

Regulating a dynamic mobile telecommunications industry

Extract of speech by Chris Chapman to Mobile Telecommunications Conference 06, Sydney, 20 September 2006

... Your industry has been, and is, the harbinger of the new world that is full of promise and possibility. But there is more than one side to possibility—the very features that make mobile communications so useful also present risks and challenges, and carry with it associated responsibilities.

The mobile phone has been phenomenally successful in Australia: the penetration rate is up around 92 per cent ... there are considerably more mobiles than fixed lines (nearly 19 million compared to slightly more than 11 million), an achievement in little more than 20 years. However, telecommunications legislation is essentially based on an old technology paradigm. Because the legislation has not changed, what has happened is that there is now an asymmetrical relationship between your size and the regulatory mode you operate under.

It is also obvious that the almost complete penetration of the mobile market means that, as an industry, you are moving from a developing dynamic market into a mature, perhaps saturated one. Logically, increased market penetration will be less important as a source of your industry's growth and sustainability ... we

are seeing the consequences of this in the move to capped plans and changes to operators' marketing mixes.

Regulating an innovative industry ... poses particular challenges for a responsive regulator ... we aim to provide a regulatory environment that supports innovation and responsiveness and balances it with consumer and community protection ... and we think the mobile industry has, to date, demonstrated maturity and responsiveness in tackling issues sufficiently ahead of regulatory intervention.

For example, when ACMA released its guide for mobile chat providers earlier this year on how to make services safer for children, we are pleased to say that the quality of the safety measures notice and guide was due in no small part to the thoughtful input and helpful suggestions made by mobile chat providers.

And mobile carriage and content service providers have been finding ways of preventing consumers from experiencing problems in developing the mobile premium services self-regulatory scheme ... we understand that many of the rules in the proposed scheme are already starting to be implemented in the payment

and supply agreements between mobile carriage service providers and content service providers.

When the industry introduced mobile number portability, it developed an industry-driven system that was, and arguably still is, international best practice ... ACMA sees portability as a fundamental plank of competition and consumer benefit—and we again compliment the industry for developing the solution that gives such a benefit to Australian consumers—4.5 million of them have now taken advantage of it.

... Many of the obligations on mobile providers have been developed within the self-regulatory process through

industry codes of practice, demonstrating the growing maturity of the industry. Your regulation is, in part, a reflection of historical circumstance, the existence of facilities-based competition from the start and your efforts to meet consumer expectations in delivering highly desirable services.

We have been thinking about the best ways to exploit the enhanced scope that a larger organisation (with influence over a broader sweep of the raw inputs to the communications world) provides for more strategic responses to the issues arising in this rapidly changing environment ... We have resolved to become a leading

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communications regulator ... and we have started the process of benchmarking ourselves internationally to test this. I have just returned from meeting our colleagues in Hong Kong and at Ofcom in the UK and did likewise in July with our colleagues in North America.

We are developing a regulatory philosophy ... Our principles include transparency, consistency and being evidence-based. A central element of the philosophy will be our preparedness and ability to research and analyse local, national and international trends in the development of new technologies and the evolution of communications markets, to ensure ACMA has a robust and credible knowledge base on which to meet its statutory responsibilities as a regulator—an evidence-based regulator.

We will adopt what I like to call 'targeted activism': that we are committed to acting when necessary. The acceptance of enforceable undertakings is part of a suite of regulatory measures available to ACMA and will be used as an alternative to, or in addition to, the exercise of other enforcement powers. The message will come to be understood that ACMA is comfortable in taking enforcement action when it is necessary to do so ... although our unreserved preferred position is to secure negotiated outcomes through early dialogue.

We have released guidelines on how we will use enforceable undertakings associated with compliance with telecommunications obligations, and will generally publish the enforceable undertakings secured on our website. The undertakings are aimed at encouraging behavioural change in an organisation. They can address systemic problems

rather than simply penalise isolated instances of non-compliance or misconduct. This strategy, we hope, signals and reflects a robust approach towards consistency and transparency in decision-making in the interests of an efficient market in the long-term interests of end-users.

