

PRIMUS TELECOM RESPONSE

ISSUES PAPER: *Inquiry into varying the exemption provisions in the final access determinations for the WLR, LCS and PSTN OA services*

OCTOBER 2011

INTRODUCTION

Primus welcomes the opportunity to comment on the Issues Paper regarding the *'Inquiry into varying the exemption provisions in the final access determinations for the WLR, LCS and PSTN OA services'*.

Primus is one of the leading telecommunications providers in the industry, servicing customers across the whole of Australia with use of its own and leased infrastructure. Primus was one of the first companies to enter the market on deregulation of the industry in 1997, and provides internet and telephony services including mobile and mobile broadband services in the corporate and consumer markets.

Primus operates its own data and voice networks, with fibre networks deployed in Australia's five major capital cities. Primus has retained 100% of its call centre positions within Australia.

EXEMPTIONS LESSEN COMPETITION

Primus submits that the exemptions be removed as:

- ❖ Telstra is the dominant supplier of resale services in all relevant markets;
- ❖ The key market is for fixed line voices;
- ❖ Competition for acquisition for fixed line services (or resale services) has not sufficiently emerged across the relevant geographic areas;
- ❖ limitations with ULL based services means they can not be fully substitutable;
- ❖ Given developments to date and the ongoing construction of the NBN there is no practical new source of fixed line voice services expected to emerge;
- ❖ Telstra will continue to have significant market power in this area.

STATE OF COMPETITION: REGULATED SITES VS UNREGULATED SITES

Telstra is able to exercise market power in the exemption areas and undisputable evidence of this is Telstra's ability to raise charges above what would provide an acceptable commercial return. In the absence of regulation Telstra is able to profit from its market power. The ACCC's decision to exempt certain areas from regulation provides Telstra with the ability to compromise competition with a means to increase its market power.

In a competitive environment Telstra would not be able to increase charges above the reasonably determined regulated tariff rate. Indeed, in the absence of market power the rates should be driven down, not up.

The transition to the NBN produces a strong motivation for Telstra to continue to manipulate its market power. Telstra's strategy is clear. While the exemptions remain in place Telstra will continue to weaken the commercial and competitive positions of other retail service providers.

PROMOTING COMPETITION: INITIAL JUSTIFICATIONS

The regulatory regime is targeted at ensuring fair and reasonable access to Telstra's monopoly network. While the regime supported the deployment of infrastructure based competition, the absence of regulation creates a barrier to entry. This is particularly so given the deployment of the NBN which totally stifles the incentives for investing in a wholesale voice service in the exempt exchange areas.

The ACCC's approach to date is inconsistent with market behaviour. The Commission first described exempting some locations from regulation on the basis that DSLAMs deployed by competitors created alternate sources of wholesale voice services and thus adequate competition.

The passage of time has established that this was not the case due to several factors including competitor technology not capable of providing voice services without significant new investment, and competitor unwillingness to become wholesalers as well as retailers.

In the face of this evidence, the Commission should reject its previous conclusions. Those conclusions are a significant departure from regulatory principles previously espoused as guiding the Commission.

If the business case existed to develop competitive supply, it would occur irrespective of whether or not the exemptions are in place.

INVESTMENT CASE NON-EXISTENT

Primus understands the economic and commercial reasons why industry does not invest in substitutable voice capabilities to provide an alternative to the Telstra regulated WLR, PSTN OA and LCS services include;

- ❖ Margins are too low;
- ❖ Alternative services cannot provide a viable substitute to Telstra services due to different supply conditions and availability relevant to the underlying ULLS;
- ❖ The uncertainty caused by both the potential for exchanges to be capped and the transition to the NBN continue to make any possible return on investment extremely risky;
- ❖ The establishment of necessary wholesale interface processes and systems.

Predictably, investment has not occurred in voice capability.

INEXPLICABLE INSISTENCE ON INVESTMENT IN SOON-TO-BE OBSOLETE TECHNOLOGY

There is no business case for the investment the Commission insists upon and it is unclear why industry participants would wish to invest money into copper infrastructure when the industry is moving to the NBN.

LONG TERM INTERESTS OF END-USERS

The ACCC is required to make its decisions to deliver outcomes in the long term interests of end-users. The removal of regulation through granting exemptions has not and will not advance the interests of end-users. It only serves to enable Telstra to discriminate with its pricing in respect to exempt services. This dampens competition and has the effect of harming the interests of end-users as service providers look to carry or pass on the increased costs of doing business.

The long terms interests of end-users can only by advanced when barriers to supply are broken down. In relation to the copper network, it requires targeted regulation designed to protect the competitive process and encourage competitor supply.

EXEMPTIONS SHOULD BE REMOVED

Primus proposes the conduct of Telstra and the changing commercial environment should be convincing enough to support a decision to abandon the exemptions.

Furthermore, Telstra's proposal to exclude exempt exchange service areas in its proposed wholesale services price list under its structural separation undertaking is inconsistent with the Government's requirement of equivalence between Telstra Retail and access seekers.

Primus submits the exemptions should be removed to prevent continued and increased harm to the long term interests of end-users.