



CONSUMERS' TELECOMMUNICATIONS NETWORK

Commissioner Michael Woods
Telecommunications Inquiry
Productivity Commission
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Dear Commissioner,

Review of Telecommunications-specific competition regulation

Thank you for providing the Consumers' Telecommunications Network (CTN) with an opportunity to contribute to this Review. CTN is an incorporated non-profit community based national organisation, which represents the interests of residential consumers in telecommunications. We are funded by DOCITA through the "Grants to Fund Telecommunications Consumer Representation" program.

Consumers in the telecommunications regulatory context

CTN represents the views of its members and of consumers generally to the industry and to regulatory authorities. CTN represents consumers on a wide range of boards and bodies. Chief among our activities is the work of the Australian Communications Industry forum (ACIF), which is the site for industry self-regulation through the development of voluntary codes and standards.

CTN also represents consumer interests to government through the Minister, the Department, the Australian Communications Authority (ACA), the ACCC and in other regulatory processes. The telecommunications environment is complex, evolving, and governed by both self-regulation and by specific policy mechanisms including universal service, customer service guarantees, privacy protection, price controls, competition regulation, complaints handling and technical regulation for health and safety.

CTN has devoted a great deal of attention to the protection of quality of service, particularly for more vulnerable consumers in remote areas or who have disabilities, in an increasingly commercialised market. This advocacy on behalf of consumers is consistent with the Government's aims as set out in the *Telecommunications Act 1997*.

However, the telecommunications amendments to the Trade Practices Act (TPA) which accompanied the 1997 Telecommunications Act do not provide for consumer participation in the competition aspects of telecommunications. Consumers are at a relative disadvantage in having their interests taken into account in matters such as choice and price.

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1. What is the inquiry about?

Competition

This inquiry is restricted to ‘telecommunications-specific competition regulation, and other matters will only be considered to the extent that they are relevant to competition in the telecommunications market and the regulation of that competition.’ (9) That is, the value of competition for its own sake is beyond question.

From a consumer perspective, however, competition is only a good thing if it brings more choice, better service, and cheaper prices. If the opposite is allowed or encouraged to occur for the sake of competition, consumers are no less disadvantaged and no more impressed by the policy. Better consultation mechanisms and freer information flows would enable consumer interests to be more thoroughly taken into account in making competition decisions and would improve consumers’ understandings of the apparent need to sacrifice consumers to commercial interests.

RECOMMENDATION 1 – Structures should be developed to facilitate consultation with residential consumers and community groups when making competition decisions.

2. The need for telecommunications-specific competition regulation?

Definition of telecommunications

The Commission’s Issues Paper raises queries about the extent to which broadcasting applications of communications technologies might become included in telecommunications regulation. While convergence is often portrayed as a phenomenon the impact of which is to expand the scope of the regulatory field, in the experience of residential consumers, in many respects the growth of new technologies and applications when combined with deregulatory policies have often had the effect of limiting access to protective mechanisms. For example, customer premises equipment and cabling now falls outside the scope of telecommunications regulation in many respects. Applications developed for broadcast purposes which might be put to use for telecommunications purposes frequently do not meet telephony standards and fall outside the protections offered by universal service and price capping arrangements.

RECOMMENDATION 2: Expansion of the definition of telecommunications to include CPE features such as interactive voice response, voice over the internet or text based messaging systems should be accompanied by expansion of consumer protection arrangements including upgrading the definition of the standard telephone service and adjusting the basket used for price control purposes.

Changes in technology, market structure and regulation

In telecommunications for residential consumers, changes in technology, market structure and regulation have made little difference to the physical household configuration. The twisted copper pair, provided by Telstra, is overwhelmingly the actual connection, and the most practical and affordable connection. In recent years its popularity has increased, with many households choosing to install additional lines. Not one of the new technologies, but more of the same. The noticeable technology changes are those which have enabled household users to use a wider range of in-premises equipment to achieve greater diversity of communications, and to select from a range of access service deliverers.

