

Australian Information Industry Association's *Convergence Review*

Response

Background

This submission is made on behalf of the Australian Information Industry Association (AIIA). AIIA represents suppliers of information technology and telecommunications goods and services (including carriage and Internet service providers). AIIA has over 350 member companies that generate combined revenues of more than \$30 billion, employ over 100,000 Australians and have exports of over \$2 billion.

From AIIA's perspective, it is timely that the Government is carrying out this review and, whilst both structural and regulatory convergence has been taking place for some time, a stocktake of some future impacts of the consolidation of quite discrete industry sectors is worthwhile. Clearly industry convergence is well advanced as a process and it is imperative that the Government addresses and manages the complex industry and policy development issues associated with the impact of convergence, mindful that convergence is not an automatic trigger for more regulation.

Rather than trying to address the full range of issues identified in the *Review*, AIIA has concentrated on high level issues and focuses on the role governments could take in the next few years, as it is not possible to forecast what a fully converged environment will look like or when it will occur. AIIA suggests that rather than convergence providing a rationale for more regulation, governments should be involved only where there is an identified market failure or a clear national interest that needs to be met. It may well be preferable for governments to focus on reviewing current regulation with a view to removing requirements that will impede the convergence process.

The challenge here, as computers, broadcasting and telecommunications converge, is to understand how existing regulatory structures can be flexible enough to meet the changing nature of increasingly "global" industries. Put simply, how do we support the shift from "connections & carriage", which has its own set of regulatory impacts, to "content and commerce" which has another set of regulatory imperatives?

Executive Summary

The *Review* has opened up many areas of debate. One of the most significant is a discussion of the relevance of government intervention and the need to justify the relevance of that intervention.

From AIIA's perspective, it is imperative that governments facilitate a migration towards non-industry-specific and technology-neutral regulation that enables markets to determine outcomes within clearly defined, and already agreed, competition principles.

Regulatory interference for its own sake is not a desirable outcome. Government does have a role to play in assessing current regulatory structures and processes to determine, in consultation with industry, whether there are opportunities to streamline legislation and regulation to enable rather than hinder industry development. Markets must be given an opportunity to work and adjustments made only if and when markets fail and when social goals and objectives are not met satisfactorily. The greatest achievement for governments to aim for would be less regulation, certainly not more.

Understanding what it is that needs regulatory intervention is important and requires more analysis. Concentration on outcomes is important. Three useful areas to guide that discussion are:

- Australia's investment attractiveness
- Australia's ability to retain and develop a suitable skills base
- Australia's international competitiveness and ability to support an export base which focuses on information and services

It is correct that "...national outcomes sought by the Government do not change with technology, and this review takes these outcomes as given. The emergence of a new industry environment raises two kinds of issues for Government policy makers. The first kind of issue is about the relevance of Government intervention in a new industry context. The second kind of issue is about the effectiveness of Government intervention".

The greatest challenge for governments is to identify, in partnership with industry, where its involvement is most relevant. In a converged environment, the relevance of national governments to have an impact on a "global" market is under question. It remains then for governments to foster domestic opportunities and protect them from negative international impacts such as dominance of content provision, dominance in access services or dominance in control of bottleneck services through international trade barriers.

In summary, it is AIIA's view that the most effective government interventions are those which allow industry to do what it does best, including choosing the technology; to provide clarity with respect to policy intentions and end-user outcomes; to ensure that the investment and tax climate

is conducive to developing globally competitive industries; and to ensure that competition is allowed to flourish.

Achieving these outcomes requires answers to the regulatory transition management questions posed in the *Review*¹. To answer those questions consistently, with the broadest possible consultation, further work needs to be done with key industry stakeholders, consumers and regulators.

Commentary

AllIA's response focuses on structural and policy issues in addition to canvassing some views on the utility of regulatory interventions by Governments.

Predicting when convergence will be complete is an impossible task. At present though, it is relatively clear that, whilst convergence is happening, there are still distinct areas where it hasn't happened yet. For example, the media, information technology and telecommunications industries are still quite distinct in Australia and in most economies around the APEC region.

Networks that exhibit the characteristics of "convergence" are fast developing but major distinctions between, for example, broadcasting and telecommunications networks still exist. The most obvious consumer applications such as TVs and PCs are still not substitutes for each other – indeed, home-based PC penetration is still at fairly low levels whilst multiple household TV set ownership is common in some countries. In terms of services, broadcast, VCR and CD-ROM are converging in their applications but are a long way from being fully integrated.

