



24 May 2002

The Secretary
House of Representatives Communications, Information Technology
and the Arts Committee
R1.116
Parliament House
CANBERRA ACT 2600

WBT Inquiry Submission No.17.....

Dear Secretary,

Vodafone welcomes the opportunity to present a submission to the House of Representatives Communications, Information Technology and the Arts Committee inquiry into the current and potential use of wireless technologies to provide broadband communication services in Australia.

This letter provides our broad views on how broadband wireless networks, products and services may develop. We also provide our views on the key issues the Government should focus on to aid the development of the market.

Broadband wireless networks and the role for Government

Technology continues to move wireless technology away from the traditional voice carriage use of narrowband to fulfil the constant drive for greater bandwidth for data services and beyond.

Vodafone continues to develop and provide products and services for the marketplace. Our success is determined by how well we do that and how well we compete with other providers of communications services. It can also be constrained by Government's regulatory choices, even where they are purported to be 'technology neutral.' In our view, our customers and the Australian economy will be best served where customer choice is not constrained through market specific regulatory decisions. Instead, Government's focus should be on ensuring that efficient entry is not constrained by lack of access to key inputs such as radio spectrum and identifying and punishing any anti-competitive conduct.

Government should take great care when considering structural regulation. In an environment where markets and delivery mechanisms are converging and where technology substitution is occurring more and more rapidly, the imposition of structural regulation on selected parts of the industry will create significant distortions. Markets should pick winners, not the Government.

Vodafone has a significant business interest in ensuring access to content for wireless services. We expect that access to content will be achieved through commercial negotiations. In the event that access to content is unable to be achieved, we would expect this to be addressed under generic competition law of the Trade Practices Act. As wireless data speeds increase, a range of services will become commercially viable on wireless networks. It is against this backdrop that the convergence of media content and wireless services will be played out.

Third Generation (3G) wireless networks will facilitate the delivery of a wide range of mobile services. Customers will expect high-speed access to the Internet, entertainment, information and mobile commerce (m-commerce) services wherever they are. Content will be crucial to fulfilling these expectations.

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The critical role for spectrum

Spectrum is one of the most critical inputs for Vodafone. Without spectrum Vodafone would be unable to offer the range of wireless products and services to Australians. Given the critical nature of spectrum, it is crucial that it is allocated and managed efficiently, with transparent and consistent processes.

The Productivity Commission is currently reviewing the efficiency and effectiveness of current spectrum allocation procedures. Vodafone has been involved in this inquiry, providing written submissions and appearing at their recent public hearings. Following is a summary of Vodafone's views, as they relate to broadband wireless issues:

- Spectrum licences should have a fixed initial period of sufficient length to justify capital intensive investment, with an ACA review of the spectrum use at a fixed period prior to expiry. It is important that the review occurs early to provide certainty to incumbents, while allowing aspiring new entrants scope to register their interest. During this review, some form of public benefit test could be used to determine whether the continued use of the spectrum would be the most beneficial use for society, or whether some other use is more appropriate;
- Vodafone supports the current three licence structure but seeks to improve any processes that may impact on the allocation of licences; and
- Vodafone recommends that responsibility for the broadcasting services spectrum bands be transferred to the ACA, and be managed under the RCA. Differing regulatory treatment of broadcasters and telecommunications companies creates the potential for inconsistent policy outcomes and market distortions at a time of increasing convergence of technologies. Spectrum users should not be able to gain a competitive advantage due to differing regulatory environments.

The impact of industry specific competition regulation on the development of the broadband wireless industry

Innovation and investment

Vodafone considers that the regulatory regime has a significant adverse impact on the development of products and services – as well as influencing the incentives to innovate and invest. For services such as wireless broadband where there is considerable uncertainty about the shape of the market, it is essential that regulatory risks are minimised.

Our view is that the regulatory regime should be focused on addressing durable market failure. Regulations should only be applied where it is efficient to do so and where such durable market failures exist. As much as possible the market should be given opportunities to work effectively. In the case of telecommunications, we believe that the focus of the regulatory regime should be on the legacy elements of Telstra's network. If durable market failures exist in telecommunications, these are likely to be a result of many years of Government monopoly ownership of telecommunications in Australia.

However, in practice, Vodafone sees a disturbing trend of regulation extending to competitive parts of the market. Some interconnection charges are already regulated in the mobiles market and the ACCC have looked to regulate national roaming arrangements in the past. Looking forward, we consider that there are real risks that the ACCC will extend structural regulation into new areas such as content and 3G services.

These risks have the potential to seriously harm the incentives to invest in new networks and new products and services, such as wireless broadband.

