

Memorandum of Understanding in relation to provision of corporate and professional services
Between the National Competition Council (NCC) and the Australian Competition and Consumer Commission (ACCC)

Background

1. The NCC wishes to ensure it has ongoing access to capable corporate and professional services to assist it in making recommendations and decisions, and undertaking its other functions, under the Competition and Consumer Act (CCA) and the National Gas Law (NGL).
2. Rather than directly engaging staff and other resources (including premises, IT payroll and accounting services, and stationery and supplies) to provide corporate and professional services, the NCC wishes to enter into an agreement with the ACCC to provide it with corporate and professional services.
3. The NCC will retain responsibility for its recommendations, decisions and other functions under the CCA and NGL. Services provided to the NCC by ACCC officers will be provided in accordance with NCC policies and procedures and under the direction of the NCC President and Councillors.

Corporate and professional services

4. An indicative list of corporate and professional services required by the NCC and to be supplied by the ACCC is set out in appendix 1.
5. The ACCC will maintain the capacity to provide the corporate and professional services required by the NCC. The NCC will retain the ability to directly engage (and pay for) independent expert and legal advice where necessary. The NCC will reimburse the ACCC for travel expenses incurred by the ACCC in the course of providing corporate and professional services to the NCC.
6. The ACCC will ensure that appropriate staff and other related resources are available to provide corporate and professional services to the NCC so that the NCC is able to meet statutory and other agreed deadlines and are of a quality acceptable to the NCC.

Administrative arrangements

7. The NCC and ACCC agree that an appropriately qualified officer of the ACCC will be designated as Executive Director of the NCC and will act as the principal link with the NCC President and Councillors and have day to day responsibility for directing the provision of services.
8. The NCC and ACCC agree that no person will be designated as Executive Director of the NCC without the agreement of the NCC president and that the NCC President will have a substantive input to the assessment of the performance of the designated Executive Director in his or her role as Executive Director of the NCC.
9. The NCC and ACCC agree that the designated Executive Director will give priority to the duties of that position unless the ACCC considers it would have a detrimental impact on the

operations of the ACCC. In such circumstances, the NCC and ACCC will discuss alternative arrangements, including designating an alternative ACCC officer to undertake the duties of Executive Director.

10. If performance by the NCC Executive Director of any duties may involve a conflict of interest, it is to be managed in accordance with the ACCC-NCC Protocol for managing any conflicts of interest in providing services to the NCC.
11. The NCC and ACCC agree that officers involved in provision of corporate and professional services may also be engaged in other duties for the ACCC. The NCC and ACCC will agree a protocol for handling of confidential information that provides appropriate protection to confidential information provided to either organisation.
12. The ACCC agrees that in assigning officers to provide corporate and professional services, regard will be given to the need for transparency in decision making and avoidance of any appearance of a conflict of interest. Wherever possible staff engaged in regulation of a service will not be assigned to assist the NCC in considering an application for certification, declaration, and revocation of declaration or coverage of that service.
13. The NCC and ACCC agree that confidential information obtained or held by either organisation will not be disclosed to the other except as provided for or authorised by law.

Expected service level and payment for services

14. In return for corporate and professional services the NCC will pay the ACCC \$850,000 per annum, quarterly in advance.
15. The payment for services may be reviewed annually having regard to the appropriations of funds by Parliament to the ACCC and NCC and any required "efficiency dividends". Payment under clause 14 will only cease upon the expiry of 6 months notice from the NCC to the ACCC.
16. Where it is considered that payment for services in clause 14 is not or will not be, sufficient to deliver service requirements, the Executive Director, the NCC President and the ACCC COO, will meet to determine what, if any, payment adjustment is required.
17. In determining any payment required under clause 16 regard shall be had to the period this agreement has been in operation, the total number of applications over that period, the nature of applications received and the anticipated level of work required.

Dispute resolution

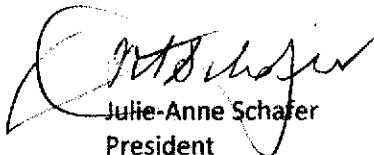
18. Where any dispute arises in relation to this agreement, the NCC President and the ACCC COO will meet to consider and determine the matter. Where agreement cannot be reached the parties will refer the dispute to the Secretary to the Treasury (or his/her nominee) for conciliation. If agreement cannot be reached at that point, notice of termination of this agreement under clause 22 will be taken to have been given. The status quo will be maintained during the notice period.

