complaints we receive, to date we have not introduced a dedicated category in our complaints management system to identify matters specifically related to mobile applications.

⁶ See clause 6.5.2 of Communications Alliance *Telecommunications Consumer Protection Code C628:2012* (http://commsalliance.com.au/ data/assets/pdf file/0017/33128/TCP-C628 2012 May2012-Corrected-July12.pdf).

⁷ See TIO Position Statement *Unlimited credit – Financial overcommitment*(http://www.tio.com.au/ data/assets/pdf_file/0011/9389/Unlimited-credit--financial-over-commitment.pdf)

⁸ See TIO Position Statement *Excess usage charges*.
(http://www.tio.com.au/ data/assets/pdf_file/0020/9038/Excess-usage-charges.pdf).

⁹ When a consumer contacts us about an expression of grievance or dissatisfaction about a matter within our jurisdiction that the service provider has had an opportunity to consider, we record this as a 'new complaint'. Complaints are recorded according to the types of issues that these complaints present, such as connection delays, credit management disputes (including disputes about the accuracy of credit files and complaints about the actions of collection agents), contractual disputes, customer service/complaint handling and billing disputes.

Nevertheless, a manual search of file notes from our database for the period 1 July 2010 to 31 December 2012 shows that a number of consumers have raised issues to do with mobile apps in their enquiries and complaints to our office.

Enquiries received by the TIO about mobile apps

The bulk of enquiries we currently receive about mobile apps concern unexpectedly high bills as a result of data use. For example, in the period 1 July 2010 to 31 December 2012, we received 85 enquiries which concerned mobile apps. Of these, 35 enquiries were about disputed charges resulting from a mobile device using unexpectedly high levels of data.

We did not register these matters as complaints because, in each case, the customer had not attempted to resolve the matter with their provider before contacting us. Such matters are registered as being 'first resort' and the consumer is referred back to their telecommunications provider to try to resolve it. Had the consumer already unsuccessfully attempted to resolve the matter with their provider, we could have considered registering these matters as complaints.

Table 2 shows a summary of the 50 enquiries about mobile apps that did not fall within our jurisdiction¹⁰.

Table 2: Enquiries received by the TIO concerning mobile apps (1 July 2010 – 31 December 2012)

| Category | Number of enquiries |
|--|---------------------|
| Mobile app supplied by non-TIO member generated automatic incoming or outgoing communication without customer permission, potentially compromising privacy | 13 |
| Faulty mobile app supplied by a non-TIO member and installed by customer post- purchase | 10 |
| Child inadvertently incurring 'in-app' charges from mobile app purchased from non-TIO member | 6 |
| Purchase of mobile app unexpectedly led to subscription to another service (e.g. MPS) | 5 |
| Misleading information provided by a non-TIO member (e.g. an aggregator) prior to purchase of a mobile app | 4 |
| Customer unable to access an app store | 3 |
| Mobile app purchased from non-TIO member incompatible with customer's mobile device | 2 |

¹⁰ Matters which do not fall within our jurisdiction are typically recorded as 'enquiries', and consumers reporting these types of complaints are referred back to their supplier in the first instance. Consumers are also advised that they may be able to approach the relevant State-based fair trading organisation if their initial attempt with their supplier is unsuccessful.

| Mobile app containing inappropriate content | 1 |
|---|----|
| Other/unknown | 6 |
| Total | 50 |

Complaints received by the TIO about mobile apps

The bulk of complaints we receive about mobile apps concern unexpectedly high bills as a result of data use. For example, in the period 1 July 2012 to 31 December 2012, we received 221 new complaints which concerned mobile apps and, of these, 206 (93%) complaints were about disputed charges resulting from a mobile device using unexpectedly high levels of data (see Table 3 below).

Of the 206 complaints involving unexpectedly high levels of data use:

- 78 occurred because the information provided by data usage app (supplied or preinstalled by a TIO member) was misleading or inaccurate (38%)
- 25 occurred because a consumer used an incorrect app for accessing 'free' social networking services (12%)
- 10 occurred because of a child using the app (5%).

