Competition Policy Review

AIIA response to the Review Issues Paper

June 2014

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About AIIA

The Australian Information Industry Association (AIIA) is the peak national body representing Australia's information technology and communications (ICT) industry. Since establishing 35 years ago, the AIIA has pursued activities aimed to stimulate and grow the ICT industry, to create a favourable business environment for our members and to contribute to the economic imperatives of our nation. *Our goal is to "create a world class information, communications and technology industry delivering productivity, innovation and leadership for Australia".*

We represent over 400 member organisations nationally including hardware, software, telecommunications, ICT service and professional services companies. Our membership includes global brands such as Apple, EMC, Google, HP, IBM, Intel, Microsoft, PWC, Deloitte, and Oracle; international companies including Telstra; national companies including Data#3, SMS Management and Technology, Technology One and Oakton Limited; and a large number of ICT SME's.

In March 2014 AIIA launched **SmartICT 2014**, which represents the current policy and advocacy priorities for AIIA and its members. It articulates AIIA's vision for a prosperous Australia, the critical role of digital technology and the ICT industry in achieving that vision, identifies current and potential impediments and suggests priority areas for action – for Government and for industry.

This submission

The AIIA appreciates the opportunity to provide this submission to the Panel conducting the Competition Policy Review. We strongly support the objective of the review to:

> *'identify competition-enhancing microeconomic reforms to drive ongoing productivity growth and improvements in the living standards of all Australians'*[1]

This submission provides the Panel with our views on:

- The importance of information technology in enhancing competition and productivity growth in the Australian economy - and the transformative changes that are occurring in markets as a result of adoption of ICT.
- The continuing need for a principles based approach to competition policy, which supports innovation, open markets and transparency.
- Specific issues, within the review terms of reference, which are of interest to our members.

[1] Competition Policy Review, *Issues Paper*, 14 April 2014, p1

1. Information technology in Australia's economy

Information technology is having a transformative impact on our economy

The expansion and adoption of information technology across our economy is pervasive. As a society, and an economy, we are connected like never before. These are transformational changes.

It is estimated that, by 2016, the Internet economy across G20 countries will be worth some $4.2 trillion[2]. If it were a national economy, the Internet would rank as one of the world's top five economies behind the US, China, Japan and India and ahead of Germany. It accounts for approximately 20 per cent of growth in developed countries and for every job that is eliminated through related productivity gains, some 2.6 new jobs are created.[3] In Australia, the direct economic contribution of the Internet was estimated to be $50 billion in 2011, with a predicted increase to $70 billion by 2016.[4]

High-speed communication networks have become the indispensable infrastructure upon which modern societies and economies depend. The sum of pervasive broadband, ubiquitous connectivity, cloud computing, social media, increasing volumes of data coupled with high powered analytics, mobility and the emergence of 'the Internet of Things' have coalesced to transform how we live, work, learn, communicate, produce, trade, provide services and govern. No aspect of how we live today is untouched by digital technologies.

In Australia, we have experienced substantial growth on the use the Internet, coupled with mobile technology, to connect individuals with each other, and with business and government. This is transforming our economy in a myriad of ways. By June 2013:

- 7.5 million Australian were using their mobile phone to connect to the Internet - an increase of 33 per cent from June 2012, and a 510 per cent growth since 2008.[5] There are now 1.3 mobile subscriptions per person in Australia.
- 10.8 million people went online more than once a day — a seven per cent increase compared to the same time in 2012 and a 72 per cent increase from June 2008.
- Internet users also performed more activities online, with 43 per cent undertaking five or more separate online activities during the month of June 2013, up from 39 per cent during June 2012 and only 12 per cent during June 2008.[6]

Further, 676,898 terabytes worth of data was downloaded during the June quarter 2013, a 59 per cent increase on the June quarter of 2012.[7]

This transformation enhances competition

These transformative technologies have had a significant, and 'disruptive', impact on our economy. The size and number of suppliers in markets for goods and services, how consumers and business communicate and interact, cost structures within markets and the availability of information to support market decisions - all have been transformed to some degree.

