

Telecommunications Inquiry
Productivity Commission
P.O. Box 80
Belconnen ACT 2616

Review of Telecommunications Specific Competition Regulation: Comments by SETEL

The Small Enterprise Telecommunication's Centre Limited (SETEL) welcomes the opportunity to make a submission to the Productivity Commission's inquiry.

Introduction

SETEL has been a proponent of increased competition in telecommunications markets and has noted benefits flowing to consumers as a result of markets being opened up and new entrants to the industry. But there is a lack of tangible evidence of substantial choice being made available to small business customers (and many residential consumers) who wish to utilise emerging technologies to carry out their business activities with greater efficiency. SETEL notes the increasing tendency for governments at all levels and big business to demand that transactions with them be carried out electronically requiring high bandwidth and high levels of security and reliability. This relates to the basic e-commerce model and other factors including the Government procurement model.

Access to high levels of bandwidth at low cost throughout the nation, particularly in non-metropolitan areas, is considered essential for efficient business operations in the future.

Consumer Representation and Informed Choice

The process of moving towards increased competition in telecommunications markets was a managed one. Competition was mandated by legislation, yet it required a protracted period of negotiation and reliance on the activities and jurisdiction of the ACCC to begin to achieve reasonable results. Consumers are still waiting, after three years, to fully experience the effects (let alone benefits) of deregulation in a number of telecommunications markets.

SETEL contends that consumers, particularly residential and small business consumers, are poorly informed by carriage service providers about the range of choices and opportunities available to them in order to select appropriate services. Many useful services remain unaffordable due to lack of competitive pressure to lower prices and extend market coverage, and of differentiation.

SETEL acknowledges the establishment of an industry body responsible for self-regulation and actively participates in Australian Communications Industry Forum (ACIF) at a number of levels. SETEL is concerned that the development of consumer codes of practice is not effective in terms of prompt delivery of additional consumer protection mechanisms (and the safeguards envisaged by the Parliament in 1997).

The move towards substantial self-regulation in the telecommunications industry necessitated effective representation on behalf of residential and small business consumers. The Parliament made provision in the Telecommunications Act 1997 for funding of consumer representation, and of research, in relation to telecommunications. SETEL and other consumer organisations are recipients of grants under this legislation. The budget allocation for this funding expires at the end of the 2001/2002 financial year.

Consumers have tended to rely to a significant degree on marketing information from carriers and carriage service providers to make choices about telecommunications services. Due to the rate of expansion of the telecommunications sector and the introduction of new technologies consumers are generally unable to keep pace with these changes and thus become less able to make an 'informed choice' about the services on offer. Carriers and carriage service providers often rely on complex bundling strategies to secure a marketing advantage.

Industry Performance

SETEL proposed the following initiatives to the Telecommunications Service Inquiry to foster increased public confidence in the delivery of telecommunications services to the public:

- Government to establish a set of broad performance parameters to inspire the telecommunications industry to deliver benefits to end-users (the public) in a more timely and effective manner.
- Provide mechanisms to ensure that the self-regulatory process delivers outcomes consistent with performance parameters established by the Government.
- Establishment of appropriate performance benchmarks for carriers and carriage service providers.
- Require the Australian Communications Authority (ACA) to more thoroughly examine and monitor industry development plans developed by carriers and carriage service providers to ensure that provisioning delays for new and additional services are minimised.
- Establish criteria for carriers and carriage service providers to comply with product/service delivery timeframes. This relates to new services planned by carriers and carriage service providers as a result of gaining access to networks or establishment of new networks or infrastructure on their own behalf.
- Provide mechanisms or incentives to enable carriers and carriage service providers to meet unmet needs in relation to voice and data services, of far higher standards than currently being provided under the USO, throughout much of Australia.
- Ensure that higher bandwidth services suitable for business-to-business e-commerce, business-to-government communications and reasonable speed data transmission are accessible, affordable and easy to use by small businesses.

