

Department of Communications Information Technology and the Arts

Proposal for New Institutional Arrangements
for the Australian Communications Authority
and the Australian Broadcasting Authority

Comment by

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Introduction

Motorola Australia is pleased to have the opportunity to submit our comments on the Departments proposal for New Institutional Arrangements for the Australian Communications Authority and the Australian Broadcasting Authority. This proposal comes at a time of increasing convergence between telecommunications, information technology, and other forms of media. Such proactive management of the regulatory environment in the times of technology progress is important for the competitive advantage of Australian industry in the increasingly global market place, while still balancing social needs.

Motorola is a large participant in the Information and Communications Technology (ICT) industry in Australia with staff primarily located in Adelaide, Melbourne, Perth and Sydney. Motorola is a significant contributor to Australian exports in the ICT industry and large employer of staff. As a leader in the field of radiocommunications and telecommunications on a global basis Motorola has also been dealing with regulatory organizations around the world for many years and can bring that experience to this submission. Motorola has likewise followed prior discussions on this topic and is aware of the history and context of this discussion paper. Motorola made a submission the original options for structural reform in spectrum management in September 2002. Our thoughts in that submission remain relevant and we appreciate the opportunity to submit our comments on this current discussion paper.

The role of a combined regulator in spectrum planning consistent with a 'minimal change' regulatory model and on the balance of objectives that should be applied particularly in relation to decisions about BSB spectrum.

Having read the discussion paper and acknowledging the canvassing of public opinion on the three institutional reform options with the preference for "creation of a single agency with responsibility for broadcasting, telecommunications, radiocommunications and online regulation", we support this option for the stated potential benefits of:

- "more effective implementation of a spectrum-wide approach to the management of spectrum planning"
- "better ability to respond to evolving spectrum management issues such as the increasing demand for mobile communications spectrum, the need to harmonise spectrum for defence and emergency services, introduction of digital radio services and the hand-back of analog television spectrum ... also an improved ability to pursue opportunities for sharing spectrum between different services"
- "improved ability to undertake detailed work on convergence, emerging competition and regulatory issues"

along with passing the ultimate cost savings on to the Australian industry participants to enhance the prosperity of the industry and for the overall benefit of the Australian public.

While there is an opportunity to minimally enhance other areas of the current legislation to keep pace with technology change, in making changes for a proposed merger of the ACA and ABA, we nonetheless support the minimal change regulatory model. Other areas where enhancements could be made to the current legislation with this minimal change approach are discussed under the topic of “any other relevant matters”.

We support the proposal that a single regulator would need to consider, “the different statutory emphases arising from the different Acts in undertaking BSB and non-BSB spectrum planning” for the benefit of Australia.

Ministerial directions powers that should apply to a combined regulator.

Similar to the way in which a single regulatory would need to balance the statutory emphases arising from different Acts, Motorola believes that Ministerial direction powers would need to balance the statutory emphases arising from the different Acts by initially specifying particular circumstances under which directions apply. Subsequently consideration could be given to consolidating and unifying where practicable the scope of Ministerial directions consistent with the objectives of both Acts.

The Board structure of the combined agency, the need for and role of a CEO, whether specialist skills and advisory structure are needed, the delegation of functions, and any other relevant organizational/institutional issues.

Motorola highly respects and values good corporate governance and supports a single regulator aspiring to the same principles irrespective of the model chosen.

Model 2 provides for a separation of regulatory functions (Chair, Board) and executive roles (CEO and executive staff). This approach is notionally considered to be good corporate governance in Australia. The alternative of Model 1, where “the Chair is accountable to the Minister for the performance of the organization including its GM and other executive staff” likewise separates the regulatory functions and executive roles. Such structure allows the Board to focus on strategic oversight and in many respects maximizes the potential of the Board. Motorola supports a model that maximizes the good corporate governance potential of the proposed single regulatory. Sub committees should be established for audit, corporate governance and nomination. Advisory committees with the Board, executive and industry representatives should be established on as needed basis.

The corporate structure and location of a combined organization, including on the most effective structure and locations of offices to maintain effective functioning and linkages with stakeholders.

Motorola seeks to maintain an efficient and effective organization and supports the notion of combining the ACA and ABA corporate areas given their similarity of structure. Consideration could likewise be given to consolidating the board support and coordination unit of the ABA and the corporate governance team of the ACA.

Given the proposed functions of a single regulator and the current location of ABA content functions in Sydney, the ACA in Melbourne and spectrum planning facilities in close proximity to Canberra for the ACA and ABA, Motorola recognizes the opportunity to consolidate the Canberra spectrum planning facilities while maintaining a presence in Sydney and Melbourne. However, given the increasing use of electronic interaction, consideration could be given to an increasing online presence and digitization of processes. Providing that a cost-benefit analysis was favourable, front and back office functions could be explored for geographic dispersion, retaining minimal front offices in Sydney and Melbourne, and increasing points of presence in other Australian cities consistent with the broader policies on regional development and online government.

Any other relevant matters.

The scope of the discussion paper is to seek feedback on the proposed new institutional arrangements for the Australian Communications Authority and the Australian Broadcasting Authority with minimal regulatory change. However, given that legislation will need to be amended, Motorola suggests that this is a suitable opportunity to consider and explore other minor modifications in line with the evolving legislative framework of other countries, for example, the emergency call, E911 clause, of the USA Telecommunications Act 1996; and the consideration of the European parliament for similar legislative change in support of location-based services with suitable privacy protection. These and other minor amendments could be explored with suitable consultation for accommodation with the minor changes required for an ACA and ABA merger.