Telecommunications competitive safeguards

and

Telstra's compliance with the price control arrangements

1999–2000

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Erratum

The date on the letter of transmittal on the opposite page should read 26 April 2001, not 26 April 2000.

Contents

Abbreviations

ACA	Australian Communications Authority
ACIF	Australian Communications Industry Forum
ADSL	asymmetrical digital subscriber line
AMPS	analogue mobile phone system
BCS	basic carriage services
CSP	carriage service provider
GSM	global systems for mobiles
HFC	hybrid fibre-coaxial cable networks
IAP	Internet access provider
ISDN	integrated services digital network
ISP	Internet service provider
LTIE	long-term interests of end-users
MNP	mobile number portability
PSTN	public switched telephone network
RKRs	record keeping rules
TAF	Telecommunications Access Forum
ToLI	telecommunications on-line initiative
xDSL	refers to the ‘family’ of digital subscriber line services (i.e. ADSL, HDSL, etc.)

1. Overview

The Australian Competition and Consumer Commission is an independent statutory body responsible for competition regulation of telecommunications within Australia. The Commission's responsibilities include regulation of access to telecommunication services declared by it and enforcement of the telecommunications-specific anti-competitive conduct provisions, under parts XIB and XIC of the *Trade Practices Act 1974* (the Act).

The Commission also has functions and responsibilities under the *Telecommunications Act 1997* (Telecommunications Act), including the power to direct its co-regulator, the Australian Communications Authority (ACA), to mandate number portability, the power to make facilities access codes and the responsibility for enforcing the international rules of conduct. Further, the Commission has responsibilities under the *Telecommunications (Consumer Protection and Service Standards) Act 1999* in relation to Telstra's compliance with the price control arrangements.

The Commission carries out these responsibilities, where possible, by encouraging self-regulatory processes. This is consistent with the general policy guiding the tele-communications regulatory provisions as provided in s. 4 of the Telecommunications Act. However, where intractable disagreements arise or anti-competitive conduct occurs, the Commission will seek to use its regulatory powers efficiently and effectively.

The Commission currently has three annual telecommunications reporting requirements under the Act. These are:

- sub-section 151CL(1) of the Act requires the Commission to review and report each financial year on competitive safeguards within the Australian telecommunications industry;
- paragraph 151CM(1)(a) of the Act requires the Commission to monitor and report each financial year on charges paid by consumers for telecommunications services; and
- paragraph 151CM(1)(b) of the Act requires the Commission to report each financial year on Telstra's compliance with the price control arrangements.

This report combines the Commission's reporting requirements for the 1999–2000 financial year on competitive safeguards and Telstra's compliance with the price control arrangements. The Commission has decided to bring these reports together to facilitate the Government's and Parliament's consideration of telecommunication matters.

The Commission notes that in the 2000–2001 financial year it intends to provide a report that also incorporates its reporting requirements on telecommunications charges.

1.1 The 1999–2000 financial year for the Commission

The 1999–2000 financial year was the liberalised telecommunications industry's third year in Australia and proved to be a challenging year for industry participants and the Commission.

During the 1999–2000 financial year the Commission experienced an increase in the number of complaints and queries on telecommunications specific anti-competitive conduct and consumer protection issues. This may be a result of a heightened awareness of the Commission's role in the telecommunications industry (partially due to the Commission's increased public profile through its GST related activities) but also because carriers and carriage service providers (CSPs) are increasingly focused on attracting subscribers to build market share. This is evidenced by the Commission's investigations into offers of free access to the Internet and slamming.

In addition to investigating market behaviour, the Commission continued to establish key preconditions designed to promote a competitive environment. The Commission's decision to declare local telecommunication services and the development of pricing principles for declared services were key activities in this respect. It is recognised that there are still significant access related issues which need to be addressed to deliver the benefits of competition to end-users. In particular, the Commission must finalise the pricing principles and associated access disputes it is arbitrating and finalise or commence considerations about varying or revoking declarations for particular services.