Additional Regulatory Involvement

SETEL also recommended:

- The establishment of a high level panel comprising the government, the Department of Communications, IT & the Arts, the ACA, ACCC and ACIF to manage a broad pan-industry program to foster faster progress and more rapid evolution of competition in the communications marketplace.
- The Communications Research Unit of the Department of Communications, Information Technology and the Arts (DCITA) to undertake research to determine the number of existing and potential customers, both residential and small business, likely to be detrimentally affected by a 'distance' factor (5 to 6 km from a digital exchange) in relation to the supply and performance of ISDN and / or xDSL services; and, report on amongst other things the potential economic and social costs to those outside this range.

Small Enterprise Telecommunications Centre Limited (SETEL)

SETEL is an independent national consumer organisation representing and advancing the interests of small business telecommunications and electronic commerce consumers in national forums. SETEL is incorporated as a company limited by guarantee. SETEL is supported by an annual grant of financial assistance for consumer representation made by the Minister for Communications, Information Technology and the Arts, pursuant to section 593 of the *Telecommunications Act 1997*.

SETEL's members are mainly industry, trade, commerce and professional associations servicing Australia's small business sector. SETEL's membership includes over 55 associations, which collectively represent around 500,000 Australian small businesses. SETEL's membership also includes the Small Business Coalition's 39 member associations. More detailed information about SETEL is on its website at <http://www.setel.com.au>.

Information about SETEL's relationship with the Small Business Coalition and its E-commerce and Telecommunications Advisory Group (ETAG) is at Attachment A. Information about the Australian small business sector is at Attachment B.

In accordance with its obligations, and in pursuit of being an effective consumer advocate for small business on telecommunications and related electronic commerce issues, SETEL maintains cooperative and harmonious relationships with many telecommunications industry representatives, policy advisers, regulators, industry associations (ATUG, IIA, SPAN, AEEMA, AMTA), carriers and carriage service providers, most notably those servicing and supporting Australian small business as telecommunications consumers. However, as an independent consumer organisation and "voice" for Australian small business, SETEL has found it necessary, from time to time, to forcefully put a case in the interests of small business consumers in national forums.

Importance of Telecommunications, Electronic Commerce and Small Business

The Australian Federal, State and Territory Governments have taken a leading role in facilitating electronic commerce, in the context of a rapidly growing information economy. They have developed visions, strategic framework, objectives and key action areas. The Federal Government has published a *Strategic framework for the information age: identifying priorities for action*¹ in which articulates its vision and ten strategic priority areas for action for Australia in the information age.

This framework emphasises that Australia must remain committed to a world class telecommunications infrastructure that is highly competitive, characterised by high bandwidth at affordable prices, and readily available virtually anywhere in the country; and, that it is essential that the supporting infrastructure is in place for the effective business and community use of online applications and services. Fundamental to achieving a world-class infrastructure is the creation in Australia of a commercial, competitive communications sector by providing and appropriate policy and regulatory environment. Australia already has a relatively well-developed communications infrastructure and sophisticated commercial environment by world standards.

Electronic Commerce is seen by Australian Governments as a key driver of national economic growth, with the potential to significantly reduce aggregate transaction costs in the Australian economy and so improve national productivity, income and welfare. It is also seen as an opportunity to generate sustainable economic growth and employment through tapping additional sources of revenue in new markets. In particular, electronic commerce is seen as an opportunity to address the challenges facing regional and rural communities in Australia.

Australian Governments believe that small business is well placed to take advantage of electronic commerce opportunities. However, Australian small businesses have been relatively slow in accessing the Internet and using electronic commerce to conduct business. This is a matter of some concern to Governments who are pursuing a range of strategies directed to encouraging small businesses to access the Internet and begin electronic commerce, however basic.

