

## Day 1 – Rod Sims

Teresa Corbin: OK. Welcome back, after afternoon tea. I'm very pleased that I get to introduce Rod Sims. We've wanted him to come and present to one of our conferences like this for a little while, so I was very glad that he accepted.

Rod Sims: Have I said no before?

Teresa Corbin: Well, we may not have invited you to every one, Rod! But affordability is one we absolutely had to have you here. I did ask Rod for his best affordability tip. It ended up being "What are your best, most affordable apps?" We ended up on the AFL app. A mixed bag for Hawthorn this year. Anyway, please welcome Rod.

(APPLAUSE)

Rod Sims: Yes, and I know that's not so much an app but a website, but it is the one I'm using most when I'm not looking at my emails. Anyway, look, thank you very much to ACCAN and Teresa for inviting me here. I'd be stunned if I've ever said no before, but I apologise if that's ever happened for timing differences. I've got a speech here which is a little bit longer than 20 minutes, so I will not go through it all, but it's on the website if anybody's interested. So I'll sort of try and paraphrase a bit on the way through to make sure that we leave time for questions.

The theme of the conference is dear to our hearts, as Teresa implied, although the term "affordability" is not always prominent in our language - it's really implicit in just about everything we do. As you know, we get involved in Consumer Protection, we get involved in competition enforcement, and we get involved in economic regulation. So we're heavily involved in this sector from a range of perspectives. And always we're trying to make markets work because efficiently functioning markets are the best way to get consumers the best prices, and sometimes these markets aren't perfect and you need to do a few things to our regulatory role which we're often doing. Today I was just going to talk a bit about our roles in promoting competition, also talk about our roles in mergers, which is very much part of that. Secondly, talk about our enforcement work. And thirdly, talk a bit about - talk more directly on the affordability issue. Then, as I say, very keen to take questions.

Our role in regulating communications is first to promote competition and, in our view, the gold standard is to have infrastructure-based competition where you can - that obviously works better in highly populated areas in cities, like where we are now, and that leads to very good outcomes. Since the industry was open to competition in the 1990s - and I'm one of those few people who've been involved with the industry since the late '80s, much more probably off than on, and so have seen all of these developments - we have, as a result, seen dramatic reductions in the price of telecommunications services, and we've seen significant infrastructure investment. Of course, you never know what would have happened otherwise, but I'm extremely confident that we've got much better services and lower prices than we would have had without competition. Since '97-'98, the average price of fixed and mobile services has fallen by around 50% in real terms.

In terms of broadband, the effective price per gigabyte has fallen from approximately \$30 in 2007 to less than \$1 today. I suspect you know most of those figures, but it really is quite dramatic, so it's worth being reminded. The second way our infrastructure regulation works is to make sure that there's sufficient use of and investment in the infrastructure. This involves in regulating the monopoly networks - obviously a price that's too high is going to damage affordability. Prices that are too low are going to damage investment. So we're constantly juggling those two goals when we

regulate infrastructure. That's why nobody's ever happy with our decisions. If you're the investor, you think we've put the price way too low. If you're the user of the service, you think we've put the price way too high. I've jokingly said in the past we're only happy when we're getting equally criticised from both sides. When I said that recently, a journalist took me to task because he thought I was serious. Anyway, if we're not getting criticised by both sides, it is a bit of a worry. Our approach to - I really do believe that our approach to regulated pricing has assisted the take-up of the unconditional local-loop service.

It's assisted with investment in DSLAMs, and it's assisted in innovations such as the launch of ADSL2+ services. Equally, the regulation of the transmission network plays a very important role. We regulate, um, particularly transmission in regional areas. We're going to be releasing our draft decision on transmission in regional areas shortly. That decision will see prices for those regulated services continue their downward trend, and we'll be releasing details on that very shortly. But more price reductions to come there. You might also have seen our recent decision to set prices for mobile-terminating access, the mobile-terminating access service - we've set prices there at \$1.77 per minute, down from \$3.06. For the first time, we've priced SMS termination - and we've done so at \$0.03 per SMS. While these rates are, of course, for wholesale services, we do expect and believe we will see reductions to be passed on to consumers either through local call rates they directly get charged, or perhaps more likely through more inclusions in plans. So one way or another, we believe those price reductions will come through and we'll be keeping an eye out to make sure that that happens. Obviously we think all this helps affordability. Just briefly turning to merger issues - these are always very tricky. I think everyone here would be aware of our recent decision on the acquisition by TPG of iiNet. We cleared that acquisition after fairly close scrutiny.

