

## Why a Charter of Competition Regulation is Better than the Australian Competition and Consumer Commission's Service Charter and Public Shaming of Corporations

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### Abstract

*The Dawson Committee's review of the competition provisions of the Trade Practices Act 1974 (Cth) (TPA) and its administration provides a rare opportunity to examine the working of Australian competition legislation and intervention by the competition regulator, the Australian Competition and Consumer Commission (ACCC). There has been some careful thinking on less direct government intervention, by business leaders in organisations such as the Business Council of Australia (BCA).*

*This has given rise to the BCA's proposed Charter of Competition Regulation, which compares favourably with the ACCC's Services Charter. Principles such as accountability or openness, transparency and consistency are seen as a basis for the operation of regulatory Charters.*

*The ACCC has been criticised for its perceived lack of accountability. Criticisms also arise through what business leaders and politicians see as the ACCC's inappropriate use of the media. This extends to the issuing by the ACCC of so called "shame notices". Such use by the regulator is seen to be inconsistent with accountability and good governance practice. The ACCC has responded to this criticism.*

*Content analysis techniques are used to compare the BCA's proposed Charter of Competition Regulation with the ACCC's Service Charter. Results from sentence comparisons show that the BCA Charter has a greater emphasis on the main themes of transparency, certainty and goal targeting. This is in addition to a sentence main theme emphasis on accountability or openness. The ACCC Charter, while dwelling to no lesser degree on accountability, has a greater emphasis on service delivery, informed Australian markets, informing consumers and complaints.*

### Introduction

The Dawson Committee's review of the competition provisions of the *Trade Practices Act 1974 (Cth) (TPA)* and its administration provides a rare opportunity to examine the working of Australian competition legislation and intervention by the competition regulator, the Australian Competition and Consumer Commission (ACCC). Proposals have been advanced by the regulator itself<sup>1</sup> to amend the law or to make it more functional in certain areas. While business leaders in the earlier part of 2002 simply reacted to these proposals, there has now been some careful thinking by those same leaders to help develop a framework for less direct government intervention. Part of this thinking involves concentrating upon:

- the economic contribution of competition regulation;
- competition regulation which supplements market dynamics rather than supplanting them; and
- the equal treatment of businesses and consumers, irrespective of size, location, age or influence.

These elements have been synthesised in the Business Council of Australia's (BCA), proposed *Charter of Competition Regulation (Annexure A)*. The BCA seeks to incorporate the important principles of transparency, certainty, accountability, proportionality and equality. To this, could be added the UK's Better Regulation Task Force<sup>2</sup> principles of consistency and goal targeting. The BCA's *Charter* compares with the ACCC's

*Service Charter (Annexure B)*, which deals with values, professional quality service, responsiveness, information and complaints. While the functions of the ACCC in relation to the dissemination of information, law reform and research are set out in S. 28 of the TPA, the ACCC appears to increasingly rely upon its *Charter* and aspects such as "informed Australian markets" and "openness" to justify an increased number of public statements<sup>3</sup>. As ACCC Chairman Allan Fels says<sup>4</sup> :

*"Media releases help to educate business and consumers about the law, act as deterrents and alert the community to scams, unsafe products and contamination. A release that accurately presents the facts reduces the chance of journalists getting it wrong. The greater the community's knowledge of competition law and its benefits, the greater the chance of compliance. This should be welcomed. The Trade Practices Act supports the ACCC's issue of releases and use of the electronic media."*

In this paper, regulatory compliance is defined and problems with regulation are identified. There is then some discussion about the ACCC's role. Within an accountability framework, the paper explores what has been termed "the perception of trial by media"<sup>5</sup> and the comment by Caltex, David Jones and Board of Taxation Chairman, Dick Warburton<sup>6</sup> on the more assertive "trial by media in the form of the ACCC's use of publicity in a raid on Caltex last April". The ACCC's issuing of releases to the media, dating from the

New Tax System's introduction, have been colloquially termed "shame notices"<sup>7</sup>. Public shaming of corporations is quite a contentious issue.

