

The Queensland Government
Submission
to the
Productivity Commission
Review of Telecommunications Specific
Competition Regulation

October 2000

Overview

The Queensland Government welcomes the opportunity to provide the following Submission to the Productivity Commission Review of Telecommunications Specific Competition Regulation.

As the most decentralised mainland State, telecommunications are particularly important to Queensland. In line with the view that the most appropriate objective of telecommunications regulation should be to maximise the long-term interests of end users, the Queensland Government believes that a truly competitive environment is essential to ensuring that all Queenslanders have the opportunity to access the benefits available to them in the information age. These benefits are multi-faceted, including innovation and productivity growth from e-commerce and social benefits from electronic service delivery and improved communication systems, as well as benefits through industry and regional development.

The Queensland Government has a proven track-record of promoting a competitive telecommunications environment. This is demonstrated by the State's support for the Coastal Broadband Project bringing competition at the infrastructure level to the coastal region between Brisbane and Cairns. It is continuing to investigate further such opportunities.

In its Submission to the "Besley" review of Telecommunications Service Adequacy, the Queensland Government argued that there should be an Inquiry into

*"whether all the necessary pro-competitive arrangements are in place to permit the Commonwealth to forego much of its influence over Telstra."*¹

The Queensland Government welcomes therefore the Productivity Commission Review. However, the Queensland Government is concerned that the tenor of the Commission's Issues Paper and of much of the public discussion surrounding the Review, including many of the submissions, miss the mark in this respect. The legislative and associated competition arrangements are only one aspect of the issue. The real question is whether competition is actually happening on the ground and actually delivering the benefits expected of it.

It is clear that a number of major market segments are not truly competitive, nor even truly contestable. Telstra's continued domination of some markets, notably the local loop, is evidence of this. Other evidence can be seen in pricing behaviour, where there are clearly pricing levels above benchmark levels or long-run marginal cost. Further evidence is apparent in some of the investment projects underway, where it pays some carriers to duplicate infrastructure that is being used at only a fraction of its capacity rather than seek interconnect arrangements.

It is recognised that there are a range of regulatory and market developments that are making the market more competitive. However, until these can be demonstrated to have

¹ Submission by Queensland Government to Telecommunications Service Inquiry, June 2000, available at <http://www.telinquiry.gov.au/subs/qldgovernment00060814.rtf>, accessed 31 August 2000, p 2.

resulted in a truly competitive situation in all major market segments, there can be no case for winding back competition legislation.

On the contrary, the continued absence of competition in major markets indicates that the Commission should be looking at options to enhance competition regulation. It is unfortunate that the Commonwealth Government's over-riding concern with privatisation, rather than the ultimate outcome sought of improved service levels, has resulted in the Commission being prevented from investigating options for structural change to the dominant telecommunications carrier that may assist to promote a more competitive outcome.

The Queensland Government therefore provides the following conclusions and recommendations:

- 1. While competition may have done its job in some parts of Australia, this is clearly not the case in a number of major market segments, particularly in Queensland.*
- 2. Vibrant competition needs to be in place before any consideration can be given to lessening competition regulation.*
- 3. The Commonwealth Government should not forego any of its power to establish effective competition in telecommunication markets at both the wholesale and retail level and, specifically should retain telecommunication specific competition provisions.*
- 4. Care needs to be taken to ensure that decisions made today do not limit the establishment of alternative carriers in the future.*
- 5. Telecommunications-specific prohibition of anti-competitive behaviour continue to be available under Part XIB of the Trade Practices Act, and that the Commission investigate options to speed up the application of these provisions.*
- 6. There should be no lessening of the requirements in relation to tariff filing and record keeping rules, and more of the information held by the Australian Communications Authority (ACA) and Australian Competition and Consumer Commission (ACCC) should be made public to ensure that lack of information is not an impediment to competition.*
- 7. There should be no lessening of requirements in access arrangements under Part XIC. On the contrary, there should be a more active approach to using these arrangements. In particular,*
 - The ACCC should act to speed up the "declaration process", place more realistic deadlines on commercial negotiations and be more willing to arbitrate, and should extend individual arbitration proceedings to "classes" of proceedings;*
 - There be more opportunities for external arbitration of technical specifications on access, such as through the ACA.*