That leaves Telstra with a 41% share, TPG/iiNet combined at 27%, Optus at 14%. The question we always have to wrestle with is - where do we draw the line? It's not a black-and-white - it's a judgement call. We did, in making this judgement, take comfort that TPG would continue to face three major competitors post the acquisition, and I've said publicly and I'll say again today, that we would have, of course, no such comfort in the case of any of the subsequent players acquiring one another so that we went from the current four players down to three as things stand - we would find that very difficult to approve. So in a sense, TPG/iiNet is where we've drawn the line in the sand. I suspect there's members of the audience who'd have wished we would have had the line somewhere else, but that's where we drew the line. In the media industry, we have also merger issues in front of us. Of course, technology is changing things rapidly in media.

This year, we've seen a huge growth in subscription video on demand. Netflix has reportedly gained 1.6 million active viewers with around 900,000 being paying subscribers - not quite sure what the actual numbers are, but I think there's enough to say it has taken off. We all know Nine and Fairfax have also launched their own subscription video and demand services. Stan - I'm honestly not sure where they came up with that name - and Presto, to make three significant players. As we all know, and people here know better than I do, consumers can download content such as TV shows and movies on a pay-per-view basis or to own outright. I have to say, in our household, most of television is watched on a computer, not on a television anymore. Traditional content providers, of course, make their content available over digital platforms by launching apps for catch-up services like iView and the like. The result is that traditional broadcasters, both free-to-air and pay TV, are offering a blend of linear and on-demand content distribution to retain viewers, as consumers' viewing patterns change. There are also signs that the traditional free-to-air and pay TV broadcasters are increasingly focusing on content that viewers particularly prefer to watch live, such as sports, news, and reality TV.

I'm afraid I'm too old for reality TV, but I do understand it's very popular. In this context, we are considering a suite of acquisitions between Foxtel, Ten and MCN. You have Foxtel taking up to 15%

of Ten, you have Ten taking nearly 25% interest in the Foxtel-owned MCN, and Ten has an option to take 10% of Presto - it's quite a range of acquisitions. MCN is an advertising business. It sells advertising on Foxtel and on other subscription platforms, including Fetch. It also sells online advertising for Telstra media. The proposed arrangements would see MCN enter the market for free-to-air advertising. So we're conducting extensive inquiries in relation to this merger. We're focusing on three things - firstly, will Foxtel's tie-up with Ten's (inaudible) for sporting rights? As we know, sports programming is very important. In 2014, 5 of the top 10 highest-rating programs on free-to-air primary channels were sport or sport-related, and all of the top 20 highest-rating programs on subscription TV were sport.

That is of no surprise to me. We're assessing whether, for example, the tie-up with Ten would result in Foxtel having an incentive to partner with Ten in preference to other free-to-air networks in bidding for sporting rights, and whether that could result in the most popular sporting matches being shown live, exclusively on Foxtel. Second - will Foxtel's tie up with Ten substantially lessen competition for other non-sports content, resulting in TV shows and movies being available on first release on Foxtel rather than free-to-air? Of course, I'll emphasise these are, of course, linked to affordability issues because watching free-to-air versus subscription television is very much an affordability issue. We're also looking at whether Ten's acquisition of a stake in MCN would substantially lessen competition in the supply of advertising - that is whether MCN would be likely to offer advertising on a bundled basis across Presto, Telstra, Ten and Foxtel and, in that way, substantially lessen competition. In answering these questions, a key issue would be looking at the extent to which Foxtel, or related parties of Foxtel, would have the ability to influence and control the operations of it in the event the mergers proceeded.

These are very complex issues, and we are currently deeply engrossed in them. So that's the competition side. Let me just talk a bit about enforcement. We take truth in advertising very seriously, both for consumer purposes so the consumers are getting what they pay for, and also for competition, and the competition is really important as an aspect of truth in advertising. If people can get away with ads that are untruthful, they drag others down, or they out-compete people who are telling the truth. And that's not what we want. We're currently turning our attention to waterproof mobile phones, where we've had a number of complaints - both ourselves and the TIO. You would have seen representations by phone manufacturers or retailers that a mobile phone handset is waterproof. Some include pictures of phones in and around pools.

Consumers have complained that, after using their phone in or near water, their phone no longer works. Retailers have pointed to fine print which states that waterproof or water-resistant - state exactly what waterproof or water-resistant means, and more importantly what it doesn't mean, but we're concerned that that's in the fine print and that these qualifications aren't clear. So we are also concerned that people who have these phones and take them back are not getting their consumer guarantee rights. So this is a situation where we're doing what we always do - we're putting people on notice, we're saying "Fix your game." Of course, if they don't, then enforcement action follows. But we usually like to give people a warning so they can sort things out themselves. But if they don't, we will take action. Just as we've taken action where the whole price of the advertisement - the whole price of a product is not made clear.

