

INTRODUCTION AND BACKGROUND

These comments respond to the Commission's discussion paper "Future Scope of the Local Carriage Service Declaration" ("**Discussion Paper**") issued on 9 August 2000. The Discussion Paper was issued partly in response to an application by Telstra for it to be exempted from the standard access obligations ("**SAOs**") applicable to the local carriage service ("**Service**").

Telstra's application for exemption attached to the Discussion Paper requests:

*"... an exemption from each of the standard access obligations relating to the supply of the local carriage service within the central business districts ("**CBD**") of Sydney, Melbourne, Brisbane, Adelaide and Perth, with effect from 1 September 2000."*

The CBD is defined as those areas "classified by Telstra as CBD for the purpose of the ordering and provisioning procedures set out in Telstra's Ordering and Provisioning Manual as amended from time to time".

The Discussion Paper seeks submissions on three matters:

- (a) Telstra's individual application for exemption under section 152AT of the *Trade Practices Act 1974* ("**TPA**");
- (b) whether the Commission should also make a class exemption under section 152AS of the TPA;
- (c) when it should consider variations to the Service declaration.

The declaration

In its July 1999 final report *Declaration of local telecommunications services* in which the Commission declared the Service ("**Final Report**"), the Commission concluded that in respect of the local telephony market:

"Telstra is the major supplier in this market holding around 94 per cent of the market at the retail level. In the main, competition occurs through re-supply of Telstra's services. Supply of the most significant input used by Telstra's competitors is not, however, subject to effective competition. Cable & Wireless Optus has gained 170 000 directly connected customers and this is expected to grow. Also, there is the potential for new entrants to provide local call services to end-users in discrete areas. It is unclear if and when the take up of Cable & Wireless Optus services, and services from other service providers, will reach a level where they can exercise competitive pressure on Telstra.

These factors lead the Commission to conclude that conditions for effective competition do not exist in this market. In the Commission's view this is unlikely to change markedly in the foreseeable future."

In its analysis of the state of competition in the local telephony market, the Commission commented upon facilities investment and network roll out in the following terms:

- (i) The sunk nature of access infrastructure, together with the features of economies of scale and density, will limit the ability of entry to constrain the behaviour of incumbents. In such an environment the threat of entry is not sufficient to constrain a firm's conduct and actual entry is likely to be necessary. Actual entry however would need to be of a sufficient scale since limited entry serving only a small portion of the market may be insufficient to generate effective competition.
- (ii) Roll out of alternative access infrastructure is occurring in CBD, metropolitan and regional areas. In suburban areas the Cable & Wireless Optus network is the main alternative whereas the CBDs are better served. However, even in the CBDs only a small proportion of end-users are currently capable of being served by more than one customer access network.

Consequently, the Commission concluded:

“Limited roll out of alternative customer access infrastructure has occurred in discrete areas, particularly the central business districts of Sydney and Melbourne. While additional roll out will gradually erode Telstra’s share of this market, Telstra is likely to hold the major part of this market for the foreseeable future.”

Related processes: arbitrations and pricing principles

As noted in the Introduction to the Discussion Paper, five arbitrations are currently before the Commission in relation to the Service.¹ All of these disputes are yet to be determined. The Commission issued a discussion paper on access pricing principles for the service in April 2000, seeking comments by 12 May 2000. However, the Commission has not as yet issued a final report on these pricing principles.

One result is that it is impossible to assess the true impact of the Declaration. For example, AAPT notes that the Discussion Paper states:

“...increasingly new entrants are loss leading on local calls. This is the practice of pricing a good or service low, possibly even below costs, to attract end-users who are expected to buy other goods or services which will yield a profit.” (p. 21)

AAPT disputes this characterisation, at least of its pricing conduct. While it is true that AAPT has been forced to incur short term losses in order to compete against Telstra, it is impossible for the Commission to draw conclusions about AAPT’s costing assumptions until such time as a proper assessment of cost is made.