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2 Boston Consulting Group, (2014) The Connected World, Greasing the Wheels of the Internet Economy, p6
3 Business Council of Australia, (2013) Action Plan for Enduring Prosperity, p33
4 Deloitte Access Economics (2011), Connected Continent: How the Internet is transforming the Australian Economy, August 2011, p7
5 Australian Communications and Media Authority (2013), *Communications Report 2012-13*, p3.
6 ibid,
7 ibid,

Further, these are all changes which, collectively, are working to enhance competition in markets across our economy. The associated benefits are substantial; more efficient, competitive, markets lower costs to business and consumers and promote allocative efficiency across the economy. These efficiency gains are akin to those sought through the wide ranging microeconomic reforms of the 1980s and 1990s.

Technology enhances competition, and overall market efficiency, by mitigating the impact of market failures – namely barriers to entry and information asymmetry (as it relates to consumers).

1. Reducing cost barriers to entry for business

The pervasive nature of the Internet has significantly reduced the costs of new entrants to many markets across our economy. Physical location is no longer the critical factor to accessing costumers that it once was. The growth in online and mobile commerce, through smartphones and tablets, enables business to access consumers using a range of new methods, including via cloud based services, websites, social media, and intermediaries (such as eBay). The lower cost of establishing a new business using an online presence opens up markets to many more potential suppliers, and, therefore, enhances competitive pressures within these markets.

Information technology also reduces the need for 'scale' to enter and trade within particular markets, as it allows smaller business to commence trading at a lower levels of capital investment. Cloud technologies are reducing the upfront infrastructure costs for new business, as are 'as-a-service' models which reduce the necessary capital investment for new businesses. These developments also allow business to be more agile and grow without capacity constraints, as they are not tied down by the capacity of their initial capital investment. For example, the rapid growth of cloud accounting services, such as those provided by Xero, demonstrate how the integration of mobile technology and cloud can provide a service for small business which has minimal up front investment cost, while providing services which small business need.

2. Improving transparency for consumers – empowering consumer choice

Information technologies - the Internet, mobile technologies and open data - are powerful tools in addressing information asymmetries in markets. In practice, information asymmetries in markets often occur because of the costs associated with accessing information (search costs), rather than direct restrictions on access to information.

Information technology is helping to mitigate information asymmetry in markets by reducing the costs for consumers to access information about products or services they are considering purchasing.

- Consumers are increasingly using the Internet to research products and services prior purchase – for both online and offline purchasing. Recent research into consumer behaviours found that 80 per cent of consumers use their smartphones in store, to compare products and prices.[8] This research is often on manufacturers websites, but can also be accessed on websites which consolidate information on similar products or services (which further reduces costs for consumers, such as when they wish to compare product specifications).
- Product review websites provide assessment and analysis of product performance, or information on user experience with the product or service. This information is valuable for consumers who wish to have greater certainty around the products they are considering purchasing.
- Price monitoring and comparison sites allow consumers to monitor prices over time and also provide useful product comparison tools to support consumer decision making.

[8] Google Shopper Marketing Agency Council (2013), *How in-store shoppers are using mobile devices*, p3.

Consumers have never before had such an array of information with which to base their purchasing decisions. Further, these information channels allow new entrants, with new product offerings or lower prices, direct access to consumers. Deloitte Access Economics estimates that the ability to search for information more efficiently on the internet is worth the equivalent of $500 per person per year, or $7 billion in total nationally.[9]

In summary, these trends highlight the role of technology in improving market efficiency and competition. These trends are, however, considered to be ‘disruptive’ because they change the nature of markets and can be difficult to navigate for incumbents, and for some segments of the population, who do not adapt well to change. This issue is considered further in Section 2 of this submission.