We have developed a new approach to industry and consumer consultation, and rethought our approach to advisory committees. We are committed to consulting with our diverse range of consumer and industry stakeholders by various means, such as direct discussion with interested organisations and people, calling for submissions, research, public

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forums, and formal advisory committees. ...

And we want to make 'industry responsibility' work so we are reviewing the ways we interact with industry. Self-regulation is important—there are obvious benefits to industry ... We aim to encourage self-regulation ... by continuously promoting a compliant industry designed to ensure the integrity of its industry codes ...

Your industry has progressed well beyond the innovative development stage and you are now closer to saturation points ... Historically, you've worked under a light regulatory burden, but this could change in the future because you are (arguably) a de facto replacement for the landline. Given the combination of market saturation and the increasingly fixed cost nature of your service for the average consumer (with capped plans),

you would do well to reflect that historically the fixed market has had a whole series of regulatory imposts ... would transferring those imposts from fixed into mobile be justified? ... Are you going to be sufficiently ahead of the game to pre-emptively and proactively avoid such a regulation transfer?

Where will your growth come from? Will it come from, for example, fixed to mobile substitution? What are your expectations? As an industry moving from development to maturity, will you have to counter the effect of a falling average return per unit principally as a result of capped plans? Only you can answer these questions: if your business

models are based on potential for growth, then you are already asking them.

Where will issues such as quality of service fit in? The ubiquity of mobile services and the growth of consumer reliance on them together pose possible challenges for the industry in meeting consumer expectations of availability and reliability. Those expectations will only increase in a world where the mobile is increasingly the primary communications mode. While ACMA is not the policy maker in response to these expectations, we do need to think about these issues because your commercial responses undoubtedly influence our actions.

As the minister reminded us, she announced earlier this year that she was establishing a working group to monitor Telstra's transition from CDMA to 3G mobile services. This

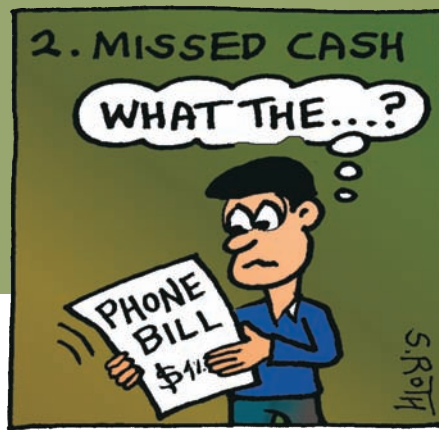
raises an issue of general interest to the communications industry—what happens when one technology completely replaces an earlier one in which consumers have made a significant investment? This issue was faced before with the AMPS closure ... similarly digital conversion will raise issues that will inevitably lead to a material role for ACMA.

ACMA's role is mainly as the independent assessor of the equivalency of coverage of the new 3G network with that of the existing CDMA network ... While Telstra is aware of the proposed methodology and route, so that any dispute on coverage gaps and the need for additional tests due to faults or planned outages are minimised, ACMA will ensure that the testing is technically sound and independent.

We are working hard on the implementation of the Do Not Call Register scheme to be operational no later than May next year ... Input by industry is critical to the success of this project ... We will also develop a telemarketing standard before the register begins, and are conscious of the need to give industry enough time to prepare for its start.

We are continuing our consultation with you. Right now we are consulting on a proposal to trial mobile communications services on-board aircraft in flight. This would operate through an on-board pico-cell on relay to a satellite. Users would operate under a roaming agreement with the mobile phone users' normal carrier.

We are also determined to work assiduously with other regulatory bodies ... we have instituted regular 'round tables' with DCITA and the ACCC, and as part of our industry consultation, we and the



Telecommunications Industry Ombudsman have agreed to meetings on a quarterly basis.

We have agreed to work with the ACCC to streamline and coordinate practices in collecting data from industry, identifying overlaps in requests, developing proposals for sharing data and exploring opportunities for joint reporting. It has become apparent that, in some instances, both agencies have been requesting similar information to fulfil their statutory obligations, and monitor and report on industry performance. In doing this, we should not impose undue financial or administrative burdens on industry ... You can assist us by allowing the necessary consent so we can share broad categories of information we collect.

