



Australian
Competition &
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Commission

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Senator the Hon. Mitch Fifield
Minister for Communications and the Arts
Parliament House
CANBERRA ACT 2600

Dear Minister

Submission to the review of the Part XIB telecommunications anti-competitive conduct provisions

We refer to the Department of Communications and the Arts' (DoCA) discussion paper on the *Review of the Part XIB telecommunications anti-competitive conduct provisions* of the *Competition & Consumer Act 2010* (CCA).¹ For the reasons set out below, if section 46 of the CCA is amended as proposed, the Australian Competition and Consumer Commission (ACCC) would support repealing the telecommunications specific anti-competitive conduct provisions in Part XIB of the CCA.

The ACCC is an independent statutory authority with responsibility for administering the CCA, including Part XIB of the CCA, and we welcome the opportunity to provide a submission to this consultation.

As you are aware, Part XIB was introduced in 1997 to facilitate the transition to open competition in the telecommunications sector given the sector's unique characteristics such as high levels of vertical and horizontal integration. Since this time, the telecommunications sector has experienced significant competitive developments, and is now undergoing structural reform pursuant to the rollout of the wholesale-only National Broadband Network. In addition, in 2010 the ACCC's powers under the Part XIB access regime were strengthened, enabling the ACCC to set terms and conditions of access and issue binding rules of conduct to address specific competition issues.

While market power concerns still remain in the telecommunications sector, the ACCC considers that the proposed amendments to section 46 are likely to be an effective tool for dealing with any associated competition concerns.

The ACCC notes that this review is being undertaken in the context of the broader review of Australia's competition law framework arising from the Harper Competition Policy Review (Harper Review), and specifically, the Government's proposal to amend section 46 of the CCA (the misuse of market power provisions) in line with the Harper Review's recommendations. The ACCC continues to strongly support the proposed amendments to section 46 of the CCA, save for the inclusion of mandatory factors.²

¹ <https://www.communications.gov.au/have-your-say/consultation-telecommunications-anti-competitive-conduct-laws>

² The Australian Competition & Consumer Commission (ACCC) has made a submission to the Government's Competition Law Amendments consultation which will be published on the Treasury's website at https://consult.treasury.gov.au/market-and-competition-policy-division/ed_competition_law_amendments

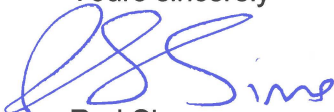
The ACCC considers that if section 46 is amended as proposed, the general anti-competitive conduct provisions in Part IV of the CCA could be effectively relied upon to address the full range of potential anti-competitive conduct in the telecommunications sector. Consequently, the competition rule in Division 2 of Part XIB would become largely redundant and the ongoing need for a telecommunications-specific anti-competitive conduct regime would be significantly reduced.

In its submission to the Harper Review, the ACCC noted that competition law should apply equally to all sectors of the Australian economy, other than where a more limited application has been found to provide a net benefit to the public.³ Following the introduction of the proposed amendments to section 46, removing the sector-specific anti-competitive conduct provisions in Part XIB would assist in promoting the principle of universality of competition law across the economy and remove unnecessary overlap between Part IV and Part XIB. The ACCC would therefore support repealing the telecommunications-specific anti-competitive conduct provisions in Part XIB if the proposed changes to section 46 are made.

If Divisions 2 and 3 of Part XIB were repealed, consequent amendments would be required to various sections of Part XIB to both streamline the Part and to ensure the on-going operation of provisions that are required for the ACCC to fulfil its other regulatory functions; for example, administering the access regime in Part XIC of the CCA. The ACCC would be happy to provide a further submission on this point in due course.

Please contact me or Richard Home at richard.home@accc.gov.au should you wish to discuss any aspect of this submission further.

Yours sincerely



Rod Sims
Chairman

³ Australian Competition & Consumer Commission, *Submission to the Competition Policy Review*, 25 June 2014, p.74 (<http://competitionpolicyreview.gov.au/files/2014/06/ACCC.pdf>)