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## 2022 Policy Priorities for Real Competition Outcomes

### Speech for CommsDay Conference Melbourne, 17 March 2022

Michelle Lim, Chair Commpete

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#### Introduction

Ladies and Gentleman, my name is Michelle Lim, Chair of Commpete – the alliance for competition in digital communications.

Commpete is the united voice of new and established dynamic challenger communications companies, who are equals, many competitors of each other, but is an alliance working collectively to form consensus views advocating pro-competition policy.

Commpete welcomes new members – Circles.Life, Field Solutions Group and Superloop.

Combined investments of Commpete members last year exceeded \$250 million and turnover approximately \$1 billion.

Commpete has many priorities for 2022. Today, I will present our top 5.

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#### Context

- Many of our regulatory policies and settings are outdated. It is clear the sector is changing at ever-increasing speed.
- Despite this, competition regulation has not kept up with these changes.
- The Government and the ACCC have shown signs that they are aware of this disconnect between the law and its application in our rapidly evolving sector.
- Commpete commends the ACCC on its world-leading work on platform regulation and the Government for supporting the ACCC's position.
- But in other areas such as mobile, more action needs to be taken by the Government, and the ACCC.
- Current policy design is predicated on Australia having sufficient competition in our mobile sector. Nothing could be further from the truth.
- Mobile communications have never been more important. The use of mobile devices dominates our personal and business life in a way barely imagined when the current regulatory arrangements were put in place. That was around 25 years ago.

- We are especially concerned about the lack of competition in regional Australia.
- And this is a problem I know is shared by our members of Parliament who represent rural and regional constituencies.
- Today our 5 key points are:
  - Mobile Competition
  - Mobile Neutral Host Design
  - Future of NBN
  - Consumer Data Right, and
  - Numbering Reform
- In our sector, it is critical the Government prioritises achieving greater competition.
- This will mean consumers and businesses are the beneficiaries of more innovative solutions, greater choice and flexibility, and most importantly, greater value.

Everyone benefits from increased competition. This includes ensuring a flourishing wholesale market.

## **1. Mobile service competition and MVNOs**

- I'm going to start off by discussing what Commpete sees as the biggest and most important issue.
- With the development of new technologies such as 5G, there are unparalleled opportunities for innovation and diversity in the mobile sector, which will benefit ALL in the economy.
- But outcomes will be sub-optimal if left to the Incumbent MNO Club and MVNOs are not given the opportunity to actively participate and drive change through innovation and are able to challenge status quo.
- There is a dire lack of competition in Australia's mobile sector.
- Sadly, the challengers in Australia today (that is, outside of the big 4) still only have 9% market share of mobile, and 11% in fixed broadband.
- That market share is clear evidence that Australia's regulatory settings unduly favour scale and incumbency, and this-needs-to-change.
- We know that in many international markets, regulation in the mobile sector is guided by pro-competition frameworks which enable strong, independent challengers - to thrive.

- MVNO's occupy 30% or greater market share which is much greater than the 9% in Australia - and consumers in those countries are better off for that vibrant competition.
- Real competition can only be achieved when independent challengers – which are defined as NOT the MNO-brands and sub brands – are treated fairly, and given the basic access right to compete.
- This is something WE need to work towards achieving here, in Australia.
- Recently the ACCC found that MNOs have increased prices on post-paid plans (~3%), and effectively increased prices on pre-paid plans (up to more than 25%) by reducing expiry periods, thereby requiring more frequent recharges.
- MNOs have moved towards a “more-for-more” model meaning that consumers get higher data allowances. However, it is unclear what additional value consumers receive from this increased allowance.
- Traditionally, the ACCC has taken a ‘light touch’ approach to regulating mobile communications, largely avoiding providing regulated access to MVNOs (other than a basic obligation for terminating services to interconnecting carriers).
- This approach has clearly not been successful.
- The sort of dynamic, highly contested, innovative mobile market that should be expected in a first world country like Australia has failed to develop and it is clear that a more activist approach to regulation is required.
- The main forms of competition in the mobile market are now on non-price factors, such as bundling of extra content, non-mobile rewards and loyalty programs, geographic coverage, network quality, download speeds, and new pricing models on data usage (such as speed-limited data plans, tethering-limited data plans, and so forth).
- Of great concern to Commpete is that, because MVNOs rely on unregulated access to MNOs' infrastructure, MNOs are in an unduly strong bargaining position and are largely able to dictate the terms of service agreements.
- With the proposed Telstra/TPG deal, despite what is being said before it formally proceeds, there is logical and genuine risk it will become even more difficult for MVNOs to negotiate reasonable terms which enable them to compete effectively in the market.
- Commpete is concerned that this will reduce competition in the market even further.

