ACCC submission to Mobile Black Spot Program Round 5A Discussion paper

June 2020

1.   Introduction

The Australian Competition and Consumer Commission (ACCC) welcomes the Department of Infrastructure, Transport, Regional Development and Communication's (the Department) consultation on the design of Round 5A of the Mobile Black Spot Program (MBSP).

The ACCC is the economy-wide competition regulator responsible for enforcing the *Competition and Consumer Act 2010* (Cth). We protect Australian consumers by fostering competitive, efficient, fair and informed Australian markets, including telecommunications markets. This includes our work under Parts XIB and XIC of the CCA in relation to preventing anti-competitive conduct in the telecommunications markets and regulating specific telecommunications services for the long-term interests of end-users (LTIE).

The ACCC supports the Government's ongoing commitment in improving telecommunications services for consumers and businesses in regional and remote areas of Australia, through programs such as the MBSP. The vast and sparsely populated geography of Australia makes it challenging for competitive markets to deliver benefit to all Australians in all regions to the same extent. As a consequence, communities living in low population areas typically lag behind or miss out on accessing quality essential telecommunications services, which have become critical in the participation of social, economic and personal lives.

The ACCC believes that public funding programs provided by governments at all levels have an important role to play in delivering outcomes that markets have failed to do, and that these outcomes could only be realised if the programs employ evidence-based selection processes and are designed with the aim to achieve clearly defined and prioritised objectives.

The ACCC's submission to this consultation is set out in two parts. The first part briefly discusses the ACCC's support for the promotion of competition as a key objective of the MBSP. The second part provides the ACCC's views on specific design points in the Department's discussion paper.

2.   Promotion of competition as a key objective

Generally, when essential services are not delivered to consumers and businesses by the market, governments may choose to step in and use public funding to provide those services. Government subsidy schemes such as the MBSP adopt a different approach to directly providing services in that they still seek to rely on commercial incentives to deliver essential services, but public funding is used to boost those incentives where they are otherwise low. That is, the MBSP is intended to subsidise the costs of MNOs to build infrastructure in regional areas where there is no, or poor coverage, and which would otherwise not be built as the costs would outweigh the potential returns of such investment.

Consistent with the ACCC's views expressed in its paper *Measures to address regional mobile issues*[1], we consider that government programs such as the MBSP must consider competition outcomes and we welcome the Government's intention to make the promotion of competitive outcomes a key design principle for Round 5A. The inclusion of competition consideration in these programs will mean that not only will they provide immediate benefits to consumers in the form of new or improved coverage, they will also be able to bring about longer term benefits associated with competitive markets over time. For example, the ACCC

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[1]   ACCC, *Measures to address regional mobile issues*, October 2017, available at: https://www.accc.gov.au/regulated-infrastructure/communications/mobile-services/domestic-mobile-roaming-declaration-inquiry-2016/regional-mobile-issues-paper.

considered that implementing open access arrangements in these programs would deliver more benefit to regional consumers and a better return for public money spent.[2]

The ACCC recognises that previous rounds of the MBSP provided for co-location on funded sites as a means to attract MNOs, other than the funding recipient, to provide services on the funded sites. However, as noted in the Department's discussion paper, MNOs considering co-location typically engage with the successful bidder after funding has been awarded, when the type of solutions and nominal site location has already been decided by the funding recipient. This can reduce the attractiveness or utility of a site for co-location as the selected solution and nominal location may not complement the other MNOs' existing networks.[3] Further, as co-location is limited to the sharing of site infrastructure, it may only result in relatively modest cost savings for an MNO and as such, may not provide a sufficient incentive for other MNOs to consider co-location to extend their networks.

The ACCC considers that the extent to which previous rounds of the MBSP has promoted competition for mobile services in areas where funded sites have been built is limited. The Department's discussion paper notes that, to date, around 28 per cent of funded sites under Rounds 1 to 4 offer co-location or on which MNOs are co-locating on existing infrastructure. This means that the vast majority (72 per cent) of the funded sites under the first four Rounds only have one MNO operating and providing services to communities in those areas. The ACCC considers that while the MBSP has so far succeeded in providing access to improved coverage to many regional and remote communities, only competition can bring sustained benefits to these communities in the longer term, including choice of services, lower prices and improved services.

