

17 April 2015

Michael Cosgrave  
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Australian Competition and Consumer Commission  
GPO Box 2154  
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**By email:** [spectrumcompetitionlimits@accc.gov.au](mailto:spectrumcompetitionlimits@accc.gov.au)

Dear Mr Cosgrave,

### **Proposed spectrum reallocation for 1800 MHz in regional Australia**

I refer to your letter of 1 April 2015 seeking comment on the need for, and impact of, imposing competition limits in the auction proposed by the ACMA for the reallocation of 1800 MHz spectrum in regional Australia. We welcome the opportunity to provide our views on this matter.

Our detailed response to the specific questions posed by the ACCC is provided in Attachment 1 of this letter. A summary of our response is provided below.

#### *Telstra's commitment to investing in regional Australia*

Telstra has a strong track record in delivering world class telecommunications services to its customers in regional Australia. This includes building Australia's largest mobile network which now covers more than 2.3 million square kilometres of the Australian land mass and 99.3 per cent of the population. It also includes Telstra's role, as Australia's universal service obligation (USO) provider, in providing all Australians with reasonable and equitable access to standard telephone service, payphone and emergency calling services regardless of where they live or conduct their business.

Delivering these services has required Telstra to make a substantial investment in both mobile and fixed infrastructure. Telstra has invested \$5.5 billion in building its mobile network since launching the 3G service in 2006, and last year alone Telstra invested \$1.1 billion in its network and paid \$1.3 billion for the spectrum that it acquired in the 2013 digital dividend auction.

As explained below Telstra is concerned that the imposition of competition limits in this auction could impact its ability to meet the future needs of its customers in regional Australia.

#### *Scope of the ACCC's analysis*

Telstra believes the ACCC's analysis should consider the market for both mobile broadband and fixed services in the regional 1800 MHz spectrum. Telstra considers that, as well as playing an important role in meeting the ongoing growth in customer demand for mobile broadband services, this spectrum continues to be an essential resource for supporting fixed

links to backhaul USO voice services and other critical fixed telecommunications services to remote communities in regional Australia. Telstra currently operates approximately 300 fixed links for this purpose in the 1800 MHz band throughout regional Australia. While substitute bands are available for mobile broadband services there are no suitable substitute bands for supporting many of the fixed link services. [c-ic]

Telstra considers that the state of competition in the mobile broadband market should only be considered on a national basis, Telstra is not aware of any regional variation in pricing that would point to the existence of regional markets. The plans that mobile network operators (MNOs) use to compete against each other to win customers in metro areas are the same plans that they offer in regional areas, even if they are the only mobile operator there. All mobile customers, regardless of where they live and how many MNOs have coverage in that area, universally benefit from the strong national competition that exists between MNOs.

While the quality of service and coverage in specific areas varies between operators, this is the result of discretionary investment, based on the network's operators' perceptions of demand, return and customer strategy. The variation in quality of service and coverage does not prevent competition between the MNOs in regional locations and each operator is free to invest in network coverage and quality if they wish to enhance their product offering in any particular location.

#### *Competition limits are not necessary - CC Act section 50 is sufficient*

Telstra concurs with the finding in the 2002 Productivity Commission Inquiry Report on Radiocommunications<sup>1</sup> that competition limits should not be applied to new allocations of spectrum on the basis that the safeguards under s.50 of the *Competition and Consumer Act 2010* (the CC Act) are sufficient and appropriate as the means to deal with any competition issues arising out of the issue of radiocommunications licences.

