Review of the Part XIB telecommunications anti-competitive conduct provisions

SUBMISSION ON DISCUSSION PAPER BY
VODAFONE HUTCHISON AUSTRALIA

Public version

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Summary

The key points we make in this submission are:

- Telecommunications-specific anti-competitive conduct laws (Divisions 2 and 3 of Part XIB) remain appropriate and fit-for-purpose. Indeed, they are an essential feature of the regulation of the Australian telecommunications sector.

- The justifications for introducing these anti-competitive conduct prohibitions remain as relevant today as they did when they were introduced in 1996. Although it was originally envisaged that these powers would be transitory, the trigger for winding them back was correctly identified as a state of "open competition" where they were no longer necessary. It cannot be credibly argued that the Australian market has achieved that state when the incumbent continues to dominate the telecommunications market in a manner which is far more extreme than comparable international telecommunications markets. Attachment B provides detailed benchmarking of the Australian industry, and the incumbent's ability to extract disproportionate value from the industry and consumers, demonstrating that Australia's structural competition problems have endured. The Government's proposed changes need to be considered in light of the evidence of Telstra's unusual excess profitability:

    - For the latest year for which comparable data is available, Telstra's share of total telecommunications (fixed and mobile) industry Free Cash Flow (**FCF**) was 93%, compared to 49% for the UK incumbent and 63-71% in Portugal, Belgium, France, Italy and Germany, The EBITDA per capita which Telstra is able to extract as a result of its enduring market power was $443 per capita, nearly 3 times the profit per capita extracted by other incumbents ($157-176 per capita in each of the UK, France, Germany, Spain and Italy);

    - The CIE analysis[1] shows that Telstra is extracting a premium of $20 per month for each fixed line and $9 per month for each mobile service, resulting in a premium extracted from Australian households of over $3bn a year. This is the equivalent to a tax of 15c/litre of petrol sold in Australia. CIE analysed the UK and New Zealand, finding that the Australian premium is highly unusual;

    - For the 15/16 Financial Year, Telstra generated FCF of $5.9bn from ~25.6m services (~17m mobile customers, ~7m fixed customers and a proportionate ~1.4m TV customers). This is nearly three times as large as the FCF generated by the entire Vodafone Group with 484.9m customers across 26 countries (~$1.7bn). Telstra extracted FCF of ~$234 per service, compared to Vodafone Group's $4 per service. Telstra is able to extract a highly unusual level of FCF from its Australian business, yet another indicator of serious structural competition issues.

- XIB has been amended and refined several times over the years to take account of specific dynamics and issues in the telecommunications industry, including the clarification that s151AF(d) applies to Content Services. This continual refinement should not be ignored and unwound merely because (important) changes are being made to the generic misuse of market power provisions.

- Much of the discussion has focused on the thresholds contained in s46 and XIB rather than the key distinguishing feature of XIB – the sector specific enforcement powers in Division 3 (i.e., Advisory

[1] The CIE (2015), *Australia's telecommunications market structure: The price premium paid by consumers*, Prepared for Vodafone Hutchison Australia, June. http://www.thecie.com.au/wp-content/uploads/2015/06/CIE-Report_VHA_Consumer-outcomes-in-communications-markets-FINAL.pdf.

Notices and/or Competition Notices).. These enforcement powers were intended to be faster and more effective enforcement powers appropriate to a dynamic telecommunications market in which the detrimental effects of anti-competitive conduct could have swift and profound negative impacts not only on the sector but on the broader economy. These enforcement measures were considered appropriate because of the critical role telecommunications plays in society and the economy, meaning that anti-competitive conduct could have profound and irreversible negative impacts on Australia's productivity, innovation and economic performance. Advisory Notices and/or Competition Notices (neither of which are, nor will be, available under s46) were intended to give the ACCC the ability to act quickly and impose substantial sanctions in the face of anti-competitive conduct.

- Although the ACCC has not used these powers recently, it has used them to intervene effectively at several key points in the development of the industry, and their mere presence is likely to significantly change the incentives of the incumbent. The significant changes to s46 will, by virtue of s151AJ(3)(a), flow through to XIB. Indeed s151AJ(3)(a) demonstrates that it was anticipated that changes would be made to broader competition law over time, and a flexible approach was put in place which meant that changes to XIB would not necessarily be required as other parts of the competition law evolved. The removal in particular of the burdensome requirement to prove that a firm "took advantage" of market power to engage in anti-competitive conduct should substantially lower the barriers to effectively and efficiently deploying the specific enforcement measures under XIB.

- We urge caution in relation to any significant reforms to the sector specific telecommunications enforcement regime at this stage given ongoing industry developments including the rollout of the NBN. The implications of this structural change for competition in this sector is by no means clear. It would be an inadvisable time to remove key sector-specific enforcement mechanisms. Whether reforms to Part XIB are required could and should be reviewed once the NBN rollout is complete and the implications of the structural changes are clearer.

- XIB should not be considered in isolation from the broader telecommunications-specific competition regime. For, example, If Part XIC were an effective access regime, then the need for XIB would be significantly reduced. However it is not possible to characterise XIC as an effective regime given that it allows the incumbent to maintain an argument that key Declared Services do not exist/cannot be effectively bought by access seekers. [c-i-c].

- In relation to Part XIB, VHA considers:

    - The definition of "engages in anti-competitive conduct" (s151AJ(2) could be amended to be consistent with the proposed s46 of the CCA. This amendment is consistent with our previous submissions and are required to preserve the integrity of the anti-competitive conduct enforcement mechanism in Division 3 of Part XIB. Alternatively, s151AJ(2) could be repealed relying on s151AJ(3), which imports the generic competition law prohibitions.

