

**Hutchison Submission to the Inquiry into the  
Broadcasting Services Amendment (Media Ownership)  
Bill 2006 and related bills**

**Senate Environment, Communications, Information  
Technology and the Arts Committee**

**25 September 2006**

## Executive Summary

1. The Minister's announcement dated 12 September 2006 "*New Digital Television Services for Australians*" ("**Minister's Announcement**") indicates that the Government intends to assign the two previously unallocated spectrum blocks within the Broadcasting Services Band ("**BSB**"), and that a potential use for one of the channels (identified as "Channel B") may be the broadcast delivery of television services to handheld devices ("**Mobile TV**").
2. Hutchison Telecommunications (Australia) Limited ("**Hutchison**") welcomes the opportunity to provide this submission to the Senate Committee. While Hutchison is conscious that legislation and statutory instruments to support the auction of Channel A and Channel B has not yet been released, Hutchison believes that this initiative is a critical component of the Government's overall media reform package and therefore warrants the attention of the Senate Committee at this time.
3. Hutchison supports the use of Channel B to facilitate Mobile TV. As outlined in the Minister's Announcement,

*"The allocation of [Channel B] provides a significant opportunity for the emergence of new digital services such as true mobile television in Australia".*

4. However, Hutchison is also conscious that should Channel B be acquired by existing vertically and horizontally integrated telecommunications or pay television providers then, in the absence of appropriate regulatory settings, Channel B could just as easily distort and undermine competition in the supply of important existing and emerging digital services, such as 3G services and fail to realise the opportunities envisaged by the Minister.
5. Channel B will be an important and unique block of spectrum and its ownership, control and use will impact on existing markets and patterns of competition in both mobile communications and content markets. The potential market impact of the introduction of Mobile TV on mobile communications needs to be understood in light of the following issues:

- *Only one block of spectrum is available* - Unlike the previous auctions of mobile telephony spectrum licences, until analogue switch off (in 2012 or beyond) only one block of spectrum will be available for Mobile TV, therefore creating a monopoly provider of Mobile TV spectrum, at least in the short to medium term.
- *Ability to exclude competitors* – It is most likely that the delivery of Mobile TV to 3G mobile handsets will be the most significant Mobile TV business model. Accordingly, in the absence of appropriately regulated access requirements a single monopoly provider of Mobile TV services would be in a position to act as gatekeeper, able to determine whether all end users may access the Mobile TV service or whether these services may only be acquired by customers of a particular mobile carrier (or customers of other services such as subscription television).
- *The industry is at a critical development stage* - The take-up of 3G services is currently at a critical point, 3G mobile carriers have spent hundreds of millions of dollars on spectrum and network deployment. Consumer acceptance of 3G services is new, but starting to gain momentum. 3G services are likely to grow rapidly over the period to 2012 (during which there will be no further Mobile TV spectrum available) but it will then become a relatively mature service. If only one mobile carrier is able to offer Mobile TV services during this critical phase of the development of 3G networks services, this may have a 'tipping effect' on various markets which may be impossible to subsequently reverse.
- *Carriers that cannot provide Mobile TV will not be able to compete* - Other service providers will suffer a significant competitive disadvantage if they are not able to offer a service which is competitive with the Mobile TV service until analogue switch-off and more spectrum is made available. A carrier without access to Mobile TV will have difficulty competing with service packages that include Mobile TV. Individual carriers should be able to differentiate their Mobile TV offerings in the way in which the product is

packaged, priced and integrated with their 3G services. However, they should not be excluded from offering Mobile TV.

- *Access to key content is a significant competitive advantage* - The ability to offer access to key content is an increasingly important for mobile carriers. If only one mobile carrier is in a position to offer Mobile TV as part of its retail mobile service offering to consumers, that would provide it with a significant competitive advantage which could distort the market(s) for mobile services in Australia.
- *Effects of bundling* - If the entity that acquires Channel B also offers other services such as fixed telephony, broadband or subscription television services, it will be the only provider able to offer Mobile TV as part of a complete portfolio of communications and content services. Offering attractive bundles has been a very effective tool used by incumbents to enhance their market power in relation to new services and traditional services.

6. For these reasons, it is essential to competition in the mobile telecommunications markets (and broader communications markets) that access to Mobile TV be regulated in the short term, until more spectrum is made available.

7. In Hutchison's view, no telecommunications carrier or carriage service provider, subscription television provider or free-to-air broadcaster should be in a position to own or control Channel B.

