



Australian
Competition &
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Commission

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Dr Heather Smith PSM
Secretary
Department of Communications and the Arts
38 Sydney Ave
FORREST ACT 2603

Dear Dr Smith

Heather

Re: Review of the Australian Communications Media Authority Draft Report

Thank you for the opportunity to comment on the draft report of the review of the Australian Communications and Media Authority (ACMA).

We have limited our comments to the draft proposals that have a direct relevance to the Australian Competition and Consumer Commission (ACCC), or where the ACCC's managerial arrangements are mentioned in the report.

We note and support the draft proposal that an annual Statement of Expectations be provided to the ACCC specifically in relation to its telecommunications functions. The ACCC's role in administering Parts XIB and XIC of the *Competition and Consumer Act 2010* falls within the responsibility of the Minister and Department of Communications and the Arts, whereas other ACCC roles largely fall within the Treasury portfolio. We agree that there are benefits to the Minister providing the ACCC with an annual Statement of Expectations with respect to its particular functions under Parts XIB and XIC. The ACCC is currently given a Statement of Expectations that encompasses its functions within the Treasury portfolio, and we would expect that the new Statement would be compatible with the expectations outlined in that document. We also agree with the draft proposal that the ACCC respond by publishing a Statement of Intent.

We agree that reinvigorating and strengthening cross-consultation arrangements between the ACMA and ACCC would benefit the decision-making of both agencies. The draft proposal for strengthening cross-appointments between the ACMA and the ACCC may be one means to achieve this (and we welcome the suggestion that associate membership be moved from the chairs of the organisations to the Commissioner/Member level). There are other cross-consultation models that would also improve engagement between the agencies

whilst maintaining flexibility and responsiveness (for instance, a memorandum of understanding). We would welcome further consultation with the ACCC and the ACMA on the implementation of this proposal to ensure that it supports effective engagement between the organisations.

Whilst we have reservations with some of the analysis in the report and the reliance upon findings by other review processes (in particular we think that the general economic regulator is ideally situated for when there are changes in market conditions, as such changes occur across many sectors of the economy), we support the draft proposal that the current institutional arrangements for economic regulation of the communications sector be retained. The ACCC has previously expressed support and reasons for maintaining the existing institutional arrangements, both for communications and for economy-wide competition and economic regulatory functions.¹

We note the draft proposal that the Department further investigate the potential to improve the regulatory framework for telecommunications consumer protections and would be pleased to participate in any such review.

Finally, the report notes that an increased number of full-time members for the ACMA may mean that existing management structures could be reviewed. As the report notes, the ACCC has successfully employed a model with full-time membership. Commissioners perform the formal decision-making functions of the ACCC rather than the day-to-day management of the organisation. The full Commission meets weekly, while sub-committees on particular ACCC functions (for instance, mergers and infrastructure regulation) meet weekly or fortnightly. Commissioners are therefore involved in formal decision-making on a daily basis, and full-time membership is a critical support to this arrangement.

Day-to-day operational management of the ACCC is not undertaken by Commissioners. Management decision-making is primarily undertaken by the Executive Management Board, consisting of the Chief Operating Officer and seven Executive General Managers. The ACCC Chair also sits on this Board, though it is chaired by the Chief Operating Officer. Commissioners meet monthly as the ACCC Corporate Governance Board, which provides a similar oversight function to that of the board of a publicly-listed company.

Yours sincerely



Rod Sims
Chairman

¹ See for instance, ACCC submission to Competition Policy Review (24 June 2014), available via <https://www.accc.gov.au/about-us/consultations-submissions/accc-submissions>.