



The Senate Environment Communications Information Technology and the Arts
References Committee

SUBMISSION FOR THE TELECOMMUNICATIONS REGULATORY REGIME

EXECUTIVE SUMMARY

Regional Internet Australia (**RIA**) is of the view that there are number of changes required to the current regulatory regime in order to better promote competition, encourage investment or protect consumers. In particular, RIA is concerned that Part XIC of the Trade Practices Act has not been significantly tested in regional areas and that access to declared services at cost based pricing has not been established. RIA considers that there are a number of steps that could be taken to improve investment incentives and these include amendments to the HiBIS scheme and an adjustment to the timing of duty payments on imported telecommunications capital equipment.

Part XIB of the Trade Practices Act 1974

As a new entrant offering regional telecommunications services, Regional Internet Australia (**RIA**) recognises the need for strong, sector specific competition law. RIA also understands the need for extensive record keeping rules to apply to the incumbent to ensure that there is regulatory transparency in the setting of cost based interconnection tariffs.

RIA considers that there is a risk that Part XIB could be applied by the ACCC in such a way as to impose an unnecessary regulatory burden on new entrants. There imposition of reporting rules on large ISP's is a worrying change of policy, reflecting as it does the inability of the ACCC to understand the interconnection need of broadband providers. The concern is that as RIA expands to provide high quality broadband services to large numbers of regional Australians that the reporting rules will also be imposed on RIA.

Part XIC of the Trade Practices Act 1974

Part XIC of the Trade Practices Act has operated effectively to encourage new entrants in the major metropolitan areas. The ACCC has found that certain services no longer need to be declared in or between state capital cities as competition has been introduced effectively. However, RIA is concerned that the access regime provided in Part XIC has not been proved

BRIDGING THE DIGITAL DIVIDE

effective in the supply of services which are essential to the roll out of regional broadband services. Specifically, the transmission service declared under Part XIC provides access to Telstra's fibre and is expressed to be priced based on the long run incremental cost. That is, the selling price should reflect the cost incurred by an efficient operator in supplying the service (and allowing for a return at the weighted average cost of capital).

RIA has found that it is cheaper to construct microwave radio based links than to acquire access to optical fibre from Telstra. This is an indication that the access regime is not working and that there is duplication of capital intensive infrastructure deployment in regional areas which can least afford it. This issue is compounded by the duty and goods and services tax payable on this capital equipment which is referred to below.

Structural issues in the Australian telecommunications sector

As a new entrant regional operator, RIA has found that there are implicit assumptions that Telstra is the service provider of choice in regional areas. This contrasts to metropolitan areas where the expectation of competition means that Telstra is not regarded as the sole potential provider. It is RIA's view that this implicit assumption adversely affects the approach taken to new entrants by all the regulators and government departments associated with the deployment of regional telecommunications services (that is, the ACCC, ACA and DOCITA).

An example of the regulators' approach is that Telstra benefits from incumbency in respect of both spectrum licences and apparatus licences meaning that RIA has limited access to the scarce resource of spectrum. This further compounds the problems associated with services access set out above.

The federal government HiBIS scheme, while providing excellent incentives for the deployment of broadband infrastructure in regional areas, is a finite pool of which more than 50% is likely to be allocated to Telstra. Telstra uses the funds to deploy additional equipment to leverage its existing infrastructure (that is, it purchases DSLAMs) whereas new entrants use the fund in support of the deployment of bypass infrastructure. That is, the federal incentive to roll out broadband services is being used by the carrier with significant market power based on its existing infrastructure and, because of the limited funds available, to the detriment of new entrants. RIA considers that the scheme should be extended and be more closely targeted to the roll out of competitive infrastructure in areas underserved by broadband providers.

Consumer protection

RIA considers that the current consumer protection safeguards are adequate and provide appropriate protection. However, RIA is concerned that the regulatory certainty provided in the past by the ACA has become clouded by regulatory intervention by the ACA in respect of

matters more normally expected to be regulated by the ABA. RIA is hopeful that the regulatory certainty will return with the establishment of ACMA. In the meantime, the uncertainty generated by the ACA as to whether complaints about content should be referred to the Telecommunications Industry Ombudsman, the TISSC or the ABA will remain.

Regulators' powers and resources

RIA considers that the ACCC has the powers required to perform its role but is concerned that its technical resources, particularly in respect of internet interconnection issues are limited. RIA has some concerns that the process of the integration of the ACA and ABA will mean that ACMA will remain internally focused during the crucial months after its formation.

Privatisation of Telstra

Privatisation of Telstra in the absence of service guarantees both on a wholesale level as well as a retail level has the potential to create a monolithic monopoly which will be nearly impervious to regulatory intervention. Further, the attractiveness of Telstra as an investment will be determined by the level of regulatory certainty rather than the level of potential regulatory intervention.

RIA is of the view that accounting separation and strictly enforced ring-fencing combined with publicly available regulatory accounts are the minimum conditions required to encourage regional competitors to consider entry into a telecommunications services market so heavily dominated by Telstra.

Universal Service Obligation

RIA considers that the provision of voice and low-speed data as part of the USO further exacerbates the digital divide between regional and metropolitan areas. It is this divide which RIA will be addressing in its roll out of high quality broadband services. However, there is a risk that there will be a further divide between our most remote communities and regional areas served by new entrants such as RIA.

Investment in infrastructure

RIA is of the view that the current structure of taxes and duties acts as a disincentive to investment in capital intensive projects such as the deployment of high quality broadband services in regional areas. The issue on investment decisions is one of cash flow. When equipment is imported into Australia there is generally a pre-payment of both GST and duty. This amounts to an upfront cash payment of 14% of the equipment capital costs. Whereas the GST can be recouped as an input tax credit in the following month, the duty cannot. Even with

Careful project management, the time between import of equipment and its operation so as to generate revenue is measured in months. RIA submits that investment incentives would be improved by Government intervention to allow deferral of payments for duty payable on telecommunications capital equipment.

Innovative technologies

RIA repeats its position on duty and GST and notes that the current radiocommunications regulatory environment encourages the use of existing technologies in spectrum which is not scarce. RIA believes that a greater emphasis by the ACA (and, in the future, ACMA) on consultations on technology rather than such economically esoteric issues such as private spectrum managers would more effectively address the promotion of innovative technologies.

Scale and scope of regulation

Whereas RIA would like to be able to argue that the scale and scope of regulation currently present in the sector is not required, it is of the view that the risk of reducing regulatory scope is that it will only benefit the incumbent. RIA would welcome asymmetric regulation where new entrants were afforded light-handed regulation and the full force of regulation falls on Telstra. This may be more possible under a new regulator which has the ABA experience of regulatory weight based on “the voices”. That is, where regulation is proportional to the market power of a player.

Other changes

In responding to the issues raised by the Senate inquiry RIA has addressed the changes that it considers need to be made to better promote competition, encourage investment or protect consumers.

Regards,

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