



Consumer Law Enforcement and Administration

Response to Productivity Commission Issues Paper

Submission by the Australian Communications Consumer Action Network (ACCAN)

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Australian Communications Consumer Action Network (ACCAN)

Australia's peak telecommunications consumer organisation

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About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will represent the views of its broad and diverse membership base to policy makers, government and industry to get better outcomes for all communications consumers.

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Introduction

The Australian Communications Consumer Action Network (ACCAN) welcomes the Productivity Commission's Inquiry into Consumer Law Enforcement and Administration.

Since the Australian Consumer Law was introduced five years ago, there have been a number of developments in both the general consumer and telecommunications markets. In January 2011, 49% of Australian adults used a smartphone.¹ By 2015, this increased to almost 80%.² There has also been a 25% increase in broadband subscribers, from 10.3 million to 12.8 million over the same period.³

At the same time, there has been a significant increase in the number of goods and services consumed by users. For each device used on a communications service (for example, a mobile phone), there are flow-on purchases, including app purchases, digital media content (such as movies and TV shows purchased on iTunes) and subscription streaming services (for example, Spotify and Netflix). In addition, communications services are used to drive consumption of goods and services in the offline world by connecting consumers with bricks and mortar businesses. There is also a strong push from government and business to drive citizen/consumer interactions online. In a 2015 survey, 72% of public sector leaders said that digital technologies are disrupting the public sector.⁴ Examples of this trend include consumers being encouraged to use online services to access Centrelink and Medicare, instead of making a phone call. A basic example of business use of technology is the use of electronic bills instead of paper-based bills.

The increasing use of technology across all aspects of the economy indicates the strategic importance of the underlying telecommunications service, and for ensuring that consumers have access to affordable, accessible and available services. ACCAN has provided feedback on a number of these emerging and ongoing issues.

¹ Australian Communications and Media Authority, 'Communications report 2011–12 series Report 3— Smartphones and tablets Take-up and use in Australia Summary report', <http://www.acma.gov.au/webwr/assets/main/lib310665/report-3-smartphones_tablets-summary.pdf>.

² Similar trends have also been seen in tablet ownership. See Deloitte, 'Mobile Consumer Survey 2015 – The Australian Cut, October 2015, p. 2, 9, <<http://landing.deloitte.com.au/rs/761-IBL-328/images/deloitte-au-tmt-mobile-consumer-survey-2015-291015.pdf>>

³ Australian Bureau of Statistics, '8153.0 - Internet Activity, Australia, June 2011' – Section: 'Type of Access Connection', <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/91A5539B10732B1CCA2579D000C0B28?opendocument>>; Australian Bureau of Statistics, '8153.0 - Internet Activity, Australia, December 2015' – Section: 'Type of Access Connection', <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/00FD2E732C939C06CA257E19000FB410?opendocument>>

⁴ Deloitte University Press, *Transforming Government through Digital*, 2015, <<http://dupress.com/articles/digital-transformation-in-government-infographic/?top=4>>. Full report available at: <<http://dupress.com/articles/digital-transformation-in-government/>>

List of recommendations

1. Improve the deterrent effect of financial penalties by increasing caps, allowing judicial consideration of revenue earned and inflationary pegging.
2. That ACL regulators should be appropriately funded to engage in effective monitoring and enforcement, including a greater use of test cases to clarify the application of the ACL.
3. That ACL regulators continue to work towards the establishment of a national complaints register and further broaden the use of existing information sharing avenues.
4. That ACL regulators engage in comprehensive, frequent and timely, consistent and accessible public reporting of (a) complaints and (b) enforcement actions.
5. That the Commission investigates the merits of a 'super complaints' scheme.

Deterrent effect of financial penalties

The maximum financial penalties currently available under the ACL (\$1.1 million for companies and \$220,000 for individuals) were set when the law was introduced in January 2011. They apply to breaches of false or misleading representations, unconscionable conduct, pyramid selling and product safety. Based on the circumstances it is up to the courts to determine the penalty amount up to these maximum limits.