The Commission was also involved in other matters for which it has responsibility under the Telecommunications Act, such as number portability. The Commission's primary role in relation to number portability is to issue directions to the ACA. However, it has also had continued involvement in the implementation processes surrounding number portability through various Australian Communications Industry Forum (ACIF) processes and ACA liaison.

1.1.1 Anti-competitive conduct and consumer safeguard activities during the 1999–2000 financial year

Legislative changes

During the 1999–2000 financial year the Government introduced amendments to part XIB of the Act which changed the previous competition notice regime. These changes arose partly because the Commission was concerned that the regime did not facilitate prompt action. A two-part competition notice regime was therefore established to enable the Commission to respond to contraventions of the competition rule more expeditiously. The regime also provides a more timely mechanism to facilitate court action, thereby providing a warning signal to the notice recipient that it should cease the conduct.

In the 1999–2000 financial year the Commission did not issue any competition notices under the new regime. However, in August 1999 it issued revised guidelines (under s. 151AP of the Act) detailing the factors it would consider in determining whether to issue a competition

notice under the new regime. In particular, the guidelines explain the policy goals of the Commission in its consideration of whether to issue competition notices. At the same time the Commission also released an accompanying information paper.

The specific details about the legislative changes to the competition notice regime and associated release of the guidelines are provided in section 2.1.1.

Anti-competitive conduct

During the 1999–2000 financial year the Commission experienced a general increase in the number of anti-competitive conduct complaints. Over this period it continued and initiated five major investigations into potential anti-competitive conduct by telecommunications carriers or CSPs. These investigations involved the following matters:

- Telstra's customer transfer (commercial churn) systems;
- the provision of services connecting Telstra's PSTN network with other networks (the switchports investigation);
- access to Telstra's exchanges following the release of its ADSL services;
- Internet peering arrangements; and
- Internet domain names.

In February 2000 the Commission and Telstra reached an agreement for the settlement of the commercial churn litigation, an investigation that began in November 1997.

The specific details of these investigations are outlined in section 2.2 of this report.

Consumer safeguards

The Commission also experienced a significant increase in the number of complaints on consumer protection issues. As a result, three major investigations were conducted during the 1999–2000 financial year. These investigations involved the following matters:

- offers of free access to the Internet (the GoConnect investigation);
- acceptable user policies (i.e. policies that are put in place to terminate services to end-users who they believe are taking advantage of certain product offerings); and
- slamming (the unauthorised churning of end-users from one carrier to another).

Details of these investigations are outlined in section 3 of this report.

1.1.2 Information-gathering activities during the 1999–2000 financial year

Tariff filing

During the 1999–2000 financial year the Commission continued to receive weekly and monthly tariff filing information from Telstra, as well as briefings on significant changes to Telstra's standard form of agreement. The Commission used this information to assist in its assessment of market behaviour (particularly where there were concerns about anti-competitive conduct) and to respond to consumer queries and complaints regarding Telstra's retail activities.

Details on tariff filing are outlined in section 4.1 of this report.

Record keeping rules

During the 1999–2000 financial year the Commission continued to develop and refine the written instrument that will bring into effect the new regulatory accounting framework using the record keeping rules (RKRs). This work was largely based on the final report provided to the Commission by Arthur Andersen in December 2000. The Arthur Andersen report recommended RKRs that would require telecommunications carriers to provide information using fully distributed costing and according to detailed allocation methodologies against specified telecommunication services. Importantly, the report also recommended horizontal and vertical separation of information, such that detailed cost and revenue breakdowns at the retail and wholesale levels would be reported.

Details on record keeping rules are outlined in section 4.2 of this report.

1.1.3 Access related activities during the 1999–2000 financial year

Public inquiries into declaration and exemption applications

During the 1999–2000 financial year the Commission initiated or finalised public inquiries into whether it would be in the long-term interests of end-users (LTIE) of telecommunication services to declare several services. It determined that it was in the LTIE to declare several local telecommunications services and the analogue-specific subscription television broadband carriage services. However, it also determined that it would not be in the LTIE to declare the long-distance mobile originating service and technology-neutral subscription television broadband carriage services. The Commission also commenced a public inquiry into whether to vary the declaration relating to intercapital transmission capacity.