The ACCC provides comments on more specific design points in the discussion paper in the next section.

3.   ACCC comments on specific design points

Promoting multi-MNO outcome is important, and designs to achieve this should be outcome-based rather than prescriptive

The ACCC notes the Government's proposal is to prioritise solutions that provide coverage from more than one MNO, regardless of whether the funding recipient is an MNO or a mobile network infrastructure provider that has a service agreement with MNOs.[4] The ACCC supports this proposal and provides the following views on how multi-MNO outcomes could be achieved.

The discussion paper raises the possibility of encouraging active Radio Access Network (RAN) sharing models based on the understanding that this approach could provide substantial savings to all parties involved and deliver competitive outcomes to consumers.[5] The discussion paper also notes that active RAN sharing could be a solution for extending coverage to areas where low population densities have discouraged investments under earlier rounds.[6]

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[2]   Ibid, p. 17.

[3]   Department of Infrastructure, Transport, Regional Development and Communication, Mobile Black Spot Program Round 5A Discussion paper, April 2020, p. 8. (Discussion Paper)

[4]   Discussion Paper, pp. 8, 10.

[5]   Discussion Paper, p. 9.

[6]   Discussion Paper, p. 6.

The ACCC understands that there are many ways in which more than one MNO could potentially provide services at a given site or a group of sites. Active RAN sharing is one form of network sharing arrangement which could deliver this result.

The ACCC also understands that the intention of the Government is to encourage more active form of network sharing arrangements (which generally result in higher cost savings) rather than passive sharing, such as co-location arrangements that were provided under earlier rounds.

While active network sharing can bring significant cost savings and efficiencies to operators and result in faster rollout of networks, in general, it is more likely to raise competition issues than passive network sharing arrangements. Possible concerns from sharing active elements such as the RAN, could include the risk of collusion, reduced competition on network quality (including upgrades to new technology) and distorted incentives for network investment in shared infrastructure. Whether any active network sharing arrangement actually gives rise to competition concerns would depend on the extent of sharing, and importantly whether the MNOs are still able to differentiate their services.

Where active network sharing is limited to deployments in areas where there is otherwise no commercial incentive to provide services, such as what is contemplated in the discussion paper, it is reasonable to assume that the benefit that such a network sharing arrangement could deliver to consumers, is likely to far outweigh any competition risk. If the parties consider that competition issues might arise under the CCA from a network sharing arrangement, the ACCC's authorisation framework can mitigate any risks to the parties of such an arrangement.

Active network sharing is not common in Australia. The ACCC is not aware of any current active network sharing arrangement amongst the MNOs other than Optus' provision of domestic roaming to VHA in some regional and rural areas.[7] Internationally, active network sharing is more common. In general, these arrangements result from commercial negotiations, but in some cases they result from regulatory intervention, such as a government or regulatory policy to encourage sharing, conditions attached to spectrum awards, a means to aid new entrants or access obligations.

Importantly, active network sharing arrangements can range widely in scope and requires extensive planning, coordination and agreement between the parties. The ACCC also considers that the MNOs are likely to have different strategic priorities regarding investments and asset ownership, which means that active RAN sharing models may not be attractive to all MNOs or may not be feasible for MNOs that are interested in such arrangements. Given these considerations, the ACCC believes that the designs of the Round should not be prescriptive in terms of the form of network sharing that should be used to deliver the multi-MNO outcome. Rather, the designs should be outcome-based, i.e. making multi-MNO solutions a clear objective, and provides flexibility for potential applicants to negotiate arrangements, which could achieve this objective, that work best for them.

The ACCC has previously raised concerns regarding the terms and conditions under which backhaul was provided in earlier rounds of the MBSP. Specifically, the ACCC noted the relevant terms and conditions were not consistent with the operation and objective of the declared Domestic Transmission Capacity Service (DTCS).[8] Depending on the network sharing model negotiated, the provision of backhaul may not be relevant in cases where parties choose to jointly deploy and share backhaul. However, the program should consider

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[7]   Past active network sharing arrangements in Australia to the ACCC's knowledge were the Joint Ventures between Telstra and Hutchison and between Optus and Vodafone in 2004, although the extent of the sharing arrangements differed greatly.