While fixed caps give some certainty to business, the deterrent effect can be undermined if profit from breaching behaviour outweighs the penalty. The Federal Court identified this as an issue in unconscionable conduct proceedings brought by the ACCC against Coles Supermarkets.⁵ For a company with annual revenue in excess of \$22 billion, a \$1.1 million penalty may be insufficient to change behaviour. The same could be said of large telecommunications operators, such as Telstra which has annual revenue in excess of \$26 billion.⁶

In 2014 Telstra was issued a \$102,000 penalty by the ACCC for advertisements which misrepresented the price of a new iPhone 6 phone plan bundle.⁷ According to Telstra's 2014/15 Annual Report "Mobile hardware revenue grew by 26.3 per cent to \$1,886 million due to an increase in average revenue per post-paid handset (higher average recommended retail price), together with

⁵ *Australian Competition and Consumer Commission v Coles Supermarkets Australia Pty Ltd* [2014] FCA 1405 (22 December 2014)

⁶ Telstra, Annual Report 2015, p. 4, <<https://www.telstra.com.au/content/dam/tcom/about-us/investors/pdf%20D/2015-ANNUAL-REPORT.pdf>>.

⁷ ACCC, 2014, 'Telstra pays \$102,000 penalty following ACCC infringement notice for iPhone 6 advertisement', available at: <<https://www.accc.gov.au/media-release/telstra-pays-102000-penalty-following-accc-infringement-notice-for-iphone-6-advertisement>>

an increase in handset recontracts as a result of the iPhone 6 launch during the year”.⁸ In the context of more than a \$400 million increase in revenue, largely attributed to increased sales of the iPhone 6, the same product which was found to have misleading advertising, the deterrent effect of a \$102,000 penalty is questionable. It should be noted that the ACCC did not seek the maximum penalty in this case. However, the ACL review is considering an approach to penalties which better reflects the revenues of an offending business.

Recommendation 1: Improve the deterrent effect of financial penalties by increasing caps, allowing judicial consideration of revenue earned and inflationary pegging.

Appropriate levels of regulator funding for effective, targeted and consistent enforcement

An effective consumer protection system requires regulators to be properly funded to enforce the law. As outlined in the introduction, there has been huge growth in the consumption of goods and services connected to an underlying telecommunications services. This trend is only going to increase in future years. In addition to the increased engagement with telecommunications services, there has also been a general rise in the number of complaints received by consumer regulators. In the last year, ACL-related contacts to the ACCC increased by 15%.⁹ In order to protect consumers, regulators must be adequately funded to deal with increased complaint levels and to engage in follow-up enforcement activities.

Specifically, ACCAN supports greater court enforcement for breaches of the ACL in the telecommunications sector. The reason for this is that the ACL has not been adequately tested in its application to new technologies. For example, it is not clear what the scope of the word of “supply” means in the context of digital goods and services, such as apps downloaded from Apple’s App Store and Google’s Play marketplaces. In order for the ACL to apply, an entity must be in the business of “supplying” a good or service.¹⁰ In the case of Apple and Google, it is not clear if these entities “supply” anything because the product itself (the app) is manufactured by a developer (who may be located offshore). This uncertainty means that Australian consumers are not adequately protected when purchasing from these marketplaces. In ACCAN’s view, this situation is unacceptable, especially given that Apple and Google receive a commission of 30% for every app that is sold.¹¹

Another example that demonstrates the uncertainty of how the ACL applies is the growing use of

⁸ Telstra Annual Report 2015 page 23,

⁹ Australian Competition and Consumer Commission and Australian Energy Regulator, Annual Report 2013-2014, p. 143 at Table 3.6,

<<https://www.accc.gov.au/publications/accc-aer-annual-report/accc-aer-annual-report-2013-14>>; Australian Competition and Consumer Commission and Australian Energy Regulator, Annual Report 2014-2015, p. 119 at Table 3.7, <<https://www.accc.gov.au/publications/accc-aer-annual-report/accc-aer-annual-report-2014-15>>

¹⁰ *Competition and Consumer Act 2010* (Cth) sch 2 (“*Australian Consumer Law*”) cl 2 (definition of “supply”).

¹¹ Apple, *Apple Developer Program*, <<https://developer.apple.com/programs/>>; Google, *Transaction fees*, <<https://support.google.com/googleplay/android-developer/answer/112622?hl=en>>

“direct carrier billing”. Direct carrier billing is where mobile providers (such as Telstra, Optus or Vodafone) allow third party businesses to bill customers for services via the customer’s phone bill. The apparent advantage is that the customer doesn’t need to enter credit card details, making the transaction more seamless. As with the Google Play and Apple App stores, services that are billed through direct carrier billing tend to be for mobile apps and games. When a customer seeks a refund for a faulty service or incorrect charge, the mobile provider will direct the customer back to the third-party provider. This is a confusing process for consumers; especially given these charges appear on their mobile bill. From a consumer perspective, the mobile phone provider seems to be the entity who is providing the service.