8. However regardless of who owns or controls Channel B, the provision of Mobile TV services must be subject to specific regulation to ensure the equitable and non-discriminatory treatment of all mobile carriers and end-users. In particular:

- *Equal access to basic tier available to all 3G subscribers* - At least a basic tier of Mobile TV channels should be available to the subscribers of all 3G mobile carriers. That is, the majority of Mobile TV channels within Channel B, including both carriage and content, should be available to all mobile subscribers through their chosen mobile carrier.
- *Equal and non-discriminatory access to exclusive channels* - To the extent that any mobile carriers are permitted to offer exclusive channels that would only be accessible by their own subscribers (in addition to the basic tier) each mobile carrier should be entitled to non-discriminatory access to the same exclusive channel capacity on an equal and transparent basis. That is, each mobile carrier could access the same carriage service capacity and that mobile carrier or its third party supplier would provide the relevant content for the Mobile TV channel.
- *Equal opportunity to integrate* - All mobile carriers should have an equal opportunity to integrate the Mobile TV services with their 3G services (e.g. including by integrating interactive elements in the relevant programming stream). The manner in which mobile content is integrated within an overall mobile service is as important a differentiator as the content itself and it is therefore important that each mobile carrier is able to compete on the basis of this integration.
- *Branding not associated with existing providers* - The basic tier of Mobile TV channels should not be branded in a manner that associates the service with any particular carrier or subscription television provider. To do so would inhibit competitor mobile carriers offering that Mobile TV service.

9. In conclusion, the allocation of Channel B under the correct regulatory conditions will ensure consumers receive new digital services and drive the growth of 3G services, without harming competition. However, to allocate such unique spectrum without an appropriate regulatory environment may harm competition in the supply of digital services to Australians.

## 1. **Introduction**

Internationally, Mobile TV services are still in the early stages of development, with commercial services available in only a small number of countries, as most jurisdictions do not have available spectrum to support such services until after the switch-off of analogue free-to-air television. The first commercial DVB-H service (the Mobile TV delivery technology most likely to be used in Australia) was launched by "3 Italia" (part of the Hutchison Whampoa Group) in Italy in June 2006.

Despite its embryonic stage of development, many are already labelling Mobile TV as the next "killer application" for mobile devices<sup>1</sup>. Therefore, the introduction of Mobile TV services in Australia, on pro-competitive terms, should be a priority for the Government.

However, the allocation of Channel B to a single provider raises significant competition issues as, until analogue free-to-air television is switched-off from 2012, it is likely there will be no further spectrum readily available for Mobile TV.

## 2. **Mobile TV and competition in communications and content markets**

In considering the impact of the allocation of a single block of spectrum for Mobile TV it is necessary to understand the likely delivery models for the provision of Mobile TV.

Mobile TV could hypothetically be delivered as a stand alone service that may be received by purpose built reception devices. However, it is unlikely that a business case for Mobile TV in Australia will be built on a model of stand alone Mobile TV networks and handsets. Consumers are far less likely to tolerate multiple devices in a mobile context than for fixed services delivered to a home or office and they are increasingly demanding fully integrated devices. Moreover the cost of providing Mobile TV without an integrated telephony and 3G content service offering is more likely to make Mobile TV a marginal business model.

Accordingly, in Hutchison's view, the most probable delivery model will be the incorporation of Mobile TV receivers in other existing mobile devices, particularly 3G mobile handsets as:

- mobile telephony handsets are the most ubiquitous mobile devices in Australia and they are being progressively upgraded to 3G handsets with the necessary screen size and resolution to support Mobile TV;
- 3G handsets already contain much of the hardware necessary for Mobile TV display and can be adapted to Mobile TV reception through the addition of necessary reception electronics to cost effectively deliver to consumers an integrated mobile device; and
- a large number of mobile handset manufacturers already have handsets on the market or in development that will include Mobile TV reception devices, including Nokia, Motorola, Siemens, Samsung and LG.

### *The interaction of Mobile TV with 3G networks and services*

In addition, there are further synergies between Mobile TV and cellular mobile services that support the involvement of mobile carriers in a business model for Mobile TV, in particular:

- a 3G return path can be used to support interactive functions offered in conjunction with Mobile TV;

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<sup>1</sup> See for example "Chip firms see mobile TV as next killer application", Electronicsweekly.com, 20 July 2006.

- 3G providers have already demonstrated their ability to introduce new and compelling content to the marketplace; and
- Mobile TV delivery will require extensive transmission infrastructure, that can be supported by elements of the existing cellular mobile networks.

***3G networks are not a substitute for Mobile TV***

For mobile devices, technologies to deliver streamed video content can largely be divided into two types of service:

- point-to-point telecommunications based services, such as 3G; and
- point-to-multipoint, broadcast technology based services (or true Mobile TV, such as DVB-H)

While 3G networks can be used to provide streaming video on a point to point basis they are not designed or dimensioned to do this efficiently or cost effectively to a large audience, for a lengthy period of time. 3G networks are designed to distribute smaller items of content specifically formatted and edited for 3G consumption and, for video streaming, can only cater for a small number of simultaneous users. This is because, in a point-to-point environment each additional viewer of a video stream requires the utilisation of additional spectrum<sup>2</sup>. Whereas for point-to-multi-point services, spectrum utilisation is independent of the number of concurrent viewers.