Telstra also notes that its competitors have expressed similar concerns previously about the application of competition limits and other ex-ante competition rules in spectrum auctions. In particular, Vodafone strongly opposed competition limits in its 2011 submission to the UK Parliament concerning the digital dividend auction, noting that the proposed caps "would distort competition and ultimately harm consumers".<sup>2</sup>

The 1 April 2015 letter from the ACCC states that the principal reason for introducing competition limits would be to prevent monopolisation of the spectrum. Telstra believes that no monopolisation risks are present in the proposed auction because:

- the 1800 MHz band is substitutable with other bands;
- all of the existing mobile network operators (MNOs) have existing spectrum allocations in this or substitutable bands;
- all of the existing MNOs have access to substantial financial resources, so they can afford to pay a market price in the auction to acquire any additional spectrum that may be sought;
- prices for mobile broadband services apply nationally;
- there is already effective competition in the national mobile market so there is no question of unconstrained pricing; and

<sup>1</sup> Productivity Commission *Radiocommunications Inquiry Report*, 2002, pages 288-289, available at <http://www.pc.gov.au/inquiries/completed/radiocommunication/report/radiocomms.pdf>

<sup>2</sup> Vodafone UK, *Written Evidence to the House of Commons' Culture, Media and Sport Committee, Spectrum Report* (2011), available <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmcomeds/1258/1258we13.htm>.

- there is no evidence of any anti-competitive hoarding of spectrum, or that MNOs will be unable to grow and meet increasing demand.

Telstra notes that the competition limit imposed on the acquisition of 700 MHz spectrum in the 2013 auction was not reached, despite additional spectrum being available. This supports the view that spectrum will only be purchased where its marginal value is greater than its marginal cost and that competition limits protecting against anti-competitive spectrum purchases are not necessary.

#### *Competition limits are likely to reduce the return to the community*

Telstra is of the view that, as well as being unnecessary, competition limits are likely to significantly distort competitive demand in the auction process, reducing the likelihood of fair and equitable market prices for the allocated spectrum. This may also result in spectrum being allocated to parties who value it less or may not have the sufficient capacity to invest in developing networks and new technologies. These factors are likely to result in lower returns to taxpayers in the short term and reduced benefits for consumers in the long term.

[c-i-c]

#### *Closing comments*

We would be grateful for an opportunity to meet with you and members of your team to discuss our response and consider any follow-up questions that you may have after reading our response. We will contact you shortly about the possibility of arranging such a meeting.

In the mean time, please do not hesitate to contact Brian Miller (03 8649 5953 or [brian.miller@team.telstra.com](mailto:brian.miller@team.telstra.com)) if you would like to discuss any aspect of this submission.

Yours sincerely,



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## Attachment 1 – Responses to specific questions

### 1800 MHz spectrum in regional areas

#### 1. What are the likely intended uses of 1800 MHz spectrum in regional areas?

Telstra expects the main future use of the 1800 MHz spectrum in regional areas will be for the delivery of mobile broadband and fixed telecommunications services.

The 1800 MHz band was one of the first bands to be used for mobile LTE deployment in Australia and overseas. A large device ecosystem has been developed internationally to support deployment in the band. The band is already used extensively in Australia for mobile LTE deployment in metropolitan and regional areas and it is expected the remaining regional spectrum that is to be allocated in the auction will play an important role in meeting the ongoing growth in customer demand for mobile LTE services in regional Australia.

The 1800 MHz regional spectrum will also continue to be an important resource for providing fixed telecommunications services to communities in regional and remote Australia. In particular, the spectrum is important for supporting low capacity backhaul links to transport USO voice services and other critical telecommunications services to these communities. Telstra currently operates approximately 300 fixed links in the 1800 MHz band throughout regional Australia for this purpose.

The 1800 MHz band is preferred for these fixed links because it can accommodate longer radio paths and is more forgiving if the paths are partially obstructed by the terrain. There are no other alternative fixed link bands which have these technical characteristics along with sufficient vacant spectrum to deliver the fixed link requirements. Spectrum is available in higher frequency bands (e.g., above 3 GHz) but these bands are often unsuitable substitutes because they cannot deliver the longer radio paths without costly infrastructure upgrades, including the possibility of having to introduce additional hops. The latter would require the acquisition and establishment of new sites which can be a lengthy and costly exercise in remote areas – especially if it involves planning approvals in national parks or native title areas. The result would be to increase the cost of delivering USO voice services in regional areas.