We propose to produce an inaugural joint report on communications infrastructure that will focus on the location of infrastructure and the state of the market for telecommunications services. It is intended to assist the assessment of regional service adequacy by the Regional Telecommunications Independent Review Committee, to be convened in 2008, as part of the government's future-proofing arrangements for regional telecommunications services.

We continue to work with DCITA and the Attorney-General's Department on issues of national and international security. We have a role at several levels including legal telecommunications interception and phone jamming.

With respect to legal action, we will take it when required. We recently confiscated transmitter equipment after the successful conviction of an unlicensed radiocommunications operator and have also convicted

a person for failing to comply with a notice under the Telecommunications Act—a criminal conviction. We have secured a criminal conviction for operating an overpowered transmitter—a breach of the Radiocommunications Act, and have successfully prosecuted under the Spam Act. Australia has gone from being the 10th spamming nation (in April 2004 when the Spam Act came into force) to number 25.

New technology brings benefits, but each new innovation seems to trigger innovation from those who seek to use the technology for undesirable ends. Missed call marketing is a good example. In many ways, it's worse than email spam, as the cost of marketing is shifted almost entirely to the target, and the method of communication is more intrusive. ACMA takes this matter seriously, and two companies have ceased these activities while we investigate them. We have advised these companies that these marketing activities are likely to constitute serious and extensive contraventions of the Spam Act.

The mobile industry faces an ongoing challenge to avoid problems relating to the supply of premium content services and internet content, and it will be important for both mobile carriage service providers and content service providers to address these problems early, before large numbers of consumers are adversely affected. For example, as the capabilities of mobiles to access the open internet increase, mobile service providers face increasing challenges in providing parents with tools to manage their children's access to internet content. The introduction of value-added

services that use information provided by a mobile network about the location of a mobile user will create new challenges for mobile service providers in ensuring the safety of children.

Using mobile phones to pay for a broader range of services has made progress overseas, such as in Japan, where mobile phones are linked to debit and credit cards so that mobile phone payments are charged to a bank or credit account. It is not obvious whether Australia will follow these trends, but if mobile payments become a significant force they will attract the attention of government authorities and consumer bodies with an interest in the transparency, efficiency and security of payment systems. It will be prudent for the mobile industry to anticipate such attention in the way it supports and guides the development of mobile payment systems.

Transparency of the costs and terms and conditions of premium services delivered to mobile phones has continued to be a major source of complaints received by the TIO, as well as a source of media interest. There is no doubt that sloppy, even unacceptable, practices by some providers of content have led to financial harm to consumers. This does the reputation of the industry, and the use of mobiles to undertake commerce, no good whatsoever. There is a genuine issue of consumer confidence here that you have an interest in addressing.

Early indications are that mobile service providers have had some success in addressing concerns about lack of fairness and transparency in contracts with their customers. Implementation of the Consumer Contracts Code appears to have reduced the number of

complaints received by the TIO about mobile contracts. We urge you to continue actively looking at this issue.

And we are releasing our approach to tackling telecommunications code compliance issues. The strategy compromises a five-category suite of actions ACMA can draw on, incorporates complementary action such as enforceable undertakings and introduces ancillary actions such as use of publicity to act as a deterrent. A formalised and articulated strategy will provide industry with consistency about the actions ACMA will take in the event of non-compliance with codes and strengthen consumer confidence in the co-regulatory codes regime. We will focus on systemic breaches, and reserve the right to take action without notice in extraordinary circumstances.

ACMA and the TIO will work through issues together, particularly on an agreed approach to systemic complaints ... dealing with complaints effectively is a core ingredient of a cost-effective customer service. Industry needs to ensure consumers are aware of how they can complain and to whom.

And we must consider what to do with expiring spectrum licences (including mobile telephony spectrum licences), as the majority of 15-year spectrum licences issued in the late 1990s to 2001 will expire in the next few years. In the interests of giving some certainty to the licensees and the industry in general, ACMA will consult with you, and plan to make decisions well before the licence expiry date, giving incumbents the certainty needed for investment planning.

The full text of Mr Chapman's speech is on the ACMA website at www.acma.gov.au (go to ACMA > Speeches).