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12 February 2003

Mr Ken Walliss

Director - Convergence
Telecommunications
Australian Competition and Consumer Commission
GPO Box 520J
Melbourne VIC 3001

Dear Sir

**Re: Brisbane City Council Response to Draft Information Paper
"Bundling in Telecommunications Markets"**

Published by Australian Competition and Consumer Commission (ACCC)

Attached is the Brisbane City Council response to the ACCC Draft Information Paper "Bundling in Telecommunications Markets". There has been insufficient time available to prepare detailed comments on the ACCC bundling draft information paper since the impact of the ACCC decision became clear in late January 2003. Council would be prepared to submit a detailed position paper on the subject at the Commission's request.

The recommendations of Council, which are outlined below, are detailed in the Council response.

1. Future reviews of telecommunications bundling proposals should specifically include either an effects test, or a substantially improved effects test, for each proposition.
2. Processes requiring accounting clarity for bundled telecommunications offerings should be adopted.
3. A calling of submissions of key industry and government participants is recommended given the impact that the recent ACCC decision on Pay TV has had on the entire Telecommunications industry.

Yours faithfully

Jude Munro
CHIEF EXECUTIVE OFFICER



Brisbane City

Response

to

**Draft Information Paper “Bundling in Telecommunications Markets”
Published by Australian Competition and Consumer Commission
(ACCC)**

Prepared by: David Hains, Strategy Branch, iDivision
Approved by: Jude Munro, Chief Executive Officer
Date: 12 February, 2003

Executive Summary

Brisbane City Council has a successful ourBrisbane.com website (a portal to a range of city services). Council has recently deferred a plan to provide ISP access as part of that website as a result of the ACCC decision that permits Telstra and Optus to bundle all telecommunications content and delivery services.

The practical outcomes of the ACCC decision in the Telstra-Foxtel-Optus PayTV proposal are that:

- That competitors in the telecommunications market must now be able to provide all elements of telecommunications – delivery and content, wholesale and retail
- Consumers may be unable to discriminate between providers on the basis of technology or specific service offering and will be attracted by the price attractiveness of any bundled packages from Telstra and Optus
- Niche market participants (eg, Internet and ISP) will be unable to compete in those niches.
- The foregoing will preclude new market entrants on cost and competitive grounds.

Council expects that the number of telecommunications market participants will contract as a result of the bundling decision.

Council recommends limits on bundling and ACCC action regarding bundling to:

- Incorporate, or substantially improve, a bundle effects test which is comprehensive across all levels of telecommunications
- Require a statement of discounts reflecting efficiency savings in any bundle, and the adoption of clear accounting processes for telecommunications bundles to support that statement.
- Circulate bundling proposals more widely for comment prior to action decisions.

There has been insufficient time available to prepare detailed comments on the ACCC bundling draft information paper since the impact of the ACCC decision became clear in late January 2003. Council would be prepared to submit a detailed position paper on the subject on the Commission's request.

Background

Brisbane City Council set a strategy in 2000 in line with a corporate vision of 2010 as an Innovative City. The strategy included an Internet website (portal) and an ISP.

The ourbrisbane.com Portal is designed to “get the city online”. Since launch it has achieved continually growing popularity, and is delivering a rich source of local content with a record 80,000 unique visitors accessing the site last month alone.

While the Portal is only one of an integrated package of eight diverse initiatives, its continued success is pivotal to the city achieving its target of 75% of Brisbane people using the Internet on a weekly basis by the end of 2004. A primary aim was to target users not currently Internet ‘savvy’, including aged, disabled and a broad range of less advantaged community and welfare groups. Council initiatives and programs are sometimes the only way they can access new technology.

Affordability of Internet access has been among Council's key concerns. This is evidenced by Council's support for community based programs, including; the

“GreenPC” computer recycling factory retailing to Commonwealth Government Health Care Card holders, an approximately 30 strong “Internet Access Centre” network offering free or cheap access to around 30,000 users annually.

The Brisbane City Council supported the Portal on the basis that it was in line with the organisations corporate values and financial objectives. The market positioning of the Portal was justified in an ACNeilson report produced in September 2002.

