



**Australian Government**

**Department of Infrastructure, Transport,  
Regional Development and Communications**

Mr Jason Lange  
Executive Director  
Office of Best Practice Regulation  
Department of the Prime Minister and Cabinet  
1 National Circuit  
BARTON ACT 2600

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Dear Mr Lange

### **Regulation Impact Statement –final assessment second pass**

I am writing in relation to the attached Regulation Impact Statement (RIS) prepared for Allocation limits for the 26 GHz Spectrum Auction (OBPR Ref. no. 42528).

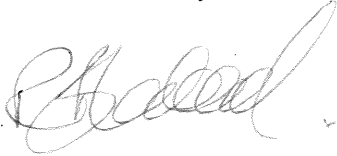
I am satisfied that the RIS addresses the concerns raised in your letter of 13 July 2020. Specifically, that the RIS addresses the issues that were raised by OBPR below and supports why government action, in the form of allocation limits, is required:

- 1) *additional evidence for the risk of monopolisation of spectrum occurring if allocation limits are not set*- the department has provided additional details on the evidence, methodology, and other considerations the ACCC applied when preparing its advice to the minister, that has also underpinned the analysis in this RIS (pp.6-8). There is a significant risk that the Government's stated policy objective of 'promoting competitive market outcomes for the long term benefit of consumers' would not be achieved if allocation limits are not set.
- 2) *Additional evidence of the negative downstream impacts if monopolisation of spectrum does occur* – The RIS reflects the ACCC's assessment that heavily asymmetric symmetric holdings would create a net cost to end users in downstream markets, and the Department has included additional information to this effect (pp.6-7).
- 3) *Why the existing competition law is not sufficient to address any misuses of market power that could arise if a bidder obtained a large of amount, or all, of the spectrum at auction.* The RIS notes that section 50 of the *Competition and Consumer Act 2010 (CCA)* exists as an alternative mechanism to manage a misuse of market power that could arise through the outcomes of the auction. However the RIS also identifies several drawbacks (pp.7-8) to exclusively relying on the CCA to support the policy objectives of the 26 GHz allocation, in particular that doing so would create significant uncertainty for potential bidders.

Accordingly, I am satisfied that the RIS now meets best practice consistent with the *Australian Government Guide to Regulation*.

I submit the RIS to the Office of Best Practice Regulation for formal final assessment.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rachel Blackwood', written in a cursive style.

Rachel Blackwood  
A/g Assistant Secretary  
Spectrum and Telecommunications Deployment Policy Branch  
Department of Infrastructure, Transport, Regional Development and Communications  
20 July 2020