Technology also drives productivity growth and economic efficiency

The Australian economy is entering a critical phase, with a number of ‘disruptive’ trends and pressures which provide both opportunities and risks for Australian business. Information technology can, when effectively leveraged by industry and government, support our response to these pressures, and be harnessed to drive a new period of productivity growth.

The resources boom has had a significant impact on the structure of the Australian economy. The rapid increase in global demand for commodities, and the corresponding strong growth in commodity prices, placed the Australian resources sector in an enviable position to benefit. Growth in exports, both in volume and value, led to historically high terms of trade and exchange rate.

A critical outcome of the resources boom has been the impact on productivity. Australia’s productivity growth - the envy of the developed world in the 1990s - has slowed dramatically in the last decade (primarily due to significant falls in mining and agriculture productivity). While increasing terms of trade has, so far, sustained incomes, despite slower productivity growth, this is not sustainable. In the long run, productivity growth is essential. These underlying structural challenges are emphasized when considering these key trends:

- Between 2005 and 2012, 58 per cent of our income growth has been the result of ‘boom’ factors, rather than productivity growth.
- 35 per cent of income growth has come from resources sector, as has 99 per cent of productivity decline.
- Productivity declined 0.7 per cent annually between 2005 and 2012, compared with growth of 2.4 per cent between 1993 and 1999.[10]

Productivity growth is the key driver of long term increases in living standards. Recovery of productivity growth in the post-resource boom period is essential for the Australian economy. While these trends make for sombre reading, there are good reasons to think positively about the capacity of information technology to drive productivity growth in the future.

- Adoption of new technology has delivered approximately $27 billion in productivity increases to businesses and government in the form of improvements to the way they operate and deliver services. These benefits also flow through to consumers through lower prices and the introduction of new products.[11]

- Deloitte Access Economics estimates the equivalent of $53 billion in benefits to households in the form of added convenience (e.g. of online banking and bill paying) and access to an increased variety of goods and services and information.[12]

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[9] Deloitte Access Economics (2011), Connected Continent: How the Internet is transforming the Australian Economy, August 2011, p25.
[10] McKinsey Global Institute (2012), Beyond the Boom: Australia’s productivity imperative, August.
[11] Deloitte Access Economics (2011), Connected Continent: How the Internet is transforming the Australian Economy, August 2011, p1.
[12] ibid.

- Recent research conducted by Boston Consulting Group and PwC assessed the potential economic benefit of increasing SME adoption of information technology. It found that, if a proportion of 'technology follower' and 'technology laggard' SMEs increased their information technology adoption, the potential gains were increased gross domestic product (GDP) of nearly $6 billion (or 0.4 per cent), increase real wages by 0.5 per cent and $11 billion higher turnover in the economy. One of the key elements in greater SME adoption of information technology in this analysis is Cloud technology, which, as noted above in this submission, has many applications for SMEs.[13]

The above analysis provides powerful evidence of the potential benefits of greater adoption of information technology. We note the focus in this review on the role of competition policy to remove barriers to productivity growth in our economy. We strongly support these goals, and would emphasise the need to ensure that future policies provide the best settings for innovation and investment in new technology, to ensure that the efficiency and productivity benefits of technology can be maximised. These themes are further discussed in the next section of this submission.

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[13] PwC (2014), *Economic Assessment: SME Tech Adoption – Technical Note*.

2. Competition policy – the way forward

Our current competition policy has delivered considerable benefits

National Competition Policy (NCP) was a landmark reform which delivered substantial benefits to the Australian economy, and society. The Productivity Commission estimated the reforms increased GDP by 2.5 per cent in the period 1995-2005, with further non-quantified gains through improved dynamic efficiency benefits.[14] While not, as yet, quantified on the same basis, the subsequent reforms under the National Reform Agenda are also considered to have delivered further gains across the economy.[15]

It is clear that competition policy, and a microeconomic reform agenda, play an important role in ensuring our economy functions to the maximum benefit of our community. We encourage the Panel to recognise the need to extend this approach to reform into the future. We note the observations within the Issues Paper around a new set of challenges for the economy:

> *There is now a new set of challenges for the economy that a further boost in competition will help Australia to meet. These challenges include, among other things, increasing globalisation, disruptive innovation, demographic changes and the different educational and skill needs of tomorrow's workforce. Increasing globalisation will expose more parts of the economy to international competition, putting pressure on local firms to be more competitive.*[16]

In section 1 of this submission we have set out the key ways in which technology is transforming our economy. These points notwithstanding, our current competition policy framework is fundamentally sound. The key conceptual underpinnings remain relevant, even within the context of the changes we have seen across our economy, and the future challenges. It is critical that this review reaffirm the key competition principles that will support a future approach to competition policy and microeconomic reform.

A principles-based approach is the best way forward

We encourage the Panel in its recommendations to take a 'principles based approach' to competition policy into the future. By this we mean, an approach which is based on a clear set of competition principles, which are underpinned by, and consistent with, the objectives of economic efficiency, productivity growth and higher living standards (consistent with the review objectives).

The benefit of a principles based approach is that it:

- Provides clear guidance for decision makers and regulators
- Provides consistency with our stated objectives as a community
- Reduces the potential for competition policy to be used inappropriately, where market forces may have disadvantaged one party over another, but where the overall outcome is the most beneficial for the community.

The principles adopted, therefore, need to empower decision makers. We support those principles set out in the Review Terms of Reference, as listed below, as being a good starting point for the Review Panel.

> *1.1. no participant in the market should be able to engage in anti-competitive conduct against the public interest within that market and its broader value chain;*

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[14] Productivity Commission 2005, Review of National Competition Policy Reforms, Report no. 33, Canberra, p XVIII.

[15] Productivity Commission 2012, COAG's Regulatory and Competition Reform Agenda: A High Level Assessment of the Gains, Research Report, Canberra.

[16] Competition Policy Review, *Issues Paper*, 14 April 2014, p2.

1.2. productivity boosting microeconomic reform should be identified, centred on the realisation of fair, transparent and open competition that drives productivity, stronger real wage growth and higher standards of living;

1.3. government should not be a substitute for the private sector where markets are, or can, function effectively or where contestability can be realised; and

1.4. the need to be mindful of removing wherever possible, the regulatory burden on business when assessing the costs and benefits of competition regulation.[17]

Competition principles should enhance innovation and investment

Competition principles need to be developed with the desired outcome in mind. Competition is not a means to an end, but rather a means by which our economy can grow and deliver higher living standards across the community. Competition Principles, therefore, should be focused on providing the foundations for the optimum economic conditions to achieve this growth, and removing all unnecessary impediments to growth.

As demonstrated above, productivity gains are already being achieved through rapid adoption of technology, and application of technological solutions across our society. In the future, our competition policy needs to continue to support this innovation and investment in technology, to allow for benefits to be realised by the Australian community.

Innovation and competition are reinforcing. Competitive pressures in markets drive innovation in products and services by businesses seeking to maintain their market share. A principles-based approach to competition policy, where the primary focus is on open, competitive markets, will best foster innovation and drive productivity growth. Further, microeconomic conditions need to foster innovation by removing unnecessary regulatory barriers, which increase the costs associated with research and development.

[17] Competition Policy Review issues paper, p50.

3. Detailed comments on specific completion policy issues

Price discrimination

We note the review issues paper includes reference to price discrimination as an area which the panel will consider, and provides international IT pricing as an example. This issue is of particular interest to our members, and we would like to make specific comments on it in this submission.

The AIIA supports a continuation of the current approach to price discrimination within competition policy, as established by the Hilmer review in 1993. We believe, as supported by Hilmer and subsequent reviews, that price discrimination in markets does not represent a barrier to competition. There are three key points that AIIA would like to make in support of this position.

