



7 April 2004

Industry Levy  
C/- MCE Market Reform  
Department of Industry, Tourism & Resources

By email: MCEMarketReform@industry.gov.au

### **AER-AEMC-ACCC Memorandum of Understanding**

Transend Networks Pty Ltd (Transend) welcomes the opportunity to respond to the above discussion paper.

Transend supports the concept of the regulatory bodies working together to avoid duplication of effort and share resources where appropriate. Such arrangements are likely to be most effective where there is a clear delineation of roles and responsibilities between the regulatory bodies. In this regard, Transend is unsure whether the proposed arrangements adequately clarify the respective roles of the regulators.

As noted in Transend's response to the discussion paper on the Code change process, there are important linkages between the Code change process and the Memorandum of Understanding. For example, if the AEMC is to be independent of other interested parties, including regulators, then this implies a much greater degree of formality between the regulators than suggested in the MOU discussion paper. In particular, an objective and transparent consideration of a Code change proposal is best achieved if communications between the AEMC, AER and the ACCC are public rather than private.

Transend's response to the Code change process discussion paper highlights the need for guidance to interested parties on interpreting the Code. This role could rest with the AER and could usefully include issuing "rulings" to interested parties (in much the same way as the Australian Tax Office provides tax rulings) to resolve particular issues of concern. Prior to issuing a ruling, it may be appropriate for the AER to consult with the AEMC and the ACCC in private. In other words, it may be appropriate for the regulators to work together in arriving at an appropriate interpretation of the Code.

This issue highlights the need to match the MOU to each regulator's functions to determine how best the AER, AEMC and ACCC should assist one another in carrying out their duties. It is likely that different working arrangements may apply to different functions. In Transend's view, further work is required to describe the roles and

responsibilities of each regulator, and to determine how the MOU should be designed to assist in executing them.

Transend's primary concern is that the discussion paper assumes that the regulators should simply work co-operatively in private. However, in order to carry out some functions effectively (such as the consideration of Code change proposals) it may be better for regulators to communicate formally through the public consultation process.

Transend would be pleased to make staff available to discuss any of the issues raised in this submission. A mutually convenient meeting can be arranged by contacting Bess Ramsay on (03) 6274 3909.

Yours sincerely

[by email]

Bess Ramsay

ESI Regulation and Compliance Manager