Both Charters are compared using content analysis techniques. From this comparison, it is argued that a proposed *Charter of Competition Regulation* is better than the ACCC's *Service Charter*. As a *Charter of Competition Regulation* is only a proposal at the moment, a comparison with the ACCC's *Service Charter* is more at the conceptual than the practical level. Nonetheless, a *Charter of Competition Regulation* has as its foundation the actual or anecdotal experiences of corporations in dealing with the ACCC. BCA members have strongly held views on the costs of regulatory errors<sup>8</sup>. It is a contention that costs stem from a deficient ACCC *Service Charter*. Formulation of a proposed *Charter of Competition Regulation* has been encouraged firstly by release of the July 1997 Australian Taxation Office's 102 page *Taxpayer's Charter* and secondly, by the *Charter of Business Taxation* recommended by the Ralph Review of Business Taxation. The ATO's November 2000 *Cooperative Compliance Model*, with its objectives of optimising economic growth, generating community confidence and building cooperative relationships with business, is in keeping with this. It remains to be seen whether the Dawson Committee will be as accepting of the *Charter of Competition Regulation* as the BCA suggests it must.

### Regulatory Compliance

In his 12 March 1991 "Building a Competitive Australia" speech, the then Prime Minister of Australia, Bob Hawke, said<sup>9</sup>:

*"The Trade Practices Act is our principal legislative weapon to ensure that consumers get the best deal from competition."*

Successive governments have emphasised this aspect, being the public interest or social benefit "deal" from trade practices legislation. The ACCC and in particular its Chairman, Allan Fels, has taken this as a cue for greater public disclosure in its regulatory activities. The Chief Executive of the Australian Consumers Association, Louise Sylvan, has described Fels<sup>10</sup> as "the best friend that consumers have".

In 1995, objects of the TPA were more clearly stated through insertion of a new Section 2 "to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection". A focus on the interests of consumers is also shown through repeated mention under S. 28 of the TPA. The debate has ranged between whether there should be greater emphasis where "government has a responsibility to provide an orderly framework for the responsible and honest conduct of companies"<sup>11</sup> or a more interventionist stance, where "regulation can be used as a surrogate for the pressure that competitive forces would exert to deliver economic efficiency, and, in effect, to mimic the market"<sup>12</sup>. This debate remains unresolved.

### Regulatory Definitions

Dewing and Russell<sup>13</sup> cite Francis' (1993) definition of regulation as "state intervention in private spheres of activity to realise public purposes." The Macquarie Dictionary<sup>14</sup> definition of regulation is "a rule or order, as for conduct, prescribed by authority; a governing direction or law".

Regulation is frequently associated with the attempt to correct market failure, such as "effective demand failures", where the market is unable to transmit messages about desired transactions from one side to the other<sup>15</sup>. It may take many forms, including, first, self regulation<sup>16</sup>, where rules are formulated without government involvement; second, quasi-regulation<sup>17</sup> which involves the development of rules or arrangements where the government has played a major role in their development and enforcement but which do not form part of explicit government regulation and third, the more discriminatory symmetric regulation<sup>18</sup> which allows for a "level playing field" upon which market participants at various stages of development or market sophistication can compete.

Compliance focuses on target populations of regulation, the extent to which they comply with regulation and why they do so<sup>19</sup>. The OECD<sup>20</sup> refers to Friedrichs (1995) in distinguishing "compliance", which uses persuasion and co-operation, from "deterrence", which involves prosecution and punishment. This is sometimes conceptualised through a "compliance pyramid", which has "self regulation and co-operation" at its base, moving upwards through "assisted self regulation" to "active enforcement" at its apex. Regulatory compliance is defined as obedience by a target population to regulatory rules or with government policy objectives. Transparency and certainty are fundamental to both the compliance and the deterrence processes.

### Problems with Regulation

The Productivity Commission<sup>21</sup> has found that irrespective of their institutions or legal frameworks, many countries are experiencing problems with their regulatory systems. The Commission goes on to list:

- inflexible regulations which often focus on fixing existing problems and are not adaptable to new situations;
- rapid growth in regulation, much of which is not subject to consistent and objective assessment prior to implementation; and
- the challenge of balancing a sense of being "over regulated" (or inappropriately regulated) with the support of many citizens for regulations which achieve certain economic and social outcomes.

