

**SUBMISSION TO THE REGULATION  
TASKFORCE**



**Vodafone Australia Limited ACN 056 161 043**

**Reducing the Regulatory Burden on Business**

**November 2005**

# Contents

---

|  |           |
|--|-----------|
| <b>1. Contents .....</b>   | <b>2</b>  |
| <b>2. Introduction.....</b>  | <b>3</b>  |
| <i>Vodafone's Global Regulatory Experience</i>   | 3         |
| <i>About Vodafone</i>  | 4         |
| <i>Vodafone's Business Principles</i>  | 4         |
| <b>3. Addressing the causes of inefficient regulation.....</b>                           | <b>6</b>  |
| <i>Demonstrating Durable Market Failures</i>   | 6         |
| Forbearance.....   | 7         |
| Enforcement or Market Failure? .....   | 7         |
| Regulator must bear burden of proof when identifying market failures .....               | 7         |
| <i>Enhancing the Robustness of the Regulation Making Process</i>                         | 8         |
| Vodafone's observations regarding existing regulation making process .....               | 8         |
| Outcome Based Regulation.....  | 9         |
| Self Regulation in the first instance.....   | 10        |
| Balance between personal responsibility and corporate responsibility .....               | 11        |
| Proportionality .....  | 12        |
| Cost Benefit Analysis .....  | 13        |
| Need for balance between private property rights and the public interest.....            | 13        |
| Need for appropriate checks and balances, including proportionate rights of appeal ..... | 14        |
| Need for sunset provisions/timely reviews .....  | 15        |
| Conflict of regulatory interest.....   | 16        |
| Consistency.....   | 16        |
| <b>4. Unnecessarily Burdensome or Complex Regulation - Examples .....</b>                | <b>16</b> |
| <i>S105 Telecommunications Act reporting</i>   | 16        |
| <i>Foreign Investment Review Board (FIRB) Reporting</i>                                  | 16        |
| <i>Taxation</i>  | 17        |
| Income Tax.....  | 18        |
| Fringe Benefits Tax (FBT).....   | 18        |
| <b>5. Duplicated Regulation - Examples.....</b>  | <b>18</b> |
| <i>Consumer protection regulation</i>  | 18        |
| <b>6. Conclusion .....</b>   | <b>19</b> |

## About this submission

This submission aims to inform the Regulation Taskforce on Vodafone Australia's experience as a foreign owned business operating within the Australian regulatory framework. Vodafone has focused this submission on the principles of regulation and draws Vodafone's experience of both domestic and international regulation of telecommunications and the business sector generally.

## 2. Introduction

---

### Vodafone's Global Regulatory Experience

2.1 Vodafone shares the observations of the Prime Minister and Treasurer that:

*[O]ver-regulation or inappropriate regulation acts to impede economic growth. It limits the scope for innovation, undermines entrepreneurial drive and reduced productivity and competition.<sup>1</sup>*

These observations are especially relevant to fast paced industries such as the telecommunications industry, where innovation and investment can be substantially stifled by premature, unnecessary regulation.

2.2 As a global business, Vodafone operates within a wide range of legal jurisdictions. We respect the rule of law within these jurisdictions and support appropriate internationally accepted standards including those on human rights. Vodafone dedicates significant resources to understanding its regulatory obligations, complying with these obligations and taking an active role in shaping future regulatory responses to policy issues as they arise both in Australia and globally across all Vodafone operating companies.

2.3 Vodafone's experience across these jurisdictions shows that the telecommunications industry in Australia is heavily regulated, in terms of economic regulation and social policy regulation, compared to most other countries in which Vodafone operates. This sector specific regulation is in addition to the more general forms of regulation that most other businesses in Australia are subject to.