THE PROPOSED EXEMPTIONS

Telstra’s individual exemption application

AAPT considers that Telstra’s exemption application is, in substance, a request for variation of the Declaration, rather than an exemption. The disingenuousness of Telstra’s individual

¹ Cable & Wireless Optus (notified 13 December 1999), Macquarie Corporate Telecommunications (5 January 2000), Primus (7 March 2000), OneTel (18 July 2000), AAPT (21 March 2000)

exemption application can be seen in the illogic of the proposition upon which it rests: that the dominant, incumbent access provider should have an exemption from the standard access obligations which is not available to other access providers.

The point is also demonstrated by the Commission's proposal to consider a "class exemption" under section 152AS of the TPA which would exempt "all current and future carriers supplying the local carriage service in the CBD areas...".

Further, AAPT notes Telstra's stated desire that the Declaration should be phased out over the next 12 months through a series of similar applications. Apart from the administrative load this would place on the Commission (discussed below), it reflects an attempt by Telstra to remove the declaration by stealth. AAPT considers Telstra's prediction that facilities-based alternatives to the Service would be generally available in that time to be hopelessly optimistic. Unless Telstra can guarantee to have a ubiquitous alternative delivery platform within 12 months, the Declaration should remain in place.

Class exemption

The Commission's proposed course is also likely to be invalid. The class contemplated by the Commission exemption includes all carriers caught by the Declaration and the exemption is intended to be framed to cover all the standard access obligations. Properly construed, the Commission's proposal is to vary the Declaration. Section 152AO(1) clearly signals Parliament's intention that variations and revocations to declarations be considered in the same manner as the declarations themselves.

AAPT therefore submits that the class exemption proposal not be further considered until the processes required by section 152AO have been initiated.

INQUIRY AND PROCESS ISSUES

The public inquiry is premature

Although the Commission commented in the Final Report that it may be appropriate to modify the scope of the declaration of the Service:

- (a) once the ULLS is available; and/or
- (b) local PSTN originating and terminating services can be used to supply local calls;

it is apparent that any public inquiry undertaken now would be premature. The reasons for this are as follows:

- (a) it is just over 12 months since the Declaration and little has changed in the local telephony market. In particular, ULLS is still not available and use of local PSTN originating and terminating services to supply local calls is minimal;
- (b) the Commission has still to finalise its pricing principles for the Service. This process needs to be completed since it may be an important consideration in the LTIE criteria for the Service; and

- (c) the Commission has a large number of outstanding disputes relating to the Service which should be addressed and resolved under the current declaration.

For these reasons, it is suggested that any public inquiry to vary the declaration should not commence until ULLS has been widely available for at least 12 months. This is the minimum time AAPT estimates it will take for even a modest penetration of the ULLS in CBD areas, and to determine the extent to which ULLS is used to provide a competitive local telephony service. This should also allow the Commission time to finalise its pricing principles and make determinations in the current disputes.

In the period leading up to this public inquiry the Commission could conduct the ‘facilities audit’ referred to in the Discussion Paper. Since any review of the Declaration will necessarily need to address the issue of alternative network infrastructure investment and roll out this audit could be conducted in parallel with the Commission’s monitoring of the deployment of ULLS². In conducting any ‘facilities audit’ the Commission would need to go beyond looking at network roll out and examine network connections and the take up of local call services. As well, the ‘facilities audit’ would probably need to be conducted by a third party organisation with the appropriate audit skills.

Telstra should not be allowed to engage in regulatory gaming

AAPT has expressed concerns in the past about delays in the Commission’s determination of arbitrations pending assessment of related access undertakings. The effect of the Commission’s approach is to create incentives for access providers to delay arbitrations and to instead submit various applications to distract the Commission. By allowing Telstra to “jump the queue”, Telstra’s strategy of regulatory gaming would be encouraged.

Similar concerns arise in respect of the current process. Telstra’s current application foreshadows “several applications... for exemption orders designed to phase out Telstra’s standard access obligations with respect to the local carriage service over an estimated 12-month period.” AAPT is alarmed that, given the limited resources available to the Commission, Telstra’s proposed course would continually distract the Commission over the next year.

Instead, the Commission should seek to encourage the resolution of disputes by expressly deferring the consideration of exemptions until currently notified arbitrations are finalised.

