AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY SUBMISSION TO PRODUCTIVITY COMMISSION REVIEW INTO MUTUAL RECOGNITION ARRANGEMENT AND TRANS-TASMAN MUTUAL RECOGNITION AGREEMENT

Introduction

The Australian Communications and Media Authority (ACMA) welcomes this opportunity to make a submission to the Productivity Commission's Review into the Mutual Recognition Arrangement and Trans-Tasman Mutual Recognition Agreement.

The Australian Communications and Media Authority (ACMA) and the Ministry of Economic Development in New Zealand (MED) have responsibility for electromagnetic compatibility (EMC) and radiocommunications matters in their respective countries. ACMA (and its predecessor, the Australian Communications Authority) has worked closely with MED to promote harmonisation of radiocommunications and EMC regulatory arrangements. In 2003 the ACA and MED signed a memorandum of understanding, under which the parties agreed to undertake certain administrative activities designed to promote the objectives of the TTMRA.

Considerable progress has been made in harmonising radiocommunications and EMC standards and regulatory arrangements. Examples of harmonisation achieved under the TTMRA include:

- use of a common compliance mark ('C-tick') for use in both Australia and New Zealand to illustrate compliance;
- harmonisation of EMC technical requirements between Australia and New Zealand (ie. a common set of EMC technical standards);
- substantial harmonisation of EMC regulatory requirements;
- partial harmonisation of radiocommunications technical standards and regulatory arrangements;
- participation of New Zealand representatives in Australian (Standards Australia) technical committees developing radiocommunications and EMC technical standards;
- regular cooperation (through bilateral meetings and ongoing consultation) between ACMA and MED to identify further opportunities for harmonisation, and to prevent significant differences in EMC regulations occurring as the regimes develop.

The few remaining variations between the respective EMC regulatory arrangements are minor and relate to the different legislative origins of the regulatory arrangements.

A number of standards for certain radiocommunications devices have not been harmonised. This is a consequence of historical differences in the allocation and use of radiocommunications spectrum between Australia and New Zealand. This issue is discussed further below.

Comments on Terms of Reference

This submission focuses on two issues in the Terms of Reference, viz.:

- assess how the administrative provisions (such as the annual roll-over of the special exemptions under the TTMRA) can be amended and/or enhanced to support the most efficient operation of the MRA and/or TTMRA (ToR 1(b));
- explore any possible implications for the operation of the TTMRA arising from participating jurisdictions' bi-lateral engagement with third countries (ToR 1(d)).

Term of Reference 1(b) - Amendment of administrative provisions to support more efficient operation of the MRA and/or TTMRA

In developing the TTMRA the parties recognised that in a number of areas, including radiocommunications, there were different standards and regulatory requirements affecting trade. Special exemptions from harmonisation objectives apply in these areas to allow each country to address the differences and to develop harmonised regulatory arrangements wherever possible.

Consistent with the reporting requirements that apply under the TTMRA to goods covered by a special exemption, ACMA has collaborated with MED to produce an annual cooperation report to detail the activity undertaken to harmonise radiocommunications standards.

The radiocommunications product categories not currently harmonised (and which are subject of discussions between ACMA and MED) are:

- Digital Electrical Cordless Telephones (DECT);
- Personal Handyphone Services (PHS);
- short-range devices;
- digital modulation transmitters (spread spectrum devices);
- high frequency citizen band (HF CB);
- in-shore boating radio services;
- cordless telephones using the medium and high frequency (MF/HF) bands.

Of the product categories listed above, ACMA believes that there is a good prospect of harmonisation for HF CB, inshore boating radio services and DECT. PHS and cordless telephones (other than DECT) are regarded by both Australia and New Zealand as technologies which are likely to become obsolete in the near term, and not considered to be a valuable focus of harmonisation activity. ACMA considers that the prospect for harmonisation in relation to short range devices (which now includes spread spectrum devices) to be poor due to historical differences between Australia and New Zealand in the spectrum bands allocated for use of such devices.

The administrative processes tied to the current special exemption – ie. to produce a cooperation report, and seek an extension of the special exemption – do not impose an onerous administrative burden on ACMA. However, ACMA believes that it is appropriate to review the need to report regularly on the progress toward full harmonisation of radiocommunications when both parties (despite the parties' support for harmonisation) are of the opinion that the benefits of full harmonisation would not be outweighed by the costs.

