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Regarding the domestic GSM and CDMA terminating access service

One problem exists in relation to call termination is (as mentioned in the discussion paper) the inability of end-users to determine the price for call termination services. This potentially has broader implications for pricing policies of carriers who provide these termination services. By raising the price of its termination service, the carrier widens the price gap between calls made within its users, and calls made to its users from users of other networks. According to network effects, the more calls an outside user makes to end-users of the termination service provider, the higher the (price) incentive is to switch their mobile (or indeed fixed) service provider to that of the termination service provider in question. If such a scenario were to exist, incumbent or dominant players, who have benefits of both ownership of network infrastructure and significant market share, may in fact have an incentive to raise the price of their call termination services and reap the rewards of a further increase in market share. Such a move may be viewed by the ACCC as anti-competitive behaviour.

The discussion paper concludes that above-cost termination services for mobile-to-mobile calls give no competitive advantage to the terminating carrier in the absence of unbalanced traffic or price discrimination. It is worth considering/investigating however, whether a dominant market share (eg Telstra and Optus) would in fact result in an unbalanced volume of mobile traffic toward the large players.

Whether such a move by operators would attract users to switch services in order to benefit from cost savings is debatable yet possible within regulatory constraints. However, another potential negative externality from one carrier raising the price of its termination service is other carriers subsequently raising the price of theirs in order to "even-up" the prices for their own end-users, but in the process increase the cost of phone calls across the board.

Such a situation would be detrimental negative for users and in turn operators. Whether operators would realise this and refrain from such activities, or whether regulation is needed to prevent such a situation is a key consideration. Be it fixed-to-mobile or mobile-to-mobile calls, the removal of regulations may have a negative impact on competition and smaller operators' ability to compete. A light-touch approach to

regulating termination services through declaration may provide stability to the market and benefit to end-users in the short-medium term and have little if any negative impact on the LTIE. The problem with benchmarking as the tool for regulation is that in a situation of limited competition, it may actually alleviate competitive pressure on incumbents, or place only a limited amount of pressure to keep prices under a mark indicated by regulators and not competitors.

When considering the declaration of services, regulation should be technology neutral in its approach and rhetoric. Rather than different declarations for GSM, CDMA, WCDMA and other technological services, focus should be on ensuring end-to-end connectivity and thus a espouse the services end-users consume rather than the particular technologies the operator chooses to deliver these services with.

Regarding 3G services

The delay in construction and rollout of 3G infrastructure, and the subsequent delay in 3G services, is not necessarily contrary to the LTIE. Japan shows that despite having a relatively advanced 2G (2.5G) market and sophisticated users who download ring-tones, wallpapers, transport information, and send emails, photos, and short files with their mobile phones, the adoption of 3G services shows mixed results. Of the two established 3G platforms, the CDMA2000 service offered by KDDI has been wildly more successful that NTT DoCoMo's "FOMA" WCDMA service. This has come despite DoCoMo's dominant market share in 2G, world-first entrance into 3G, and a "higher-end" technology. Network compatibility meant KDDI's CDMA2000 users had all-to-all connectivity over existing network infrastructure, whereas DoCoMo was required to rollout new infrastructure due to the incompatibility between existing and new networks. DoCoMo had originally marketed future videophone capabilities, but scaled back this approach when competitors such as J-phone introduced camera phones that allowed users to send pictures over existing 2G networks.

In Australia, consumers have not had access to such sophisticated services available over mobile phones. Thus the move to 3G network could be expected to take place in an evolutionary fashion, rather than a sudden move from 2G to 3G technologies. This would facilitate not only greater end-user understanding of the new technology, but enhanced compatibility between new and existing networks upon their implementation. To this end, policy must encourage, but not necessarily hasten operators to implement 3G technologies. Interconnectivity between old and new technologies however, is a must.

In light of this, the Commission may find that regulatory forbearance may be beneficial to industry and consumers in the short-term, or until the market has matured enough to be likely to use the potential services that 3G can offer. As the paper mentioned, Hutchinson are rolling out 3G infrastructure in the absence of a 3G declaration, and other dominant operators may engage in the same when they feel the competitive pressure to do so. By announcing a future declaration of 3G services, the Commission may apply subtle

regulatory pressure to incumbents if there is a lack of competition. In this regard, the Commission should consider whether declaring a 3G service, while encouraging industry competition, would or would not outpace market diffusion and maturation, resulting in inefficient allocation of resources and a possible negative impact on LTIE.

In relation to this, the Commission may consider (as mentioned earlier) announcing the future declaration of mobile services expanding to become technology-neutral and to encompass 3G-based telephony and transmission services.

When considering the risk of vertical integration for network, applications, and content, lessons can be learned from past experiences. Experience in Japan, and subsequent success of mobile internet services would suggest that a complete separation between operator and content provider are essential for the service's development and diffusion. This allows (in theory) a variety of content providers equal access to providing content via the service, and increases the variety available to end-users. Conversely, in order to secure seamless handset and network compatibility and reliability, Japan's experience suggests that close collaboration between operators and handset makers is imperative to provide a stable platform through which content, applications, and communication services can be delivered.
Australia's WAP platforms arguably implemented the complete opposite strategy by tying up with near-exclusive content providers (eg Telstra-News Corp, Optus-PBL) in a similar fashion to their pay-television relationships, and relying on GSM handsets from overseas. If operators have learned from their WAP failures, they may be willing to seek independent content providers to supply content services. If however, they fear an inability to attract these content providers, the temptation may arise to keep such services in-house or outsource to providers with whom they have close ties. In this regard, the Commission should encourage operators to a near open access policy for content providers to ensure (quasi)vertical integration does not result, which may not only be detrimental to operators, but also to the market in general and LTIE.

As for definition, it is important to note that in Japan, packet-based technology was being implemented over a 2G (2.5G) network, to the great benefit of end-users. Thus 3G does not by definition signify a move from circuit-switched to packet-based networks. Nor does it inherently include text, pictures, or even motion picture per se. Rather, 3G should refer to a significant increase in bandwidth and connection speed enabling access to rich content services, greater inter-connectivity between different devices and platforms, and multi-media communication between users.