8. *The ACCC and ACA use joint processes to fast track decisions in the interests of long term users of telecommunications services. In particular, that a work plan be developed within the context of the Strategic Framework for the Information Economy to identify and address the impediments to competition in the telecommunications market.*
9. *An alternative approach to industry self regulation be considered that improves the timeliness of outcomes for the benefit of end customers.*
10. *Telecommunications industry development plans should be made public and should contain a report of business activity on a state by state basis. Moreover, relevant Commonwealth agencies should work with State Governments to reduce the impact on industry of preparing multiple plans or submissions.*
11. *In addition to the access provisions under competition legislation, primary access should also be established as part of license conditions or other agreements with State agencies.*
12. *The information provisions of Part 4 of the Telecommunications Act should remain. Moreover, except where the ACCC determines to the contrary, this information should be made public to ensure that lack of information does not provide a barrier to the efficient operation of the market.*
13. *Current access requirements to transmission towers and underground facilities be maintained and stronger provisions, about access on just terms and co-location and co-ordination of installations, be introduced to the Telecommunications Act (1997) and associated regulations, in consultation with States and Local Government.*
14. *Access arrangements for building distribution frames should be implemented in such a way to reduce the impact on building facilities and owners while maximizing customers' access to service providers*
15. *The legislative requirements for pre-selection remain and that the processes for establishing unbundled pre-selection services be accelerated. Moreover, consultation processes for exemptions to pre-selection by the ACA be extended to include consideration of major customers and Government.*
16. *Determinations of standards for the interconnection of facilities should be expedited and upgraded.*
17. *Customers should be given ownership of numbers and key identifiers rather than carriers or service providers.*
18. *Ownership and management of charging zones should be vested in an independent body rather than the dominant carrier.*
19. *Mobile roaming should be provided in all coverage locations*

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1 Introduction

1.1 The purpose of this submission

The purpose of this submission is to provide a balanced view on telecommunications competition in Queensland from three perspectives, a statewide view, a state Government view and major customer view.

1.2 Why is telecommunications competition important to Queensland?

Queensland is the most decentralised mainland State, with 45.6% of its population living outside the capital city statistical division.² Queensland's economic base is dependent upon the decentralised industries of mining and mineral processing, agriculture and agribusiness, and tourism. As a result, the issue of cost effective regional and rural infrastructure and services is more pressing in Queensland than for any other area of Australia. At the same time, the information technology industry in Queensland is growing more rapidly than in other States.

It is the Queensland Government's view that telecommunications competition under the current regulatory regime has primarily been concentrated in metropolitan Australia. These markets continue to be the main focus of competition, and of new infrastructure investment.

Commercial realities are recognised that in an environment of enterprise investment rationing, projects addressing high density and high value customer centres will almost always displace lower return non-metropolitan investments, even if these projects would offer an acceptable commercial return to an operator on a standalone basis. Hence it is accepted that there will be limits on the benefits competition can provide to rural and remote communities, and that a broader range of policies are required for the provision of telecommunications services to those areas. For the purposes of the review, and to simplify discussion the Queensland Government considers that there are three major telecommunications markets in Queensland. These equate to

- South East Queensland - the urbanised zone covering the greater Brisbane area and the Gold Coast;
- the coastal strip; and
- "Far North and West of the Divide".

Table 1 shows the Queensland Government's assessment of the current status of competition in each of these major markets. It is evident that market participants see Brisbane and South East Queensland as an attractive market. Unfortunately other markets are not being seen in the same light, with a significant proportion of the investment that is occurring requiring Government support. The Queensland Government for example has acted to encourage competitive private sector investment along the coast and to the major regional centres, while three years ago the State Government support assisted Telstra to establish Integrated Services Digital Network (ISDN) in over 95% of settlements with schools.

² Department of Communication and Information, Local Government and Planning; "*Recent population and housing trends in Queensland – 1999*"; Planning and Forecasting Unit; August 1999.

Table 1 – Competition in Telecommunications Markets in Queensland

Segment	Voice	Mobile	IP/Data
South East Queensland	Contestable. Australia parity pricing, but uncompetitive with trading partners (especially for international links)	Contestable at both an infrastructure and service level.	Contestable. Australia parity pricing, but uncompetitive with trading partners (especially for international links)
Coastal Strip (regional Queensland)	Contestable at a service level. Increasingly contestable at an infrastructure level. Significant price penalty vis-a-vis Brisbane	Contestable at a service level.	Increasingly contestable at an infrastructure level as a result of Government support. Points of Presence in major centres; but significant price penalty vis-a-vis Brisbane
Far North and West of the Divide (rural and remote Queensland)	Imperfect market. Issues include: <ul style="list-style-type: none"> • scale (unit costs) • investment hurdle rates • price barriers 	Contestable at a service level (eg CDMA) in a small number of locations. Without government support, the service is unlikely to increase coverage. Issues are <ul style="list-style-type: none"> • scale (unit costs) • investment hurdle rates • lack of coverage-high price barriers 	Imperfect market: <ul style="list-style-type: none"> • Government intervention needed • Customer access Network and lack of local call access to the Internet a real issue.

