Public Competition Assessment

24 June 2009

Vodafone Group plc and Hutchison 3G Australia Pty Limited - proposed merger of Australian mobile operations

A Introduction

1. On 29 May 2009, the Australian Competition and Consumer Commission (**ACCC**) announced its decision not to oppose the proposed merger of the Australian mobile operations of Vodafone Group plc and Hutchison 3G Australia Pty Limited (**proposed merger**). The ACCC was of the view that the proposed merger would not be likely to have the effect of substantially lessening competition in any relevant market in contravention of section 50 of the *Trade Practices Act 1974* (the **Act**).

2. The ACCC formed its view on the basis of the information provided by the merger parties and information arising from its market inquiries. This Public Competition Assessment outlines the basis on which the ACCC has reached its decision on the proposed merger, subject to confidentiality considerations.

B Public competition assessment

3. To provide an enhanced level of transparency and procedural fairness in its decision making process, the ACCC issues a Public Competition Assessment for all transaction proposals where:

   - a merger is opposed;
   - a merger is subject to enforceable undertakings;
   - the merger parties seek such disclosure; or
   - a merger is not opposed but raises important issues that the ACCC considers should be made public.

4. This Public Competition Assessment has been issued because the proposed merger is considered to raise issues of interest to the public.

5. By issuing Public Competition Assessments, the ACCC aims to provide the public with a better understanding of the ACCC's analysis of various markets and

the associated merger and competition issues. It also alerts the public to the circumstances where the ACCC's assessment of the competition conditions in particular markets is changing, or likely to change.

6. Each Public Competition Assessment is specific to the particular transaction under review by the ACCC. While some transaction proposals may involve the same or related markets, it should not be assumed that the analysis and decision outlined in one Public Competition Assessment will be conclusive of the ACCC's view in respect of other transaction proposals, as each matter will be considered on its own merits.

7. Many of the ACCC's decisions will involve consideration of both non-confidential and confidential information provided by the merger parties and market participants. In order to maintain the confidentiality of particular information, Public Competition Assessments do not contain any confidential information or its sources. While the ACCC aims to provide an appropriately detailed explanation of the basis for the ACCC decision, where this is not possible, maintaining confidentiality will be the ACCC's paramount concern, and accordingly a Public Competition Assessment may not definitively explain all issues and the ACCC's analysis of such issues.

C The merger parties

Vodafone

8. Vodafone Australia Limited (**Vodafone**) is wholly owned by its parent company, Vodafone Group plc.

9. Vodafone is a mobile network operator (**MNO**). Vodafone operates a 2G mobile network, which it claims to cover approximately 95% of the Australian population. Vodafone also operates a 3G network that it claims currently covers 80% of the population. Vodafone has plans to expand its 3G network to ultimately reach 94% of the population.

10. In metropolitan areas, Vodafone shares a radio access network (RAN) with Optus. The joint RAN covers around 60% of the population with approximately 2,200 base stations. In regional and rural areas, Vodafone has its own RAN infrastructure. More detail on Vodafone's 3G network capabilities are provided in Table 1.

11. Vodafone has almost 4 million mobile customers, including over 100,000 mobile broadband (**MBB**) customers. There are currently 170 Vodafone branded stores throughout Australia. Vodafone also retails its products through non-branded retail sites.

12. In the financial year ending 31 March 2008, Vodafone reported total revenue of \$2.44 billion and a consolidated net profit of \$107 million.

Hutchison

13. Hutchison Whampoa Limited (**HWL**) is the Hong Kong-based parent company of the Australian mobile business Hutchison Telecommunications Australia Limited (**HTAL**). HTAL is an ASX-listed public company. It owns 100% of the shares in Hutchison 3G Australia Pty Ltd (**H3GA**). For the purposes of this Public Competition Assessment, Hutchison refers to HTAL and H3GA.

14. Hutchison is an MNO and sells retail products under the ‘3’ brand.

15. Through its roaming arrangement with Telstra, Hutchison provides access to 2G services in areas where it does not have 3G coverage. Telstra claims this covers 96% of Australia’s population.

16. Hutchison operates a 3G network in Sydney / Wollongong, Melbourne / Geelong, Brisbane / the Gold Coast, Adelaide, Canberra and Perth. Hutchison claims that its 3G network footprint currently covers around 57% of the Australian population. Further details on Hutchison’s network capabilities are in provided in Table 1.