Australian telecommunications infrastructure and services underpin, but also play a pivotal role in the Australian economy, financial and payment systems and the Internet. Advanced telecommunications, and electronic commerce over the Internet, have the potential to fundamentally change the way Australian small businesses operate and, in turn, to improve their profitability. Many have been using the telephone, fax, electronic funds transfer and / or electronic data interchange to conduct, or support the conduct of, commerce for many years.

The Internet and its underlying telecommunications infrastructure are in a significant growth phase, attributable in part to its strength as a medium of communication, education and entertainment, but more recently as a tool for commerce.

With the growth of the Internet and electronic commerce over the Internet, there is a need for ubiquitous, affordable, competitive, high-speed bandwidth, particularly to support Australian small business operations, in the global information economy. Small business managers and employees need to be able to readily access education and training sector bandwidth and services from their desktops.

Comments Relevant to this Inquiry

Telecommunication infrastructure is an integral aspect of national development at all levels. Australia enjoys significant social and commercial benefits from universal access to a telecommunications service as the direct result of investing, establishing and maintaining a network, which is envied around the world. A national infrastructure is much more than a network of wires and switches. On the contrary, a network is the manifestation of a complex set of relationships involving human, equipment and policy variables. Similarly the business and residential markets that rely on the telecommunications backbone constitute a corresponding complexity of interrelationships that help define Australia's social and commercial landscape.

Telecommunication markets represent a source of significant profits, influence and impact in all economic sectors. Consequently the telecommunication industry is a nexus of intense political and commercial rivalry among stakeholders that requires specific telecommunications instruments within existing competition legislation to ensure equitable outcomes for all stakeholders.

The rapid changes in telecommunication and related technologies, which are causing the phenomenon known as convergence of once disparate telecommunications, broadcasting and computer industries also strengthen the argument for telecommunications-specific competition legislation. SETEL believes that incumbents are able to exploit the benefits of dynamic technologies in attractive markets at the expense of new entrants and consumers. General competition legislation does not allow for the unique effects of convergence on telecommunication markets.

Recommendation 1:

SETEL believes that it is imperative that policy makers retain telecommunication specific instruments within the Trade Practices Act 1974.

SETEL acknowledges the benefits that the current telecommunications regime has brought to business and residential consumers since 1997. Self-regulation processes, anti-competitive instruments, and access provisions are moving in the right direction in relation to opportunities of entry to new carriers and greater consumer choice at reasonable prices. However the regime has been criticised for allowing court appeals by incumbent carriers to delay rights of fair and reasonable access to networks.

Expensive litigation inhibits the growth of the telecommunication industry and ties up capital resources in legal costs. In addition less transparent costs of loss of opportunity to

junior carriers retard market growth and efficiency. Consequently consumers are denied further benefits of choice and ensuing price reductions.

SETEL is aware that some carriers have stated that telecommunication-specific regulation has caused the current litigation bottlenecks. We accept that proposition in so far that the legislation specifically identifies telecommunication issues rather than broader competition provisions. Arguably the present problems would be greater in frequency and intensity without the provisions of Parts XIB and XIC. Criticism of the special provisions within the *Trade Practices Act* fails to recognise their current value as a deterrent to anti-competitive behaviour.

Part XIB has acted as deterrent to those who otherwise would use their market strength and synergies to squash competition and prevent new entrants from gaining a foothold. The low number of competition notices issued under Part XIB is an indication of the effectiveness of the special regulations in changing carrier behaviour. Despite the effect that Part XIB has had on reducing anti-competitive practices, the persistence of legal bottlenecks ties up industry resources that would be better invested in developing improved telecommunication efficiencies and options in service delivery.

As a solution, SETEL proposes that the powers of the ACCC, as a dispute resolution body, be strengthened. The establishment of a telecommunications-specific tribunal within the ACCC would strengthen the deterrent value of Part XIB and expedite the evaluation process of complaints. It is imperative that a body of adjudicators, skilled in telecommunication issues and competition law, are given additional powers to hear submissions and rule on them. It is envisioned that the new body, the *Telecommunications Access Tribunal* would work closely with DCITA staff and the Australian Communications Authority, thus creating synergies that would lead to greater efficiencies and integrated effort across regulatory bodies.

