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Submission to the Senate Standing Committee on Environment and Communications inquiry into the Radiocommunications Bills 2020

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Commpete—an industry alliance for competition in digital communications markets—welcomes this opportunity to contribute to the Senate Standing Committee on Environment and Communications inquiry into the Radiocommunications Bills 2020 (**the Inquiry**).

Commpete represents non-dominant telecommunication service providers. Our members provide fixed and mobile voice and data services across a range of customer segments, including residential, SME, corporate, and government. Some members hold multiple apparatus licences.

We are broadly supportive of the proposed reforms to the radiocommunications licensing regime and the implementation of the recommendations of the 2015 Spectrum Review. However, there is one particular issue that we wish to raise in relation to the Radiocommunications Legislation Amendment (Reform and Modernisation) Bill 2020 (**the Bill**), which proposes to amend the *Radiocommunications Act 1992* (**the Radcoms Act**).

The Bill envisages that the Australian Communications and Media Authority (**ACMA**) will consider competition issues as part of its administration of the radiocommunications licensing regime. See for example, the Explanatory Memorandum (at page 4) in respect of the proposed new object of the Radcoms Act: 'Considerations around facilitating the efficient use of spectrum would include competition considerations, such as factoring in the role of competition in downstream markets.'

However, in this context, the ACMA would apply a significantly different economic framework to such issues from that used by the Australian Competition and Consumer Commission (**ACCC**). Specifically, the ACMA applies the total welfare standard[1] whereas the ACCC applies the consumer welfare standard.[2] The difference between the two standards is the 'producer

[1] See, eg, ACMA, *Five Year Spectrum Outlook 2016-20: The ACMA's spectrum management work program* (October 2016), 10-1 <www.acma.gov.au/sites/default/files/2019-07/ACMA%20Five%20year%20spectrum%20outlook%202016-20.pdf>.

[2] See, eg, Rod Sims, *Address to the 2018 Annual RBB Economics Conference* (RBB Economic Conference, Sydney, 29 November 2018) <www.accc.gov.au/speech/address-to-the-2018-annual-rbb-economics-

surplus'; that is, the producers' profits. Total welfare can thus increase in circumstances where consumer welfare is decreasing.

The Bill therefore creates the prospect that different regulators may examine the same issue in the same market under the same set of circumstances and yet reach substantially different conclusions.

For example, the ACMA may take competition issues into consideration when deciding whether to issue a spectrum licence[3] or an apparatus licence.[4] The ACCC may have cause to consider the effects of the issue of such a licence given such actions are taken to be acquisitions for the purposes of section 50 of the *Competition and Consumer Act 2010* (**CCA**).[5]

The Inquiry should consider the risks of creating potential for competition issues to be assessed by different telecommunications sector regulators using different standards.

A solution to this problem seems relatively straightforward. First, an explicit competition objection, consistent with that of the CCA, should be incorporated into the object of the Radcoms Act (in section 3) rather than leaving 'competition' as a discretionary consideration mentioned only in the Explanatory Memorandum. Second, and additionally, the ACCC should be given sole responsibility for considering competition issues relevant to the ACMA's administration of the Radcoms Act.

These measures would harmonise the different perspectives of the two regulators. The ACCC's advice—based on its application of the consumer welfare standard—could be taken into account by the ACMA in its consideration of the 'long-term public interest' object using the total welfare standard.

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conference#:~:text=Total%20welfare&text=There%20are%20many%20economists%20who,'%20surplus%20and%20consumers'%20surplus.>

[3] Explanatory Memorandum, Radiocommunications Legislation Amendment (Reform and Modernisation) Bill 2020, item 31, 31 (on allocation limits).

[4] Ibid, item 63, 39 (on consideration of the aggregate part of the spectrum).

[5] See paragraphs 71A and 106A of the Radcoms Act (in respect of spectrum and apparatus licences respectively), which are subject to proposed amendments under Items 40B, 41, 73A and 73B of the Bill, respectively.