17. Hutchison shares its RAN with Telstra. The network is the 3GIS network. 3GIS covers around 57% of the population with approximately 2,700 base stations.

18. Hutchison has over 2 million Australian mobile customers, including over 260,000 MBB customers. There are currently 170 ‘3’ branded stores throughout Australia. Hutchison also retails its products through non-branded retail sites.

19. In the financial year ending 31 December 2008, Hutchison reported revenue of $1.623 billion and a net loss of $163.1 million.

D Other participants in the mobile telecommunications industry

20. In addition to Vodafone and Hutchison, there are two other competing MNOs – Telstra and Optus. There are also a number of other mobile service providers within the industry.

Telstra

21. Telstra is a fully integrated telecommunications provider of fixed-line, mobile and information services. Telstra currently provides mobile services to approximately 9.4 million customers, of which 4.4 million have access to 3G services. Telstra has its own 3G network —Next G — which it claims covers 99% of the Australian population. Telstra also operates a comprehensive 2G network (which it claims covers 96% of the population) and shares a RAN with Hutchison (as discussed above). Details of Telstra’s network capabilities are provided in Table 1.

22. In the financial year ending 30 June 2008, Telstra reported total sales revenue of $24.7 billion and retail mobile services revenue of $4.92 billion.

Optus

23. Optus is the second largest MNO in Australia, behind Telstra, and also provides fixed line telecommunications and subscription television services. Optus currently provides mobile services to approximately 7.42 million customers, of which 2.16 million have access to 3G services. Optus claims that its 3G network (Yes G) reaches around 96% of the Australian population. More details on Optus's 3G network capabilities are provided in Table 1.

24. In the financial year ending 31 March 2008, Optus reported total sales revenue of $7.76 billion. In the half financial year ending 30 September 2008, Optus reported mobile services revenue of $1.96 billion.

Summary of the four MNOs' network capabilities

25. Table 1 provides details on the four MNOs' network capabilities.

Table 1 **Network capabilities of the four MNOs**

	Telstra	***Optus***	***Vodafone***	***Hutchison***
Base stations				
Metro	3000 (Next G) + 2700 (JV with Hutchison – 3GIS)	2200 (JV with Vodafone)	2200 (JV with Optus)	2700 (JV with Telstra – 3GIS)
Regional/rural	4000 (Next G)	2550	1020	—
Coverage area				
% of population	99%	98%	80% (94% under Project Xelerate)	57% (96% via roaming on Telstra's Next G)
Completion date	N/A	End 2009	End 2009	N/A
Speed				
Technology	HSPA+	HSPA	HSPA	HSPA
Advertised maximum (downlink)	Up to 21 Mbps Up to 42 Mbps by end 2009	Up to 7.2 Mbps Up to 28Mbps by late 2009 Up to 42Mbps by mid 2010	Up to 14.4 Mbps (Xelerate)	Up to 3.6 Mbps Up to 7.2 Mbps proposed
Average	Up to 550kbps to 8Mbps	Up to 512kbps to 1.5Mbps (with burst speeds up to 3Mbps)	Up to 500kbps to 1.5Mbps	Up to 600kbps to 1.5Mbps
Spectrum				
850MHz	2 x 10 Metro 2 x 15 Regional	—	—	2 x 10 Metro 2 x 7.5 Regional (*not in use*)
900MHz	2 x 8.3 Nationwide	2 x 8.3 Nationwide	2 x 8.3 Nationwide	—
2100MHz	2 x 12.75 Metro 2 x 11.75 Regional	2 x 12.5 Metro 2 x 10 Regional	2 x 12.5 Metro 2 x 10 Regional	2x15 Mel + Syd 2x10 Adel, Bris + Perth

Source: Publicly available data from company websites and analyst reports.

Other providers of retail mobile telecommunications services

26. Other mobile service providers, besides the four MNOs described above, include mobile virtual network operators (**MVNOs**) and resellers. MVNOs and resellers purchase wholesale services from Telstra, Optus or Vodafone and on-sell mobile services under their own brand. MVNOs also own a small amount of infrastructure allowing them to provide some support services.