The introduction of competition has been most successful in the way it has improved our ability to shop and select an item we can plug in to our socket without expert aid. We can use faxes, answering machines and modems. In areas where the copper wire has not been available or has been slow to transmit data, it is regulatory intervention through such mechanisms as universal service upgrades, the ‘*Networking The Nation*’ initiative and associated strategies associated with the use of funds derived from partial privatisation of Telstra, rather than the open market, that has brought the benefits of technology changes to households. There has not been any noticeable benefit to households from competition in infrastructure provision apart from the limited rollout of C & W Optus cable which in itself caused great controversy in terms of residential neighbourhood amenity. Directly connected C & W Optus household customers remain a small minority in Australia and there are no publicly available plans from C & W Optus or any other carrier to continue the attempt to duplicate the cable infrastructure.

This suggests that competition regulation is essential to mandate competitive access to the in-place copper loop. In this respect, telecommunications requires specific regulation and cannot be handled adequately by the laws which apply to stand-alone consumer goods and services. The value of our telecommunications infrastructure is highly dependent on its ability to deliver any-to-any connectivity. This connectivity should be available among different carriers, service providers, equipment suppliers and technologies. Competition which is not specifically regulated is unlikely to achieve this overall access platform as no single market participant would otherwise have the appropriate motivation to open its service to its competitors. We as consumers want a competitive market, not a balkanised one. We want competition *in* markets, rather than competition *for* markets. The emerging international pattern is one of fiercely competitive mergers, acquisitions and takeovers of entire businesses or market segments. We want to be able to choose from a range of carriers, rather than have carriers owning geographically defined market segments which they trade among themselves.

It is increasingly evident from our experiences of competition to date that the attractive, competitive markets occur chiefly in major business districts and for larger corporate accounts. Residential consumers will never as individual account holders reach the usage levels attractive to these ‘cherry-pickers’. This is reflected in the decreasing availability of choice the further one travels from a CBD.

RECOMMENDATION 3: Telecommunications-specific regulation for telecommunications should be retained in residential markets for the medium to long term.

Barriers to competition

Australian residential consumers feel that we have already made a substantial contribution to the ‘large lumpy investments’ in telecommunications infrastructure. This investment has been made through generations of taxpayers whose investment was rewarded by the development of a publicly owned incumbent which produced substantial profits. The time for debate about whether such profits should have been returned more directly in the form of lower prices has passed, but there is no denying that even in the one-off return of privatisation it has proved an effective strategy, both in terms of profit and in terms of achieving a ubiquitous, national telephone network. It is difficult to see how any form of competition policy could replicate the success of this strategy in future.

Residential consumers continue to contribute to the lumpy investment through connection fees and line rentals. It is disappointing to note that the major impact of competition on these costs has not been to reduce them. In fact in some respects they have increased in recent times. What has occurred, however, is an increasingly complex competition-driven presentation of pricing plans to consumers, which does not make this 'lumpy' cost transparent. This is particularly prevalent in mobile telephony, and tends to create its own barriers to competition as consumers get locked in to service contracts which disguise hire-purchase equipment provision.

RECOMMENDATION 4: Telecommunications-specific regulation should require transparent pricing policy which enable consumers to understand and compare fixed and per-use charge components. Consumers should also have a wider range of choices in terms of acquiring and maintaining their own access facilities if they so wish.

The role of convergence

As discussed above, the possibilities of greater and more diverse markets of which telephony might be just one component are greatly exaggerated for residential consumers. The twisted copper pair to households is proving both durable and adaptable. Take-up of cable-TV with telephony potential has been slower than anticipated, household demand for ISDN is almost non-existent, and we are yet to see if an affordable set-top box will impact significantly on our entertainment habits. However, protection of our basic communication entitlements remains vital to ensure that in the rush to sell us something new the market does not neglect our core need to talk to each other.

At this stage we do not believe it appropriate to make regulatory changes on the basis of market promises that have not yet been delivered. For example, HCLL may offer opportunities for greater competition, but this may be at the expense of call quality. As residential consumer spend on telecommunications is seldom sufficient to greatly benefit from economies of scale, we may require mandated standards to protect us from getting a greater choice of less satisfactory services. For example, CTN has not been able to ascertain what effect unbundling the local loop might have on the transmission of calls to 000.