Telstra is also considering the possibility of using spectrum in the 1800 MHz band for the replacement of its legacy fixed wireless access systems in the 1500 MHz band. These systems are part of the access infrastructure for delivering USO voice services to customers in low population density areas. They are nearing end of life and will need to be replaced soon. Telstra is considering the 1800 MHz band for the replacement solution because suitable modern equipment is being developed for this band and the band has similar technical characteristics to the 1500 MHz band. The latter will minimise the need to build new infrastructure when swapping out and upgrading the existing systems.

#### 2. What is the optimal allocation of spectrum for the anticipated uses?

Different technologies and services can use the 1800 MHz band and there is different value attributed to the spectrum depending on what services it is used for. For example, while mobile broadband services may represent a more attractive economic usage of the spectrum resource in populated areas, it is unlikely that mobile broadband services will be widely deployed throughout less populated areas such as in national parks, native title and hilly/alpine environments. In these areas, it is likely to be more appropriate to use the spectrum for the provision of fixed services to remotely located communities.

To ensure a socially efficient allocation of this spectrum, Telstra believes it should be allocated to the use that creates the greatest value to society. An auction is the most likely way that the spectrum is allocated efficiently. The efficiency of the auction will, however, be diminished if there are limitations imposed on what technology the spectrum may be used for or if there are indirect quotas applied on the quantity of spectrum that can be purchased (for example, through competition limits). Each of these things act to reduce the competitive pressure in the auction, bias the amount of spectrum that can be purchased for one use relative to another and, therefore, can ultimately result in the allocation of spectrum to a use that is not the greatest value to society.

Further, considering that spectrum licences can have a term of up to 15 years, winning bidders should have the flexibility to decide the most appropriate uses for the spectrum over time. Telstra considers that identifying portions of the spectrum for specific uses would be less than optimal as it would limit flexibility for a migration to newer technologies (e.g., 5G technologies) and higher value uses of the spectrum over the 15 year license period.

### **3. Are there any other technical factors that the ACCC should take into account in its assessment of competition limits?**

Telstra believes the ACCC's assessment needs to recognise that the spectrum could be used for a variety of existing and future technologies, and for the delivery of both mobile and fixed services.

The assessment should take account of the technical features of this band that make it attractive for low capacity backhaul links and other fixed services to regional communities. The specific characteristics of this band (reduced radio path losses) permit longer hops to be established between towers, thereby reducing the need to invest in additional sites and infrastructure that would be required if higher frequency bands were to be used. The impact of sites and infrastructure on the environment is also minimised.

The assessment should also take account of the radio frequency channel bandwidths likely to be used for LTE deployment and 5G deployment in the future. LTE channels occupy multiples of 2 x 5 MHz up to a maximum of 2 x 20 MHz. A 2 x 20 MHz channel enables a mobile network operator (MNO) to make the most efficient use of the spectrum (after allowing for overhead data packets) and supports the fastest throughput to customers. The latest LTE technology<sup>3</sup> also allows multiple channels to be aggregated to provide even greater throughput. It is likely that future 5G technology will be based on the aggregation of channels with a minimum bandwidth of 2 x 20 MHz. For these reasons being able to acquire and use a 2 x 20 MHz block of spectrum creates proportionately more value than the acquisition of a lesser size block. The implication of this is that MNOs will achieve greater value for customers from being able to acquire spectrum in blocks that, when combined with existing holdings, allow them to create multiples of 2 x 20 MHz blocks.

### **4. Are there sectors, other than telecommunications, that are likely to participate in the auction?**

Telstra is not in a position to speculate on whether other sectors are likely to participate in the auction but notes there is some existing use of the 1800 MHz regional spectrum by the resources and transport sectors.

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<sup>3</sup> LTE Advanced (LTE-A) technology

## Competition in regional mobile broadband markets

### 5. To what extent do you consider mobile broadband markets are competitive? Please provide evidence and reasons for your view.