27. MVNOs and resellers compete to provide retail mobile telecommunication services to customers. Key MVNOs and mobile resellers are: Soul; Dodo; People Telecom; AAPT; Macquarie Telecom; Comtel and TransACT.

28. Virgin and Crazy John's provide branded mobile products at the retail level. These two businesses are wholly-owned subsidiaries of Optus and Vodafone, respectively.

E Background to the transaction

29. The transaction will be a 50/50 merger of the Australian mobile telephony operations conducted by H3GA and Vodafone. The transaction will be effected as follows:

- Vodafone will become a wholly-owned subsidiary of H3GA; and
- the wholly-owned subsidiaries of Vodafone Group plc which together hold all of the shares in Vodafone will be issued with a 50% shareholding interest in H3GA, with the remaining 50% to be held by Hutchison 3G Australia Holdings Pty Limited (**H3GA Holdings**), a direct wholly-owned subsidiary of HTAL.

30. Effectively, the transaction involves transforming H3GA into a joint venture entity, to be renamed Vodafone Hutchison Australia Pty Limited (**VHA**), of which HTAL and Vodafone will have equal ownership of 50%.

E ACCC review timeline

31. The following Table outlines the timeline of key events in this matter.

Date	Event
11-Feb-09	ACCC commenced review under the Merger Review Process Guidelines.
04-Mar-09	Closing date for submissions from interested parties.
01-Apr-09	ACCC published a Statement of Issues outlining preliminary competition concerns.
14-Apr-09	ACCC requested further information from the merger parties. ACCC timeline suspended.
17-Apr-09	Closing date for submissions relating to Statement of Issues.
04-May-09	ACCC received further information from the merger parties. ACCC timeline recommenced.
29-May-09	ACCC announced it would not oppose the proposed merger.

F Market inquiries

32. The ACCC conducted extensive market inquiries with a range of interested parties, including competitors – MNOs and MVNOs, consumers, mobile phone retailers, input suppliers, industry bodies, Australian and international regulatory agencies and other interested parties. Submissions were sought in relation to the substantive competition issues.

33. The ACCC also held discussions and requested information from the parent companies of the two merger parties regarding the likely future of Vodafone and Hutchison in Australia if the merger did not proceed.

34. Also, the ACCC extensively scrutinised internal documents obtained from the merger parties and their competitors.

G Statement of Issues

35. The ACCC published its Statement of Issues on 1 April 2009 identifying some preliminary concerns with respect to the proposed merger. The Statement of Issues is available on the ACCC's website at: www.accc.gov.au/statementsofissues.

H Industry background

36. As at December 2008, the market penetration rate of mobile telephony subscriptions was 111.4% of the Australian population.

37. Given the high level of penetration of mobile telephony services, in order to gain market share, MNOs, MVNOs and resellers must compete to attract subscribers from competitors. This has led to strong retail price-based competition.

38. Mobile data, however, is only in the early stages of consumer take up. Industry analysts predict that consumer demand for mobile data — both on 3G handsets as well as MBB using a USB modem — will grow significantly over the next few years. Information provided to the ACCC in market inquiries included reference to a forecast of growth in the number of MBB users in Australia from 1.8 million in 2009 to more than 4 million in 2014. On these estimates, subscriber growth over the five year period would be approximately 136%.

39. With such large subscriber growth, mobile data is also expected to generate considerable revenue growth for mobile providers. It was put to the ACCC that, on the basis of the forecasts mentioned above, MBB would generate global revenues of $137 billion in 2014, representing growth of 450% from 2008.

40. As MBB and other mobile data services become more popular with consumers, there will be increased network traffic on 3G networks. Australian industry estimates suggest that 3G data services will increase from occupying around 1800–2000 terabytes of network traffic in 2008-09 to approximately 10,000 terabytes in 2011-12, an increase of around 400% over the period.

41. The projected growth in traffic on 3G networks — primarily from MBB, which is a 'bandwidth hungry' service, but also from Internet on your mobile (IOYM) — has already required and is expected to continue to require MNOs to make significant investments in their network capabilities. Essentially, investments are needed to alleviate network capacity constraints, which affect both the speed of data services and the quality of voice services on 3G networks.

I The ACCC's merger assessment process – the 'with and without' test

42. Section 50 of the Act prohibits a merger or acquisition if it would be likely to have the effect of substantially lessening competition in a market.