Metrics to determine the impact of convergence are difficult to implement and harder to verify, but some simple indicators are the growth of Internet use, the uptake of electronic commerce and the widespread adoption of email, Intranet and Internet applications. Whilst we debate the impact of convergence and adapting regulatory structures to support evolving information industries, many underlying principles and industry characteristics will remain constant.

However, as convergence gathers momentum, the current regulatory segmentation across industry sectors may cause problems, for example, the different treatment of free-to-air TV to similar services. Conflicting jurisdictions create uncertainty, inconsistency and distort outcomes by directing investment on the basis of regulatory advantage. Regulatory delay has an impact on both business and consumers and the most heavily regulated suffer unfairly under the burden of

¹ In particular, Section 4.4 Questions 33 – 35.

regulation in a changing environment. This submission addresses the impact of some of these issues in the discussion below.

Policy Principles

AIIA's approach to regulatory policy principles is consistent across a number of different areas.

The key characteristics of the industry sectors involved in the convergence process include:

- rapidly changing technology, in both carriage and services
- globalisation of activity and the decreasing importance of geographic boundaries
- an increasingly sophisticated "global" consumer market
- enormous diversity in the interests, size and scope of individual AIIA members
- the key enabling role the industries play in advancing economic growth within countries

In developing policy responses in an environment like this, it is a real challenge for governments to have regulatory frameworks that can accommodate and facilitate changing circumstances. At the same time, it is imperative that any regulatory structure provides an environment in which a sustainable and world-competitive information industry can develop. From AIIA's perspective, these policy responses should reflect that:

- an industry self-regulatory model should be the preferred approach and formal regulation used only when necessary, for example, in the case of health and safety
- mandatory requirements are kept to a minimum
- international standards are used as a benchmark
- technology neutrality in that carriage and services are treated the same, irrespective of the actual technology used
- investment and procurement decisions are made on a commercial basis
- prospects for achieving world best practice in service, price and the deployment of new technology are maximised

Outcomes

To realise the benefits of convergence in terms of better services and cheaper prices for end-users, any adjustment of regulatory responses must take into account the following factors:

- facilitating the knowledge economy and, more particularly, the trade in information and services
- enabling access to information and services by consumers
- lower transaction costs

- choice in commerce and entertainment

In doing that, we would wish to avoid:

- static regulatory frameworks
- larger regulatory commitments and any unnecessary regulation which is a barrier to commercial entry rather than a facilitator
- regulation which focuses on technology-specific solutions rather than the competition effects which include control of market dominance, consumer choice and downward pricing trends
- regulation that distorts commercial and investment decisions on the basis of regulatory advantage

Structural Issues

In an increasingly blurred regulatory environment, where there is decreasing separation between the computer, broadcasting and telecommunications industries, it becomes increasingly important that any change to regulatory structures and processes should be in response to market failure rather than regulation for its own sake.

We need to be clear about what it is we are regulating, what we want to achieve and what really needs to be done. In the interim, it will remain imperative to have:

- independent and appropriately resourced regulators
- transparent regulations to deliver investment certainty, and
- appropriate dispute resolution processes which reach decisions quickly, fairly and with minimum cost

In essence, the challenge is to manage a transition from separated telecommunications and broadcasting industries governed under different law and regulations by different regulators with very different constituencies, public policy positions and revenue streams.

We would then, perhaps, evolve to a regime that is more concerned about market behaviour where market dominance and where the impact of the misuse of market power continues to be the trigger for regulatory intervention.

It is in this environment that AIIA supports a review of the current regulatory regime. One positive outcome from any review of regulatory and legislative frameworks in this context would be to revisit the roles of the various regulators as they currently exist and to identify opportunities for streamlining operations in response to industry convergence.

Policy Objectives and Regulatory Responses

The appropriateness of regulatory intervention and the opportunity for governments – both Federal and State – to play a key enabling role in a converged industry and marketplace needs further examination. Australia has developed successful telecommunications, broadcasting and IT industries via a combination of industry self-regulation and industry development coupled with clear government policy objectives in a number of crucial areas - most notably, in competition policy which aims to encourage innovation, choice and price reductions for end-users.

In the context of the *Review*, it is worthwhile to look at some issues in detail as they present both the greatest challenges and most valuable opportunities for Australian industries in a global “information” market place.

