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9 October 2019

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Dear Review Secretariat,

### **ACCC's search warrant and telecommunications interception powers**

The ACCC welcomes the Government's exposure draft legislation in response to the recommendations of the ASIC Enforcement Review Taskforce Report. We support the Government's aims of modernising and harmonising ASIC's search warrant powers and allowing telecommunications interception agencies to provide lawfully intercepted information to ASIC for the investigation or prosecution of serious offences.

The ACCC has a long history of using a similar suite of investigative powers and conducting similar enforcement roles to ASIC. Like ASIC, we have a responsibility to investigate serious criminal offences and refer briefs to the Commonwealth Director of Public Prosecutions. Both the ACCC's and ASIC's ability to fulfil our obligations depends upon us having a full suite of effective investigative powers.

As we outlined in the ACCC submission to the Review in July 2017, a number of the Government's proposed amendments to ASIC's investigative powers would rectify similar deficiencies in the ACCC's powers. Specifically, I encourage the Government to consider making equivalent amendments to the ACCC's powers to those that are being progressed in relation to ASIC in order to:

- Bring the ACCC's search warrant powers into line with the provisions of the *Crimes Act 1914* (Cth), modified as necessary, and
- Enable the ACCC to receive telecommunications interception material to investigate and prosecute serious offences.

#### *Search warrants*

The ACCC frequently relies on search warrants in its cartel investigations. However, the ACCC's search warrant powers have not been substantively amended since they were first granted in 2006. Furthermore, these powers were largely based on equivalent provisions in the *Crimes Act 1914* (Cth) that dated from 2001, which means that the ACCC's search warrant powers do not reflect the changes in business and communications practices that have occurred over the last two decades. As a result, the ACCC has encountered practical

difficulties in its investigations, particularly regarding the treatment of electronic material. Improvements to these powers would have a significant positive impact on our ability to investigate and prosecute cartel conduct. We can provide further details of recent experiences of these issues if required.

*Telecommunications interception material*

In addition, the ACCC currently cannot receive telecommunications interception material, even where that material is relevant to serious criminal offences in the *Competition and Consumer Act 2010* (Cth), such as cartel conduct, and has already been intercepted by an interception agency, such as the AFP. The OECD Council revised its Recommendation in relation to combatting hard core cartels in July this year to explicitly recommend that competition authorities should “have access to appropriate investigative techniques, such as communications interception” in order to effectively combat cartel conduct. Without access to these tools, Australia does not comply with the terms of the Recommendation.

Currently, like ASIC, ACCC staff can only access such material as part of a joint investigation with the interception agency, which the ASIC Enforcement Review Taskforce Report noted “can...result in inefficiencies and delays, which can in turn prejudice the investigation”. This undermines the ACCC’s ability to independently uncover, investigate, and prosecute conduct that can seriously distort the proper functioning of the Australian economy. This issue could be rectified by a relatively simple amendment to the *Telecommunications (Interception and Access) Act 1979* (Cth), similar to the amendment for ASIC proposed in the Government’s exposure legislation. The ACCC can provide further details of recent experiences of these issues if required.

Amendments to the ACCC’s search warrant powers and ability to receive telecommunications interception material are critical to ensure that the ACCC has the enforcement tools necessary to enable it to fulfil its enforcement mandate. I look forward to discussing this letter with you.

Yours sincerely



Rod Sims  
Chair

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