

Is co-regulation the optimal solution?

Sector-based regulation in Australia is feeling increasing pressure from rapidly changing industry structures, technologies, services and new areas of consumer concern. Against this backdrop, and informed by its experience in code development and review processes, the ACMA has undertaken work to examine the conditions for effective and efficient self- and co-regulation in the media and communications sectors.

The conditions that are likely to lead to effective and efficient regulation, particularly for industry self- and co-regulatory arrangements in which the ACMA has a role, are explained in a new occasional paper, *Optimal conditions for effective self- and co-regulatory arrangements*.

The paper, one in a series of occasional papers exploring current issues in regulation, aims to contribute to broader debate about effective regulatory tools and outlines 10 'optimal conditions' which are considered to influence the effective operation of self- and co-regulatory arrangements.

These conditions are based on the ACMA's experience in administering self- and co-regulatory arrangements in the broadcasting, telecommunications and internet sectors and the growing body of academic and government literature on regulatory design.

The 10 optimal conditions form an assessment framework for considering appropriate regulatory responses for specific circumstances. The ACMA intends to use the optimal conditions framework as a diagnostic tool to help inform the establishment of new industry self- or co-regulatory arrangements, and in the ongoing review of existing arrangements.

It is proposed that, before pursuing options such as codes, an initial and early assessment of whether self- or co-regulation is the most appropriate tool should be undertaken using the optimal conditions framework.

While it is not necessarily the case that all factors need to be present for optimal co-regulatory arrangements, if very few are present, consideration would need to be given to whether self- or co-regulation is the most appropriate regulatory response. An overview of the 10 optimal conditions follows.

Optimal conditions for self- and co-regulation

Environmental conditions

These are factors primarily relating to market and industry circumstances. Overall, the paper asks the question: Do the following environmental factors indicate that industry has the incentives and ability to work together effectively to address the issue?

1. Number of market players and coverage of the industry.
2. Whether it is a competitive market with few barriers to entry.
3. Homogeneity of products— whether they are essentially alike and comparable.
4. Common industry interest— whether there is a collective will or genuine industry incentive to address the problem or enhance existing provisions.
5. Incentives for industry to participate and comply.

Features of the regulatory scheme

These factors concern the content of the particular regulatory scheme, as well as aspects of its operation and enforcement. They include:

6. Whether the objectives are clearly defined by the government, legislation or the regulator.
7. The role of the regulator.
8. The existence and operation of transparency and accountability mechanisms.
9. Stakeholder participation in the development of the scheme; in particular, consumer input into the development of co-regulatory arrangements.
10. Whether the scheme is promoted to consumers. 🗨️

Feedback

The ACMA invites comments and discussion on the issues set out in the paper.

Feedback should be sent via email to regulatory.frameworks@acma.gov.au or by mail to:

Project Manager
Optimal conditions framework
Regulatory Frameworks Section
Australian Communications
and Media Authority
PO Box 13112
Law Courts
Melbourne Victoria 8010

Optimal conditions for effective self- and co-regulatory arrangements, complements other work currently being undertaken by the ACMA, including the *Reconnecting the Customer* public inquiry. The paper is available on the ACMA website at www.acma.gov.au (go to About ACMA: Publications & research > Research > Self- and co-regulatory arrangements).