There is ample support for such a principle in the legislation. Section 152DB(1)(a) requires that the Commission determine arbitrations “as speedily as a proper consideration of the dispute allows...”. No such requirement is expressed in relation to the consideration of exemption applications.

Insufficient information is available to assess Telstra’s application

Telstra’s application states that “The facts and contentions relied upon by Telstra in support of the exemption are contained in submissions to the ACCC which will follow this application.”

² See the Commission’s media release of 22 August 2000.

The administrative process which this approach suggests is the reverse of what it should be. Clearly Telstra has sought to gain a regulatory advantage by having the Commission commence the public discussion without fully informing the market of the basis of the application. The Commission will not be able to make a proper assessment of the arguments Telstra makes in support of its application until those arguments can be exposed to comment by those who are likely to be materially affected by the exemption.³

COMMENTS ON PARTICULAR ISSUES IDENTIFIED IN THE DISCUSSION PAPER

Market definition

The Commission identifies two potential markets in respect of the Service:

- (a) an upstream (wholesale) market in which local call services used in supplying downstream services are provided to carriage service providers (CSPs), e.g. the Service; and
- (b) downstream (retail) markets such as those in which local calls are provided to end-users.

In the Final Report the Commission identified the local telephony market (access and local calls) and the long distance telephony market (national and international long distance calls) as the relevant downstream markets. The Commission also recognised the importance of the "one bill" factor in the provision of long distance services, and the fact that the impact of the supply conditions for local call services is not confined to the local telephony market.

1 *Is there a market that involves the wholesale supply of the local carriage service by carriers to themselves and other carriers?*

In the Discussion Paper the Commission states its preliminary view that:

"... it is necessary to consider the wholesale supply of the local carriage service in determining whether the proposed exemptions are in the LTIE."

AAPT can see no reason to doubt the existence of a wholesale market for the supply of local carriage services and supports the Commission's preliminary view on the basis that the special circumstances of supply associated with basic access and local calls are such that competition at the retail level does not necessarily imply competition at the wholesale level. Indeed, this is the current situation with the re-supply of the Service.

AAPT's preliminary view is that the relevant geographic *wholesale* market is a national one, although it is acknowledged that the local call is, by definition, only provided in local call charging zones ("standard zones"). AAPT comes to this conclusion because, unlike PSTN access services, wholesale prices are not geographically desegregated and commercial agreements for the supply of the Service are formulated on a national basis. It may be

³ Telstra apparently employed a similar strategy in seeking the Commission's early assessment of its proposed acquisition of the residential business of OzEmail (Commission media release, 28 January 2000).

possible to identify geographic submarkets but in AAPT's view the logical boundaries for such submarkets would be the standard zones. Applying a SSNIP test, the smallest area over which a monopolist could exercise market power would be a standard zone. An attempt to impose a SSNIP in any smaller area would result in substitution on the margin up to the point at which the area covered the standard zone.

Although market definition is not determinative of whether an exemption is appropriate, AAPT considers that exemptions or variations which apply in areas smaller than the market are likely to lead to undermine the LTIE by distorting competition and leading to inefficient investment decisions based on the different treatment of different areas within the capital city standard zones. In the case of an exemption covering the CBD only, one result is likely to be the creation of artificial incentives leading to over-investment in capital city CBDs (which are already comparatively well served) and under-investment in metropolitan, regional and rural areas.

AAPT considers that the LTIE would clearly be adversely affected if exemptions were made covering the capital city standard zones and, even more so, the national market.

Even in the downstream market in which local calls are provided to end-users, there are not significant geographical differences in retail prices, other than the Neighbourhood Call (which appears to be a special case). As noted by the Commission in the Final Report, pricing variations tend to be based on quantity and customer type rather than location. Here too, the smallest logical submarket would be the local call zone.

The significance of these factors in the context of the current application is that acquisition of the local call service is generally within a national market, although AAPT acknowledges that, theoretically, it would be possible for CSPs to enter into contracts for the supply of the service only in particular geographic areas.