Details of these inquiries are contained in section 5.3 of this report.

During the 1999–2000 financial year the Commission also received an exemption application in relation to the local carriage service. Telstra submitted that it should be exempt from its obligations to supply the local carriage service to its competitors in the CBD areas of Melbourne, Sydney, Brisbane, Adelaide and Perth.

Details on the process associated with the Commission's consideration of the exemption application are outlined in section 5.4 of this report.

Access undertakings

During the 1999–2000 financial year Telstra submitted a new access undertaking relating to the domestic PSTN originating and terminating services (the declared PSTN services). This followed the Commission's decision to reject Telstra's earlier undertaking.

In the new undertaking Telstra proposed a headline (i.e. average) rate of 2.3 cents per minute for the declared PSTN services in the 1999–2000 financial year and 2 cents per minute in 2000–2001. Telstra did not include non-price terms and conditions in the undertaking. Shortly after the end of the reporting period, the Commission decided to reject Telstra's new access undertaking.

Details on the assessment of Telstra's undertaking are outlined in section 5.6 of this report.

Access disputes and pricing principles

At the end of the 1999–2000 financial year a total of 24 access disputes had been notified to the Commission (including completed and withdrawn disputes). Most notifications are generally lodged with the Commission because the parties are unable to agree about the price of access to declared services.

The high number of access disputes has been of some concern to the Commission and it has received far more notifications than was ever envisaged when the part XIC provisions of the Act were introduced. However, it is expected that the negotiation/arbitration model will become more effective as competition increases and as the Commission finalises its core work on access pricing — which will provide further guidance to industry on appropriate pricing benchmarks.

During the 1999–2000 financial year the Commission initiated the development of pricing principles for a number of services:

- mobile number portability;
- the unconditioned local loop service;
- the local carriage service;
- the domestic GSM originating and terminating access services; and
- the declared PSTN services supplied by non-dominant or smaller fixed networks.

The Commission has endeavoured to arbitrate access disputes as speedily as possible. It notes that in many cases the complexity of the issues it faces, combined with resource limitations, has meant that some access disputes have been active for considerable periods of time. During the 1999–2000 financial year it made three interim determinations on the access disputes regarding the declared PSTN services, two interim determinations regarding the digital data access service, one interim determination regarding the local carriage service and a final determination regarding a routing option for local number portability. In addition, access seekers withdrew two access disputes and a further three were suspended pending possible withdrawal. A list of the arbitrations and their status at the end of the 1999–2000 financial year is provided in section 5.7 of this report.

1.1.4 The Commission's activities under the Telecommunications Act during the 1999–2000 financial year

Number portability

During the 1999–2000 financial year the Commission directed the ACA to amend the *Telecommunications Numbering Plan 1997* (the Numbering Plan) to provide for mobile number portability (MNP). The direction also contained amendments to the 1997 direction regarding the processes for dealing with number portability exemption applications.

During the 1999–2000 financial year the Commission also commenced an examination of whether mandating number portability for national rate and premium rate number services would be in the LTIE.

The Commission also finalised an access dispute in relation to a routing option for local number portability.

Details on the Commission's responsibilities and associated activities regarding number portability issues are outlined in section 6 of this report.

Electronic addressing, facilities access code and international rules of conduct

During the 1999–2000 financial year the Commission finalised a facilities access code following extensive public consultation. The code sets out the conditions of access which carriers have to comply with regarding the provision of access to eligible telecommunications facilities. Details of the facilities access code are provided in section 7.2 of this report.

The Commission did not issue a direction to the ACA on electronic addressing nor did it conduct any investigations about international rules of conduct in the 1999–2000 financial year.

