

*ERICSSON AUSTRALIA - RESPONSE TO PRODUCTIVITY COMMISSION REPORT ON
RADIOCOMMUNICATIONS*

"Ericsson is shaping the future of Mobile and Broadband Internet communications through its continuous technology leadership. Providing innovative solutions in more than 140 countries, Ericsson is helping to create the most powerful communication companies in the world."

BACKGROUND

Ericsson Australia welcomes the opportunity of providing comments on the Productivity Commission's draft report on Radiocommunications. Ericsson's comments are made in the context of being the dominant supplier globally and in Australia of mobile communications systems. On an international basis 40% of calls on mobile systems are on Ericsson products whilst in Australia the figure is closer to 70% where Ericsson is a supplier to Telstra, Vodafone and Hutchinson. Ericsson has globally won to date 40% of contracts for 3G networks.

Recognising that spectrum is the "lifeblood" of the mobile industry Ericsson has taken a strong interest in administrative arrangements applying to radiocommunications both through its membership of such Associations as AMTA, involvement in various working groups of the Australian Communications Authority, etc. Globally Ericsson is a major industry participant in the ITU including meetings of the World Administrative Radiocommunications Congress.

In general Ericsson believes that the existing arrangements as administered by the Australian Communications Authority are working well and have worked well over the past several years with the allocation of some major spectrum blocs via competitive processes. It is recognised that in an industry that has changed rapidly and introduced many new technologies (to a short time frame) challenges are posed for administration. The ACA has risen to these challenges. Fundamental changes have been made to Radiocommunications administration over the past decade to introduce market mechanisms for determining the most efficient use of spectrum in significant areas. Despite considerable scepticism about the potential outcomes of such reforms in general the results have been positive.

In particular Ericsson has found the consultative, transparent and openness of the ACA's processes to be first class. Furthermore as a global company Ericsson believes it is important that individual country administrations maintain alignment with global developments both in areas of spectrum and standards. Australia's consistent approach of adopting ITU recommendations on spectrum allocation as well as the acceptance of international standards and proof of compliance on a global basis has enabled the early introduction of new services and products to the benefit of users and the productivity of the economy.

Some comments in relation to progress or whether secondary markets have developed appear to underplay the realities of the recent substantial changes to the dynamics of the telecommunications industry and particularly the mobile industry. Over the past two years there has been a significant re-evaluation of the industry arising from the dot-com

crashes and consequent pressures from the stock market and the collapse of a number of new carriers (eg OneTel in Australia, Global Crossing in the US). In many markets high levels of mobile penetration have been achieved. 3G services are being introduced on a global basis with significant technical and commercial issues. As a result there has been a significant process of industry consolidation in the face of an “overhang of capacity”. Demand for spectrum has lessened considerably as has the pressure for secondary trading.

In responding Ericsson Australia will provide comments on the major recommendations of the Commission and make a few additional suggestions focussing in particular on areas concerning the length of licences and renewal arrangements for spectrum licences. Ericsson also notes that the recommendations of the UK review of spectrum administration (Cave Review) follows a similar thrust to the recommendations of the Productivity Commission, as does the soon to be released Report of the Spectrum Working Group to the Radiocommunications Consultative Committee of the ACA.

Regulatory Arrangements

Ericsson strongly agrees that the primary objective of the Radiocommunications Act should relate to maximising the efficient allocation and use of spectrum. Issues such as revenue raising should be secondary to such an objective. In this respect Ericsson would support maximising the efficient allocation and use of spectrum as being the primary objective with subordinate objectives relating to the use of spectrum for non-commercial users and the necessity to maintain international alignment.

Issues such as interference have major implications for spectrum usage and are constraints on the adoption of simple property rights approaches based on land use.

Spectrum Administration

As previously noted Ericsson as a global company (that operates in 140 markets) strongly endorses the Australia approach towards spectrum allocations to maintain consistency with International Telecommunications Union allocations. Ericsson does not believe the Commission has identified any compelling arguments for departing from such an approach that has served Australia well in enabling the early introduction of new services to a timeframe consistent with other developed countries. This provides for productivity benefits associated with the introduction of new technology and the lower prices associated with economies of scale in production. The US approach towards spectrum allocation on the basis of a national rather than international considerations highlights limitations of such an approach. The Australian approach of spectrum licensees that do not define the technology application for the particular band has worked well.

Licensing

Ericsson considers security of tenure is an important element and notes the introduction of elements of uncertainty over recent years with the explosive growth of the mobile industry and its demand for spectrum in bands traditionally the preserve of fixed link operators.

Ericsson notes the challenges inherent in a spectrum administration approach that has a market-based system in respect of spectrum licences and an administrative approach in respect of apparatus licensing. It also notes comments in respect of indefinite tenure for spectrum licences.

Ericsson supports administrations having the ability to re-plan spectrum which includes the need to retain the ability to not re-issue licences, or to resume existing licences that are only part way through their term. The rapid growth of wide area mobile services has led to an escalating rate of change in band use which has often required the relocation of fixed link services, generally however with significant notice. For example the WARC Conference of 1992 identified the 2GHz band for use in the introduction of UMTS but it will not be until October 2002 that in Australia this spectrum becomes available..

Ericsson agrees that security of tenure is important for investment certainty and that the changes in spectrum usage over past decade has introduced uncertainty particularly for fixed link operators. It would appear many incumbent apparatus licensees have operated on the basis of a presumption of renewal despite no such provisions within the *Radiocommunications Act 1992*. This would appear to partly account for the majority of licenses continuing to be for one year terms despite terms of upto five years being available.

