



ELECTRONIC COMMERCE POLICY

PRINCIPLES OF ELECTRONIC COMMERCE POLICY

Australia's commercial and economic future is critically dependent upon the competitiveness and efficiency of our enterprises, governments and labour force, both domestically and within the global economy.

ACCI is resolutely committed to: market-oriented economic policy; flexible education and training; competitive industry; a decentralised labour market; and free and liberal world trade policies.

Electronic commerce engages with all of these and many other aspects of the policy domain which affect commerce and industry, both domestically and internationally.

Importantly, the causal flows are two-way: electronic commerce influences, and is influenced by, a broad spectrum of policy demands.

Commerce and industry fully recognises future developments in electronic commerce will have significant effects on the pace and direction of economic change, on the way we deliver education and training, the competitiveness of our firms, how and where we deploy and engage our labour force and our successes in trading and investing abroad.

For these reasons ACCI considers it essential Australian industry and governments pursue appropriate policies to ensure that, as a nation, we can capitalise on the full potential of electronic commerce to best advance our national interests.

POLICY OBJECTIVES

ACCI's overarching policy objectives include:

- development of electronic commerce should continue to be driven predominantly by the private sector responding to market forces;
- private sector self-regulation is preferred ahead of government intervention unless the former can be shown to be ineffective or inefficient in meeting a proven need;
- government intervention should be kept to a minimum but, where it takes place, be transparent, objective, non-discriminatory and technology-neutral;
- electronic commerce should receive tax equivalence with commercial activity in the physical space. There should be no taxes specifically designed to apply to electronic commerce per se and/or transactions thereon;
- there should be liberal access to essential information infrastructures and services, especially telecommunications, to facilitate competition and growth in electronic commerce;
- protection of users, whether business or individuals, regarding privacy and content control should be driven by policies which empower individual choice, within the generally applicable rule of law; and
- a comprehensive Agreement on Electronic Commerce under the auspices of the World Trade Organisation would

assist in meeting many of these policy objectives.

THE POLICY FRAMEWORK

Electronic commerce per se is not new. Business and consumers have been using a broad range of electronic mechanisms for well over a century to conduct trade and commerce, both domestically and internationally.

Earlier platforms included, successively, the invention and utilisation of the telegraph, the telephone, the radio, the television, the facsimile, credit/debit cards and more recently smart-card technologies.

However, the newer platforms such as the Internet (which allows the integration of several elements of the electronic transaction), combined with operational integration of and technological advances in existing mechanisms, are likely to substantially broaden and deepen the use of electronic commerce in the daily lives of business and consumers around the world.

The rapid development and growth of Internet-based electronic commerce underscores the dynamic, globalised nature of commerce, trade and investment and presents opportunities and challenges for business, consumers, governments and the labour force.

For business, electronic commerce will increase the contestability of existing markets and create new markets by lowering entry costs for new players, especially small and medium sized firms, and extend their geographic reach into much larger, even global, markets.

For consumers, it will offer greater choices at lower costs for products tailored to their individual requirements, while for the labour force it will hold out wider opportunities and modalities for education, training and working. It will make available new skill areas, while making others redundant.

For governments, it will require fundamental rethinking of the nature and implementation of policies across banking and finance, education and training, industry, labour and workplace, taxation and international trade and commerce to name just a few. It will add further, welcome pressures for 'competitive government'.

Commerce and industry does not seek to design, let alone predict, the future growth and development of electronic commerce, recalling the observation of the American firm Western Union which stated in 1876 "... *the telephone has too many shortcomings to be seriously considered as a means of communication.*"

Failure to recognise the opportunities and challenges arising from the expansion of electronic commerce holds the risk of missing the many possibilities offered by the information economy.

The Broader Regulatory Framework

ACCI advocates a self-regulatory framework, not government regulatory intervention, to guide the development of electronic commerce.

A self-regulatory framework will enable commerce and industry to respond more efficiently and effectively to the constantly evolving nature of electronic commerce. It will also empower users, whether business or householders, through the market-mechanism.

Deterministic and interventionist government regulatory approaches which lack the capacity to respond to the dynamic nature of electronic commerce will serve to distort and/or frustrate its development and diminish its capacity to deliver benefits to users.

Where government regulation is widely recognised as being necessary, it should be no more than is essential as well as

being flexible, proportional, transparent and technology-neutral.

Governments can have a legitimate, but not exclusive role, in areas such as intellectual property protection, taxation and the removal of barriers to competition. However, issues relating to 'harmful content', marketing and advertising, and privacy should be dealt with through self-regulation and technology tools.