1.1.5 Telstra's compliance with the retail price control arrangements

In September 2000 Telstra provided the Commission with information about its compliance with the price cap arrangements as set out in the *Telstra Carrier Charges — Price Control Arrangements, Notification and Disallowance Determination No.1 of 1999.*

Having assessed the information, the Commission is satisfied that Telstra has complied with the price control arrangements for the 1999–2000 financial year. The price-cap of CPI–5.5 per cent for the first basket of services and the price sub-caps of CPI–0 per cent for the second and third baskets and CPI–1 per cent for the fourth basket have been satisfied. Telstra has also complied with the metropolitan/non-metropolitan pricing parity requirement for residential, charity and business customers.

Details on Telstra's compliance are provided in section 9 of this report.

1.2 Looking forward

The telecommunications industry has changed significantly since July 1997 due to the effect of competition in many areas and the introduction of new technologies and services. These developments have been visible to end-users, particularly through reductions in retail prices and greater service offerings. There has been an unprecedented expansion of infrastructure, fixed and wireless; particularly, but by no means exclusively, within and between cities. The investment going into the telecommunications industry and related industries, such as the Internet, is now a major stimulus to the economy.

Another important development is convergence, whereby converging technologies and services enable new services to be offered from traditional platforms and traditional services to be offered from non-traditional platforms. The delivery of telephone services via the Internet, or datacasting services from broadcast networks are some examples of convergence. An implication of convergence is that the types of market structures and conduct observed are likely to change.

As a result of these changes, the nature of the regulatory task is changing. The competition issues are different in an environment in which competition is becoming more established. The focus is shifting at several levels.

Firstly, the focus is moving away from ensuring access to essential infrastructure (through declaration of services) towards ensuring that the terms and conditions of that access are reasonable.

With a number of services already declared, infrastructure deployment continuing, and alternative technology platforms capable of offering data and higher value services as well as voice services, new infrastructure bottlenecks are less likely to arise in the future. In addition, the anticipated growth in data traffic is likely to provide opportunity for new entry into data and other more traditional telephony markets.

For the Commission this means that decisions to regulate further services are likely to become a smaller part of its work. Indeed, the Commission is examining whether the existing level of regulation is appropriate for some services. For example, it is conducting a public inquiry into whether the declaration relating to intercapital transmission capacity should be varied and is assessing an exemption application on the local carriage service.

With further infrastructure deployment and new entry, interconnection arrangements are becoming more complex with individual carriers now having to deal with more carriers than before to ensure any-to-any connectivity. As a result there is likely to be an increase in the number and complexity of intercarrier negotiations related to wholesale interconnection. The Commission would like to think that these negotiations will be conducted largely on a commercial basis and will be encouraging such an outcome, but notes the possibility of further access dispute notifications being lodged.

Another important shift of focus is likely to be from price to non-price terms and conditions. Non-price terms and conditions of access are increasingly influencing the ability of new entrants to offer services in competition with incumbent operators.

Ensuring non-discriminatory access to operational support systems will be a particular priority for the Commission as the wholesale market develops further. For example, it will work closely with the Australian Communications Industry Forum (ACIF) on its initiative known as telecommunications on-line initiative (ToLI). It will also be increasingly involved in investigations, such as that conducted during the 1999–2000 financial year into access to Telstra's exchanges following the introduction of ADSL services. The level of regulatory intervention in this area will be dependent on the speed and success of industry initiatives.

A further shift of focus is that the more traditional telecommunications services, such as ordinary voice calls, are increasingly being bundled with data and higher value services. Cross-product bundling, such as television and telephony, or telephony and Internet services, allows carriers, who want to build high-value business, to achieve a competitive edge. However, it also raises competition issues related to the ability of end-users to purchase only part of the bundle. Bundling may also involve the sharing of costs across a number of voice and data services and has implications for the way the Commission regulates and monitors prices.

A final example of the shift in focus is the movement from entry into the market to merger and acquisition activity within markets. Merger activity is apparently increasing as the telecommunications industry globalises and as markets and technologies converge. Mergers enable firms to take advantage of changing economies of scope and scale and to leverage their existing services and end-users into new markets.

