ACCANect 2018

Day 2 Thursday, 13 September 2018

**Session 1, 2 ,3, 4**

**10:20 - 10:30am Q&A for all morning sessions**

TERESA CORBIN: Go that way and grab a seat and if I can get Delia and Nerida and Nadine to come up. I think we've got a couple of roving mics. While they're just grabbing a seat, it actually might be great to just get the ACCAN team to stand up so everybody can see what ACCAN staff we have here. There's Una Director of Policy, Wayne at the back who's our Director of Inclusion. Tanya here who runs our grants program and research. Isabel who's our policy office and TCP code expert and a new member of the team on the accessible Telecoms project. At the very back we've got Melissa who's also just joined the team as the media officer. Richard who's our IT website extraordinaire of graphic design and Gareth who's our senior policy analyst. We also have people out the front as well, but I just really wanted to identify them, so if you want to talk to them about anything to do with ACCAN today, please feel free to approach them and have a word. Surely you've got lots of questions after all of that information and I have to say, I'm very excited about having an all-women panel, especially when we're talking telecommunications. It's very rare. Richard, we need a photo of this. We've got a question from Chris Dodds who's on our board, our deputy chairperson.

>> I represent ACOSS on Telstra's Low Income Measures Assessment Committee. Over the last year, we saw a royal commission into banking competition to provide consumer protection. In fact, the consumer detriment that's being exposed even as we talk here today in the insurance industry follows on in the superannuation and a month ago it was retail banking. The ACCC last year did a major inquiry into electricity and identified a whole lot of failure of competition and light-handed regulation in terms of the energy industry and I say "light-handed regulation" in that while energy is highly regulated if you go through the retail protections every second clause is excluded for market contracts, because competition was going to provide the consumer protection and in fact, the recommendations out of the ACCC report indicate there needs to be much stronger consumer protections. So in that context, what's your response to the direction that the telecommunications industry needs to be going? Given it's got the lightest hand of regulation of all three of those industries.

TERESA CORBIN: Nadine you've got the mic, but feel free to pass it on. It's the hot potato.

NADINE WILLIAMS: So I will start. I think it's a really interesting question. I think that balance between regulation and consumer protection and competition is one that we're facing across a raft of industries as you sort of outline. And I think we're seeing a real shift in the telecommunications industry in terms of the way we regulate which is why I was going to suggest that Nerida talk a little bit about this and it's one of the things we're looking at very closely at as part of the consumer co-regulator environment is still fit for purpose. Whether it's serving consumers or whether there are other ways of doing this. And I think that we probably do need to give careful thought to whether there are core areas which are more better suited to a more traditional sort of direct regulator approach and whether there is it is still suitable for a co-regulator sort of approach. But you're quite right, I think in that balance between regulation and deregulation the pendulum is certainly swinging more towards the regulator side of things in a whole raft of sectors and in the telecommunications sector we need to start thinking about what that means in terms of the way in which we craft our own regulator frameworks. But Nerida, is there something you'd like to add?

NERIDA O'LOUGHLIN: I think it's a really live question. I think that the co-regulator framework I think is working extremely effectively in some areas, particularly around technical and operational codes where it's around how networks work together and really it's about how the industry works together. I think there is certainly a question and it's a question that we asked ourselves in the consumer space. For example, looking at complaints handling it was very obvious that the existing co-regulator framework was not delivering for consumers and hence why the regulator stepped in and that's why we have raised it to a standard. I think it will be very interesting to see how the industry also reacts to that. They've got their TCP code out for consultation and deliberation at the moment so we'd be looking at what's the industry going to put forward in terms of a co-regulator approach. But this is a very complicated sector as financial risen exponentially and quite rightly and I think that draws you into a conversation which will happen through the consumer safeguards review of what's the right regulator framework. Not whether it's co-regulator or self-regulator or full law. What is the right one for delivering consumer outcomes in the telecommunications sector?

TERESA CORBIN: Delia, did you want to say something on that? You also go on financial services, as well.

DELIA RICKARD: I think the increased penalties you've got have been a really important thing. I'm looking forward to seeing you go out there and use them. Ideally you don't have to, but certainly the ACCC we found time and time again you just have to keep doing it. But I think that most sectors really need to take a long look at what's happening with the royal commission and ask themselves are they doing the right thing and how do we need to lift our game? Because I think you're right. It's taken a long time but the pendulum is swinging back towards a much stronger regulator stance and if you want to prevent that, then you really just need to fix the problems and sadly, there is still quite a few out there to be fixed.

TERESA CORBIN: Judi, I think you wanted to comment? You're ready to pass it, okay, let's throw back to the floor. Just next to Tess, is it? If you just introduce yourself. following on from that question in terms of the regulator settings and the powers with regulators and telco sectors. Do you think there's a role for enhanced collective redress in the telecommunications sector? And if we look to financial services, ASIC will soon probably be getting enhanced directions power. It will be able to direct firms to provide redress to consumers, so enhanced remediation schemes and things like that. We've just seen some pretty shocking statistics about the level of complaints and certainly our case workers at consumer action see common problems that affect a lot of people and pursuing individual complaints is always time-consuming and burdensome and inefficient. I'm wondering your thoughts about whether there's a role for better collective redress for consumers.

TERESA CORBIN: Really good question.

