

**Paul Fletcher**  
Director  
Corporate & Regulatory Affairs

27 January 2005

Dr Jacqueline Dewar  
Acting Secretary  
Environment, Communications, Information Technology and the Arts  
References / Legislation Committee  
Parliament House  
CANBERRA ACT 2600

Dear Dr Dewar

**INQUIRY INTO THE AUSTRALIAN COMMUNICATIONS AND MEDIA  
AUTHORITY**

I refer to your letter of 13 December 2004 inviting Optus to make a submission to the committee concerning the Australian Communications and Media Authority (ACMA) Bill and related issues concerning regulation of the telecommunications, media and broadcasting sectors. Optus appreciates this opportunity.

*Support for the Merger*

Optus supports the merger of the Australian Communications Authority (ACA) and the Australian Broadcasting Authority (ABA) as put into effect via the ACMA Bill 2004. We consider that an integrated structure will allow emerging issues (including in respect of internet regulation and mobile content) to be optimally addressed in a manner which avoids jurisdictional overlap and associated inefficiencies and regulatory uncertainty.

We believe that the earlier integration of the Spectrum Management Authority (SMA) and AUSTEL to form the ACA has been successful. It has generated efficiencies and a more integrated policy response to spectrum issues as they impact on new and innovative telecommunications services. We see the creation of ACMA as a logical progression towards a more integrated and multi-functional communications regulatory body.

The ACMA Bill does not provide for telecommunications-specific competition regulation functions to be assigned to ACMA. Rather the Government intends that these functions remain with the Australian Competition and Consumer Commission (ACCC).

There are sound arguments for including telecommunications specific competition regulation in the domain of the general competition regulator. Of course, there are also arguments for the opposing approach – in which the communications sector regulator also has sector-specific competition regulatory powers. This was the approach adopted with the ACA's predecessor Austel. It is also the model recently adopted in the UK with the creation of Ofcom.

Nevertheless, at this stage of the development of the telecommunications market in Australia, Optus considers on balance that it is preferable for telecommunications competition regulation to remain with the ACCC. The ACCC has developed significant telecommunications industry expertise, and we would not want to see this put at risk. In due course, as the industry matures and the necessary degree of direct regulatory oversight reduces, we consider that it may be appropriate to revisit this approach.

While supporting the overall structure of the reforms to implement ACMA, Optus has comments in two specific areas:

- the scope for efficiency gains and cost savings
- the internal structure and operation of ACMA in practice.

#### *Efficiency Dividend*

Optus is aware that in announcing the policy to establish the ACMA the then Minister noted that there would be no net reduction in funding associated with the merger. While we understand that savings are not the motivation for the merger, we believe that some cost savings should be achieved. A merger of two organisations with associated integration of corporate centre functions (including, for example, finance, human resources, IT and facilities) must lead to some efficiency gains. This downward pressure on costs is important to the carriers because funding for the ACA is obtained via the telecommunications carrier licence fees.

The ACA's overall costs have increased sharply in recent years – in the period from 1998/99 to 2002/03, the proportion of the ACA's costs attributable to ACA's telecommunications functions and powers has increased by 60% (or \$7.9 million) from \$13.11 million to \$20.97 million. By contrast, over the same period the budget of the industry self regulatory body, ACIF, increased by only 24%.

We believe that the Department of Finance should be charged with ensuring that ACMA's costs are kept under review and appropriate efficiency goals met. Optus does not see any justification for continued high growth in telecommunications regulatory costs.

#### *Operation in Practice*

Optus is interested in how the new ACMA will be structured and operate pursuant to the governing legislation and the apparent high degree of flexibility offered.

We note that the Chair and Deputy Chair positions will be full time appointments and the (up to) seven other members may be full or part time. We support this approach. We consider that the organisation should be led by a full time Chair and Deputy with accountability for setting the policy approach and culture, as well as fulfilling traditional chief executive functions. It is desirable to allow part time Members in order to ensure that a cross section of experience and expertise can be harnessed.


It will be important that individuals selected to the ACMA Board have both telecommunications and broadcasting experience. It is critical that the high level of technical knowledge that is present on the current ACA Board is not lost. In particular there will need to be a balance between the broadcasting, telecommunications and radiocommunications areas without domination by any one sector.

We note that the Bill provides for ACMA to establish one or more Divisions and to delegate ACMA's powers and functions to such Divisions. We endorse this capability to develop centres of expertise within the organisation. However we would not want to see the use of Divisions leading to the operation of ACMA as three distinctive sub-organisations dealing with each of the three principal functional areas. Such an approach would undermine the value of the establishment of ACMA itself.

We look forward to working with ACMA upon its formal establishment.

Thank you for this opportunity to make comments on this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P. W. Fletcher', written in a cursive style.

Paul Fletcher