Only when a proposed merger is likely to result in a substantial lessening of competition, or prevent or hinder it, will it raise concerns for the Commission. This is more likely to be the case when the firms in question operate in the same market and hold substantial market shares or have the potential to develop them. This was the case in the proposed Cable & Wireless Optus–AAPT merger. It is much less likely to be the case when the firms operate in different markets, or when one of them is a small player. This was the case in the Telecom New Zealand–AAPT merger.

2. Anti-competitive conduct provisions

This section of the report examines amendments to the telecommunications-specific anti-competitive provisions of the Act and the investigations the Commission undertook into potential breaches of these provisions during the 1999–2000 financial year.

Part XIB provisions of the Act specifically address anti-competitive conduct in the telecommunications industry. These provisions were introduced because the Government considered that Telstra's market power and scope to engage in anti-competitive conduct, as well as the dynamic nature of the industry, would not allow the part IV provisions of the Act to sufficiently constrain possible anti-competitive conduct. The telecommunications-specific provisions were intended to supplement the general anti-competitive conduct provisions (part IV of the Act) by increasing the Commission's ability to respond swiftly to anti-competitive conduct.

2.1 Anti-competitive conduct

The part XIB provisions of the Act prohibit a carrier or CSP from engaging in anti-competitive conduct — a prohibition known as the competition rule. Section 151AJ of the Act sets out the two circumstances under which a carrier or a CSP contravenes the competition rule.

The first circumstance is where a carrier or CSP takes advantage of a substantial degree of power in a telecommunications market with the effect, or likely effect, of substantially lessening competition in that, or any other, telecommunications market. An examination of the purpose for which the conduct is being engaged is not required under the competition rule, as it is for the general misuse of market power provisions of the Act (s. 46 of the Act).

The second circumstance of a breach of the competition rule is where a carrier or CSP engages in conduct relating to a telecommunications market that contravenes the anti-competitive conduct provisions in part IV of the Act. In particular:

- s. 45 — contracts, arrangements or understandings that restrict dealings or affect competition;
- s. 45B — covenants affecting competition;
- s. 46 — misuse of market power;
- s. 47 — exclusive dealing; or
- s. 48 — resale price maintenance.

2.1.1 Competition notices

Under part XIB of the Act, the Commission may issue competition notices in response to alleged anti-competitive conduct. In the 1999–2000 financial year the Government introduced amendments to the competition notice regime, partly because the Commission was concerned that the process did not facilitate prompt action.

> To address these concerns, the … amendments establish a two part competition notice regime. Part A competition notices will allow the Commission to more quickly identify conduct it considers is in contravention of the competition rule, open the gate for court action against the conduct and thereby warn the notice recipient that it considers the recipient should cease the conduct. Part B competition notices will enable the Commission to give particulars of conduct or a defined kind of conduct under a Part A notice, enabling the Commission to provide the detailed, particularised information required for prima facie evidence purposes for use in its own court action or court actions mounted by third parties.

Under the new regime the Commission has a discretion to issue part A and part B competition notices. When exercising this discretion it must have regard to any guidelines issued under s. 151AP(2). The guidelines identify matters the Commission must take into account when deciding whether to issue a competition notice, although it must also have regard to any other relevant matters. The guidelines are therefore not exhaustive.

In August 1999 the Commission issued guidelines under s. 151AP of the Act. The guidelines explain the policy goals the Commission considers relevant to its decision of whether to issue a part A or part B competition notice. These policy goals will guide the Commission in deciding whether a competition notice is the most appropriate response to anti-competitive conduct. The Commission considers that in many investigations of anti-competitive conduct where it has a reason to believe that the carrier or CSP has engaged, or is engaging, in a contravention of the competition rule, the issuing of a competition notice will be an appropriate and positive step to achieving those policy goals. However, there may be some circumstances where other responses might lead to a more effective or appropriate outcome than issuing a competition notice.

Part A competition notices

The Commission may issue a part A competition notice where it has reason to believe that the carrier or CSP concerned has engaged, or is engaging, in an instance of anti-competitive conduct, or at least one instance of anti-competitive conduct of the kind described in the notice. In contrast with the previous competition notice regime, a part A competition notice does not constitute prima facie evidence of the matters in the notice.