Innovation and advancements in technology are the major drivers of improvements in telecommunications services. The capability of telecommunications networks to carry more information at a faster rate underpins the development of innovative telecommunications services, lowering of costs and drives improvements in service quality. Without innovation, improvements in the range and sophistication of the services that are critical to the growth in the information economy will diminish.

Advancements in technology are also breaking down barriers to entry and competition into telecommunications markets. For example, improvements in the quality and reductions in the cost of wireless telephony create the potential for competition in the provision of the 'local' telephony services to develop in many regions where a decade ago entry was considered uneconomic.

Advancements in technology and the use of those advancements to provide innovative services to consumers require investment. Investments in telecommunications networks and technologies, and the development of innovative services are usually large and irreversible. Innovation by its nature is unpredictable. Investors can suffer large losses. For instance, the losses suffered by Iridium in developing its satellite telephony network are in the vicinity of \$US5 billion.

The role of networks

In a market-based economy firms invest and innovate with the expectation of earning profits. In deciding to invest, investors recognise there is a chance the investment will be unsuccessful. The greater the risk, the larger must be the anticipated profit if the investment is successful. Developing innovative telecommunications services involves significant risks. At the time the investment is made there is uncertainty concerning whether a marketable service will be developed, the demand for the service if it is marketable and developments in technology that may supersede the service. As the pace of change increases, so does the risk associated with any investment. In the event the investment is successful, unless the return compensates for these risks, the investment will not be undertaken. For example, Hewlett-Packard's LX series of handheld devices had the dominant share in the Personal Digital Assistant (PDA) market prior to the production of the Palm Pilot. It has since languished despite having many applications.

In a competitive market firms innovate to differentiate their services from those of their competitors. By providing better services, firms can increase their market share and profits. Firms that fail to innovate or are not successful in their innovations fall behind their competitors and suffer losses.

Competitive pressure is particularly important in telecommunications markets where there is rapid advancement in technology. Competition encourages service providers to explore fully and use advances in technology to develop innovative services, and punishes services providers who do not.

Infrastructure competition versus service competition

As noted above, regulation can reduce incentives for investment and artificially limit the development of competition in telecommunications markets. Of particular concern is the scope for the regulation of resale and access services to limit the development of network competition and investment in new infrastructure. Network competition is a major engine of innovation in telecommunications. Although some developments in technology have recently improved the capability of existing networks (for example, the development of xDSL technologies has improved the capability of copper fixed-line networks to convey information at greater speeds), there are limitations. Many of the major innovations in telecommunications technology are embodied in network roll-outs and could not be implemented without investment in alternative networks. This does not mean that existing networks must be replicated using the same technology. Innovation will thrive where competing technologies are deployed.

Network competition is even more important to the development of innovative mobile telephony services. The most significant current development in mobile telephony services is the development of 3G mobile systems. By substantially increasing data speeds, 3G mobile systems will be able to provide a range of new multimedia and Internet-driven services that cannot be provided using current mobile systems. Significant investment in network infrastructure is required to provide these services.

The Productivity Commission Report

The Productivity Commission recently completed an inquiry into the current telecommunications regulatory regime, and the Government has announced its response. The focus of the Commission's recommendations was to reduce the inherent risks for regulatory overreach in the current regime. Vodafone remains concerned that even after the recent Government response, these regulatory risks remain.

The main thrust of Vodafone's response to the Productivity Commission report was that changes were needed to the current regime to protect against regulatory overreach.

These reforms could include:

- The scope of access regulation should be limited by applying new, and narrower, declaration (regulation) criteria which would focus the regime on durable market failure;
- A firm commitment to move to transition from the current industry specific regime to one based on generic competition law – so that telecommunications is not treated as a 'special case' and hence is subject to the same regulatory oversight (and the same competition rules) as other industries in Australia;
- Lighten regulation on competitive services like mobiles, including revocation of existing GSM declaration;
- 'Non-dominant' operators be exempted from declarations of services under the access regime; and
- Legislated sunset clauses be introduced for all new declarations.

The Government has chosen a different reform path to that recommended by Vodafone. However, we believe that the inherent regulatory risks that still exist in the current regime will continue to hamper the development of new investment and innovation in the industry. We continue to believe that more fundamental reform of the regime is required.

Conclusion

Wireless broadband presents an array of opportunities for the delivery and distribution of data services – subject to investment. Success will continue to be determined by how well an organisation performs competes in the marketplace. Potential and realised success should not be inhibited by misdirected Government regulation. Markets should pick winners, not Government.

Regards



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