



**Australian Mobile
Telecommunications
Association**

Convergence Review – Framing Paper

AMTA submission – 10 June 2011

Introduction

The Australian Mobile Telecommunications Association (AMTA) is the peak industry body representing Australia's mobile telecommunications industry. Its mission is to promote an environmentally, socially and economically responsible, successful and sustainable mobile telecommunications industry in Australia, with members including the mobile Carriage Service Providers (CSPs), handset manufacturers, network equipment suppliers, retail outlets and other suppliers to the industry. For more details about AMTA, see <http://www.amta.org.au>.

AMTA is pleased to participate in the Convergence Review. The convergence of broadcasting, media and telecommunications is now a reality. Children today are truly the digital generation. They have not known a world without the internet or mobile phones. It is intuitive for them to expect to have the internet and all its information and content services at their fingertips wherever they are and whenever they want it. Likewise they do not differentiate between screens – they are just as used to viewing video on a laptop or mobile device as they are used to playing games on the television screen or their mobile phone.

In the face of this new reality, it is timely to consider how we can adapt our approach to regulation and the legislative framework so that it remains relevant in the face of convergence.

The proposed principles set out in the framing paper are generally consistent with the review's terms of reference and provide a useful clarification and expansion of issues the review committee intends to examine.

However, as the terms of reference of the review are necessarily very broad and quite far reaching, the proposed principles set out in the framing paper will assist stakeholders in focussing the points of discussion on identifying the various mechanisms Australia should use to frame its future media and communications policy. Such a broad review risks achieving little if the focus cannot be narrowed so that the necessary attention can be given to the most relevant issues and details.

AMTA strongly supports the assurance given in the framing paper that,

“the committee does not presume in advance that regulation will be necessary to achieve desired outcomes.”

AMTA prefers a policy perspective that is based on the principles of regulatory forbearance and that provides incentive for innovation and investment in infrastructure and convergent technologies.

Overview

The framing paper refers to the legislative framework currently governing the media and communications sector in Australia. Namely, the *Broadcasting Services Act 1992* (BSA), the *Telecommunications Act 1997*, the *Radiocommunications Act 1992*, the *Australian Broadcasting Corporation Act 1983* (ABC Act), the *Special Broadcasting Services Act 1991* (SBS Act) and the *Competition and Consumer Act 2010*.

As the framing paper points out each of the above pieces of legislation has an historical context and further amendments and regulatory complexities have developed as the legislation has been applied and extended to differing circumstances and developing technologies.

A thorough review of the legislative framework, while welcome and perhaps overdue in some instances, is quite a task. It will necessarily involve complex analysis and a thoughtful balancing of multiple competing issues and interests.

AMTA is hopeful that we have learnt from our history and take this opportunity to reform the legislative framework so that it can be flexible enough to serve Australia's needs regarding current and emerging technologies as well as technologies and services we cannot yet imagine. If our legislation could be drafted with future needs in mind it would allow greater potential for innovation and further drive investment in Australia's digital economy.

As stated in our comments on the draft terms of reference¹, AMTA believes that there are several overarching principles that should guide this review of the legislative and regulatory framework:

- The need to support an environment that promotes investment in convergent industries.
- The preferred policy framework is based on the principle of regulatory forbearance.
- The need to minimise the regulatory burden by examining the appropriateness and necessity of existing regulatory settings.
- The need for any regulation to be technology neutral and platform independent in its application. That is, a service oriented approach must be adopted where regulation of professional media services functions regardless of the type of underlying platform or means of distribution.
- The lines between responsibility for production of content and media services and the distribution or carriage of such content need to be clearly drawn and regulatory obligations defined. Carriage service providers who are mere conduits cannot be responsible for a media service that is the creation of a content service provider.

¹ AMTA [submission](#) on draft ToR of Convergence Review

The Principles

The framing paper sets out 8 principles that are based on the review's terms of reference.

AMTA has commented on the following principles:

Principle 1: Australians should have access to a diversity of voices, views and information.