    - Amendments should be introduced which increase the transparency and predictability of the ACCC's process and criteria taken into account when considering whether to issue or (just as importantly) to decline to issue a Competition Notice. Provided the complaint gives its consent, the ACCC should be required to publish details of a register of complaints, with the ACCC's decision to proceed or not proceed, and its associated reasoning. This would ensure that other industry participants who are likely to have similar concerns are notified of other complaints and are able to provide associated

submissions if they choose to do so.

The approach proposed in this submission by VHA has the advantage of maintaining certainty and is the simpler solution. The Part XIB regime is well understood; industry participants are familiar with the regime and the ACCC has practical experience in administering the regime. Retaining the Part XIB regime and making limited amendments (and necessary consequential amendments) is the approach that best balances the concerns of various stakeholders.

A. Background

Vodafone Hutchison Australia Pty Limited (**VHA**) makes this submission in response to the discussion paper released by the Australian Government, the Department of Communications and the Arts (**Department**) on 5 September 2016 (**Discussion Paper**) regarding the ongoing operation of the telecommunications-specific anti-competitive conduct laws in Part XIB of the *Competition and Consumer Act 2010* (**CCA**).

The Discussion Paper seeks feedback on whether the anti-competitive conduct provisions of Part XIB need to be amended in light of the Government's proposed changes to s46 of the CCA. Those changes were set out in the Treasurer's Exposure Draft Bill for the CCA.

Changes to s46 were most recently proposed in the 2014 review undertaken by the Competition Policy Review Panel (**Harper Review**). Vodafone supported amending s46 and advocated that changes to s46 should be consistent with the anti-competitive conduct prohibition in Part XIB.

Following the Harper Review, the Treasurer further consulted on the changes to s46. Vodafone again supported amending s46. Following further industry consultation, the Government published its Exposure Draft Bill on 5 September 2016 (**Bill**). The Government is consulting on this Bill, with consultation closing on 30 September 2016.

In a parallel consultation, the Department's Discussion Paper seeks stakeholder views regarding the ongoing operation of Divisions 2 and 3 of Part XIB.

B. Discussion paper

The Discussion Paper briefly sets out the background to the proposed changes to s46 and the telecommunications specific anti-competitive provisions in Part XIB.

Division 2 of Part XIB of the CCA prohibits "anti-competitive conduct" which is known as the **Competition Rule**.[2] Relevantly, a telecommunications carrier or carriage service provider (**CSPs**) can breach the Competition Rule if it: (i) has a substantial degree of market power and takes advantage of that power, engages in conduct or a pattern of conduct with the effect, or likely effect, of substantially lessening competition; or (ii) contravenes any of the specified provisions of Part IV of the CCA in respect of a telecommunications market. Division 3 grants the ACCC the power to issue a Competition Notice in respect of a contravention of the Competition Rule.

Absent the amendments to s46 proposed in the Exposure Draft Bill, the anti-competitive conduct test in Division 2 and s46 differ. However, if s46 is amended as proposed, the tests will be similar and this has prompted the Department's review of whether Divisions 2 and 3 should be amended. In any case, s151AJ(3)(a) provides that the sector-specific enforcement powers contained in Part XIB are available not only for breaches of the Competition Rule, but also for specified provisions of the CCA, including but not limited to s46. Therefore if s46 were amended, the ACCC would be empowered to use its Advisory Notice and Competition Notice powers to enforce the revised provisions of s46 without any need for amendment of Division 2.

[2] Section 151AK which refers to anti-competitive conduct as defined in s151AJ.

C. VHA's overall position

VHA supports the Australian Government's response to the Harper Review recommendations and its proposed reform of s46. However, we consider that the telecommunications-specific anti-competitive conduct regime (i.e. Divisions 2 and 3 of Part XIB) remains appropriate for the reasons outlined in this submission, which provide context to VHA's responses to the Department's specific questions in section D below.

A telecommunications specific regime remains necessary

Divisions 2 (potentially with slight amendment) and 3 of Part XIB are appropriate and necessary for these reasons:

(a) The telecommunications industry is currently undergoing a comprehensive transformation driven by the Government's National Broadband Network (**NBN**) program.

(b) The telecommunications industry is complex and continues to be highly concentrated with key industry participant(s) having substantial market power. Moreover, the market power enjoyed by some firms, being tied to key infrastructure, is enduring despite advances in technology.

The explanatory memorandum to the *Trade Practices Amendment (Telecommunications) Bill 1996* (**Explanatory Memorandum**) which introduced the telecommunications-specific anti-competitive conduct laws stated:

> *Total reliance on Part IV of the TPA to constrain such anti-competitive conduct might, in some cases, prove ineffective because of the state of competition in the telecommunications industry and the fast pace of change in this industry. There may be difficulty, for example, in obtaining evidence of predatory behaviour supported by inappropriate internal cost allocation by horizontally or vertically integrated firms.*[3] *[emphasis added]*

(c) VHA disagrees that the changes to s46 would obviate the need for Division 3. The changes to s46 are focused on the threshold for intervention, and do not give the ACCC additional fast-track enforcement powers. Division 3 remains the only mechanism through which the ACCC has specific enforcement powers appropriate to the nature of the telecommunications industry – a dynamic industry which is a critical enabler of productivity, innovation and therefore efficiency for business and consumers. Division 3 of Part XIB, in particular the competition notice regime (**Competition Notice**), is a flexible and robust regime allowing for a "swift regulatory response" to anti-competitive conduct in the telecommunications sector where the slow-moving machinery of litigation under generic Part IV prohibitions are unsuitable.