As the ACCC has acknowledged in its recent market reviews, all of the relevant market indicators - including the fact that there are three economically sustainable mobile networks - show that the market for mobile broadband is highly competitive, contains no barriers to competition and is growing.

Australian consumers benefit from an industry that is competing vigorously on coverage, data inclusions, price, and customer service. Australian mobile providers offer an array of products, services, pricing options and technology platforms to consumers.

Telstra's success in this market is built on continuous improvement in product offers, network investments and customer service designed to attract new mobile customers to the company.

While other parties to this consultation might comment on Telstra's coverage in regional areas, the ACCC should consider the following points in any assessment of competition in these areas.

#### *Competition occurs nationally, with the benefits of competition being passed on to regional customers*

All operators offer customers the same plans nationally, regardless of where they live. The reason for this is due to strong supply and demand-side substitutability between geographic areas. MNOs would incur undue cost in creating, marketing, and supplying different plans to different customers in different geographic areas. Also, should an MNO increase price in one area relative to another, customers in the first area could simply travel to the second to buy a mobile service and defeat that price increase.

As a consequence of competition being national in scope, the plans that MNOs use to compete against each other to win customers in metro areas are the same plans that they offer in regional areas, even if they are the only mobile operator there. Thus, all mobile customers, regardless of where they live and how many MNOs have coverage where they live, benefit from the strong competition that exists between MNOs.

#### *Prices continue to fall*

As the ACCC has recently observed, the mobiles market is functioning well with mobile usage continuing to grow and increased investment particularly in 4G. In the most recent Division 12 report, the ACCC noted that in real terms, the prices of mobile services fell by 2.0 per cent during the reporting period, which is the largest price decrease since 2010–11. Mobile prices have fallen in every reporting period since 2009–10 and are now 52.7 per cent lower than they were in 1997–98.<sup>4</sup>

Given the national scope of competition, customers in regional areas benefit from reductions in the prices for plans as much as customers in urban areas do.

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<sup>4</sup> ACCC, Telecommunications competitive safeguards for 2013-14, p.25

*The broadband market is healthy and continues to grow*

The mobile broadband market is also one of ongoing growth driven by consumer demand and competition to meet that demand. This is evident from the following facts and figures:

- Increase in mobile data subscriptions – mobile services in operation have increased from 25.99 million in June 2010 to 31.01 million in June 2014, an increase of 19 per cent over 4 years.<sup>5</sup>
- Increase in number of smart phone devices – at May 2014, 74 per cent of Australian adults were estimated to be using a smartphone compared with 64 per cent at May 2013, an annual increase of 16 per cent.<sup>6</sup>
- Increase in 4G subscribers – in June 2013 there were 3.9 million 4G services in operation, rising to 8.6 million by June 2014, an annual increase of 121 per cent.<sup>7</sup>
- Increase in mobile data usage – the volume of data downloaded via mobile handsets increased by 91 per cent between December 2013 and December 2014, from 27,627 TB to 52,745 TB.<sup>8</sup>
- Mobile data allowances have increased – allowances for Telstra's and Optus's most popular mobile data plans increased by 67 per cent and 100 per cent respectively between April 2014 and April 2015.<sup>9</sup>

This growth is supported by the launch of over-the-top video subscription services also increasing demand for data on both fixed and mobile platforms. This illustrates that investment in infrastructure is critical to further development of the market.

*Telstra's investment in regional network coverage is a result of seeking to differentiate*

Telstra has invested \$5.5 billion in building its network since launching its 3G service in 2006. Last year alone Telstra invested \$1.1 billion in its network, while also making payment for \$1.3 billion worth of spectrum acquired in the Government's digital dividend auction.

Telstra has invested in the network to be able to differentiate its service offerings. While this network investment has carried risks, it was made possible in an environment that encouraged investment and facilities competition. This is acknowledged by the ACCC, which notes that "*Competition between the three mobile network operators (MNOs) has created incentives for each to expand their mobile network coverage*".<sup>10</sup>

Telstra understands that this view is shared by its network competitors. New Optus CEO Allan Lew has publicly declared his desire to compete with Telstra with a substantial investment program,<sup>11</sup> and in the New Zealand context Vodafone has held Australia up as an example of the benefits of competition based on differentiation of network coverage.<sup>12</sup>

<sup>5</sup> ACMA, Communications report 2013-14, p. 17.