The existing Australian regulatory structure is well understood. Competition principles and practice become even more important as industries converge and new dominant players emerge – for example, those that own customers, content, the means to carry the content and the means to prevent others from entering any portion of that market chain.

Other issues include the following.

On-line content regulation

This issue provides a good example of where government intervention can place an unnecessary and onerous burden on the Australian information industry. The implementation of on-line content regulation has imposed a heavy, industry-specific burden on network operators, service providers, content providers and users.

If Australian business is fettered with unreasonable and impractical – both commercial and technical - regulation that is expensive and difficult to comply with, one could only expect operators in that sector to move their operations out of Australian jurisdiction. Regulation in this area should be industry-driven and focus around agreed codes of practice and they should be consistently applied by the various States and Territories.

AIIA supports the use of codes of conduct as the basis of a self-regulatory regime. This aligns with the approach adopted since the 1997 *Telecommunications Act* reforms and which are broadly supported by industry.

Digital Broadcasting

The digital broadcasting debate is another case in point where government intervention can create barriers to convergence. The emergence of the digital economy is having a profound impact on the community and specifically on AIIA members as suppliers of information technology and telecommunications goods and services. The Government is now at a crossroad as to how it should regulate for the allocation of spectrum to the diverse field of potential digital players.

In relation to the HDTV debate, AIIA has consistently argued that it is not the role of the Government to mandate the technology, but to allow the market to choose the most viable option. In this environment, market pressures will determine the development of viable HDTV products and services. Those consumers who wish to obtain some of the digital benefits can do so at a lower cost simply by accessing SDTV.

It is AIIA's view that decisions with respect to this and future converged industries must be made in a regulatory environment which moves towards generic, non-industry specific operating conditions, away from technology and service specific licensing conditions.

Datacasting

In relation to the debate on what constitutes datacasting, it remains AIIA's view that the Government should resist the temptation to be too prescriptive in defining a datacasting, or indeed any other, service.

While acknowledging that there is a need, under the current regime, to retain a regulatory distinction between what is broadcasting and what is datacasting, it remains AIIA's view that as broad a definition as possible of datacasting be established.

If too narrow a definition is adopted the emergence of datacasting technologies and the involvement of new entrants will be compromised. If the definition is such that it simply extends to the free-to-air broadcasters an opportunity to use their market strength and position to dominate the emerging datacasting services market, there will be little incentive for new entrants to emerge.

In the long run, a situation could emerge where Australian consumers are offered a smaller suite of datacasting services than consumers in other countries. This will limit local industry and service development, restrict export opportunities for services, deny the benefits of competition and drive consumers to services and technologies originating from overseas.

Access to bottleneck services ²

Bottleneck services are those which constrict the provision of inputs for the competitive supply of products to end-users. Control of bottleneck facilities – whether it is access to the local loop, access to both domestic and international Internet backbone, transmission capacity, spectrum or crucial customer data – has an impact on a converged industry. Australia has well-tested, practical measures for addressing anti-competitive conduct and access issues via the ACCC and the competition principles within the *Trade Practices Act*. The principles and their practical effect are crucial in a converged environment.

In the context of the *Review*, it is important to recognise the possibility that currently identified bottleneck services may no longer exist, that new bottlenecks may emerge and that a progressive wind-back of industry specific regulation may address the changing nature of access services.

In the case of access to international backbone, one complicating factor is the impact of networks rather than geographies on regulatory issues. Where does the dispute about access to international Internet backbone lie? In AIIA's view, this lies firmly within the domain of networks and commercial negotiations and not within the purview of any existing Australian. How is it resolved? Again, in AIIA's view, this is, in the absence of global regulatory jurisdiction, by commercial negotiations on a global scale, outside the range and reach of both governments and regulators.

In the domestic context, access to bottleneck facilities can be resolved (albeit sometimes slowly and litigiously) with the ACCC. In the context of convergence, the issue becomes one of regional and global importance where, although substantial in regional terms, the Australian "convergence marketplace" punches below its weight. Questions that need further exploration in the context of the *Review* are outlined in the footnote.³

The question of whether the definition of access to services (in the telecommunications context, declared services) should be extended is one that could be referred to an industry body such as the Telecommunications Access Forum or the Australian Communications Industry Forum for further discussion.