The effectiveness of the Part XIB regime can be further enhanced by introducing legislative changes that increase the transparency and predictability of the ACCC's process and criteria taken into account when considering whether to issue or (just as importantly) to decline to issue a Competition Notice.

[3] Ibid.

> The Supplementary Explanatory Memorandum to the *Telecommunications Legislation Amendment Bill 1998*, which enhanced the telecommunications-specific competition regime, acknowledged the importance of Part XIB as follows:
>
> > *The competition rule/notice regime is designed to stop anti-competitive conduct in the telecommunications industry and, by so doing, promote the development of competition. The regime was intended to enable a swift regulatory response where anti-competitive conduct became evident, including where that conduct had the effect of substantially lessening competition, if not the purpose.*

Notwithstanding the observations in the Discussion Paper that Division 2 and 3 of Part XIB were introduced after deregulation of the telecommunications industry and intended to be transitory following the transition to open competition, a telecommunication specific regime continues to be needed. NBN Co is operationally in its infancy and Telstra remains the dominant player in many retail and wholesale markets, including those for fixed-line and mobile telecommunications and wholesale markets including the market for the supply of transmission services. The transition to open competition has yet to occur and Divisions 2 and 3 of Part XIB regime are still needed.

In VHA's view, the justifications that brought Part XIB into existence remain as relevant today as they did in 1996.

Future review of content of telecommunications specific regime

When the Part XIB regime was introduced, a provision was included requiring the Minister to arrange for a review of the operation of Part XIB before 1 July 2000. VHA considers a similar requirement in the current round of legislative changes to the CCA would be appropriate and allow a proper and considered review of Part XIB in the future.

Substantially amending Part XIB at this time is not appropriate given the following:

(a) the telecommunications structural reforms taking place, led by NBN Co, need time to achieve their potential;

(b) significant technological change in all telecommunications markets (voice and data) are taking place;

(c) the Government is in the midst of a review of the Australian Communication and Media Authority which may reshape the regulatory landscape in the telecommunications sector; and

(d) the reforms to s46 (and reforms to the CCA more broadly) are not yet enacted and some time will be needed to observe whether the reformed misuse of market prohibition achieves the enforcement outcomes envisaged in the Harper Review.

The Part XIB regime remains fit-for-purpose and is familiar to participants in an environment of rapid change and should be retained until it becomes clear that retaining both the new s46 provisions and the Part XIB regime has become unworkable.

While a review of Part XIB has been previously called for, e.g. in the *Independent cost-benefit analysis of broadband and review of regulation June 2014* (**Vertigan Review**),[4] such a review should be conducted after the completion of the NBN and not simply tacked onto the s46 amendments.

Given the importance of telecommunications to all Australians, a review of the telecommunications-specific legislation is needed, and should extend beyond Division 2 and 3 of Part XIB. Accordingly, VHA considers this is not the time to substantially reform Part XIB. Rather, amendments to Part XIB should be limited to aligning the competition test in the proposed s46 and s151AJ(2) and to providing for a future review of Part XIB.

D. VHA'S RESPONSE TO THE DISCUSSION PAPER QUESTIONS

In relation to the Government's specific consultation questions in the Discussion Paper, VHA sets out its view below (adopting the numbering of the Discussion Paper).

Division 2

1. *In light of the proposed changes to section 46, should the telecommunications competition rule in Division 2 of Part XIB (section 151AJ) be retained? If so, why? If not, why not?*

   As outlined in this submission above, the Competition Rule / Competition Notice regime remains fit-for-purpose and remains necessary in a rapidly changing telecommunications sector. It is appropriate to retain the Competition Rule as it is a trigger for the Competition Notice mechanism in Division 3 of Part XIB. The Competition Rule is also sectoral specific and applies specifically to "telecommunications markets".

   Currently, a carrier or CSP can breach the Competition Rule if it "engages in anti-competitive conduct" which is defined as:

   (1) if it has a substantial degree of market power and takes advantage of that power, or engages in conduct or a pattern of conduct with the effect, or likely effect, of substantially lessening competition (s151AJ(2)) or

   (2) if it engages in conduct in contravention of any of the specified provisions of Part IV of the CCA in respect of a telecommunications market (s151AJ(3)).

   While the proposed s46 introduces an effects test to the operation of s151AJ(3) (making it broader in scope than the prohibition on anti-competitive conduct in s151AJ(2) which still requires "take advantage"), s151AJ(2)(ii) includes an important "aggregation" or "pattern of conduct" concept that is not prescribed in the proposed s46. It is important that this concept is expressly prescribed as it allows the ACCC to examine a carrier's pattern of conduct to determine whether it is anti-competitive in cases where a single instances of conduct would unlikely to result in a substantially lessening of competition.

   VHA submits that the Competition Rule in Division 2 of Part XIB should be retained subject to minor amendments to harmonise the competition test in the proposed s46 and s151AJ(2). Indeed, it was always the intention of Parliament's intention that "*competition rules for telecommunications will*

[4] See recommendation 2 and proceeding discussion in the Vertigan Review.

eventually be aligned, to the fullest extent practicable, with general trade practices law."[5] The proposed change to s46 needs a consequent amendment to s151AJ(1).

We note however that the generic Part IV competition prohibitions "flow" via s151AJ(3)(a) through to the Competition Rule in Part XIB, including for example s46. If the proposed changes to s46 are enacted, this would mean that the definition of anti-competitive conduct in Part XIB is to some extent automatically aligned with those changes.