- TPG will be significantly reliant on receiving wholesale access to the Telstra network, meaning we will effectively see the number of mobile networks in Australia go from (potentially) 4 prior to the TPG/Vodafone merger, down to effectively 2½.
- Since the merger with Vodafone, TPG has NOT established any substantial wholesale MVNO offering.
- Under the proposed deal with Telstra, TPG itself will be in the position of being like a large MVNO on the Telstra network - to a significant extent.
- In addition, it is far from clear what TLS or TPG will do at the end of the 10 year term of the bi-lateral commercial deal.
- Commpete calls on the ACCC to conduct an urgent and wide-ranging review of the mobile market with a particular focus on the actions required to produce a dynamic and competitive market for wholesale mobile services.
- Not only is the MVNO marketshare shrinking, but so is the number of MNOs – the only way to bring about competition is if the ACCC intervenes NOW.
- The outcome needs to ensure that MVNOs can multi-host and that they should be able to provide ALL of the services that the host MNO provides at the retail level AND in a timely way.  
It is unacceptable to continue to promote ongoing ‘retail lock-outs’ in our industry.
- Let’s commit to getting this done in 2022.
- Greater competition will support diversity for both small AND large players, drive innovation and improve outcomes for consumers, by providing them with greater value, flexibility and choice.

## **2. Mobile: Neutral hosting**

- Another big concern of Commpete is how acute the lack of competition in the mobile sector is affecting regional Australia, where choice and quality of mobile services are significantly limited.
- Extensive public funding for improved regional mobile infrastructure by all levels of government (including the Mobile Black Spot Program) have failed to address this issue.
- Rather, funding has been pocketed by the major MNOs to build their own networks, limiting any flow on benefit to consumers and ensuring there is no increase in competition from the investment of that public money.
- The Telstra-TPG sharing arrangements (which was conditional on decommissioning certain infrastructure) as I discussed earlier may only

compound this problem and is likely to not lead to improved services and network infrastructure for consumers and businesses in regional, rural or remote areas over an extended period required.

- Commpete considers that it is critical that any public funding of mobile infrastructure 'mandates' that access to such infrastructure is made available on an 'open access basis' to maximise the competitive and consumer benefit of those infrastructure(s).
- It was never acceptable for Mobile Black Spot money to benefit only individual incumbent operators.
- It should never be a fait accompli that public funding goes to one provider for exclusive use.
- Doing this has put a hand brake onto market competition and meant that consumers have not been able to access better value and increased choice of services.
- This could be facilitated by domestic roaming arrangements.
- Alternatively, Commpete firmly believes the neutral hosting model is one way in which greater competition can be encouraged.
- This is where an independent operator builds both passive and active infrastructure and allows open access to both MNOs and MVNOs.
- This model can achieve the economically efficient use of infrastructure and thereby improve coverage in both regional and metropolitan areas for the long term interests of consumers.
- It can also reduce the environmental impact of mobile infrastructure roll out which will become increasingly important in the emerging 5G landscape and hopefully for big business being brought to the bush.
- Some examples of this are seen in the NZ regional neutral hosting approach, the UK approach, and more recently the NSW active sharing partnership approach.
- All have merit and all represent improvements on current Australian practice.
- The NSW Government recently went out to tender under the NSW Government Mobile Coverage Program inviting participants to provide a response to participate in the Mobile Coverage Program Active Sharing Partnership.

The objectives of this are to establish fit-for-purpose commercial and delivery models for active network sharing. This tender closed in January this year.

Commpete strongly commends this proposal and considers the Government's stance, as progressive, and a step in the right direction to achieve stronger mobile competition.

We are of the view that any solution developed under this program, and other grant activity, should require active network sharing with MVNOs as well as MNOs in order to drive choice and competition in the sector.

- With the over \$800 million in Government grant funding, let's mark 2022 as the milestone in Australia's history where we change our approach for the 'benefit of all'!
- This means carriers who receive any funding should be required to provide active sharing with both other MNOs and MVNOs.
- Commpete calls on the Government and regulators to take active steps to encourage the development and uptake of neutral hosting models in Australia.
- The open access regime will create a more timely, dynamic, competitive market for both retail and wholesale.
- Doing this will deliver flexibility, value and choice and is in the long-term best interests of end users.
- Commpete assures you - we will look back at this year and think it was a '*no brainer*' that 'public funding' must promote 'public interests.' **And** - it should have happened sooner.

### **3. NBN Regulation and Future Ownership**

- Commpete is a long-time advocate for NBN.
- Removing the incentive and ability for discrimination by a vertically integrated operator remains the most important industry reform since the introduction of competition 30 years ago.
- But further reform is necessary.
- So, what does Commpete think should be the priorities for the coming year?
- There are three things we'd like to see.