On receiving a part A competition notice the Commission would expect that the carrier or CSP would cease to engage in the conduct detailed in the notice. Where the carrier or CSP contravenes the competition rule by engaging in the conduct detailed in the notice, the Commission has a variety of options. For example, it may seek orders for, and commence proceedings to recover, pecuniary penalties of up to $10 million and $1 million per day that the conduct continues.

Part A competition notices allow the Commission to respond to conduct it considers is in contravention of the competition rule more quickly than under the previous regime. The degree of certainty with which the contravention must be established to issue a competition notice is less than under the previous legislation. Specifically, the part A competition notice must describe a type of anti-competitive conduct rather than a specific instance of anti-competitive conduct. Under the previous regime it was a requirement that the notice contain descriptions of the particular instances of anti-competitive conduct. In such a case a carrier or CSP that had been served with a notice could effectively avoid the operation of the notice by varying its conduct to the extent that it fell outside the scope of the conduct particularised in the notice. Part A competition notices also provide a mechanism to deter possible court action and expedite outcomes by providing a warning signal to the notice recipient that it should cease the conduct.

During the 1999–2000 financial year the Commission did not issue any part A competition notices.

Advisory notices

If a part A competition notice is in force in relation to a carrier or CSP, the Commission may issue a written advisory notice advising the notice recipient of the action it should take, or consider taking, to ensure that it does not engage, or continue to engage, in the kind of conduct dealt with in the part A notice.

An advisory notice is not legally binding. In issuing such a notice the Commission is only offering advice to the recipient on how it can change its conduct to avoid contravening the Act. However, it is open to a court to have regard to an advisory notice when determining the orders against a carrier or CSP found to have contravened the Act.

During the 1999–2000 financial year the Commission did not issue any advisory notices.

Part B competition notices

Part B competition notices are optional notices which the Commission can issue to assist the proof of a contravention of the competition rule. A part B competition notice states that a specified carrier or CSP has contravened, or is contravening, the competition rule and sets out particulars of the contravention.

Once issued, a part B competition notice is prima facie evidence of the matters set out in the notice (i.e. the facts comprising the particulars of the contravention) in any proceedings under, or arising out of, part XIB of the Act. It does not conclusively establish that a carrier or CSP has engaged in anti-competitive conduct, which is a matter to be determined by the court.

During the 1999–2000 financial year the Commission did not issue any part B competition notices.

2.1.2 Exemption orders

A carrier or CSP proposing to engage in conduct which may breach the competition rule may apply to the Commission for an exemption order. The Commission may grant an exemption order where it is satisfied that:

- the resultant public benefit outweighs any public detriment of lessened competition; or
- the conduct will not breach the competition rule.

Conduct, which is the subject of an exemption order, will not be anti-competitive conduct for the purpose of the competition rule.

No exemption order applications were received during the 1999–2000 financial year.

2.2 Investigations under the anti-competitive conduct provisions

The Commission experienced a general increase in the number of anti-competitive conduct complaints received during the 1999–2000 financial year. Over the financial year the Commission undertook five major investigations into possible contravention of the anti-competitive conduct provisions. Details of the specific investigations are outlined below.

2.2.1 Commercial churn

In February 2000 the Commission and Telstra reached an agreement for settlement of the commercial churn litigation. The litigation originated as a result of a number of complaints from industry concerning the terms and conditions of the customer transfer process (known as the churn service) that Telstra required its competitors to adopt when consumers changed their local call provider. Complaints were also received concerning the way in which the churn service had been introduced. It was alleged that Telstra had unilaterally imposed this service, had not consulted with industry and had refused to negotiate on the transfer conditions.

Following investigation of complaints the Commission's concerns centered on:

- the transfer conditions relating to transfer fees;
- the new local call provider inheriting pre-transfer debt owed to Telstra;
- the use of a complex standard transfer authority form;
- the rejection of transfer applications and the imposition of multiple transfer rejection fees; and
- the time taken by Telstra to process transfer requests.