2. *If the competition rule in Part XIB is retained, would changes need to be made to the rule to provide certainty for businesses? If so, what changes would need to be made?*

As noted above, s151AJ(3)(a) "flows through" the general competition law prohibitions to XIB, including s46. If the proposed changes to s46 are enacted, this would mean that the definition of anti-competitive conduct in Part XIB is aligned with those changes.

Therefore, there are two possible simple amendments that could be made to Part XIB.

Either amend the Competition Rule itself to align with the changes to s46. This could be done by removing the concept of "take advantage" and otherwise amending the probation to refer to "purpose, effort or likely effect" to s151AJ(2)(i) and s151AJ(2)(ii) [adding the word purpose].

Proposed amendments to s151AJ(2) are as follows:

(2) A carrier or carriage service provider engages in anti-competitive conduct if the carrier or carriage service provider:

(a) has a substantial degree of power in a telecommunications market; and

(b) either:

(i) ~~takes advantage of that power~~ engages in conduct in that or any other market with the purpose, effect, or likely effect, of substantially lessening competition in that or any other telecommunications market; or

(ii) ~~takes advantage of that power~~ engages in conduct in that or any other market, and engages in other conduct on one or more occasions, with the purpose, combined effect, or likely combined effect, of substantially lessening competition in that or any other telecommunications market.

Alternatively, repeal s151AJ(2) and rely on s151AJ(3) (and the prohibition in s46 is imported into XIB). This would require some minor consequential amendments to s151AJ(1).

Whichever option is adopted: the changes required are not substantial, the number of subsequent changes that need to be made to Part XIB are limited, and the changes have the effect of harmonising the Competition Rule with the proposed s46 of the CCA providing certainty to businesses.

[5] Trade Practices Amendment (Telecommunications) Bill 1996 (Explanatory Memorandum).

Division 3

3. Do competition notices have ongoing utility in addressing anti-competitive behaviour in the sector? If so, why? If not, why not?

Competition Notices have ongoing utility in addressing anti-competitive behaviour in the telecommunications sector.

While the ACCC has not recently issued a Competition Notice under Part XIB, the *potential* for the ACCC to issue a Competition Notice is likely to substantially influence the incentives of firms with market power and discipline the conduct of telecommunications carriers that have substantial market power. The number of Competition Notices issued is not the appropriate measure of the provision's effectiveness.

Competition Notices are an effective deterrent tool. The reversal of onus imposed by the Competition Notice regime (if a Part B notice is issued) on the alleged contravening party to establish their conduct did not contravene the Competition Rule is a powerful disincentive for a carrier or CSP to engage in anti-competitive conduct. Competition Notices also facilitate enforcement by third parties, further amplifying the deterrent effect. In contrast, enforcement under s46 (current or proposed) relies on the commencement of proceedings, and otherwise lacks an enforcement mechanism similar to a Competition Notice.

The Competition Rule and Competition Notices provides an important regulatory tool for the ACCC to use. The ACCC recognises that a key characteristic of the telecommunications industry is the very fast pace of change, and that anti-competitive behaviour can cause rapid damage to the telecommunications markets and severely hamper new entry. The inclusion of the Competition Notice regime in the Act allows a faster response than under Part IV.[6]

The Competition Notice mechanism remains appropriate as it is a powerful deterrent preventing telecommunications carriers with substantial market power from engaging in anti-competitive conduct. Once s46 is amended, by virtue of s151AJ(3)(a), the ACCC will be able to utilise Advisory Notices and Competition Notices without having to prove the burdensome "take advantage" criteria, meaning that more such notices should be able to be issued, increasing their utility as a deterrent in a way that would better reflect the importance of telecommunications to the Australian economy.

4. Do the proposed changes to section 46 and section 46's interaction with Part XIB raise issues for the operation of competition notices?

No, the proposed s46 and its interaction with Part XIB does not raise any issues for the operation of Competition Notices.

The interaction of s46 (current or proposed) with Part XIB is limited to s151AJ(3), which states that anti-competitive conduct for the purposes of the Competition Rule includes conduct in contravention of s46, where that conduct relates to a telecommunications market.

[6] ACCC, *Telecommunications Competition Notice Guidelines*, September 2015, page 16.

The Competition Notice mechanism applies where: (i) the ACCC has reason to believe that a carrier has engaged or is engaging in anti-competitive conduct (s151AKA); or (ii) where the ACCC has reason to believe that a carrier has contravened or is contravening the Competition Rule (s151AL). As such, the Division 3 enforcement tools are different, with a potentially lower threshold (e.g., a Part A Competition Notice), to s46. This recognises the central position of telecommunications to the Australian economy where competition problems are likely to have a direct and immediate impact on consumer welfare (e.g., higher prices as evidenced by the CIE report) and may impair the productivity of Australian businesses.

5. *If section 46 is amended to include the proposed mandatory factors that the courts must take into account when determining whether there has been a substantial lessening of competition, should they be considered when the ACCC decides to issue a competition notice under Part XIB? If so, how?*

The proposed mandatory factors that the courts must take into account as outlined in the proposed amendments to s46 are concepts that are generally well understood and applied routinely in competition matters.

We consider it is appropriate to include the proposed mandatory factors for the purposes of determining whether the ACCC should issue a Competition Notice. Doing so promotes certainty and predictability in the application of business and the ACCC.

