

TRADE PRACTICES ACT 1974

Part A Competition Notice issued pursuant to section 151AKA(2)

The Proper Officer

Telstra Corporation Limited (ACN 051 775 556)

Level 41, 242 Exhibition Street

MELBOURNE VIC 3000

PREAMBLE

This notice is a Part A competition notice issued by the Australian Competition and Consumer Commission (the **Commission**) pursuant to section 151AKA(2) of the *Trade Practices Act 1974* (the **Act**) to Telstra Corporation Limited (ACN 051 775 556) (**Telstra**).

DEFINITIONS AND INTERPRETATION

1. In this notice:
 - a. **Fixed Voice Services** means, as the context requires, one or more of the following residential telephony services supplied by way of a PSTN:
 - i. Local Services;
 - ii. fixed-to-mobile call services;
 - iii. national long distance call services; and
 - iv. international call services;
 - b. **Home Access increase** has the meaning given in paragraph 5.c;
 - c. **HomeLine Part increase** has the meaning given in paragraph 5.a;
 - d. **Local Services** means residential line rental and local call services supplied for the end-use of Retail Customers, whether supplied on a retail or wholesale basis;
 - e. **Lower Spend Customers** means Retail Customers who are low-to-mid spending customers in the Retail FVS Market, including at least those Retail Customers who are in the lowest expenditure quartile in the Retail FVS Market;

- f. **PSTN** means a Public Switched Telephone Network;
- g. **PSTN OTA Charges** means charges levied by a carrier or carriage service provider in respect of the supply of originating and terminating access to its PSTN;
- h. **Retail Customers** means end-user customers throughout Australia who acquire Local Services and who may also acquire other Fixed Voice Service(s);
- i. **Retail FVS Market** has the meaning given in paragraph 7.b;
- j. **Retail Price** means the price at which Retail Customers are supplied with Fixed Voice Services;
- k. **Retail Transformation Costs** mean the incremental or avoidable costs of transforming Local Services and PSTN originating and terminating services into services suitable for retail supply, including costs associated with customer acquisition and the development and maintenance of support systems necessary for retail supply, such as billing systems;
- l. **Telstra's Rivals** means:
 - i. Telstra's Wholesale Customers; and
 - ii. Telstra's prospective Wholesale Customers, who compete or would compete in the Retail FVS Market on a basis that is no less efficient than Telstra;
- m. **Total Cost** means, in respect of a Fixed Voice Service supplied to Retail Customers, the sum of:
 - i. the Wholesale Price;
 - ii. the PSTN OTA Charges; and
 - iii. the Retail Transformation Costs,
 relating to the supply of that Fixed Voice Service;
- n. **Wholesale Customers** means carriers or carriage service providers who acquire Local Services for use in the supply of Fixed Voice Services to Retail Customers;
- o. **Wholesale Local Services Market** has the meaning given in paragraph 7.a; and
- p. **Wholesale Price** means the price at which Telstra supplies Telstra's Wholesale Customers with Local Services.

2. In this notice:

- a. the singular includes the plural and the plural includes the singular;

- b. a defined word appearing in another grammatical form has the equivalent meaning; and
- c. unless the contrary intention appears, words used in this notice which are defined in section 151AB of the Act have the same meaning as given in section 151AB.

SECTION 151AKA(2) STATEMENT

3. Telstra has engaged, and is engaging, in at least one instance of anti-competitive conduct of a kind described in this notice.

REASON TO BELIEVE

4. The Commission has reason to believe that Telstra has engaged, and is engaging, in at least one instance of anti-competitive conduct of a kind described in this notice.

THE CONDUCT

5. Telstra has engaged in the following conduct:
 - a. Effective 1 December 2005, Telstra imposed an increase in the Retail Price of one of its Local Services products, HomeLine Part (the **HomeLine Part increase**). Table A of Schedule 1 provides details as to the Retail Price at which Telstra supplied HomeLine Part immediately before the HomeLine Part increase and immediately after the HomeLine Part increase.

Explanatory note: HomeLine Part permits a Retail Customer to acquire its Local Services from Telstra, but to "pre-select" other providers in respect of all or any of the other Fixed Voice Services. Consequently, HomeLine Part enables Telstra's competitors to supply Fixed Voice Services (other than Local Services) to HomeLine Part customers on a pre-selection basis.
 - b. At the time of the HomeLine Part increase, Telstra did not increase the Retail Price of any of its other Fixed Voice Services products.
 - c. Effective 5 December 2005, Telstra imposed an increase in the Wholesale Price of the monthly charge for a **wholesale basic** telephone service with its Local Services product, Home Access (the **Home Access increase**). Schedule 2 provides details as to the **Wholesale Price at** which Telstra supplied a wholesale basic telephone service with **Home Access** immediately before the Home Access increase and immediately after the Home Access increase.

Explanatory note: Home Access is a wholesale input used by Telstra's Wholesale Customers to provide line rental and local call services (i.e. Local Services) products to Retail Customers.

