



Transitional regulation needed

by John Rohan, Managing Director, Vodafone Pty Limited

The first stage of deregulation of the Australian telecommunications marketplace was instigated by the Federal Government in the early 1990s. Since then, competition has increased with three carriers in place of the previous monopoly, price competition has been introduced and the quality and range of services have substantially expanded.

However, Australia is still emerging from a long period of Telstra monopoly. Despite the granting of new licences and the entry of new players, market dominance - paid for by taxpayers - is still very much a fact of life in Australian telecommunications.

An essential pre-condition for genuine competition is connectivity of new services with the existing national telecommunications infrastructure. Connectivity must be guaranteed to new players. But, given that existing infrastructure is owned and operated by the former monopoly, Telstra, connectivity can only be ensured by maintaining some form of transitional regulation.

New carriers and small service providers cannot afford to wait two or three years for a court to settle basic access and interconnection disputes. Without guaranteed access, many companies simply will not invest, market shares will not change and real competition will not be achieved.

Vodafone fully supports the principles of the Hilmer Report and the Federal Government's move towards deregulation. But, this deregulation must be a careful, gradual process. Major carriers, must not be allowed to use their size and strength in an anti-competitive way.

In the mobile communications market, Telstra can use its extensive fixed telephone service to cross-subsidise its mobile services. This is unfair, especially as the fixed phone infrastructure has been paid for by taxpayers. Fixedline and mobile communications should be structurally separated in general carriers such as Telstra.

The Bureau of Transport and Communications Economics *Communications Futures* report confirms that the most important single area of development in terms of both market size during the next decade and longer term influence on patterns of consumption, will be mobile communications. BTCE forecasts that by 1999 there could be between five and seven million voice-based mobile connections in Australia.

With current analogue and mobile digital connections totalling around 2 million, this indicates that the mobile market is only around one-third the way towards maturity. Mobile *digital* penetration, in particular, is currently around 300,000 - just *five per cent* of the total predicted market by 1999.

Competition in areas such as mobile is only just beginning and the dominance conferred by years of monopoly cannot be levelled out quickly or easily.

International experience supports a gradual deregulation approach. For instance, in Britain after nearly a decade of competition with an effective regulator in place, the playing field is still quite heavily slanted in favour of the former monopoly, British Telecom.

In New Zealand, open slather competition under general anti-competitive trade practices provisions has

applied and market shares have remained frozen. The former New Zealand monopoly has remained one of the best investment prospects in the world and the main deregulatory activity has been a string of inconclusive and drawn-out court cases.

It now seems likely that the New Zealand Government will be obliged to step in again to legislate for affordable access so as to restore essential connectivity and, thereby, competition to the telecommunications market. These examples are instructive in Australia.

Vodafone believes that transitional regulation cannot be achieved in the short-term by a non-specific, non-expert regulator such as the proposed Australian Competition and Consumer Commission (ACCC). Telecommunications needs a specific regulator which understands the industry, which can make sure the playing field is flat, and allows new players to compete on equal terms.

A transitional, specialist regulator will foster competition and should be maintained for a further three years from 1997 to 2000, with full, open competition applying from then.

In the climate of rapid and far-reaching change that will occur during the next five years, it would be too disruptive and counter-productive to radically reduce or remove all regulatory controls.

Regulation that is developed post '97 should also be flexible and accommodate rapid technological developments forecast for the next five years. A rigid regulatory framework will prove restrictive and counter-productive as any regulations are likely to be rapidly overtaken by new technologies. □



Telecommunications regulation:

	1975	1989	1991	1997 (proposed)
Regulator(s)	Cth Postmasters-General's Dept. to 1975; then ATC/Telecom.	AUSTEL, TPC.	AUSTEL; TPC/ACCC from 1995; SMA from 1993.	ACCC (competition); AUSTEL/SMA (technical & consumer).
Telecoms. Providers	Cth Postmasters-General's Dept. to 1975 then ATC/Telecom (domestic); OTC (international) from 1946; AUSSAT (satellite) from 1981.	Telecom, OTC, & AUSSAT. Some providers of 'value added services' (VAS) & 'private network services' (PNS).	Telecom & OTC merged to form AOTC. AUSSAT sold to private 2nd carrier (Optus). 3 mobile carriers licensed (Telstra Optus Vodafone). Service providers under class licences.	No numerical restriction on number of carrier licences; policy of lowering barriers to industry entry.
Ownership	Carriers state-owned.	Carriers state-owned; service providers privately owned. Trade Practices Act 1974 (TPA). Foreign Acquisitions & Takeovers Act 1975 (FATA).	Telstra state-owned. Other carriers & service providers privately owned. Limits on foreign participation in other carriers. TPA. FATA. From 1992 Broadcasting Services Act limit on carrier participation in satellite pay TV.	Continue policy of effective Australian control & the maximum possible Aust. ownership of existing carriers. Foreign control of new carriers & service providers - FATA, general foreign investment policy, BSA.
Scope for Competition	Limited exceptions to the statutory monopoly.	Some competition in customer premises equipment; 'VAS' & 'PNS'.	Duopoly in network infrastructure; triopoly in mobile services; open markets in other services.	Infrastructure provision open to service providers as well as carriers.
Reserved Rights	Most rights reserved to ATC/Telecom. Exemptions in favour of transport authorities, land owners & occupiers for installations capable only of operating within the land or premises, persons authorised by ATC/Telecom, AUSSAT, OTC, ABC, SBS & licensed broadcasters.	Any service for primary communications carriage between 2 or more 'cadastally separated' places or persons reserved to carriers - Telecom (within Aust.); OTC (between Aust. & other places); AUSSAT (domestic satellite-based facilities).	General carriers: provision of reserved line links & ancillary facilities; satellite-based facilities; payphones. Mobile carriers: provision of mobile services. All reservations subject to exceptions.	No infrastructure or services reservations.
Access to Land	ATC/Telecom: extensive rights to enter, alter & build upon land subject to obligations to minimise disruption & pay compensation.	Telecom, OTC & AUSSAT: extensive access powers subject to obligations to give reasonable notice & to compensate.	Carriers: extensive access powers, subject to obligations to give reasonable notice & to compensate.	AUSTEL & Cth Environment Protection Agency to review '...with a view to tightening obligations on carriers'.
Competitive Safeguards - Inter-connection	N/A.	Carriers obliged to connect 'VAS' & 'PNS' to their networks, unless not technically feasible or service declared unlicensed by AUSTEL.	Carriers right to obtain network interconnection & carriage, on reasonable terms & conditions. Service providers rights to tariffed basic carriage services (BCS) on non-discriminatory terms; right to connection of services not supplied by another carrier; power in AUSTEL to require 'unbundling' of services.	Interconnection obligations based on mandatory access undertakings & arbitration, reflecting the TPA Part IIIA regime, augmented by industry codes of practice.



Recent Australian history

	1975	1989	1991	1997 (proposed)
Competitive Safeguards - Pricing	N/A	Carriers prohibited from discrimination against 'VAS' & 'PNS' providers on price, performance or terms of supply, except so far as cost-justified.	Carriers BCS tariffs subject to disallowance by AUSTEL. Restrictions on departures from tariffed rates, inter-carrier fees set by AUSTEL or negotiated subject to AUSTEL arbitration, with reference to cost-based pricing principles.	Notification/disallowance procedure to be extended to service provider connection to carrier networks from June '96 to July '97. Thereafter such connection to be priced though new access regime. Carriers obliged to charge in accordance with filed tariffs. ACCC power to disallow anti-competitive tariffs.
Competitive Safeguards - Information	N/A	AUSTEL power to obtain info relevant to performance of its functions or exercise of its powers; broad accounting separation requirement.	Mandatory tariff filing for BCS offerings; reporting obligations; AUSTEL info-gathering powers; accounting separation under COA/CAM manual; register of access agreements.	Carriers having substantial degree of power in a market obliged to file tariffs. All carriers & service providers required to develop code of practice for publication of terms of offerings. ACCC info-gathering power regarding competition policy matters.
Retail Price Control	Telecom required to publish rentals & charges in <i>Gazette</i> . Ministerial approval required for variations affecting 'standard telephone services' rentals, charges for calls within Aust. & charges for telegram transmission.	Minister could determine that a 'reserved service charge' was subject to price control arrangements, including price caps & notification & disallowance procedure.	CPI-X% price caps on 'baskets' of Telstra's retail services. Increases in prices of some other retail services subject to notification & disallowance process.	CPI-X% price caps & notification & disallowance price control arrangements to remain on Telstra; AUSTEL to be given 'a broader monitoring role'.
Industry Policy	Australian preference arrangements administered by Telecom.	Industry development arrangements 'to build a dynamic, export oriented industry integrated into world market opportunities'.	Significant network roll-out obligations imposed on new carriers through licence conditions. Various industry devt programs (FTA, IDA, Partnerships for Devt.). Telecoms Industry Devt Authority (TIDA) estab. 1992.	No explicit roll-out obligations for new carriers. All carriers to develop with govt. a detailed plan for involvement with domestic industries - commercial relations, research & development, exports.
Universal Service	ATC/Telecom obliged to 'make its telecoms. services available throughout Aust for all people who reasonably require those services'. Minister could direct Commission as to performance of its functions & exercise of its powers, as necessary in the public interest.	'Community service obligation' on Telecom.	'Universal service obligation' on Telstra to ensure that standard telephone service & payphones are 'reasonably accessible to all people in Aust on an equitable bases, wherever they reside or carry on business; other carriers contribute according to shares of timed traffic.	Possible redefinition of standard telecoms service to one supporting voice telephony, fax and data. Carriers to contribute in proportion to revenue derived from carriage businesses under their licences; targeted assistance to promote access.
Untimed Local Calls	Yes.	Yes.	Yes, at customer's option.	Customer's option maintained.
Ombudsman	Cth Ombudsman est. 1977	Cth Ombudsman	Telecoms. Industry Ombudsman (TIO) est 1993	TIO jurisdiction to be extended to all service providers.