Whether such difficulties extend to regulatory failure may be a question of degree (rather than complete regulatory failure as in the case of "regulator capture" by a regulatee) and also the extent to which regulatory systems remain unresponsive to change and the need for improvement. The OECD<sup>22</sup> refers to the degree of trust between regulatees and regulators. If regulatees feel that regulators treat them as untrustworthy, then defiance and resistance build up so that inefficiency and non-compliance both increase. In administering the law, regulators such as the ACCC may engage in behaviour which the Australian House of Representatives Standing Committee on Economics, Finance and Public Administration<sup>23</sup> has described as "bullying or arm twisting". This has given rise to complaints about the ACCC. Examples are:

- continually talking up the threat of sizable penalties, even where the most minor transgression of the law is involved;

- misrepresenting its views as the “law” or generally overstating its powers;
- requiring voluminous disclosure from companies without any reciprocal supply of details on the regulator’s part about a particular transaction or behaviour;
- engaging in demonstration trials to induce compliance. Such proceedings are sometimes settled pre-trial; and
- using adverse publicity to imply or state that a party has breached the law.

### ACCC’s Role

In reviewing the ACCC’s role as a competition regulator, the House of Representatives Standing Committee<sup>24</sup> has touched on some important points. Firstly, it has said “the ACCC has to be transparent and accountable in its operations. Some consider the ACCC has become so powerful that it increasingly seems accountable to no one”. Secondly, it has said “the ACCC has demonstrated the ability to gain the media high ground and public opinion in a way that creates considerable additional influence for the stands it decides to take. Some suggest the ACCC’s media influence can on occasions inhibit proper business decision making and create unnecessary fear particularly amongst small business”. This last point is amply illustrated by the views of Finn, J.<sup>25</sup> when his honour said:

*“The stances so taken may constitute good public theatre. The stance taken by the ACCC, in at least some of the instances in which threats were made against (the association) and the suppliers, could quite reasonably be interpreted as simply an attempt to stifle debate.”*

Leaving aside the ACCC’s use of the media and reverting to the House of Representatives Standing Committee’s first point, an interesting question is whether being transparent and accountable is enough. The BCA expects more through its proposed *Charter*, particularly from the viewpoint of certainty and consistency on the part of the ACCC. As Di Piazza and Eccles<sup>26</sup> comment, “transparency and accountability are not enough to establish public trust. In the end, both depend on people of integrity. Rules, regulations, laws, concepts, structures, processes, best practices and the most progressive use of technology cannot ensure transparency and accountability. This can only come about when individuals of integrity are trying to ‘do the right thing’, not what is expedient or even necessarily what is permissible”.

The ACCC’s Chairman Allan Fels, has sought to deflect criticism of the ACCC’s administration of the system of competition regulatory compliance. In the opinion of the BCA<sup>27</sup> the ACCC continues to show a “less than contrite attitude”. For instance, in a 24 January 2002 *Business Review Weekly*<sup>28</sup> article Fels is quoted (page 24) as saying:

*“As to public accountability, no Australian agency is more accessible, open and accountable in providing information about, and reasons for, its decisions. The ACCC is sometimes accused of adopting a ‘trial by media release’ approach to its work as guardian of the Trade Practices Act. This is nonsense. About 90 per cent of the ACCC’s releases are issued after the Courts have brought down their decisions. No one is put ‘on trial’ by a media*

*release. A media release alerts business to the penalties for breaching the Act. Greater awareness should mean greater compliance ... The ACCC is accountable to the public, the Courts and the Government. Its representatives are summoned before Parliamentary committees and the ACCC’s annual report is tabled in Parliament. The report is reviewed by the House of Representatives standing committee on economics, finance and public administration. There are submissions and public hearings. The ACCC’s critics get the floor, and the committee’s published review is no rubber stamp. There is a contradiction in the criticism that the ACCC is both unaccountable and gets too much publicity. The unaccountable are shy of publicity.”*

