

MARS/PRISM:
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Monday 16<sup>th</sup> January 2006

Ms Susan Philp  
Director  
Adjudication Branch  
Australian Competition and Consumer Commission  
PO Box 1199  
DICKSON ACT 2602

Dear Ms Philp

Your letter dated 20 December 2005, but not opened in this office until 6<sup>th</sup> January 2006, requests further information and comments with which ADMA will not be able to comply within the time frame specified.

1. Analysis of the 2005 Code vis-à-vis legislative requirements

The ADMA executive responsible for this area, Jodie Sangster, is overseas on leave until late in January, and at this time of year it will be impossible to undertake this detailed research.

2. Independent audit and reporting mechanism.

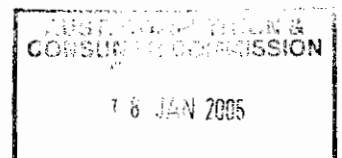
This proposal would involve ADMA in such considerable expense and diversion of finite resources that it is a matter that will need consideration by the Board of Directors whose next meeting is on 24 February. Without pre-empting a decision of the Board, it is my preliminary view as Chief Executive that it will be very hard to make a business case for continuing to seek authorization under those circumstances.

3. Anti-competitive detriments

Notwithstanding the above, your letter and the Prime Minister's Review of Red Tape late last year has caused ADMA to consider the underlying need for this authorization. Specifically what are the anti-competitive circumstances that could arise for which the Association needs protection?

The history of this Code dates back more than a decade when there were no legislative provisions covering the activities of direct marketers. The Ministerial Council on Consumer Affairs (MCCA) developed a self-regulatory code in conjunction with industry and consumers that ADMA adopted along with the establishment of an independent Code Authority with a mandate to oversee member compliance. ADMA took legal advice that ACCC authorization may be necessary to ensure that any action taken by the Authority in imposing sanctions upon miscreant members could not be held to be anti-competitive, this view was supported by the ACCC.

The intention at that time was for the processes of reviewing the Model Direct Marketing Code by the MCCA and the ACCC authorization be synchronised.

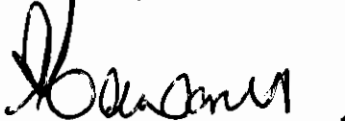


Once the two processes fell out of step ADMA reviewed the need for authorization. One of the considerations was the strong recommendation of the ACCC that it should continue. At that time the Privacy Act had been extended to the private sector, however consumers still needed the protection of the ADMA code for most of the fair trading activities of direct marketers. Hence ADMA followed the advice of the ACCC and began the process of applying for revocation and substitution in July 2003.

Since that time new legislative provisions at both the national and state level have considerably reduced the areas of the code that could give rise to anti-competitive activity by the Code Authority. At the national level, electronic and mobile marketing are covered by the Spam Act and financial services telephone marketing by the anti-hawking provisions of the Financial Services Reform Act. At the state level, two states – New South Wales and Victoria – have amended their Fair Trading Acts to cover telephone marketing.

In view of (1), (2) and (3) above please suspend further action until ADMA has the opportunity to secure appropriate advice.

Yours truly,

A handwritten signature in black ink, appearing to read 'Robert L Edwards', with a flourish at the end.

Robert L Edwards  
Chief Executive Officer