

Primus Telecom submission to the ACCC

Provided in response to the ACCC's April 2008 draft paper, "*Pricing principles and indicative prices for local carriage services and wholesale line rental – a guide*"

Summary

Primus telecom (Primus) takes this opportunity to comment on the Commission's draft pricing principles and indicative pricing for the declared Wholesale Line Rental (WLR) service and the Local Carriage service (LCS).

In the absence of an appropriate cost model Primus supports the use of retail-minus methodology to determine indicative prices. Primus submits however that the indicative pricing proposed by the Commission is illogical, and irrelevant to consumption patterns and competition in the industry. Primus submits the Commission has selected the wrong benchmark for determining its proposed retail-minus based indicative prices. By selecting the largely irrelevant Homeline Part service as the retail benchmark the Commission has arrived at a meaningless outcome, which can only serve to distort the market and suppress competition. The Homeline Part service bears no relationship with the bundle of services made actively and commercially available by Telstra and other industry competitors. Accordingly, there is a disconnect between the benchmark selected by the Commission and the realities of the market. The indicative pricing proposed by the Commission will serve little else but to dampen the prospect of improved competition.

The absurdity of the current approach is evident from the impact Telstra's arbitrary increase in the price of Homeline Part has had on the (draft) WLR access pricing. Primus submits this demonstrates the perverse consequence of the Commission selecting a meaningless legacy plan as its benchmark. Such an anticompetitive outcome is clearly inconsistent with the Commission's mandate to promote competition and the long term interests of end-users. The proposed pricing, if confirmed by the Commission, will likely have the immediate effect of driving up access prices to the ultimate detriment of consumers.

Primus submits the Commission should select a more relevant retail benchmark and suggests that in the absence of determining an applicable weighted average retail price for WLR and LCS based on scrutiny of the full range of bundled and unbundled services, the Commission should adopt Homeline Complete as the appropriate benchmark for WLR and LCS indicative pricing. The Homeline Complete service is more popular basic access service, and is much more

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reflective of actual costs of services, consumption decisions and the competitive interface.

In the event the Commission was of a mind to not correct its preliminary choice of benchmark, Primus would suggest that instead of persisting with publishing an arbitrarily inflated outcome that will distort the market the Commission should decide not to publish indicative pricing at all, while it proceeds to finalisation of its cost model.

Rationale for indicative pricing

The Commission suggests in its guide to the WLR and LCS pricing principles that it considers these pricing principles may help guide commercial negotiations of access by providing greater certainty as to the Commission's views on reasonable access prices.

Primus submits the Commission is misplaced in this consideration, and should reassess the purpose underlying these pricing principles before it proceeds to publish the proposed indicative prices. The indicative pricing proposed by the Commission will not guide commercial negotiations toward fair and reasonable access pricing. Conversely, the indicative pricing currently proposed by the Commission will encourage Telstra to impose increased wholesale pricing, particularly in respect to WLR. A further impact is that access seekers are unable to lodge access disputes because of the long term cash flow consequences of the Commission making an interim determination at the proposed indicative pricing. Typically in these arbitration proceedings there can be no firm prospect of a timely Final Determination. Primus notes that there has been some industry speculation to the effect that Telstra has stage-managed the Homeline Part pricing to produce this WLR indicative pricing outcome.

While the proposed draft indicative pricing for WLR is currently of the greatest concern, Primus also notes that LCS is subject a similar benchmarking issue to WLR. Homeline Part local calls are 22c, while Homeline Complete local calls are 20c. The proposed draft pricing principle will therefore adopt a benchmark for LCS calls 2c above Telstra's typical retail price (all gst inclusive).

