

Macquarie Corporate Telecommunications submission in response to the ACCC's Dispute Resolution Process Paper

MCT supports the ACCC's proposed Dispute Resolution Process on the grounds that it potentially provides a more expedient and defined resolution process.

In the interests of competition it is critical that disputes can be resolved expediently. The provision for backdating in arbitrations may ultimately offset the financial consequences of a dispute, however whilst the dispute is in process parties must carry the costs of financing any losses suffered. In addition, until a dispute is finalised an element of uncertainty is attached to the parties. If the quantum or issue in dispute is significant, the uncertainty can impact on the market value of the company, deter investment in and by the company and deter potential customers.

Given the importance of expedient resolution, MCT believes the following issues need to be addressed:

- Some form of sanction needs to be available to the ACCC to enforce compliance with deadlines in the process. In MCT's experience, access providers that benefit from delaying resolution have continually flouted process deadlines with impunity.
- Whilst there are attractions in referring disputes or elements of disputes to ADR, where an arbitration is in process the ADR process must not be allowed to delay the arbitration unless all parties agree.
- If parties are to be joined to proceedings or joint hearings held the ACCC must ensure that any delays to the initial arbitration process are kept to a minimum.