1. As previous reviews have found, regulation of price discrimination is 'contrary to the objective of economic efficiency' and substantially limits price flexibility, which is at the heart of competition

Price discrimination occurs when like goods or services are provided to different persons at different prices, the difference in price being unrelated to the cost of providing the goods or services. An example includes a discount or concessions given to students or pensioners for the purchase of goods or services.

From the period 1974 until 1995, section 49 of Australia's *Trade Practices Act 1974 (Cth)* prohibited a corporation from discriminating between purchasers of goods of like grade or quality in relation to the prices charged (including via discounts, allowances, rebates or credits).

In 1993, the Hilmer Review, recommended that section 49 be repealed following a detailed consideration. The Hilmer Review's recommendation reiterated the concerns and recommendations of a number of previous inquiries, including the Swanson Review in 1976 and the Blunt Review in 1979 – namely, that the price discrimination prohibition in fact discouraged competitive prices and hence worked against economically efficient outcomes.

The Hilmer Review concluded that as a general matter price discrimination *enhances* economic efficiency, and section 49 was therefore 'contrary to the objective of economic efficiency'. Any price discrimination that harmed efficiency could be more effectively addressed by section 45 (anti-competitive agreements) or section 46 (misuse of market power).[18] .

Section 49 was subsequently repealed in 1995. The second reading speech for the amending legislation, the *Competition Policy Reform Act 1995*, stated: '*The prohibition against price discrimination is to be repealed as the provision is largely redundant, and the conduct it is designed to address is adequately covered by other provisions of the Act*'.

In 2003, the last major review of Australian competition law, the Dawson Review, again considered price discrimination issues. The Dawson Review concluded that section 46 (misuse of power) of the Act already provides a sufficient basis for regulating anti-competitive price discrimination. The Committee reasoned: '*As the Swanson Committee observed in 1976, it is price flexibility which is at the heart of competitive behaviour and a general prohibition against price discrimination would substantially limit price flexibility*'.

[18] See Hilmer Review at www.ncp.ncc.gov.au, pages 74-79

2. These principles are even more compelling with respect to regulation of international price differences

It is widely recognized that there are distinct geographic markets. Under global competition law principles, markets are defined by product *and* geographic aspects. It is typical and justifiable that there may be different pricing in distinct geographic markets.

There are many legitimate bases for such differences:

- **Price differences may reflect different market and competitive conditions.** Each market 'bears' a price that reflects relative levels of demand and supply, as influenced by consumers' willingness to pay and levels of demand/supply side substitution. Different geographic markets have different supply and demand characteristics, different customer and consumer demographics, and different competitive conditions, independent of costs, which affect price. This is true even within Australia – for example, the price of a cup of coffee, or petrol, varies in different parts of Australia.
- **Price differences may reflect cost and supply structure differences**. Costs that may vary in different geographies include raw materials or other inputs, labour, rent, marketing, training, advertising, supply chain costs, transport and distribution costs.
- **Price differences may reflect different product strategies**. The way that firms compete and position products and services in different markets can vary. The strategy is likely to be different in different countries, particularly if the competitive landscape is different. Producers may have different product and brand strategies in different markets, including positioning a product as premium in one market and budget-friendly in another. A strategy in an emerging market with a lower cost of living and different customer perception may be widely different than for a developed market. In some markets a firm may be a market entrant, in others an incumbent.
- **Price differences may reflect tax and regulatory differences**. Regulation and risk may be greater in some jurisdictions than other markets. Costs of obtaining approvals or certifications, compliance, and legal advice may vary. Taxes and tariffs often vary by country.
- **Price differences may reflect currency exchange rate fluctuations**. Perceived price differences may be based on exchange rate fluctuations. At the same time, in the interest of certainty and stability, firms typically do not change prices daily to reflect fluctuations, so such price differences may not be reflective of actual exchange rates.

