

Macquarie Corporate Telecommunications Submission to the Committee of Inquiry for the Review of the Competition Provisions of the Trade Practices Act (1974)

Macquarie Corporate Telecommunications (MCT) welcomes the current review of the competition provisions of the Trade Practices Act (1974) (the Act) as an opportunity to ensure that economic regulation remains appropriate, effective and efficient.

Generally, MCT believes that the Act has a balanced approach. The concepts underlying the Act, such as competition, fair trading and markets, are desirable and suitable for application in a changing world. However, MCT believes there are several sectors and instances where the Act has not been effective in producing these outcomes and therefore, considering the period for which the Act has been in force, amendment in certain areas is appropriate.

Criminal sanctions

MCT proposes that the Act be amended to introduce criminal sanctions for the most serious contraventions of the competition provisions of Part IV. MCT proposes that it be a criminal offence for large companies to collude with a competitor to fix prices or limit output or supply. Individual employees found to have been personally involved in a contravention would be liable to be imprisoned. Non criminal sanctions would apply to acts by smaller companies.

Misuse of market power and cease and desist powers

MCT believes that the operation of the misuse of market power provisions would be improved by incorporating an “effects” test to supplement the existing “purpose” test. It is also appropriate for the ACCC to have power to take action more quickly in the event of a breach of these provisions and MCT recommends a cease and desist power, similar to that in the New Zealand legislation.

Accountability, certainty and transparency of the ACCC’s processes

MCT believes that the existing legal framework and the ACCC’s processes provide an appropriate balance between adequate protection of commercial affairs and reputation and maintaining certainty, transparency and accountability in the administration of the Act. The independence of the ACCC and the fact that it is accountable only to the Minister provides confidence, or at least a perception, that the actions of the ACCC are not being influenced by political or business interests. Allowing any entity to interfere in or veto the actions of the ACCC will open the process to political interference and, by inference, influence by external interests. Whether such interference or influence occurs or not, the perception that it could occur would undermine and cast doubt on the actions of the ACCC.