43. In assessing a merger pursuant to section 50 of the Act, the ACCC must consider the effects of the transaction by comparing the likely future state of competition if the transaction proceeds (the "with" or "factual" position) to the likely future state of competition if the transaction does not proceed (the "without" or "counterfactual" position).

44. The ACCC therefore focuses on the foreseeable future when considering market definition and each of the merger factors to determine whether a substantial lessening of competition is likely to occur.

45. In this matter, the ACCC found that the appropriate analytical timeframe for consideration of the proposed merger was within a range of three to five years. In taking this view, the ACCC recognised that MNOs tend to undertake careful planning with respect to network investments. Network investments are invariably made with a long-term timeframe in mind, given that a return on investment is typically not generated for several years after the investment is made.

J Market definition

46. Table 2 lists the relevant markets identified by the ACCC for the purposes of reviewing the proposed merger.

47. As shown in Table 2, the ACCC did not define an acquisition market for radiofrequency spectrum for the purposes of its review of the proposed merger. The ACCC considered it was appropriate to characterise spectrum as an input in the relevant retail markets identified below. The ACCC notes that the competitive analysis of the proposed merger is likely to be the same, irrespective of whether radiofrequency spectrum is treated as a separate market, or an input into the relevant retail market.

Table 2 **Market definitions adopted by the ACCC**

Product dimension	***Geographic dimension***
Wholesale markets	
Domestic transmission capacity services	Distinct transmission routes including: • inter-capital transmission; • transmission other than inter-capital routes such as capital to regional routes; • inter-exchange local transmission; and • tail-end transmission
3G mobile and Internet content	National
Mobile services for the purposes of resale to retail customers	National
Roaming services	National and international
Mobile terminating access service	National
Retail market	
Mobile telecommunications services (including mobile telephony and MBB) (**the retail market**)	National

Product dimension

48. The ACCC found that there are two distinct types of mobile telecommunications services offered at the retail level – mobile telephony services and MBB. Mobile telephony consists of the provision of voice, data and some Internet services over a wireless network to customers via handsets. Internet services – commonly known as IOYM – are available on a 3G handset. IOYM includes emails, Internet browsing and short TV or movie clips. MBB consists of the provision of Internet services over a wireless network to customers via a USB modem or a dongle. From these appliances, customers can access most Internet services, with the exception of very high bandwidth applications, such as file and video sharing.

49. The ACCC found that demand-side substitution between mobile telephony and MBB was limited, but likely to increase over time. The ACCC found that there is a group of consumers wanting to use mobile Internet ‘on the go’ that may consider MBB to be substitutable for a 3G handset with IOYM (such as the Apple iPhone). While it was found that such demand-side substitutability was currently at the margin, it is likely to increase over time.

50. The ACCC found that mobile telephony and MBB are likely to be supply-side substitutes. Operators of 3G networks in Australia supply mobile telephony and MBB services over predominantly the same infrastructure and market these services using predominantly the same distribution channels.

51. Accordingly, the ACCC found that on the basis of supply-side substitutability, and limited but increasing demand-side substitutability, the appropriate product market was a retail market for mobile telecommunications services, including both mobile telephony and MBB services.

52. While the ACCC found there were some signs of fixed-to-mobile substitution developing in relation to telephony services, and an increased incidence of bundling, the ACCC considered that differences in price, functionality and accessibility were such that fixed telephony services should not be included in the market for mobile telecommunications services.

53. The ACCC found that fixed broadband services provide limited substitutability to MBB services, primarily due to differences in functionality. The primary characteristic of MBB is the ability for a user to access data services independent of location, whereas fixed broadband does not provide mobility to a similar extent. The ACCC also observed significant differences in price between MBB and fixed broadband services. The ACCC therefore considered that fixed broadband should not be included in the retail market for mobile telecommunications services.

54. The ACCC found that the predominant suppliers of retail mobile services were MNOs. There are a number of other competitors that re-sell the MNOs' mobile telephony and MBB services at the retail level; however, market enquiries indicated that this competition is at the margin of the retail market.

Geographic dimension

55. The ACCC observed that many of the elements of competition between MNOs are national at the retail level. Retail services tend to be priced, marketed, advertised and distributed on a national basis.