**One**, we'd like to see the government begin to think about and specify what the NBN Companies Act calls 'unacceptable private ownership or control situations'.

- The reality is everybody assures us that privatisation is not on the agenda – until it is!

- Privatisations in Australia have had a patchy history in terms of public interest outcomes.
- The regulatory and policy framework has to be carefully planned.
- With the basic NBN construction completed, and in light of other structural changes to the telecoms market, now is the right time to start thinking through exactly what 'unacceptable private ownership and control situations' means.
- Commpete believes it is better to start the process now rather than leave it to be rushed in the heat of the eventual public debate over privatisation.

**Two**, we'd like to see NBN significantly reduce its cost base and move to a flat rate pricing.

We see one, as enabling the other. Because a lower cost base provides the headroom to lower pricing and does away with any need for the variable CVC charge.

- Frankly it is crazy that NBN's biggest return generating asset is not the \$29 billion it has spent building the network, but the \$36.2 billion in accumulated losses (the ICRA).
- Long term losses of this sort can never be recovered without major damage to appropriate wholesale pricing.
- The ICRA is not forecast to be recovered within the life of the SAU, which doesn't expire for another 30 years.
- We need to accept the commercial reality that long term losses of this kind can NEVER be recovered. The only course is write-off.
- It is going to have to happen eventually, and the longer it is delayed, the bigger any write down is going to have to be.
- And incidentally, for the Jobkeeper wage subsidies the Australian government spent about \$89 billion.
- Surely fostering greater internet utilisation by making NBN usage more affordable, would too - have relative public benefit.

**Three**, we'd like to see the ACCC deal itself back into the game by ensuring any revised SAU gives the ACCC a greater regulatory oversight of NBN to ensure its costs are efficient, its pricing is reasonable, and its terms are fair.

- Commpete was critical of the original SAU at the time for constraining the ACCC ability to regulate the NBN monopoly.

- The ACCC has flagged shifting NBN regulation to a similar price regulatory framework used in established utility businesses since it has now operational.
- This means replacing the current revenue cap with a weighted average price cap, which would shift the volume risk off customers and back onto NBN.
- The ACCC would instead like the NBN to have the incentive to stimulate greater demand by capping its prices rather than its revenues.
- This would help align NBN's pricing incentives with the original policy goal behind NBN, which was to maximise the economic and social benefits of the universal broadband.

#### **4. Consumer Data Rights in the telecoms sector**

- Treasury has recently released its design paper for the Consumer Data Right Rules and Standards.
- The Treasury position reflects Commpete's policy preferences.
- It is considering adopting a "de minimis" threshold for the designation of data holders who will be required to share CDR data under the regime (meaning that certain data holders would be excluded from these data sharing obligations based on their size).
- That is a sensible approach and reflects workable approaches currently adopted in other sectors, such as energy.
- Commpete's concern now is to hold onto the win, and avoid backsliding.

#### **5. Numbering Reform**

- And finally, Australia's Numbering Plan is out of date and no longer fit for purpose.
- In 2011, over 10 years ago, the ACMA released Futures Direction Paper in relation to the numbering plan, which envisaged – and I quote: "an actively managed evolutionary path is the more desirable approach to minimise the short-term adjustment costs to industry..." – unquote.
- Well, that didn't happen.
- While the Numbering Plan was redrafted in 2015 and was reduced from 280 pages to 115 pages.
- Australia's numbering arrangements are still tied to legacy policy measures such as inflexible number types (for example geo numbers tied to physical



locations), IPND, DNCR and taxation arrangements such as the annual numbering charge.

- The global trend is 90% of enterprise customers will be using cloud-based communications platforms by 2023.
- But looking at the Numbering Plan... Who would know?!
- Other jurisdictions for example have electronic addressing plans.
- We believe that infrastructure (whether it be mobile 5G, fixed wireless, satellite, FTTP) should be increasingly treated as a technology agnostic platform. Doing this will facilitate competition at the service layer and encourage our regulatory regime to slowly transition away from compartmentalised technology-specific regulatory silos.
- Commpete believes the government and the ACMA, as a priority, to consider HOW it could make Australia's numbering arrangements 'more forward looking and flexible' - to support innovation, and more uses.

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## Conclusion

In conclusion today:

- 1) Public funding must promote public interests
- 2) Public subsidies should promote neutral open networks
- 3) Wholesale mobile needs regulatory attention
- 4) NBN is a monopoly and needs to be regulated accordingly
- 5) NBN future ownership options should be considered now
- 6) Numbering reform is overdue and could support innovation
- 7) CDR implementation must recognise difference between smaller and larger players

On behalf of Commpete, it has been a pleasure to be here this morning.

We look forward to keeping you updated.

Thank you.