

# Australian Competition & Consumer Commission Resolution of telecommunications access disputes

## Submission by PowerTel Limited

27 August 2003

PowerTel welcomes the opportunity to provide comments regarding the proposed revisions to the Commission's guide to *Resolution of telecommunications access dispute* (the **guide**).

PowerTel notes that in revising the guide the Commission has incorporated two sets of guidelines that it is now required to formulate. The first guideline relates to backdating of arbitration determinations and the second concerns the deferral of an arbitration where the Commission is considering an undertaking relating to the same matter.

On the issue of backdating, PowerTel notes the recent amendment to the *Trade Practices Act*, which clarifies that the Commission has the power to award interest (new s. 152DNA(6)). PowerTel believes this change should remove incentive for delays in an arbitration particularly by the dominant carriers. PowerTel is supportive of the methodology for calculating interest as outlined in the guide (section 7.4.4) however, suggests that the interest rate to be applied should be two per cent above the standard variable rate.

PowerTel does not agree that the rate of interest should reflect the opportunity cost but instead should be set higher to deter carriers from delay tactics within an arbitration. Furthermore, opportunity costs do not give consideration to other revenue generating activities that carriers forego because they have committed resources to launch an arbitration and are required to continue making over payments.

The second guideline provides the Commission with the power to defer an arbitration if there is an access undertaking on the same matter.

PowerTel notes that the Commission must consider the fact that the access undertaking if accepted, will generally apply to all access seekers, not just those involved in the arbitration. In addition, PowerTel notes the Commission must have regard to any guidelines that the Commission has made, and which are in force, in relation to the deferral of arbitration.

PowerTel believes there are aspects regarding the deferral of an arbitration that require further clarification. This was highlighted recently when PowerTel contacted the Commission about a possibility of launching an arbitration against a mobile network operator regarding charges for mobile termination. As the Commission had yet to release the first results of the retail glide path pricing methodology it at the time chose to adopt, PowerTel (and any other carrier who may have faced the same predicament) could not justify the arbitration costs while there remained much uncertainty regarding price movements.

PowerTel suggests that the Commission consider the issue of the deferral of an arbitration in the context of where pricing principles or the relevant results are yet to be finalised. PowerTel considers it may be relevant and appropriate for arbitrations to be launched and if needed deferred until such time the Commission is able to finalise its view with respect to pricing which is critical to the arbitration. As indicated above, while there remains uncertainty over indicative prices or access price movements,

access seekers will always hesitate or may even forego an arbitration. PowerTel requests that the Commission give due consideration to the deferral of an arbitration in the situation where there is an absence of price guideline so that genuine access seekers will not continue to be disadvantaged.