6. *Is the need for competition notices reduced by the ACCC powers under Part XIC to set terms and conditions for access to services and issue binding rules of conduct?*

No. Divisions 2 and 3 of Part XIB serve a very different purpose to XIC. XIB contains a flexible and robust regime allowing for a "swift regulatory response" to anti-competitive conduct in the telecommunications sector. The ACCC's powers under Part XIC to set access determinations and issue binding rules of conduct do not have the same immediacy and serve an entirely different purpose. Even the setting of a new Access Determination for a long-standing Declared Service can take many years.

Part XIB should not be considered in isolation from the need for reforms to the broader telecommunications-specific competition regime, specifically Part XIC. Currently, it is not possible to characterise Part XIC as an effective regime given that it allows the incumbent to maintain an argument that key Declared Services do not exist/cannot be effectively bought by access seekers. [c-i-c].

Part XIB and Part XIC are complementary tools in the ACCC's regulatory tool box and we would welcome a broader review of XIC to ensure that it actually provides effective access regulation in the telecommunications market.

7. *Would the exemption order provisions in Part XIB be rendered obsolete by the introduction of authorisations under section 46? If so, why? If not, why not?*

The introduction of authorisations under section 46 would not render the exemption order provisions in Part XIB obsolete. While the exemption order applies an identical public benefit test to the authorisation process under Part VII of the CCA, it is a separate process (see s151BC(1)).

An exemption order implicitly exempts a party's "anti-competitive" conduct from the Competition Notice regime, i.e. the ACCC will not issue Competition Notices in respect of conduct covered by an exemption order made under s151AS. The authorisation process under Part VII authorises a party's conduct which would otherwise contravene Part IV of the CCA, i.e. the generic competition provisions of the CCA.

Given the Competition Rule / Competition Notice regime has a place in the ACCC's regulatory tool box, the exemption order provisions should also remain.

However, given the proposed changes to the CCA include an authorisation process in respect of s46 conduct, it may be appropriate to repeal s151BC(4) so that a party can seek an exemption order in relation to s46 conduct relating to the telecommunications industry.

ATTACHMENT A: THE UTILITY OF A THE PART XIB REGIME

In the *Telecommunications Legislation Amendment Bill 1998*, the Australian Government acknowledged that the "*competition rule/notice regime is fundamentally sound*" and referred to the changes the regime had brought about. VHA's experience is that this is accurate and that the Competition Notice regime has resulted in no detriment to the industry, but rather has brought with it very substantial benefits, as explained below.

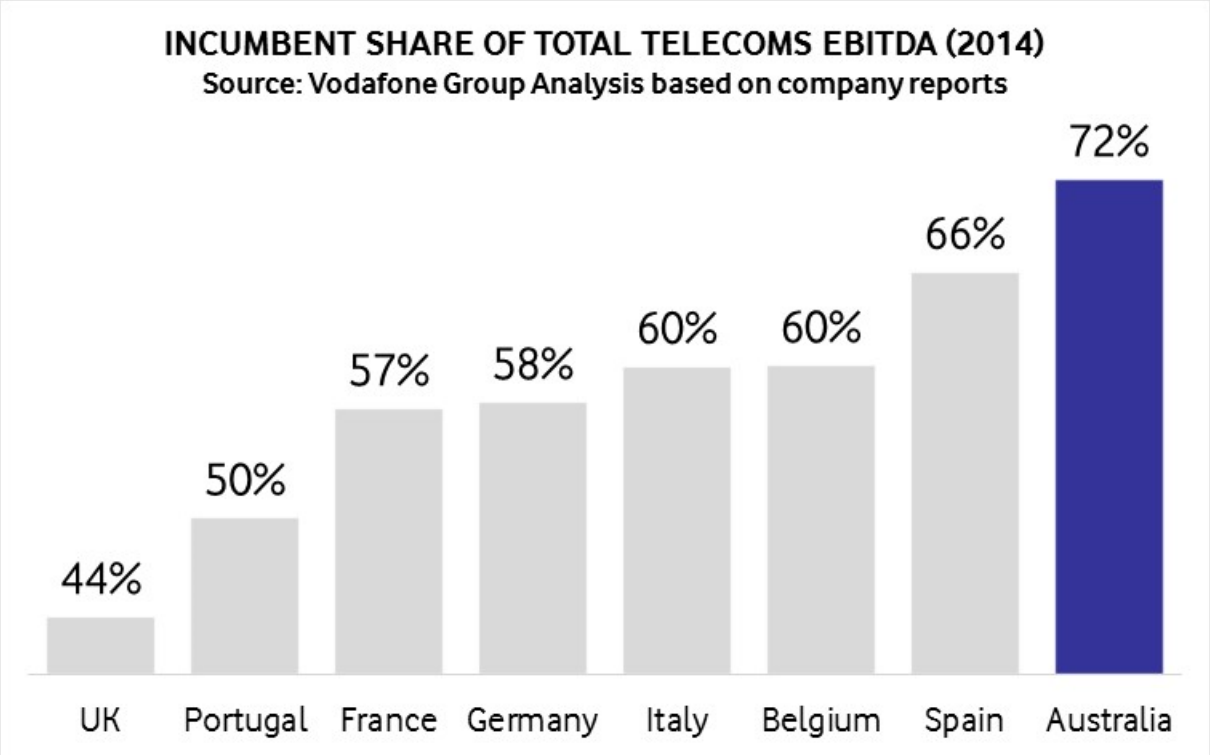
Part XIB has been used to discipline anti-competitive conduct by Telstra in 1998 (Internet access), 1998 (commercial churn), 2001 (broadband), 2004 (broadband), and 2006 (wholesale line rental), as set out in the table below.