56. All four MNOs compete by providing retail services to customers on a basis that is broadly national, either through their own networks or through a combination of their own networks and roaming arrangements with other MNOs. While there are some differences in the quality and, for data, the costs of services provided to customers as a result of roaming onto a foreign network, the ACCC considers these services to be broadly substitutable with services provided to customers on a 'home' network.

K Impact of the proposed merger in the retail market — unilateral effects

Market concentration

57. The ACCC found that the proposed merger would lead to a significant increase in the level of concentration in the already highly concentrated retail market.

58. Tables 3 and 4 provide the market shares, by subscribers[1] and by revenue, for the two segments of the retail market — mobile telephony and MBB. As shown, Hutchison has attracted a relatively large share of the revenue flows over the second half of 2008 in both segments.

Table 3 **Market shares – mobile telephony [a]**

	Subscribers *(stock)* *(%)*	***Subscribers*** *(flow)* *(%)*	***Retail revenues*** *(stock)* *(%)*	***Retail revenues*** *(flow)* *(%)*
Vodafone	16.8	15.0	16.0	6.1
Hutchison	8.7	19.5	10.9	18.4
Telstra	41.7	31.7	44.2	43.8
Optus	32.8	33.8	28.8	31.6
Post-merger concentration measures				
HHI	3465	3338	3507	3517
Δ in HHI	293	585	349	225

a Stock measures are the shares of the number of subscribers and revenues

b Flow measures are the share of the increase in the number of subscribers and revenues over the previous half – July 2008 to December 2008.

Source: UBS, March 2009.

Table 4 **Market shares – postpaid MBB [a, b, c]**

	Subscribers *(stock)*	***Subscribers*** *(flow)*	***Retail revenues*** *(stock)*	***Retail revenues*** *(flow)*
Vodafone	6.5	4.7	4.6	8.1
Hutchison	17.0	20.3	9.1	20.5
Telstra	52.1	40.5	73.2	30.6
Optus	24.4	34.5	13.1	40.8
Post-merger concentration measures				
HHI	3862	3455	5633	3418

[1] These figures differ slightly from those published in the ACCC's report *Telecommunications Competitive Safeguards for 2007-2008*, which reported market shares for that financial year (as at June 2008); whereas the subscriber 'stock' market shares presented in this Public Competition Assessment are based on estimates as at December 2008.

	Subscribers *(stock)*	***Subscribers*** *(flow)*	***Retail revenues*** *(stock)*	***Retail revenues*** *(flow)*
Δ in HHI	221	190	84	332

[a] Market shares are derived from a number of sources. The ACCC considers these figures to be the best estimates available for the purposes of this assessment. [b] Shares for prepaid MBB are not included.
[c] Flow measures are over the previous half – July 2008 to December 2008.

Vigorous and effective competitors

Hutchison

59. The ACCC's inquiries revealed that Hutchison has played an important role in driving price competition and innovation in the retail market.

60. Evidence provided to the ACCC illustrated that Hutchison has often led prices for postpaid mobile telephony plans where the monthly spend is $49 or less. Hutchison has also priced aggressively in prepaid and postpaid MBB services since it commenced supplying these services.

61. Hutchison's price leading behaviour was found to have elicited competitive responses from all three of its major competitors. Information considered in the course of the investigation showed that the other three MNOs often respond to Hutchison's pricing changes, even when those changes had not yet had a discernible impact on customer churn. Further, it was found that Hutchison had been successfully attracting new customers as well as retaining its existing customers.

62. Amongst competitors and within the industry more generally, Hutchison was seen as an innovator. In Australia, Hutchison was the first to market with cap plans, Skype on mobiles and prepaid MBB, among other products and services.

63. On the basis of the evidence available, the ACCC found that Hutchison has been a vigorous and effective competitor in the retail market.

Would Hutchison continue to compete aggressively in the foreseeable future?

64. While it was found that Hutchison has been a vigorous and effective competitor to date, evidence analysed by the ACCC indicated that Hutchison was likely to be a less competitive force in the retail market in the foreseeable future.

65. The ACCC found that in the foreseeable future Hutchison was unlikely to continue to be a vigorous and effective competitor in the MBB segment of the market. It was found that Hutchison has network capacity constraints, and would need to undertake substantial investments in network capacity in order to continue to compete aggressively for MBB customers.

