

STATEMENT OF EXPECTATIONS

MINISTER FOR COMMUNICATIONS, CYBER SAFETY AND THE ARTS

TO THE

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

This Statement communicates my expectations of the Australian Competition and Consumer Commission's (ACCC) relationship with the Australian Government, along with issues of accountability and operational priorities relating to its telecommunications-related functions. This Statement complements any statements from the Treasurer in relation to expectations relating to the ACCC's broader responsibilities and regulatory functions.

The Government recognises and respects the statutory independence of the ACCC. Confidence in the regulatory framework requires the ACCC to exercise, and to be seen as exercising, independent judgment about the application of the regulatory framework in particular circumstances. The ACCC plays a critical role in administering regulatory frameworks pertaining to telecommunications competition and consumer protection. In discharging its role, the ACCC should have regard to the Government's specific policies and priorities in those areas.

The ACCC has a number of specific roles in the telecommunications sector, as detailed in the *Competition and Consumer Act 2010*, the *Telecommunications Act 1997*, the *National Broadband Network Companies Act 2011*, the *Radiocommunications Act 1992* and associated regulatory instruments. In particular, the ACCC plays a key role in regulating access to bottleneck infrastructure and promoting the economically efficient operation of, and investment in, infrastructure and radiofrequency spectrum.

The ACCC also has a broader economy-wide role, which is relevant to the telecommunications sector. Its role includes promoting competition by taking action to stop anti-competitive conduct, protecting the interests and safety of consumers, supporting fair trading in markets, and promoting the economically efficient operation of, use of and investment in monopoly infrastructure.

More specifically, the telecommunications market is undergoing significant change with the completion of the volume rollout of the National Broadband Network (NBN) and the emergence of Fifth Generation Mobile Technologies (5G). I consider that given the ACCC's regulatory functions and responsibilities, it can play a vital role in helping foster a strong and vibrant communications sector during this turbulent period.

Relationship with the Minister for Communications, Cyber Safety and the Arts

My policies and priorities for the telecommunications sector include:

- ensuring that policy and regulatory settings:
 - a. support sustainable investment in telecommunications
 - b. support domestic and international competitiveness
 - c. sensibly balance national security objectives
- facilitating consumer access to affordable and reliable communications services, irrespective of where consumers live or work; and
- facilitating the efficient deployment and use of new networks and technologies, particularly the NBN and 5G.

My preference is to encourage the commercial operation of the telecommunications sector and to keep regulation and intervention to a minimum except where a clear market failure has developed. With the Government's overarching priority being sustainable investment in telecommunications, it is preferable that wholesale providers, including NBN Co Ltd (NBN Co), have reasonable flexibility to set prices in response to market developments.

I expect the ACCC will inform me prior to any significant regulation or intervention in the telecommunications markets. I also expect the ACCC to provide me with sufficient advance notice in relation to major announcements, public submissions, media releases and major speeches relevant to my portfolio responsibilities.

Specific priorities

NBN wholesale pricing

In my opinion the ACCC should work constructively with my Department and NBN Co on how best to develop a comprehensive regulatory solution on NBN's wholesale pricing that delivers certainty for all stakeholders, including a Special Access Undertaking (SAU) variation to incorporate all of the Multi-Technology Mix networks.

In developing an agreed SAU variation with NBN Co, the ACCC could have regard to the Vertigan Panel's Recommendation 19¹ that the ACCC should use a "building block" cost model. In my view, work could begin on such a model immediately in accordance with the framework under the SAU and the ACCC could include NBN technologies not currently covered by the SAU in this building block cost model. The cost model could be based on NBN Co's actual prudently incurred costs in accordance with the methodology set out in the existing SAU.

Business market competition

It is the Government's expectation that NBN Co will play a key role in increasing competition in the business segment of the market via its build activities. The NBN rollout ensures all service providers, including the smaller Retail Service Providers (RSPs), have an opportunity to access NBN Co's wholesale network to compete, including in the business segment. This increased competition will also stimulate lower pricing from RSPs for the benefit of end-users. In my opinion, the ACCC should support new entry and competition in this market within the constraints established by the regulatory framework.

