	Australian Competition and Consumer Commission

**Regional Cities
Telecommunications Forum**

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I would like to start by thanking you for inviting me to be here today.

This forum is also certainly timely given some of the ongoing policy debates that will heighten in coming months. From the ACCC's perspective, the focus is inevitably on ensuring the underlying regulatory settings are appropriate and best promote the development of sustainable competition in these areas.

The inevitable first challenge for a forum of this sort is to come to some agreement on the framework or frameworks they believe are most likely to provide sustainable high quality services to rural Australians. I suspect the answer to that question might vary considerably even within this room depending on the demographics of the community you represent.

There is certainly still a considerable overhang that suggests that a single network provider that subsidises high cost users, either directly or indirectly, is the only way we will see decent services in the bush. Arguably, the Page Institute's call for a national fibre network (although it was not at all clear who would operate such a network) is a legacy of this approach.

However there is a growing acceptance that there may well be alternative models which is being increasingly recognized. As recently as last weekend the Deputy Prime Minister advocated a 'genuine and robust' separation of Telstra's wholesale and retail units and a review of regulatory powers to ensure proper competition between Telstra and its smaller rivals, as well as a more traditional call for future governments to continue to fund services in non-commercial markets. This approach tends to suggest that the days of a single-dimensional approach to these questions has past and more closely reflects the ACCC's perspective as to how it can use its existing suite of powers to deliver outcomes that are in the long term interest of end users.

Competition and the need for regulation
In the period since deregulation of the telecommunications sector in 1997, competition has developed unevenly across different regions and across different

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markets. Outside of central business districts and some metropolitan areas, widespread competition has remained elusive.

Our concerns around competition keep coming back to the thorny issue of the copper local access network. In regional areas, as with most parts of Australia, Telstra continues to be the sole provider of this network, which connects virtually every home and business. As a result, companies seeking to compete have no option other than to rely on some form of access to Telstra's network.

Competitors in this position have two options – they can either resell the Telstra service, or they can bypass some or all of Telstra's network by choosing to roll out their own competitive infrastructure.

Notably, the more competitive markets that have emerged since 1997 have been those where there is more infrastructure-based competition. For example, even in metropolitan areas, corporate and business consumers have benefited to a much greater extent than residential consumers as the result of the roll-out of competitive infrastructure by new players.

Similarly, while some competition issues remain in the mobiles market, the roll-out of four competing mobile networks has now created the basis for more durable competition over the longer term.

Unsurprisingly, the case for regulation has also been weakest in those markets where infrastructure-based competition has developed.

To date, much of the ACCC's activities have been directed towards ensuring competitors are able to get access to critical parts of Telstra's network, where they need it, on reasonable prices and on reasonable terms. Put simply, competitors need to be able to buy access services from Telstra at prices that allow them to compete with Telstra at the retail level.

In order to facilitate this outcome, the ACCC has 'declared' access to a range of services. Once a service is declared, we then have a role in assessing undertakings around the terms and conditions of access and also in arbitrating disputes arising when competitors have difficulties getting access to critical parts of the network.

However, I should also note that these functions often do not amount to a direct pricing role, as the access regime is biased towards commercial negotiation and the delivery of market-driven outcomes wherever possible.

In administering the access regime, the ACCC has also been mindful to ensure that declarations are appropriately targeted to those services where competition issues remain evident.

This has seen the removal of access regulation from several competitive services in metropolitan areas, which has, in turn, narrowed our focus onto the remaining non-competitive regional areas. For example:

- by 2001, most inter-capital routes had been excluded from the declaration covering backhaul transmission[1];
- in 2004, 14 capital-regional routes were also excluded[2];
- by 2002, the obligation to supply the local calls service to resellers in CBD areas of the major capital cities was removed; and
- this month, a decision was released to exclude CBD and metropolitan areas from the existing ISDN and Digital Data Access Service declarations.

Without the development of competition outside metropolitan areas, it is likely that this divergent approach to regulation will continue.

The ACCC was interested to hear from some regional participants attending its price control review hearings that the HiBIS and 'Networking the Nation' schemes are starting to encourage the entry of new competitive infrastructure into regional areas.

Consistent with our approach to the deployment of competitive infrastructure more generally, it is important to ensure that the potential benefits arising from this competitive entry in regional areas are not unduly hindered at this crucial stage.

New entrants need a reasonable opportunity to build new access networks, or to gain access to existing networks in order to provide new services. This should be able to occur without the added burden of having to combat anti-competitive behaviour.

Incumbent operators are likely to respond to these developments and it is perfectly reasonable to expect them to compete vigorously. It is not now, and never will be the aim of the ACCC to prevent this from occurring.

However, we have a duty to ensure that anti-competitive conduct is not being used by incumbents and we will not hesitate to use our full suite of powers in order to ensure that this does not occur.

Broadband competition in regional areas
Arguably, the potential for broadband to deliver benefits for local businesses has always been greatest in regional areas. However, it is also becoming increasingly clear that broadband is no longer a discretionary luxury, but an essential tool for conducting business in all parts of Australia.

For many Australians, the only affordable broadband service available at this time is the DSL service provided over that same ubiquitous copper access network.

