

## Submission

**13 October 2023**

Webform Submission  
[StrategicReview@acc.gov.au](mailto:StrategicReview@acc.gov.au)

### **Re: ACCC 2023 Strategic Review – Compliance and Enforcement Priorities 2023-24**

The Australian Communications Consumer Action Network (**ACCAN**) thanks the Australian Competition and Consumer Commission (**ACCC**) for the opportunity to comment on the ACCC's Compliance and Enforcement Priorities 2023-24 (**the CE priorities**).<sup>1</sup>

ACCAN is the peak body that represents consumers on communications issues including telecommunications, broadband, and emerging new services. ACCAN provides a strong unified voice to industry and government as we work towards communications services that are trusted, inclusive and available for all.

ACCAN supports the ACCC maintaining the following priorities into 2024-2025:

- Scam detection and disruption, including supporting the implementation of the National Anti-Scam Centre.
- Consumer and fair-trading issues relating to manipulative or deceptive advertising and marketing practices in the digital economy.
- Competition and consumer issues arising from the pricing and selling of essential services, with a focus on energy and telecommunications.
- Competition and consumer issues relating to digital platforms.

ACCAN comments on the ACCC's CE priorities that should be extended into 2024-2025 in **Attachment A**. If you have any questions about our submission, please contact [con.gouskos@accan.org.au](mailto:con.gouskos@accan.org.au).

Yours sincerely,

Con Gouskos

Policy Officer

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<sup>1</sup> ACCC 2023. *2023 Strategic Review - Stakeholder Survey*. Available at: <https://consultation.accc.gov.au/accc/2023-strategic-review-stakeholder-survey/>.

**Attachment A: Further comments on the ACCC's priorities.**

**Competition and consumer issues arising from the pricing and selling of essential services, with a focus on energy and telecommunications.**

ACCAN supports the ACCC's inclusion of competition and consumer issues from the pricing and selling of telecommunications services as a 2023-24 priority and ACCAN considers that this priority should be maintained for the 2024-25 period.

ACCAN encourages the ACCC to place a specific focus on misleading and deceptive conduct for regional, rural and remote consumers. ACCAN has received several reports concerning confusing, or potentially misleading information being provided to regional, rural and remote consumers by various service providers, including with respect to Universal Service Obligation (USO) landline and alternative services. Noting the criticality of communication services for regional, rural and remote consumers, we consider that this should be an enforcement focus within the telecommunications priority.

ACCAN encourages the ACCC to place a focus on the mis-selling of telecommunications products and services, noting the significant financial harm experienced by consumers mis-sold telecommunications devices and services.<sup>2</sup> ACCAN continues to receive reports of mis-selling from our members and stakeholders.

ACCAN would like to highlight that limited payment options for telecommunications consumers present opportunities for consumer harm and may represent unfair contract terms. As the telecommunications market has expanded and become more competitive, it is antithetical that consumers are presented with increasingly limited fee-free payment options. ACCAN research has identified that some of the payment options that are offered by telecommunications providers to their customers are not suitable for people in vulnerable circumstances.<sup>3</sup>

Competition and consumer issues arising from the pricing and selling of telecommunications must account for the upcoming period of dramatic change in wholesale voice and internet services. NBN Co is currently revising its Special Access Undertaking (SAU) which will begin a major transformation in the pricing of wholesale broadband across the country, requiring effective economic regulation to ensure operational efficiency that meets the long term interests of end users.<sup>4</sup> During this period the broader telecommunications space will incorporate enormous change as 5G mobile is taken up by consumers and Low Earth Orbit Satellite (LEO Sat) services become more widely available to consumers. ACCAN supports the ACCC's ongoing role in the regulation of these essential services and promoting a competitive communications market through its compliance activities.

**Scam detection and disruption, supporting the implementation of the National Anti-Scam Centre.**

ACCAN encourages the ACCC to continue its work in combatting scams. ACCAN supports to National Anti-Scam Centre as a major step in combatting scams in Australia.

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<sup>2</sup> ACCAN. 2023. *TCP Code Discussion Paper*, p.7. Available at: <https://accan.org.au/accans-work/submissions/2147-tcp-code-discussion-paper-2023>.

<sup>3</sup> ACCAN. 2023. *Direct Debit in Telecommunications*. Available at: <https://accan.org.au/accans-work/research/2121-direct-debit-in-telecommunications>.

<sup>4</sup> ACCAN 2023. *ACCC Consultation for the NBN Special Access Undertaking: August Variation*. Available at: <https://accan.org.au/accans-work/submissions/2238-nbn-sau-august-variation>.

According to the ACCC, Australians reported losing \$3.1 Billion to scams in 2022, 80% than the year before.<sup>5</sup> According to Scamwatch, in 2022 phones, social networking, email, internet, mobile applications and text message remained key technologies for scammers to target their victims.<sup>6</sup>

Preventing harm from scams will require a myriad of approaches but stopping scammers from contacting their victims should be paramount. Communications consumers are regularly contacted by scammers via phones and text, undermining their confidence to use an essential service.