Table 1 shows that competition has a way to go in Queensland before the Queensland Government could consider recommending any lessening of competition regulations.

From a Queensland perspective, it is strongly argued that vibrant competition in the telecommunications market must be in place before any consideration be given to lessening telecommunications specific regulation.

Conclusion:

- ***While competition may have done its job in some parts of Australia, this is clearly not the case in a number of major market segments, particularly in Queensland.***
- ***Vibrant competition needs to be in place before any consideration can be given to lessening competition regulations.***

1.3 What is the purpose of competition?

The Queensland Government view is that competition is a means to an end – not an end in itself. Competition is a vehicle to improve the efficiency of the economy as a whole and to allocate scarce resources. In telecommunications, competition is a proven way of driving down costs to users. In appropriate circumstances, it can also result in improved service levels.

Competition is not the same as untrammelled operation of market forces. It has long been recognised that the operation of market forces in network infrastructures such as telecommunications can result in uncompetitive outcomes. Uncompetitive outcomes are frequently associated with the extraction of monopoly rents, often in the form of inefficiency and low levels of productivity, derived from excess pricing and insufficient focus on customer needs.

In telecommunications, competition can take place at the infrastructure level or the service level. Infrastructure competition is the most complete expression, as that gives functional independence between operators and hence permits the full force of competitive forces to be unleashed. These forces are strong in high demand centres (eg Brisbane), less strong in urban centres and can be weak or non-existent in regional and remote centres (Table 1).

Focussing competition at the infrastructure level can however result in either wasteful investment in the form of duplicating infrastructure that is being used at only a fraction of its capacity, or the absence of a market competitor. This is likely to be the case in many rural and remote areas. The delays and costs that this involves limits access for Australian businesses and communities to world class services that will open them to global economies and societies. Until the market moves from a focus on bandwidth to content, we will remain bogged down in yesterday's debates whilst other parts of the world forge ahead.

In this latter case, the fact that a market may be “contestable” in the sense that there are no legal barriers to market entry does not necessarily make it contestable in the true sense of the word, in that there are still substantial barriers to entry in the form of sunk investment costs.

Technological change in telecommunications (eg, the application of wave division multiplexing in optic fibre) has increased the capacity of many telecommunications networks by a factor exceeding even the very strong growth in demand that is occurring. As a result, the problem of “natural monopoly” at the infrastructure level, particularly in regional and rural areas is not diminishing.

For this reason, much of the focus of competition needs to be at the service level. This is justified by the unique characteristic of telecommunications that all services must be available on an “any-to-any” basis. Moreover, technological change is giving Telstra a windfall gain in the form of greatly increased capacity from earlier optic fibre investments. There can be no philosophical objection to requiring Telstra to share that windfall gain with the community through providing access to its network to competitors on a fair and equitable – ie, full economic basis.

That the interconnect arrangements are not fair and equitable can be seen in the outcome that some competitors are prepared to pay to duplicate infrastructure that is being used at only a fraction of its capacity rather than seek interconnect arrangements. While an appropriate level of infrastructure investment is critical, it is of concern where such investments may go beyond this level and constitute a waste of scarce investment resources paid for by the Australian public at an ongoing cost to Australian businesses and communities.

As an example of the consequences of wasteful duplication, the Queensland Government is concerned about the costs of relocating multiple infrastructure installed in roads when this is required due to road upgrading works, and the lack of legislative ability for States to effectively facilitate co-ordinated infrastructure installations when space is limited.

2 Telecommunications Specific Regulation

2.1 The Need for telecommunications specific competition regulation

An absolutely fundamental requirement of any telecommunications service is “any-to-any” connectivity. Given the presence of economies of scale and scope and network externalities, efficient competition can only be achieved through an interconnect arrangement, as well as active markets at both the wholesale and retail level for all telecommunications services. This in turn requires a degree of co-operation between all those associated with the telecommunications supply chain.

It is clear to the Queensland Government, both as a major customer and in its role of representing the people of Queensland, that the required co-operation is still building, cannot be relied upon, and is still undertaken at the benevolence of a few major players.

It is of concern that after more than three years of competition that many of the basics are yet to be resolved effectively (eg wholesale access to carriage, roaming between mobile phones, pre-selection, number portability and unbalanced access to critical information sources).

It is unfortunate that advantage was not taken of the opportunity to substantially resolve many of these issues at the onset of the full competition and privatisation of Telstra in 1997. It can be argued that the opportunity should have been taken then to separate Telstra into two major business units – one for wholesale/infrastructure provision and one for value added services. This would have engendered an appropriate culture of cooperation at an infrastructure level and competition at a value added services level.

