

SUBMISSION TO THE REGULATION TASKFORCE



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Reducing the Regulatory Burden on Business

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About this submission

This submission highlights several of the key regulatory issues facing the telecommunications industry at present, particularly *Part XIC of the Trade Practices Act 1974* and the *Telecommunications (Service Provider Checks for Prepaid Mobile Services) Determination 2000*. The submission also recommends streamlining these regimes to produce more efficient regulatory processes and reduce burden for the industry.

1. Introduction

- 1.1 Vodafone welcomes the opportunity to comment on the Productivity Commission's (the Commission) '*Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services*' Paper.
- 1.2 Vodafone supports a regulatory regime that achieves an appropriate balance between the interests of consumers and the interests of industry.
- 1.3 However, we believe that regulation should be a 'last resort' mechanism, to be introduced in instances of durable market failure and when industry led market practices have clearly failed to address the issue.
- 1.4 Vodafone believes that the benefit of introducing regulation should be clearly assessed through extensive consultation with industry, consumers, and other key stakeholders. A meaningful and robust cost-benefit analysis should be undertaken with each proposed regulatory intervention to assess the costs and benefits – and overall balance – of the introduction of the regulatory proposal.
- 1.5 Lastly, Vodafone is a member of the Australian Mobile Telecommunications Association (AMTA). Vodafone supports the AMTA submission lodged with the Commission.

About Vodafone

- 1.6 Vodafone Group Plc (Vodafone Group) is the world's leading mobile communications service provider. Vodafone Group has a presence in 25 countries through equity interests and a further 42 countries through partner market arrangements. At 31 December 2008, Vodafone Group had 289 million customers worldwide¹. Vodafone Group is the largest acquirer of unbundled local loop access and is the fifth largest broadband provider in Europe.
- 1.7 In Australia, as at 31 December 2008, Vodafone had a direct customer base of 3.95 million customers making it the third largest participant in the Australian telecommunications sector. Vodafone operates a GSM digital mobile network that covers 93 per cent of the Australian population and is currently undertaking a national 3G mobile broadband rollout using High-Speed Packet Access.
- 1.8 Vodafone has announced that it is in the final stages of preparing to launch its high speed 3G network in major regional centres, which will go live in the first week of May 2009. Customers in all other existing Vodafone 2G coverage areas throughout Australia are planned to experience Vodafone 3G services by August 2009. When this second stage is completed, Vodafone 3G coverage will reach over 94 percent of the Australian population.
- 1.9 On 9 February 2009, Vodafone Australia Limited and Hutchison 3G Australia Pty Limited announced their intention to merge their telecommunications businesses in Australia. This proposed merger is subject to shareholder and regulatory approval. The views expressed in this submission are those of Vodafone Australia Limited.

Vodafone's Global Regulatory Experience

- 1.10 Vodafone dedicates significant resources to managing the vast number of regulatory obligations, and takes an active role in contributing to the policy debate about future regulatory responses as they arise – in Australia and across all Vodafone operating companies.
- 1.11 The telecommunications industry in Australia is heavily regulated, in terms of economic regulation and social policy regulation, compared to most other countries in which Vodafone operates.
- 1.12 Vodafone Australia's Public Policy team actively contributes to policy discussions and regulatory developments that affect Vodafone's local and global business. Vodafone's Public Policy team in Australia draws on the experience of its global colleagues to inform domestic policy development. Similarly, Vodafone's operations in other jurisdictions benefit from shared knowledge of Australian policy and regulatory developments. The Public Policy team is supported by all areas of Vodafone's business.

2. Vodafone's Approach to Regulation

- 2.1 Vodafone understands that the Taskforce's primary objective is to reduce the regulatory compliance burden on business. Before considering ways to reduce this compliance burden, it is important to whether it is indeed necessary or appropriate in the first instance.
- 2.2 Regulation without a clearly identified market failure simply imposes regulatory costs on business and therefore does not deliver identifiable consumer benefit. Regulatory processes that lack robustness result in disproportionate regulation where the costs to business outweigh the benefits. Vodafone submits that these matters need to be addressed in order to achieve long term reductions in the compliance burden of regulation on the Australian business community.
- 2.3 It is also essential that a cost-benefit analysis be conducted. This is to enable stakeholders to understand the likely net benefit of a specific piece of regulation is to be introduced. It would also raise the question of "who pays?" for the regulation. It is important to note that if industry is to pay, ultimately it will be consumers that wear this cost.