2.4 In Australia alone, Vodafone employs a team of nine people who are dedicated to managing and responding to industry specific regulation of Vodafone's business – the Vodafone Australia Public Policy team. This team is supported

---

<sup>1</sup> Taskforce Issues Paper, p1.

by representatives within the Vodafone Australia business, including legal, technical, finance, operational and marketing divisions, to ensure a comprehensive assessment of developing and existing regulations. In addition, Vodafone Australia's Public Policy team actively contributes to policy discussions and regulatory developments which affect Vodafone's local and global business. Vodafone's Public Policy team in Australia draws on the experience of its global colleagues to inform domestic policy development.<sup>2</sup> Similarly, Vodafone's operations in other jurisdictions benefit from shared knowledge of Australian policy and regulatory developments.

## **About Vodafone**

- 2.5 Vodafone Australia is a subsidiary of Vodafone Group Plc which provides an extensive range of mobile telecommunications services globally, including voice and data communications. Vodafone Group is the world's largest mobile telecommunications company, with a significant presence in Continental Europe, the United Kingdom, the United States and the Far East through the Company's subsidiary undertakings, associated undertakings and investments.
- 2.6 At 30 September 2005, based on the registered customers of mobile telecommunications ventures in which it had ownership interests at that date, the Group had 171 million customers, excluding paging customers, calculated on a proportionate basis in accordance with the Company's percentage interest in these ventures.

## **Vodafone's Business Principles**

- 2.7 In addition to Vodafone's regulatory commitments, Vodafone also makes a number of other commitments to its stakeholders. These commitments are articulated in the ten Business Principles that are set out below and apply to all Vodafone companies where a majority equity interest is held and to all Vodafone employees.

---

<sup>2</sup> For example, Vodafone Group provided Vodafone Australia with guidance from the European Commission on E-money, which has contributed to the development of the Australian Securities and Investment Commission's policy on the regulation on non-cash payment facilities in Australia.

| <b>Business Principles</b> |  |
|----------------------------|--|
|                            | <p><b>1. Value Creation</b> We believe that competition in a market economy, pursued in an ethical way, is the best way of delivering benefits to our stakeholders. We are committed to providing the best possible return for our shareholders. The criteria for our investment decisions, acquisitions and business relationships will be primarily economic but they will also include social and environmental considerations.</p>   |
|                            | <p><b>2. Public Policy</b> We will voice our opinions on government proposals and other matters that may affect our stakeholders but we will not make gifts or donations to political parties or intervene in party political matters.</p>   |
|                            | <p><b>3. Communications</b> We will communicate openly and transparently with all of our stakeholders within the bounds of commercial confidentiality.</p>   |
|                            | <p><b>4. Customers</b> We are committed to providing our customers with safe, reliable products and services that represent good value for money. We will work to understand, anticipate and respond to the needs of our customers and to provide them with innovative products and services. We value the trust our customers place in us and will safeguard the information provided to us in accordance with relevant laws.</p>   |
|                            | <p><b>5. Employees</b> Relationships with and between employees are based upon respect for individuals and their human rights. We will pursue equality of opportunity and diversity through our employment policies. We will encourage our employees to reach their full potential through training and development. We will promote employee participation in share incentive plans.</p>  |
|                            | <p><b>6. Individual Conduct</b> We expect all our employees to act with honesty, integrity and fairness. No form of bribery, including improper offers or payments to or from employees will be tolerated. All Vodafone companies, their directors and employees must comply with the provisions of all applicable domestic and international laws, standards and principles relating to anti-corruption, including the Applicable Laws and Regulations. All employees are expected to avoid any contacts that might lead to, or suggest, a conflict of interest between their personal activities and the business of Vodafone. All employees are expected to avoid accepting hospitality or gifts that might appear to place them under an obligation.</p> |
|                            | <p><b>7. Environment</b> We are committed to sustainable business practices and environmental protection. We will use finite resources carefully. We will promote the use of operational practices that reduce the environmental burden associated with our activities. We will support innovative developments in products and services that can offer environmental and social benefits.</p>   |
|                            | <p><b>8. Communities and Society</b> We accept our responsibility to engage with communities and we will invest in society in a way that makes effective use of our resources, including support for charitable organisations.</p>   |
|                            | <p><b>9. Health and Safety</b> We are committed to the health and safety of our customers, employees and the communities in which we operate. We will disclose any information that comes to our knowledge, which clearly demonstrates that any of our products or services breach internationally accepted safety standards or guidelines.</p>  |
|                            | <p><b>10. Business Partners and Suppliers</b> We will pursue mutually beneficial relationships with our business partners and suppliers. We will seek to promote the application of our Business Principles by our business partners and suppliers.</p>  |