Separate from the supply issue, another concern is how consumer guarantees apply to communications services. For example under the ACL, in the event of a ‘major failure’ of a good or service, a consumer is entitled to either terminate the contract or obtain a refund for the reduction in the value of the service.¹² However, there is no legal guidance on what a ‘major failure’ means for a telecommunications service. These examples demonstrate the need for greater court enforcement to gain clarity on the actual effect of the law. This view is supported by the 2013 Regulator Watch report, which noted that active enforcement through test cases “avoids the need for debate and inquiry on the imposition of further regulation”.¹³ This approach benefits consumers and their advocates such as ACCAN, and will also provide certainty to industry about their responsibilities.

In addition to representing general and small business consumers, ACCAN also advocates on behalf of more vulnerable groups including Aboriginal and Torres Strait Islander people, low income consumers, people with a disability, culturally and linguistically diverse people, youth, seniors and those in rural, regional and remote areas. These groups are often disproportionately affected by inadequate consumer protection and are more dependent on telecommunications services for essential daily life. For this reason, it is critical that regulators target their limited resources to protect the most vulnerable in society. A successful example of this is the ACCC’s enforcement to protect indigenous consumers from unsolicited commercial agreements.¹⁴

In addition to greater enforcement, ACCAN supports greater regulator monitoring in areas where complaints levels are significant or where there are very serious allegations but comparatively fewer complaints. Monitoring is a useful information gathering exercise either in its own right or as a precursor to enforcement. Monitoring is critically important in the communications sector where product offerings are rapidly changing and where the main advertised features of broadband services (for example, speed) are often difficult to measure and report from a consumer standpoint.

Finally, ACCAN also reiterates the importance of consistent enforcement across states and territories. The single-law, multi-regulator model can only be effective if that single law is enforced

¹² *Competition and Consumer Act 2010* (Cth) sch 2 (“*Australian Consumer Law*”) cl 267(3)(b).

¹³ Gordon Renouf, Teena Balgi and the Consumer Action Law Centre, “Regulator Watch”: The Enforcement Performance of Australian Consumer Protection Regulators’, March 2013, pp. 18-19, <<http://consumeraction.org.au/wp-content/uploads/2013/04/CALC-Regulator-Report-FINAL-eVersion.pdf>>

¹⁴ Australian Competition and Consumer Commission, ‘Jackson Anni and FDRA sales agents not to enter Indigenous communities to sell goods or services’, 6 May 2016, <<http://www.accc.gov.au/media-release/jackson-anni-and-fdra-sales-agents-not-to-enter-indigenous-communities-to-sell-goods-or-services>>

uniformly. Australians have a right to receive the same protections regardless of their state or territory. This is particularly the case for states and territories with large rural, regional and remote populations as these consumers are disproportionately affected by poor quality of service.

Recommendation 2: ACL regulators should be appropriately funded to engage in effective monitoring and enforcement, including a greater use of test cases to clarify the application of the ACL.

National complaints register and increased information sharing

One of the issues arising from the multiple-regulator model is that there is no national complaints systems across states and territories. That this is the case does not make sense in a country with a largely national (and often international) market for goods and services.¹⁵

In 2011, the ACCC recommended the establishment of a national complaints register as part of its submission to the Productivity Commission's COAG Reform Inquiry.¹⁶ 5 years later, ACCAN understands that some steps have been taken to achieve this goal. Led by Fair Trading NSW, the National Sentinel Pilot Program aims to provide a national database of compliance with safeguards in the automotive industry (legally a state matter). Following the outcome of the trial, ACCAN urges all ACL regulators to adopt the successful components of this pilot to work towards a national consumer complaints register as soon as possible.

ACCAN is also aware of the establishment of the Australian Consumer Law Intelligence Network Knowledge (ACLink). ACCAN encourages the continued use of ACLink by regulators to share useful insights and identify national trends and emerging issues.¹⁷ In the absence of a national complaints register, ACCAN urges ACL regulators to share as much information as possible, not only specific complaints and cases that individual regulators perceive to be important. A successful, although small Local Court prosecution in one jurisdiction could provide very useful guidance to other regulators about whether they can undertake similar enforcement activities.

Recommendation 3: That ACL regulators continue to work towards the establishment of a national complaints register and further broaden the use of existing information sharing avenues.

