

Review of Telecommunications Specific Competition Regulations

A Submission to the Productivity Commission from the Service Providers Industry Association Inc. (SPAN)

About SPAN:

SPAN's mission is to foster open, effective and ethical competition in Australian telecommunications markets and to ensure that all service providers obtain access to networks and facilities in a manner suitable for the provision of sustainable competition in services to end users.

This statement of SPAN's mission dictates that SPAN's policy position on issues will be aligned with the interests of access seekers, rather than access providers when the interests of those two communities conflict. In SPAN's formative years, Telstra was the dominant access provider and other SPAN members saw themselves as access seekers, dictating a conflict of interest on many issues between Telstra and "the rest". Now, as the industry enters the new millennium, the roles of access seeker and that of access provider are being shared by more participants in the industry. SPAN members will increasingly find that they have interests in both camps.

The new shape of the industry does not mean that SPAN should abandon its access seeker role. To do so would compromise SPAN's pro-competition position, a position that is ultimately in the interests of the membership and community at large. It does mean that SPAN's role to provide forums and policy inputs that identify and clarify current and impending issues, and help resolve conflicts and produce effective competitive outcomes, becomes more important as the industry moves ahead.

SPAN's Board of Directors includes representatives of carriers (Telstra, Cable & Wireless Optus, Powertel and AAPT), carriage service providers (Macquarie Corporate Telecommunications, Clariti Communications), professional and value added service providers (I-Tel, Connect International and KPMG Legal). This spread of interest and experience at Board level ensures that SPAN can identify and address the broad range of issues that impact on our changing industry.

The Current Regime:

Before commenting on the effectiveness of current arrangements, SPAN would like to emphasise *that it views negotiation as the desirable means of reaching agreement on the definition, prices, terms and conditions of supply of facilities and services between industry members.*

Experience has shown, however, that negotiation has proved in many instances to be difficult, protracted, even impossible. There needs, then to be an effective and expeditious set of safety net regulatory arrangements to ensure that the industry can move forward when commercial negotiations break down. The telecommunications specific competition provisions that are under review by the Commission are the foundation for that safety net, and likely to remain a vital part of the industry interworking framework for the foreseeable future. Therefore, SPAN's overall view is that the provisions of the current Telecommunications Specific Regulation, and in particular Parts XIB and XIC of the Trade Practices Act 1974, as amended, are

necessary and will remain necessary for the development of the telecommunications industry and for the benefit of consumers.

This view is grounded on current and past experience of SPAN members in pursuit of their objective of bringing new, competitive services to the market and of creating and maintaining an effective wholesale and retail interworking structure – a structure that will expand the range of competitive services offered to customers and encourage effective competition in service levels and prices. While the present regulatory instruments have been useful in advancing this objective, the pace of progress has been too slow.

Lessons from History:

SPAN draws the attention of the Commission to the chronology of negotiations over access and interconnect agreements over the past three years since the introduction of the Telecommunications Act 1997. The record is punctuated by excessive delays and the need for lengthy arbitration procedures. The current plans to provide access to Telstra's local loop are worthy of study and we note that again, prices offered by Telstra are being hotly contested and the subject of criticism by the regulator and the Minister. We expect that the Commission will find it instructive to review progress of this critical issue, including the progress of the ACIF working parties that are trying to negotiate appropriate conditions for supply of services to Telstra's competitors.

We note that ACCC Chairman Professor Fels has expressed his frustration at the "logjam" of bilateral arbitrations that are before the ACCC concerning access to the local loop and mobile services. This state of affairs points clearly to the need for action to encourage commercial negotiation where possible, and to streamline the safety net regulatory arrangements where commercial negotiations break down.

Some Suggested Improvements to the Regulatory Structure:

A major area of concern is lack of transparency and an imbalance of information in the process of negotiation of terms for the provision of declared services and interconnect agreements. SPAN suggests that one way of overcoming this problem where a service is declared, would be for the ACCC to publish pricing principles for the service at the time of declaration and require the provider/s of the service to enter into an undertaking to provide the service to any access seeker, by a specified date, at prices, terms and conditions consistent with the published pricing principles. Any dispute about the compliance of the undertaking with the pricing principles would need to be resolved promptly. This should not mean that the access providers and access seekers would not be able to agree terms and conditions that differ from the undertaking, simply that the undertaking would provide a base level framework for wholesale provision of the service.

This would focus competition at the service level, rather than the access pricing level where currently, confidentiality agreements and practices confuse and delay the establishment of effective wholesale business relationships.

Another useful suggestion to improve transparency and accelerate outcomes was recently reported from a speech by Professor Fels where he raised the prospect of

multilateral decision making by the ACCC through measures such as public arbitrations. SPAN strongly recommends that the Review seek to make recommendations that will improve the transparency of access determinations and conditions and thus accelerate the opening up of competitive service opportunities to the industry.

A Streamlined and More Transparent Process will Benefit All!

While SPAN members' views may not be unanimous on the outcomes that should flow from this Review, we are confident that the views put forward here reflect the opinions of the great majority of members.

We are confident that **all members** share a concern arising from protracted uncertainty about prices, terms and conditions. Telstra as well as others, is disadvantaged in business planning when basic business variables such as price remain undecided during extended disputes and arbitrations.

Australia's co-regulatory regime for the introduction of competition into the rapidly evolving telecommunications services supply industry has many strengths. It is beginning to deliver real benefits to consumers through better prices and a greatly expanded range of services. However, unless action is taken to identify and correct aspects of the regulatory process that are impeding its intent, we will fall behind our global competitors and deny Australian businesses and consumers the rich and affordable range of facilities and services that technology can provide.

In summary, SPAN seeks continuation of telecommunications specific competition regulation, because to abandon it would result in a stifling of competitive industry development and a serious reduction in the range of competitive services available to Australian consumers and businesses. SPAN urges the Commission to examine ways in which incentives can be created to reach commercial negotiation of access prices, terms and conditions and to increase transparency and urgency into these processes. SPAN is ready to assist in any way that will support the Review in addressing these goals.