3. Evaluating the existing telecommunications-specific competition regulation

Telecommunications-specific competition regulation sits in a nest of regulatory arrangements which include self-regulation through the ACIF, Standards Australia and other bodies, consumer protection through the TIO, ACA supervision of registered codes of practice, DOCITA management of universal service, price capping and some aspects of provision for people with disabilities, state based fair trading and general consumer protection legislation, and the ACCC.

From the consumer perspective, the ACCC has been disappointing in its lack of activity on price control and truth in advertising. However, it has clearly had a major role in settling disputes between carriers, which have been much more ready to use ACCC procedures than they have to avail themselves of the industry based voluntary codes compliance schemes, alternate dispute resolution, or the Telecommunications Access Forum. This suggests that the ACCC is administering competition regulation more effectively than any other option yet tried, at least as far as inter-carrier matters are concerned. We look forward to the ACC taking a more pro-active approach once the main consumer protection codes of practice are finalised.

It is unfortunate that consumers do not have a more direct insight into the efficacy of the ACCC current administration of competition regulation. In many respects the benefits to consumers of ACCC determinations have been difficult to grasp. We do not recommend any substantial changes at this time and would welcome the opportunity to gain a better understanding of the ACCC's approach in future.

RECOMMENDATION 5: A more comprehensible and publicly accessible mechanism for measuring and reporting on the price and service variety and quality impacts of competition in telecommunications should be developed. Reports using this mechanism should be published regularly. Reporting should assist consumers to compare and make informed telecommunications purchase decisions.

It has been put to CTN that the major defect of the current arrangements is a lack of serious incentive to negotiate on price, which is causing delays in getting competitive offerings to market and unnecessary resort to ACCC procedures. We are not in a position to obtain access to sufficient information to evaluate the accuracy of this assertion. We note, however, that in other jurisdictions such as the UK, the regulator can set and publish an access price. While this might not be the most libertarian approach to the market, it does have the attraction of diminishing pricing disputation. Perhaps this approach could be considered for the Australian market.

Other elements of the Telecommunications Act 1997

This section of the discussion paper deals with pre-selection, number portability and technical standards about interconnection of facilities. We have discussed interconnection elsewhere in this submission. In this part, we will focus on pre-selection and number portability.

Pre-selection and number portability are essential attributes of a genuinely competitive consumer telecommunications market. These requirements are provided for in the relevant legislation. However, implementation has been disappointing in many respects. This suggests that changes to legislation or policy may be required to bring the aims into reality.

For example, directly connected C & W Optus customers may only pre-select to Telstra, or have all services provided by C & W Optus. In response to CTN's query about this deficiency, the ACA has advised that C & W Optus has met its license condition by offering pre-selection to other carriers, but that no other carriers have chosen to exercise this option. This seems to be inadequate. We are aware of consumers who did not fully understand these implications when they decided to switch to C & W Optus, and we believe that there will be those who might wish to subsequently make other choices as new offerings become available and who are unable to do so.

Another example is the recently launched Telstra 'Homezip' product. This is designed to meet the needs of low-income multi-occupier households consisting of several adults who are not in close family relationships to each other, such as those in boarding houses or student group houses. It enables several users of the same line to take responsibility for their individual bills. This is a welcome initiative. However, users of such a service are not able to access the benefits of preselection or override code usage, despite the fact that they collectively pay multiple line access rental fees. Any individual user paying such a fee would have those entitlements.

CTN was concerned to note that this arrangement was approved by the ACA despite our protests about the inequitable access to the benefits of competition this represents. As this kind of service is likely to appeal to low-income users, it could be suggested that the regulatory implementation of this aim is disproportionately impacting on different consumers depending on their socio-economic status.

RECOMMENDATION 6: Pre-selection facilities should be a mandated condition for the provision of service to residential consumers on their fixed line to the home at the consumer's request.

Number portability significantly enhances the consumers' ability to 'shop around' for the best service for their needs. Despite regulatory engagement with the processes for implementing this aim over the past four years, the current situation is unsatisfactory.

The aims of number portability need to be implemented in accordance with the aims of the National Numbering Plan. Under this plan, and in accordance with consumer expectations, the number dialed contains some information about the likely cost of the call. Total portability would negate this expectation. As newer offerings promise such things as combined home and mobile service, how will the caller know what the call will cost? While number planning is managed by the ACA with appropriate advisory input, achieving number portability has been largely left to the industry to develop through self-regulatory processes, which have necessitated extensions of time to comply.