Schedule 1 Part 5 Clause 36 of the *Telecommunications Act 1997* has established a process whereby the ACCC can act as an arbitrator in relation to disputes over access. The fact that a number of disputes continue to move into the court system suggests that such legislative mechanisms are not fully effective.

An additional access determination process seems to be necessary to reduce the number of costly disputes being forced into the court system.

Recommendation 2:

SETEL advocates that the ACCC establish a judicial tribunal involving telecommunication access disputes. The ‘Telecommunications Access Tribunal’ would rule and arbitrate between contesting carriers and penalise offenders that fail to abide by judgements within a reasonable time period.

Reasonable Equivalence

SETEL believes that a policy of encouraging *reasonable equivalence* should be adopted by policy makers within the relevant areas of the ACCC and other telecommunication regulatory bodies. Reasonable equivalence is a demand-driven initiative by the market and the industry that secures the availability of enough bandwidth regardless of the technology or delivery platforms employed.

Reasonable equivalence incorporates the driving principle that telecommunication infrastructure must be flexible and robust enough to meet the needs of the end-user responding to the demands of standardised e-commerce protocols and delivery practices. Flexibility must be designed into the national infrastructure to allow service providers and equipment suppliers to offer a range of technological options that allow may take advantage of any-to-connectivity.

Failure to incorporate any-to-any connectivity in the telecommunication infrastructure will result in lost opportunities in gaining international competitive advantage. From a small business perspective, this has the potential to retard Australia's international competitiveness for years. Furthermore, the costs involved in rectifying a haphazardly constructed national broadband network signified by infrastructural weaknesses and inflexibility may be prohibitive. For this reason a focus on national ubiquity rather than relying on regional patchwork initiatives makes greater economic and commercial sense.

In essence access seekers need to be able to gain access to networks to be able to provide differential, innovative and competitive services – by a variety of technologies. Access determination principles tend to be technology specific whereas greater public benefit could be achieved by not restricting the technology by which services are delivered to end users once access became available.

Recommendation 3:

SETEL advocates that policy makers incorporate a principle of demand-driven reasonable equivalence when deciding on access pricing and other pro-competition factors

Ewan Brown
Executive Director
October 2000

Attachment A – Small Business Coalition and ETAG

The Small Enterprise Telecommunications Centre Limited <<http://www.setel.com.au>> joined with the Small Business Coalition (SBC) in December 1999 to form and support the Electronic Commerce and Telecommunications Advisory Group (ETAG). The SBC is convened by the Australian Chamber of Commerce and Industry (ACCI) <<http://www.acci.asn.au>>.

Small Business Coalition

The SBC is a grouping of 39 Australian industry associations and chambers of commerce with an interest in Australian small business issues and policies, notably those relating to taxation reform, the information economy, electronic commerce and telecommunications. SBC members are from a wide range of trade, commerce, professional and industry associations. More detailed information about the SBC and its membership may be found at <<http://www.setel.com.au/sbc/sbc.htm>> and <<http://www.setel.com.au/sbc/sbcmembers.htm>>, respectively.

E-commerce and Telecommunications Advisory Group (ETAG)

The SBC established ETAG to advise on electronic commerce and telecommunications issues and policies of national significance to Australian small businesses. Mr Tom Muecke, a prominent South Australian businessman, is ETAG's Chairman and a member of the National Electronic Authentication Council (NEAC). ETAG's members are representatives of the following organisations:

- Australian Chamber of Commerce and Industry (ACCI)
- Australian Society of CPAs (ASCPA)
- Australian Business Limited (ABL)
- Master Plumbers' & Mechanical Services Association of Australia (MPMSAA)
- National Institute of Accountants (NIA)
- National Farmers' Federation (NFF)
- Small Enterprise Telecommunications Centre Limited (SETEL).