Less than six months later,<sup>29</sup> the Treasurer Peter Costello (to whom the ACCC is responsible), is quoted as saying “Professor Fels’ use of publicity is excessive. The enforcement of competition law is the Commission’s primary objective and media coverage should not overtake that role”. Caltex Chairman, Dick Warburton has said about Fels<sup>30</sup> “He’s a dedicated public servant but he’s gone beyond the bounds of what I believe is proper practice for a regulator. I do believe there should be more accountability in the comments made and a reining in of what I class as abuses of publicity.” Such reported comments are consistent with those of the Business Council of Australia’s Chief Executive, Katie Lahey, who said<sup>31</sup> “the accountability of the ACCC is one of the Business Council’s biggest concerns. Although Fels’ powers, reach and budget have increased (from \$33.9 million in 1996-97 to \$83.4 million in 2001-02) the accountability of the ACCC has not. Fels has become investigator, prosecutor, judge and jury”. Apart from Dick Warburton’s comments (*supra*), the President of BP Australia and New Zealand, Greg Bourne, is reported as saying<sup>32</sup> “the prior knowledge of certain sections of the media ... may already have created a perception of guilt in the public’s mind. This type of action by the ACCC displays either a lack of good governance, or bad judgement.”

### Comparison of Charters

The BCA’s proposed *Charter of Competition Regulation* and the ACCC’s Service Charter have been compared, using content analysis techniques.<sup>33</sup> Such techniques have been found to provide generally acceptable levels of reliability and validity. Following Weber (1988), Milne and Adler<sup>34</sup> conclude that content analysis is an appropriate method of codifying the text (or content) of a piece of writing into various groups or categories depending on selected criteria. Citing Krippendorff (1980), the authors also define content analysis as a research technique for making replicable and valid inferences from data according to their context. Techniques can be used to transform communication content through objective and systematic application of categorisation rules. Such rules are designed to allow better understanding of what is being said, how the communication is made, to whom the communication is directed towards, why the communication was made, the party making the communication and the effect the communication may have.

### Method

The BCA’s submission to the Dawson review paints a picture of what the proposed *Charter of Competition Regulation* will include. The picture emerges from sentence construction

and the context within which each sentence links to references or other evidence. The BCA's companion proposals for a Board of Competition and an Inspector General of Competition Regulation have been de-coupled to allow a more direct comparison with the ACCC's *Service Charter*. The method relies upon categorising 18 sentences in the BCA's *Charter* and 21 sentences in the ACCC's *Charter*, in four areas:

- whether or not they are related to regulation;
- main themes, such as accountability or openness;
- context - evidence or reference given; and
- whether good (positive), bad (negative), both good and bad or neither good nor bad connotations.

Coding categories are further identified in Table 1.

Descriptions are based on the following definitions:

- *accountability or openness* - regulation and the process of the regulator should be open to analysis and

· *transparency*

· *certainty*

· *proportionality*

· *equality*

criticism, and the regulator should be accountable to independent bodies;

- regulation should be transparent in application, including in relation to the relevant criteria used for making decisions;

- regulation should provide certainty about when it will apply and what is required for compliance;

- regulatory responses, in both legislative and administrative terms, should be in proportion to the specific issues being addressed;

- regulation should treat all regulated businesses

**Table 1 - Coding Categories**

Category Count	Description
(a)	Sentence related to regulation
(b)	Sentence didn't relate to regulation
(c)	Blank
(d)	Main theme – accountability or openness
(e)	Main theme – transparency
(f)	Main theme –certainty
(g)	Main theme – proportionality
(h)	Main theme – equality
(i)	Main theme – consistency
(j)	Main theme – goal targeting
(k)	Main theme – professional quality service
(l)	Main theme – responsiveness
(m)	Main theme – informed Australian Markets or consumers
(n)	Main theme – complaints
(o)	Main theme – good governance
(p)	Main theme – not previously mentioned
(q)	Blank
(r)	Blank
(s)	Blank
(t)	Context – some evidence or reference given
(u)	Context – no evidence or reference given
(v)	Blank
(w)	Good or positive connotation
(x)	Bad or negative connotation
(y)	Both good and bad connotations
(z)	Neither good nor bad connotations