2 How should CBD areas be described?

AAPT notes that the description of "CBD" given in Telstra's exemption application refers to Telstra's Ordering and Provision Manual "as amended from time to time". Subject to the comments in response to question 1, AAPT does not in principle object to an approach of nominating particular exchange service areas ("ESAs"). However it strongly rejects Telstra's attempt to allow itself the discretion to decide which ESAs would be included in the definition in the future. If the Commission were to accept Telstra's suggested definition, it would allow Telstra an open-ended exemption.

Although the extent of CBD areas is likely to change over time, AAPT does not consider that those changes would be so rapid that any definition provided in a declaration requires a discretionary element in the manner suggested by Telstra. AAPT would suggest that any definition used by the Commission be based on the current ESAs included in CBD areas, with any future modifications to be the subject of further applications.

3 What substitute technologies (which constrain the price and output decisions of carriers supplying the local carriage service) are currently used to provide the local carriage service, or are substitutes for the local carriage service, in the CBD areas? What technologies are likely to be used to supply the local carriage service or local calls in CBD areas in the foreseeable future?

AAPT considers that the only substitute technology which could currently be used in CBD areas to provide a competitive local carriage service or constrain the price of the Service would be optic fibre cable. The other technologies mentioned in the Discussion Paper are:

- (a) technically not suitable for the efficient provision of the Service by access seekers;
- (b) not currently available; and/or
- (c) not economically efficient for the supply of Service as a stand alone service.

Local loop radio technologies such as LMDS are yet to develop to a point where they can be regarded as substitute technologies in the CBD areas. AAPT's roll out of LMDS is not expected to commence until the first quarter of 2001 and will not be operational until 2002. Other local loop radio technologies are also unlikely to have sufficient penetration to compete with the Service for some years.

Satellite and transmission capacity are generally not efficiently employed to offer local call services.

Domestic and Local PSTN Originating & Terminating Services may be employed to provide a local carriage service. However, it is AAPT's understanding that the use of these services to date to supply local call services has been minimal, due partly to the inefficiency and duplications inherent in establishing points of interconnect in all exchanges where the access seekers wishes to provide the local call service is to be offered.

The ULLS may ultimately provide some competitive constraint to the Service. However, the extent to which access seekers will deploy ULLS to provide competitive local calls at the retail level or to supply the Service remains to be seen. The terms and conditions of supply of ULLS are also uncertain. The reasons for this include the notification to the Commission of disputes, the recently issued Record Keeping Rules ("RKR's") to Telstra in relation to the ULLS, and the requirement for final industry agreement on certain technical and operating matters. All of these facts suggest that supply of the ULLS is likely to be constrained for some time. If the Commission were to now exempt Telstra from the obligation to provide access to the Service, it would give further incentive to Telstra to delay access to the ULLS service.

Therefore the extent to which CSPs will use ULLS to supply competitive local calls is yet to be determined. Based on AAPT's understanding of Telstra's own estimates of ULLS penetration, AAPT does not consider that it will be possible to make an assessment of the success of ULLS as a substitute service until at least 12 months following the general availability of ULLS.

For all of the above reasons, for the foreseeable future competitive supply of local calls based on alternative infrastructure or access services other than the Service, is likely to be very

limited. As such, the only product available in most instances is the Service the supply of which is a virtual monopoly.

Competition analysis

Section 4.2 of the Discussion Paper outlines the approach of the Commission's competition analysis, with the focus being the CBDs of the capital cities nominated by Telstra. Most of the issues raised by the Commission have already been addressed in its final report on the declaration of the Service. As such, there seems to be limited value in the Commission addressing these issues again after such a short period. Notwithstanding this comment AAPT provides the following responses to the questions set out by the Commission in section 4.2 of the Discussion Paper.

- 4** *Since the Commission's report on Local Telecommunications Services, have new carriers begun supplying the local carriage service at a wholesale level? If so, what technologies are being used by the new carriers to supply the local carriage service, or local calls, and has entry occurred in CBD areas (if so, in which CBD areas)?*
- 5** *Are there likely to be further new carriers supplying the local carriage service at a wholesale level in the foreseeable future? What type of technologies would new carriers be expected to use, and would entry be expected in the CBD areas (if so, in which areas)?*

In AAPT's experience, there has been little (if any) competitive entry into the local carriage services market at the wholesale level. Cable & Wireless Optus ("CWO"), as the second largest carrier and with the benefit of pre-97 carrier rights, would be in the best position to offer such a service. However, due to the low level of market penetration, CWO is unable to provide the Service on anything like a ubiquitous basis. AAPT does not currently acquire the Service from Optus and would be unlikely to do so if Telstra's exemption were granted. At the retail level, it is AAPT's understanding that the take up of CWO local call services in CBD areas has not yet reached a level where CWO can exercise any competitive pressure on Telstra.