We recently - iiNet recently paid penalties of \$204,000 after we issued two infringement notices concerning certain iiNet advertisements. We felt that they failed to prominently state the full price. Again, this is both consumers getting misled, but also a competition issue. If we don't step in and say where the line is in terms of advertising, then there'll be a race to the bottom. So these issues are very important. In December last year, Telstra paid a penalty of \$102,000 after we issued an infringement notice concerning their iPhone 6 advertisement. We considered that it also

misrepresented consumers the price of the phone and the phone plan bundle in a way that we judged to be misleading. It was different to the way its competitors were doing the advertising.

Just briefly on the TCP code - I think everybody here is across this issue, but we certainly were very disappointed by the extent of the proposed changes to the code. We were concerned about proposals to remove provisions around advertising, selling practices and unfair contract terms. We've been working very closely with Comms Alliance, ACMA, and also ACCAN, to try and get things improved. We felt that the code did make a very great difference when it was introduced.

There have been a lot of complaints in relation to telecommunications issues and, since the introduction of the code, there's been a marked increase in complaints, particularly with the TIO. So we think the TCP code is an essential component of the consumer protection framework, and we're pleased that it looks like it's going to continue to play that role. Finally, just some comments on affordability, more targeted comments. As I've said, the data shows quite dramatic reductions in the price of telecommunications, but of course the other side is looking at people's incomes. For example, according to ABS data, the proportion of households with internet access differs markedly with income. So in 2012-13, 96% of households in the highest quintile had internet access, while only 59% of households in the lowest quintile did. While this may change, a key issue in the question of affordability is the nature of the services. I mean, what is an essential service that should be affordable? And what don't we need to worry as much about? It was not that long ago that fixed telephone line was the only essential part of communications.

Of course, now, mobile telephony has exploded and a mobile phone would, I think, now be considered an essential service for consumers. And we may be getting to the point where we all consider that smartphones are an essential service. Fixed-line phones are dropping off. An increasing number of households no longer have a fixed line. With the roll-out of the NBN, broadband will become more available, and I think most people here would regard that as an essential service, having access to a good broadband connection. Um, I mentioned earlier Netflix - I doubt that people would regard that as an essential service. So the challenge we face in looking at the essential services is - what are the goods that we regard as essential that we want to be affordable, and what aren't we concerned about? So you can't really sum up affordability in one number. We see falling prices for particular services but, of course, as new services come in, they have very high prices. There's a lack of data on affordability.

Particularly, I can contrast that, as I think everyone can, with the energy sector. I've had a lot to do with the energy sector. You've had constant discussion about energy poverty. Energy is an essential service. You can just sum up the price that people are paying and, of course, in energy, the lowest 10% of the population spend, last time I looked, 8% to 10% of their income on electricity, whereas the average person spends 2% to 3%. So it really is a problem. But we don't have that measuring stick in telecommunications. We need it, and we're working with ABS and Department of Communications to get it. I think more work needs to be done on that. That's why we're pleased with this conference to try and get a focus on that, work out where the focus should be. I just want to finish up, in my last remaining - two minutes since the last 5-minute sign went up - an issue that I think is extremely important, not diminishing the issues I've just been talking about. The ACCC is considering consulting on fixed broadband monitoring and reporting program.

This, I think, is really important, and I'm urging everybody here to get behind the introduction of that. We've looked at the technical and commercial aspects of such a program, and we'll be publishing this very soon, so I urge you all to have a read of it and we'll certainly send it to ACCAN and others. We think this would promote competition and consumer outcomes by providing transparency over the quality of broadband services that are on offer to consumers. Consumers need this information to help them select the most appropriate service, and to make sure that

they're getting the service they're paying for. Both are very important. Competition would also, in the retail market, we think, is limited by the asymmetry of information. The RSPs have information about their service. They don't have information about other services.

Of course, they have more information than consumers do. If people are going to increasingly, with an NBN, market their broadband services on speed in a much broader way than they've been able to do through D-SLAMs, in our view it's increasingly important that there's a broadband-monitoring program in place where people can get access to information about what the speeds are, what's being provided by the various players, and if I could just add, we won't be leading the world on this - we'll be following. Broadband monitoring programs were established in the UK in 2008, the US in 2010, New Zealand in 2010, and Singapore in 2011. Surprised Singapore was the slower one of that lot - usually it wins. Canada is going to commence doing it next year. It's something that's happening overseas, and it really needs broad support if it's going to get up here, so I'd really like to urge you to get behind that, because it's going to need a bit of popular support, because there'll be a range of people who won't want to see it happening. So, thank you very much. That's all I've got to say. Happy to take questions.

