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Facilitating Convergence: Australia's Regulatory Approach

Extract from ACMA Chairman Chris Chapman's speech to the Telecom and Broadcasting Regulatory Forum in Taipei, 4 October 2007

Australia is one of the few countries in the world with a converged regulator in place—the Australian Communications and Media Authority, or ACMA, of which I'm both Chairman and Chief Executive. What do we mean by a converged regulator and how does such a 'multi-headed' beast approach converging technologies when all the traditional, well-understood paradigms are under unrelenting, irreversible pressure?

To remind ourselves of the already massive transformation of our communications landscape, let's take a brief glimpse of Australia's experience of the communications revolution.

In stage one (around 1990) there were only two main types of communications services—the plain old telephone service, delivered using a mature network of copper wire pairs, and the broadcasting services of television and radio, which were all free-to-air and almost exclusively provided using high-powered terrestrial wireless transmitters.

Stage two began with the introduction of mobile phone services in 1992, starting a revolution that has seen the number of mobile services now rise to more than 19 million (roughly Australia's population), and the arrival of pay television, with a few channels delivered by satellite or wireless.

The next new arrival was dial-up internet and email services in 1993, built on an old one—the plain old telephone service. But what really supercharged the internet was another new application that went mainstream around 1994—the world-wide web.

The next important development came in 1995 with a hybrid fibre

coaxial network in three major Australian cities. In a sense, this was the first truly 'convergent' investment as the platform's business model needed revenue from both telephony and pay TV—the phenomena of new technologies and applications in search of sustainable business models to 'nurture' them.

Satellites developed a new lease of life from the mid-1990s by becoming a viable way of supplying phone services and data capacity to Australia's remote areas.

Then the traditional content industries started to see the possibilities the internet offered, for example, in distributing music, publications and movies—any content that could be digitised.

Around 1998, e-commerce and the dot-com boom were upon us—everyone was talking about 'paradigm shifts', fundamental economic enablement and new business models that had valuation models based on multiples of revenue.

Around 2000, a new technology, DSL, arrived that allowed the supply of internet services at much higher speeds without needing a plain old telephone service. Messaging services on mobile phones and the internet arrived soon after, but the most

interesting development was the advent of multimedia content on mobile phones, a true window into the delivery of content to mobile platforms.

There were three developments of major importance:
- broadband take-up at higher speeds accelerated, leading to telephony over the internet—completely reversing the previous relationship—and the potential for internet protocol television
- content became compartmentalised, breaking down forever the traditional notions of how content might be created and delivered, and
- the range of devices people use for content access continued to broaden.

Where is this communications environment heading? If we call the new communications environment stage three, one potential model focuses on the internet at the middle and the underlying uses of communications services hanging off it. It's impossible to foretell how convergence is likely to play out over the coming years but, in Australia at least, that does not stop some of our stakeholders from asking why we haven't moved the regulatory construct to the 'end game' yet. We are continually considering possible ways to get there.

But of course, we also need to deal with the great majority of our stakeholders who are still firmly at stages one and two, and deal with the existing 'silo' legislation. Regulators must regulate for current issues and circumstances while, with a clear eye to the future, 'building a

bridge' for those who are still comfortably living in the world of legacy services.

Australian response to convergence – the creation of ACMA

The Australian Government's response to the challenge was to create a converged regulator with the capacity and flexibility to deal with today and build a 'bridge to the future'.

The legislation that created ACMA in mid-2005 focused almost exclusively on merging the two predecessor organisations and did not change the legislation we administer. ACMA was expected to organise itself as a converged regulator in anticipation of convergence continuing apace, not unlike Article 16 of Taiwan's Fundamental Communications Act.

It has also allowed us to think about the best ways of exploiting the enhanced scope that a larger organisation—with influence over a broader sweep of the 'raw inputs' to the communications world—provides for more strategic responses to the issues arising in this fast-paced environment.

The Australian converged model is, in broad terms, responsible for the regulation of telecommunications, broadcasting, radiocommunications and the internet. Our statutory objectives, as defined in our primary broadcasting, telecommunications and radiocommunications legislation, are also wide-ranging and include, for example, an efficient and competitive industry and an economically efficient investment and reasonable return.

ACMA CHAIRMAN CHRIS CHAPMAN SPEAKING AT THE TELECOM AND BROADCASTING REGULATORY FORUM IN TAIPEI

ACMA has thought about its responsibilities and objectives strategically, and distilled the elements into four key result areas (KRAs):

- consumer and audience safeguards and standards—consumer safeguards are effective and keep pace with community standards
- community/national safeguards— national safety and security interests are met
- diversity of services—consumer and audience choice of communications and media products and services are maximised, and
- public resource management— allocation and use of public resources is efficient.