The Commission has Selected the Wrong Benchmark

Primus submits the Commission has selected the wrong benchmark. As the Commission would be aware, Telstra has no interest or incentive in marketing or selling the Homeline Part service. Indeed, Telstra has clear incentives to encourage these customers onto bundled plans where it can be guaranteed increased revenues through various locked-in calling charges. This imperative supports Telstra's motivations to increase the Homeline Part prices in October

2007. Although historically there may have been an argument to support the selection of the Homeline Part unbundled service as the retail benchmark, the realities of price movements since, and the consideration of consumption patterns and the competitive interface demonstrates that the Homeline Part service is now largely irrelevant in the minds of both consumers, Telstra and other service providers. Indeed, the Homeline Part service has no corresponding relationship with market realities. It is considered an unattractive marginal legacy service and few customers acquire it. Accordingly, the arbitrary decision by Telstra in October 2007 to increase pricing for Homeline Part, while the pricing for other bundles has largely stayed the same, has led to a huge disconnect between Homeline Part and the actual consumption and marketing patterns in the industry, and the actual and 'booked' costs of providing line rental and local calls. In these circumstances it is clearly flawed for the Commission to select a meaningless and largely ignored Telstra outlying service (Homeline Part) as the basis for deriving WLR and LCS access pricing.

Primus considers that one of the motivations behind Telstra's decision to increase the retail price for Homeline Part in October 2007 was to drive the remaining customers off this legacy service. Primus further notes that if the Commission was to review Telstra's customer website (or indeed, the websites of most other service providers as well), it will become very clear that the Homeline Part plan is completely irrelevant to the majority of the industry.

Primus further submits the Commission should give consideration to the history of Telstra's price cap regulation when considering the matter of benchmarks for determining indicative prices for WLR and LCS. Telstra basic residential line rental has been subject to ACCC price cap arrangements since industry deregulation in 1997. The current price cap determination has specified nil increase in the price of basic residential line rental. It is clearly incongruous that Telstra has twice raised the Homeline Part line rental which the ACCC is using as the benchmark for WLR, whilst the Telstra basic retail plan Homeline Complete remains fixed. Primus submits that the ACCC draft pricing principle for WLR is allowing two divergent prices for basic access rental when the matter could be simply and best dealt with by referencing the WLR to the more popular line rental package as is dealt with by the price cap arrangements.

The Correct Benchmark

Primus agrees that in the absence of a cost model at this time the ACCC should look for alternative methods to derive indicative pricing that will indicate to the industry a price point around which access pricing could reasonably be negotiated. As evident above, Primus disagrees with the retail benchmark selected by the ACCC.

In order to assess the appropriateness of any pricing approach that seeks in any way to emulate a competitive outcome it is necessary to understand the history of the pricing of the relevant services (and plans) and appreciate the realities and dynamics of the market. It is important to understand the competitive process, and understand how the products and services are marketed and sold by service providers. It is also important to understand how the products and services are viewed and consumed by customers. To ignore this context will lead to the selection of an irrelevant benchmark, and an arbitrary outcome that has no consequence but to distort the market.

In the case of the currently proposed WLR and LCS pricing principles it is not clear the Commission has conducted any such diligence. Indeed the Commission's selection of the meaningless Homeline Part service as the retail benchmark suggests the Commission has not concluded the necessary due diligence.

Primus submits that the more reasonable and acceptable approach to determining a retail benchmark would be to consider an average of local services packages, deducting retail costs from the weighted-average retail price of Telstra's local services plans. Primus understands that the ACCC has access to the information necessary to conduct this exercise and strongly supports the ACCC undertaking such an assessment.

Conclusion

The Commission has selected an irrelevant benchmark for determining wholesale access prices. In the absence of undertaking the robust assessment proposed above, Primus suggests the ACCC adopt the Homeline Complete service as the benchmark for retail line rental services. An examination of the industry demonstrates that the majority of consumers prefer the convenience and economics of such bundled services. In terms of the competitive supply of a basic residential access type service, Primus and others largely compete with Telstra at this retail point. Primus considers this is the most relevant point on the spectrum for determining a retail benchmark. Primus suggests such an approach would determine a much more meaningful and logical outcome in respect to indicative wholesale pricing that currently proposed.

Primus also notes the ACCC has made a GST error in determining residential WLR pricing where it has selected a GST-inclusive benchmark when it should have used a GST-exclusive benchmark.

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