



Australian Government

Department of the Prime Minister and Cabinet
Office of Best Practice Regulation

Reference: 23860
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Mr Richard Windeyer
Deputy Secretary
Department of Communications and the Arts

Dear Mr Windeyer

Regulation Impact Statement – Second Pass Final Assessment – Allocation Limits for the 3.6 GHz Spectrum Auction

Thank you for forwarding a Regulation Impact Statement (RIS) to the Office of Best Practice Regulation (OBPR) for second pass final assessment on 28 June 2018 considering the introduction of allocation limits for the 3.6 GHz spectrum auction.

I appreciate the additional time and effort that has gone in to further developing the RIS to assist stakeholders and decision makers to understand what is a very complex policy intervention. In general the RIS provides a good basis for understanding what competition limits are and their intended outcomes. The RIS is compliant with Australian Government RIS requirements and may be provided to the decision maker.

However, given the significant impact *ex ante* conditions on auctions can have on setting the structure of the market, to achieve best practice the analysis should have included some of the Australian Competition and Consumer Commission's (ACCC) advice around competition. In particular, the RIS would have benefited from more detailed analysis about how the competition limits balance the objectives of ensuring the spectrum is moved to its highest value use, against broader welfare considerations. This ideally would include descriptions of the number of carriers that might maximise welfare, and whether large carriers realistically have the means to pay significantly above a competitive market rate to block entrants.

The analysis in the RIS and the preferred option would also have benefited from clearer evidence that competition limits have worked in the past, and why *ex post* regulations set out in Parts XIB and XIC of the *Competition and Consumer Act 2010* are not sufficient for mitigating the risk of anti-competitive conduct.

The OBPR maintains a RIS website and aims to post RISs as soon as practicable after the regulatory decision has been publicly announced. We would appreciate you advising us when a final decision on this proposal has been announced and forwarding us a copy of the RIS in a form meeting the Government's accessibility requirements. Our reference number for this issue is 23860.

If you have any further queries please do not hesitate to contact me.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Wayne Poels', with a stylized flourish at the end.

Wayne Poels
Executive Director
Office of Best Practice Regulation
2 July 2018