ETAG's Terms of Reference

The Electronic Commerce and Telecommunications Advisory Group (ETAG) will:

- advance and represent in national forums the interests of Australian small businesses as consumers of Internet / electronic commerce / telecommunications services;
- advise on policy relating to the Internet, electronic commerce and telecommunications issues of national significance to Australian small businesses;

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- coordinate, as far as practicable, the advancement and representation of the interests of small businesses in national forum on Internet, electronic commerce and telecommunications policy and issues;
 - collaborate with SETEL in its role of advancing and representing the interests of Australian small businesses in telecommunications matters;
 - report to the SBC on ETAG's achievements and, as appropriate, seek support on significant policy positions as they relate to Australian small businesses;
 - oversight the development of SBC applications for grant monies and projects relating to the Internet, electronic commerce and telecommunications with significance for Australian small businesses, including facilitation of research projects;
 - draw upon the staff resources of SETEL / SBC member associations to assist with its work;
 - provide a watching brief and, where appropriate, make representations on the adoption of accepted international standards, protocols and codes of practice for e-commerce in respect of small business; and
 - promote accessibility for Australian small businesses to Internet and e-commerce, particularly in relation to adequate bandwidth.

In particular ETAG will, in relation to Australian small businesses:

- identify Australian Government bodies with an interest in the Internet and electronic commerce and, as appropriate, coordinate and seek SBC representation on those bodies;
- act as a "clearing-house" for material to be published on the SBC website;
- report to the SBC on Internet, electronic commerce and telecommunications issues of national significance;
- identify impediments to the uptake of electronic commerce, notably those concerned with online payment arrangements, fraud and security of commercial information;
- work with Australian Government agencies on the resolution of Internet, electronic commerce and telecommunications issues of concern to SBC members in particular and Australian small business in general; and
- provide support to the Chairman of ETAG and other SBC members in their representation on Government bodies, notably the National Electronic Authentication Council (NEAC).

Collectively the Small Business Coalition, ACCI and SETEL represent over 60 associations, plus affiliated associations, companies and individuals.

Appendix B – Australian Small Business Sector

Small Business Defined

Small businesses are those businesses employing less than 20 people.ⁱ *Micro-businesses* are those businesses employing less than 5 people, including non-employing businesses. *Micro-businesses* are a subset of *small businesses*.

Small Business Statisticsⁱ

ABS statistical data shows:

- there were over one million small businesses in Australian 1996/97:
 - almost 105,000 agricultural businesses;
 - over 900,000 non-agricultural businesses;
 - employing over 3.5 million people.
- Of these non-agricultural small businesses, there are over 751,500 micro-businesses:
 - 331,000 employing firms (1 to 4 employees);
 - 409,500 non-employing firms;
 - employing 3.25 million people.
- Less than 5 per cent of small businesses and 2 per cent of micro-businesses export goods and services.

National Importance of Small Business

Australian small and medium enterprises are major sources of economic growth, employment, income, trade and entrepreneurship. They comprise 96% of all enterprises in the private non-agricultural sector, account for more than 56% of private sector employment and, as a whole, contribute most of the private sector employment growth.ⁱ

Export Potential of Small Businessⁱ

Smaller firms generate employment opportunities by using a wide range of electronic commerce applications to facilitate exports:

- Micro sized firms can only access export markets using electronic commerce.
- Online micro, small and medium sized firms generate higher export earnings as a proportion of total turnover than offline firms.
- Smaller firms increase their chances of future export growth and increased turnover by using a wider range of electronic commerce applications.

- Online micro, small and medium sized firms export to more countries than offline exporting firms.
- Larger firms with established business networks overseas have less to gain from electronic commerce as an export tool than smaller firms.

Structure of the Australian Small Business Sector 1996/97