Ericsson supports recommended changes to the Radiocommunications legislation to provide a presumption of renewal. Feedback from the financial sector is that a presumption of renewal with appropriate conditions would be an advantage over existing arrangements in securing finance.

Accompanying any such change should be a Forward Review process to examine likely changes in band use on a regular basis to include those bands where a change in use was anticipated, or at least possible. In particular such a Forward Review should be conducted in association with every WARC.

Under the Forward Review, the ACA would review bands every three years. If the Review does not identify any likely change in a particular band, then those who hold five year terms could be offered up to an additional three years on their licence which in essence provides a rolling licence framework.

Ericsson supports retention of the existing maximum apparatus licence term of five years. Arrangements for the renewal or otherwise of a licence are more important to licence holders than the term of the licence itself. A presumption of renewal and a forward review will provide additional certainty of tenure. These issues have been discussed at length in the context of the Spectrum Working Group of the Radiocommunications

Consultative Committee – it is understood that a copy of this Report will be made available to the Commission shortly.

It is recognised that the ACA needs to retain the flexibility to make a change or to highlight a potential change in band use and to advise licence holders accordingly including that it would not be possible to obtain a continuation of their licence.

Ericsson agrees that spectrum licences offer more flexibility than apparatus licences in responding to changing uses and technologies over time. They offer the best approach towards technology neutrality. Ericsson believes some of the suggestions by the Productivity Commission in respect of allocating spectrum licences even when there is only one prospective buyer rely overly on the supposed benefits of market forces.

Competition Levels

Ericsson supports the recommendations of the Productivity Commission that competition limits under section 60 and 106 of the Radiocommunications Act 1992 be repealed. Such limits have only been used on a limited basis and Ericsson agrees that section 50 of the Trade Practices Act 1974 provides enough flexibility. As a matter of principle Ericsson supports general provisions rather than specific regulatory instruments. It is noted that the UK Cave Review made similar recommendations.

Compensation

Ericsson agrees that compensation should not be payable to apparatus licensees where licences are cancelled or not renewed as a result of spectrum re-allocation. Such an approach is consistent with global approaches.

Spectrum re-allocation

Spectrum licences have generally been issued for the maximum period (currently 15 years) allowable under the *Radiocommunications Act 1992*.

Ericsson notes the discussion by the Productivity Commission recommending that three years notice be provided before the process of re-allocating spectrum licences occurs..

Under Sections 78 to 84 of the Act arrangements for re-issuing spectrum licences on their expiry are provided such that within two years prior to the expiry of licences, the ACA must:

- publish a notice in the Gazette regarding licences which are to expire and invite expressions of interest from persons interested in licences for those parts of the spectrum;
- prepare draft licences to replace (in whole or in part) the current licences; and
- conduct a price-based process for allocating the replacement licences.

The Act makes provision for re-issuing spectrum licences to the original licensees, without a further price-based allocation, where it is in the public interest to do so.

These arrangements which have yet to be tested owing to the limited period of time for which spectrum licences have been in existence. However Ericsson believes that the relatively limited time provided under the ACT before the licences expire will cause uncertainties and constrain business confidence and reduce investment in the provision of services. Given that the uncertainties cannot be resolved until near the end of the licence period, and given the time necessary to achieve an appropriate return on investments in infrastructure to operate in the spectrum, it is unlikely that a licensee would have the incentive to invest in infrastructure beyond the initial rollout period.

Ericsson believes that approaches to re-issue spectrum licences should be considered significantly earlier than the final two years of a licence period, and desirably at least five years prior to the expiry date. The offer for an extension could be for a term of upto five or ten years from the date of examination. In making any consideration of this issue public interest would need to be a dominant consideration and provisions could include such issues as the services provided, customer numbers, etc.

Secondary Markets

Ericsson notes that provisions already exist for secondary trading of spectrum and that it may possibly be issues external to the industry that limit trading eg taxation on spectrum. Whilst the identified technology and site specific nature of apparatus licences may restrict the potential for trade in these licenses, that is an inherent condition of the advantages of such licences. Current industry conditions also act as a constraint on interest in secondary trading.

Charging for Spectrum

Ericsson has no objections to licence holders bearing charges that reflect the cost of administering their use of spectrum. However such costs should be reflective of actual costs and not be a revenue raising device. All such charges should be transparent.

Managing Spectrum for non-commercial and broadcasting services

Ericsson supports the recommendations of the Productivity Commission that “a system of explicit budgetary support should replace the current system of granting exemptions and concessions from spectrum charges to some non-government, non-commercial users.” Such would have the advantage of making spectrum usage transparent and assist in maximising the efficient use of spectrum through the establishment of pricing signals currently missing.

Broadcasting

Ericsson supports the comments of the Productivity Commission in respect of Broadcasting, notably transferring responsibility for planning and licensing the broadcasting services bands of the spectrum to the ACA and that licence fees and access to spectrum be based on “the opportunity cost of spectrum used.” Such provisions are necessary in an environment of convergence to prevent distortions of technology usage in investment decisions.

Australian Communications Authority

As previously commented Ericsson is supportive and appreciative of the processes followed by the ACA in meeting its obligations in respect of radiocommunications. The Authority has introduced some major changes in spectrum administration over the past decade and conducted a number of significant auctions. It would appear to be the general views of the telecommunications industry that these changes have been successful, notwithstanding teething issues, and that the processes established for consultation and input have worked well.

Conclusion

Ericsson supports the general thrust of the Productivity Commission’s Report into Radiocommunications noting that the current arrangements are in general working well.

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