¹⁵ Gordon Renouf, Teena Balgi and the Consumer Action Law Centre, "Regulator Watch": The Enforcement Performance of Australian Consumer Protection Regulators', March 2013, p. 40, <<http://consumeraction.org.au/wp-content/uploads/2013/04/CALC-Regulator-Report-FINAL-eVersion.pdf>>

¹⁶ Australian Competition and Consumer Commission, 'Submission to Productivity Commission Inquiry into Council of Australian Government Deregulation Reforms', 27 October 2011, p. 5, <<http://www.pc.gov.au/inquiries/completed/coag-reporting-busines-vet/submissions/R008.pdf>>

¹⁷ Commonwealth Treasury, 'The Australian Consumer Law – National Projects', <<http://consumerlaw.gov.au/the-australian-consumer-law/acl-national-projects>>

Comprehensive, frequent and timely, consistent and accessible public reporting

(a) Complaints reporting

ACCAN strongly believes that having better-informed consumers increases competition in the marketplace. The decrease in information asymmetry between companies and consumers rewards companies who offer quality products and services and satisfactory complaints processes. One way of providing greater information to consumers is by providing public access to complaints data. Not only does this assist consumers, but it also allows consumer advocates such as ACCAN to understand emerging consumer issues and engage with industry on key concerns. In addition, better access to publicly held data is already strongly encouraged through open data policies developed by the Commonwealth and all state and territory governments. At the Commonwealth level, this includes a commitment to “making non-sensitive data open by default”.¹⁸ Many states and territories have adopted similar policies.¹⁹

In 2015, the ACCC recorded 60299 contacts about ACL matters.²⁰ While the ACCC reports on aggregate complaints levels and the number of complaints per sector, it does not publish other raw data. For example, ACCC reports do not include the number of complaints per sector on a state-by-state basis, the key complaint issue on a sector by sector or state by state basis, and other information such as postcodes with the highest number of complaints. Postcode reporting is particularly important in the telecommunications sector because of the differences in coverage and quality of service, especially in rural, regional and remote areas.

ACCAN can point to a number of successful public complaint reporting systems that provide a useful model for the Commission to consider. In August 2016, Fair Trading NSW introduced a new consumer complaints register.²¹ This register publishes the names of businesses that have received more than 10 complaints per month.²² The Register is updated monthly and the data is presented on an interactive dashboard that can be exported by users for further analysis. Although the dataset

¹⁸ Department of the Prime Minister and Cabinet, ‘Australian Government Public Data Policy Statement’, 7 December 2015, <https://www.dpmc.gov.au/sites/default/files/publications/aust_govt_public_data_policy_statement_1.pdf>.

¹⁹ See, for example: ACT: Office of the Chief Digital Officer, *ACT Government’s Open Data Policy*, <http://www.cmd.act.gov.au/_data/assets/pdf_file/0011/859430/2016-Proactive-Release-of-Data-Open-Data-Policy.pdf>; NSW: Department of Finance, Services and Innovation, *NSW Government Open Data Policy*, <https://www.finance.nsw.gov.au/ict/sites/default/files/resources/NSW_Government_Open_Data_Policy_2016.pdf>; Tasmania: Department of Premier and Cabinet Office of eGovernment, *Tasmanian Government Open Data Policy 2016*, <http://www.egovernment.tas.gov.au/stats_matter/open_data/tasmanian_government_open_data_policy>

²⁰ See, e.g. Australian Competition and Consumer Commission and Australian Energy Regulator, Annual Report 2014-2015, p. 117-118, <https://www.accc.gov.au/system/files/979_Annual%20Report_2014-15_web_FA_1.pdf>

²¹ NSW Fair Trading, ‘NSW Fair Trading Complaints Register Guidelines’, March 2016, p. 8, <http://www.fairtrading.nsw.gov.au/biz_res/ftweb/pdfs/About_us/Complaints_Register_Guidelines.pdf>

²² NSW Fair Trading, ‘NSW Fair Trading Complaints Register Guidelines’, March 2016, p. 8, <http://www.fairtrading.nsw.gov.au/biz_res/ftweb/pdfs/About_us/Complaints_Register_Guidelines.pdf>

is limited, it is a positive step towards the goal of comprehensive, frequent and timely, consistent and accessible reporting.

Another model for improved complaint reporting data is from the Telecommunications Industry Ombudsmen (TIO). The TIO publishes the number of complaints per named provider, the top complaint issues by postcode and detailed spreadsheets with access to the raw data.^{23 24} The TIO also provides data on the complaints in context, that is, new complaints per 10,000 services in operation.²⁵ This gives consumers an easy to understand figure to inform their decision making, especially when considering switching products to obtain improved services.