Commerce and industry places great importance on the liberty of the individual and in this regard would expect users to retain discretionary control and property rights over any personal data transmitted using electronic commerce. Similarly, service providers should not bear principal responsibility or liability for the content which flows across systems.

Any government intervention must also be internationally co-ordinated, recognising the dysfunctions which can emerge from fragmented or inconsistent legal and regulatory approaches. Governments must not impede the interoperability of electronic commerce mechanisms through regulatory/standards settings, with any interventions being technology-neutral.

Extra-territorial application of the approach of a single nation, or small group of nations, as a global standard should be disavowed.

The better approach would be voluntary mutual recognition of, and cooperation between enforcement agencies with, compatible and consistent regulatory schemes (especially in areas such as capital and securities, financial services and consumer protection).

Application of Laws

The growth and development of electronic commerce will have a number of implications for legislatures: first, to review and update statutes to ensure they do not impede, but are consistent and conducive to, the electronic marketplace; and second, to ensure such laws are consistent between jurisdictions, both intra- and inter-nationally.

Implementing and maintaining the appropriate legal framework for the international operation of electronic commerce will require respect for, *inter alia*, the freedom of contract and effective action against fraudulent conduct.

Legislative amendments may be necessary to ensure consistent application of laws of contract to legal instruments in electronic and physical form and appropriate private sector self-regulatory mechanisms and rules for the recognition and acceptance of digital authentication.

To ensure the broadest and deepest confidence in electronic commerce mechanisms, documentation in electronic form must not be denied legal recognition and acceptance solely on the grounds of its electronic form.

The procedures and rules for the settlement of disputes relating to contracts or transactions using electronic commerce should enjoy legal equivalence with those in physical space, within the relevant domestic or international laws.

Business and governments should continue to work cooperatively in effectively combating fraudulent activity using electronic commerce, across prevention, detection and enforcement.

The consumer protection privileges and liabilities of users of electronic commerce mechanisms should have legal equivalence to those afforded to comparable transactions in the physical domain.

Access to Infrastructure

The growth and development of electronic commerce is dependent upon effective access to continually advancing information infrastructure and technologies, which will be significantly impacted by telecommunications policies and regulatory frameworks.

The nature and extent of participation by suppliers, intermediaries and users in the electronic commerce marketplace should be determined by competitive and open market forces, with minimal government intervention.

The corollary of this situation is that the contestability of essential infrastructure will determine the nature and extent of competition in, and indeed the usage of, electronic commerce.

Liberal competition policy is the preferred approach to dealing with issues such as access regimes, contestability, dominance and pricing arrangements. Pro-competition, pro-investment and pro-technology policy approaches are the most appropriate to deal with market-based demand for bandwidth.

The regulatory framework should focus on reducing impediments to competition and the emergence of new players, services and technologies in contestable markets.

Governments can contribute to the necessary contestable environment through both unilateral liberalisation initiatives and coordinated action in multilateral fora such as the International Telecommunications Union and the World Trade Organisation.

The corporatisation of government-owned telecommunications infrastructure and service providers would make a constructive contribution to ensuring greater market responsiveness, with full privatisation being the preferred arrangement.

Security in the utilisation of infrastructure, whether by business, intermediaries or consumers, will be essential. The vulnerability and/or demonstrable weaknesses of key infrastructures will erode confidence of users and impair the growth and development of electronic commerce.

The private sector should adopt a leadership role in developing and implementing appropriate standards, procedures and technologies for preferred levels of security.

Governments have a proper role in ensuring those who violate such security are liable to civil and/or criminal action. Wrongful actions in the electronic domain should be treated with legal equivalence to those in the physical space.

Intellectual Property

Effective protection of intellectual property in the electronic commerce framework is essential to realising its full potential. Absent or ineffective intellectual property protection will severely impede the growth and development of electronic commerce.

The effective protection of intellectual property rights in intangible assets used or transferred using electronic commerce is a proper legislative responsibility of government, in consultation with commerce and industry.

Intellectual property protection in electronic commerce should be no less comprehensive or rigorous than that in physical space. That is, intellectual property protection laws and enforcement practices should have legal equivalence and not discriminate between modes of transaction.

Actions by national governments to address international intellectual property protection issues in the electronic commerce context should take into account multilateral work in this area (eg by the World Intellectual Property Organisation and the World Trade Organisation).