[8]   ACCC, *Measures to address regional mobile issues*, October 2017, p. 17.

including fall-back terms and conditions that are consistent with the operation of the DTCS, in cases where one MNO requires backhaul from a funded site to their nearest designated physical point of interconnection.

The ACCC agrees that the proposed solutions which also provide co-location for complementary services from third party providers, such as fixed wireless services, will provide additional benefit to consumers and businesses and should be encouraged. While the provision of co-location arrangements will provide additional revenue streams for the funding applicants, and therefore increases their commercial incentives, it would be important for the program to clearly outline any additional support that the Government is contemplating to facilitate such arrangements.

The program should provide incentives to applicants to deliver multi-MNO outcome

In order to achieve the multi-MNO outcome, the program would need to provide sufficient incentives to the MNOs and mobile network infrastructure providers to work together to deliver this outcome, by making this a more attractive proposition than individually applying for funding. For instance, one way to achieve this may be to offer a higher level of funding for proposed solutions that achieve a multi-MNO outcome.

The program should also clearly outline how a multi-MNO solution would be prioritised compared to a single-MNO solution, particularly on how this is taken into account in the overall value for money assessment. The discussion paper lists a range of factors that the Government will take into account in its value for money assessment,[9] but there is no indication as to the weight given to each of the factors and how they would be prioritised in the case of competing objectives. For example, one of the factors that the Government will consider is the cost to the Commonwealth of a proposed solution. This cost is potentially reduced by co-contributions from state or territory governments and third parties who are willing to provide financial support for a proposed solution.[10] As the ability of different operators to attract co-contributions is likely to differ, it is important that the consideration of this factor does not undermine other important objectives, such as the achievement of multi-MNO outcome.

Higher funding cap may be necessary as program targets increasingly remote areas

The ACCC supports the Government's proposal to explore whether a higher funding cap than what was available in the first five rounds of the MBSP may be required.[11]

The ACCC recognises that as successive rounds of the MBSP seek to expand coverage into increasingly remote areas with less commercial value to the MNOs, it would be increasingly difficult for the program to attract private investment while achieving the objective of promoting competition at the same time. An operator's incentive to invest in an area declines with increasingly lower commercial returns, and this impact would be exacerbated if it would need to share potential revenue returns from such investment with a competitor.

For this reason, in order to continue to encourage participation in the program and to ensure that competitive outcomes are delivered, the Government may need to consider increasingly higher levels of public funding for each new infrastructure built.

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[9]   Discussion Paper, p. 13.
[10]   See Discussion Paper, p. 11.
[11]   See Discussion Paper, p. 9.

Evidence of on the ground experience may be useful in assessing new coverage outcomes

The ACCC notes that the Government intends to assess the amount of new coverage provided by each proposed solution by testing the coverage against the MNOs' public coverage maps. The ACCC encourages evidence-based selection of sites. While using public coverage maps is a straight forward way of assessing the extent of new coverage, the ACCC understands the MNOs' public coverage maps do not always reflect real life experience due to technical limitations. This means that relying only on public coverage maps may not always present a fully accurate picture of the new coverage outcome that is likely to be provided by a proposed solution.

Further, based on the ACCC's engagement with the MNOs in our 2018 Regional Mobiles Issues Forum, we understand it is difficult to make like-for-like comparisons of the MNOs' coverage information.[12] While the MNOs have agreed to use common terminology to describe the three standard levels of coverage to customers (Indoor, Outdoor and External Antenna),[13] we understand the engineering models used by the MNOs to predict coverage do not use consistent underlying assumptions, making accurate comparisons of coverage difficult.

The ACCC suggests that in assessing the new coverage outcomes, the Government should consider evidence of on the ground experience where available. As the MNOs are best placed to provide this information, the program could require applicants to provide evidence of on the ground experience in support of claims about the amount of new coverage that is likely to be provided by their proposed solutions.

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[12]   For more information, see the ACCC's website at: https://www.accc.gov.au/regulated-infrastructure/communications/mobile-services/regional-mobile-issues.

[13]   See the Australian Mobile Telecommunications Association website at: https://amta.org.au/understanding-coverage-maps/.