2.8 It is clear from these Business Principles that Vodafone is a strong supporter of self regulation.

- 2.9 This submission focuses on the principles that apply to the development and implementation of regulation. These principles will be illustrated by sector specific and general regulation to highlight examples of good and bad regulations and the respective development processes. The submission does not dwell on the arguments made by Vodafone regarding telecommunications-specific regulatory issues. However, if the Regulation Taskforce wishes to view copies of Vodafone's previous submissions, we are happy to provide such.

### 3. Addressing the causes of inefficient regulation

---

- 3.1 Vodafone understands that the Taskforce's primary objective is to reduce the regulatory compliance burden on business. Before considering ways to reduce this compliance burden, it is important to understand what causes unnecessary or inappropriate regulation (**inefficient regulation**) in the first instance. In Vodafone's view, inefficient regulation arises when:

- (a) There is no identified or substantiated market failure; and / or
- (b) There are flaws in the regulation making process.

Regulation without a clearly identified market failure simply imposes regulatory costs on business and therefore does not deliver identifiable consumer benefit. Regulatory processes that lack robustness result in disproportionate regulation where the costs to business outweigh the benefits. Vodafone submits that these matters need to be addressed in order to achieve long term reductions in the compliance burden of regulation on the Australian business community.

#### Demonstrating Durable Market Failures

- 3.2 As a principle Vodafone does not support regulatory intervention except in cases where it is directed to a demonstrated durable market failure. By this Vodafone means that regulation can only be productive where:
- (a) A market failure has been identified, substantiated and continues to be observed in the relevant market;
  - (b) The market has been given the time and opportunity to 'correct' the failure in the first instance before regulation is implemented;
  - (c) It is clearly demonstrated that market forces have not be able to deliver the necessary public policy objective (e.g. due to a lack of competition); and

- (d) It is clearly demonstrated that regulatory intervention would achieve a better result.

### ***Forbearance***

- 3.3 Regulators should refrain from the temptation to regulate in the absence of actual market failure. Regulatory forbearance should be the default position of a regulator until such time that it can be clearly demonstrated that a durable market failure exists, and that regulatory intervention should be targeted and shown to deliver a superior outcome compared with market delivered outcomes.
- 3.4 Regulation has a substantial impact on the development of products and services and influences the incentives to innovate and invest. Applying a premature regulatory framework, for example regulation 'just in case' anti-competitive behaviour occurs in a market, unnecessarily limits the opportunities for new and innovative outcomes to be achieved. Premature regulation also imposes unnecessary costs on markets and consumers.
- 3.5 There are real benefits to be gained from regulators adopting a 'wait and see' approach to new market developments, particularly in the telecommunications industry. New markets should be given opportunities to operate in the best interests of society without premature regulatory intervention. Vodafone commends the Government's application of this approach to the regulation of Voice over Internet Protocol (**VOIP**) services. However, there is further scope for regulators to apply this approach to matters where the perceived market failure is based on anecdote and a lack of investigation and identification of the real issue, for example mobile 'spam'.

### ***Enforcement or Market Failure?***

- 3.6 Regulators should be careful not confuse market failures with enforcement failures. There are many instances where regulators have attempted to define issues based on evidence of regulatory compliance breaches rather than evidence of market failures. In these cases the real issue is the enforcement of existing regulation, rather than the existence of market failures. Regulation driven by enforcement failures ultimately causes unnecessary costs when the underlying issues could be addressed by regulators exercising relevant enforcement powers.