Demonstrating Durable Market Failures

- 2.4 As a principle Vodafone does not support regulatory intervention except in cases where it is directed to a demonstrated durable market failure. By this Vodafone means that regulation can only be productive where:
 - (a) A market failure has been identified, substantiated and continues to be observed in the relevant market;
 - (b) The market has been given the time and opportunity to 'correct' the failure in the first instance before regulation is implemented;
 - (c) It is clearly demonstrated that market forces will not or have not be able to deliver the necessary public policy objective (e.g. due to monopoly characteristics; or the inability for market forces to sufficiently address an issue); and
 - (d) It is clearly demonstrated that regulatory intervention would achieve a better result.
- 2.5 There are real benefits to be gained from regulators adopting a 'wait and see' approach to new market developments, particularly in the telecommunications industry. New markets should be given opportunities to operate in the best interests of society without premature regulatory intervention. There is scope for regulators to apply this approach to matters where the perceived market failure is based on anecdote and a lack of investigation and identification of the real issue.

Outcome Based Regulation

- 2.6 Where regulation is required, it is critical to define the policy objectives and outcomes that regulation aims to achieve before defining solutions. In turn, market participants should be allowed maximum flexibility to deliver the identified outcomes within the regulatory framework. Where possible, regulation should avoid being unnecessarily prescriptive to enable industry participants to identify and develop the most cost effective and efficient ways to meet regulatory obligations within each business.

Self Regulation in the first instance

- 2.7 Where a market failure has been identified, there are a number of regulatory options available to address that market failure, from self regulation to regulation. In determining which regulatory option is appropriate for addressing a particular issue, the regulator must consider:

- (a) Is this market failure unlikely to be addressed by market forces;
- (b) Is there a durable market failure;
- (c) Will the proposed intervention protect against adverse impacts on investment incentives; and
- (d) Is the proposed intervention removable once it has addressed the failure, and how will that point be identified?

- 2.8 Vodafone advocates self regulation as the first regulatory response for the telecommunications industry. Self regulation enables industry to develop appropriate codes of practice and guidelines by which industry participants abide..

- 2.9 Where self regulation is unable to achieve the defined outcomes, co-regulation should be considered before resorting to explicit regulation. Industry players are integral to the development of the co-regulatory response. This works best where the desired outcomes are clearly defined and understood, and industry is able to assess potential regulation upfront and reach consensus before regulations are imposed. Co-regulation allows industry participants to address an issue in the most appropriate manner for each business, and the relevant regulatory body is empowered to take enforcement action as necessary.

- 2.10 Pure government regulation is often inflexible and does not give industry participants the flexibility to adapt their regulatory responses themselves as the industry and services evolve. Compliance, under legislation, can be overly burdensome for the industry. The inflexibility and lengthy processes associated with pure government regulation does not fit with the faster pace of industry change that is now experienced. This is particularly the case in the rapidly changing technology industry in which Vodafone operates.

3. Specific Regulatory Reform

Part XIC of the Trade Practices Act 1974 (TPA)

- 3.1 A good example of an existing regulatory process that is inefficient and decreases certainty is the telecoms specific access regime under Part XIC of the TPA. The existing process under XIC is based on a negotiate/arbitrate model whereby if negotiations over access pricing to a declared service fail the regulator can arbitrate on an access price. That price is set on the basis of a 'pricing principle' published by the regulator. Parties can submit an 'undertaking' – for approval by the regulator – in an attempt to have a price (other than that of the pricing principle) accepted. Decisions regarding undertakings are subject to full merits appeal to the Australian Competition Tribunal.
- 3.2 Vodafone submits that Part XIC of the TPA could be usefully amended to streamline the operation and application of the process, and deliver greater business certainty. Vodafone makes these comments based on our first-hand experience of Part XIC of the TPA, having exercised all aspects of Part XIC to determine the wholesale price of the Mobile Terminating Access Service (MTAS) – the practical experience of which involves complex, extenuated and costly processes.
- 3.3 Vodafone believes that a simpler two stage model could be implemented. Under such a model the Commission would simply set the access price/s for declared services for a fixed period such as 3 years – with substantially strengthened criteria for assessment. Such a decision could be subject to full merits review by the Australian Competition Tribunal.
- 3.4 From a practical perspective, there are three main ways in which the price of declared services may be determined under Part XIC:
- (a) by way of an indicative price specified by the Australian Competition and Consumer Commission (the Commission) in pricing principles for a particular declared service pursuant to section 152AQ of the TPA;
 - (b) as part of an access undertaking approved by the Commission pursuant to section 152BU of the TPA; or

- (c) as part of an access dispute determination made by the Commission pursuant to section 152CP of the TPA.