In short there are efficient reasons that firms charge different prices in different geographies. To prohibit this practice risks banning legitimate price differences and forcing multinational firms towards uniform global pricing, thereby denying the very conduct that previous reviews of Australian competition policy deemed beneficial. Reversing those earlier policy decisions via new legislation that limits firms' ability to control prices could also cause foreign suppliers to abandon or decide not to enter the Australian market, resulting in less competition and less choice for consumers in Australia. Likewise, Australian suppliers could also be discouraged from entering overseas markets, or be constrained from pricing competitively in an overseas market – putting them at a disadvantage vis-à-vis their overseas competitors.

Even legislation targeted at 'unjustified' international price discrimination would likely deter legitimate and pro-competitive conduct. Such a provision would be inherently difficult to implement and enforce, due to the many factors affecting price levels in any geography. The resulting uncertainty and the perceived risk of having to provide sensitive and voluminous business records to the government could deter firms from implementing legitimate and pro-competitive price differences, or from participating in the Australian market at all.

In a free market economy the 'remedy' for unjustified or excessive pricing is competition, not regulation. If competition is not functioning properly, that is addressable through existing provisions in the Competition and Consumer Law.

After consideration of the issue of international price discrimination in the context of the IT Pricing Inquiry, the House of Representatives Infrastructure and Communications Committee reached the following conclusion:

> *"Section 49 was repealed after a number of reviews found that it operated to reduce price flexibility, had inflationary effects, and that other sections of the act (especially the provisions on anti-competitive agreements and misuse of market power in sections 45 and 46 of the CCA) would likely address breaches of the section.*
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> *Treasury's Mr Geoff Francis noted that price discrimination laws may function differently to the way they are intended: "Anecdotally, the suspicion is that it [a price discrimination ban] reduces price flexibility rather than increasing it, because typically the activity you see is one company taking another company to court to stop them from discounting".*
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> *Consequently the Treasury recommended against reintroducing a provision similar to section 49. <u>The Committee concurs with this view [with respect to international price discrimination].</u>"* [19]

The AIIA concurs with this conclusion by the Committee and Treasury, for all of the reasons stated above.

3. Regulating international price discrimination would contravene Australia's international treaty obligations

Domestic legislative provisions that apply on a discriminatory basis between domestic trade and cross-border trade can conflict with Australia's obligations pursuant to international treaty obligations and trade laws. The requirements of international trade law are set out in the international trade agreements to which the Australian Government is a party, including the World Trade Organisation (WTO) and various Free Trade Agreements (FTAs). These agreements are international treaties and are legally binding on the Australian Government. The agreements are also enforceable by inter-governmental dispute resolution and the potential imposition of trade sanctions.

The principle of 'national treatment' is a fundamental precept of international trade law and is enshrined in the WTO and all FTAs to which Australia is a party. The principle requires Australia to ensure that all regulatory measures treat imported goods and services no less favourably than nationally produced goods and services. Jurisprudence under the WTO has interpreted the national treatment obligation as requiring 'equality of competitive conditions for imported products in relation to domestic products'.

The concept of 'national treatment' has broad application and is not limited to legislative provisions that are expressly discriminatory (i.e., so-called *de jure* discrimination). The concept also applies to regulatory measures that have the practical effect of altering market conditions so as to discriminate against foreign firms (i.e., so-called de facto discrimination).

International trade law does permit the regulation of international price discrimination in the context of anti-dumping law. Nations are permitted to impose anti-dumping duties if the domestic price in their jurisdiction is lower than the foreign price. However, anti-dumping measures represent an exception from the national treatment obligation and are subject to a range of international treaty obligations.

Given the above, if Australia did wish to regulate international price discrimination, it would need to enact a provision that has equal application to both domestic trade and international trade. In effect, this would require the re-enactment of section 49. However, as identified above, there are good reasons why section 49 was repealed and all recent reviews have recommended against it.