### ***Regulator must bear burden of proof when identifying market failures***

- 3.7 Regulators must bear the burden of proving the existence of a durable market failure, rather than requiring industry to justify why regulation should not proceed. The following questions should be answered in the affirmative before

regulatory intervention is considered:

- (a) Is there a demonstrable market failure?
- (b) What are the nature, impact and duration of the market failure?
- (c) Who are the stakeholders adversely affected by the market failure?
- (d) Would the cost of intervention outweigh the benefits to be gained from the intervention?

## **Enhancing the Robustness of the Regulation Making Process**

### ***Vodafone's observations regarding existing regulation making process***

3.8 The ideal regulation making process following the identification of a problem or issue should incorporate:

- (a) A Discussion Paper – to determine whether there is an issue, and distributed to all reasonably identified stakeholders;
- (b) An Issues Paper – which clearly identifies the issue / problem, the desired policy objectives and possible options to achieve these objectives, and distributed to all reasonably identified stakeholders. The issues paper stage of the process should incorporate at least a summary discussion of all the matters that would appear in a regulatory impact statement as these are important factors for consideration for the purposes of public consultation;
- (c) Policy consultation / submissions on the Issue Paper – and further consultations if further information is required;
- (d) A Final Report – with recommendations and rationale; and
- (e) Implementation of those recommendations via agreed mechanism, for example self-regulatory Code of Practice; co-regulatory Code; legislative instrument.

3.9 Vodafone has observed many examples of flaws in existing processes used to determine appropriate regulatory responses. These flaws include:

- (a) Lack of transparency;



- (b) Truncated consultation periods that compromise quality decision making for fast decision making;
  - eg. Telstra Sale legislation
- (c) Lack of problem analysis & issue identification;
- (d) Consultations on possible 'solutions':
  - eg. the Department of Communications, Information Technology and the Arts, *Introduction of a Do Not Call Register Possible Australian Model Discussion Paper*, which lacks identification of the actual problem/s - telemarketing and privacy;
- (e) Consultation and discussion papers based on anecdote and/or containing incomplete, inaccurate or no data;
- (f) Regulations being made to address matters that were not raised as part of the initial consultation
  - For example the draft *IPND Standard* developed by the then Australian Communications Authority (now the Australian Communications and Media Authority);
- (g) Overly prescriptive regulation;
- (h) Uncertainty from ambiguity;
- (i) Duplicated regulation across various jurisdictions; and
- (j) Inconsistent regulatory treatment.

The following discussion highlights particular areas where further robustness is required to improve the quality of regulatory decisions.

### ***Outcome Based Regulation***

- 3.10 Where regulation is required, it is critical to define the policy objectives and outcomes that regulation aims to achieve before discussing possible solutions. In turn, market participants should be allowed maximum flexibility to deliver the identified outcomes. Where possible, regulation should avoid being unnecessarily prescriptive to enable industry participants to identify and develop the most cost effective and efficient ways to meet regulatory obligations within

each business.

- 3.11 Unfortunately, in many instances, we see a leap being made from the identification of a perceived problem directly to a regulatory “solution”. Too often the solution is proposed before the objectives and outcomes – or “end state” – have been defined. This inevitably leads to frustration and disappointment as the regulation is disproportionate and misdirected - therefore delivering unsatisfactory outcomes for suppliers and consumers. In some cases there is a tendency to address such cases of inappropriate regulation with yet another regulatory solution.
- 3.12 An example of effective outcome based regulation is the *Privacy Act 1988*. While this enables the Privacy Commissioner to provide guidance and examples of ways to comply with the Act, it does not stifle businesses from developing and implementing other means of compliance.

