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ACCC submission to *Draft Five Year Spectrum Outlook 2019-23*

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to comment on the Australian Communications and Media Authority's (ACMA) consultation draft of its five-year spectrum outlook (FYSO) 2019-2023.

As the ACMA is aware, the ACCC has an interest in spectrum management and allocation as it is an essential input to the provision of wireless services in downstream markets, which we regulate.

As the national competition regulator, we consider that spectrum management and allocation should create an environment where the competitive process can develop, and rely on that process to deliver better outcomes for consumers, such as better quality networks, improved coverage and lower prices. Access to spectrum is critical to the ability of operators to provide wireless services and compete effectively in downstream markets, and as such is both an enabler and a barrier to entry in wireless markets.

We consider the FYSO is a useful planning tool and we have provided some feedback in response to specific issues for comment below.

Issues for comment

Question 5: Do you have any feedback on optimising established planning frameworks?

We consider the ACMA's existing spectrum planning frameworks could be optimised by increasing the transparency around the process for dealing with expiring spectrum licences for major bands. There are limited opportunities for interested parties to acquire spectrum, and the reissuing of expiring spectrum licences or administrative reassignment of apparatus licences is a key opportunity for such acquisition (outside of new allocations).

We consider it should be the exception (rather than the rule) to return expiring spectrum licences to the incumbent licensee without comprehensive market testing for new demand or

evaluating the incumbents use of the asset (in the case that it has been underutilised for example). We consider that more transparency, through a public report or other document that outlines the reasons for rolling forward expiring licences, will assist market participants, policy and regulatory decision makers, and the community more generally, to understand the benefits from extending expiring licences.

In the absence of market testing, the current market structure risks being locked in, which can not only impede downstream competition and consumer outcomes, but may also risk the realisation of the highest value use of the spectrum resources.

We recognise the importance of certainty for spectrum licensees and the consequences for investment and continuity of consumer services if there is insufficient certainty. However, we consider the *Radiocommunications Act 1992* created a presumption that upon expiry, spectrum licences would be returned to the market (rather than rolled over), which is yet to occur in practice. We understand that all of the expired 15-year spectrum licences to date have been re-issued to incumbents under the Act's public interest provisions. We consider there could be more transparency around the decision making to return these licences to incumbents.

We also consider there is significant merit in testing the market periodically for new demand. In practice, this could be a consultation paper prior to expiry of a major spectrum licence and internal consideration of how the spectrum is currently being used.

Question 6: Do you have any comments about the ACMA's approach to the forward allocations, or the prioritisation and timing of allocations?

We note the proposed allocation of the 850/900 MHz bands and 26 GHz band have both been scheduled for Q1 2020-2021.

While we support the reconfiguration and allocation of the 850/900 MHz band and acceleration of the allocation of 26 GHz band, we are concerned about the concurrent allocation of these bands.

In particular, we consider that holding two major spectrum allocations concurrently will disadvantage some prospective bidders, given the regulatory and financial burden associated with acquiring any new spectrum. We are also concerned that an inefficient outcome may result from the auction, noting the unsold lots of 700 MHz spectrum at the Digital Dividend auction.

Spectrum acquisition is a major investment for any mobile network operator, and raising capital to support investments in two major auctions may create an additional challenge for some operators.

In the event that an operator is unable to participate in an auction, or unable to acquire sufficient spectrum, this could have negative consequences for competition in downstream markets such as poor consumer outcomes if network quality or coverage declines.

Further, we have some general concerns about the current design of spectrum allocations, and the lack of weight given to downstream competition. At present, spectrum allocations typically focus on ensuring a technically efficient outcome (such as the allocation of spectrum without interference) and allocative efficiency (such as allocation of all available spectrum). While we support these objectives, we consider these could be enhanced by also placing emphasis on achieving economic efficiency and taking into account competitive outcomes in downstream markets.

We note that there are a range of tools used in spectrum allocations to promote competition in downstream markets internationally, such as spectrum set asides or licence obligations, including coverage and/or speed requirements.

Question 7: Do you have any feedback on the ACMA's approach to improving how we manage spectrum?

We support the ACMA's general approach to managing spectrum and balancing a number of competing objectives and demands for spectrum. However, we consider the ACMA's current approach could be strengthened by including an explicit objective in the spectrum management principles that recognises how spectrum allocations can impact competition in downstream markets.

We appreciate that the ACMA does take competition considerations into account in their current spectrum management processes. However, in the absence of an explicit objective in the framework, we are concerned that downstream competition may be overlooked or be given insufficient weight and consequently, the economic value of spectrum and its corresponding public benefit, will not be maximised.

In particular, we believe it is important to clearly distinguish between competition in wholesale markets *for* spectrum and competition in markets that *use* spectrum.

For example, Ofcom, the UK communications regulator that allocates spectrum, issues a public statement about market conditions and competition issues that may affect a spectrum award as part of its spectrum planning process.

In this statement, Ofcom seeks feedback on the potential impact that market changes may have on both spectrum efficiency and on competition, as well as other technical allocation issues. Under the ACMA's current spectrum management and allocation framework, we consider there is an opportunity to place more focus on competition issues in markets that use spectrum, such as downstream wireless markets, as opposed to competition issues in wholesale markets for spectrum, such as during the allocation phase.

Spectrum is central to competition in wireless markets (among others) as the amount of spectrum held by an operator is a determinative factor in the price, quality and coverage of its services. As such, it is a critical driver of competition and in the absence of sufficient spectrum across relevant frequency bands, a mobile network operator will be limited in its ability to compete effectively.

We consider the ACMA could more explicitly seek feedback on the state of current and future competition in relevant downstream markets that use spectrum as part of its spectrum management and planning processes, such as the FYSO and individual spectrum band consultation processes. The ACCC would welcome the opportunity to work with the ACMA on examining the state of competition in relevant markets.

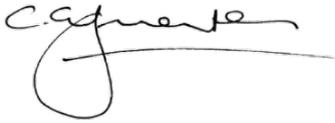
Conclusion

Spectrum planning decisions have a significant influence on competition in downstream markets as the use of spectrum in an efficient and competitive way is fundamental to future growth and development of a range of services and applications across different markets.

We consider it is imperative that competition is more explicitly taken into account during the early planning stages of spectrum allocation, such as the FYSO, and that the market is regularly tested for spectrum demand and value, in order to achieve the optimal allocation and highest value use of spectrum.

The ACCC welcomes the opportunity to continue to engage closely with the ACMA on future spectrum planning and would be happy to discuss any of the views provided in this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'C. Cifuentes', with a long horizontal flourish extending to the right.

Cristina Cifuentes
Commissioner