Commencement, review and termination of agreement

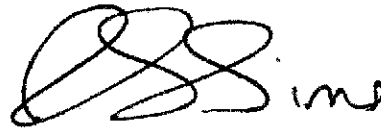
19. History of review:

1 July 2014	The date this agreement first commenced.
1 January 2017	Following the Agora Review conducted in July 2016, the parties agreed that the NCC would pay the ACCC \$850,000 per annum for corporate and professional services (an increase from \$700,000 from the first agreement dated 1 July 2014). This fee increase was implemented from 1 January 2017. The other key changes agreed were: shortening of the notice period for termination of agreement (from 12 months to 6 months); and designation of an additional ACCC staff member (NCC Executive Officer) to assist with the duties of the NCC Executive Director.
August 2018	A review is currently being undertaken and will be completed before 31 December 2018.

20. This agreement first commenced on 1 July 2014 and was varied following the Agora Review conducted in July 2016. It will continue until terminated on notice by the NCC or ACCC.
21. This agreement will be reviewed on or before 31 December 2018 and every two years thereafter.
22. Any party seeking to terminate this agreement under clause 20 will give 6 months notice.
23. This agreement may be amended or terminated at any time where a change in Government policy or legislation so requires.


Julie-Anne Schafer
President
NCC

Date: 20.08.2018


Rod Sims
Chairman
ACCC

Date: 17/8/18

Appendix 1: Corporate and professional services

Advice and support in relation to NCC recommendations, decisions and reports

Receive applications under Part IIIA and the NGL (usually there will be pre-application discussions with intending applicants). This encompasses applications for:

- declaration of a service (and revocation of declaration)
- certification of state/territory access regimes
- ineligibility for declaration (and revocation of an ineligibility determination)
- coverage of pipelines (and revocation of coverage)
- form of regulation of covered pipelines (light regulation determinations are made by the Council)
- 15 year pipeline no-coverage determinations
- Classification and reclassification of pipelines

Advise the NCC on validity of applications

Arrange public notice of applications and publication on NCC website, advise service provider and other interested parties, advise decision making Minister

Advise the NCC on novel issues arising in applications and how these should be considered in accordance with the law, discuss approach to such issues and associated risks with the NCC as appropriate

Seek submissions on applications, publishing these on the website

Deal with applications for confidentiality in accordance with NCC policy

Investigate and research issues arising in applications, especially those relating to satisfaction of the relevant declaration or other decision criteria

Prepare a draft recommendation for consideration by the NCC, amend this as required following discussion with the NCC

Publish and distribute draft recommendation (incl on website), seek further submissions in response to draft recommendation

Finalise recommendation in conjunction with the NCC, provide to decision making Minister

Publish Minister's decision and NCC recommendation

Participate, and brief counsel and solicitors to participate, in reviews or appeals of decisions and other litigation in accordance with NCC policy and practice (It is the NCC's intention that it would directly engage (and pay for) independent experts, solicitors and counsel engaged in any review, appeal or similar proceedings)

Prepare and update guidelines and similar policy statements for approval by the NCC

Respond to inquiries in relation to possible applications and third party access to infrastructure generally

Undertake research and analysis to support the NCC's response to any requests for research or advice under ss29B (1) or (2) of the CCA

Prepare draft submissions and reports as directed by the NCC

Liaise with Commonwealth and State/Territory officials as required

Administration of the NCC

Maintain NCC website

Organise scheduled quarterly Council meetings and other meetings/teleconferences as required

Coordinate travel arrangements for NCC President and Councillors (The NCC will remain responsible for the costs of Councillor travel and accommodation)

Generally assist the NCC in meeting its statutory obligations, including in relation to freedom of information and privacy legislation

Prepare the NCC's Annual Report, including reporting required under s 290(2) of the CCA.

Prepare responses to parliamentary questions

Prepare briefing material for the NCC President's attendance at Senate Estimates and other similar inquiries

Prepare speaking notes and conference presentations for the NCC President and councillors

Prepare and distribute NCC media releases (NCC media releases will generally be issued in the name of the Council President. Day to day media inquiries will be handled by the Executive Director and escalated to the President as required).

Maintain the NCC's financial records and payroll (the ACCC currently provides the NCC's financial and personnel administration, it is assumed that these functions would be as part of the provision of overall secretariat services)

Liaise with the NCC's auditors in relation to the NCC's financial statements

Liaise with Treasury and other agencies in relation to the NCC's budget and financial management

Coordinate the NCC's provision of information to and dealings with Treasury, Finance, Comcare, Comcover, APSC, Office of Legal Services Coordination, and other government agencies

Maintain NCC records in accordance with National Archives and other requirements

Carry out functions to comply with the *Privacy (Australian Government Agencies — Governance) APP Code 2017*, including appointing Privacy Champion and Privacy Officer, developing privacy management plan, undertaking annual review of plan and privacy processes/procedures