



# Competition Policy Review

AIIA response to the Review Draft Report

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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; telecommunications companies Telstra, Optus and Nextgen; national companies including Data#3, SMS Management and Technology and Technology One; 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.

## Response to Draft Report

AIIA appreciates this opportunity to comment on the Competition Policy Review Draft Report, which was released in September 2014.

The Draft Report provides robust analysis of the broad range of issues and challenges for competition policy in Australia. In our first submission to the Panel, we endorsed a principles based approach to competition policy, and we are happy to see these concepts included in the Panel's Draft Report. We support the principles set out in Recommendation 1 of the Draft Report. We also support the concept of competition policy being 'fit for purpose', with a particular focus on the importance of fostering innovation and entrepreneurship in our economy.

We would like to provide the Panel with comments on specific issues that the Draft Report addresses, which are most critical for our members.

### Price discrimination

In our first submission to the Panel, we provided detailed comments on the issue of international price discrimination. In our submission, we asserted that:

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*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.*

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We are pleased to see that the Draft Report considered this issue, and we support the position in the Draft Report that:

- The former prohibition on price discrimination (contained in repealed section 49) would be likely to result in price inflexibility, and negatively affect consumer welfare,
- There would be significant implementation difficulties associated with any attempt to prohibit international price discrimination, and
- Market-based mechanisms are the best approach.

We support Draft Recommendation 26 of the Draft Report, which states that a specific prohibition on price discriminations should not be reintroduced into the CCA.

In relation to international price discrimination, we note that the Panel supports the use of legal steps to circumvent attempts to prevent their access to cheaper legitimate goods. This includes taking advantage of new distribution channels, product review website and price monitoring sites.

We support the education of consumers to access *legal* channels used by consumers to access goods at lower prices, and agree with the statements made in the Draft Report that such market based approaches are the best way forward (for example, a market for distribution services develops to support consumers seeking lower priced goods). We would emphasise, however that there remains a significant online copyright infringement problem in Australia, which the government has committed to addressing. The government must be careful that their endorsement of methods to circumvent geo-blocking (as one example) are not also interpreted as endorsement of illegal methods to obtain online content.

## Institutional reform

We note that the report recommends that the access and pricing functions of the ACCC be transferred to a new national independent regulator. The body would undertake the access and pricing regulatory functions under: The National Access regime; the national electricity law and the telecommunications regime.

The AIIA agrees that the current arrangements, where the ACCC has responsibility for telecommunications regulatory matters, do have limitations, primarily due to the wide breadth of responsibilities that the ACCC currently has (of which telecommunications is one of several areas). We therefore welcome the panel considering alternative arrangements; however these need to be an improvement on the current arrangements. We have concerns about the proposal in the Draft Report.

- Access regulation in telecommunications is tied to broader competition considerations - in regulating access to services, a regulator will need to consider the competition implications of its decisions. In telecommunications, access regulation needs to encompass a range of complex issues. In setting prices, for example, the ACCC has to balance a number of competing interests with a view to assessing the impact of such prices in downstream retail markets. Therefore, the method for setting prices should be considerably different to that used in the energy sector.
- Unlike the regulation of utilities, such as electricity transmission, gas distribution and water, the main objective of telecommunications competition regulation is to promote competition and transition the market from monopolistic to effective competition. The ultimate aim of regulation is to develop effectively competitive markets, of which an access regime is but one possible regulatory remedy.
- Telecommunications involves the provisions of multiple products and services. The pace of change of convergence within telecommunications is driving a whole set of issues which are not directly related to network infrastructure (access to content, the rise of 'over the top applications' and bundling of services). These issues will be influenced by broader competition analysis and are likely to go beyond the scope of traditional infrastructure regulation.

A 'theoretical' argument about co-locating common types of regulatory activity is not sufficient to make the case for change that is proposed. Furthermore the degree of regulatory similarity between utility sectors such as electricity and water on one hand and telecommunications on the other is not clear.

In addition we would encourage government to exercise sound judgment when considering making the changes to regulatory institutional arrangements for the telecommunications sector, which is currently undergoing a major structural transition. It is critical that further uncertainty and complication of existing pricing processes (i.e. fixed line services, domestic transmission services, mobile termination) is avoided.

## **Competitive neutrality**

AIIA is supportive of the discussion and recommendations on competitive neutrality in the Draft Report, which include recommending that all Australian governments review their competitive neutrality policies, and that the transparency and effectiveness of competitive neutrality complaints handling processes be improved.

We support the Panel's recommendations for:

- a reinvigorated competitive neutrality policy framework;
- improved policy clarity;
- independent investigation of complaints;
- public government response (preferably within a specified period of time);
- annual reporting of all complaint activity; and
- proactive application of competitive neutrality by all GBEs where they engage in activities which entail entry to, or border on, competitive markets and competitive impacts.

We look forward to future government analysis on this important area of economic policy.

## **Intellectual property**

AIIA supports the proposed review of Australia's IP system, noting some alignment with recent online copyright infringement debates. AIIA has made a number of submissions on these issues.

We would emphasize the role of technology as an enabler, as we outlined in detail in our first submission. Technology can greatly enhance competition in markets, however protection of intellectual property is critical to ensure sufficient investment in emergent digital economy.