



SPECTRUM REVIEW ISSUES PAPER

**SUBMISSION TO THE
DEPARTMENT OF COMMUNICATIONS**

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Vodafone Hutchison Australia (**VHA**) welcomes the comprehensive review of Australia's spectrum management framework, which is to be undertaken by the Department of Communications (**Department**) in conjunction with the Australian Communications Media Authority (**ACMA**).

1. Key issues

Over the last decade there has been a profound and transformational shift in the technologies that use radiocommunications spectrum. Mobile telephony and mobile broadband services have rapidly become crucially important to the community and vital to the productivity growth of the Australian (and indeed the world) economy. Australia's spectrum management framework provides the foundation for enabling economic and social benefits across these and many other sectors of the economy. It is essential for the framework to work effectively so that it can unlock Australia's productivity potential. A modern spectrum management framework must do more than merely ensure technically efficient spectrum management; it must promote fair and open competition in downstream markets and avoid regulatory burdens that deter innovation and investment.

Australia already has a robust and resilient spectrum management framework. This has put the country at the forefront of global best practice spectrum management. Key features of the Australian spectrum management framework such as technology neutrality, market-based allocation mechanisms and opportunity cost pricing have now been adopted in many international jurisdictions. However, while the existing framework includes many elements required to effectively manage Australia's spectrum resources, it needs to be modernised to reflect changes in technology and consumer preferences.

The mobile industry's recent experience with rarely used elements of the spectrum management framework provides further impetus for reform. The Department and mobile industry participants now have the benefit of learning from spectrum processes, such as the renewal of 15-year spectrum licences and the auction of spectrum in the 700 and 2500 MHz bands. In these processes, many infrequently used and untested parts of the spectrum management framework profoundly influenced billion dollar investment decisions. It is timely to reflect on these processes and identify ways in which legislative reforms can deliver a better outcome for consumers, taxpayers and industry.

VHA is pleased that the Department's Terms of Reference and Issues Paper identify many of the issues that will be relevant to achieving a modern, efficient and effective spectrum management framework for Australia. The objectives of simplifying the framework (including via deregulation), clarifying institutional arrangements, and increasing consistency across legislation and sectors, are all matters which VHA agrees need to be reviewed and reformed to achieve the type of framework that is required in Australia today.

There are several additional issues to those identified in the Terms of Reference that ought to be considered as part of a comprehensive review of the spectrum management framework:



1. **Competition requires an explicit focus in the spectrum management framework.** Spectrum management should promote fair and open competition. Outcomes that do not promote competition may deter industry investment and innovation to the detriment of end-users. Unfortunately, the current regime only requires a cursory assessment of the competition issues and corresponding consumer welfare impacts associated with spectrum management. The role of competition assessments in spectrum management is too narrow and the language in relevant provisions in the *Radiocommunications Act 1992* and the *Broadcasting Services Act 1992* (**BSA**), and related instruments is out of date and not consistent with the language in other Commonwealth legislation that deal with competition and consumer benefit considerations. The Terms of Reference should include an item that focuses on the competition and corresponding consumer benefit aspects of spectrum allocation and management.
2. **A unified spectrum management framework is desirable.** The Review should strive to achieve consistency in spectrum management via a transition to a unified approach to spectrum allocation and licensing across all sectors. The increased demand for spectrum, as well as improvements in the sophistication of spectrum technology, means the approach historically taken to spectrum management in some sectors, along with the differences in spectrum management between sectors, is no longer relevant or appropriate. This was recognised in the conclusions and recommendations of the Convergence Review committee. The pursuit of consistency across legislation and sectors should not be restricted to the achievement of consistency across a limited set of factors. Rather, a transition to a unified approach to spectrum management and licensing across all sectors should be considered.
3. **Remove barriers to efficient allocation, investment and use.** The consideration of ways to ensure efficient allocation, ongoing use and management of spectrum, and incentives to encourage efficient use by all spectrum users, should be broad ranging and include critical aspects of the allocation process (e.g., payment terms). Under the current regime, payment of spectrum access charges is often required 18-24 months before the spectrum can be used. This is economically and financially inefficient and imposes significant costs on industry.

Separately, the current spectrum management framework fosters overly prescriptive technical regulation, which means spectrum cannot move to higher value uses in a timely manner. For instance, today regional 1800 MHz spectrum in some parts of Australia is not being used for its prescribed purpose (i.e. the provision of fixed point-to-point services) yet VHA and other mobile carriers cannot access this spectrum, which is used in the major capital cities to support 4G mobile services, to expand its 4G network into regional Australia. Changes to the spectrum management framework could improve its flexibility and enable more efficient (and timely) spectrum use.

The Review must be open to considering any and all reasonable options and mechanisms for encouraging efficient allocation, ongoing use and management of spectrum.



2. Specific comments

Set out below are our specific recommendations in relation to issues to be considered under various Terms of Reference in the Department's Issues Paper.

2.1 Term of Reference 2

Improve the flexibility of the framework and its ability to facilitate new and emerging services including advancements that offer greater potential for efficient spectrum use, while continuing to manage interference and provide certainty for encumbrance.