66. Having examined the evidence provided by Hutchison and HWL, the ACCC considered that the significant investments needed to fully overcome Hutchison's network capacity constraints were not likely to be made. The ACCC concluded that without this network expansion, Hutchison would suffer a significant competitive disadvantage — in particular, the speed of its MBB and other data services would slow down and the quality of its voice services would degrade. It was found that such a disadvantage was likely to increase over time as Hutchison's competitors are likely to continue to make the necessary investments in their networks. This may lead to a continued widening of the network capability 'quality gap' (see Table 1).

67. In relation to mobile telephony services, the ACCC found that, absent the merger, it was likely that Hutchison may continue as a price leader for some of its mobile telephony products, but was likely to implement some small price increases in light of the constraints related to the current economic climate. Further, it was considered that its inability to undertake network expansion was likely to impact on its ability to continue to compete strongly in relation to mobile telephony services. In particular, it would not have the advantages of revenue support from the growing MBB segment of the market, or the economies of jointly providing mobile telephony and MBB services.

Vodafone as a vigorous and effective competitor

68. It was found that Vodafone has also been an important competitor in the retail market, but, like Hutchison was not likely to be such a competitive force in the future in mobile telephony and MBB. The ACCC's view on this issue was informed by a large amount of evidence obtained in the course of its enquiries.

69. The ACCC's enquiries indicated that Vodafone, in competing with Hutchison to attract customers away from Telstra and Optus, has provided a significant amount of competitive tension in the retail market.

70. However, it was found that the competitive tension provided by Vodafone, particularly in the MBB segment of the market would be limited in the foreseeable future.

71. In outer metropolitan areas and beyond, it was found that Vodafone would be likely to have effectively ceased to compete for MBB customers in the absence of the merger. Network capacity upgrades would not have been made, and products would have been removed from Vodafone's retail stores.

72. In metropolitan areas — areas that cover around 60% of the Australian population — Vodafone would continue to compete for MBB customers. However, the quality of Vodafone's MBB products was likely to decrease.

73. Like Hutchison, it was found that Vodafone was likely to face significant budgetary and network capacity constraints. Within these confines, it is highly unlikely that Vodafone would have continued to make the investments necessary to remain competitive in MBB across Australia in the absence of the merger. Vodafone provided evidence that its inability to invest sufficiently to bridge the 'quality gap' would leave it in an increasingly less competitive position compared with Telstra and Optus (see Table 1) who have each made substantial investments in their respective networks.

Competition analysis

Mobile telephony

74. In the mobile telephony segment of the retail market, the ACCC found that the proposed merger would result in the aggregation of two of the four competitors where:

- concentration will increase in an already highly concentrated segment;
- there is no prospect of entry by an MNO on the scale and scope necessary to constrain existing MNOs;
- MVNOs and resellers would not pose a strong competitive constraint on existing MNOs;
- The ACCC considered that Optus and Telstra may compete more aggressively for Vodafone and Hutchison customers during a period of integration after the merger, but that this increase in competition was likely to be temporary;
- the degree of competition driven by the imperative for Hutchison and Vodafone to build scale will be reduced; however, the increased scale from the proposed merger would be likely to provide the merged entity with a platform from which to undertake network investment that will enable more effective competition against Telstra and Optus in mobile telephony and MBB in the future.

75. In relation to the final point above, the ACCC's enquiries revealed that it is increasingly important for MNOs to have a strong offering in both voice and data services (including MBB services) in order to be an effective competitor in either segment. The ACCC's findings regarding the merger parties' respective network capacities and MBB offerings, discussed in the previous sections and below, led the ACCC to conclude that the proposed merger was not likely to substantially lessen competition in the mobile telephony segment of the retail market.

MBB

76. The ACCC considered that the proposed merger is unlikely to lead to a substantial lessening of competition in the MBB segment of the retail market.

77. The ACCC examined a large amount of evidence which indicated that Hutchison and Vodafone, on an individual basis, would not be likely to continue to make the investments in their networks that would be necessary for the delivery of high-speed MBB services. Without the merger, it was likely that Hutchison and Vodafone would become increasingly weak competitors over time relative to Telstra and Optus.

78. With the merger, the merged entity has an increased incentive to make the investments in its network given it will have the ability to spread its fixed costs over a larger subscriber base. Indeed, for this segment, the ACCC considered that the proposed merger may have a pro-competitive effect over the longer term.

