

Productivity Commission Review of Telecommunications Specific Competition Regulation

Tasmanian Government Submission

October 2000

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Failure of deregulation in regional areas

Since full deregulation of the telecommunications industry began in 1997, significant benefits have flowed to larger telecommunications markets, often at the expense of smaller economies. During this period, prices have dropped and new services appeared across Australia, but the differential between metropolitan and regional Australia has actually increased. This is a testament to the engineers who have implemented new technologies, but suggests that the present competitive and regulatory environment is not delivering in regional Australia.

Furthermore, much of the competition that appears to be occurring is in fact illusory. Many of the new players in the market are merely resellers of services, leaving the majority of profits with Telstra as the wholesale supplier, and the majority of the competition between resellers at the retail end.

There is a reasonable chance that telecommunications competition in regional areas will in fact decrease in next few years, rather than increase, echoing the decline of many other aspects of service delivery to regional Australia. This could occur if small operators, such as local ISPs, continue to be lost to mergers or closure, while large carriers such as Optus pull out of regional areas, as has already occurred to some extent in Tasmania.

The characteristics of competition in telecommunications

The nature of telecommunications services provides a challenge for a regulatory framework. The main difficulty is that the telecommunications network forms a logical monopoly.

Facilities competition requires the various companies to install their own equipment in common exchange buildings and to rent or build interconnecting transmission links which may never justify the expenditure in usage terms. The dominant carrier has generally fully amortised the network and with low operating and maintenance costs, prices can be cut to any level the dominant carrier wishes and sustained there indefinitely. Because the network is heavily integrated with higher-level services, it is difficult to ascertain what constitutes fair pricing for access to the network and therefore difficult for the ACCC to regulate effectively.

It has been suggested that alternative networks will be able to break the monopoly of the local loop but the reality is that alternative technologies such as wireless and satellite have had a very limited effect on the competition. These technologies are only efficient in special circumstances, and can rarely compete with in-ground copper local loops. It is unlikely that in the near future alternative networks will do any more than provide an illusion of competition, except in specific niche markets.

It is natural for large commercial operators to exercise their market power to the extent permitted. The telecommunications industry has been in no way immune from the growing tendency of dominant companies to squash competition by squeezing out small operators and reducing customer information and consumer power. Common techniques include bundling of services, so that prices are obscured and the consumer must commit to a wider range of services, a tendency towards predatory pricing, in which prices are set in a way that undermines new competitors until those competitors

leave the market, and making promises in respect of future infrastructure roll-out which are not delivered.

Need for a change of emphasis

The *Trade Practices Act 1974* and the *Telecommunications Act 1997* contain broad provisions to prevent anticompetitive behaviour. However their application by the ACCC has not yet resulted in any appreciable increase in true competition, or consumer protection, in regional areas. There are several areas where a change of emphasis would better serve regional Australia.

Open access framework in regional areas

Many of the factors that shape the competition in telecommunications markets vary between regions. Aspects of telecommunications infrastructure may form a critical part of infrastructure access in one regional area, but be unimportant in another. In fact, the application of regulation that does not take into account these regional differences may increase competition in metropolitan Australia at the expense of a viable service delivery in regional Australia. For example, the ACCC has not pursued the mandation of roaming between mobile phone carriers, encouraging the duplication of facilities in high density areas but ultimately reducing the extent of coverage outside these areas and providing little incentive for roll-out in low density areas.

The ACCC's narrow view that the critical aspects of each telecommunications market are essentially uniform across Australia has lessened the impact that declarations could have on the market.

The Bass Strait connection provides one example. At present, the only landline link off the island of Tasmania is an undersea fibre optic cable to Victoria, owned by Telstra. Telstra also operates two microwave radio connections from Tasmania to Victoria, via King and Flinders Islands, in order to provide telecommunications links to and from those islands. The existence of just one fibre connection does not create a limited capacity bottleneck. On the contrary, Telstra indicates that current usage of the fibre link is well under 10% of known capacity, using today's technology. However, Telstra does not sell access to this cable at an indefeasible rights or dark fibre level, so other carriers have no choice but to purchase capacity from Telstra.

The ACCC has not declared the fibre link between Tasmania and the mainland, although it forms a critical service for the Tasmanian market, acting as Tasmania's 'local loop' into the Australian network.