- *consistency* - equally, and not favour nor disadvantage businesses based on their actual size or competitiveness; the same or similar circumstances when presented to a regulator should produce the same or a similar decision when compared with prior decisions, and includes consistency of enforcement actions within and across regulators and consistency with international laws;
- *goal targeting* - intention to achieve certain goals or objectives, including the use of a goal based approach with enforcers, and those being regulated given flexibility in deciding how best to achieve clear, unambiguous targets;
- *professional quality service* - standards comparable generally with the provision of professional advice;
- *responsiveness* - speed of response to interested parties' queries or submissions;
- *Informed Australian markets or consumers* - intention to broadly disseminate information;
- *complaints* - willingness to receive and process complaints, problems, criticism and related issues; and
- *good governance* - standards of behaviour, values and business based ethics.

The sentences in both Charters were coded in the four areas. As an example, the BCA *Charter of Competition Regulation* sentence 9 reads as:

*“The Charter of Competition Regulation would establish an accepted, transparent framework within which Australian competition regulation would be consistently developed and implemented.”*

This was coded as:

- Sentence 9 (a) Sentence related to regulation
- (e) Main theme - transparency
- (u) Context - no evidence or reference given
- (w) Good or positive connotation

With the ACCC *Service Charter*, an example is sentence 3, which reads as:

*“We value integrity, openness, effectiveness, efficiency, professionalism and innovation in the way we perform our work.”*

This was coded as:

- Sentence 3 (a) Sentence related to regulation
- (d) Main theme - accountability or openness
- (u) Context - no evidence or reference given
- (w) Good or positive connotation

## Results

In the four areas, it is possible to compare the 18 sentences in the BCA's *Charter* with the 21 sentences in the ACCC's *Charter* using unweighted frequency percentages. Results are summarised in Table 2.

From this table, it is apparent that the BCA *Charter* has more sentences (89 percent) related to regulation, whereas the ACCC *Charter* has not (81 percent). It is clear that the BCA *Charter* has a greater emphasis (ie. 55 percent cumulative) on the main themes of transparency, certainty and goal targeting, in addition to a sentence main theme of accountability or openness (17 percent). Goal targeting (21 percent) is identified as the single largest main theme in the BCA *Charter's* sentences. In comparison, the ACCC *Charter*, while dwelling to no lesser degree on accountability or openness, has a greater emphasis (ie. 51 percent cumulative) on service delivery, informed Australian markets or consumers and complaints. With context, it is possible to link BCA sentences to some other evidence or reference (44 percent); with the ACCC's *Charter*, it is not. Both BCA and ACCC sentences entail a good or positive connotation (50 percent and 62 percent respectively), with the ACCC's *Charter* perceptively more definite or “black and white” in connotation. Some 28 percent of BCA sentences were coded as involving neither good nor bad connotations.

## Limitations

Commonly identified difficulties with some aspects of content analysis<sup>35</sup> also apply to this research. Principally, problems with consistent and valid coding and replication by different researchers also apply here. When dealing with concepts and the researcher's understanding of those concepts, it is sometimes difficult to define the boundaries of categorisation - for instance, the main themes of accountability or openness and transparency could be seen as elements of good governance. Deciding on what is a “main theme” also presents some difficulty, along with the definite “good” or “bad” connotations, as an attempt at polarity. The test for “main” categorisation has been “chiefly” or “mainly”, although other researchers may disagree on this rule.

The method does not allow a deeper probing of sentence descriptions and consequently, main themes. For instance, when the BCA in its Dawson submission<sup>36</sup> says “the ACCC's Service Charter is silent on where complaints can be made about the ACCC's handling of matters other than to the ACCC itself” and then says “The ACCC's Service Charter seems to fall short of the (Australian Standard for Complaints Handling AS 4269)”. There is no ability to check this from the content analysis outcome.