<sup>6</sup> ACMA, Communications report 2013-14, p. 20.

<sup>7</sup> ACMA, Communications report 2013-14, p. 8.

<sup>8</sup> ABS, 8153.0 – Internet Activity, Australia December 2014.

<sup>9</sup> Data inclusions for Optus's \$60 MRO plan were 1.5MB in April 2014 and 3MB in April 2015. Data inclusions for Telstra's \$60/\$70 MRO plan were 1.5MB in April 2014 and 2.5GB in April 2015.

<sup>10</sup> ACCC, Telecommunications competitive safeguards for 2013-14, p.77.

<sup>11</sup> 'Optus plots mobile war on Telstra', *Australian Financial Review*, 27 January 2015.

<sup>12</sup> Vodafone New Zealand submission to the Commerce Commission New Zealand's Draft Review of National Roaming as a Specified Service, 26 August 2013, p.2. Available from [www.comcom.govt.nz/dmsdocument/11041](http://www.comcom.govt.nz/dmsdocument/11041).

## 6. How does the state of competition differ in metropolitan, regional and rural areas of Australia? Please provide evidence and reasons for your view.

Telstra agrees with the approach of the ACCC, as noted in its 1 April 2015 letter, that mobile broadband services should be considered in the context of a national market. In particular, there is no regional variation in, or determination of, pricing. The pricing plans of the three leading mobile network operators – Telstra, Optus and VHA – are national rather than regional. This reflects the national strategic approach that the network operators take to competition.

Significantly, all three of the national mobile network operators are able to provide both 3G and 4G services in many of the regional areas. While it is true that the quality of service and coverage in specific areas varies, this is the result of discretionary investment, based on the network operators' perceptions of demand, return and customer strategy. The variation in quality of service and coverage does not prevent competition between the MNOs in most regional locations, and each operator is free to invest in network coverage and quality if they wish to enhance their product offering in any particular location.

In its draft spectrum reallocation recommendation for the 1800 MHz band (February 2015) the ACMA proposed 12 defined geographical areas: Darwin, North Queensland, Central Queensland, South Queensland, Northern New South Wales, Canberra, Southern New South Wales, Regional Victoria, Tasmania, Regional South Australia and Regional Western Australia. Telstra understands this was done for administrative and allocation purposes only and did not involve an assessment of the nature of competition between these areas and other urban areas.

Telstra believes the only approach to the assessment of the state of competition in mobile broadband markets is to review market conditions on a national basis, in accordance with the national approach previously taken by the ACCC.

## 7. What are the substitutes for spectrum in the 1800 MHz band in regional areas?

### *Substitute spectrum for mobile LTE use*

Other bands may be substitutes for the 1800 MHz regional spectrum to the extent that they can offer similar distance coverage, data throughput capacity, and are compatible with the desired technology options.

The geographic coverage or reach of towers is greater at lower frequencies and reduces at higher frequencies. The reduced coverage at higher frequencies can be offset by installing additional sites and infrastructure but this is unlikely to be economic for servicing low population areas.

The quantity of spectrum available varies between bands. The higher frequency bands generally offer more spectrum which means they can accommodate larger bandwidths and deliver greater data throughput to customers. Therefore, these bands are most useful for delivering mobile services in high demand areas, including regional cities, towns and locations where customers gather for events (e.g. sporting events) or other reasons.