Table 3: New complaints received by the TIO concerning mobile apps (1 July 2012 – 31 December 2012)

| Category | Number of new complaints | Percentage |
|---|--------------------------|------------|
| Disputed charges resulting from a mobile device using unexpectedly high levels of data | 206 | 93% |
| Mobile app provided or pre-installed by a TIO member appeared to be faulty | 12 | 6% |
| TIO member provided misleading or inaccurate information about app-related services or performance at the point of sale | 3 | 1% |
| Total | 221 | 100% |

Specific issues highlighted by consumers

Common issues highlighted in all the enquiries and complaints we analysed include:

• In a number of cases, consumers appeared unaware that downloaded apps may be running in 'background' mode and downloading data without their knowledge. This has led to unexpectedly high bills due to data roaming charges where consumers have travelled overseas. However, it is not always clear that the data has been downloaded by an app.

- Consumers say they have been misled by usage and cost information provided through apps downloaded from telecommunications providers, either due to a time lag between data usage and the app updating, or because certain relevant information is missing. For example, in one case a consumer was refunded charges after complaining that the app did not show call costs including GST.
- In some complaints, consumers mentioned that apps sent emails or text messages containing contact details without their permission. In one case, an app appeared to associate contact details with a service number and then store these online. Transferring the number to a third party appeared to make contact details available to the new owner.
- In-app advertising leading to subscription click-throughs has been a common issue. For
 example, in-app advertisements for the chance to win a mobile phone leading to
 subscription services appeared multiple times.

3. Adequacy of the information being disclosed before and after the application is downloaded

The proportion of enquiries and complaints we received about information disclosed about mobile apps both prior to and after purchase was relatively small. For example, during the period 1 July 2012 to 31 December 2012, 5% of mobile-app related enquiries were about misleading or inaccurate pre-sale information provided by a non-TIO member (e.g. by a third party supplier of the app). During the same period, 1% of complaints were about a TIO member giving misleading or inaccurate information about a mobile app.

4. Adequacy of current protections available to consumers

The CCAAC Issues Paper describes the protections afforded by existing laws, such as contract law, the Australian Consumer Law and the *Electronic Transactions Act 1999*, to Australian consumers who purchase mobile apps.

4.1 Regulation

Mobile applications and app stores are subject to multiple regulatory schemas, further complicated by the fact that the market is global, with developers, aggregators/platforms and consumers often based in different jurisdictions.

1. Telecommunications regulation: Regulation of supplier provision of products and services via fixed and mobile networks to enforce standard consumer safeguards, such as billing arrangements, quality of service issues and prohibition of false or misleading information. In Australia, such regulations include the *Telecommunications Act 1997*, *Telecommunications Consumer Protection Code 2012* (TCP Code 2012) and *Mobile Premium Services Code 2011* (MPS Code 2011).

- 2. Consumer/competition regulation: Regulation of supplier practices to promote fair trading and competition, and to enforce consumer protections such as warranties and prohibition of misleading or deceptive conduct, and promotion of mechanisms for dispute resolution (as described on pp 8-9 of the CCAAC Issues Paper). In Australia, such regulations include the Competition and Consumer Act 2010. The Australian Competition and Consumer Commission (ACCC) recently announced that a new challenge for competition and consumer regulation is the app market, particularly misleading and deceptive conduct targeting children¹¹, but no compliance or regulatory action has been taken in Australia to date. However, the TIO is aware that the US Federal Trade Commission recently prosecuted developers who falsely claimed that an app could provide treatment for acne and subsequently developed guidelines for app developers to comply with 'truth-in-advertising' and privacy guidelines¹².
- **3. Content regulation:** Regulation of content, including classification and protection of minors from harmful or offensive material. In Australia, such regulations include the *Broadcasting Services Act 1992* and the *Classification (Publication, Films and Computer Games) Act 1995*.
- **4. Function-specific regulation:** Regulation of products and services which may be harmful or risky in some way due to their particular function. For example, in the USA, devices which offer a health-related or medical function are subject to regulation by the US Federal Drug Administration (FDA). The FDA has recently commenced regulation of apps which perform medical functions, such as heart monitoring. Similar regulation is also being considered in the UK, but not yet in Australia. Similarly, apps used for electronic funds transfer and banking may be subject to financial services regulations¹³, although this does not appear to have been considered in Australia at the time of writing.