² There are a number of questions in the *Review* to which this section relates, in particular, Section 4.2 Question 3, 4 and 13. The most important issue to address here is the characterisation of the problem of access to Internet backbone currently dominated by Tier One global carriers, principally based in the USA. This matter has been the subject of a detailed APEC Tel study, the results of which can be found at <http://www.apii.org.kr/telwg>.

³ In particular, further examination of Section 4.2, Questions 2 – 6 which really address the impact of the "access principles" embodied within what has been considered as "telecommunications" regulation rather than "access to bottleneck facilities" more broadly.

In summary, access to services upon which the delivery of electronic commerce and multimedia applications to end-users relies is a policy issue for government. The Federal Government, for example through its On-Line Australia initiatives, has been clear about its intentions to facilitate access to a digital world. That intention, in a converged environment, needs closer policy attention and clear identification of desirable “new millennium” outcomes.

International Standards

Self-regulation is central theme of the Government's approach towards managing an evolving industry environment. AIIA fully supports this approach and believes it should be applied generally across the information and communications industries. While there may well be circumstances, such as health and safety requirements, that may justify the introduction of mandatory regulations, the starting point must be that industry stakeholders develop acceptable codes of practice.

AIIA has had most experience with self-regulation in the telecommunications industry and, in particular with the impact of international standards on the industry. It is vital for Australia to participate in the work of the ITU, ETSI, IETF and the US T1 Committee and the new key standardisation forums, outside of the traditional forums, that are being established for new technologies. Australia may be called a “standards” taker, but government support for the efforts of industry in international forums can make that into an opportunity and have key local requirements taken into account.

Sensible technical standards are a key enabler of convergence, providing investment and technical clarity and allowing quicker entry to market of new products and services.

Skills Development

The demand for IT&T skills has been quantified in a number of different ways, including in the September 1999 IT&T Skills Task Force report, and provides a base for policy makers to understand the skill requirements as convergence progresses. It is clear that the skills deficit will remain an issue and that there is a good opportunity for government, industry and academia to co-operate and ensure that efforts to develop and retain skills in Australia as the global marketplace expands are successful.

Spectrum allocation

The issue of spectrum, as a precious physical resource, is of major significance in a discussion about the impact of a converged industry. The challenge for the Government is to provide a reasonable and robust framework for the allocation of spectrum and then allow commercial and

market processes to deliver value to end-users. Market-based allocation ensures “best price” outcomes; does not limit the end use of spectrum which encourages innovation; and ensures, again, that industry specific regulation does not unfairly burden service providers.

It is AIIA's view that spectrum allocation should be carried out in a competitive environment. The market is best placed to make decisions on spectrum use, particularly in circumstances where there is rapid technological change and untapped demand for solutions.

In a broader context, it is also important to take account of the global identification of spectrum band usage to ensure that Australia is consistent in its allocation processes. For example, the ITU and other regional standardisation bodies have agreed that a particular band is to be used for wireless local loop applications and it would be sensible if Australia followed suit.

Conclusions & Future Priority Questions

It is clear from the *Review* that the work of understanding the impact of merged industries is only just beginning.

The *Review* identifies a wide range of questions which remain unanswered in the analysis and which require prioritisation and further input. The questions provide opportunities for ongoing analysis and discussion between government, industry and regulators and this is a process that AIIA can facilitate as a peak industry body.

The impact of technology on policy and regulation is of primary importance. Further understanding of the impact of globalisation on regulatory interventions is also of great importance and an area that needs further detailed study in the context of Australia's place in international forums such as ICANN, the ITU, the OECD and APEC.

In summary, two service sector business systems are currently in contention, each with its own preferred industry structures and business models.⁴ The first system is exemplified by the traditional industries of telephony, radio and television. The Internet and the networked applications that are deployed across it exemplify the second. The service sector is in transition between these paradigms, and this transition will be a costly and complex process. It is the management of the transition, rather than the management of convergence *per se*, which is the greatest challenge for both industry participants and governments. As the *Review* says, “. . . Government intervention matters. It is an important determinant of industry structure and performance, and will affect industry's ability to adapt to the new environment”. Government

⁴ A detailed analysis of the shift from a telephony to an Internet model can be found at “Netheads vs Bellheads”, <http://www.tmdenton.com>.

intervention is even more effective when undertaken with close consultation with key players. It is through this consultation that strategies can be implemented that achieve desired outcomes and deliver commercial success and consumer satisfaction.