

Our Ref: 55782  
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**Australian  
Competition &  
Consumer  
Commission**

10 September 2014

Mr John Stanton  
Chief Executive Officer  
Communications Alliance Ltd

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**By email:** Stanton@commsalliance.com.au

Dear Mr Stanton

### **Communications Alliance Ltd application authorisation A91453– information request**

I write in relation to an application for authorisation lodged by Communications Alliance Ltd (**CA**) with the Australian Competition and Consumer Commission (**ACCC**) on 8 September 2014.

The ACCC requires further information from CA in order to assess the proposed conduct for which authorisation is sought. Please provide the following information to the ACCC as soon as possible to assist the ACCC to progress its assessment of CA's application in a timely manner.

#### Parties covered by the authorisation

1. Please confirm whether CA wishes authorisation to extend to future as well as current CA members.
2. Please clarify whether CA wishes authorisation to potentially extend to other future parties also – for example, in response to question 2(a) on the application form, CA notes that other organisations from different sectors are considering joining the arrangement in the future. If this is the case, CA may need to consider amending its application to include parties that are not CA members.

#### Sites proposed to be boycotted

3. The identity of the independent party who is to create and maintain the Infringement Website list may be important to the ACCC's consideration of this matter. Please indicate when the independent party is to be determined and what this party's qualifications and expertise will be.
4. Please indicate the basis for determining which sites will be placed on the Infringement Website list? Specifically:
  - a. What criteria will be applied?
  - b. What is meant by sites which promote "online copyright infringement"? CA's response to question 4 on the application form indicates this is "primarily via

improper file-sharing". What kind of files do the arrangements relate to, and will anything else (besides file-sharing) be targeted as part of the arrangements?

- c. How will the arrangements deal with websites who are not primarily, or intentionally, engaging in online copyright infringement? For example, facilities or software provided by a website may be improperly used for sharing of copyrighted material without the knowledge or intention of the website operator.
  - d. What is the lead time between the identification of an infringing website to its placement on the Infringement Website list, and what notice and opportunity to respond will be given to the operator of the website before being added to the list?
5. Where and how will the Infringement Website list be published, and who will have access to the list?
  6. How many sites does CA envisage the proposed boycott may cover? What proportion of these sites are likely to be Australian?
  7. Can you provide an estimate of the current advertising spend of CA's members on sites proposed to be included in the Infringement Website list, and the basis on which this estimate is made? Also, if possible, please indicate what proportion of advertising spend on these sites is constituted by CA members' spend.

#### Other issues

8. Please provide further detail on the review and appeal mechanism available to website owners who claim their website should not be included on the Infringement Website list.
9. To assist in its assessment of the authorisation the ACCC compares the likely future with the conduct that is the subject of the arrangements to the likely future without the arrangements. The ACCC will compare the public benefits and detriments likely to arise in the future where the conduct occurs against the future in which the conduct does not occur. To this end, please indicate CA's view of the likely future without the arrangements.
10. CA's response to question 2(a) on the application form refers to the arrangements as being part of a "multi-faceted approach". What other activities will be undertaken by CA as part of this approach?

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Hannah Ransom on (02) 6243 1255.

Yours sincerely



Dr Richard Chadwick  
General Manager  
Adjudication Branch