However, it appears that, to date, no other jurisdictions have developed regulatory approaches specific to the mobile apps market beyond application of these four regulatory domains.

4.2 Internal dispute resolution

The first and preferable recourse where a consumer has a complaint about any service is through the company providing the service. Effective internal complaint processes are a key consumer protection mechanism.

¹¹ See the ACCC media release http://www.accc.gov.au/content/index.phtml/itemId/1038323.

¹² See US Federal Trade Commission website, http://business.ftc.gov/documents/bus81-marketing-your-mobile-app (viewed on 21 November 2012)

mobile-app (viewed on 21 November 2012)

13 Such as the *ePayment Code 2011*, administered by the Australian Securities and Investments Commission (ASIC): http://www.asic.gov.au/asic/asic.nsf/byheadline/ePayments-Code.

We are aware that the major app stores do provide mechanisms for resolving consumer complaints. The ACMA has undertaken research into the mobile applications market's approach to consumer safeguards, including the provision of internal dispute resolution (IDR) mechanisms¹⁴. It found that:

- In general, app stores provide mechanisms to report problems, forums for resolution and user rating systems.
- Consumers can seek redress through either the platform or the developer, although app
 developers are the final responsible party. Contact information for developers is available
 from the advertisement featured in the app stores, and sometimes within the mobile
 application itself.
- Some technical and product support information is available via the different platforms to further support consumers.

The ACMA report also notes that agreements between the major app stores and developers all stipulate codes of practice for developers – although the nature and extent of safeguards provided to consumers varies between platforms.

5. External dispute resolution

As the CCAAC Issues Paper notes, some disputes about advertising, purchase and use of apps are covered by the Australian Consumer Law and handled by State-based Offices of Fair Trading and Consumer Affairs. In addition, the TIO performs a limited dispute resolution service outlined above. However, there is currently no dedicated external dispute resolution scheme for mobile apps in Australia.

Given the ubiquitous nature of mobile applications and of mobile use more generally among consumers of all groups, and the consumer concerns and potential detriment about app services highlighted in the Issues Paper, it is useful to consider other external dispute resolution (EDR) arrangements which could improve customer protections when making app and in-app purchases.

In particular, it is a legitimate consumer expectation that a clear and effective EDR framework is in place to ensure that when they do experience difficulties, they can be properly and fairly resolved. In addition, consolidated EDR services for an identified industry provide an opportunity to monitor trends and issues in an industry, and inform community, industry and regulatory responses.

A key element in any EDR process is determining the most appropriate point in a supply chain or market on which to focus. Having regard to the supply chain for the mobile app market, there are a number of options:

1. <u>Focusing responsibility for EDR on app developers</u>. As discussed earlier in section 4.2, this approach is already reflected in some current IDR mechanisms for apps. However, developing a parallel EDR model would be complex. This is especially the case given that

¹⁴ Emerging business models in the digital economy – The mobile applications market, Australian Communications and Media Authority, May 2011. See http://www.acma.gov.au/scripts/nc.dll?WEB/STANDARD/1001/pc=PC 312545.

there are literally hundreds and thousands of these developers, most based in countries other than Australia.