## Conclusions

While S. 28 of the TPA provides the ACCC with a legislative basis for its functions, its *Service Charter* specifies the values under which the regulator operates. A comparison

Table 2 - Results

Category Count	Description	BCA	ACCC
(a)	Sentence related to regulation	89%	19%
(b)	Sentence didn't relate to regulation	11%	81%
(d)	Main theme – accountability or openness	17%	19%
(e)	Main theme – transparency	17%	5%
(f)	Main theme – certainty	17%	5%
(i)	Main theme – consistency	11%	-
(j)	Main theme – goal targeting	21%	5%
(k)	Main theme – professional quality service	-	12%
(l)	Main theme – responsiveness	-	24%
(m)	Main theme – informed Australian markets or consumers	-	5%
(n)	Main theme – complaints	-	10%
(o)	Main theme – good governance	6%	5%
(p)	Main theme – not previously mentioned	11%	10%
(t)	Context – some evidence or reference given	44%	-
(u)	Context – no evidence or reference given	56%	100%
(w)	Good or positive connotation	50%	62%
(x)	Bad or negative connotation	-	14%
(y)	Both good and bad connotations	22%	24%
(z)	Neither good nor bad connotations	28%	-

of the BCA's proposed *Charter of Competition Regulation* and the ACCC's *Service Charter* reveals some deficiencies. There is a lack in description of principles in the ACCC's *Charter*. Just as the ACCC seeks to deflect criticism of its administration of the trade practices legislation, it may not be willing to accept that there are deficiencies, preferring instead to argue for a strengthening of firstly, its legislative powers and secondly, its position to use the media to publicly shame corporations. What is clear from the analysis in this paper is the ACCC's *Service Charter*, which is primarily focused on "quality service" and not governance, does not properly equip it in defending against criticisms of its actions. There is no evidence from its *Charter* to show that the ACCC's actions can be based the principles of on transparency, certainty, consistency or goal targeting. In this regard, the BCA's *Charter* is better.

A solution may lie in a Ministerial Direction to the ACCC under S. 29 of the TPA. Such a Direction "connected with the performance of (the ACCC's) functions or the exercise of its powers under (the TPA)" would require the ACCC to improve its *Service Charter* to remove deficiencies such as those identified above. This could include what the University of New South Wales' Frank Zumbo<sup>37</sup> describes as a Media Code of Conduct, i.e. spelling out exactly what constitutes appropriate media comment by the ACCC. According to the Australian Industry Group,<sup>38</sup> an improved vould also "deal with the procedures and processes to be adopted by the regulator in its enforcement undertakings, the manner in which it must document and detail its investigations and allegations, the procedures for media releases and clearance of conduct at all levels, including the ACCC itself. It should set out a mechanism for the despatch of investigators, handling of confidential and commercial information and complaint

handling protocols".

Alternatively, a more prescriptive approach may be to amend S. 28 of the TPA itself. A more detailed explanation of what is required from the ACCC could be provided. However in the light of the Prime Minister's 6 August 2002 speech<sup>39</sup> to the Securities Institute and Institute of Chartered Accountants', this is probably a less preferred option by the present Government. Mr Howard is against "embracing fresh regulation for its own sake" and clearly prefers self regulation and a co-operative approach. Other forms of regulation such as "quasi-regulation" are less preferred, unless attempts at self regulation have failed.§