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[1] All inter-capital routes, except those routes connecting to either Hobart or Darwin, are now excluded from the transmission capacity service declaration. Transmission wholly within metropolitan areas remains covered by the declaration.

[2] The 14 capital-regional routes excluded from the declaration were:
  Sydney – Albury, Lismore, Newcastle, Grafton, Wollongong, Taree, Dubbo
  Melbourne – Ballarat, Bendigo, Geelong, Shepparton
  Brisbane – Toowoomba, Gold Coast
  Adelaide – Murray Bridge.

To date, the focus of access regulation has been on making the key inputs for DSL services available to competitors. In doing so, the ACCC has sought to provide competitors with the opportunity to transition to a greater reliance on their own infrastructure-based services where possible.

This work has included the declaration of services known as the unbundled local loop service (or 'ULLS') and the Line Sharing Service (or 'LSS').

The ULLS enables competitors to physically connect their own infrastructure to the Telstra local loop in order to provide both high-speed internet services and voice services. The LSS, on the other hand, enables competitors to connect to the local loop for the purpose of providing broadband services only, while Telstra continues to 'share' use of the loop in order to provide standard voice services.

In both cases, direct access to local loops enables competitors to bypass large sections of Telstra's network. This access also enables competitors to provide a much higher quality, and much more diverse range of broadband services than is currently possible by simply reselling Telstra's existing ADSL service.

For example, ADSL2+ technology is now available and ready to be rolled-out, offering the prospect of speeds of up to 20 megabits per second over short distances. At this speed, live DVD quality TV can easily be delivered via an internet connection.

The LSS declaration, in particular, has the potential to promote competitive outcomes in regional areas as the associated prices specified for this service are averaged across all geographic areas. In other words, the price for an access seeker to connect their own DSL infrastructure to local loops in regional areas via the LSS should be no more than the price of accessing the same service in metropolitan areas.

Telstra's competitors have indicated that the increasing take-up of broadband services is starting to justify the transition to their own DSL infrastructure. The ACCC will continue to monitor these developments with much interest. In the meantime, Telstra has also announced that it will soon start rolling out its own ADSL2+ network.

Of course, gaining access to the local loops is only part of the cost of providing an end-to-end broadband service to consumers. In regional areas, there are significant costs involved in providing a connection from the regional service provider's infrastructure back to its metropolitan point of presence.

Many of you would be aware that some broadband providers have pointed to reasonable access to backhaul transmission capacity as an essential component to promoting the roll-out of competing broadband services in regional areas.

Some have indicated that current backhaul charges are prohibitive to them supplying broadband services to many regional towns, and that this is most evident for those towns that are currently without any broadband service at all. They have claimed that that in addition to preventing the supply of broadband services to many regional towns, this also significantly impedes the development of competition as Telstra is able to build on its existing incumbency status by being the first provider to supply broadband in a particular town.

Some commentators have gone so far as to call for the declaration of a transmission service that could be used by broadband service providers operating in regional areas.

I should begin by noting that the ACCC has already declared a transmission capacity service, which could be used by regional broadband providers to access backhaul transmission capacity on all bottleneck routes. In doing so, the ACCC assessed that routes with more than two fibre links were sufficiently competitive.

The ACCC also published a high-level pricing principle last year that would provide guidance on how we would determine a reasonable price for backhaul should we be called upon to do so in the event of an arbitration.

As I noted earlier, the ACCC does not have a direct price-setting role in the absence of an arbitration and, to date, disputes have not been formally notified to the ACCC in relation to the backhaul service.

Perhaps that is understandable, given the resources available to regional operators as opposed to those available to the principal providers of the backhaul services.

That said, even in the absence of an arbitration, pricing guidance can have an important role to play in informing commercial negotiations around the pricing of access to a declared service.

In order to determine whether it would be appropriate for the ACCC to provide more specific pricing guidance in relation to backhaul, we have commenced a work program considering both the suitability of the existing backhaul declaration and the associated approach to pricing the service.

As an initial step, we have been making inquiries of broadband service providers to gain a better understanding of the market conditions that currently exist for transmission backhaul in regional Australia. We will also be examining whether further pricing guidance from the ACCC would promote more reasonable access to transmission backhaul and what form any further guidance should take.

Issues for the ACCC to consider as part of its work program include:
- whether it is appropriate to move from the existing high-level pricing principle towards the setting of indicative prices;
- if indicative prices are appropriate, whether the prices should be route-specific or averaged across all transmission routes; and
- whether it may be appropriate to build a bottom-up costing model for the service, or whether benchmark route pricing, as derived from more competitive routes, could be a more effective way to provide timely guidance to industry.

Depending on the outcomes of these initial inquiries, it may then be necessary for us to also move towards gathering more specific industry information, such as on the actual prices currently being offered on more competitive routes.

Conclusion

I would like to conclude by stressing that the ACCC does not hold strong views on the direction that industry should take in regional areas or, indeed, any part of Australia. Ultimately, it is the role of the market to determine how and when particular communications services are made available to end-users.

However, regardless of the direction taken, the ACCC holds the view that evolution should occur via competitive processes as much as possible as this will ultimately deliver the best-possible outcomes for consumers.

Our work will continue to be informed by this aim.

Thank you.