The link between mobile telephony and MBB

79. The ACCC considered evidence which suggested that, in the near future, any distinction between competition for the supply of mobile telephony and the supply of MBB would be increasingly blurred.

80. Evidence provided to the ACCC indicated that a competitor that does not have the capacity to provide a strong mobile telephony together with a strong MBB product was unlikely to be able to compete vigorously in either segment of the market because:

- revenue growth for voice has tapered off and the main source of future revenue growth is MBB and related data services;
- a competitor that only had the capacity to compete strongly in one segment of the market would not be able to take advantage of the economies of jointly supplying voice and data services; and
- there is likely to be further convergence between voice and data supplied on newer 3G handsets as well as increased bundling of MBB and 3G voice and data.

81. In light of these issues, without the merger, it is likely that Vodafone and Hutchison would have gradually suffered competitively in both segments of the retail market as the ‘quality gap’ between Telstra and Optus, two integrated players, continued to widen.

Public pricing commitment

82. On 25 May 2009 Hutchison and Vodafone issued a joint public ‘pricing commitment’ in which it indicated to its customers that following the merger:

- Customers would receive the same or better value deals;
- All new and existing contract customers of Hutchison and Vodafone would enjoy the same value from their mobile voice and data plans for a period of 2 years;

- Each company's respective approach to pricing, which allow customers to acquire handsets for $0 on 24 month contract, would be retained post-merger; and

- No plan would be withdrawn from the market for the next 2 years whilst new plans would also be offered

83. The 'pricing commitment' had no bearing on the ACCC's decision.

L Impact of the proposed merger in the retail market — coordinated effects

84. The ACCC's preliminary view in the Statement of Issues was that the proposed merger was likely to lead to coordinated effects in the retail market. This view was based on an understanding that each MNO can readily observe its rivals' prices.

85. There is a large range of price points within a plan or cap, such as national call rates, flagfall, voice mail access and overage rates[2], as well as underlying prices, such as handset subsidies and content packs. Many, although not all of these product offerings remain transparent.

86. Further investigation in relation to this issue revealed that the four MNOs keep a close watch on each other's product launches and pricing behaviour. However, as noted above, there are a large number of these products and associated offerings, and the value to the MNOs of offering them often depends on the mix of customers held and targeted by each competitor. The ACCC considered that although many products and prices are visible between competitors, these may be difficult to coordinate.

87. The ACCC considered that the most pertinent issue was the potential for the proposed merger to lead to unilateral effects, as discussed throughout this document.

M Impact of the proposed merger on other relevant markets - wholesale markets

88. The ACCC is of the view that the proposed merger is unlikely to substantially lessen competition in any of the five wholesale markets identified in Table 2 as relevant markets for the purpose of this matter. The ACCC considered that Telstra and Optus are likely to continue to impose a competitive constraint on the merged entity in these markets post-merger.

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2 Overage typically refers to the consumption of minutes outside the cap limit.

N Spectrum aggregation

89. As shown in Table 1, Hutchison currently owns spectrum in the 850MHz, 1800MHz and 2100MHz frequency bands across various metropolitan and regional areas. Vodafone currently owns spectrum in the 900MHz, 1800MHz and 2100MHz frequency bands in metropolitan, regional and rural regions.

90. The ACCC considered whether the aggregation of spectrum would increase the ability and incentive of the merged entity to ‘hoard’ unused spectrum with the effect of raising barriers to expansion for existing MNOs.

91. The ACCC concluded that with or without the proposed merger, Hutchison and Vodafone are unlikely to sell their spectrum even if the spectrum remains unused. The ACCC considered that with the proposed merger, the merged entity has an increased incentive to use previously unused spectrum to increase its network capacity.

92. On this basis, the ACCC took the view that the spectrum aggregation is unlikely to lead to a substantial lessening of competition in any market.

93. The ACCC also understands that the deployment of next generation mobile telecommunications technologies – long term evolution (**LTE**) – requires MNOs to have a 20MHz lot of contiguous spectrum to fully 'unlock' the benefits of the technology. Given this, post-merger, it was found that all three MNOs would need to secure more spectrum to rollout a new LTE network.

O Conclusion

94. On the basis of the above, the ACCC concluded that the proposed merger would not have the effect, or be likely to have the effect of substantially lessening competition in any market.