3G networks are therefore an imperfect substitute for Mobile TV and better suited for truly on-demand services or content demanded by niche audiences.

***Impacts on communications and content markets***

Accordingly, Mobile TV has the capacity to significantly affect competition in the provision of mobile telecommunications services, particularly 3G services because it is likely to be delivered over the same handset as cellular mobile telecommunications as part of a packaged bundle of services (including voice, data, 3G content and Mobile TV).

The acquirer of spectrum for Mobile TV will be in a position to control the manner and terms on which Mobile TV is available to consumers, which, in the absence of appropriate regulation and licence conditions, may include only making Mobile TV available to end users that use a particular mobile carrier (or subscription television service). This would significantly distort competition in the provision of not only Mobile TV but also 3G content services, mobile telephony services and potentially wider fixed telecommunications services and pay television services.

**3. Ownership restrictions**

We note that the Minister's Announcement indicates that no control restrictions will be applied to Channel B in relation to the provision of Mobile TV services.

In Hutchison's view, given that only one block of spectrum will be available for Mobile TV at the current time, the allocation of the spectrum should be subject to ownership restrictions which provide that no existing carriers or carriage service providers (including wireless broadband

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<sup>2</sup> For example, in a point-to-point environment, if the average cell throughput were 2 Mbps (for a single carrier with 5 MHz of spectrum) and TV streams were encoded at 256 kbps then only 8 users could concurrently be provided with a TV stream. Even this example is too simplistic as it does not take into account the geographic spread of customers throughout a licence area.

providers), subscription television or free-to-air television provider, or their respective associated entities, should be able to acquire, or be in a position to control, the Mobile TV spectrum. This restriction should also extend to ensure that any such entity does not have a preferential position in any consortium that owns such spectrum or the distribution network for Mobile TV that uses the spectrum.

The allocation of Mobile TV spectrum to an incumbent in telecommunications provider or broadcaster (in particular Telstra, Foxtel or a commercial broadcaster) would potentially result in a substantial lessening of competition in a number of markets. In addition, the benefits of innovation and consumer choice that should arise from the introduction of Mobile TV are unlikely to be realised unless incumbents in both telecommunications and broadcasting are excluded from the Mobile TV spectrum allocation, just as incumbents have been excluded from similar spectrum auctions in the past.

Reliance solely on the Trade Practices Act ("**TPA**") to prevent an anti-competitive acquisition would not be an effective/efficient means of ensuring the prevention of an anti-competitive outcome. As the ACCC has itself noted in relation to previous spectrum allocations:

- the TPA would not be an adequate tool to prevent an anti-competitive outcome of the spectrum allocation because of the burden of proof required;
- reliance solely on the TPA may also raise unacceptable uncertainties in the allocation process, particularly an auction, including:
  - a period of uncertainty following the auction during which the ACCC determines its views; and
  - the potential of an ACCC injunction to prevent an allocation or protracted court action to seek divestiture of allocated licences;
- reliance solely on the TPA may raise the level of uncertainty to such an unacceptable degree that it discourages certain entities from participating in the allocation process; and
- reliance solely on the TPA may increase the administrative costs associated with spectrum allocations, for example, by requiring detailed ACCC examination of acquisitions.

If express ownership restrictions are not applied to the Channel B allocation process, then it becomes all the more important to ensure there is open and equal access to Mobile TV by all mobile carriers.

#### 4. **Requirements for an open platform**

Given the impact that having only Channel B allocated for Mobile TV services could have on the mobile telecommunications markets, it will be essential for access to Channel A to be regulated, in the short to medium term (until further spectrum is made available for Mobile TV and distribution networks built for competitive Mobile TV services), to ensure the service is operated in a fair and competitive manner.

There is currently no access regime that would ensure an appropriate regulatory environment for a Mobile TV service. Part XIB and XIC of the TPA are specifically designed for declared "access services" and also include a variety of exceptions, including in circumstances where a carrier has limited capacity. Moreover, they are not well suited to complex emerging markets, spectrum allocation and integrated carriage and content services.

Accordingly, Mobile TV should be subject to a requirement, imposed through legislation or as a condition of the relevant spectrum licence, that the acquirer will operate the Mobile TV service as an open platform which ensures the equitable and non-discriminatory treatment of all service

providers and end-users. In particular, at a minimum, the rules set out in paragraph 8 of the Executive Summary should apply to the provision of a Mobile TV service.

These requirements would only be necessary to the extent that there is limited spectrum availability for Mobile TV. If, following analogue switch-off, further spectrum is made available for Mobile TV, such requirements could be removed, as other entities would then be able to acquire their own spectrum and offer competing Mobile TV services.