

4 September 2000

Future Scope of the Local Carriage Service Declaration

Thank you for the opportunity to make preliminary comments in relation to the making of a class exemption on terms similar to those expressed in Telstra's individual exemption application.

Although Vodafone is not involved in the supply of Local Carriage Services, we have a vital interest in any application of the LTIE test under s152 of the Trade Practices Act, and any associated impact on declared services, or proposals for declaration.

It is in this light that we have considered the Commission's discussion paper on the Future Scope of the Local Carriage Service Declaration ("Discussion Paper").

Vodafone agrees with the ACCC comments at section 4.1 in the Discussion Paper¹ regarding market definition. That is:

Identifying the relevant markets affected by an individual and class exemption will allow the Commission to analyse the level of competition in those markets and the effect of providing such exemptions. The markets identified may be those in which the wholesale access services that are used in supplying local calls are provided to services providers.....or downstream markets such as those in which local calls are provided to end-users.

....In most cases, this is likely to be the market for downstream services rather than the market in which the eligible services is supplied....

Relevant to this is that in the origin report on the declaration of a local carriage service ("Report"), in section 8.1.2, the Commission states²:

Telstra is the main supplier of local telephony services, with a market share of around 94 per cent. Service providers re-supplying Telstra services are the major source of competition. Although there is some competition from facilities-based operators such as Cable & Wireless Optus, this is limited.

Vodafone agrees that, at that point in time (July 1999) there was a market failure in the supply of local telephony services. Whether that was durable or ongoing, or would have been corrected by market forces without the need for regulation is debatable.

¹ Discussion Paper, page 16

² Report, page 104

A re-examination of the situation today reveals an entirely different situation. In the CBD areas in question, Vodafone understand that operators such as AAPT, Davnet, PowerTel, Primus, UeComm, and WorldCom, as well as Cable & Wireless Optus are all rolling out infrastructure. Shortly industry players will also have access to Telstra's unconditioned local loop, and wireless local loop technologies will become available.

In short there will be a multiplicity of suppliers of local telephony services, that is in the downstream market of supplying retail local call services to end users.

This should be the focus of the Commission's analysis. Vodafone considers the whilst the Commission is correct in its preliminary view³ *that it is necessary to consider the wholesale supply of the local carriage service in determining whether the proposed exemptions are in the LTIE*, this should be a secondary consideration. Certainly it should not be limited to such considerations, which appears to be the case in the ensuing discussion in sections 4.2.1, 4.2.2 and 4.2.3.

Focussing on the wholesale supply may lead to an erroneous conclusion.

Yours sincerely

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³ Discussion Paper, page 17