Diversity can be a driver of competition and innovation. While it is the Government's role to regulate the creation and aggregation of content and media services according to the interests of the public policy agenda, the regulation of media content and services must be technology and platform neutral. That is, the same regulatory framework should operate regardless of the underlying platform or means of distribution. Diversity, competition and market efficiency should be the over-arching goal of policy and regulation of content distribution markets.

Principle 2: The communications and media market should be innovative and competitive, while still ensuring outcomes in the interest of the Australian public.

AMTA agrees that innovation and competition should be highly valued in the marketplace. AMTA also believes that it is in the best interest of the Australian public to have policies that encourage and nurture innovation and competition. A regulatory environment that encourages investment in infrastructure and technology will be both competitive and innovative.

For example, encouraging competition in the area of spectrum allocation would better enable spectrum to be used for its highest value use, mobile broadband.

Principle 3: Australians should have access to Australian content that reflects and contributes to the development of national and cultural identity.

Principle 4: Australians should have access to news and information of relevance to their local community.

As Principles 3 and 4 are closely related we have combined our comments on both.

AMTA agrees that Australians should have access to Australian content that reflects and contributes to the development of national and cultural identity. Historically, due to government policy and funding, Australians have had wide access to such content.

With regard to content that "reflects and contributes to the development of national and cultural identity", AMTA notes that in today's converging world there is a global trend for end users to generate and publish content via the web. And that such user generated content is easily and widely distributed amongst not only the local community, but globally.

For this reason, in response to the Senate Committees on Legal and Constitutional Affairs Inquiry into Australia's classification scheme, AMTA has argued against the regulation of the mobile applications development field, so that developers (mostly individuals and small business people) are not constrained by classification regulation that was put in place with

filmmakers and broadcasters in mind, and are able to develop and launch applications that Australians want and that add to development of Australian based content and services.²

The technological development of smartphones combined with various mobile applications (mobile apps) and social media networks are responsible for driving innovation in the area of user-generated content. It is undeniable that user-generated content will have an impact on the development of national and cultural identity. This trend affects how consumers interact with businesses and government agencies. It also informs consumer and political debates. During times of emergencies and natural disasters, such as the Queensland floods, it will impact on how Australians spread and receive news and communicate with each other. This is an example of technological convergence becoming the means for consumers to drive the innovative use of technology and fundamentally alter the environment in relation to news and media in Australia. Such innovative uses of technology flourish in a competitive and diverse marketplace.

A policy framework that encourages investment and innovation will also promote the development of mobile applications that supply Australians with the local based content, news and information they want and provide it to them where and when they want it. Mobile applications that make use of technology that allows for the provision of location based services are a key example of how mobile technologies can provide both localised and user-specified content, including news and information to consumers.

Principle 5: Communications and media services available to Australians should reflect community standards and the views and expectations of the Australian public.

AMTA agrees that as a principle, community standards and the views and expectations of the Australian public should be taken into account in the policy framework for telecommunications and media services available to Australians. AMTA does however note that it is a perennial challenge to determining what those community standards and expectations are, especially in a rapidly changing world.

AMTA is an active participant in the Australian Law Reform Commission's review of the national classification scheme. We strongly support the classification scheme's role in protecting children and all Australians from content that is criminal or otherwise unacceptable to the Australian community. The scheme's ratings systems also play an important role in informing consumers, particularly parents, about some forms content, allowing them to make an informed choice. The challenge now lies in how we deal with the explosion of content now available on the internet which can be accessed from various mobile devices as well as traditional PCs, especially when so much of this content is increasingly distributed by internationally based content providers rather than traditional domestically based content distributors.

While the internet has internationalised content distribution, the scope of the Australian government's effective regulatory reach is still constrained by our national border.

² [AMTA Submission](#) to Senate Committees on Legal and Constitutional Affairs - Inquiry into the Australian film and literature classification scheme

Principle 6: Australians should have access to the broadest range of content across platforms and services as possible.