As a result of this Commonwealth policy, Telstra remains the dominant player in the telecommunications market, with a unique capacity to “bundle” and cross-subsidise services in an opaque manner that is as likely to be in its own interests as in customer interests.

In these circumstances, the need for sector-specific competition regulation is absolutely clear. No other industry has the same circumstances of network effects, economies of scale and scope, requirement for any-to-any connectivity, and a dominant player operating in an integrated manner in both wholesale and retail (and even value-added) markets.

In the absence of competitive benchmarks, Telstra has focused on international comparisons (eg lines per employee or revenue per employee). This focus is unhealthy and detrimental to development in Australia. Unique Australian circumstances are not recognised in such exercises, it results in an excessive focus on internal costs to the detriment of customer needs and it is also resulting in job losses in small centres.

In these circumstances, the Commonwealth Government should not forego any opportunity to establish effective competition in wholesale and retail markets. In particular, it cannot forsake telecommunications-specific competition regulation. The general competition provisions were not designed for the unique characteristics of telecommunications markets and will deliver sub-optimal results if inappropriately applied to those markets.

Recommendation:

The Commonwealth Government should not forego any of its power to establish effective competition in telecommunication markets at both the wholesale and retail level and, specifically, should retain telecommunication specific competition provisions.

2.2 Barriers to competition

The main barrier to competition in the Australian telecommunications system relates to carrier access to customers, particularly the Customer Access Network. This is owned by the commercial entity now known as Telstra, but most of it was developed in the pre-competitive, and even pre-commercial era. It should be seen not as an investment by Telstra, because in the most part it isn't, but as a national resource paid for by the public over a period of years. As an asset it has already paid for itself many times over and in many locations should be fully depreciated.

It is this infrastructure that now has the potential to make Australians full participants in the information age. Continuing disputes over effective access to the Customer Access Network are undermining Australia's potential position in the information age.

2.3 Convergence and the definition of telecommunications

Respective definitions should not restrict the innovation that can occur as part of the convergence of broadcasting and telecommunications. Central to the definition of telecommunications should be an ability for carriage service providers to increase the value and lower the cost of services in the long-term interests of customers.

The current prevalence of point solutions to customers (eg an internet solution, a TV solution, mobile phone solution and a fixed telephone solution) is unlikely to remain in the long-term interests of end users. Where possible as a nation, we need to use a definition that permits integrated services using familiar paradigms to move the country into the information age and to achieve widespread efficiency gains.

As a major user of telecommunications in Queensland, the Queensland Government proposes to converge voice, data and other media onto appropriate carriage services to serve customers and its business needs.

In the future, datacasting may be used to provide information services to Queenslanders who do not have ready access to the World Wide Web. The extent to which this

technology can be used as a service delivery channel will ultimately be determined by cost, geographic availability and consumer uptake.

Aside from datacasting, there is a potential in rural and remote Queensland, for television service providers (satellite or terrestrial) to provide quality voice services, reliable data services and potentially mobile services. It is understood that similar business models work effectively in other jurisdictions. Government intervention will still be needed to facilitate rollout in lower profit areas.

Also technologies are becoming increasingly available to allow power companies to use their existing infrastructures and business model to provide telecommunications to customers. It is understood that for the most part, the extension of these infrastructures can come at a comparatively small incremental cost above a business case that has already been justified for core business.

Convergence has the potential of providing high value customer services over an alternative local loop. Care needs to be taken to ensure that decisions made today do not limit the establishment of alternative carriers in the future. The Commonwealth's decisions in respect of data-casting have already been criticised on these grounds.

In addition, it is possible, particularly for large customers with Virtual Private Networks, that the transition to carrier offered IP-based networks may produce both differing charging paradigms and a greater likelihood of lock-in to a specific carrier's services. The ACCC and ACA need to be mindful that existing competition enhancing mechanisms such as pre-selection may require review or replacement to ensure the maintenance of a competitive telecommunications market.

Conclusion:

Care needs to be taken to ensure that decisions made today do not limit the establishment of alternative carriers in the future.

3 Evaluating the existing telecommunications-specific competition regulation

3.1 Anti-competitive conduct – Part XIB of the Trade Practices Act

The Queensland Government supports retention of telecommunications-specific anti-competitive conduct provisions. The intent of the current provisions, to stop misuse of market power where this has the effect, not just the intent, of being anti-competitive is entirely appropriate to the circumstances of the telecommunications market. A market participant in Telstra's position – operating in virtually all market segments with dominant status in some of them – can very easily engage in anti-competitive activities without any evidence, or even actuality, of intent.