Put simply, ACCAN believes that regulators should publish most data that is captured in their systems from every single contact (except sensitive information that identifies the complainant).

This data should include:

- the complaint issue
- any relevant section of the ACL (this data is already captured by the ACCC)
- the postcode of the complaint (as per the TIO model)
- the sector (this data is already captured by the ACCC and NSW Fair Trading)
- the type of consumer, for example business or private consumer
- complaints in context data - proportionate complaint levels per capita (as per the TIO model)
- referral data - for example, how many complaints were referred to other regulators or specialist resolution bodies, for example Ombudsmen offices
- the identities of frequently complained about businesses (as per the NSW register model).

In order to reduce any reporting burden on regulators, this data can be published in spreadsheet format rather than requiring regulators to produce specific graphs. ACCAN strongly ACL regulators to work with their internal ICT resources and the Digital Transformation Office (or state and territory equivalent) in order to implement these simple data export functions.

Recommendation 4 (a): ACL regulators should increase public reporting of all complaints.

(b) Enforcement reporting

In addition to improved access to complaint data, ACCAN also supports improved access to data on ACL enforcement. Transparent information on enforcement increases public confidence by demonstrating specific cases where the regulator has acted to protect consumers from harm. It also provides transparency about how regulators are using taxpayer funds in their operations.

²³ See for example Telecommunications Industry Ombudsman, 'New complaint issues by service provider with more than 25 new complaints - January-March 2016', <https://www.tio.com.au/_data/assets/excel_doc/0011/200081/Issues-by-provider-with-more-than-25-new-complaints-January-March-2016.xlsx>

²⁴ Telecommunications Industry Ombudsman, 'Detailed statistics by quarter', <<https://www.tio.com.au/publications/statistics#quarterly>>

²⁵ Telecommunications Industry Ombudsman, 'Telecommunications Complaints in Context', <https://www.tio.com.au/_data/assets/pdf_file/0003/199713/Complaints-in-context-April-2016-FINAL.pdf>.

The 2013 ‘Regulator Watch’ report highlighted significant problems with reporting on enforcement across all state and territory regulators. ACCAN strongly supports the Report’s overall recommendation for “comprehensive, frequent and timely, consistent and accessible” reporting.²⁶

For example, for state and territory prosecutions of ACL cases, there are no written judgments because these cases occur in lower level courts. This makes it impossible for the public to understand any precedent on what behavior is illegal and when complaining is appropriate.

When cases are reported by ACL regulators, they do not include key information. For example, NSW Fair Trading publishes quarterly enforcement actions in a summary form register. The spreadsheet recently recorded a successful case for breach of the ACL. The only information was the amount of the fine and the words “False representation that goods are of a particular standard or quality”.²⁷ It would be more useful to know qualitative information, such as the specific facts of the case.

To address these issues, ACCAN supports the Regulator Watch recommendation that ACL regulators should publish qualitative information for all court cases and fines, including “at least the type of action taken, section of law breached, size and type of the defendant and the amount of money involved”.²⁸ Including this information does not place a significant additional reporting burden on regulators because this data has already been captured in internal departmental documents, including legal documents. It could be easily published with minimal effort.

The ACCC provides a good example of comprehensive qualitative reporting enforcement actions. For each successful case and penalty notice issued, the ACCC publishes a media release that specifically explains the facts and the section of the ACL that was breached.²⁹

Finally, ACCAN supports Regulator Watch’s recommendation for consistent reporting across jurisdictions and across time periods.³⁰ This will enable consumers, advocates and industry to develop insights into enforcement trends on a national basis.

Recommendation 4 (b): ACL regulators should improve reporting on all enforcement outcomes.