### ***Self Regulation in the first instance***

- 3.13 Where a market failure has been identified, there are a number of regulatory options available to address that market failure, from self regulation to explicit government regulation – black letter law. In determining which regulatory option is appropriate for addressing a particular issue, the regulator must consider:
- (a) Is this market failure unlikely to be addressed by market forces in the medium term;
  - (b) Is the market failure temporary or long term;
  - (c) Will the proposed intervention protect against adverse impacts on investment incentives; and
  - (d) Is the proposed intervention removable once it has addressed the failure, and how will that point be identified?
- 3.14 Vodafone advocates self regulation as the first regulatory response for the telecommunications industry and acknowledges that it is likely to be the best option in many other industries. Self regulation enables Vodafone and other market participants to develop voluntary Codes of Practice, and empowering industry members with responsibility and reinforcement of these Codes of Practice. Vodafone believes in most cases industry participants can regulate themselves without government intervention. This stance is supported by the Government’s regulatory policy stated in subsection 4(a) of the *Telecommunications Act 1997*:

*The Parliament intends that telecommunications be regulated in a manner that:*

*(a) promotes the greatest practicable use of industry self-regulation.*

- 3.15 Where self regulation is unable to achieve the defined outcomes, quasi-regulation and co-regulation should be considered before resorting to explicit regulation. Industry players should be part of determining and designing the quasi-regulatory or co-regulatory response in conjunction with government and regulators. This works best where the desired outcomes are clearly defined and understood, and industry is able to assess potential regulation upfront and reach consensus with the regulator before regulations are imposed. Co-regulation allows industry participants to meet defined regulatory requirements in the most appropriate manner for each business,, and the regulator is legislatively empowered to take enforcement action if necessary.
- 3.16 A good example of co-regulation in the telecommunications industry is Schedule 3 of the *Telecommunications Act 1997*, the *Low Impact Facilities Determination*, and the associated *Deployment of Mobile Phone Network Infrastructure* industry code of practice<sup>3</sup>. The Code was developed with full participation of key stakeholders including Local Government, community groups, unions and industry. It is outcome focused, allowing flexibility in terms of how requirements are met, and was signed off by all the parties involved. The Code provides a good balance between community and business needs.
- 3.17 Vodafone recommends explicit government regulation involving black letter law only as a last resort response to market failures. Pure government regulation is often inflexible and does not give industry participants the flexibility to adapt their regulatory responses themselves as the industry and services evolve. Compliance, under legislation, can be overly burdensome for the industry. The inflexibility and lengthy processes associated with pure government regulation does not fit with the faster pace of industry change that is now experienced. This is particularly the case in the rapidly changing technology industry in which Vodafone operates.

### ***Balance between personal responsibility and corporate responsibility***

- 3.18 Vodafone has serious concerns regarding an apparent increasing trend to substitute personal responsibility with state responsibility and corporate responsibility in regulation. While there is no doubt that both governments and corporations have a significant level of responsibility with respect to the needs of the communities that they serve, that should not diminish the need for individuals to take responsibility for their own actions. Vodafone recognises the importance of its customers and shareholders concerns and, in the normal course of its business, responds to these concerns in the absence of

---

<sup>3</sup> ACIF Code [ACIF C564:2004](#)

government regulation. These concerns and responses are outlined in Vodafone's annual Corporate Responsibility Report and are enshrined in the Business Principles set out in the introduction to this submission. Where regulation is considered to be necessary, a balance needs to be struck between an individual's responsibility for their actions and a company's responsibility to their customers. A distinction needs to be drawn between consumer protection where there are real risks to consumers, and instances where there is no impedance to the consumer's ability to make fully informed decisions and understand the consequences of those decisions.

- 3.19 For instance, premium mobile services have the potential to lead to costly mobile bills for customers. Although people are ultimately responsible for how they use their mobile services, Vodafone recognises that customers need access to tools to help them manage and control their use of such services. Vodafone provides a variety of such tools and billing options that customers can use.
- 3.20 Content on mobile phones is another area where regulation requires a balance between a person's responsibility and corporate responsibility. Increasingly mobile phones are being used to access content and services from various sources. Vodafone takes responsibility to ensure that tools and measures are in place to restrict a minor's access to inappropriate content and services.
- 3.21 However, increasingly it seems that Vodafone is being required to take more responsibility for the voluntary actions of its customers. For example, it has been proposed that Vodafone should take responsibility for a customer's bill once the bill exceeds a certain level. In our view this tips the balance of responsibility inappropriately away from personal responsibility and would result in unfairly restricting Vodafone's business and limiting or inconveniencing many customers in their legitimate use of services.