Operating Standards

Commerce, industry and government should work co-operatively to facilitate inter-operability of electronic commerce platforms and systems to deliver integrated and strong end-to-end chains of connections.

Compelled convergence in, or undue prescription of, standards must not stifle the competition and technological advances which are the foundation of electronic commerce.

Against this backdrop, the development and application of standards should be consensus-based, international in focus, market-led, technology-neutral and reflect the dynamic nature of electronic commerce. This is particularly the case with electronic authentication of communications, documentation and signatures.

When and where developed by government, standards should be transparent and applied consistently by competition, customs, standards and taxation agencies.

Governments must not mandate or encourage the use of one technology over the other, although they should retain freedom to choose those systems which meet their own operating needs.

However, in doing the latter, governments should refrain from using government procurement mechanisms to discriminate between alternate formats or standards.

Protection of Users

The protection of users, whether business or householders, must be pursued through individual empowerment, user choice and market-led solutions, within self-regulatory frameworks.

Government intervention must not impede the cross-border flow of commercial or personal information, and thus act as a barrier to trade, commerce and exchange.

Commercial suppliers of electronic commerce services and technologies should make available to users the means to exercise their free choices in areas such as anonymity, confidentiality, access to content and privacy. Such means would include discretionary exercise of freedom of choice and take-up of accessible technologies.

Business confidence in electronic commerce, in particular, will depend on the international integrity of strong cryptographic systems which are effective in preserving confidentiality in the transfer and storage of commercial information.

As such, ACCI is strongly opposed to any mandatory requirements for the disclosure of cryptographic codes or keys and impediments to the cross-border movement of information where such mechanisms are used.

Small and Medium Sized Enterprises

Electronic commerce will empower smaller to medium sized enterprises. It will hold out the potential to create new markets by lowering entry costs for new players, extending their geographic reach to much larger markets beyond their local areas. Such capacities will be especially important for SMEs located in regional or rural areas.

However, a number of hurdles will need to be overcome for SMEs to realise the full potential of electronic commerce. These include poor awareness of the capacities of electronic commerce, fear and resistance to change and lack of confidence and trust in the privacy and security of electronic communications and transactions.

While the expanded use by larger enterprises and governments of electronic commerce in their purchasing and supply arrangements will drive many SMEs to embrace the new medium, business associations can play a valuable role in accelerating the uptake of electronic commerce in the SME community through general awareness raising and specific training.

Taxation

Commerce and trade undertaken using electronic commerce should receive taxation equivalence with comparable

transactions in the physical space. Modal-specific taxes (eg BIT taxes) should not be imposed.

Where governments seek to extend existing taxes to electronic transactions, this should be done in the least costly, distortive and intrusive manner. Further, where necessary, any taxation of transactions using electronic commerce must also be specific, precise and transparent, and administratively simple for all concerned.

Taxation in the context of electronic commerce should have a wide meaning, embracing all forms of government revenue including direct and indirect taxation, fees and charges and customs duties.

Commerce and industry acknowledges the concerns of government at the potential for electronic commerce activity to fall outside conventional taxation bases and the resulting debate over whether relevant taxes should be applied at the point of production or consumption.

Insofar as taxes must be imposed, then ACCI's general preference is for consumption-based taxation systems.

Trade

The growth and development of electronic commerce will be particularly important for international trade and commerce, opening new opportunities for more efficient and effective trade promotion and facilitation, especially for smaller to medium sized enterprises.

Governments can complement the growth and development of international trade-related electronic commerce by taking action to remedy transport bottlenecks, both within and between modes, as well as simplifying customs processing rules and procedures.

The commitment of member states of the World Trade Organisation, including Australia, to continue their practice of not imposing customs duties on electronic transactions is welcome.

Commerce and industry would support the negotiation of a comprehensive, discrete and robust Agreement on Electronic Commerce under the auspices of the World Trade Organisation, providing consistent, cross-sectoral coverage for electronic commerce issues within the rules-based multilateral trading system.

These negotiations could usefully clarify and codify the application of existing WTO rules on electronic commerce, leading to a set of agreed common, specific principles dealing with customs duties and procedures, market contestability, movement of data and transparency as well as the fundamental, system-wide principles of most favoured nation, national treatment and non-discrimination.

An agreement on electronic commerce will necessarily have implications for, and will need to take into account the content and purposes of, WTO instruments and negotiations in areas such as intellectual property, information technology, government procurement, standards and conformance, trade facilitation and the trade in services.

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