Although some of the remaining carriers, including AAPT, have rolled out fibre optic cable in some CBD areas the coverage of these local networks is very limited. There are good reasons for this including:

- (a) the large capital expenditures required, not only for cable and ducts, but also for building entry and internal cabling;
- (b) the need to target customers rather than simply adopt a 'build it and they will come' approach; and
- (c) the advantages of incumbency in the larger CBD buildings enjoyed by Telstra, and to some extent by CWO, as a consequence of the pre-97 regulatory regime. This is exacerbated by difficulties experienced by other carriers in dealing with building owners notwithstanding the provisions of the *Telecommunications Act 1997*.

For all these reasons the roll out of alternative fibre optic cable infrastructure is very limited and will continue to be highly targeted rather than ubiquitous.

Regarding the roll out of wireless local loop networks, which may ultimately be capable of providing competitive local call services including the Service, few such networks exist in the CBD areas. Such networks that do exist are not sufficiently well developed to offer any real competitive constraint and hence this technology currently represents a threat of entry rather than actual entry.

As discussed in response to the previous questions, AAPT concludes that actual entry of competing carriers is very limited and certainly insufficient to provide any competitive constraint on Telstra. Further, the extension of entry to the CBD market in the foreseeable future by competing carriers is unlikely to be on a sufficiently wide scale to offer any serious competitive constraint to Telstra's local call service including the Service.

6 What level of local call resale competition is occurring in CBD areas and is it expected to increase in the foreseeable future?

For the reasons given in response to question 1, the level of local call resale competition in CBD areas is not, in AAPT's experience, significantly different to that occurring in other geographic sub-markets. However, the basis on which competition is conducted is likely to be based on bundling, rather than supplying the Service as a stand alone service.

The level of competition is more affected by the type of end-user being served and volume, rather than the location of that end-user. For example, the market dynamics which apply to the supply of residential local calls, are significantly different to those which apply in relation to businesses. In the former case, competition is more commonly conducted on a price per call basis, whereas in relation to business, the more common approach is for price competition to take place on a whole of business basis. While the concentration of businesses in CBDs happens to be greater than in metropolitan or suburban areas, this factor does not itself increase the intensity of competition.

AAPT does not expect a dramatic change in the nature of competition in the near future.

7 Would providing an individual and/or class exemption change the incentives for carriers supplying the local carriage service at a wholesale level or new re-sellers supplying local calls at a retail level? If so, how?

Providing exemptions to supplying the Service is only likely to change the incentives at the wholesale level by further diminishing the limited bargaining power which access seekers currently possess.

Because of the importance of bundling and economies of scope in competing for the supply of local call services to business, the incentives for owners of local loop technology in the CBDs will be to deny access to those services to downstream competitors. In the absence of any requirement to provide the Service on regulated terms, access providers are likely to cross-subsidise from the local telephony market into a number of related retail markets such that competitive outcomes will be further distorted.

- 8 Are the sunk costs associated with rolling out new networks a significant barrier to entry for carriers supplying the local carriage service at a wholesale level in CBD areas? Do the sunk costs differ substantially between different technologies?**
- 9 Are there any other barriers to entry for new carriers supplying the local carriage service at the wholesale level in CBD areas, such as Telstra's market share?**
- 10 Are there any barriers to entry for new re-sellers supplying local calls at a retail level?**

AAPT agrees with the Commission's observation that there are significant sunk costs associated with the installation of new local loop networks. It is important to note that the sunk costs are not only associated with the facilities required to provide the service, but also in the time and expense required to undertake the installation of those facilities (eg agreements with building owners).