### ***Proportionality***

- 3.22 Vodafone supports the principle of proportionality in regards to regulation. In considering the appropriate regulatory response to a market failure, regulators must assess whether the regulatory response is proportionate to the risks to consumers. This principle is particularly applicable in terms of any compliance burden or penalty framework, which may apply to the telecommunications industry.
- 3.23 The benefits of regulation must also be proportional to the compliance cost of such regulation on industry and business. Regulatory rules used to achieve a certain regulatory end must be necessary and be the least burdensome on industry participants. This is supported, for example, by the Government's regulatory policy in the *Telecommunications Act 1997* – subsection 4(b):

*The Parliament intends that telecommunications be regulated in a manner that:*

*(b) does not impose undue financial and administrative burdens on participants in the Australian telecommunications industry;*

### **Cost Benefit Analysis**

- 3.24 Vodafone believes a cost-benefit analysis of the regulatory response must be undertaken prior to regulatory intervention. Such an analysis must weigh the risk of regulatory error against the likely outcomes the market would deliver without regulation. It follows that an assessment can be made as to whether introducing regulation will actually lead to a better result in terms of economic efficiency than if the market was left to operate freely.
- 3.25 The cost benefit analysis needs to show that regulation will lead to better outcomes for consumers and does not distort the competitive dynamics of relevant markets before regulation is introduced.

### **Need for balance between private property rights and the public interest**

- 3.26 Vodafone believes regulation should balance private property rights and the costs associated with intervening with private property rights and the broader public interest. The protection of private property rights is central to the success of Vodafone. Protection of shareholder property rights over the firm, and the firm's property rights over assets are critical to an efficient operation of any organisation. The value of shareholder rights is a measure of the success of a firm like Vodafone to undertake what it sets out to do at least cost.
- 3.27 However, Vodafone's property rights are influenced by regulatory interventions that may constrain the ability of Vodafone's management to conduct business and focus on delivering services to customers at least cost. Vodafone should have rights to use, retain income from and transfer assets or resources under its ownership in the interest of their shareholders and other stakeholders.
- 3.28 Economically, prior to intervening in property rights, the regulator should conduct a cost benefit test – does the benefit of the taking of property exceed the costs? Such an economic analysis must take into account dynamic costs and benefits as these are often larger than any allocative or productive efficiencies that may be gained.
- 3.29 Suggested criteria for the telecommunications industry would include all of the following:
- (a) The communications service is of significance to the national economy;

- (b) There are substantial entry barriers to new entrants;
- (c) Entry to the market of a second provider of the service would not be economically desirable or feasible;
- (d) No substitute service is available under reasonable conditions that could be used by the access seeker;
- (e) Competition in downstream markets is sufficient to prevent the provider of the service from exercising substantial market power;
- (f) Addressing the denial of access, or the terms and conditions of access, to the service concerned is likely to improve economic efficiency significantly; and
- (g) Access, or increased access, to the service would not be contrary to the public interest.

All criteria should be met in the affirmative before regulatory intervention is undertaken. If the government does decide to intervene in private property rights in the interest of public interest, compensation should be paid on the grounds that regulation interferes with the opportunities of an organisation to earn a fair return on investment.

***Need for appropriate checks and balances, including proportionate rights of appeal***

3.30 Appropriate checks and balances, including proportionate rights of appeal are necessary part of any regulation. This is particularly the case in the telecommunications industry because:

- (a) the direct costs of regulation are high;
- (b) the potential indirect costs of regulation are immense; and
- (c) the distributional consequences of regulation inevitably encourages so-called rent-seeking, or the expenditure of money and effort by those affected for distributional gain - even where there is no net social benefit.

