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Productivity Commission
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9 February 2001

Dear Mr Williams

Review of Telecommunications Specific Competition Regulations

The following is a submission by the Australian Telecommunications Users Group to the additional two terms of reference provided to the Productivity Commission regarding its review of Telecommunications Specific Competition Regulation.

I apologise for the late submission of this material.

The comments are offered in the format of the Commission's Issue Paper 2.

Market power in regional markets

- Experience to date suggests that competition in regional markets is not as extensive as in capital city metropolitan areas.

Competition in regional centres and the immediately surrounding areas is often reasonable with one or two carriers and a number of Service Providers offering services. In rural and remote areas often only one fixed network is present with the only competition being offered by satellite services.

For some applications satellite services are not considered to be a direct substitute for or the equivalent of a fixed service, largely because of transmission delay and susceptibility to rain fade, if the service is not well designed.

The relatively small size of regional, rural and remote markets may well mean that for some time to come competitive offerings will be limited.

It may also be that small carriers or service providers with low operating costs and with the community support that is often offered, will succeed in bringing a reasonable level of competition to non urban areas.

- Issues relating to market power in regions are considered to be similar to those applying nationally, but in one sense of a smaller scale because of the smaller market place. Conversely, the absence of competition in regional communities will be seen as a further disadvantage suffered by country people.
- With regard to new or emerging technologies, which may be of benefit to regional areas, it is clear that Dense Wave Division Multiplex transmission equipment will increase the capacity and reduce the cost of providing transmission capacity.

Wireless in the local loop, provided by mobile infrastructure, 3.4 GHz infrastructure or LMDS infrastructure, will significantly reduce the cost of and time taken to roll out an alternate access network, narrow band or broad band. Such infrastructure will also overcome the rural problems of salt corrosion of physical assets and induction problems associated with a copper Customer Access Network and electric fences.

Also, the increasing availability of satellite services and associated new digital transmission technologies will make well designed satellite systems more affordable and relevant to the demands of regional communities.

The falling per unit cost of the technologies mentioned in the foregoing will also help to make the services acceptable in a regional environment.

- It is not known how telecommunications carriers could earn excess returns in regional areas, as even in a monopoly environment the low density of demand compared with metropolitan areas will tend to make costs higher to some degree when compared with urban areas.
- Experience suggests that market power in regional areas results from the presence of only one provider, usually Telstra, because new carriers have firstly seen urban roll out as a priority. In addition, to date, available new technologies have not provided the substantial cost advantages required by an alternate carrier.

However, recent development suggests that local area or regionally focused carriers, using the best of today's technologies and with reasonable access arrangements to transmission links to capital cities and other national networks, will be able to build regional customer access networks and offer services which will attract customers.

- Problems relating to access in regional Australia seem to have largely related to the time taken to arrange for a new and small carrier to gain physical access to the Telstra network. Often such delays are perceived by the new carrier as anti-competitive conduct.

In addition, the prices charged by Telstra for regional transmission links and access services are considered by most industry analysts as being far too high and certainly not reflective of the cost structures offered by today's technologies.

This circumstance highlights perhaps the most significant issue requiring consideration by the Industry, the Productivity Commission, the Australian Competition and Consumer Commission and the Government. The lack of transparency, an absence of an appreciation and eventual acceptance of Telstra's costing structures, causes major uncertainty.

Contrary to positions outlined by Telstra, no commercial organisation expects Telstra to provide wholesale services below cost.

In any wholesale environment a purchaser will expect to pay a supplier a price which reflects cost plus a reasonable commercial margin.

The primary difficulty arises because Telstra will not share with the industry the basis of its costing methodology. Some briefings received by ATUG of Telstra's costs have gone some way down the path of disclosure, however, not far enough and, as a consequence, uncertainty develops as well as a basis for dispute. Resolution of problems associated with access pricing has been extraordinarily slow, delaying the ongoing development of the industry.

In some circumstances, where adequate costing information has not been provided and disputes have arisen, requiring long and costly arbitration or litigious processes to bring about resolution, the difference of position between the provider and seeker or the provider and regulator has been as small as 20 %.

One would imagine, in an environment of equality, of understanding of critical information and in an atmosphere of tolerance, a negotiated solution would be possible.

As the Commission is aware, ATUG and SPAN sponsored an industry forum prior to Christmas to identify process and procedure issues and propose a new approach to inter-industry relationships.

Both organisations intend to pursue this matter in the 2001 year, however, ATUG would urge the Productivity Commission to specifically offer advice as to how the players can better interact in a non-interventional regulatory environment, an environment strongly supported by all sides in the Federal Parliament.

