

[REDACTED]

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**From:** [REDACTED]  
**Sent:** Tuesday, 5 September 2023 1:59 PM  
**To:** DL - Expiring Spectrum Licences  
**Subject:** FW: Comments on papers for tomorrow's Spectrum Committee meeting [SEC=OFFICIAL]

Folks – views from Anna Brakey on the ESL SC paper.

Please note the kind offer in relation to the information request and let me know if you want to take it up. Can just be flagging interest in doing so if you're not certain.

[REDACTED]

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**From:** Rachel Blackwood  
**Sent:** Tuesday, 5 September 2023 1:01 PM  
**To:** [REDACTED]  
**Cc:** Christopher Hose  
**Subject:** FW: Comments on papers for tomorrow's Spectrum Committee meeting [SEC=OFFICIAL]

Hi all, see Anna's written comments below, as flagged by Adam at Spectrum Committee.

Rachel

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**From:** Adam Suckling [REDACTED]  
**Sent:** Tuesday, 5 September 2023 11:53 AM  
**To:** Linda Caruso [REDACTED]; Rachel Blackwood [REDACTED]  
**Subject:** FW: Comments on papers for tomorrow's Spectrum Committee meeting [SEC=OFFICIAL]

Fyi

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**From:** Anna Brakey [REDACTED]  
**Sent:** Monday, 4 September 2023 5:01 PM  
**To:** Adam Suckling [REDACTED]  
**Subject:** Comments on papers for tomorrow's Spectrum Committee meeting [SEC=OFFICIAL]

**OFFICIAL**

Dear Adam

My sincere apologies that I can't attend the Spectrum Committee meeting tomorrow. I have a clash that I can't avoid unfortunately. But thank you to the team for the great papers.

I have the following comments on items 2a and 2b.

**2a: submissions to expiring spectrum licences process**

The expiring spectrum licences process provides a rare opportunity for the ACMA to reassess the arrangements for the majority of spectrum licenses held by the MNOs and therefore has the potential to reshape the mobile services market. As you are aware, the ACCC provided a submission to the ACMA's initial consultation paper. The key recommendation of our submission is for the ACMA to explore opportunities for reducing barriers to entry and facilitate new entrants during the ESL process.

***Telstra's stated views that facilitating new entrants is not in the public interest***

It is unsurprising that Telstra saw potential possibility of policy interventions on this issue and has objected to re-allocating spectrum to achieve this objective at this early stage.

We disagree with Telstra's views on this issue:

- As explicitly stated in our submission, the ACCC does not have a view on the optimal number of MNOs that should operate in the mobiles market. Rather the ACCC is recommending that the ACMA signal to the market that it is willing to reduce barriers to entry for new entrants and thereby creating threat of entry. Whether a fourth MNO does emerge at the end of the process is a separate matter.
- The mobiles market is a dynamic market and is constantly disrupted by new technologies. Whether the market could sustain 4 MNOs will be determined by market conditions from time to time. In any case, entry and exit of players in a market is a natural phenomenon in a competitive market. What is problematic is a market with no threat of entry due to high barriers to entry (either structural or behavioural), which would create a tight oligopoly structure that weakens competitive intensity and heightens the risks of coordinated conduct. Unfortunately, there are signs this is what has been happening in the mobiles market after the TPG/VHA merger in 2020.

As noted in our submission, the ACCC is currently not aware of any prospective new entrant. In many cases, interests from prospective new entrants will likely only appear after the regulator indicates its intention to investigate the possibility of new entrants. We consider that this process provides a rare opportunity for the ACMA to indicate such intention.

[REDACTED]

[REDACTED]

[REDACTED]

***Examination use and ACCC Infrastructure Record Keeping Rules data***

I note interest in the use of information provided by the MNOs to the ACCC under the Infrastructure Record Keeping Rules for the ACMA's examination of the use of spectrum. While the ACCC has published the information provided by the MNOs since 2021, there is a significant lag between the receipt of the information and the publication due to the time needed to conduct relevant analysis. The ACCC has the power to provide RKR information to the ACMA prior to publication. The Mobile and Wireless Markets team at the ACCC is happy to engage with ACMA staff regarding the information that the ACMA may need and facilitating access if required to assist in the ESL process.

***Private wireless network use cases***

It appears that whether spectrum should be set aside for LA WBB use cases could potentially be a key issue for the ESL process. The private wireless network market is a growing market where smaller and new entrant providers are increasingly competing with the MNOs, and the MNOs are likely to have a significant competitive advantage due to their spectrum holdings. Making sufficient spectrum available for access by smaller providers for this purpose is likely to be necessary to promote competition in this market. I note that item 2b discusses the challenges in resolving competing demand for the current 3.4-4.0 GHz remote allocation and the importance of demand forecasting, which would appear to suggest that demand for this spectrum is higher than expected, at least in some areas. More detailed demand analysis for private wireless network usage (as suggested by item b) appears important to inform the ACMA's assessment of whether existing spectrum available for non-MNO providers (mainly through AWLs) is sufficient, and this will certainly influence any consideration of whether it would be in the public interest to make parts of the spectrum subject to the ESLs available for these providers.

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[REDACTED]

I hope these comments are useful for the Committee's consideration of these two papers. I am happy to discuss further.

Kind regards,

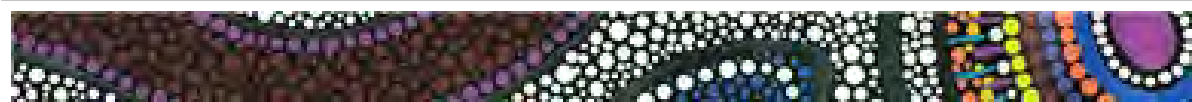
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**Anna Brakey**  
**Commissioner**

**Australian Competition & Consumer Commission**  
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[REDACTED]  
[REDACTED]

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The ACCC acknowledges the traditional owners and custodians of Country throughout Australia and recognises their continuing connection to the land, sea and community. We pay our respects to them and their cultures; and to their Elders past, present and future.

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**PRIDE Network** - *Supporting diversity of sexuality and gender identity at ACCC and AER*

**Proud CALD Ally**

I am an active supporter of cultural and linguistic diversity in the workplace.

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