AMTA strongly agrees that Australians should have access to a broad range of content across a broad range of platforms and services. Ideally, policy should be framed so that it is capable of covering and not precluding future technologies, platforms and services. However, history shows us that it is impossible to accurately predict future technologies and how they may be used, so the goal must be to frame policy broadly enough that it hopefully will not inhibit innovation or new developments in either technology or its potential uses.

Policy that provides incentive for investment in converging technologies is also fundamental for Australians to be able to realise the full benefits of the digital economy. Policy must be technology and platform neutral in its application so that investment is not constrained or diverted due to regulation favouring one platform for delivery of services or content over another.

Industry cannot deliver content to meet the demands of consumers and Australian businesses if the infrastructure that provides the carriage service cannot be put in place to accommodate the growth in demand. For the mobile industry this means there is a need for spectrum allocations together with an increased deployment of infrastructure as well as efficiencies and upgrades to be realised within networks.

There is demonstrated growth in consumer demand for mobile broadband services. Forecasts show that by 2015 the average smartphone will generate 1.3GB of data per month and global data rates will increase 26 times to 6.3EB per month³. Further, mobile broadband subscriptions are predicted to number 2 billion by 2015 and have increased by 60% in 2010 to 558 million (as opposed to 500 million fixed line broadband subscribers).⁴ Industry can only meet this demand given the right economic and regulatory environment, one that promotes investment in infrastructure and technological development and encourages efficiencies and innovation so that the industry can deliver what consumers and Australian businesses so clearly demand.

Principle 7: Service Providers should provide the maximum transparency for consumers in how their service is delivered.

AMTA believes that well informed consumers make the best customers. It is important that carriers and service providers are able to keep their customers informed in ways that are relevant, timely, transparent and appropriate to the service, content and technology being offered to them. Too much information all at once can be overwhelming and it is important that customers can have continuing access to points where they can review information, make further queries, or have their complaints handled in a timely manner.

AMTA notes the identification of transparency of network management practices as a specific issue to be considered by the review. AMTA submits that in a highly competitive market, such as the Australian mobile telecommunications market, carriers and carriage service providers, left unregulated, have no incentive to prioritise their networks or the

³ CISCO VNI Mobile 2011

⁴ Infonetics – [Mobile broadband subscribers overtake fixed broadband](#) 7 June, 2011

delivery of content services in any way that is contrary to customer demand. In this context, AMTA sees little need to contemplate regulatory intervention in this area beyond the already extensive powers possessed by the ACCC to require the disclosure of relevant network management practices.

Principle 8: The government should seek to maximise the overall public benefit derived from the use of spectrum assigned for the delivery of media content and communications services.

By 2020, mobile data traffic is forecasted to increase 33 times, totalling 127 EB per annum, and by 2025 it is forecasted to reach 350 EB per annum.⁵ IDATE predicts that the Asia region will hold the largest share of mobile data traffic, out-pacing both Europe and the Americas in the growth of mobile data traffic. It is predicted that although mobile broadband users (using smartphones or dongles) will account for just under a third of mobile subscriptions, they will account for over 60% of mobile data traffic.⁶

It is clear that the Australian mobile industry will need to move quickly to meet this predicted growth in demand for mobile broadband services. Mobile broadband services are not only used for personal communication and entertainment purposes, but are becoming essential for small business operators and larger firms to do business in the digital economy. In addition, machine- to-machine (M2M) wireless data communications will become ubiquitous and account for more and more mobile traffic. So, not only will more people have smartphones, but many machines will also be using mobile-like devices to transmit data on a daily basis and this will all add to the demand placed on mobile networks.

The public benefit derived from the efficient allocation and use of spectrum is undeniable. Spectrum is an essential component of telecommunications infrastructure and more is required for mobile broadband services than originally forecasted. The digital dividend, alone, will not meet the latest forecasted need for spectrum for mobile broadband. The ACMA has clearly recognised this increased demand driving spectrum requirements for mobile broadband in two recently published discussion papers.⁷ The ACMA is actively consulting with industry in relation to how spectrum can be efficiently allocated and used to meet the requirements for mobile broadband services and AMTA is a participant in that consultative process.