So spectrum bands at lower or higher frequencies are substitutes for the 1800 MHz band but for different reasons – lower frequency bands are substitutes for the coverage benefits of 1800 MHz and higher frequency bands are substitutes for the throughput capacity characteristics of 1800 MHz. More specifically:

- The lower frequency 700 MHz band, 850 MHz and 900 MHz mobile bands all offer superior coverage to the 1800 MHz band and in that respect are ideal for regional services. However, less spectrum is available in these bands and therefore their ability to provide throughput capacity is somewhat reduced.
- The higher frequency 2 GHz, 2.3 GHz and 2.5 GHz mobile bands offer somewhat reduced coverage but adequate spectrum is available in these bands so their ability to support throughput capacity is similar to or better than that for the 1800 MHz band.

#### *Substitute spectrum for fixed link use*

As explained in the answer to question 1, in the case of fixed links there are no readily available direct substitutes for the 1800 MHz regional spectrum. Other low frequency bands that are identified for fixed link use and offer similar coverage are the 1.5 GHz, 2.1 GHz, 2.2 GHz and 2.3 GHz bands. However, these alternate bands are already heavily used for existing services in regional areas, so there is little scope for these bands to usefully act as substitutes. The higher frequency bands (e.g. > 3GHz) are also unable to be used as direct substitutes in many cases because the radio path losses are too large for the longer hops required between towers.

### **8. To what extent are these fully-effective substitutes?**

#### *Mobile broadband services*

In situations where there is a relatively high population density and coverage is less critical, such as for services in regional cities and towns, the mobile bands above 1800 MHz (2 GHz, 2.3 GHz and 2.5 GHz) are effective substitutes for the 1800 MHz band.

In situations where coverage is more important than throughput, such as along regional transport corridors and where population is consistently low density, the lower frequency bands (700 MHz, 850 MHz and 900 MHz) are all effective substitutes for the 1800 MHz band.

#### *Fixed links*

As explained in the answer to Question 7, there are no effective direct substitutes for spectrum that is used for fixed link services in regional areas.

Other low frequency bands (< 3 GHz) suitable for fixed link use are already congested by existing services in regional areas so there is little opportunity to deploy additional fixed links in these bands.

The higher frequency fixed link bands (> 3 GHz) are generally unsuitable due to the radio paths being too long for satisfactory performance at the higher frequencies. It would often be necessary to invest in additional infrastructure for these higher frequency bands to act as a substitute for many of the fixed link services. This additional investment is likely to be uneconomic, especially in cases where it involves establishing new sites for additional radio hops or making substantial upgrades to towers.

### **The need for competition limits**

### **9. Do you think competition limits are necessary for the 1800 MHz band in regional areas of Australia?**

As explained below, Telstra believes there is no basis for concluding that competition limits are necessary for the auction of the 1800 MHz spectrum in regional areas, and any such limits are likely to result in the spectrum providing a reduced return to the community.

### *No constraint on opportunity for MNOs to introduce or grow services in regional areas*

Telstra believes a key issue which needs to be considered is whether the introduction and growth of competitive services from the existing MNOs is constrained by access to spectrum in regional areas.

Telstra notes that both Optus and VHA already have access to spectrum in bands suitable for the deployment of regional services. Optus has access to approximately 87 MHz of regional spectrum in the 700 MHz, 900 MHz, 2 GHz and 2.5 GHz bands, and VHA has approximately 37 MHz of regional spectrum in the 850 MHz, 900 MHz, and 2 GHz bands. This is compared to Telstra's holding of approximately 217 MHz across all bands. While there is variation in the amount of spectrum held by MNOs, this needs to be weighed against variation in the numbers of customers they need to supply in those areas. Telstra, Optus and VHA's holdings are sufficient and allow them to progress LTE deployments in regional areas. Telstra considers that all MNOs, given their existing spectrum holding and customer bases, are in a similar position with respect to their need for 1800 MHz regional spectrum to expand their service offerings and respond to data growth.

Telstra also sees no reason why competition limits would be required to enable MNOs to acquire sufficient additional spectrum to support their business plans for growing services in regional Australia. Telstra's competitors (Optus and VHA) are owned by parent companies with substantial financial resources so they should have no difficulty in paying a market price at the auction to acquire sufficient additional spectrum. [c-i-c]

### *CC Act section 50 is sufficient*

As the ACCC would be aware, under s.71A of the *Radiocommunications Act 1992* the issue of a spectrum licence is subject to s.50 of the *Competition and Consumer Act 2010* (the CC Act).

