

Submission by
Australian Consumers' Association
to
Australian Competition and Consumer Commission
opposing renewal of the authorisation of the
Australian Direct Marketing Association's Code of Practice¹

The Australian Consumers' Association (ACA) is a not-for-profit, non-party-political organisation established in 1959 to provide consumers with information and advice on goods, services, health and personal finances, and to help maintain and enhance the quality of life for consumers. The ACA is funded primarily through subscriptions to its magazines, fee-for-service testing and related other expert services. Independent from government and industry, it lobbies and campaigns on behalf of consumers to advance their interests.

The ACA opposes renewal of the ACCC authorisation of the Australian Direct Marketing Association's Code of Practice. We do so because we do not deem the Code worthy of authorisation. We take this view on two grounds:

1. The Code is ineffectual and lightly enforced – therefore the anti-competitive strength of the Code is weak and insufficient to require authorisation.
2. The Code embodies active consumer detriment, so to the degree that the Authorisation is deemed necessary, it fails to deliver public benefit sufficient to justify Authorisation.

We support the level of disaffection and frustration with the origin and administration of the currently registered code expressed by other consumer and privacy advocates. We are concerned that the Code is poorly promoted. It has limited coverage in areas of major concern to consumers (electronic messaging and telemarketing). The Code regime is vulnerable to the disengagement of parties when even mild sanctions are proposed. We are disappointed that the Code has not received the review and maintenance that would have perhaps enabled it to reach some better measure of standing in the regulatory landscape.

It is apparent the ADMA Code was always lowest common denominator and has been overtaken further by actual and proposed State and Federal legislation, as well as better practice codes developed and delivered by other bodies (Internet Industry Association, Australian Communications Industry Forum, the E-Commerce Model Code and indeed ADMA itself in the M-Commerce Code).

We think it is important that the ACCC have regard to the unintended endorsement effect that flows from authorisation of the Code. In the minds of consumers unversed in the finer points of regulatory lore and nuance, the phrase 'Authorised by the ACCC' carries the connotation of approval or badging by the ACCC – something we note has explicitly been floated recently as a possible regulatory approach by the Chair of the Commission. Irrespective of the merits of that notion, consumers would be forgiven for thinking the **consumer** protection agency is lending its imprimatur to

¹ ACA File Reference 030710/01

the operation of the code and not just indicating an assent to a minor derogation from competition principles.

In our view the Code is essentially trivial. It does not have the strength, has not achieved the coverage and is not administered with sufficient vigour to contribute to any appreciable lessening of competition. It does embody a 'standard' of behaviour that is rapidly falling behind industry, consumer and legislative benchmarks, and so cannot be seen to deliver a public benefit. The ACCC should not authorise and register pointless, powerless and useless instruments that do not limit competition and cannot deliver consumer benefit. To do so risks causing poor consumer outcomes and diminishing the standing of the ACCC.