3.31 For these reasons, Vodafone considers that robust appeal rights within the regulatory process are important – they are a fundamental aspect of natural justice. For example full rights of appeal to the ACCC decisions under section XIB and XIC of the Trade Practices Act should remain as an important check on the powers of the ACCC. Unfortunately they have been eroded over time in the

interests of expediting regulatory outcomes.

- 3.32 Checks and balances are necessary as regulators may not always be relied upon to improve on the market in terms of social and economic outcomes. Checks on the intervention in specific sectors ensure that the potential costs of regulation are weighed against the benefits of intervention. Where a regulator acts in multiple roles these checks and balances become vital. For example, in the telecommunications context the ACCC acts as rule maker, prosecutor and judge, yet appeal rights have now been reduced to administrative grounds or matters of interpretation of law for almost all regulatory proceedings.
- 3.33 However, Vodafone notes the argument by some in the industry that the current appeal rights have been used to delay regulatory processes. While there may be a number of reasons why such delay has taken place, Vodafone does not support the solution that has involved limiting the rights of parties to appeal decisions that impact on private property rights. We believe that the appeals process should be streamlined and reasonable time frames introduced to reduce incentives on parties to 'game' the appeal process.

***Need for sunset provisions/timely reviews***

- 3.34 Regulatory interventions should be reviewed regularly, to reflect the changing environments in which they are applied. For instance, some regulation that was once implemented on market failure grounds may no longer be required as the market has developed and become more competitive. Regular regulatory review is particularly important in industries that are inherently fast paced such as the telecommunications industry.
- 3.35 There are a number of benefits to sunset clauses, including:
- (a) Acting as an in-built protection against regulatory creep – which can lead to regulations applying beyond the time required to address market problems; and
  - (b) They provide an important check on the powers of regulators, as it will shift the burden of proof for the continued regulation of the service. The regulator will be required to justify that there are net-benefits of continued regulation – rather than the industry being required to justify why regulation should be removed.
- 3.36 Vodafone considers that sunset clauses should be part of all 'best practice' regulation. This is now a welcome feature of Declarations made by the ACCC in the telecommunications industry.

### ***Conflict of regulatory interest***

- 3.37 What happens when the regulation maker is also the enforcer? Is it possible for the regulator to be completely objective when it has predetermined the outcome, for example the regulation of mobile termination rates and dispute resolution?
- 3.38 Regulation making functions and enforcement making functions should be separate. While regulators need flexibility to interpret regulations and how to enforce regulation, it should not define policy or make the regulation itself in any manner that deprives the public / industry of the same consultation process as explicit regulation.

### ***Consistency***

- 3.39 To minimise the compliance burden on industry, Federal, State and Territory governments and regulators across all sectors must be more willing to proactively work together and communicate to minimise duplication and inconsistency in regulation.

## **4. Unnecessarily Burdensome or Complex Regulation - Examples**

---

### **S105 Telecommunications Act reporting**

- 4.1 The Section 105 report is a requirement for telecommunications participants. The information requirements between 2004 and 2005 dramatically increased without explanation, despite consultation responses indicating that it would not be possible for all industry participants to provide all of the requested information. This resulted in inconsistent information provided by market participants and the s105 report became a 'fishing expedition'. In addition there was no explanation of how each particular piece of information would be used or its relevance to the reporting objective of the regulator, especially where information was not congruent between market participants. Vodafone is particularly concerned that regulators are allowing third party consultants to prescribe the required information, adopting a 'cast the widest net possible' approach to gather as much information as possible, rather than a targeted approach designed to meet genuine information needs.

### **Foreign Investment Review Board (FIRB) Reporting**

- 4.2 The Foreign Acquisitions and Takeovers Act 1975 requires notification of certain real estate agreements, including some interests required to establish



and maintain mobile network base stations. Vodafone has more than two thousand base stations and they are an integral part of Vodafone's mobile network. They usually consist of a small equipment cabin plus external antennae located on a building or other structure. Base stations are co-located with other carriers where practicable. Details of base stations are also entered into the National Site Archive, a web-based database provided by the Mobile Carriers Forum.