The question that arises is whether the current provision is sufficient. The provision relies upon a Competition Notice to be issued by the Australian Competition and Consumer Commission (ACCC). Even with the 1999 amendments to expedite the application of this provision, questions arise about the time delays involved in the process. The Submission by PowerTel to the Review suggests the introduction of a new mechanism which enables the ACCC to issue "stop orders" where it reasonably suspects anti-competitive behaviour. This is a suggestion worthy of serious consideration.

Recommendations:

- *Telecommunications-specific prohibition of anti-competitive behaviour continue to be available under Part XIB of the Trade Practices Act.*
- *The Commission investigate options to speed up the application of these provisions.*

3.2 Tariff filing and record keeping rules

Market forces are yet to establish efficient information flows between carriers or between carriers and customers. This absence of information considerably impedes the development of efficient market outcomes, eg, by requiring tortuous re-negotiation of arrangements that have already been agreed by a carrier with other customers.

Also, as a major customer, the Queensland Government has found that carriers often attempt to use their power to limit pricing and service information across government, clearly with a view to reaping benefits from differential pricing of similar services across agencies.

A central repository of baseline tariff information should be maintained in line with Tariff filing and record keeping rules. This information should be made public to create a truly informed market and ensure that lack of information does not create undue inefficiencies.

Recommendation:

It is recommended that:

- *there should be no lessening of the requirements of part XI; and*
- *information held by the Australian Communications Authority (ACA) and Australian Competition and Consumer Commission (ACCC) should be made public to ensure that lack of information is not an impediment to competition.*

3.3 Access regulation – Part XIC of the Trade Practices Act

For Australia to excel in the information age telecommunications services need to provide citizens and business with an opportunity to innovate at an economic and social level.

Australia can ill afford to repeat the duplication of investment that was made in cable infrastructure in the name of competition in the past years (estimated service losses to date of \$4.2 Billion³). The recent Channel 7 decision through the High Court now places this cable infrastructure in correct perspective, requiring providers to carry content to customers. It is unfortunate that this could not have been resolved more efficiently.

The lack of cost effective access is evidenced in the necessity and ability for numerous new carriers to justify installing duplicated backbone and mobile networks. Invariably this duplication is in high traffic routes and as a result severely limits the investments that can be made in centres with lower populations.

In this regard it is important to note that wasteful duplication of infrastructure does not constitute socially productive investment. Telecommunications investment is of no value per se – it is only of value if it supports customer demands and economic development in the information age. Wasteful telecommunications investment therefore detracts from more socially productive investment, resulting in a lower overall level of national income and living standards.

This is doubly the case where the effect of requirements affording carriers wide powers to access land (including roads) largely without compensation whilst increasing landowners' liability with respect to possible damage to the infrastructure, encourages wasteful duplication of infrastructure because carriers are not being required to bear the full costs of their installations. In some circumstances, these costs are borne as social costs, eg, by road authorities when land is acquired and carriers' facilities are relocated at public cost.

Telstra is the only carrier with extensive terrestrial Statewide infrastructure and service investment. The National Bandwidth Inquiry showed that Telstra has excess carriage capacity in its terrestrial network. In general, the price has not moved downwards to increase the demand and utilisation of this resource. It is clear that in much of its

³ Paul Budde Communications; "Australia - Pay TV - Industry Developments 1996 – 2000"; June 2000.

network, Telstra is pricing above long-run marginal cost. This means that the current access regime must be more rigorously applied if it is to achieve its objectives.

To influence competitive pricing in regional Queensland the Government has had to use its rights of way and procurement practices to facilitate the establishment of the private sector led Reef Networks projects to provide a competitive fibre backbone along the Queensland Coast. Cable and Wireless Optus has committed to use this infrastructure to provide carriage services to Queensland coastal centres.

As a major customer, the Queensland Government has had direct experience of the continuing lack of cost effective seamless interconnection between competing carriers. Two examples are the Queensland Government's ongoing inability to:

- facilitate cost effective interconnection between CENTREX services such as Telstra's Spectrum service and other carriers through direct access lines to Telstra's DMS100 switches; and
- establish higher functionality Centrex services across competing vendor platforms.

Seamless interconnection is also a key concern for Universal Service Obligation Contestability Pilots - ideally customers should not be adversely impacted by changes in carrier.

Further evidence of the failure of the current access arrangements to deliver the full benefits of competition can be seen from a comparison of domestic long distance charges with call charges to international destinations. Table 2 shows such a comparison. The table shows that it can even be cheaper to transit an international link back to the Customer Access Network than it is to originate and terminate a call in Australia.