- The processes and arrangement offered by Parts XI B and XI C of the Trade Practices Act are seen to be generally reasonable for both urban and regional circumstances.

The ability to declare a service with a geographical definition is considered a satisfactory way of ensuring access to key network elements in regional Australia.

Given the successful development of a tolerable cost model for telecommunications infrastructure, which ensures the provider receives a reasonable price for declared services (genuine cost plus a reasonable commercial margin), then infrastructure development will occur.

Telstra, at a policy and general management level, has made it clear they wish to see the wholesale model grow and succeed, they have made it clear they wish to see competitors consider the buy not build option and for Telstra to – amongst other things – become a carriers' carrier.

Intention seems clear, the development of a robust and lasting relationship framework is urgently needed to quickly bring about rational industry development which is economically sound and delivers services and benefits to end users, the primary objective of the Telecommunications Act.

Access, declarations and other Part XI C processes

Care must be taken in the definition of markets, particularly geographic markets, when exercising the declaration processes.

The declaration process is designed to be used when effective competition is not present.

This is the circumstance in many regional markets, but often not the case in urban or inter-capital markets. Therefore, the geographic definition or description of a market must be carefully undertaken.

In doing so, it would seem reasonable to have a slight bias to declare rather than not declare, as the former will promote development with perhaps a minor risk of inefficiency for a short period, as any declaration is subject to review as markets develop.

In fact, ATUG would strongly promote prompt declaration with a review after one year, rather than drawn out and costly evaluations which, experience suggests, have sought to be near perfect.

The concept of a prompt and considered declaration with a little risk, but with review, is considered to be far superior to a drawn out, near risk-free, near perfect solution.

- There is considered to be little risk to investment in bottleneck facilities by declaring services, if the total process ensures the provider is able to achieve a reasonable rate of return on their investment.

The issue is, what is a reasonable rate of return and what are reasonable costing methodologies, questions discussed earlier.

ATUG has a view that the concept of "lack of incentives to invest", raised in relation to the provision of bottleneck services which have been or are likely to be declared, is simply a ploy or scare tactic to push up access prices.

Emotion and irrational behaviour will be completely removed from this debate, if an industry agreed costing model is developed, along with reasonable rates of return for different types of services in a range of market place circumstances.

- ATUG is not aware of circumstances where access to bottleneck services by a competitor has deterred investment; on the contrary, the Customer Access Network enhancement program, undertaken by Telstra to lower connection times, reduce repair times and reduce failure rates, will reap an unforeseen reward.

The enhanced CAN is ideal for Digital Subscriber Line services, which will be offered by Telstra as well as a number of competitors, all using the common Telstra CAN infrastructure.

A large amount of new and unexpected revenue will accrue to Telstra as a consequence of this investment in this core and fundamental asset.

- Exemption processes set out in Part XI C are considered to be reasonable.
- The concept of access holidays is not appreciated, but if it was to mean where investment in infrastructure was considered to only deliver a marginally positive rate of return and therefore an access declaration would not apply, such an approach is considered to be counterproductive.

Other providers would not enter this particular local market, businesses would not grow and overall a poor result would occur.

New players entering a market place will bring innovative services and ideas. They will provoke customer interest and service take-up and, as a consequence, grow the overall market place activity.

Without new players, the status quo will drift along.

- ATUG would support development of a regional focus by the ACCC, however, the concept of a Regional Commission is not supported. Such an approach could become divisive.

Pay TV and regional telecommunications

The issue of Pay TV programming is not an area of ATUG expertise. It is, however, understood that one of the matters which led to the failure of the Northgate Network in Ballarat, Victoria, was its inability to obtain customer desired content for the Pay TV component of its bundled service.

In relation to the Optus and Telstra hybrid fibre coax broad band networks, ATUG is very disappointed that the exclusive access arrangements, which have prevented other content providers from using these infrastructures to deliver their content, were allowed to exist. The arrangement has stifled the development of content and its independent provision.

Both cables were built under common carrier, open access rules with all town planning exemptions in place, therefore uninhibited access to the cables and their conditional access service should have been the case.

While ATUG tolerated what was understood to be a short term Ministerial exemption from the open access rules, it absolutely opposed the continuation of the exclusive arrangements for the long period they applied.

This circumstance is considered to have inflicted serious damage on the development of an indigenous content and service industry.

With regard to overall service marketing, where a provider would seek to offer a bundled service or a range of bundled services at particular prices, current experience suggests that a Pay TV component with good programming is a pre-requisite.

The development of a policy and/or regulatory framework for this area is not within the experience of ATUG.

I trust the foregoing comments are of assistance to the Commission in this current activity.

Yours sincerely,

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