- d. At the time of the Home Access increase, Telstra did not increase the Retail Price of its Local Services products or any of its other Fixed Voice Services products. Table B of Schedule 1 provides details as to the key Retail Prices at which Telstra supplied its various Fixed Voice Services products immediately before the Home Access increase and Table C of Schedule 1 provides details of Telstra's key Retail Prices after the Home Access increase.
- e. Telstra actively promoted the implications of its new pricing structure for its various Fixed Voice Services to Retail Customers.
- f. From at least 5 December 2005 to the present and continuing:
 - i. Telstra has supplied, and continues to supply:
 - A. Local Services to Telstra's Wholesale Customers at the Wholesale Price applicable immediately after the Home Access increase; and
 - B. Fixed Voice Services to Retail Customers at Retail Prices which are materially unchanged from those applicable immediately after the Home Access increase;
 - ii. Telstra has refused, and continues to refuse, to supply:
 - A. Local Services to Telstra's Wholesale Customers other than at the Wholesale Price applicable immediately after the Home Access increase, except in limited circumstances; and
 - B. Fixed Voice Services (other than new products introduced since the Home Access increase) to Retail Customers other than at Retail Prices which are materially unchanged from those applicable immediately after the Home Access increase.
- g. Further, from at least 5 December to the present and continuing:
 - i. Telstra has supplied, and continues to supply, Local Services to Telstra's Wholesale Customers such that, in respect of Lower Spend Customers, Telstra's Retail Price is less than the sum of the Wholesale Price, its PSTN OTA Charges and its Retail Transformation Costs; and
 - ii. Telstra has refused, and continues to refuse, to supply Local Services to Telstra's Wholesale Customers, other than in circumstances where, in respect of Lower Spend Customers, Telstra's Retail Price is less than the sum of the Wholesale Price, its PSTN OTA Charges and its Retail Transformation Costs.

CARRIER

- 6. Telstra is and was at all material times a carrier.

TELECOMMUNICATIONS MARKETS

7. At all material times, there were and are markets in Australia that are no wider than markets for:
 - a. the supply and acquisition of wholesale Local Services (the **Wholesale Local Services Market**); and
 - b. the supply and acquisition of retail Fixed Voice Services (the **Retail FVS Market**).
8. Each market identified above at paragraph 7 is a telecommunications market.

MARKET POWER

9. In the supply of Local Services in the Wholesale Local Services Market, Telstra is not materially constrained by the conduct of:
 - a. Telstra's competitors and potential competitors in the Wholesale Local Services Market; or
 - b. persons to whom or from whom Telstra supplies or acquires goods or services in the Wholesale Local Services Market,
 as demonstrated by, *inter alia*:
 - c. Telstra's ownership and control of network infrastructure, including the only PSTN with near-Australia wide coverage, which is essential for supplying wholesale Local Services;
 - d. Telstra's high and stable market share;
 - e. the high barriers to entry into the Wholesale Local Services Market, including the existence of large sunk costs and economies of scale and scope;
 - f. Telstra's strong degree of vertical integration in supplying network, wholesale and retail telecommunications services; and
 - g. the lack of countervailing power on behalf of Telstra's Wholesale Customers, other potential wholesale purchasers of Local Services, and Retail Customers.
10. Accordingly, and without prejudice to **the Commission's views in respect** of any other telecommunications market, Telstra has a substantial degree of power in the Wholesale Local Services Market.

TAKING ADVANTAGE OF MARKET POWER

11. Telstra has taken and is taking advantage of its market power in the Wholesale Local Services Market by engaging in the conduct described in paragraph 5.

EFFECT OR LIKELY EFFECT ON COMPETITION

12. The conduct described in paragraph 5 had and has the effect or likely effect of substantially lessening, preventing or hindering competition in the Retail FVS Market in one or more of the following respects:
 - a. by substantially preventing or hindering Telstra's Rivals from competing for Lower Spend Customers in the Retail FVS Market, as such customers cannot be supplied at a price which enables Telstra's Rivals to recover the Total Cost of supplying Fixed Voice Services;
 - b. by raising the costs of Telstra's Rivals, and thereby:
 - i. substantially reducing the incentives of Telstra's Rivals to engage in competitive activity to acquire new Retail Customers and to retain existing Retail Customers; and / or
 - ii. resulting in higher Retail Prices for Fixed Voice Services than would otherwise be the case in a competitive market;
 - c. by substantially increasing the barriers which prevent or hinder Telstra's Rivals from entering into or expanding within the Retail FVS Market, in at least one or more of the following respects;
 - i. adversely affecting the capacity of Telstra's Rivals to generate or to maintain sufficient business to develop and to take advantage of economies of scale and scope; and
 - ii. reducing the ability of Telstra's Rivals to expand product offerings and to invest in or to deploy new **infrastructure** and / or alternative technology in order to develop and to supply new and innovative products (particularly in the form of **facilities-based** competition) which may, in the long run, result in more **efficient delivery** of services;
 - d. by threatening the viability of at least some of Telstra's Rivals; and
 - e. by substantially preventing or hindering Telstra's Rivals from supplying Fixed Voice Services to Retail Customers at a **competitive** price by means other than a bundle which includes Local Services (for example, on a "pre-selection" basis to Retail Customers acquiring Telstra's HomeLine Part product).

