



Optus Network Outage Inquiry

**ACCC submission to Senate Environment and
Communications References Committee**

17 November 2023

Introduction

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to make a submission to the Senate Environment and Communications References Committee's 'Optus Network Outage Inquiry'.

The ACCC is an independent Commonwealth statutory agency that promotes competition, fair trading and product safety for the benefit of consumers, businesses and the Australian community. The primary responsibilities of the ACCC are to enforce compliance with the competition, consumer protection, fair trading and product safety provisions of the *Competition and Consumer Act 2010 (Cth)* (CCA), regulate national infrastructure and undertake market studies.

The ACCC is responsible for economic regulation of telecommunications services at the wholesale level. We are also responsible for economy-wide competition law, and the Australian Consumer Law in conjunction with the state and territory fair trading and consumer affairs authorities.

We understand that Optus' customers were impacted by a national whole-of-network outage that commenced at roughly 4am on 8 November 2023 and was not fully rectified until 6pm that day (the outage). The ACCC recognises that the outage significantly impacted Optus customers and individuals and businesses wishing to engage with Optus customers.

This submission outlines information on the ACCC's roles, functions and recent relevant activities for the Committee's consideration and information:

- the consumer protections afforded by the Australian Consumer Law;
- the role of the ACCC in telecommunications-specific matters; and
- findings regarding the feasibility of temporary mobile roaming in the ACCC's recent Regional Mobile Infrastructure Inquiry.

Consumer protections under the Australian Consumer Law

The general protections contained in the Australian Consumer Law (ACL) apply to retail telecommunications. Under the ACL, products and services supplied to consumers automatically come with consumer guarantees, which include that products must be of acceptable quality and fit for a particular purpose; and that services are supplied with due care and skill, and that the services provided are fit for any stated purpose.

The consumer guarantee provisions in the ACL also entitle consumers to receive a remedy where there has been a failure to meet these consumer guarantees.

Depending on the nature of the problem, remedies can include a refund, a repair or replacement, providing the service again free of charge in a way that meets the consumer guarantees, and compensation for reasonably foreseeable loss or damage caused by the failure to meet the consumer guarantee.

The consumer guarantee provisions apply to services that a consumer ordinarily acquires for domestic, household or personal use. The provision of a telecommunications service to a small business will in some circumstances be covered by the consumer guarantee provisions.

If it is determined that Optus failed to provide its services with due care and skill, small businesses that have suffered loss or damage that was reasonably foreseeable due to the failure may be entitled to compensation. The potential compensation will vary based on the

specific circumstances of each particular case. Only a court or tribunal can make a determination as to whether there was a failure by Optus to provide its services with due care and skill, and as to what compensation small businesses may be entitled to in any particular case.

Accordingly, the ACCC notes the announcement of specialised inquiries into the outage, including those announced by Optus, the Australian Communications and Media Authority, the Department of Infrastructure, Transport, Regional Development, Communications and the Arts, and the Committee's own inquiry. The ACCC will follow these inquiries and closely consider any outcomes to determine if they reveal conduct to be investigated further under the Australian Consumer Law.

The role of the ACCC in telecommunications

The ACCC has a number of specific roles in telecommunications, as required by the CCA and the *Telecommunications Act 1997*.

Specifically, the ACCC has powers in relation to anti-competitive conduct in the telecommunications markets, and in making record keeping rules under Part XIB of the CCA. It also has powers to regulate wholesale telecommunications services for the long-term interests of end-users pursuant to the access regime under Part XIC of the CCA.

In addition, the ACCC has powers to make codes in relation to access to telecommunications facilities under Schedule 1 and Part 34B of the *Telecommunications Act 1992* and arbitrate access disputes.

We do not consider that the outage raises issues under Part XIB/XIC of the CCA or the facilities access regime under the *Telecommunications Act 1992*.

Recent ACCC findings regarding temporary mobile roaming during emergencies

From time to time, the ACCC may also undertake specific inquiries relating to telecommunications services, including when directed by the Government to do so. For instance, the ACCC conducted the Regional Mobile Infrastructure Inquiry during 2022–23, in response to a Ministerial direction.¹

The Regional Mobile Infrastructure Inquiry examined, among other things, the feasibility of temporary mobile roaming during natural disasters and emergencies. The ACCC's inquiry found that temporary mobile roaming is technically feasible although there are questions of technical complexity and risk, including congestion, which need to be managed. There are also policy and commercial factors that will determine how temporary mobile roaming is practically implemented.²

Relevantly, the ACCC's examination of temporary mobile roaming did not consider the feasibility of this solution outside natural disasters and emergencies, such as in response to a network outage suffered by a mobile carrier.

Yours sincerely

Gina Cass-Gottlieb
Chair

¹ [Telecommunications \(ACCC Inquiry into Access to Regional Towers and Associated Infrastructure\) Direction 2022](#)

² ACCC, [Regional mobile infrastructure inquiry: Final report](#), July 2023, pp. 82-95.