3.5 There are five key elements of Part XIC which Vodafone believes require amendment to deliver greater certainty for all parties – including the Australian Competition and Consumer Commission (the ACCC) – involved in the determination of prices of declared services:

- (a) clear regulatory objectives and the monitoring of outcomes;
- (b) pricing principles and their effects on the negotiate / arbitrate model;
- (c) the establishment of pricing principles;
- (d) timeframes for the establishment and application of pricing principles; and
- (e) facilitating appeals of ACCC decisions on pricing principles to the Australian Competition Tribunal.

Importance of clear regulatory objectives

3.6 Vodafone asserts that it is vital that regulatory objectives associated with Part XIC processes and outcomes contribute to the object of Part XIC and promote the long-term interests of end-users (LTIE).

3.7 The stated objective of the regulation of MTAS was to increase competition in the fixed line market, particularly in the area of fixed-to-mobile (F2M) retail pricing. However, this outcome has not been achieved.

3.8 Vodafone recommends that the objectives of regulation must be fit-for-purpose and be actively monitored. In the example of MTAS, the ACCC should be required to present evidence to demonstrate that the objective of the regulation is indeed being met, with such evidence encompassed in a regulatory review process, whereby critical evaluation of objectives and evidence must occur:

- (a) to decide whether to continue the regulatory intervention or not, for what purpose; and
- (b) to ensure that the continuation of regulatory intervention is appropriately directed and, most importantly, delivers consumer benefit and is in the LTIE.

Vodafone's recommendation for improved certainty and efficiency of declared services

- 3.9 As stated above Vodafone contends that in order to deliver greater efficiency and certainty Part XIC could be amended to deliver a simpler two stage process. Such a change is one example of a reform that could lessen burden on industry while delivering other benefits such as business certainty.

Prepaid Mobile Identity Checks

- 3.10 Vodafone believes that the existing prepaid regime and processes around it are burdensome, costly and do not deliver its stated policy objective i.e. to eliminate “anonymous” prepaid services in support of Australian national security policies.
- 3.11 Mobile prepaid identity checks are required under the *Telecommunications (Service Provider Identity Checks for Prepaid Mobile Telecommunications Services) Determination 2000* (the Prepaid Determination).
- 3.12 The Prepaid Determination requires the telecommunications industry to collect, verify, store, and, on lawful request, retrieve identity and address information about the purchaser and/or end user of prepaid mobile services.
- 3.13 In 2006, the Australian Communications and Media Authority (ACMA) introduced the Prepaid Identification Compliance Plan and Enforcement Strategy, in an attempt to improve compliance levels with the Prepaid Determination. Industry members – Vodafone, Hutchison, Telstra, Optus and Virgin Mobile – within AMTA, developed a paper-based Point-Of-Sale (POS) process in response to the Compliance Plan. However, this process has highlighted significant problems with the Prepaid Determination.
- 3.14 The introduction and continued use of the Prepaid ID Form (Form) has proved to be a costly and ineffective exercise for industry. Design, printing, distribution, as well as education and training associated with the form and process, as well as the overall cost of compliance, has led to costs in excess of \$10 million per year for industry.
- 3.15 Additionally, the Form does not assist in meeting the primary and secondary objectives of the Prepaid Determination. For example, the form does not protect against the use of false identification by purchases (therefore does not reduce the likelihood of an ‘anonymous’ purchaser), and the Form does not guarantee that the purchaser is the end user of the service.
- 3.16 Given the ineffectiveness and costliness of the current process, Vodafone believes that the Prepaid Determination needs to be revisited. Vodafone believes that a rigorous review is needed in order to establish clear legislative objectives that can be met, whilst maintaining the interests of Law Enforcement Agencies, regulators, industry and consumers.

- 3.17 At a policy level, all key stakeholders in the Prepaid ID process should reassess the merits of the current Determination, and work with industry to develop a process that is less costly, more efficient, and importantly, successful in meeting the objectives of national security policy.

