

BUNDLING IN TELECOMMUNICATIONS MARKETS

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MACQUARIE CORPORATE TELECOMMUNICATIONS' SUBMISSION

Macquarie Corporate Telecommunications (**MCT**) welcomes the opportunity to comment on the Commission's Information Paper.

For the Commission's reference a previous submission provided to the Commission in 2000 is attached. The submission addresses Telstra's bundling practices, most of which are still employed, and the anti competitive nature of the practices and relevant remedies.

MCT would like to make the following specific comments in response:

Addressable markets

MCT agrees with the Commission's observations regarding the implication and role of bundling in the market. MCT also agrees with the view that bundling is likely to raise anti competitive concerns where the carrier or CSP has market power in the supply of at least one of the bundled services offered. It is beyond question that Telstra has market power in customer access through its ownership of the CAN. This control is most unlikely to be threatened in the medium term. As access is an essential component of any telecommunication offering, through bundling Telstra can and will be able to continue to leverage its market power in access to its advantage in all other telecommunication markets and potentially extending to Pay TV. MCT submits that Telstra's control of the basic access market allows it to significantly reduce the "addressable market" across all services.

Corporate and government markets

Bundling is of particular significance in relation to business customers. The Commission has noted that there is a preference for business customers to purchase long distance services and other telecommunications services from a single supplier¹. Accordingly, business customers are likely to be more susceptible to anti-competitive bundling and tying behaviours. In addition, Telstra's costs of supplying local calls to business customers are substantially lower than for residential customers. However, this cost differential is not generally recognised in the price charged by Telstra to other carriage service providers that acquire local calls from Telstra for resale. As a result, Telstra (unlike its competitors) has a substantial potential margin on local calls to business customers which it is able to use to offer a bundle of services at a price which is not easily able to be matched by its competitors.

¹ *Declaration of Local Telecommunication Services* July 1999 at p 41

Preselection

Preselection of competitive services was mandated precisely so that Telstra would not be able to leverage its market power in customer access and local telephony into other markets. Telstra's current strategies seriously undermine this competitive safeguard and thereby substantially lessen competition in these markets.

Aggregate impact of bundling

Telstra's several tying and bundling restrictions are imposed under standard contracts. It is therefore important to assess the aggregate impact of Telstra's strategies in order to fully appreciate the effect of them. In aggregate, these tying and bundling arrangements clearly have the effect of substantially lessening competition in the markets for long distance, international and fixed to mobile telephony services, as well as Internet subscription services since they have a substantial impact on the competitive process in these telecommunications, Internet and Pay TV markets. The aggregate effect of Telstra's bundling and tying strategies is to insulate Telstra from competitive pressures by creating artificial demand for Telstra's services in otherwise competitive markets and by creating a potential avenue through which Telstra can maintain its dominant market power.

Information gathering

To determine whether bundling practices constitute anti competitive behaviour as defined by the Act it is necessary to have access to sufficient information regarding the full cost of providing services and the pricing of individual services within bundles. MCT believes that the inability to access sufficient information has to date stymied any proceedings in response to Telstra's anti competitive bundling practices. (There have been 3 competition notices issued by the ACCC in 5 years and no successful TPA anti competitive actions due to the inability of parties to fulfil the onerous evidentiary requirements of the provisions.) This has in turn protected and encouraged bundling. MCT therefore urges the Commission to fully utilise its information gathering powers under the Act to access relevant information. In addition, MCT urges the Commission to fully utilise its RKR powers to ensure that adequate information is accessed to evidence any anti competitive behaviour in Telstra's bundling practices and, in particular, the potential bundling of Pay TV services.

2002 legislation – public disclosure

As foreshadowed in the recent legislation and hopefully addressed in the Minister's direction to the Commission, relevant information should be made public by the Commission to allow parties to identify anti competitive practices and to take independent action and/or urge the Commission to act. Hopefully the disclosure of adequate information to evidence offending behaviour will ultimately have the effect of deterring such behaviour.

Increased powers

MCT believes that legislative amendment is required to give the Commission sufficient powers to address anti competitive bundling behaviour. Providing the Commission with a cease and desist power and/or lowering the Part XIB thresholds would allow the Commission to more effectively prosecute anti competitive behaviour and thereby provide a more compelling deterrent than currently exists. By its nature any action against bundling will be complex and pose significant evidentiary burdens and therefore it is desirable to deter such behaviour rather than take action after the event.