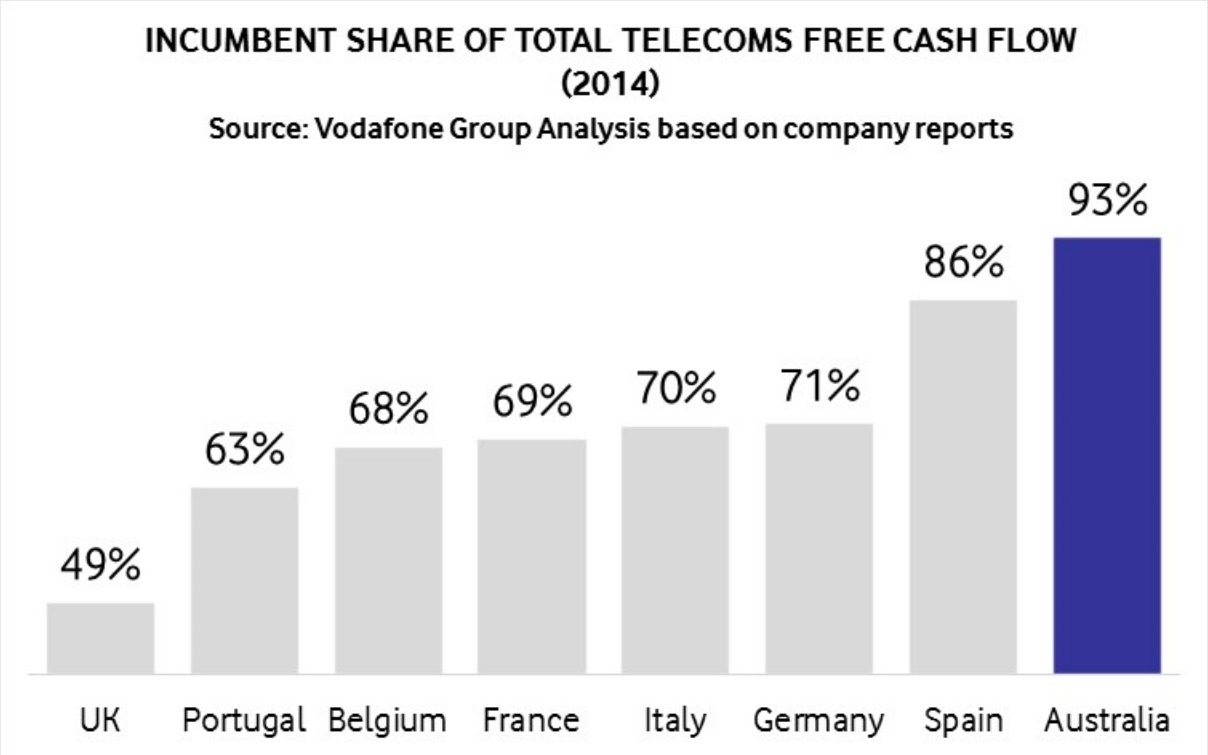
Year	**Detail**
1998 (Internet access)	Telstra was alleged to have charged its Internet competitors for services by Telstra while at the same time refusing to pay for a similar service it received from those same Internet competitors.
1998 (commercial churn)	Telstra was alleged to have offered its commercial churn service to wholesale customers under conditions so unattractive that they could not effectively compete if they used the service. Complainants suggested, for example, that the inability to offer customers one bill is stifling the further development of long distance competition, particularly for those who want a single service provider.
2001 (broadband)	Telstra was alleged to supply its wholesale asymmetrical digital subscriber line (ADSL) broadband products known as Flexstream to its wholesale customers at prices set at a level whereby there was only a small positive margin or negative margin between those prices and the corresponding prices at which Telstra supplied ADSL services to its residential and small business retail customers.
2004 (broadband)	Telstra raised the price of its wholesale ADSL broadband products, resulting in an alleged vertical price squeeze of its wholesale customers relative to Telstra's BigPond ADSL retail offerings.
2006 (wholesale line rental)	Telstra raised the price of its Home Access product, which is an input used by Telstra's wholesale customers to provide line rental and local call services to consumers. The price increase resulted in Telstra's retail prices for the line rental component for the majority of its fixed voice products being below Telstra's wholesale price for line rental.