Table 2 – Comparison of Domestic and International Call Charges

Centre	Peak (per minute) ⁴	Off peak (per minute) ⁵	Any time (per minute) ⁶
Brisbane to:			
Canberra	\$0.47	\$0.37	
France			\$0.26
Germany			\$0.25
UK			\$0.16
USA			\$0.16
Japan			\$0.28

⁴ http://www.telstra.com.au/locallongdistance/ccost_f.htm

⁵ http://www.telstra.com.au/locallongdistance/ccost_f.htm

⁶ <http://www.digiplus.com.au/>

The reason for the failure of the access arrangements to achieve their objectives can be seen in the attitudes of the various parties. As cited by the Commission in its Issues Paper, “regulatory intervention is seen as a ‘last resort’” where commercial arrangements fail.

In the circumstances of the telecommunications industry, commercial arrangements are bound to fail. Under the current arrangements, the dominant incumbent is given far too many opportunities to delay the process by dragging out commercial negotiations. These include:

- the incumbent’s effective power of veto in industry forums;
- the opportunity it has to extend negotiations with each individual access seeker; and
- the opportunity it has to force access on the basis of inappropriate technical specifications.

The Queensland Government recommends a more active approach to addressing these problems.

Recommendations:

- *There be no lessening of requirements in access arrangements under Part XIC*
- *The ACCC act to speed up the “declaration” process*
- *The ACCC place more realistic deadlines on commercial negotiations and be more willing to arbitrate*
- *The ACCC extend individual arbitration proceedings to “classes” of proceedings*
- *There be more opportunities for external arbitration of technical specifications on access, such as through the ACA.*

3.4 The regulatory agencies

While it may be necessary to fine-tune the relationship between the ACA and the ACCC, both organisations undertake valid roles and the current relationship represents an appropriate balance of power.

Further evidence for the need for a body with powers such as the ACCC is New Zealand’s recent establishment of a regulator after almost 15 years of deregulation without such a body.

It is understood the ACCC has the seldom-used power to provide an interim determination to fast track a decision relating to an access claim or industry dispute without being subject to immediate appeal and delay. Clearly this power needs to be used more assertively.

It is apparent that in some instances the ACA is not empowered to act unless directed by the ACCC, such as in relation to number portability requirements. This can impose an additional level of delay, which could be removed if the two bodies could agree on a

work program to address many of the outstanding impediments to competition. This work program should be framed in the context of the Strategic Framework for the Information Economy.

Recommendations:

- ***The ACCC and ACA use joint processes to fast track decisions in the interests of long term users of telecommunications services.***
- ***A work plan be developed within the context of the Strategic Framework for the Information Economy to identify and address the impediments to competition in the telecommunications market.***

3.5 The Role of Industry

It is evident that self-regulation necessitates wide consultation and consideration of many issues. Unchecked, this process has the potential of becoming a bogged down, and producing dysfunctional results over an extended timeframe. In particular, self-regulation contains inherent biases in favour of a large incumbent with the resources to participate in all aspects of the self-regulation process in a manner that progresses its interests rather than the long-term interests of end users.

From a customer perspective, self-regulation is yet to show strong evidence of working effectively. The effect of increasing the level of self-regulation at this stage will only be to place further power in the hands of incumbents and slow the speed of real competition across Australia. This is not in the long-term interests of end users.

A more productive approach would be to determine desired outcomes and provide a defined timeframe in which the industry could reach agreement on the details, ie, bounded self-regulation. Failing agreement on detail, the appropriate body (ACA or ACCC) could make a determination based on progress made by industry as well as other sources. This approach would have the benefit of industry participation, but would have the added bonus of a timely outcome for the benefit of end customers.

Recommendation:

- ***An alternative approach to industry self regulation be considered that improves the timeliness of outcomes for the benefit of end customers.***

4 Telecommunications Act

4.1 Industry development plans

The Queensland Government is supportive of an active approach that assists the development of local industry on a competitive basis. The requirement for industry development plans is consistent with that view. It would be beneficial if States were given an opportunity to view these documents – ideally they should be public documents.

Regional telecommunications development should be widely promoted as a desirable outcome of these plans. Currently carriers and service providers have no obligation to report details of their business activity on a State or regional basis. This creates a shortfall in detailed planning information.

For its part, the Queensland Government requires the IT&T industry to submit industry development proposals as part of large tenders. This approach is under review, with a view to replacement with an accreditation scheme linked to the Commonwealth's Partnerships for Development program. This will have the benefit of reducing the burden on the industry as well as in improving industry development outcomes.