NERIDA O'LOUGHLIN: One of the ongoing discussions are systemic complaints, things that are emerging either about one company with a huge amount of complaints or indeed and across the industry where the TIO was observing things going wrong and I think that comes a little to your point about how do we feed through that data and information to the regulator, so the regulator can look at it and say "Is there a systemic issue here? " So we're doing quite a lot of work on that process. I think in terms of powers, the way I approach it is we have a very broad range of powers. As you can see through the process we've done over the last 12 months we've used rule-making powers, we've used record-keeping what we've used them previously and I think that's an important thing for regulators. You've got a whole bunch of powers. You might want to use them differently to how you have before and then at the end of the day if you think something is missing that's when we go to government and ask them. I'm not sure that I've answered your question specifically about collective redress, but I think it's important to know that there's lots of powers and lots of things that can be used. Record keeping rules are a really strong power we've found in getting greater data out of the industry to understand what the real issues are.

>> If we identify a problem that's impacted on a body of consumers in the same way then we'll expect the telco to put it right for all of those consumers. Often the impact is different consumer by consumer. It's not as easy as saying everybody should get a $30 rebate. It depends on the impact on the consumer and some of the enforceable undertaking work that the ACCC has been doing has been part of that, that it hasn't needed any new power.

DELIA RICKARD: There is always the threat of litigation. We've had collective redress with third party billing and through enforceable undertakings where there was the threat of being able to go to court, so quite a lot of money has been going back to consumers.

TERESA CORBIN: We might go a little bit too morning tea. We have suddenly got a couple of questions come up. This is a question for the part of ordinary change and everybody is benefiting. If you read the news submission, in fact, it's gross anticompetitive behaviour. Now if you come down on the gross anticompetitive behaviour, what can you do for platforms outside of Australia. It's really to Delia.

DELIA RICKARD: I guess it was for me. To be completely honest we're working our way through things. When people do business within Australia our legislation covers them if they're transacting here. They are clearly doing business here. We recently had a case where the High Court upheld our jurisdiction where there was no physical presence or agency representation here so we do have powers. What is interesting with some of those players though is both Germany and Spain have put in place initiatives to try and get money back into the hands of media and Google has just cancelled some of its services there. They do have a lot of power, so we're thinking through the smart ways, what the smart solutions are to this.

TERESA CORBIN: It's going to be a watch this space. Let's go to the Kiwi delegation and get a question from across the ditch.

>> I'm Ben from the Commerce Commission in New Zealand. We've got a light touch form of regulation in New Zealand and the Telecommunications Act is being amended and it looks like the commission will receive some powers that allow us to take some of the approaches you guys have undertaken and we experience some of the to the nbn, but similar themes of complaint to our equivalent of the TIO. My question is, do you have any advice to us -all your organisations have achieved a huge amount in the last year or so -do you have any advice specifically with engagement with industry in terms of how you've gone about bringing in some of these approaches and how we might be able to do something similar?

TERESA CORBIN: I can't resist. Fund a consumer organisation.

>> That would be brilliant.

TERESA CORBIN: I know Consumers NZ would love it.

NADINE WILLIAMS: We've been able to look at each element of the system and line up action across all of the regulators. Across the collaborative whole of system approach we've adopted has been useful in this space and particularly when you're working with industry, bringing industry into the conversation, a lot of the things we've done over the last 12 months have been sort of underpinned by very comprehensive conversations either with the wholesaler, with the nbn or the RSPs themselves, the retail service providers. Conversations at a number of different levels about what they could do first to change and improve things in their space before we move to a regulator approach. I guess from my perspective as well, the third thing there is that we've been able to draw on a really good solid body of evidence about what's happening in been able to pull together which really tells you where the interventions are going to have the most effect. Those are very basic things, but our ability to do the work we've done so rapidly and the engagement in particular of the regulators in that space has really been I guess informed by our ability to actually draw on that sort of evidence and data.

NERIDA O'LOUGHLIN: I'd support that. That was incredibly important to have that data, rather than just anecdotal. There was huge amounts of anecdotal, but really getting to the facts so we could look at where regulator intervention could be needed. I'd also say that a little bit of political leadership helped. I was just thinking about it when I was watching everybody, that we did have our minister call together all the regulators, the TIO and the industry, heads of the major companies and NBN Co and indicated a great dissatisfaction with the way things were going. That was great from the regulators' point of view, because it gave us the imprimatur to get on with it. That helped as well, but basing it on research and data is essential. If you want to know more detail you can just turn to the two people sitting behind you, and Paul who's behind them and they can pretty much tell you how we went about things.

JUDI JONES: Just from the complaints perspective, my experience in running schemes here and back in New Zealand is that they work really well when there is a strong and clear regulatory framework. When I first set up the energy complaints scheme in New Zealand and the deregulation almost to the bizarre degree was the situation in the when you were the only person actually calling the experience on the providers from the consumers. That's supported by us having the power to require everyone in the delivery chain to participate in the complaints process. Simply having the power means that it happens without us having to use that power.

DELIA RICKARD: I agree with everything everyone else has said here, but I also think it's important once you have those stronger powers that in the appropriate cases you use them, because if you go for a long period without using them, you'll be ignored.

TERESA CORBIN: I'm really sorry, I know there's a lot of hands that have suddenly gone up, but we're out of time. You do have to do your networking. That's an important part of this conference. Perhaps what might help is if the people from the ACMA can pop their hands up and wave so people can see who you are and the people from the department -over there -and then ACCC and then we've also got the telecommunications industry ombudsman. Is Vicki still here today? Look, if you can thank the panel, but please make an opportunity to go and talk to them in the break, as well. (APPLAUSE)

(Morning tea)