

Competitive Carriers' Coalition

29 July 2003

Mr Chris Pattas
Senior Director
Australian Competition and Consumer Commission
GPO Box 520J
Melbourne VIC 3000

Dear Mr Pattas

Telstra Undertakings – PSTN OA, ULLS and LCS Services dated January 2003

Competitive Carriers' Coalition (CCC) Submission

The CCC, comprising PowerTel, Primus Telecom, Macquarie Corporate Telecommunications and Comindico makes this submission to the ACCC's public consultation process into whether it should reject Telstra's undertakings.

The CCC contends that the Commission should reject Telstra's undertakings.

The CCC engaged three independent consultants, Gilbert and Tobin, Access Economics and Gibson Quai, to consider the undertakings from a legal, economic and technical perspective respectively. All three concluded that the Commission should reject the undertakings. The consultants' reports are attached and constitute the CCC's submission.

Further to the consultants' reports, the CCC also has serious concerns in relation to the undertakings process. To that end the CCC makes the following additional points.

The Telstra model is seriously flawed when contemplated as a tool for use by the ACCC in determining access costs/rates.

The PIE II model is unworkable, cumbersome and lacks adequate transparency. It provides no reasonable means of testing alternative input parameter assumptions (technical or economic), verifying inputs, calculations or output results. The model is clearly not designed to allow the ACCC, industry stakeholders or independent experts to make an informed assessment.

The undertakings are blatantly unreasonable, for amongst other reasons, it offers fixed rates only, it does not allow for adjustment in the LCS rate to take account of movements in Telstra's retail rates, and price and non price terms and conditions are inappropriate and incomplete.

The prices for the UT services are far above what Telstra currently offers on a commercial basis, and are far above the ACCC's indicative pricing for these services.

Telstra has commenced regulatory gaming of the process

Primus received a letter from Telstra dated 22 July 2003, less than two weeks prior to the ACCC's deadline for submissions, advising that it had revised the PIE II model in light of industry concerns and attaching an "enhanced" version.

Since May, when Telstra made available the PIE model, the CCC and its consultants have spent significant time and resources evaluating the model and the undertakings. For Telstra to now expect industry to reassess an already unworkable model in less than two weeks is unconscionable and a clear display of its contempt for the process and the industry.

Unlike Telstra, competitors do not have limitless resources and budget to match Telstra in its gaming activities. The CCC will therefore not be incurring further expense in considering Telstra's last minute changes to the model.

The CCC therefore expects the Commission to consider its submission on these undertakings notwithstanding it does not take account of Telstra's revised PIE II model.

Revised undertakings must address previous concerns and identify variations

Industry cannot be expected to incur ongoing expense in evaluating a succession of unreasonable undertakings.

In the event that Telstra submits revised undertakings, the form of any revised undertaking must be such that it makes clear where revisions and/or variations have been made to the original undertakings, and how those revisions and/or variations address concerns or reasons why the original undertakings were either rejected or withdrawn.

The onus should be on Telstra to satisfy the ACCC and the industry that any revised undertaking addresses previous concerns.

Revised undertakings must be consistent with ACCC's model terms and conditions

Should Telstra submit revised undertakings, they must be consistent with the Commission's recently released model price and non-price terms and conditions.

The objective of the model terms and conditions is to provide guidance to industry in its commercial negotiations and to signal the Commission's thinking on how it may approach arbitrating a dispute.

Any revised undertaking which is clearly inconsistent with the model terms and conditions, would not be in the spirit of the objects of Part XIC and would show contempt for the access regime.

Finally, the members of the CCC are strongly of the view that the process of assessing these present undertakings should be completed to the point where the ACCC publishes its assessment of them, whether or not Telstra withdraws them before the process has concluded.

Whilst the ACCC has an obligation to assess undertakings and therefore arguably also any model that is used to base those undertakings upon, the CCC considers it inappropriate for the ACCC to adopt, as a defacto, a model put forward by Telstra for the purposes of the ACCC's obligation to set indicative prices. A more appropriate course of action would be for the ACCC to endorse an independently developed model, free of any potential conflicts of interest.

This assessment by the ACCC should provide a context against which any subsequent undertakings are considered. As referred to above, the CCC is of the view that revised undertakings should only be considered if they take explicit account of the inadequacies of those presently being assessed.

The CCC would be pleased to discuss its submission with the Commission should it wish to do so.

Yours sincerely

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