The report reaffirmed a gap in the existing market for a mid-sized ISP supplier who possessed a recognised and trusted brand. The OurBrisbane Portal strategy was a perfect fit for this gap. As Australia’s largest City Council we were able to offer a recognised brand, at a lower price than either Optus or Telstra Bigpond, and with a high level of quality and support. In September 2002 the ISP component of the portal represented a viable investment for Council which would achieve community policy aims and value for money to the consumer community.

The unanticipated decision of the ACCC to allow Telstra and Optus to offer PayTV, Internet ISP and telephony bundles came with implications. The impact was not clear until consumer acceptance data became available in January 2003. Council’s view is that as a result the landscape of the entire telecommunications industry has shifted, and the permitted bundling of all telecommunications services has clouded the ‘cost’ of one consumer service.

The dominance of Telstra and Optus and the market power they have to access a mass market in a short period was confirmed when they were able to gather 10,000 customers in 12 days.¹ Subsequent to these announcements the Brisbane City Council undertook a review of the ISP strategy. Council concluded that the increased dominance of Telstra and Optus in the adjusted market, with bundled product offers has made “segment” product offerings commercially unsustainable. At this time it is clear that the increased market influence that the major telecommunication carrier now holds resulting from the ability to ‘bundle’ a number of services is insurmountable.

As demonstrated the changed market dynamics have made an impact at a level such that entry or substance in this one market segment is no longer viable.

Accounting separation, visible internal transfer pricing and limits on bundling will be essential to ensuring competition in the Telecommunications industry. Without these critical ingredients there will be no competition and the consumer will be exposed to an industry where there is no alternative. Services will only be provided on the basis of financial returns.

Long Term Effects of Decision

A recent Australian Broadband report² contained findings involving a clear government commitment to a national goal ensuring that market arrangements are pro-competitive and encourage investment in infrastructure, services and applications to advance the long-term interests of the end users³.

¹ <http://www.telstra.com.au/newsroom/release.cfm?ReleaseID=24741>

² Australian Connectivity Report, Broadband Advisory Group Report to the Federal Government, NOIE, January 2003.

³ IBID

It is the contention of the Brisbane City Council that the recent decision to allow bundling will have the opposite effect and that the number of market participants will contract and the long-term interests of consumers will suffer.

Conclusions

1. Efficiency. The ACCC discussion paper includes 'equal efficiency of competitors' as one consideration in reviews of bundling proposals.

Bundling implies a lack of "equal efficiency" in delivery of the bundled products. If the product bundles were equally efficient then a price discount which reflects the efficiency savings made should be evident.

In the consequences to the PayTV case at least, market bundles offered by the dominant carriers do not appear to have any price discount at all.

2. Future impact on Government Services
Council provides a number of services (communities, training etc.) either in association with or through its ourBrisbane.com website. The extension of this and similar services for any government – as opposed to commercial – reasons is seen to be seriously inhibited in the future. Council is concerned that in future it's options for service delivery will be constrained to commercial channels and involving subsidies of tax dollars to achieve service "reaches" for government programs that do not fit a commercial carrier's revenue stream or ROI needs.
3. Access.
Unless third party telecommunication providers have fair and reasonable access to the network, it is our belief that they will be seriously disadvantaged and there will be an imminent decline in competition. To duplicate the required infrastructure to compete across the entire telecommunications market would be prohibitively costly and a waste of resources. The ability to compete in one segment only will not be viable. There will be a decline in competition across all ranges of the industry. There will be no niche telecommunications providers.

Recommendations

1. Future reviews of telecommunications bundling proposals should specifically include either an effects test, or a substantially improved effects test, for each proposition. The effects test should be comprehensive – not limited to any single aspect of the proposal. In the case in point, such an effects test should include it's effects on telephony and Internet provision rather than just PayTV. Consumer access across all levels of telecommunications should be protected as a priority of any ACCC decision.
2. Processes requiring accounting clarity for bundled telecommunications offerings should be adopted. Without such data no objective decision on competition or efficiency could be reasonably made. In particular, an element of the Commission's consideration of bundled proposals should include the stating (in the proposition) and assessing the degree of price discounting which would apply to the bundle as a reflection of efficiency savings. Those

discounts should as a minimum be supported by cost visibility through the recommended accounting clarity process.

It is Council's view that this is most likely to be effected by corporately separating telecommunications infrastructure provision from the content the infrastructure carries.

3. Proposals for telecommunications bundling should be more widely circulated for comments within the professional, business and user/operations communities before any decisions are adopted.