The findings of the Productivity Commission in its 2002 Report on Radiocommunications<sup>13</sup> were that the provisions in s.50 of the CC Act are sufficient and appropriate as the means to deal with any competition issues arising out of the issue of radiocommunications licences. The Productivity Commission recommended that competition limits should not apply to the primary issue of radiocommunications licences and concluded that:

*"At best, the competition limits imposed under ss60 and 106 of the RC Act duplicate the operation of s.50 of the TPA. At worst, they may be used to engineer industry outcomes that exceed the reach of s.50."*

Telstra similarly considers that the test applied in s.50, which is whether the acquisition is likely to have the effect of substantially lessening competition in the market, is the correct approach to be taken to the issue of spectrum licences.

This appears to be recognised by the ACCC in its letter 1 April 2015 where it is stated that the principal reason for introducing competition limits is to prevent monopolisation of the spectrum. The ACCC notes that this could occur when;

*(a) an operator acquires sufficient proportion of the spectrum such that its retail prices are not constrained by the other acquirers of the spectrum (that is, it could charge monopoly prices for its services), or*

<sup>13</sup> Productivity Commission *Radiocommunications Inquiry Report*, 2002, pages 288-289, available at <http://www.pc.gov.au/inquiries/completed/radiocommunication/report/radiocomms.pdf>

*(b) an operator acquires more spectrum than it needs in order to prevent other operators using the spectrum to provide competing services.*

It is abundantly clear that neither of these monopolisation risks are present with regard to the auction of the 1800 MHz regional spectrum. As explained above:

- the 1800 MHz spectrum is substitutable with spectrum in other bands;
- all of the existing MNOs have existing spectrum allocations in the 1800 MHz band or substitutable bands;
- all of the existing MNOs have access to substantial financial resources, so they can afford to pay a market price in the auction to acquire any additional spectrum that may be sought;
- prices for mobile broadband services apply nationally;
- there is already effective competition in the market so there is no question of unconstrained pricing; and
- there is no evidence of any anti-competitive hoarding of spectrum, or that MNOs will be unable to grow and meet increasing demand.

Telstra notes that the competition limit imposed on the acquisition of 700 MHz spectrum in the 2013 auction was not reached, despite additional spectrum being available. This supports the view that spectrum will only be purchased where its marginal value is greater than its marginal cost and that competition limits protecting against anti-competitive spectrum purchases are not necessary.

#### *Competition limits are likely to reduce the return to the community*

Telstra considers that competition limits would significantly distort competitive demand in the auction process, reducing the likelihood of fair and equitable market prices for the allocated spectrum.

This position has previously been supported by other MNOs. Optus has expressed the view that price-based allocation of spectrum is “the most efficient way to allocate a scarce resource”, and that, “unless the Government can identify a clear market failure, it should not use competition rules to shape the market”.<sup>14</sup> Hutchison 3G Australia expressed a similar view prior to its merger with Vodafone Australia.<sup>15</sup> Vodafone has strongly opposed spectrum caps in the context of the UK’s planned digital dividend auction, noting that the proposed caps “would distort competition and ultimately harm consumers”.<sup>16</sup>

Competition limits may result in spectrum being allocated to parties who value it less or who may not have the sufficient capacity to invest in developing networks and new technologies. This would result in lower returns to taxpayers in the short term and reduced benefits for consumers in the long term. The historical summary in Table 1 below suggests that this has been the prevailing Australian experience of spectrum auctions with competition limits imposed: few of the new entrant bidders deployed their licences in a way that promoted long-term and sustainable competition in the mobiles market.

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<sup>14</sup> Optus submission to the Productivity Commission, Review of the Radiocommunications Acts and the Role of the Australian Communications Authority, p 3.