#### 4.3 Information currently provided to FIRB includes:

| Field                                 | Description  |
|---------------------------------------|--|
| Vodafone Site No. & Option Identifier | Site number and option   |
| Vodafone Site Name                    | Site name  |
| Site Address                          | Physical address   |
| Site Access Date                      | Date when Vodafone had consent from landowner to use site  |
| Lease/License Agreement Start Date    | Commencing date for tenure agreement   |
| Agreement Term & Options              | Term of the initial tenure agreement and details of any options  |
| Rental                                | Annual rental (\$)   |
| Commencing Date for Development       | Date when site development/construction commenced (Schedule C date)                                    |
| Site Type                             | Type of land acquisition (eg. vacant land, building etc)   |
| Structure Type                        | Civil structure type (eg Lattice tower, Building, DAS etc)   |
| Cost of the Development               | All costs associated with the planning, design and construction (including civil and equipment costs). |

4.4 In our view, and in the context of our overall business, the information that we are required to provide is unlikely to be of any significant value to FIRB and is quite onerous for us to provide. We recommend that FIRB reporting requirements be amended to exclude mobile network base stations.

## Taxation

4.5 The complexity of tax laws imposes a considerable compliance cost on corporations, especially telecommunication entities such as Vodafone. This complexity extends to Income Tax laws, GST, Fringe Benefits Tax and other taxes. The burden is increased further by the imposition of taxes at various tiers of Government; Federal, State and Local. Other Government departments also seek to access taxation data. For example Vodafone is required to complete Australian Bureau of Statistics labels in return forms. Vodafone's compliance cost in meeting these burdens includes internal resourcing to comply with regulations and external advisors to assist with process.

### ***Income Tax***

- 4.6 The introduction of Tax Consolidation legislation was intended to reduce compliance burden for company groups. However, legislation is complex in most respects, particularly the entry and exit of members from the group.
- 4.7 Tax legislation for telecommunication companies has at times also resulted in 'blackhole expenditure', specifically the deductibility for specific items of expenditure common to the telecommunications industry was not permitted under legislation.

### ***Fringe Benefits Tax (FBT)***

- 4.8 Despite attempts to simplify it, FBT legislation remains overly complex, for example the definition of 'Meal Entertainment'. Aside from an additional compliance burden the lack of clarity often results in overpayments of FBT.

## **5. Duplicated Regulation - Examples**

---

### **Consumer protection regulation**

- 5.1 Federal and state parliaments have devoted considerable attention to the regulation of contracts and contract terms. In addition, legislative changes similar to the unfair contract terms provisions of the Victorian *Fair Trading Act* have been foreshadowed by a number of states. This means that there is a substantial and growing body of law that, in effect, 'covers the field'. In addition Vodafone must also comply with the ACIF *Consumer Contracts Code* and also the provisions of *the Trade Practices Acts 1974*. Vodafone holds that the depth of replication of existing instruments and potential development of such is unnecessary and burdensome to business.
- 5.2 Vodafone encourages reforms that more closely align sector-specific regulation with general regulation that applies across all industries. This will ensure that a consistent regulatory approach is enforced across a wide range of industries – which is vital in a marketplace of convergent technologies, national operations and vigorous competitive pressures from outside what is traditionally viewed as the telecommunications industry.

## 6. Conclusion

---

- 6.1 Vodafone understands that when a clear market failure exists, regulation is necessary for the proper functioning of markets. In a competitive market, with no market failures, goods and services are allocated efficiently, which maximises the well being of the community. Price signals along with competition create production, consumption and product- mix efficiencies.
- 6.2 Where regulatory intervention is necessary any intervention must be proportionate to the problem that is to be addressed and the benefits to be gained must outweigh the costs and other resources needed to comply with the regulation. It is particularly important to ensure that the burden of any such interventions is borne by society as a whole, not just particular industry segments. Furthermore, where private property rights are diminished, adequate compensation should be provided to the holder of those property rights.