# *Performance Benchmarking of Australian Business Regulation study*

## 1. Introduction

Communications Alliance is pleased to have this opportunity to make a submission to the Performance Benchmarking of Australian Business Regulation study. This submission follows on from the original submission to the Regulation Taskforce made by the Australian Communications Industry Forum (ACIF) in November 2005. Since that study took place ACIF merged with the Service Providers Association Inc. to form Communications Alliance Ltd.

Communications Alliance was formed to provide a unified voice for the Australian communications industry and to lead it into the next generation of converging networks, technologies and services. Its membership is drawn from a wide cross-section of the communications industry, including service providers, vendors, consultants and suppliers as well as business and consumer groups.

The Productivity Commission Issues Paper seeks input to assist the Commission in identifying the best way forward in developing performance indicators and reporting frameworks across all levels of government to assist COAG to implement its in-principle decision to adopt a common framework for benchmarking, measuring and reporting on the regulatory burden on business.

This submission does not attempt to address the specific questions posed throughout the Issues Paper. Rather, it draws together the matters raised in the individual submissions submitted by members of the communications industry to the Regulatory Taskforce.

By identifying matters of common concern in the telecommunications industry, themes emerge which in our view will assist the Commission in addressing particular questions relating to the areas of regulation affecting business which should be benchmarked, the use of direct/indirect measures, the types of appropriate indicators, costs of compliance, and the priorities of the telecommunications sector.

This is intended to be a preliminary submission. With the broader representative membership of Communications Alliance since the Regulatory Taskforce initiative, there may be other issues and input raised by members which can be provided to the Commission.

## 2. Self-regulatory landscape

The regulatory landscape of the Australian telecommunications industry is not straightforward. The industry is primarily regulated by legislation set out in the *Telecommunications Act 1997* and the *Telecommunications (Consumer Protection and Service Standards) Act 1999.* ; in addition to which, service providers are bound by elements of other legislation such as the Trade Practices 1974, unfair trading legislation of the States and Territories and the Privacy Act. This level of regulation is not only burdensome but also confusing and in many instances duplicative; all of which are factors identified in the submissions to the Regulation Taskforce.

The telecommunications industry is described as a self-regulatory industry; in practice however, it is probably closer to being a quasi-regulatory or co-regulatory industry. This factor leads to complaints from service providers that the clarity of regulatory requirements can be blurred by the fact that there are too many rule makers involved and the service providers have to satisfy all of them in order to remain compliant.

## 3. Greater emphasis on self-regulation

Section 4 of the *Telecommunications Act* provides that the policy intent is that the telecommunications industry be regulated in a way that promotes the greatest practicable use of industry self-regulation' and 'does not impose undue financial and administrative burdens on participants in the industry.

A theme from the submissions made to the Regulation Taskforce is that it is questionable that current regulatory requirements are facilitating the achievement of the policy objective.

All service providers that made submissions to the Regulation Taskforce commented on the need for the telecommunications industry to be given greater licence to regulate itself with less intervention from the Australian Communications and Media Authority. The consensus opinion is that the current system relates more to a state of market failure, where punitive regulatory requirements are implemented to ensure that industry participants improve performance and standards to consumers. In reality, the current telecommunications industry has evolved from being monopolistic to the competitive environment achieved since the market was opened up. The industry however, does not feel that the self-regulation regime has been afforded the efficacy it deserves and a move towards true self-regulation would be welcomed.

## 4. Cost of compliance and duplication of reporting requirements

The self-regulatory framework dates back to 1997 and is now well established. Clearly, it is in the interest of industry participants to be involved in the work developing industry-developed outcomes – for example, the work which is led by Communications Alliance - but participation carries a high level of cost for the organisations concerned. The actual cost to industry is unknown, but has been estimated at around $2 million[1] for the development of an industry code.

All service providers that made submissions to the Regulation Taskforce commented on the high cost of compliance with all relevant regulations. The costs associated with compliance relate to staffing numbers, costs and the number of hours involved in compliance related tasks.

Maintaining full compliance is a labour intensive process which, for larger service providers, may require a team of dedicated staff who spend hundreds of hours per year collecting and preparing the data and reports for various regulatory bodies.

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[1] ACIF Submission to Regulation Taskforce, November 2005, page 11

There is a heavy burden on industry from the current reporting and regulatory requirements in terms of the amount and the frequency with which information has to be supplied. The issue of cost of compliance has been found to be further compounded by the existence of duplicated compliance regulations and reporting requirements. This occurs when legislation in the Telecommunications Act overlaps with other legislation such as the *Trade Practices Act* and requires that service providers present the same, or very similar, information to two regulatory bodies.

Of particular concern is the existence of specific ACIF Codes for areas such as Credit Management and Complaint Handling and the need for service providers to comply with the *Trade Practices Act* for these areas.

Again, the industry view is that an increase in self-regulatory functions would reduce the incidence, cost and burden of regulation.

## 5. Conclusion

As part of this exercise the Communications Alliance has compiled a list of issues identified in the submissions made by service providers to the Regulation Taskforce. When an issue was identified by one service provider, it was cross-referenced with others to develop an overall picture of concerns within the industry. The list can be seen in Attachment 1.

This picture will hopefully provide a starting point for the Commission in its study of appropriate benchmarks and we look forward to continuing involvement.

**Attachment 1: Commons issues surrounding regulatory burden**

| | Issue Description | Reference in Regulation Taskforce Submissions | | | |
| --- | --- | --- | --- | --- | --- |
| | | Comms Alliance | Optus | Telstra | Vodafone |
| 1 | Section 105 reporting | | | ✓ p. 40 | ✓ p.16 |
| 2 | Sunsetting (phase out regulations which are no longer necessary) | | | ✓ p. 29 | ✓ p.15 |
| 3 | Duplication of / unnecessary regulatory requirements | ✓ p.10 | ✓ p.4 | ✓ p.36 | ✓ p.18 |
| 4 | Telco specific codes for: Complaint Handling – unnecessary / duplicative | | ✓ p.4 | | |
| 5 | Telco specific codes for: Credit Management – unnecessary / duplicative | | ✓ p.4 | ✓ p.35 | |
| 6 | Labour costs associated with the development of codes and standards | ✓ p.11 | | ✓ p.14 | ✓ p.3-4 |
| 7 | Number of staff required to ensure full compliance with regulatory requirements | | | ✓ p.14 | ✓ p.3 |
| 8 | Mixing social policy objectives into competition policy creates confusion | | | ✓ p.6 | |
| 9 | Greater emphasis on self-regulation required | ✓ p.12-13 | ✓ p.3 | ✓ p.26-27 | ✓ p.10 |
| 10 | Uneven framework favours smaller players | | ✓ p.5 | ✓ p.20 | |
| 11 | Involvement of the ACMA and TIO in code production blurs lines of authority | | ✓ p.3 | | |