KINDS OF ANTI-COMPETITIVE CONDUCT

13. Each of the following kinds of conduct is a kind of anti-competitive conduct described in this notice:
- a. conduct by Telstra of the kind referred to in paragraph 5.f.i;
 - b. conduct by Telstra of the kind referred to in paragraph 5.f.ii;
 - c. conduct by Telstra of the kind referred to in paragraph 5.g.i;
 - d. conduct by Telstra of the kind referred to in paragraph 5.g.ii, and where that conduct has the effect or likely effect of substantially lessening, preventing or hindering competition in a telecommunications market as referred to in paragraph 12.

DURATION

14. This notice comes into force on 13 April 2006.
15. This notice remains in force until 12 April 2007.

DATED: 12th April 2006



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Graeme Samuel
Chairman
Australian Competition and Consumer Commission

SCHEDULE 1

TABLE A: TELSTRA'S RETAIL PRICE FOR HOMELINE PART	
HomeLine Part monthly line rental price immediately before 1 December 2005 increase	HomeLine Part monthly line rental price immediately after 1 December 2005 increase
\$26.95 (including GST)	\$31.95 (including GST)

TABLE B: TELSTRA'S KEY RETAIL PRICES FOR FIXED VOICE SERVICES PRODUCTS¹ IMMEDIATELY BEFORE HOME ACCESS INCREASE (including GST)					
	HomeLine Advanced	HomeLine Plus	HomeLine Complete	HomeLine Budget	HomeLine Part
Monthly Line Rental	\$35.95	\$29.95	\$26.95	\$18.50	\$31.95 ²
Local Calls (per call)	15c	17.5c	20c	30c	22c
STD Calls					
Capped STD Calls STD calls capped between 7pm (4pm Saturdays) and midnight	Not Available	\$1.50 per call	\$2.00 per call	\$3.00 per call	Not Available
or					
Everyday STD option \$2.50 per call 24 hours, 7 days for calls up to 3 hours	Not Available	\$2.50	Not Available	Not Available	Not Available
or					
\$1.49 per call 24 hours, 7 days for calls up to 20 minutes	\$1.49	\$1.49	Not Available	Not Available	Not Available

¹ Products listed in the table represent in excess of 97% of Telstra's Retail Customers.

² Certain discounts apply to monthly line rental depending on the value of calls the customer makes with Telstra.

Mobile Calls³					
Fixed to Mobile rate (to non-Telstra mobile)	37 cents a minute	37 cents a minute	37 cents a minute	42 cents a minute	42 cents a minute
Fixed to Mobile rate (to Telstra mobile)	33 cents a minute	33 cents a minute	33 cents a minute	37 cents a minute	37 cents a minute
International Calls	Rates vary depending on country	Rates vary depending on country	Rates vary depending on country	Rates vary depending on country	

TABLE C: TELSTRA'S KEY RETAIL PRICES FOR FIXED VOICE SERVICES PRODUCTS⁴ IMMEDIATELY AFTER HOME ACCESS INCREASE

	HomeLine Advanced	HomeLine Plus	HomeLine Complete	HomeLine Budget	HomeLine Part
Monthly Line Rental	\$35.95	\$29.95	\$26.95	\$18.50	\$31.95 ⁵
Local Calls (per call)	15c	17.5c	20c	30c	22c
STD Calls					
Capped STD Calls STD calls capped between 7pm (4pm Saturdays) and midnight	Not Available	\$1.50 per call	\$2.00 per call	\$3.00 per call	Not Available
or					
Everyday STD option \$2.50 per call 24 hours, 7 days for calls up to 3 hours	Not Available	\$2.50	Not Available	Not Available	Not Available
or	\$1.49	\$1.49	Not Available	Not Available	Not Available
\$1.49 per call 24 hours, 7 days for calls up to 20 minutes					

³ Other caps and options are available, but the table represents baseline pricing for these products.

⁴ Products listed in the table represent in excess of 97% of Telstra's Retail Customers.

⁵ Certain discounts apply to monthly line rental depending on the value of calls the customer makes with Telstra.

Mobile Calls⁶					
Fixed to Mobile rate (to non-Telstra mobile)	37 cents a minute	37 cents a minute	37 cents a minute	42 cents a minute	42 cents a minute
Fixed to Mobile rate (to Telstra mobile)	33 cents a minute	33 cents a minute	33 cents a minute	37 cents a minute	37 cents a minute
International Calls	Rates vary depending on country	Rates vary depending on country	Rates vary depending on country	Rates vary depending on country	

Note: no material changes from the Retail Prices which applied immediately before Home Access increase.

⁶ Other caps and options are available, but the table represents baseline pricing for these products.

SCHEDULE 2

WHOLESALE PRICE FOR HOME ACCESS LINE RENTAL	
Monthly charge for a wholesale basic telephone service with Home Access immediately before the Home Access increase	Monthly charge for a wholesale basic telephone service with Home Access immediately after the Home Access increase
\$24.50 (excluding GST)	\$27.60 (excluding GST)