There is a further difficulty. Because so much of the infrastructure associated with telecommunications forms a natural monopoly in small markets like Tasmania, and because there are so many economies of scope associated with combining telecommunications roll-out with other construction activity, such as that of roads, the viability of facilities-based competition here depends on open access to infrastructure and facilities. This can occur at many levels, ranging through:

- access to sites (derived from planning permission, ownership or leasing of land, easements etc.);
- ducting, trenching, buildings and power on radio sites;

- cable/wiring, towers;
- switching and carriage, radio transmission;
- wholesale minutes/bandwidth;
- resale of tariffs; and
- own local infrastructure but interconnect to another carrier's network.

For example, a mobile phone provider could:

- locate its own tower on the same hill site used by other carriers, potentially using the same power source etc;
- share a tower with other operators to house its own transmission equipment;
- purchase wholesale minutes from a carrier and create its own tariffs and deals; or
- resell off the same tariff that the carrier providing the infrastructure uses.

In the first two cases, the provider may only own infrastructure in, say, Tasmania, and then interconnect to another carrier's network to provide national connectivity. The majority of the work done by the ACCC is directed at ensuring fair competition at the higher levels of this hierarchy – for example through declarations governing interconnect agreements, roaming agreements, etcetera. There is a licence requirement on carriers to provide other *carriers* with access to infrastructure such as towers. However, where that infrastructure is not owned by a carrier, for example when it is leased from Government, or the carrier has outsourced its management to a third party, then this condition does not apply. It is at this level that access to infrastructure is particularly important.

A broad framework for the declaration of services or other mechanisms for ensuring open access to infrastructure is essential if the ACCC is to be able to take into account factors that may be critical to each regional market.

The need for transparent pricing

Cost obfuscation through price complexity is becoming increasingly prevalent in the telecommunications market, as in several others. It is a mechanism that is used on the supply-side by the larger providers to limit competition and slow regulatory intervention and on the demand-side by all carriers to limit consumer choice, and therefore demand-side competition. Not only does this reduce the ACCC's ability to ascertain whether there is excessive charging, predatory pricing (often disguised as discounting), collusion or other anti-competitive behaviour but also limits the consumer's ability to choose. This dual-pronged limitation on competition at both the supply and consumer ends has handed large players in many industries the potential to engage in anti-competitive behaviour. Consumers are aware that these practices occur and feel powerless to change them because of the lack of information on which to base choices and the ACCC's slow response to regulating such practices. This undoubtedly constitutes a barrier to consumers switching suppliers and therefore reduces competition.

Supply-side regulation and transparent pricing.

At present, the access pricing for declared services is conducted in a closed manner, creating the potential for price obfuscation behind commercial-in-confidence agreements.

It is difficult for a regulator to act on suspected anti-competitive behaviour when there is price obfuscation by owners of services that have been declared. The pricing of access often bears no relationship to the actual cost of providing such access. Pricing can be either obscured by being 'commercial-in-confidence' or by being so divorced from real pricing that the relationships that obscure real prices become extremely complex and difficult to unravel. This complexity limits the ACCC's ability to investigate breaches such as collusion and overcharging. It also makes cross-subsidisation more difficult to identify. Transparent pricing for access to declared services is a pre-requisite for a regulator to be able to investigate claims of complainants and to exercise the powers that are available to the regulator under legislation.

Transparent pricing at the supply side hands a powerful tool, not only to the regulator, but also to other market players in their negotiations with the owner of the declared service, lessening the need for costly investigations and dampening the litigious atmosphere that has begun to pervade the telecommunications market.

Demand-side regulation

Regulatory activity should also be extended to include not only anti-competitive behaviour towards competitors but also general anti-competitive behaviour in the market. For example, bundling and price obfuscation not only affects competition at the supply end but also prevents consumers (the demand-side) from making informed choices in the marketplace and hence limits competition.

For consumers to have the ability to exercise power in the market there must be a high level of pricing disclosure from companies, to enable informed consumer choice. Many products, especially in the telecommunications market, have their prices obscured by either bundled products (such as mobile phones) or because the price bears no visible resemblance to the cost of providing the service (such as long distance calls).

Bundling of telecommunications products obscures the actual price. For example mobile phone contracts are often bundled with a 'free' handset. Because the pricing of each component in the contract (both the service and the hardware) is obscured, consumers are unable to make a reasonable assessment of total cost of ownership and hence cannot reasonably compare prices.

