



# The new regime's three pillars

*Andrew Bedogni, Manager - Regulatory Affairs, Optus Communications*

**O**ptus welcomes the introduction of the next phase of telecommunications deregulation and the move to open competition. The end of the duopoly on 1 July 1997 has been in Optus' sights and planned for over an extended period. While Optus is well positioned to meet the challenges and seize the opportunities which lie ahead, it does not under-estimate its competitors or the significant modification to the regulatory safeguards which will apply.

Three aspects of the new regime are currently particular areas of focus for Optus and are seen as critically important to the success of deregulation in the Australian context. These are:

- the move to increased industry self regulation;
- the safeguards to protect against anti-competitive conduct; and
- the regime to permit access to networks.

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## Self-regulation

The government has placed an onus on the industry to play a greater role in regulating itself. This applies in respect of both consumer and technical matters. The ball is very much in the industry's court to deliver on this opportunity in order to avoid regulatory intervention.

For its part, Optus has been active in the establishment and substantial funding of the Australian Communications Industry Forum (ACIF) which will manage the self-regulatory process. Optus believes that it is essential for all industry participants - carriers, service providers, consumer groups, suppliers and industry associations - to engage in the process and ensure their perspectives are taken into account.

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## Anti-competitive conduct safeguards

In line with the move to deregulation, the government has realigned competitive conduct safeguards in the telecommunications industry to be closer to general trade practices law. However, some key distinctions remain in recognition that telecommunications is a complex and integrated industry and that competition is not yet fully established.

Optus feels confident that the new competition provisions have the potential to both deter and curb anti-competitive behaviour if used as intended by the government to allow swift regulatory responses to suspected breaches of the trade practices legislation. This will be particularly important for the growth of new competitors in the marketplace, but is also critical for existing players to compete on an equal footing to the incumbent with substantial market power.

The ACCC's power to issue a competition notice which can then be used as evidence in Court that anti-competitive conduct has occurred should also provide parties with an easier path to obtaining relief from such conduct. However, if Telstra is determined to test the waters of the new regime this could stretch the resources of the ACCC in its early days of responsibility and potentially undermine its new powers. To counter this, the ACCC will need both to act 'expeditiously' as required by the legislation and to provide clear signals to industry of anti-competitive conduct which it will challenge.

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## Access

Another area within the ACCC's jurisdiction is the new access regime. Optus recognises that this regime will

encourage new competitors and views this as beneficial in increasing competition and thus service provided to customers. New competitors will also allow Optus to leverage its network investment and create additional revenue. Optus therefore welcomes them as customers, as well as competitors.

However, uncertainty remains as to how the access regime will develop in practice. Optus believes that in implementing the new access provisions, it is essential that the economic rationale for regulation is recognised and in this regard that bottleneck services and facilities be targeted. Interconnection rates for competitive services should be left to commercial negotiation.

A proper evaluation of the economic costs of provision of facilities must also be undertaken to determine appropriate access prices, rather than reliance on historically determined interconnection figures. Access prices should recognise the substantial investment made to build network infrastructure and in this way encourage infrastructure-based competition which provides real choice.

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## The way forward

Optus sees many benefits arising from the move towards deregulation and is determined to play its part in ensuring that industry self-regulation works. However, we are also cautious about how easy the transitional path will be. It is critical to the success of deregulation that there are adequate regulatory resources which allow a swift response, clear guidelines on the anti-competitive conduct rules and targeted regulation of access based on sound economic analysis. Optus is optimistic that the industry and government can achieve the desired outcomes of deregulation if these issues are addressed. □