12 April 2019

Rental Arrangements for Communication Towers on Crown Land
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop NSW 1240

Dear Sir,

IPART Review of rental arrangements for communications towers on Crown land – Initial Submission

Vodafone Hutchison Australia Pty Limited ("VHA") is pleased to comment on IPART's issues paper on the Review of rental arrangements for communication towers on Crown land.

We support the MCF submission with further comments below.

Discriminatory rental regime

In addition to the MCF comments, VHA believes that the effect of the IPART recommendations are discriminatory if they are used to limit the appeal options available to Carriers when compared to options available to other land users. For example, section 143 of *the Crown Lands Act* 1986 (NSW), which deals with objections and appeals against determinations or redeterminations of rent by the Minister in relation to Crown Lands states:

> *(3) If the recommendation of the Independent Pricing and Regulatory Tribunal is applied by the Minister in determining or redetermining the rent concerned, the Civil and Administrative Tribunal and the Land and Environment Court are, despite subsection (1), to apply the recommendation in determining any appeal against the Minister's decision.*

This view is consistent with the Telstra v the State of Queensland case where the FCA found that s 37A of the Queensland *Land Regulation* amounted to discrimination within cl. 44(1) of Sch 3 of the *Telecommunications Act 1997* because it had the effect of denying Carriers a right of appeal that was available to others (see paragraphs 168 and 169 of the Telstra v the State of Queensland case).

Additionally, as the MCF submission notes, Carriers are not generally eligible to receive rebates which are available to certain other users of Crown Lands and we cannot comment on their effectiveness. However we note that the stated intent of the rebates is to take into account external benefits provided by commercial activities that provide services in rural communities, in excess of their ability to generate revenue. The rebate is not generally available to Carriers, even if their services at a particular location fit that profile. In our view this amounts to discrimination within cl. 44(1) of Sch 3 of the *Telecommunications Act 1997* as it has the effect of denying Carriers the opportunity to enjoy reduced rents that are available to other users.

Specific issues raised in the Issues paper.

VHA further comments in addition to the MCF submission as follows:

1. **Do you agree with our proposed definition of efficient rents for communication tower sites on Crown land as the range bounded by a user's willingness to pay and the opportunity cost to the land agency?**

   VHA reiterates that the valuation methodology should be the unimproved value of the land.

2. **What is the appropriate rent discount for co-users?**

   VHA is of the firm belief that there should be no penalty whatsoever for co-locating, reducing the proliferation of infrastructure, not diminishing the visual amenity and providing essential communication services in often rural and remote areas.

   A fair market rent should only be applied in instances where additional land is licenced by the co-locating carrier. If this occurs, then the MCF recommendation should apply.

If you wish to discuss this submission or any of the matters raised within it, or require any additional information, please do not hesitate to contact ***Andrew Frith*** [redacted] or ***Lee Gilligan*** [redacted]

Yours faithfully

[redacted]

Shihan Musafer
Head of Network Property