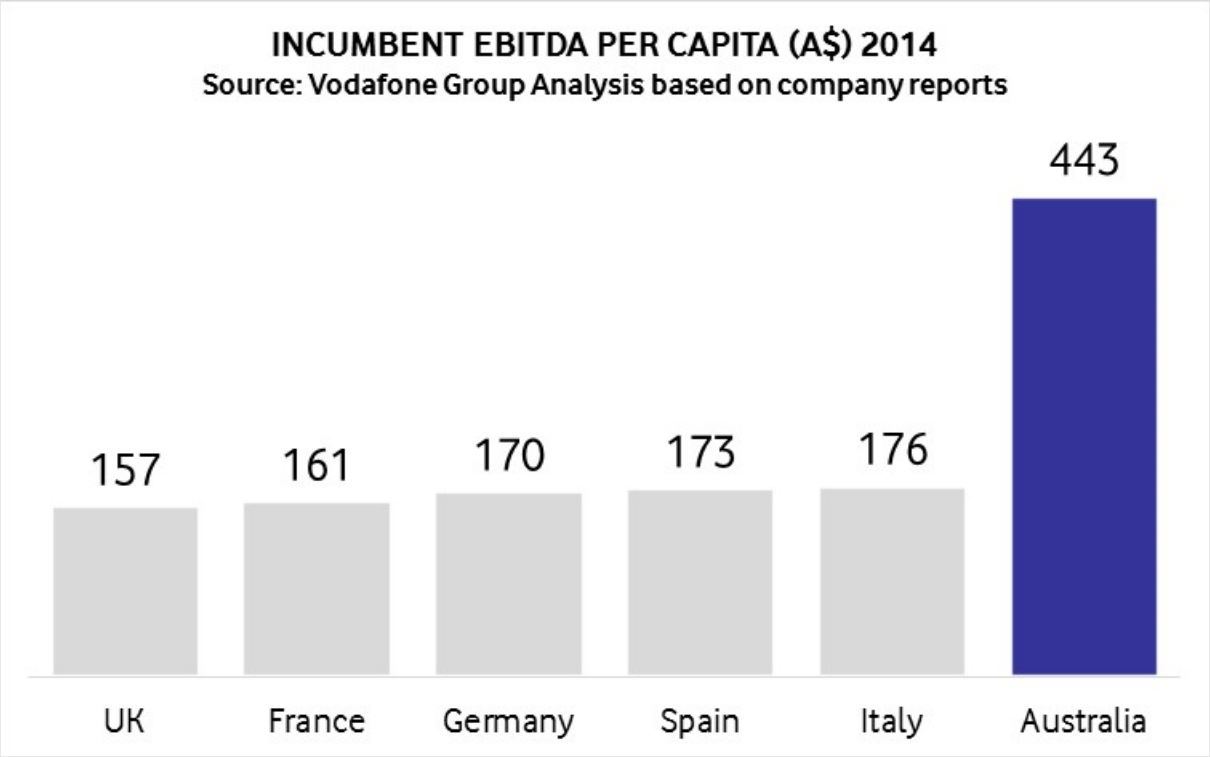
This table shows those occasions where the ACCC issued a particular notice. What is not shown is the number of occasions in which a complaint to the ACCC has been made, providing evidence of anti-competitive conduct and requesting that the ACCC issues a notice.

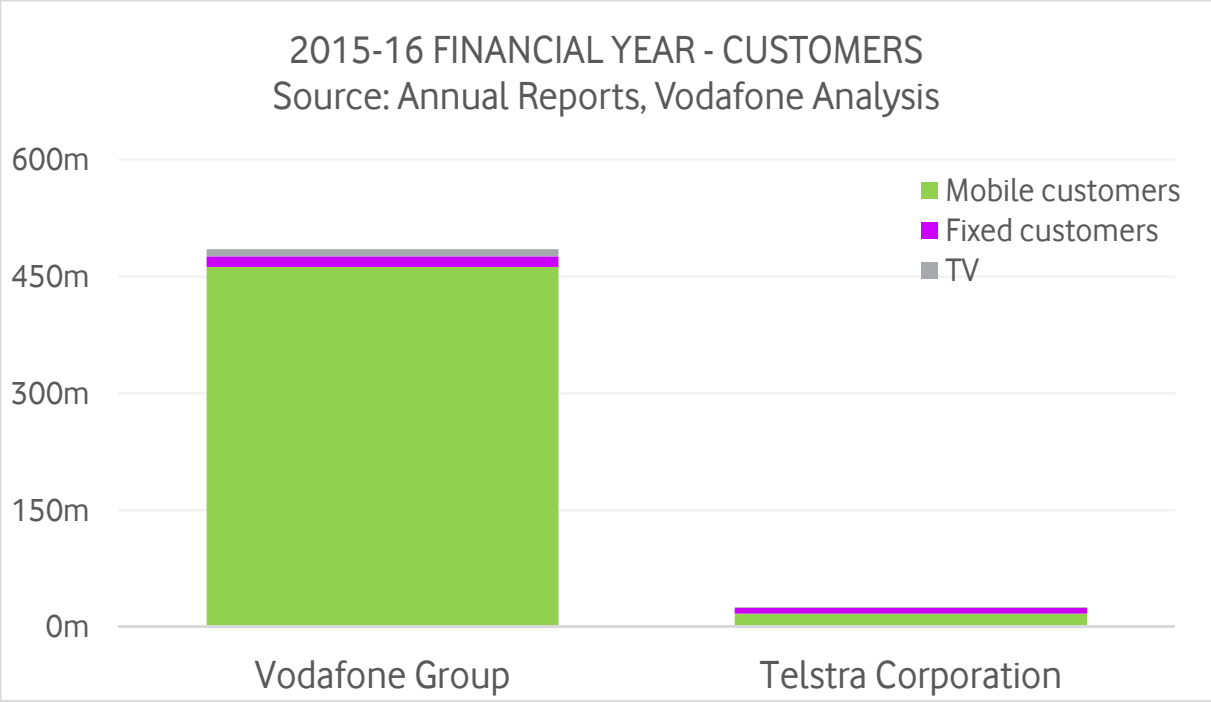
[c-i-c]. The crucial point from VHA's perspective is that the mere existence of the Competition Notice regime and ability to approach the ACCC to request the issue of such a notice provided a valuable avenue for addressing anti-competitive conduct. What this shows is that Divisions 2 and 3 of Part XIB are used and relied on by telecommunications industry participants, even if that reliance does not result in the issue of Competition Notices. If anything, the regime should be improved so that the ACCC becomes less reluctant to use the Competition Notice regime as an enforcement tool in respect of anti-competitive conduct notified to it.