Recommendations:

- *Telecommunications industry development plans be made public documents and that they contain a report of business activity on a state by state basis;*
- *Commonwealth Department of Science, Industry and Resources work with State Governments to reduce the impact on industry of preparing multiple plans or submissions.*

4.2 Access to supplementary facilities

The Queensland Government believes that no opportunities should be foregone to effect competitive outcomes in the telecommunications market. This includes the access to facilities requirements within the Telecommunications Act.

Where, practicable, primary access provisions should be established as part of license conditions or other agreements with State agencies. This will reduce any confusion in this area, and may have the desired effect of lessening the impact on scarce ACCC and court resources.

However, the access requirements under Part XIC of the Trade Practices Act would also still be necessary to resolve issues surrounding access to pre-existing carriers' facilities and to provide more appropriate legal remedies.

In addition, the Queensland Government supports the Austroads initiative to compile a standardised code of practice and other standard agreements for carriers requiring access to roads.

Recommendation:

Primary access provisions should be established as part of license conditions or other agreements with State agencies.

4.3 Access to network information

Similar comments apply in relation to the current legislative provision governing the supply of information between carriers. Information is obviously critical to the operation of a competitive market, and any restriction on the availability of necessary information would inevitably have an anti-competitive effect.

In the current telecommunications environment, absence of accurate information would place service providers using a particular network to service their customers at a severe disadvantage. This uncertainty subsequently places the activities of Australia's businesses and citizens in jeopardy. This vulnerability should be limited where possible.

This information is of such importance to the effective investment in telecommunications in Australia and Australia's positioning in the information age that it warrants being enshrined in legislation.

A question in this area would be more appropriately framed in terms of what are the costs to Australia of not providing ready access to the information proposed.

Recommendation:

The information provisions of Part 4 of the Telecommunications Act should remain. Moreover, except where the ACCC determines to the contrary, this information should be made public to ensure that lack of information does not provide a barrier to the efficient operation of the market.

4.4 Access to transmission towers and underground facilities

From an economic and environmental perspective, physical infrastructures such as transmission towers and underground facilities should be shared. To do anything else would not serve the good of the country.

It would be absurd for the intermediate level of competition, between access and full duplication of infrastructure, to be excluded from the armoury of pro-competitive regulation. While it is accepted that carriers need to have certainty of access to their own facilities, access arrangements need to limit anti-competitive or environmentally detrimental effects.

The Queensland Government has taken the position of sharing towers and other facilities with carriers to streamline the rollout of new infrastructure in Queensland wherever practical. The Government is currently preparing a standard set of conditions to simplify carrier's access to its sites across the State.

Also, the Queensland Government is currently investigating how its existing strategic and statutory planning systems can be enhanced to proactively support Queensland's transition into the information age.

Recommendation:

Current access requirements to transmission towers and underground facilities be maintained and stronger provisions about access on just terms, and co-location and co-ordination of installations, be introduced to the Telecommunications Act (1997) and associated regulations, in consultation with States and Local Government.

4.5 Building access - a limitation to CBD competition.

A matter of concern to major building owners is the limited space that can be provided for carriers' distribution frames in building basements. Longer established carriers have an increased presence in buildings and therefore a significant competitive advantage over new players.

To facilitate competition, a solution needs to be found that allows all carriers access to a building without needlessly filling floors with distribution racks.

Recommendation:

Access arrangements for building distribution frames should be implemented in such a way to reduce the impact on building facilities and owners while maximizing customers' access to service providers.

4.6 Pre-selection

The ability to use pre-selection is critical to Queensland and to the Queensland Government.

Over the past 12 months the Queensland Government has been seeking the ability to pre-select other local call carriers from its Telstra Spectrum service using direct access trunks connected directly to Telstra's DMS100 Centrex switches. The Government has experienced numerous delays and received a number of explanations as to why this cannot be done now. As a reasonably patient customer these delays were accepted on face value.

Quite by accident the Queensland Government became aware that the ACA had been asked by Telstra to provide an exemption from pre-selection on this platform.

Fortunately, this exemption was not granted, as the possible impact of the ACA providing an exemption would be to place the State Government and a large proportion of its voice services at the mercy of the incumbent – who has in the past used the threat of significant price rises to influence Government decisions. One of the positive outcomes of an ability to pre-select long distance has been a fifty percent reduction of call costs - approximately

\$10 million in the first twelve months of operation. In the absence of pre-selection costs would have remained high.

One of the other implications of such an exemption would be to limit the extent to which the Government could use its demand to strengthen the competitive market in Queensland.

Recommendations:

- *The legislative requirements for pre-selection remain and that the processes for establishing unbundled pre-selection services be accelerated.*
- *The consultation processes for exemptions to pre-selection by the ACA be extended to include consideration of major customers and Government.*

4.7 Technical standards about the interconnection of facilities

There is a need for regulations enabling Government to set standards about the interconnection of facilities. Industry self-regulation is too slow and unfortunately only a few large players can impact results.