AAPT has encountered considerable difficulties in obtaining access to appropriate sites in which to install equipment associated with its LMDS network. Similarly, access to cable ducts in CBD areas and entry to buildings and internal cabling are all usually more costly and difficult than anticipated. Similar considerations apply with respect to co-location of facilities within existing exchanges, as is currently being encountered in relation to the take up of Telstra's ULLS.

Although some of the hardware costs associated local loop networks are not sunk in the true sense, in that the facilities may be deployed elsewhere, all of the costs associated with obtaining access for facilities, designing networks and actually installing those facilities are sunk.

AAPT shares the Commission's concern that Telstra's market share is itself a barrier to entry for the supply of the Service. As discussed above in response to questions 5 and 6, the very low levels of penetration of alternative networks makes them either unattractive as a source of the Service or means that they provide no competitive pressure on Telstra in the supply to end-users of local call services. In this sense, the local loop is characterised by substantial "network externalities".

Further, the difficulty of obtaining access to the Service on reasonable terms and conditions itself contributes to the barriers to entry to the wholesale market. The difficulty of obtaining access is likely to retard the growth of alternative networks as these carriers and CSPs will find it increasingly difficult to build the customer bases required to justify investment in local loop technology.

At the retail level, the chief barrier to entry is the negotiation of reasonable terms of access to the Service. AAPT, as Australia's third largest carrier, would be expected to be in a relatively favourable bargaining position. However, the terms and conditions on which AAPT has been able to acquire access to date leave it unable to effectively compete with Telstra on a stand alone basis. The rates at which AAPT currently acquires the Service are in fact higher than Telstra's advertised "neighbourhood call" rates and, AAPT suspects, many of Telstra's commercially negotiated rates with corporate customers.

If the Commission were to grant Telstra's exemption, AAPT considers that the barrier to entry to the local call market created by Telstra's reluctance to commercially negotiate would create an insurmountable barrier to entry to this market.

11 Has there been growth in the demand for local calls in CBD areas since the local carriage service was declared (if so, in which CBD areas)? If so, has the growth been captured by incumbent carriers or new market entrants?

12 Is it expected that there will be growth in the demand for local calls in CBD areas over the foreseeable future (if so, in which CBD areas)?

AAPT has little available data that it can provide in response to these questions. Further, AAPT does not see the relevance of the questions, other than in relation to the importance of the local call markets. For the reasons outlined in regard to the manner in which local call services are supplied, AAPT sees little relevance in the questions.

13 Since the Commission's report on the Local Telecommunications Services, what has been the impact of declaration on the legitimate commercial interests of the carriers supplying the local carriage services at a wholesale level (Telstra and other carriers)?

AAPT agrees with the Commission's assessment in the Final Report and the Discussion Paper that it is unlikely the Declaration has had a significant impact on the legitimate commercial interests of access providers of the Service. In particular, AAPT notes that no other access providers have sought an exemption from the Declaration. Because of the end-to-end nature of the Service it is unlikely that the supply of the Service has had any impact on Telstra's network operations and therefore the only impact is probably on Telstra's competitive position in the relevant retail markets. Further, Telstra has not provided an access undertaking to the Commission in relation to the service and none of the current access arbitrations have been determined. As such, the terms and conditions on which access to the Service are provided remain a matter for commercial negotiation.

As noted in the Final Report, Telstra did not raise concerns on this point. Until further submissions by Telstra are made available, it is impossible for AAPT to comment on any claimed adverse affects on Telstra's legitimate commercial interests.

AAPT notes that Telstra's financial statements for the year ended 30 June 2000⁴ reveal that Telstra's revenue from local calls fell from \$2.4 billion to \$2.3 billion, while its revenue from domestic wholesale rose from \$158 million to \$223 million. Telstra gives the following reasons for this result:

- (a) loss of market share to competitors;
- (b) re-balancing between basic access and local call charges;
- (c) the introduction of Neighbourhood Call;

⁴ available at: <http://www.telstra.com/2000results/download.htm>.

- (d) the reduction in rates under Easy Saver Plus arrangements.