AMTA suggests that any consideration by the review committee under principle 8 take into account the ACMA's findings from the consultative processes already underway.

AMTA supports the principle that the overall public benefit derived from the use of spectrum should be maximised. AMTA considers that this review provides an opportunity to consider the efficiency of the current framework within which spectrum is made available for the delivery of media content and communications services with the objective of substantially streamlining the current framework.

⁵ IDATE "Mobile Traffic Forecasts 2010-2020"

⁶ Total Telecom, 11 May 2011 "Video to trigger 33-fold growth in mobile traffic by 2020"

⁷ Towards 2020- Future Spectrum Requirements for Mobile Broadband, May 2011. The 900MHz Band – Exploring new opportunities, May 2011

Spectrum must be allocated in a fair and efficient way. Investment in infrastructure needs to be encouraged so that there is no unnecessary delay in replanning spectrum usage to meet the demand for mobile broadband services.

Other considerations

The impact of legislative and regulatory frameworks outside of the Minister's portfolio.

The Minister is also responsible for a secondary portfolio as the Minister assisting the Prime Minister on Digital Productivity. Australia's future productivity is closely tied to the digital economy and its potential for growth. Further the growth of the digital economy is dependent on the telecommunications and media sector to fuel its growth, provide the necessary innovation and deliver on consumer and business demands.

The Minister's secondary portfolio recognises the pervasiveness of digital telecommunications technology in our lives today and the impact it can have on productivity in so many areas. For example, health, education and infrastructure, to name a few, are all portfolios that will benefit from the digital economy and convergent technologies and therefore policy frameworks set under those portfolios will have an impact on the Minister's portfolio and vice versa. Therefore, this review cannot be undertaken in isolation, without an assessment of legislative and regulatory frameworks outside of the Minister's portfolio as the telecommunications and media sector is a driver for productivity gains in many other sectors of the economy.

The impact of policy settings on industry and government revenue

Policy settings will generally have an impact on industry revenue. Regulatory burdens will necessarily result in costs to industry. These costs are often passed onto consumers. Light touch regulation lessens the cost of compliance to industry and promotes investment and innovation which can lead to productivity gains.

Over-reaching regulation can impede competition and stifle revenue growth. For example, applying classification regulations to mobile applications could be a severe impediment to innovation in the field and lead to many small start-up developers being forced out of business in Australia.

Similarly, lack of clear policy statements can lead to uncertainty and inhibit investment in infrastructure and technological developments. For example, if there is uncertainty about spectrum availability for mobile broadband, investment in other telecommunications infrastructure and even commodities such as handsets will be slowed. The end result is an overly cautious market unable to meet consumer demand and higher costs passed onto end-users.

Appropriate ways to treat content sourced from outside Australia

Content sourced from outside Australia will always provide a challenge to government as it is clearly outside the jurisdiction of our legislation and regulatory framework and so there will necessarily be some practical limits to how that content can be regulated or not-regulated.

International approaches and Australia's international obligations

Governments are restricted by national boundaries. It will therefore be more and more important for like-minded governments to work together to ensure consistent approaches to issues relating to cyber-security, cyber-safety and particularly, cyber-crime.

AMTA believes international approaches and obligations are policy issues for the government to define and determine, in consultation with industry where relevant.

AMTA is aware that the government has acceded to the EU Convention on Cybercrime. AMTA has provided a joint submission with Communications Alliance to the Attorney-General on the accession to the EU Convention on Cybercrime.

Conclusion

AMTA welcomes the Framing Paper, particularly its aim to focus the discussion under the Convergence Review. However, the Review is still very broad, as per its terms of reference, and AMTA hopes that the Committee is able to focus on key issues such as lifting existing regulatory burdens and building a regulatory framework that provides encouragement and incentive for investment in infrastructure and convergent technologies. AMTA believes an investment driven approach will promote an innovative and efficient converged telecommunications market in Australia.

If you have any questions relating to AMTA's submission please contact Lisa Brown, Policy Manager, at lisa.brown@amta.org.au or on 0405 570 059.