The long-term interests of the end-user should be at the forefront of the majority of decisions related to telecommunications competition and standards setting.

The ACA and ACCC should do everything in the power to hasten the production of standards on the interconnection of facilities to effective competition.

Recommendation:

Determinations of standards for the interconnection of facilities should be expedited and upgraded.

4.8 Number portability

Lack of widespread number portability is an impediment to the smooth operation of a competitive market because of its potential to bind customers to carriers and service providers long after they would have preferred to change provider.

As the customer pays for all costs in the market, ownership of phone numbers and some other key customer network identifiers (eg IP, email and www domain addressing) in appropriate circumstances should be deemed to be the customer's property. This approach would simplify transitions and lower the switching costs associated with changing provider.

Recommendation:

Customers be given ownership of numbers and key identifiers rather than carriers or service providers.

5 Other matters

5.1 Charging Zones

Effective management of charging zones underpins telecommunications services in Australia. For example charging zones determine the extent of local calls, STD call costs and IDD costs.

Currently, the existing zone structure is being used by the Commonwealth Government to:

- establish untimed local calls in Extended Zones;
- pilot USO contestability in standard zones; and
- provide, through Farmwide, local call access to the Internet in Standard Zones where that is not already available.

Concurrent with these developments, Telstra has announced that it is reviewing the charging zones. This review has been long awaited and is applauded.

It is of grave concern however that an independent body such as the ACA does not own and manage this critical foundation to telecommunications in Australia.

Unexpected changes to the zone structure by the owner could have serious effects on other carrier operations and investments and government and community investments (eg, under the *Networking the Nation* program).

Recommendation:

Ownership and management of charging zones be vested in an independent body rather than the dominant carrier.

5.2 Mobile roaming

The Commonwealth Government has indicated that mobile roaming will be part of the social bonus to extend mobile phone coverage on national highways.

For similar safety arguments, this feature should be available in all coverage locations, recognising that the customer selected carrier should provide service where infrastructure is available.

Recommendation

Mobile roaming be provided in all coverage locations.

TERMS OF REFERENCE

REVIEW OF TELECOMMUNICATIONS SPECIFIC COMPETITION REGULATION

Section 151CN of the Trade Practices Act 1974 requires that before 30 June 2000, the Minister for Communications, Information Technology and the Arts should cause to be conducted a review of Part XIB of that Act which deals with anti-competitive conduct in the telecommunications sector. At the Minister's request, the following reference is made to the Productivity Commission.

I, PETER COSTELLO, Treasurer, pursuant to Parts 2 and 3 of the Productivity Commission Act 1998 hereby:

1. Refer telecommunications specific competition regulation for inquiry and report within twelve months of receipt of this reference.
2. Specify that in conducting the review, the Commission has regard to the intent of the Parliament in establishing the review, the state of competition in the telecommunications market, and the impact of new technologies and delivery platforms.
3. Specify that in making its recommendations, the Commission aim to improve the overall economic performance of the Australian economy.
4. In particular, request that the Commission examine and report on:
 - (a) The operation to date of Parts XIB and XIC of the Trade Practices Act 1974, and the following provisions of the Telecommunications Act 1997:
 - (i) Part 17, which deals with pre-selection in favour of carriage service providers;
 - (ii) Division 5 of Part 21, which deals with technical standards about the interconnection of facilities;
 - (iii) Part 22 as it pertains to number portability;
 - (iv) Division 3 of Part 25, which deals with ACCC inquiries, particularly in relation to the declaration of services under Part XIC; and
 - (v) Parts 2 to 5 of Schedule 1, which deal with various access matters;
 - (b) The community and economic benefits and costs, including ongoing network investment, flowing from the provisions mentioned in paragraph 4(a);
 - (c) Whether the provisions in paragraph 4(a) are sufficient to prevent integrated firms taking advantage of their market power with the purpose or effect of substantially lessening competition in a telecommunications market, or whether alternative arrangements are required or appropriate;

and

(d) Whether any or all of the provisions mentioned in paragraph 4(a) above should be repealed or amended.

5. Specify that the review:

- (a) Take account of any recent studies undertaken;
- (b) Have regard to the established economic, social and environmental objectives of the Australian Government; and
- (c) Not encompass the structural separation of Telstra, in line with Government policy on this issue.

6. In undertaking the review, the Commission is to advertise nationally, consult with key interest groups and affected parties, and release a draft report. The Government will respond to the final report produced by the Commission within six months from the date it is received.

PETER COSTELLO