All of these factors are either Telstra's commercial decisions or the results of the increase in competition in the retail market. Telstra's revenue attributable to wholesale local calls increased dramatically. Of course, the accounts are not structured to allow an accurate assessment of the costs attributable to the Service.

14 What would be the impact on the legitimate commercial interests of the carriers supplying the local carriage service at a wholesale level (Telstra and other carriers) if an individual and/or class exemption was provided?

Again, AAPT is unable to comment on what adverse impacts Telstra or other access providers claim prior to reviewing supporting submissions.

The likely impact of exemptions to the Declaration would be to improve the competitive position of access providers. However, AAPT's experience has been that in the absence of cost-based access services, Telstra has sought to gain competitive advantages by the use of its ability to cross-subsidise be from the supply of the wholesale Service to services in downstream markets. AAPT does not consider that the likely benefit to these carriers would be "legitimate" or consistent with the LTIE.

Appropriate timing for considering a possible variation

15 What are the views of industry participants, and the general public, as to the appropriate timing for consideration of possible variations to the local carriage service declaration, if any? Using the same framework as provided in section 4 of this Discussion Paper, what considerations are used to support these views?

As noted in section 2.3 of the Discussion Paper, in declaring the Service the Commission recognised that competition in the local telephony market might evolve to a point where it would be appropriate to revoke or vary the Declaration. Given that the Service was only declared in July last year, the key question is what has happened in the past year that would suggest the Commission should consider revocation or variation of the declaration.

AAPT suggests that the appropriate timing for considering variations to the Declaration is when sustainable, ubiquitous wholesale local call services are available. For the reasons discussed in responses to questions 3, 4 and 5, AAPT does not consider that that time has come.

Important factors which would suggest that competition in the wholesale market is effective, would include:

- (a) the availability of two alternative wholesale providers of the Service, and
- (b) the ready commercial negotiation of terms and conditions of access.

Even if the Commission does not consider these requirements for a competitive wholesale market to be preconditions for a review of the Declaration, it is essential that, as a minimum, the preconditions set by the Commission in the Final Report be met. In particular the

Commission's view that in respect of the local telephony market, only actual entry which is of a sufficient scale can generate effective competition. To determine what entry has actually occurred and the extent of that entry will require the Commission to undertake a facilities audit of the type described earlier in this response. It is AAPT's view that the responses to the questions set out in section 4.2 of the Discussion Paper will be totally inadequate for determining the exact nature and extent of competition in both the wholesale market and the downstream retail market.

16 Over what geographic areas should the inquiry, or inquiries, be focused?

As discussed above in relation to market definition, AAPT considers that the appropriate geographic area for any inquiry is probably the national market for the Service. AAPT does not consider that any case has yet been made for geographically disaggregating the market along the lines suggested by Telstra's application. No such information is provided in the Discussion Paper, and the absence of Telstra's detailed application from public scrutiny means that such a proposal by Telstra must be viewed as no more than an unsubstantiated claim. However, if the Commission does believe that the market can be disaggregated along the lines suggested by Telstra, then the Commission will need to define such disaggregation and not leave it to the discretion of Telstra.

CONCLUSIONS

AAPT considers that Telstra's application for exemption is premature and should not be further considered until other related access processes have been completed, particularly the finalisation of pricing principles to be applied to the Service and the determination of the currently notified arbitrations. Telstra's approach of making the application without making supporting submissions publicly available means that it is impossible for the Commission to assess the application or for submitters to properly assist the Commission.

Nevertheless, AAPT makes the following submissions in opposing the application and the proposal for a class exemption:

- (a) the state of competition must be assessed by reference to *actual* competition in the *wholesale* market, which is currently limited and likely to remain so for a considerable time because of the limited technological substitutes, considerable barriers to entry and Telstra's possession and use of substantial market power;
- (b) there is no logic to the proposal to grant an exemption in respect of an area which is smaller than the relevant market. To do so would create competitive distortions and lead to inefficient investment;
- (c) the legitimate commercial interests of access providers have not been adversely affected by the Declaration.

For the Commission to grant the exemption now would have a substantial detrimental impact on the legitimate commercial interests of current access acquirers, would retard competition in several telecommunications markets and stifle investment in competitive infrastructure.