4. Regulatory Reporting

- 4.1 Members of the telecommunications industry are required to submit numerous reports to government agencies, several times a year. The ACCC, ACMA and the Australian Bureau of Statistics (ABS), regularly request the submission of a broad range of information. Often, there is overlap in the information requested by more than one government regulatory authority and/or agency. Below is a snapshot of Vodafone's regulatory reporting requirements:

ACMA

- Annual Industry Information Request for ACMA's Research and Reporting Program – Section 105 Report (Schedule 3 of the *Telecommunications Act 1997*)
- Review of Financial Hardship Policies
- Review of Complaint Handling Policies

ACCC

- Record Keeping Rule – Division 12 Report (Under Part XIB, Division 12 Report of *Trade Practices Act 1974*)
- Infrastructure Record Keeping Rule (Under s. 151BU of the *Trade Practices Act 1974*)
- Regulatory Accounting Framework Report

ABS

- Internet Activity Survey
- Business Indicators Survey
- Survey of International Investment
- Survey of International Trade in Service

- 4.2 In particular, Vodafone would like to draw the Commission's attention to the growing number of surveys being issued by the ABS on a quarterly or annual basis. The depth of information has also increased substantially in the last few years. Specifically in relation to information collected in the quarterly Internet Activity Survey, there is a degree of overlap with the information that is requested by ACMA in the Annual Industry Information Request for ACMA's Research and Reporting Program – Section 105 Report.
- 4.3 Vodafone believes that regulatory authorities and agencies should communicate to streamline and create efficiencies in reporting requirements, particularly to minimise duplication of reporting requirements.
- 4.4 In relation to ACMA's Annual Industry Information Request for ACMA's Research and Reporting Program – Section 105 Report and the ACCC's current proposed amendments to the Division 12 Record Keeping Rule, Vodafone believes that the breadth of information required is onerous, in spite of recent efforts made by ACMA and the ACCC to compare and streamline the regulatory reporting requirements collected by both authorities. While progress has been made and the level of overlap is significantly less, Vodafone believes these authorities should continue to work closely with industry to promote reporting efficiency and reduce the burden on industry.
- 4.5 Regulatory reporting requires significant financial and human resource commitment, which is costly for business. In addition, some regulatory reporting includes requirements to provide data in a format that differs considerably from what the business is reasonably able to provide – which imposes further costs to business in discharging its regulatory obligations – and for which the benefit is not communicated or is unclear.
- 4.6 Vodafone recommends that the Productivity Commission conduct further investigation into the degree of regulatory reporting required imposed on the telecommunications industry in order to reduce the burden on industry.

5. Environmental Reporting

- 5.1 Environmental reporting is an area that Vodafone believes clearly demonstrates the ability for industry to lead the establishment of a reporting framework, without the need for further government regulation.
- 5.2 Whilst some of the initiatives remain voluntary, they effective in bringing about industry consensus and standardisation in particular areas. Such activities already require commitment of time and resource. Government regulation over and above such activities will create additional burdens on industry.

- 5.3 As a signatory to the National Packaging Covenant, Vodafone reports its actions in relation to packaging and waste management on an annual basis. In addition to this annual reporting process, Vodafone develops an Action Plan every three years to ensure constant improvement is achieved across all areas of our business operations. The current discussions around the introduction of an audit process by the National Packaging Covenant Council should take into consideration the system currently in place under the covenant, as well as the additional burden an audit process will place on industry.

6. Conclusion

- 6.1 Vodafone understands that where there is no other proven effective means, regulation can be beneficial, if not necessary, to enabling markets to function appropriately.
- 6.2 However, Vodafone advocates that where regulatory intervention is deemed necessary, a thorough cost/benefit analysis should be conducted to ensure that there is a net benefit.
- 6.3 Vodafone believes that the Productivity Commission should highlight the inefficiencies entailed in the requirements of Part XIC of the TPA and the Prepaid ID collection regime.
- 6.4 Vodafone considers that both pieces of regulation should be thoroughly reviewed to create efficiencies and reduce the regulatory burden on members of the telecommunications industry.
- 6.5 Regulation imposes significant administrative and compliance burden on industry. The existence of inefficient regulatory processes and requirements – of which Part XIC of the TPA and the Prepaid ID collection regime are examples in the telecommunications industry – require review and streamlining to ensure optimal outcomes for all stakeholders, including consumers and industry participants.