Our fifth KRA is to establish a resilient organisation.

In practice, ACMA faces challenging issues under each of these KRAs. In our consumer and community protection role, for example, our responsibilities range from ensuring compliance with the telecommunications universal service obligation through to the investigation of complaints about incorrectly classified or inappropriate broadcasting content.

ACMA completed its formal integration from the former two regulators within its first year of operation, including a revised internal structure with a more horizontally-based organisation. This structure better reflects the converging nature of our environment and aims to provide stakeholders with access to more cohesive arrangement of responsibilities.

It has been a useful mechanism for enabling us to think and deal with matters across all the sectors and legislation for which we are responsible, and extended our capacity to respond to changing needs, be proactive and facilitate new thinking. Importantly, it has strengthened our ability to build the stage three end game thinking into our regulatory practice, without diminishing our capacity to work effectively within the scope of our

very immediate and current stage one and two worlds.

The organisational restructure is only one piece of the puzzle in transforming our operations and delivering that 'resilient' organisation. More recently, we have embarked on an ambitious change process to fundamentally transform the way we do things.

Transformation

Our ambition for ACMA is that it be, and be recognised as, the leading converged communications regulator in the world by 2010. Not to know all the answers, because change is too unpredictable, but to get prepared and be agile enough to act quickly. To achieve this, we have complemented the five KRAs with our 12 value-adding processes and the best converged practice in each of these, which will contribute to the transformation of our organisation.

We also know it is vitally important to maintain the integrity of the regulatory framework for current services—our current day job. It is equally important for us not to stifle innovation through an approach that says 'that's the way it's always been done before' because we, too, are afraid to paradigm bust. Indeed, we are mandated, in part, to do just the opposite. That's why we need to continually scan the horizon for emerging issues and start developing potential responses before issues and opportunities become problems.

Review of investigation activities

Conducting investigations is a core ACMA function (one of the 21 identified value-adding processes) and more than 15 areas within our organisation have investigations responsibilities. There is great potential for ACMA to better harness the synergies that exist to improve the efficiency, effectiveness and overall integrity of our investigations practices, so we have reviewed our investigations needs.

The review has identified options for aligning our internal operations under current legislative frameworks

to put in place more harmonised and consistent treatment of regulatory issues. It has confirmed our instinct that there is considerable benefit to be gained through the adoption of a more holistic approach.

Spectrum management

ACMA plans and manages the radiofrequency spectrum, and it is in this sphere that the benefits of a converged regulator become especially apparent. As convergence developed, the distinction in planning the spectrum for broadcasting and non-broadcasting applications was no longer supportable, and was a major reason behind the creation of ACMA.

Our single team for radiofrequency planning policy allows us to throw our weight behind the government's Digital Action Plan for converting free-to-air television transmission from analog to digital and the introduction of the first permanent Eureka digital radio systems, scheduled for the start of 2009 in our major cities.

Our key spectrum management strategies are at various stages of development, but one is our strategy for increased transparency and more effective consultation on our radiocommunications regulatory activities.

We have estimated spectrum requirements over the next five, 10 and 15 years, and the information from the demand studies will be used to identify areas of future competing spectrum demands. Strategies will then be developed to manage the demands. We expect to release the initial five-year plan early next year.

International engagement

These and other activities under the broad umbrella of our transformation agenda will position ACMA to achieve

its core objectives. It will be equally important to ensure that we continue to lift our gaze beyond the immediate horizon of our own jurisdiction.

Increasingly, ACMA will be faced with regulatory challenges that require international cooperation and collaboration because of increasing difficulty in finding 'access' points into the regulatory construct. These challenges are only likely to increase as we move closer to the stage three or end-game models.

Traditionally, regulation only had to deal with businesses in their own countries. Now businesses with no local presence can easily trade within our borders. We need 'hooks' to tie these businesses to our regulatory framework. One is the capacity to use our relationship with regulators in those businesses' country of residence.

Our current engagement with international organisations on spam and internet content offers models for what will be an expanding part of all of our regulatory activities.

ACMA has recently been involved in developing a bilateral mutual recognition agreement on electromagnetic radiation between Australia and Taiwan. This will allow for mutual acceptance of test reports from recognised bodies for health exposure testing of products such as cellular and cordless phones. ACMA has worked closely with the Taiwan Economic and Cultural Office and the NCC. The bilateral arrangement will reap trade benefits in the radiocommunications market for both countries.

The full text of Mr Chapman's speech is on the ACMA website at www.acma.gov.au (go to Home > About ACMA: News & media centre > Speeches).