[19] House of Representatives Infrastructure and Communications Committee (2013) *At What Cost? IT Pricing and Australian Tax.*

3.1 Competitive neutrality

The AIIA believes that the principles of competitive neutrality were an important part of the National Competition Policy (NCP) reforms enacted in the mid 1990's, supporting the realignment of public sector activities to areas of demonstrated market failure and the realisation of a 'level playing field' in situations where government business enterprises (GBE's) were in competition with privately owned businesses.

In recent years, as the broad NCP agenda has largely run its course, the principles of competitive neutrality have had less visibility in both public discourse and practical settings. In the AIIA's view this development is not surprising, given the presence of GBE's within the economy — and the range of activities which they undertake — has progressively been scaled back in the interests of supporting competitive dynamics and private sector investment. There is, however, one clear exception to this trend, namely the telecommunications sector.

Within the telecommunications sector the most substantive GBE is NBN Co, which has been charged with implementation of the National Broadband Network (NBN). In addition to NBN Co, almost all jurisdictions within Australia also have GBE's which are active in the telecommunications space, for example VicTrack in Victoria and Queensland Rail in Queensland. While these entities have different charters and characteristics, we have observed that:

- Some entities have a propensity to enter, or contemplate entering, markets which are competitive; and
- The awareness of the principles of competitive neutrality is not high.

Examples of the activities which concern the AIIA include NBN Co's proposed Cell Site Access Service (under which it would provide a 'tower backhaul' service to mobile network operators (MNO's)) and its recent proposal to offer a broader 'POI backhaul' service (under which it would offer backhaul services between various points of interconnect to retail service providers).[20] The AIIA also has concerns about the efforts of State-owned telecommunication GBE's to participate in open tenders for the provision of telecommunication services to government agencies.

In the instances cited above suggest a disregard for the principles of competitive neutrality. Indeed, NBN Co explicitly discusses the possibility of 'POI Backhaul' services as a revenue opportunity. What is less clear is how NBN Co might reconcile the provision of 'POI Backhaul' services given the market for backhaul services is already competitive, as adjudged by the ACCC in the course of its advice to the Australian Government in November 2010 on the appropriate location of NBN POI's taking into account existing market participants and the infrastructure they have deployed.[21] We question why NBN Co would contemplate entering markets outside its role as a provider of a wholesale only, local access network.

In response to the questions in the Review Issues Paper, we would like to make the following points:

- There are some instances, notably in the telecommunications sector, where competitive neutrality seems to not function effectively.

- To the extent which they exist, methods for implementing the principles of competitive neutrality need to be updated and accompanied by a clearer articulation of what competitive neutrality can entail (i.e. demonstrated ring-fencing of commercial and non-commercial activities) — simple 'tick box' assessments which do not have regard to the mix of activities undertaken, or the markets in a GBE competes against private sector

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[20] This proposal was contained in NBN Co's recent review of Fixed Wireless and Satellite services (see page 66), available at: http://www.nbnco.com.au/content/dam/nbnco/documents/NBNCo_Fixed_Wireless_and_Satellite_Review_07052014.pdf

[21] This advice is available at: http://www.accc.gov.au/system/files/NBN%20points%20of%20interconnection.pdf

entities, do not provide the required level of assurance that the principles of competitive neutrality are understood and adhered to.22

- Private businesses can face significant disadvantages when competing with GBE's due to the latter typically having a mix of taxpayer funding, low required rates of return, the power to cross-subsidise their service offerings and/or stipulated non-commercial responsibilities which are used to underpin other commercial activities. Furthermore, uncertainty about the intentions of GBE's and/or the competition policy measures which they will be subject to is detrimental both to competitive dynamics and investment activities.

We appreciate this opportunity to make this submission to the review Panel, and look forward to providing further comments on the Review Draft Report when released.

[22] The AIIA contends that the infrequent and high level assessments of competitive neutrality compliance, such as that undertaken for COAG in 2009-2010 lack true granularity and are of little practical use. See: http://www.coag.gov.au/sites/default/files/competitive_neutrality_matrix_report_2009-10.pdf