²⁶ Gordon Renouf, Teena Balgi and the Consumer Action Law Centre, “‘Regulator Watch’:The Enforcement Performance of Australian Consumer Protection Regulators’, March 2013, p. 19, <<http://consumeraction.org.au/wp-content/uploads/2013/04/CALC-Regulator-Report-FINAL-eVersion.pdf>>

²⁷ See, for example, Fair Trading NSW, ‘Enforcement Actions Report: January - March 2016 Quarter’, p. 2, http://www.fairtrading.nsw.gov.au/biz_res/ftweb/pdfs/About_us/Enforcement_actions_report_Jan_Mar_2016.pdf

²⁸ Gordon Renouf, Teena Balgi and the Consumer Action Law Centre, “‘Regulator Watch’:The Enforcement Performance of Australian Consumer Protection Regulators’, March 2013, p. 57, <<http://consumeraction.org.au/wp-content/uploads/2013/04/CALC-Regulator-Report-FINAL-eVersion.pdf>>

²⁹ See, for example, Australian Competition and Consumer Commission, ‘Dodo pays infringement notices’, 6 January 2011, <<http://www.accc.gov.au/media-release/dodo-pays-infringement-notices>>

³⁰ Gordon Renouf, Teena Balgi and the Consumer Action Law Centre, “‘Regulator Watch’:The Enforcement Performance of Australian Consumer Protection Regulators’, March 2013, p. 14, <<http://consumeraction.org.au/wp-content/uploads/2013/04/CALC-Regulator-Report-FINAL-eVersion.pdf>>

Super complaints scheme

As a representative organisation, ACCAN often hears from individual consumers who have problems with specific products, services and providers. ACCAN maintains a register of these cases to assist us with our ongoing advocacy and engagement with industry and government. However, there is no requirement for the government to respond to any issues that we may raise. It is up to the individual Department, or the Minister concerned, to decide whether to respond to issues raised.

To address this issue, ACCAN suggests that the Commission investigate the merits of a ‘super complaints’ process. This would allow recognised representative organisations such as ACCAN to make a complaint to regulators on behalf of a group of consumers about systemic market problems. This model has been in place in the UK since 2003 and has been very successful.³¹

In the UK, the law allows approved advocates to make a complaint about a “feature(s) of a market in the UK for goods or services that is, or appears to be significantly harming the interests of UK consumers”.³² The regulator receiving the complaint must respond within 90 days, along with a written response of its decision to take some or no action, and the reasons for doing so.³³ Some of the responses can include taking enforcement action, conducting a market study, referral to other regulators or recommending legislative action by government.³⁴

The super complaints scheme in the UK has been successfully used by energy consumer advocates to establish a redress scheme for poor billing practice, while a complaint from a financial services advocate ultimately led to the banning of excess credit card payment fees.³⁵ In many cases such as these, super complaints have also “undoubtedly been an invaluable source of preliminary information” for regulators before commencing market inquiries.³⁶ ACCAN broadly supports the introduction of a similar super complaints scheme in Australia.

A ‘super complaints’ scheme means that consumer harm is addressed more promptly than through the regular parliamentary and political processes. This is particularly relevant when dealing with issues in communications services, which are critical to the economy and society more broadly. As the UK experience demonstrates, the super complaints process also benefits government by giving it direct access to individual consumer experiences that consumer advocates have collected. This offers increased efficiency to regulators who do not have to collect individual submissions before

³¹ See *Enterprise Act 2002* (UK), section 11, <<http://www.legislation.gov.uk/ukpga/2002/40/section/11>> and accompanying guidelines: Office of Fair Trading United Kingdom, ‘Super-complaints: Guidance for designated consumer bodies’, <http://www.offt.gov.uk/shared_offt/business_leaflets/enterprise_act/oft514.pdf>

³² See *Enterprise Act 2002* (UK), section 11(1), <<http://www.legislation.gov.uk/ukpga/2002/40/section/11>>

³³ *Enterprise Act 2002* (UK) section 11(2), <<http://www.legislation.gov.uk/ukpga/2002/40/section/11>>

³⁴ Competition and Markets Authority UK, ‘What are super-complaints’, 7 May 2015, <<https://www.gov.uk/government/publications/what-are-super-complaints/what-are-super-complaints>>

³⁵ See, HM Treasury and The Rt Hon Sajid Javid MP, ‘Financial services super-complainants confirmed by government’, 19 December 2013, <<https://www.gov.uk/government/news/financial-services-super-complainants-confirmed-by-government>> and Mike George, Professor Cosmo Graham, and Linda Lennard, ‘Complaint handling: Principles and Best Practice’, April 2007, p. 6, <http://webarchive.nationalarchives.gov.uk/20080814090336/http://www.energywatch.org.uk/uploads/Complaint_handling_Principles_and_Best_Practice_April_2007.PDF>

³⁶ Barry Rodger and Angus MacCulloch, *Competition Law and Policy in the EC and the UK* (Routledge and Cavendish, 4th ed, 2008), p. 156.

examining the issue further.

Recommendation 5: That the Commission investigates the merits of a 'super complaints' scheme.