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AMTA Submission addressing the draft Terms of Reference of the Convergence Review 2011

1. Overview

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, retail outlets, network equipment suppliers and other suppliers to the industry. For more details about AMTA, see <http://www.amta.org.au>.

AMTA welcomes the opportunity to participate in the Convergence Review (the Review) and to provide comment on the draft Terms of Reference (ToR). In light of plans for the NBN, the strong demand for mobile broadband services and inevitable roll out of LTE mobile services over the next few years, the Convergence Review is both timely and appropriate.

AMTA is broadly supportive of the ToR and offers the following comments in response.

AMTA is pleased that the focus in the ToR is on content and media, given the central role both will play in our evolving Digital Economy.

AMTA supports the high level questioning and examination of the existing Regulatory Objects, current policy framework and regulatory approach for continuing relevance, however, AMTA also strongly recommends an approach that respects the relatively early stage in the evolution of convergence markets and the potential downside of pre-mature intervention.

It is also critical that the scope of the Review should avoid duplication of existing policy processes and/or entering into areas that may be prejudicial to existing processes.

AMTA has examined the draft ToR and suggests the inclusion of the following key principles and policy parameters to further guide the Review:

- 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 targeting existing regulatory settings.
- The need for any regulation to be **platform neutral** in its application.

2. Investment Opportunity

Investment by industry will be a key driver of developments in technologies, innovations, applications and services that will in turn support Australia's access to the economic and social benefits of convergence. AMTA strongly supports the inclusion of an investment theme in the ToR that builds on the OECD reference noted in the Background Paper regarding the need for policy frameworks not to impede investment and choice in the marketplace.

3. Regulatory Forbearance

AMTA strongly prefers a policy framework based on the principle of regulatory forbearance and an evidence based approach to regulation. Unless market failure can be both shown to exist and demonstrated to be enduring, regulatory forbearance should be the preferred approach of government.

As both government and industry recognised in the 2000 Convergence Review, that in a converging world there is risk that intervention that is premature or unjustified can have unintended and undesirable consequences.

“...one of the working assumptions identified for all convergence scenarios was a high level of structural uncertainty. The structural nature of convergence, and the unpredictable effects of countervailing trends, means that the progress and outcomes of convergence cannot be determined in advance. No-one knows how convergence will unfold, and navigating the structural transition is the major commercial and regulatory challenge.

*The relevant approach in this case is **regulatory forbearance**: ‘Policy intervention is confined to identifiable, significant and persistent market failure to achieve desired national outcomes.’*

The Convergence Review provides us with an important opportunity to examine the existing regulatory regime and decide if, how, when and where reform is needed. The ToR should therefore approach the question of regulatory reform from a neutral standpoint - making no presumptions regarding the need for new regulation.

The ToR should ask first, “***do we need to regulate in this market?***”, rather than “***how should we regulate this market?***”

If a market is competitive and working efficiently without adverse outcomes for consumers, then a policy principle of regulatory forbearance should be maintained.

AMTA notes that in point 5 of the ToR sections ‘b’ to ‘g’ all focus on identifying appropriate regulatory and policy settings. AMTA concedes that ‘appropriate’ regulatory reform could be required to achieve some desired outcomes, however, the questions suggested above should be the initial test. This will better prepare the Review to examine the issues from a standpoint that does not presume some form of regulatory intervention will necessarily be required.

4. Removing regulatory burdens

AMTA supports the high level questioning and examination of the existing Regulatory Objects, current policy framework and regulatory approach for continuing relevance, as defined in ‘3’. AMTA would also recommend that as part of item ‘3’ there is an explicit reference to the removal of regulatory burdens that are identified as currently impeding competition, innovation, efficiency, diversity of content, consumer choice and access in the market. Deregulation must be a priority for the Government’s strategies to promote continued investment in converging technologies.

5. Platform Neutrality

Regulation needs to be platform neutral in its application. That is, it should not matter which screen a consumer is using to view or interact with media and content, the same regulations, if any, should apply in a way that is transparent across industries. The current legislative and regulatory environment was devised when there were clear and distinct boundaries between platforms, for example, broadcasting services and telecommunications services.

Convergence means that these boundaries are increasingly blurred to the consumer and it is imperative that industry have a level playing field upon which to deliver both content and carriage services to consumers. As consumers are already able to access the same content or media on various screens and across various platforms, regulations need to be made consistent and equitable in their application to all delivery platforms.

Regulation must also clearly define different and transparent levels of responsibility for the production of content, delivery of content and provision of carriage services.

In terms of platform neutrality, AMTA recommends the ToR be expanded to include an explicit reference that requests the expert group advise on the practicality of incorporating all legislation into a single *Communications Act*.

6. Specific Areas of Concern – ToR - 5g

AMTA questions the appropriateness of the inclusion of spectrum allocation (5g) in the ToR and suggests that this should be excluded from the Review.

Apart from 5g the ToR focus on content and media, rather than infrastructure. And the inclusion of spectrum allocation is the only inclusion of infrastructure considerations. AMTA recognises that this is probably in order to avoid duplication and overlap with existing NBN processes, resource management and policy development and suggests that spectrum allocation is also an area where the existing resource management processes should be allowed to continue outside of the scope of this Review.

In fact, there is a significant and substantial ongoing work program in the area of spectrum management and allocation in Australia including critical global processes. AMTA further questions whether the detail and depth of analysis required in order to do justice to a review of spectrum management and allocation issues is realistically within the scope of the Review.

As already noted the Review should take care to avoid duplication of existing policy processes and/or entering into areas that may be prejudicial to existing processes.

AMTA urges the Government to consider the substantial work that has recently been completed on spectrum allocation and management, the current policy settings and risk of significant uncertainty, (with flow-on impacts on investment planning) for spectrum licensees should a parallel examination of these issues proceed within the Review.

If, for completeness the Review needs to address high level infrastructure questions then the ToR could include a reference which would aim to identify convergence trends and related infrastructure requirements and timeliness of infrastructure delivery for further investigation outside the Review.

7. Summary:

AMTA welcomes the opportunity to participate in the Convergence Review and is broadly supportive of the ToR.

AMTA would prefer to see the ToR contain references to investment, regulatory forbearance, policy parameters that encompass platform neutrality and a priority to lift inappropriate regulatory burdens and impediments to competition, continued growth and innovation.

AMTA is optimistic that an outcome of the Review will be a regulatory environment that promotes investment in convergent technologies so that all Australians can enjoy the many social and economic benefits that convergence is capable of delivering.

AMTA is pleased to be participating in the Convergence Review and looks forward to being able to provide further comment as the Review progresses. In the interim, please do not

hesitate to contact AMTA's Policy Manager, Lisa Brown at 02 6239 6555 if you have any questions.