While there are few choices on fixed line available, this has not been an issue for residential consumers so great as it has been for business customers. However in the area of mobile telephony it has been a significant frustration. There are many reasons for a consumer to wish to change mobile service carrier while retaining their mobile phone number. There are also options such as switching from a contract to a pre-paid service while retaining the number which ought to be available but are not.

One of the most unnecessary impediments to the implementation of mobile number portability has been the carriers concern about losing customers who still have payments to make for their handsets. The consumer is often unaware of such outstanding liabilities due to inaccurate presentation and advertising of mobile phone contracts which suggest that the handset is very cheap or free of charge when in fact it is a hire-purchase kind of arrangement. If such information was made available to consumers up front at point of purchase and the outstanding total noted on every subsequent bill this would be a lesser concern.

In CTN's view, there is already in the ordinary commercial law sufficient avenues of debt recovery available to losing service providers without necessitating impediments to change of service including number portability. We welcome recent initiatives by the Australian Communications Industry Forum to develop a code of practice for mobile number portability and we look forward to the rapid and universal adoption of the code. Unfortunately the rate of sign-on to other industry developed codes of practice has been so slow as to cause us to doubt the general good will of the industry in self-regulation and it remains to be seen whether this code will lead to benefits for consumers in the near future.

RECOMMENDATION 7: Mandatory number portability should be implemented by regulatory processes which protect the information provided about call costs as set out in the National Numbering Plan and which minimise externality impediments such as credit management considerations.

It must be noted that the willingness of the Australian Communications Authority to grant exemptions on request to carriers who wish to make offerings that do not include preselection or number portability is a cause for concern. While a power to mandate is appropriately accompanied by a power to relieve from the obligation in appropriate circumstances, there have been deficiencies in the public consultation processes that have accompanied such decisionmaking as well as a readiness to allow for technical impediments that could be more rapidly overcome, we believe, if the appropriate incentives were provided.

3.3 Other matters

CTN generally does not regard evidence from other countries as particularly significant for Australia. We have a unique environment both internally and in relation to our proximity (or lack of it) to other markets. We recognise that in many respects, having few people concentrated in coastal areas and otherwise spread over difficult terrain makes the task of connecting our telecommunications a challenge for which uniquely Australian solutions are possible, desirable, and a matter of some pride. We are also aware of the enthusiasm, relatively high household income for our region, and propensity for international travel which makes Australia an attractive international market for which no special concessions need be made for global competitiveness. As consumers we want accurately informed choices and cheaper prices. We also want quality and ubiquity. We expect our regulatory arrangements to deliver on these aspirations.

We look forward to discussing these matters at the public hearings of the Inquiry.

Yours sincerely,

Helen Campbell,
Executive Officer,
For the Consumers' Telecommunications Network.
Encl.: Summary of recommendations

SUMMARY OF RECOMMENDATIONS

1. Structures should be developed to facilitate consultation with residential consumers and community groups when making competition decisions.
2. Expansion of the definition of telecommunications to include CPE features such as interactive voice response, voice over the internet or text based messaging systems should be accompanied by expansion of consumer protection arrangements including upgrading the definition of the standard telephone service and adjusting the basket used for price control purposes.
3. Telecommunications-specific regulation for telecommunications should be retained in residential markets for the medium to long term.
4. Telecommunications-specific regulation should require transparent pricing policy which enable consumers to understand and compare fixed and per-use charge components. Consumers should also have a wider range of choices in terms of acquiring and maintaining their own access facilities if they so wish.
5. A more comprehensible and publicly accessible mechanism for measuring and reporting on the price and service variety and quality impacts of competition in telecommunications should be developed. Reports using this mechanism should be published regularly. Reporting should assist consumers to compare and make informed telecommunications purchase decisions.
6. Pre-selection facilities should be a mandated condition for the provision of service to residential consumers on their fixed line to the home at the consumer's request.
7. Mandatory number portability should be implemented by regulatory processes which protect the information provided about call costs as set out in the National Numbering Plan and which minimise externality impediments such as credit management considerations.