

1 February 2007

Japan FTA Task Force
Department of Foreign Affairs and Trade
John McEwen Crescent
Barton ACT 0221



To whom it may concern,

Re: Comments on an Australian-Japan free trade agreement (FTA)

Please find attached Communications Alliance's submission in response to DFAT's request for comments on an Australian-Japan free trade agreement.

Yours sincerely,

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A handwritten signature in blue ink, appearing to read 'A.C. Hurley'.

Anne Hurley
Chief Executive Officer
Communications Alliance

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COMMENTS ON AUSTRALIAN-JAPAN FREE TRADE AGREEMENT (FTA)

COMMUNICATIONS ALLIANCE

1. INTRODUCTION

Communications Alliance is pleased to have this opportunity to provide comments on an Australian-Japan free trade agreement (FTA).

Communications Alliance Ltd was formed in 2006 following the merger between the Australian Communications Industry Forum (ACIF) and the Service Providers Association Inc.. Its membership is drawn from a wide cross-section of the communications industry, including service providers, vendors, consultants and suppliers as well as business and consumer groups.

The vision of Communications Alliance is to provide a unified voice for the Australian communications industry and to lead it into the next generation of converging networks, technologies and services. In pursuing its goals, the Communications Alliance aims to provide constructive contributions to policy development and debate.

Communications Alliance welcomes the opportunity to maintain ongoing dialogue on the issues related to an Australia-Japan FTA and provides these preliminary comments to assist in the early development of priorities from the perspective of our members. Our preliminary comments relate to:

- Promotion of industry self-regulation
- Mobile Number Portability
- Independent Regulator
- Market-based system for allocation of spectrum
- Access to fixed line network services: transparency of pricing by the incumbent for wholesale services.

2. PROMOTION OF INDUSTRY SELF-REGULATION

Section 4 of the *Telecommunications Act 1997* provides that the policy objective for regulation of telecommunications in Australia is 'the maximum use of industry self-regulation'.

The underlying rationale for this policy objective is to encourage industry self-regulation and to limit the involvement of regulatory agencies to cases where self-regulation has serious failings. As noted by the Productivity Commission in its 2001 report, a main reason for the emphasis on industry self-regulation springs from the fact that the changing nature of telecommunications technology and its complexity make it difficult for any government agency to devise appropriate standards. Further, the potential costs to the industry from regulatory error are very high.

In Australia, the industry has worked collaboratively and co-operatively to deliver the benefits of the competitive environment to end-users. The Australian experience of

promoting industry self-regulation has delivered and continues to deliver significant benefits to all stakeholders – for example, in the form of industry-developed inter-operator arrangements (for example, related to LNP, MNP, ULLS deployment, mobile phone tower deployment) and rules designed to protect and enhance consumer experience. A major focus for industry is currently on the transition from the circuit-switched environment to the Next-Generation-Network IP-based network environment (a summary of ongoing initiatives is at www.commsalliance.com.au).

Communications Alliance notes that the Australia-Singapore FTA contains provision in Article 13 for Industry Participation and the facilitation of industry self-regulation. The inclusion of equivalent provision in an Australia-Japan FTA would enhance cross-border consistency in regulatory approach. It would also facilitate consistent and expeditious industry responses in the transition to the Next Generation Network environment and provide equal opportunity for industry participation in both Australia and Japan.

3. MOBILE NUMBER PORTABILITY

Communications Alliance notes that Mobile Number Portability was introduced in Japan in October 2006 and that this is a welcome development in the promotion of competition in Japan's mobile telecommunications industry.

Australia celebrated the fifth anniversary of MNP in 2005 and our scheme – developed and administered under the auspices of Communications Alliance - is undoubtedly a world-leader in MNP. In the five years of operation, there have been over five million successful ports, with a monthly average of 85,000 ports. The Australian MNP scheme delivers a fast and free service to end-users, with 90 per cent of ports completed within three hours. Each carrier bears its own costs in relation to the scheme, and the industry works co-operatively to ensure its continuing success.

It is the Australian experience that the roll-out of MNP and competition in the provision of mobile services has been facilitated by the MNP scheme developed by industry.

Communications Alliance submits that there is much that could be learnt and adapted from the Australian MNP scheme and encourages the inclusion of dialogue on these specifics in the context of the Australia-Japan FTA negotiations.

4. INDEPENDENT REGULATOR

In Japan, both the policy and regulatory functions for telecommunications are the responsibility of the Japanese Ministry of Internal Affairs and Communications ('MIC').

International best practice has long recognised that an independent regulator – independent of the policy-maker and of any provider - is the optimal model for telecommunications regulation, in particular for providing and ensuring a competitive telecommunications sector.

Communications Alliance submits that an Australia-Japan FTA should optimally include provision that Japan will establish an independent regulator in line with international best practice.

5. MARKET-BASED SYSTEM FOR SPECTRUM ALLOCATION

Australia's *Radiocommunications Act* provides for a transparent public auction for allocations of radio frequency spectrum and also for the secondary trading of spectrum.

These approaches increase transparency in allocation, facilitate the efficient use of available spectrum and promote competition.

Japan does not adopt either system of public auction or secondary trading.

It is the view of Communications Alliance that the inclusion of provisions for the allocation of spectrum by public auction would be beneficial.

6. Access to fixed line network services: transparency of pricing by the incumbent for wholesale services.

Communications Alliance submits that it is fundamental to competition in telecommunications services that there be transparency of the principles – both price and non-price - applicable to wholesale access to the incumbent's fixed line network services.

The Australian telecommunications and competition regulatory regimes contain extensive provisions relating to access to Telstra's network services.

Communications Alliance acknowledges the provisions of Japan's Telecommunications Business Law relating to non-discriminatory and unfavourable treatment. We submit that it may be beneficial to address more specifically provisions which increase transparency in the provision of wholesale services in Japan and promote increased competition.

Ends....