- 2. Focusing responsibility for EDR on carriers and CSPs. The TIO currently provides EDR for carriers and CSPs for some telecommunications services provided via a carriage service. It may be possible to amend the meaning of these services to encompass apps. However, while apps are accessed via a carriage service in the majority of cases, individual carriers and CSPs generally have no control over the pre-sale information, purchase, performance, or billing arrangements for apps except for those that they have developed or supplied. As such, it would be unreasonable to expect carriers and CSPs to assume responsibility for apps purchased from third party aggregators or developers (unless, for example, the additional functionality provided by such apps is promoted in the pre-sale information provided by CSPs and carriers).
- 3. <u>Focusing responsibility for EDR on aggregators (app stores)</u>. A possible approach, of making aggregators responsible for the behaviour of suppliers, largely mirrors how EDR operates in the mobile premium services (MPS) industry. Carriers and CSPs that bill for the premium service and obtain a financial benefit from the charges, are also responsible for working with consumers to resolve billing and other MPS disputes. Reasons why this approach may be preferable include:
 - There are a limited number of app stores in the mobile app market, offering the potential for efficiency and consistency of dispute resolution processes
 - App stores have a direct relationship with consumers and often obtain a financial benefit from the sale of an app
 - App stores commonly provide the charging mechanism for mobile apps (e.g. via a user account or voucher)
 - App stores are a visible and logical point of contact for consumers who have a complaint about an app.

From our experience providing EDR services in the MPS market, we are aware that such an approach can (in conjunction with appropriate self-regulatory and regulatory responses) enhance the protection of consumers in this type of market for digital services.

6. Other matters

The mobile app market is only one example of digital services that can be consumed by consumers over mobile devices. Other services include software applications (e.g. 'software as a service'), subscriptions and credits with social networking and gaming platforms (e.g. Facebook credits), and digital music and video services (e.g. online media stores such as iTunes).

An effective consumer protection framework for apps, which does not have regard to this broader market of digital services, may perhaps be drawn too narrowly. When considering future consumer protection frameworks, we suggest that the CCAAC also take into account the increasing trend for consumers to purchase other digital goods and services in addition to mobile apps.

Appendix: Additional information about the TIO

Functions and powers

The specific powers and functions of the TIO are drawn from a number of different sources, including:

- The Telecommunications (Consumer Protection and Service Standards) Act 1999, which
 provides the legislative basis for the TIO's existence and gives us the power to investigate,
 make determinations and give directions on complaints about telecommunications services
 by the end users of those services. This Act also requires each carrier and all eligible carriage
 service providers to become Members of, and comply with, the TIO.
- The Telecommunications Act 1997, which enables the Ombudsman to have functions and powers conferred upon him or her by Industry Codes that are registered with the Australian Communications and Media Authority (the ACMA). Where the TIO has accepted conferral of power under a particular registered Industry Code, we have the power to receive, investigate, facilitate the resolution of, make determinations and report on complaints by consumers about matters arising under that Industry Code.
- The *Telecommunications Act 1997*, together with the *Telecommunications (Low Impact Facilities) Determination 1997* and the *Telecommunications Code of Practice 1997*, which give us the power to handle objections from owners/occupiers about land entry, installation of low impact facilities and maintenance activities by carriers.
- The TIO Memorandum and Articles of Association, which establishes TIO Limited as a public company limited by guarantee that is overseen by a board of Directors and funded by its Members. It also enables the creation and amendment of the TIO Constitution and binds the TIO and its Members to the terms of the TIO Constitution.
- The TIO Constitution, which sets out the jurisdiction, powers and functions of the Ombudsman. It also sets out the criteria for the investigation of systemic issues, describes the responsibilities of the TIO Council and Board, and specifies which of the Ombudsman's powers can be delegated to TIO staff.

Understanding TIO complaints data

The TIO provides the telecommunications industry and the community with an independent perspective on the consumer experience in the context of landline, mobile, internet and mobile premium services. Through the thousands of contacts received each week and the many residential or small business consumers assisted each year, the TIO is able to identify complaint trends and their probable causes and to provide this valuable information to stakeholders.

The TIO captures information about complaints for a variety of reasons including:

- monitoring of complaint trends
- identifying gaps in consumer protection as may be indicated by complaint trends

- identifying systemic problems within the industry
- measuring the impact of new technologies and changes in industry behaviour
- creating awareness and informing TIO Members about good industry practice as set out in Industry Codes
- reporting complaint trends and possible code compliance issues, to regulators and the industry
- allocating TIO resources in an efficient and effective manner
- reporting to the community on the work undertaken.