Competition can only occur when there is a framework for new market entrants to be able to compete on a 'level playing field' (the area in which the ACCC has invested most of its regulatory effort) *and* when consumers are able to make informed choices based on real prices, unobscured by bundling and meaningless pricing that has no relation to actual cost. This last point is especially important in small regional economies where there is extremely limited competition between carriers. The regulatory framework for competition between carriers alone does not make these small economies attractive to new market entrants. New entrants must be able to

expect a high churn of customers from the incumbent, but because prices are obscured consumers are unable to make informed choices about a new entrant's prices in comparison to what is offered by the incumbent and so are more likely to 'stick with what they know'.

It is not just price information which is unclear. Mobile phone coverage maps provide a good example of poor information in relation to services available. In 1998, Telstra produced a GSM coverage map, used in advertising to potential and actual mobile phone buyers, which indicates both the coverage which it guarantees to the ACCC, and those areas where coverage was planned to be provided by March 1999. The actual roll-out schedule left out the majority of the areas which were indicated as planned for March 1999 but the map is still being used (for example, this is the map which appears on the Telstra web site).

Accurate consumer information is essential to consumer empowerment and competition. If trading were conducted on a transparent basis, consumers, competitors and the ACCC would be able to derive an accurate picture of real pricing and competition trends.

Other issues for consideration

There are several characteristics of the telecommunications industry that are not explicitly addressed in the scope of this inquiry but are of note for general consideration of telecommunications competition policy.

000-emergency

000-emergency services are of serious concern to the Tasmanian Government after several instances of emergency services being misdirected which has led to delays and has placed the public at risk. Currently, Telstra delivers 000-emergency services nationally. Until recently, emergency call centres existed on a state-by-state basis. However, due to the commercial pressures that now affect Telstra, 000-emergency services are now centralised. There is serious concern that the centralisation of services may increase the incidence of emergency services misdirection.

Because of the high level of public good that comes from the provision of these services and the risk to public safety entailed by the provision of 000-emergency services being bound by the commercial decisions of a telecommunications carrier, it is possible that a different approach to the provision of 000-emergency services in Australia would be preferable. Ultimately, 000-emergency is a public service that Telstra is presently mandated to deliver. The provisions in the *Telecommunications (consumer protection and service standards) Act 1999* obligate the designated provider of 000-emergency services to:

- i) *“receive and handle calls made by those end-users to the relevant emergency service number; and*
- ii) *if appropriate—transfer such calls to an appropriate emergency service organisation; and*
- iii) *if appropriate—give information in relation to such calls to an appropriate emergency service organisation. “*

However there are no detailed requirements in relation to service levels, and no contract or service level agreement covering this essential service. This leaves the

provision of 000-emergency services subject essentially only to commercial decisions by Telstra. The provision of public services such as 000-emergency ought to be subject at least to basic service level agreements, otherwise these non-profit making services could continue to be downgraded by Telstra's commercial decisions.

White pages directory services

It is a national asset enjoyed by few other countries to have a standardised central directory of telephone numbers that is not dependent on the carrier to which a person is subscribed.

The ownership of the directory presently lies with Telstra, a historical legacy of being a government owned service provider. Telstra is still mandated to provide this centralised directory service, but just as with 000-emergency there are no service agreements for the provision of directory services. It would be highly undesirable for white pages directory services to be subject solely to Telstra's commercial decisions. Telstra's commercial decisions have already begun to affect white pages directory services with the introduction of charging for 013 services. At the same time, it would be undesirable if the introduction of greater competition in the provision of directory services resulted in a fracturing of this directory into many competing lists.

As numbering issues are the jurisdiction of the Australian Communications Authority, it would be logical for the control of white pages directory services to lie with the ACA. Telstra, or any other carrier if it were tendered, could act as a provider of the delivery mechanisms subject to service level agreements to preserve this asset.

Conclusions

Telecommunications deregulation is very new and has occurred during a period of immense technological change. In this immature industry, it is very clear that the intervention of the ACCC is still required to allow fair competition to occur.

However it is also clear that this intervention to date has not benefited regional Australia to the extent that it should.

The ACCC must widen its focus on telecommunications regulation to encompass and assess competitive effects at the consumer end and to take into account the regional differences in telecommunication markets. It should also focus on transparent pricing and service information as a means to accelerate change in the telecommunications industry, both at the demand and supply end of the market. This would be entirely within the scope of the present regulatory framework.