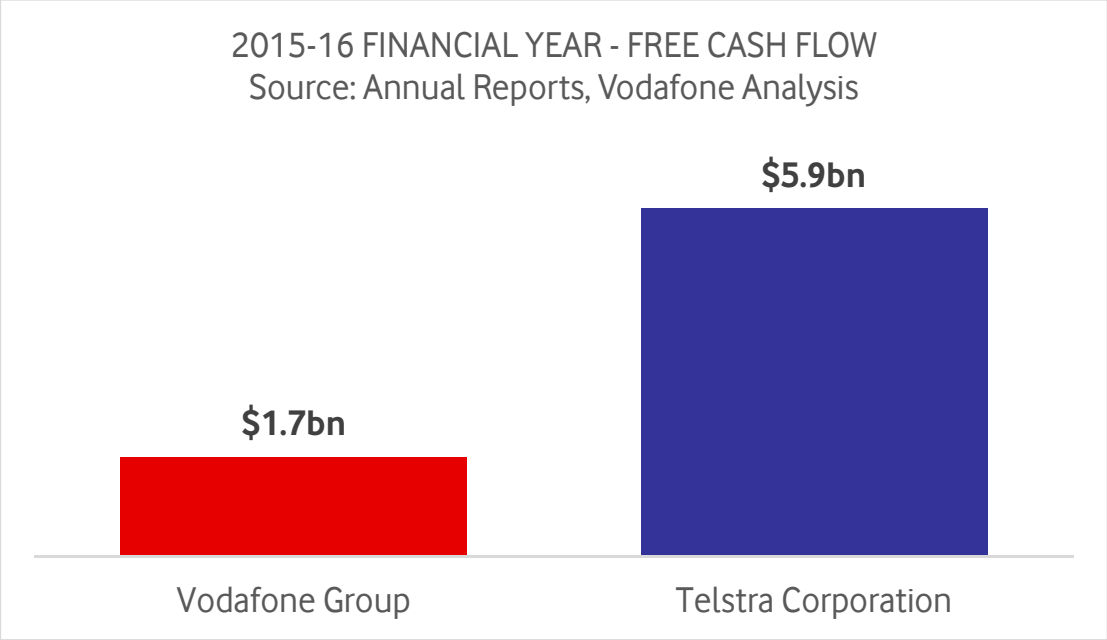
ATTACHMENT B: BENCHMARKING OF DOMINANCE IN THE AUSTRALIAN TELECOMMUNICATIONS INDUSTRY

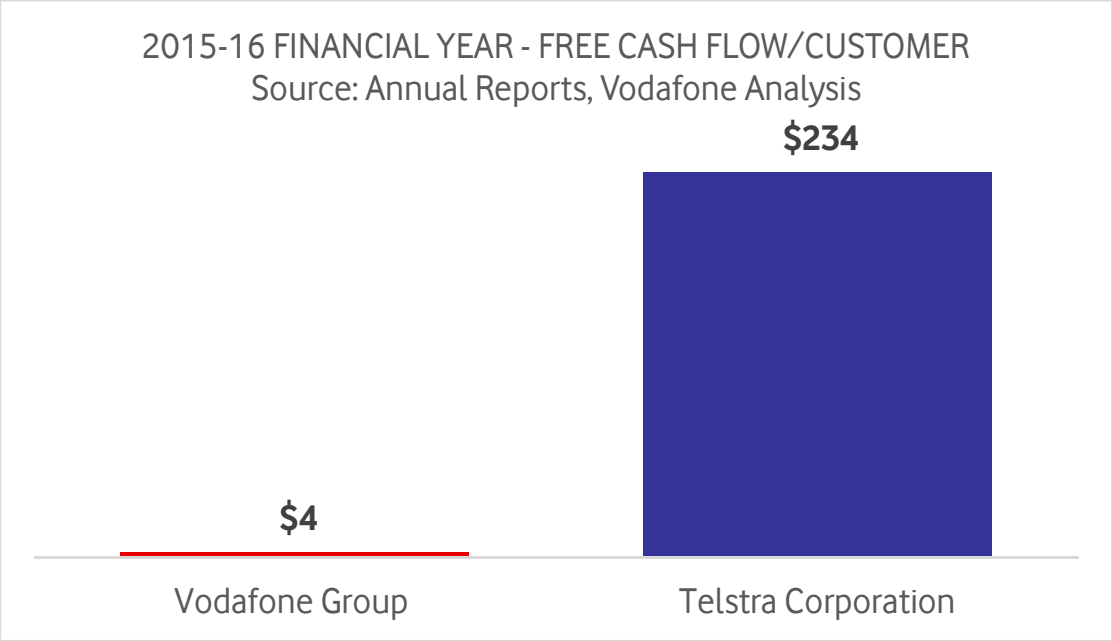





INCUMBENT EBITDA PER CAPITA (A$) 2014
Source: Vodafone Group Analysis based on company reports
157
161
170
173
176
443
UK
France
Germany
Spain
Italy
Australia


2015-16 FINANCIAL YEAR - CUSTOMERS
Source: Annual Reports, Vodafone Analysis
600m
450m
300m
150m
0m
Mobile customers
Fixed customers
TV
Vodafone Group
Telstra Corporation


2015-16 FINANCIAL YEAR - FREE CASH FLOW
Source: Annual Reports, Vodafone Analysis
$5.9bn
$1.7bn
Vodafone Group
Telstra Corporation


2015-16 FINANCIAL YEAR - FREE CASH FLOW/CUSTOMER
Source: Annual Reports, Vodafone Analysis
$234
$4
Vodafone Group
Telstra Corporation