<sup>15</sup> Hutchison 3G Australia, *National Broadband Network Regulatory Reform for 21st Century Broadband - Submission by Hutchison 3G Australia Pty Ltd*, 3 June 2009, pp 4-5.

<sup>16</sup> Vodafone UK, *Written Evidence to the House of Commons’ Culture, Media and Sport Committee, Spectrum Report* (2011), available <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmcmums/1258/1258we13.htm>.

Entrant	Auction	Outcome
Catapult Communications	800/1800 MHz (1998)	Not used
Ozphone	800/1800 MHz (1998)	Ozphone purchased by AAPT in 1999
AAPT Wireless	800/1800 MHz (1998)	Spectrum licences acquired by Hutchison in 2007
OneTel	1700/1800 MHz (2000)	Spectrum licences acquired by rail operators in 2006–08
Austar	3400 MHz (2000)	Austar acquired 2.3 GHz spectrum licences acquired via secondary trades Spectrum licences acquired by NBN Co in 2011
CKW Wireless	1900/2100 MHz (2001)	Acquired by Commander Communications; spectrum licences acquired by Telstra in 2010
3G Investments (Australia) (Qualcomm)	1900/2100 MHz (2001)	Spectrum licences acquired by Optus in 2010

Table 1: History of new entrant spectrum acquisitions

[c-i-c]

**10. If so, what do you think appropriate competition limits would be?**

As explained above in its response to Question 9, Telstra does not consider competition limits are required.

Telstra believes it is important for all bidders to be able to have the opportunity to bid for the additional spectrum that they are seeking to meet future demand and grow their services in regional Australia.

[c-i-c]

**11. Should existing spectrum holdings be considered in any assessment of competition limits? Please provide reasons for your view.**

Telstra believes that any consideration of existing holdings should be limited to whether such holdings are being effectively used to deliver services in regional Australia. Parties that have already invested in spectrum and infrastructure to deliver services for regional communities should not be penalised by having their options restricted in this auction.

[c-i-c]

## The impacts of competition limits on downstream markets

### 12. What do you think are the relevant downstream markets for the purposes of the ACCC's analysis?

The ACCC's preliminary view is that the relevant downstream markets are the wholesale and retail mobile broadband markets. Telstra agrees that these markets appear to be the main relevant downstream markets for the analysis, but as explained earlier in this letter, the focus needs to be at a national level and not a regional level. Telstra also believes the ACCC should include the regional fixed service telecommunications market in the analysis.

#### *Wholesale market considerations*

In considering the impact of competition limits on competition in the wholesale mobile broadband market, the ACCC should take into account the significant investments that have been made in wholesale mobile infrastructure which have contributed to a thriving and competitive mobiles market in Australia. Wholesale customers have a number of options for the supply of wholesale mobile services and this is reflected in the competitive and differentiated service offerings available to those customers.

Significantly, the composition of the wholesale mobiles market differs markedly from retail. Telstra Wholesale holds a relatively small share of the wholesale mobiles market. [c-i-c]

Telstra Wholesale's experience is that in seeking to sell its mobile services to MVNOs it is competing with the wholesale mobile services offered by Optus and Vodafone on the basis of price, the quality of the services and the level of service provided. The wholesale mobiles market is continuing to evolve in terms of service offerings, innovation and competitive intensity. Telstra considers that the imposition of competition limits may risk dampening investment in the wholesale mobiles market and thus have a negative impact on future wholesale market competition.

### 13. Do you think competition limits would promote competition in these downstream markets? Why or why not?

Refer to the comments made in the response to question 9 as to why competition limits are not necessary for competition in the market for mobile broadband services. Telstra considers that an auction of the 1800 MHz band without competition limits is not likely to substantially lessen competition in that market.

### 14. Are there any other factors that you think the ACCC should consider in its assessment of possible competition limits?

Telstra believes that the ACCC should consider the efficiencies and consumer benefit likely to result from an environment where investment in new or improved facilities is promoted. An auction without competition limits is most likely to create and encourage such an environment.