(APPLAUSE)

Andrew Colley: Hi, Andrew Colley, a freelance journalist. I'm wondering if the ACCC has taken a view on net neutrality yet?

Rod Sims: Have we taken a view of net neutrality - no. Well, sorry, we've taken a view that there's nothing we need to do at the moment. We're watching it. We're of course fully aware of what's happening in the US. We don't see the problem here. We're aware of how the problem could manifest itself. There's many ways, you could see, how that happens. We don't mind ISPs providing visible services that accelerate speeds of some things and not others. They can offer those different offerings. What we want to make sure is there's no - ISPs aren't favouring their own services in an anti-competitive way. So we are watching it very closely. But at the moment we don't have concerns. But if you do or anybody else does, we would be delighted to hear about them, because it's complaints that often drive this. But at the moment, having looked closely, we don't have concerns.

Unknown speaker: Hi, it's Pat from communications. You mentioned you were working with other regulators and government on a way to make communications pricing more transparent. What form might that take?

Rod Sims: Well, it's very early days. We're just trying to work out how we can get better data to get a handle on affordability, where the problems are. As I say, in energy, it's really quite stark and that is data we just don't have in communications. But I'm afraid it's early days and we also have to get through the difficult hurdle of what's essential and what's not essential. But I'm a strong believer that if you can just shine a bit of a line on where people are struggling in their affordability of these things, new issues arise and you can help solve them. And maybe it will help our work as well. But I'm afraid it is early days. One more down there.

Mark Gregory: Mark Gregory from RMIT University. I would like to ask the question about affordability looking at it from a different perspective. We've got higher prices in Australia for many telecommunication segments in our market than around the world. Backhaul is 200 times higher in costs than it is in Europe - and you can go on and on with this. But on the flip-side, you've got companies like Telstra, that, if you like, have pegged a post in the ground, "We're going to return 7% a year to our investors and shareholders". So the question to you is, when the ACCC looks at its price determinations, is it happy that Telstra is saying, "We're going to provide our shareholders 7% a

year"? Why isn't it 2%? Why isn't it 1%? Why isn't it 3%? Where's a reasonable value for a company like Telstra to return to its shareholders, knowing that whatever the value is, the flip-side is the telecommunications in Australia is hundreds of times more expensive than it is anywhere else in the world? And we keep getting told fictitious reasons for that, about the large size of the country and how hard it is to do this and how hard it is too that. Isn't it more that we've got companies like Telstra demanding that the ACCC agree to them setting prices so that they can return 7% plus per year to their shareholders? Isn't the ACCC complicit in causing Australia to have prices that are far higher than the rest of the world? Don't you have some responsibility?

Rod Sims: Excellent question, thank you very much! If Henry Ergas and a whole range of other people were here, they think we are single-handedly - and I mean this seriously, there's a whole lot of people who think we're single-handedly responsible for the NBN, because we pushed the prices so low, only Telstra would invest in the NBN and it's our fault. You can take that as a plus or minus, but I think there are people with the exact opposite view. It is an interesting question. Let me stay a couple of things. I mean, I was around in the late 80s, early 90s, when we had the big battle over whether Telstra would remain vertically integrated or not. That was one of the great public policy battles. It was one I lost - I won quite a few, but I lost that one big-time. And I think that made a big difference for a start.

Our role in regulating it is to look at the costs of what Telstra has got there and make sure that, as I said earlier, the prices aren't so low as to damage investment, or so high as to damage consumers. We work out what we think the asset base is, we work out what we think the cost is, we apply an average cost of capital and we come up with the price. Now, whether we've always got that right or not, I don't know, but I assure you we're getting equally criticised from both sides. We've done the best job we can. Telstra thinks we're hopelessly focused on consumers and have damaged them. Your comments are very similar to ones that Vodafone and others would make. So what the right answer is, I don't know. I honestly think that there is something in the population argument in terms of just the density of our cities and the density of our country. But I honestly haven't really sat down and worked out how you separate that out. All I do know is, we're making the best job we have been of trying to work out the right rate of return on Telstra's assets. The good news for us and Telstra is that when the NBN gets going, we won't have to bother with Telstra anymore - we will just be regulating the NBN. But anyway, good question, thank you.

Teresa Corbin: Can we just join together and thank our speaker, Rod?

(APPLAUSE)