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**Annexure A**

**BCA Charter of Competition Regulation**

- 1 The Business Council proposes that a *Charter of Competition Regulation* be established as a clear framework to guide the development and implementation of the competition provisions of the TPA.
- 2 The Council also proposes that a Board of Competition be established to oversee the Charter's implementation.
- 3 In developing this proposal, the Business Council has taken into account the models recently proposed or adopted by the Commonwealth Government to improve the taxation system.
- 4 These processes are summarised in Appendix 3 (to the BCA's submission).
- 5 The Business Council has been guided by these models, but it has adapted them to the needs of competition regulation and therefore differ somewhat from the approach adopted for taxation administration.
- 6 The ACCC currently has Service Charter that sets out the parameters for the ACCC's interaction with the individuals.
- 7 The text of the Service Charter is set out in Appendix 4 (to the BCA's submission).
- 8 The proposed *Charter of Competition Regulation* would have a considerably wider scope than the current Service Charter.
- 9 The *Charter of Competition Regulation* would establish an accepted, transparent framework within Australian competition regulation could be consistently developed and implemented.
- 10 It would provide guidance to companies and individuals on how the competition provisions will be administered, assisting and encouraging compliance by the regulated.
- 11 The Charter would serve as a benchmark against which the ACCC's actions could be judged more transparently.
- 12 The Charter would build on the amendments to the TPA proposed above, by providing guidance to the ACCC on how the amendments should be complied with.
- 13 The Charter would also focus on how the TPA is to be implemented to achieve the objects of the Act.
- 14 The Charter would be built around three core goals for competition regulation, namely, that competition regulation should:
  - (i) contribute to an Australian economy that is efficient and internationally competitive;
  - (ii) supplement market dynamics rather than supplant them; and
  - (iii) treat all businesses and all consumers equally, neither favouring nor disadvantaging businesses in particular sectors or of particular size.
- 15 The Charter would also incorporate a set of principles to guide the development, implementation and administration of competition regulation, such as:

- |                        |  |
|------------------------|--|
| <i>transparency</i>    | regulation should be transparent in application, including in relation to the relevant criteria used for making decisions;                           |
| <i>certainty</i>       | regulation should provide certainty about when it will apply and what is required for compliance;  |
| <i>accountability</i>  | regulation and the process of the regulator should be open to analysis and criticism, and the regulator should be accountable to independent bodies; |
| <i>proportionality</i> | regulatory responses, in both legislative and administrative terms, should be in proportion to the specific issues being addressed;                  |
| <i>equality</i>        | regulation should treat all regulated businesses equally, and not favour nor disadvantage businesses based on their actual size or competitiveness.  |
- 16 These principles would be used to identify weaknesses in the TPA and its administration, and to assess the merits of reform proposals.
  - 17 They would also serve as a benchmark against which the administration of the TPA could be measured.
  - 18 The final text of the Charter would be determined by the Cabinet or the Treasurer, not by the Board of Competition

**Annexure B**

**ACCC Service Charter**

- 1 This charter sets out the standards of service you can expect from us and the steps you may take if these standards are not met.
- 2 Our mission is to enhance the welfare of Australians by fostering competitive, efficient, fair and informed Australian markets.

**Values of the ACCC**

- 3 We value integrity, openness, effectiveness, efficiency, professionalism, and innovation in the way we perform our work.

**Professional, quality service**

- 4 You will be treated with courtesy and our staff will be helpful.
- 5 Your questions and inquiries will be answered promptly.
- 6 We will be objective in our dealings and will take steps to ensure that our guidelines concerning conflict of interest are adhered to.
- 7 We will give you reasons for decisions.

**Responsiveness**

- 8 You can contact us by telephone, fax, in person or electronically during normal business hours.

- 9 Over the telephone and at the counter we will identify ourselves to you.
- 10 Our letters will have a contact name and telephone number on them.
- 11 All switchboard telephone numbers will be answered from 8.30am to 5.30pm each business day.
- 12 We will follow up telephone messages within 24 hours.
- 13 Correspondence requiring responses will be acknowledged as soon as practicable.
- 14 Responses will be provided within 28 days, but where this is not possible we will keep you informed of progress.
- 15 Where it is not appropriate for us to help you we will refer you to the relevant organisation.

#### **Information**

- 16 You will be able to obtain information about your rights and obligations under the legislation we administer from ACCC offices.
- 17 We will provide information and guidelines in plain language.
- 18 We will respect your rights to privacy and confidentiality.

#### **Complaints**

- 19 If we fail to meet these standards:
  - first try to sort it out with the staff member you're dealing with;
  - talk to that staff member's manager if you're not satisfied; and
  - if you are still not satisfied, or if the above suggestions are not appropriate in the circumstances, write to or telephone Chief Executive Officer.
- 20 The Chief Executive Officer will respond to your complaint within 10 days of receipt.
- 21 If you are still not satisfied we will advise you where else to take your complaint.

\* Partner, KPMG and DBA Candidate MGSM.§