Spectrum

Spectrum is a scarce and finite resource that is essential to the provision of services in downstream markets, so consideration of competition and consumer issues for spectrum allocations is particularly important. I expect the ACCC to provide advice on such issues when requested, and to take into account the communications policy objectives of the Government when preparing advice on spectrum allocation issues.

¹ Independent cost-benefit analysis of broadband and review of regulation, Statutory review under section 152EOA of the *Competition and Consumer Act 2010*, June 2014 at page 10 and page 60.

Regulator performance

The ACCC is required to comply with the Government's Regulator Performance Framework, including associated assessment requirements and the *Legal Services Directions 2017*. I expect the ACCC's decisions will be underpinned by robust evidence and sound principles. Where a clear problem is evident and regulatory intervention is required, any ACCC action should be based on consultation with stakeholders, be targeted, effective, proportionate, designed to minimise negative consequences, and have regard to the Government's policy objectives. The decision-making process should be transparent and follow a robust process. I encourage the ACCC to continue to publish the reasons for its decisions and the submissions of stakeholders where possible, even when not strictly required to do so under legislation, and to continue to allow those affected by potential decisions to be given a reasonable opportunity to respond to reasons for decisions.

The ACCC has a number of specific regulatory powers that allow it to create new regulatory obligations (including the ability to declare specified carriage services and determine the terms and conditions of access), and to extend regulatory obligations to different industry participants. If new regulatory obligations are needed, I expect the ACCC would, as part of its usual decision making processes, carefully consider the costs and benefits, downstream implications, and the extent to which new obligations would rely upon or interact with any existing rules or obligations made by the Communications Minister or the Australian Communications and Media Authority (ACMA).

Part XIC of the *Competition and Consumer Act 2010* requires the ACCC to have regard to whether an intervention will promote the long-term interests of end-users of carriage services and services supplied by means of carriage services. In accordance with Part XIC, the ACCC should give due weight to incentives for investment when undertaking its regulatory functions and issuing opinions or decisions.

The active monitoring and reporting on the process and level of competition by the ACCC is an important function that the ACCC undertakes and I expect the ACCC to, where possible, use this information to inform market participants, to identify conduct which may potentially be anti-competitive and to inform potential enforcement action. The publication of data by the ACCC can be an important incentive to guide positive industry behaviour. This information can also be useful for consumers, policy makers and other agencies. Consistent with the Government's Regulatory Reform Agenda, when making requests for data held by participants in the telecommunications sector, I expect the ACCC will seek to minimise unnecessary collection and reporting burdens for industry. I expect the ACCC to regularly consider if similar data is otherwise available to it for use from other Government sources, and seek to actively rationalise data collection activities with other parts of Government where feasible.

Relationship with the Department of Infrastructure, Transport, Regional Development and Communications

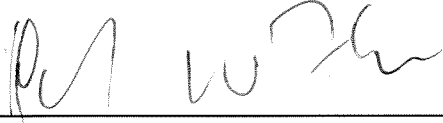
My Department advises me on telecommunications policy matters and is responsible for the legislation that governs them. I expect the Department and the ACCC to maintain a close and productive working relationship. The ACCC should, as far as lawfully possible, seek to provide the Department with sufficient advance notice of significant actions affecting the telecommunications sector, so that it can advise me. The ACCC should also continue to contribute to the Government's policy development by advising the Department on the operational implications and practical implementation of Government policy initiatives. The ACCC should also continue to consult with my Department on opportunities to improve the regulatory framework.

Relationship with ACMA

I expect the ACCC to work closely with ACMA to enable both regulators to give sufficient consideration to the economic, competition and technical impacts of regulatory decisions relating to the telecommunications sector. I expect the ACCC to maintain cross appointments with ACMA to promote information sharing.

Statement of Intent

I look forward to receiving a Statement of Intent outlining the ACCC's plan for meeting these expectations within three months from the issuing of this Statement.



THE HON PAUL FLETCHER MP
MINISTER FOR COMMUNICATIONS, CYBER SAFETY AND THE ARTS

..... 9 October 2020