The incoming SMS sender ID register will be an important step to help stop texts and regulatory agencies should encourage prompt development and introduction to reduce harm from scams texts as soon as possible. Scams should remain a priority for the ACCC into 2024-2025.

### **Consumer and fair-trading issues relating to manipulative or deceptive advertising and marketing practices in the digital economy.**

As the digital economy grows, it is more important than ever that consumers receive fair treatment to express their choices. The ACCC has previously recommended the introduction of an unfair trading practices prohibition into the Australian Consumer Law.

According to the ACCC, unfair trading practices is conduct that is:

- Harmful but does not reach the legal threshold for unconscionable conduct.
- Not misleading or deceptive but distorts consumer choice by creating confusion or hiding or omitting relevant information.
- Not captured by the unfair contract term provisions as harmful terms in non-standard form contracts or unfair conduct engaged in pursuant to a contract term that is, on the face of it, a reasonable contract term.<sup>7</sup>

ACCAN supports an economy-wide prohibition on unfair trading practices to curtail the harms from deceptive digital design.<sup>8</sup> Deceptive digital design should remain a priority for the ACCC in 2024-2025.

### **Competition and consumer issues relating to digital platforms.**

Digital platforms are used by almost all Australians. The ACCC's September 2022 Digital Platforms Services Inquiry Report on Regulatory Reform made a range of recommendations to avoid consumer and competition harms.<sup>9</sup> Many of the regulatory reforms recommended by the ACCC are still outstanding, including stronger consumer protections and targeted competition measures for large digital platforms.

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<sup>5</sup> ACCC 2023. *National Anti-Scam Centre*. Available at: <https://www.accc.gov.au/national-anti-scam-centre>.

<sup>6</sup> Scamwatch 2023. *Scam statistics*. Available at: <https://www.scamwatch.gov.au/research-and-resources/scam-statistics?scamid=all&date=2022>.

<sup>7</sup> ACCC 2023. *ACCC welcomes consultation on possible unfair trading practices regulatory reforms*. Available at: <https://www.accc.gov.au/media-release/accc-welcomes-consultation-on-possible-unfair-trading-practices-regulatory-reforms>.

<sup>8</sup> For example, option four in the current unfair trading practices consultation. See: The Treasury 2023, p.27. *Unfair trading practices - Consultation Regulation Impact Statement*. Available at: <https://treasury.gov.au/consultation/c2023-430458>.

<sup>9</sup> ACCC 2022. *September 2022 interim report*. Available at: <https://www.accc.gov.au/inquiries-and-consultations/digital-platform-services-inquiry-2020-25/september-2022-interim-report>

ACCAN notes the delayed action on the establishment of an independent external ombudsman scheme. The scheme was suggested in the Digital Platforms Inquiry final report in 2019.<sup>10</sup> An independent external ombuds scheme should be a priority to provide consumers with redress.<sup>11</sup>

Another area of attention relating to digital platforms is the growing Internet of Things (IoT). Publicly available IoT devices present a range of risks around cybersecurity and privacy.<sup>12</sup> Australia's current voluntary, Code-based IoT regulatory framework offers consumers minimal protection, and there are limited market-based incentives for Australian IoT device manufacturers to fill this void.<sup>13</sup>

In ACCAN's view the further development of regulatory reforms identified in the September 2022 Digital Platforms Services Inquiry Report, in addition to emerging harms including domestic and family violence, merits keeping digital platforms as an ACCC priority into 2024-2025.

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*The Australian Communications Consumer Action Network (ACCAN) is Australia's peak communication consumer organisation. The operation of ACCAN is made possible by funding provided by the Commonwealth of Australia under section 593 of the Telecommunications Act 1997. This funding is recovered from charges on telecommunications carriers. ACCAN is committed to reconciliation that acknowledges Australia's past and values the unique culture and heritage of Aboriginal and Torres Strait Islander peoples. [Read our RAP](#)*

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<sup>10</sup> ACCC 2019. *Digital platforms inquiry - final report*. Available at: <https://www.accc.gov.au/about-us/publications/digital-platforms-inquiry-final-report>.

<sup>11</sup> ACCAN 2023. *Influence of International Digital Platforms*. Available at: <https://accan.org.au/accans-work/submissions/2074-influence-of-international-digital-platforms>.

<sup>12</sup> Sivaraman, V., Habibi Gharakheili, H. & Fernandes, C. 2017. *Inside job: Security and privacy threats for smart-home IoT devices*. Available at: <https://accan.org.au/grants/grants-projects/1442-inside-job>.

<sup>13</sup> ACCAN 2021. *Internet of Things Position Statement*. Available at: [https://accan.org.au/files/Policy%20Positions/PP%202021/Internet%20of%20Things%20Position%20Statement%20short\\_FINAL.pdf](https://accan.org.au/files/Policy%20Positions/PP%202021/Internet%20of%20Things%20Position%20Statement%20short_FINAL.pdf).