VHA strongly supports the view that greater flexibility is required in the spectrum management framework to ensure that it is able to be responsive to both long term and short term changes within the various sectors and in spectrum demands and uses generally. We recognise that this also needs to be balanced against licensees' need for certainty and the benefits that are to be derived from the adoption of a consistent and timely approach to issues that may affect the use and management of spectrum, but wherever possible the regime should deliver results that maximise innovation, competition and economic benefits.

An important consideration to ensure that opportunities are maximised is the need for international harmonisation. Australia does not operate in a vacuum. Decisions relating to the allocation and usage of spectrum in Australia are not isolated from what is occurring in other parts of the world. Decisions made under the spectrum management framework must take into account these global positions.

To this end, VHA believes that the issues to be considered under this Term of Reference should be expanded to include:

- the requirement for licensees to have certainty regarding the duration, terms and renewal of their spectrum licences, and the manner in which such certainty is best achieved; and
- the benefits of ensuring international harmonisation in spectrum management decisions, and the best way to achieve such harmonisation.

2.2 Term of Reference 3

Ensure efficient allocation, ongoing use and management of spectrum, and incentivise its efficient use by all commercial, public and community spectrum users

Other means to promote efficient use of spectrum

VHA believes that ensuring the efficient allocation, ongoing use and management of spectrum must be one of the key objectives of the review of the spectrum management framework. Increased demands for



spectrum across all sectors requires that decisions relating to the allocations of spectrum, and then the ongoing use of allocated spectrum, need to be managed to ensure maximum efficiency. VHA agrees that the various issues and options set out in the Issues Paper are appropriate to consider. However, we believe there may be other options and mechanisms which may also encourage efficient use and management of spectrum and these should also be considered. These could include matters such as:

- sub-licensing of spectrum via apparatus licences;
- a management model;
- minimum use and/or investment requirements for licensed spectrum; or
- access rights and obligations, to apply where applicable use requirements are not satisfied.

To ensure these and other potentially relevant options and mechanisms can be considered, we suggest that the issues to be considered in relation to this Term of Reference be expanded to include:

- other ways to encourage efficient allocation, ongoing use or management of spectrum.

Promotion of competition and public benefit

The focus on efficiency in relation to the allocation, use and management of spectrum should include a consideration of the extent to which the use of spectrum maximises the overall public benefit. This is recognised in the Department's Issues Paper.

An important aspect of the public benefit derived from the use of spectrum is the impact of spectrum allocation and use on competition among spectrum users and the consumer benefit derived from the various uses of spectrum. Although the objectives in the BSA and the spectrum management principles currently applied by the ACMA both include references to such factors, it is not clear that these considerations are given appropriate weight in the decision-making processes that affect the allocation and use of spectrum. To a large extent, this may be a result of the legislative language that captures these concepts being out of date. The drafting of the BSA does not reflect the terminology and focus of more modern regulation such as the *Competition and Consumer Act 2010*.

To address this, VHA believes that the issues to be considered in relation to this Term of Reference be expanded to include:

- the effectiveness of the existing regulatory mechanisms that require competition and consumer benefits to be taken into account in relation to the allocations and use of spectrum; and
- whether such mechanisms can be reformed to maximise the overall public benefit derived from the use of spectrum.



2.3 Term of Reference 5

Promote consistency across legislation and sectors, including in relation to compliance mechanisms, technical regulation and the planning and licensing of spectrum

VHA welcomes the Department's intention to consider the appropriateness of adopting a more consistent approach to spectrum management across different sectors. The Issues Paper indicates that this will include a consideration of whether a more consistent and simpler approach should be adopted in relation to specific issues as they apply to different sectors. VHA believes that the review should also explicitly consider whether a unified framework covering telecommunications, broadband, broadcasting and other users of spectrum should be adopted.

Further, to the extent specific matters in respect of which consistency may be sought are listed, these matters should explicitly include things such as valuation, pricing and payment terms, and renewal and reissue of spectrum rights.

2.4 Term of Reference 8

Develop a whole-of-economy approach to valuation of spectrum that includes consideration of the broader economic and social benefits

VHA agrees that a consistent and transparent approach to valuing spectrum, both for the purpose of making allocation decisions and for the purpose of setting reserved prices and administrative charges, is a key matter that should be considered as part of the review.

VHA believes that the review should also explicitly recognise and consider the differences and interrelationship between spectrum valuation and the setting of spectrum access charges, which are two distinct matters. While the valuation of spectrum is important in considering how spectrum should be allocated (for example, to mobile, broadband or another use), the setting of a price for spectrum should be based on the principle of opportunity cost for a typical or hypothetical licensee within an industry that generates the highest value of the spectrum. Given this distinction, we suggest that a separate Term of Reference, dealing with spectrum pricing (as opposed to spectrum valuation) be added to the Terms of Reference.

3. Concluding remarks

VHA again congratulates the Department for initiating this timely and much needed comprehensive review of the spectrum management framework. We look forward to working with the Department and the ACMA to progress this review.