ACMA believes consideration should be given to replacing the current special exemption for radiocommunications devices, and replacing it with a 'permanent exemption' under the TTMRA Act that applies to certain devices (eg. short range devices) for which harmonisation is not cost-effective due to differences in spectrum allocation and use between Australia and New Zealand. ACMA believes this would recognise the substantive differences between Australia and New Zealand that underpin the current non-harmonised standards.

While it is possible (in theory) that the Australian and New Zealand spectrum plans could be harmonised (ie. by allowing for common spectrum bands for the use of short-range devices), the benefits of such spectrum harmonisation (including the trade of relevant goods between Australia and New Zealand) would be negligible compared to the costs of achieving spectrum harmonisation.

ACMA also notes that there may be standards developed in the future –either by Australia or New Zealand – and which relate to devices that use different spectrum bands. ACMA believes that consideration should be given to making a permanent exemption for radiocommunications standards that apply to devices where:

(1) the spectrum bands in which the device is permitted to operate differ between Australia and New Zealand;

(2) the differences between the spectrum bands render it impracticable to develop harmonised technical standards for the device without harmonisation of the relevant spectrum bands; and

(3) the costs of harmonising spectrum allocation and use outweigh the economic benefits (including trade between Australia and New Zealand) of harmonisation.

However, ACMA recognises that jurisdictions may be concerned that amendments to the TTMRA instruments consistent with the above proposal may either lead to confusion in identifying the parameters of the special exemption, or result in spectrum regulators purporting to determine the scope of the permanent exemption (and therefore the TTMRA itself) in relation to radiocommunications.

ACMA is also cognisant of the need to ensure ongoing efforts to harmonise radiocommunications standards that may be developed in the future. Australia and New Zealand both follow the ITU in developing national spectrum plans; ACMA and MED also work together (bilaterally, and multilaterally as part of regional preparations and the trans-region Spectrum Regulators' Forum) in developing harmonised approaches to spectrum allocation and usage.

ACMA believes that, to alleviate any concern that harmonisation efforts will cease with the establishment of a (qualified) permanent exemption , the TTMRA could be amended to impose an obligation on Australia and New Zealand to continue to work together on radiocommunications standardisation and regulation issues, including by promoting harmonisation of spectrum arrangements (where such harmonisation is practicable and cost-effective) and associated technical standards and regulatory requirements.

Implications of bilateral agreements concluded between parties to the TTMRA – Term of Reference 1(d)

In April 2008 New Zealand and China announced the signing of a China-New Zealand Free Trade Agreement (CNZFTA). While the CNZFTA is primarily an enabling agreement – that is, it provides the basis for subsidiary agreements that allow for mutual recognition of standards and conformity assessment, rather than providing expressly for mutual recognition – ACMA notes that Annex 14 of the CNZFTA provides for mutual recognition of conformity assessment in relation to electrical and electronic equipment.

In the context of the 'TTMRA mutual recognition principle' articulated in section 10 of the TTMRA Act (ie. that goods that may be lawfully be sold in New Zealand, be sold in an Australian jurisdiction without the necessity for compliance with further requirements) it may be that the TTMRA imposes an obligation on ACMA in relation to goods permitted for supply to New Zealand under the CNZFTA (or other bilateral agreement between New Zealand and another country). ACMA also notes (as referred to in the Productivity Commission's Issues Paper) the MRA between the European Union and New Zealand in relation to electrical and electronic equipment (which is likely to have a similar effect to Annex 14 of the CNZFTA).

ACMA is continuing to consider internally the implications for the operation of provisions in the *Radicommunications Act 1992* which relate to:

- the supply, operation and possession of devices which do not meet harmonised radiocommunications standards; and
- labelling requirements determined under section 182 of the *Radiocommunications Act*.

ACMA's concern is that the TTMRA will operate to make lawful the supply within Australia of a product that is eligible for supply to New Zealand under a MRA between New Zealand and a third country, notwithstanding that the product does not meet Australian regulatory requirements. For example, if a MRA concluded between New Zealand and a third country provides for New Zealand to accept the third country's compliance mark, is Australia under an obligation to allow that product to be supplied to Australia if it bears the third country's compliance mark?

Should the TTMRA operate in the manner described above, ACMA submits that consideration be given to amending the TTMRA Act to qualify the operation of the TTMRA in relation to goods supplied to New Zealand under a third party agreement concluded between New Zealand and another country.

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