Of particular concern was the pre-transfer debt that service providers inherited unless they paid Telstra a fee of $30 per transferred service. This, combined with other transfer conditions,

made local call resale unprofitable and affected fixed local telephony competition. As end-users have generally preferred one bill for their telecommunication services, competition for long-distance end-users was also affected as potential long-distance suppliers would be subject to the churn conduct when providing the local call component of the 'one bill' service.

The terms of the settlement provided that Telstra would pay $4.5 million to a fund to be called the 'on-line fund'. This fund is to be administered by the Commission and in June and July 2000 the Commission canvassed industry views as to the most appropriate use of the on-line fund. In light of the submissions received, the Commission has decided to make an initial disbursement to an ACIF initiative known as the ToLI. The payment will be used by the ToLI to progress project scoping activities and will utilise the services of consultants. Future disbursements will be based on the outcomes achieved from this initial funding.

Part of the funded work being carried out for the ToLI is developing an electronic information gathering and reporting process which will capture information from the various operations support systems and other sources generated by carriers and CSPs. Aside from efficiencies that are likely to flow from automation of these intercarrier processes, it will also assist the capture of information that will enable the Commission to discharge its functions in relation to declared services and make the information accessible to other regulators and the industry more generally.

2.2.2 Switchports

In early 2000 the Commission investigated complaints that Telstra had engaged in anti-competitive conduct by inadequately provisioning services connecting Telstra's declared PSTN services with other telephone networks.

The Commission's investigations revealed that when allocating interconnection capacity to its competitors, Telstra was responding to significant increases in requests for interconnection that were above its industry forecasts. These unusually large increases for interconnection capacity were mainly due to increases in dial-up Internet service provider (ISP) traffic and from ISP traffic migrating from integrated services digital network (ISDN) services onto Telstra's cheaper fixed line options.

Notwithstanding the reason for potential inadequate provisioning, the investigation into Telstra's supply of switchports (which enable interconnection with other networks) has demonstrated to the Commission that there is a lack of transparency and clarity for wholesale customers in Telstra's forecasting, ordering and provisioning processes. This is particularly relevant in cases where there is constrained capacity and in turn raises serious competition concerns.

The Commission decided that it did not have reason to believe that Telstra had contravened the competition rule, as is required under part XIB of the Act. However, due to the importance of efficient allocation of interconnect capacity in relation to network planning, the Commission requested Telstra to establish new methods and processes for providing interconnection

services. These changes included transparent, consultative processes to deal with forecasting, ordering and provisioning where there is likely to be constrained capacity. The Commission considers that the provision of switchports and other wholesale services, which enable the supply of declared and other wholesale services, is an important issue relevant to ensuring a competitive environment.

2.2.3 Unconditioned local loop service

In July 1999 the Commission declared the unconditioned local loop service as it considered declaration was likely to promote competition in the markets in which local telephony services and high bandwidth carriage services are supplied (section 5.3.1 provides further details). Declaration of the unconditioned local loop service provides carriers and CSPs with the opportunity to deliver competitive xDSL services to end-users. The xDSL services are a 'family' of digital subscriber line services that use compression technologies to transmit high-speed data and voice signals along standard copper wire. Declaration therefore provides a greater opportunity for other carriers and CSPs to bring innovative Internet, multimedia and data services to the market.

Telstra launched its retail asymmetrical digital subscriber line (ADSL) product in the post-reporting period (ADSL services provide a dedicated line from customer premises to a network exchange that can provide access speed of over 1.5 Mbits per second). Leading up to the launch the Commission closely monitored Telstra's roll-out of the services that would allow competitors to also provide xDSL services using the unconditioned local loop service. For instance, the Commission had received several complaints from CSPs seeking access to Telstra's exchanges to deploy equipment allowing for the provision of ADSL services. The Commission did not take any action before the release of Telstra's ADSL products because the evidence suggested that some CSPs had been slow in lodging orders with Telstra and others had not completed preparing their own networks for these services.

In July 1999 amendments were made to the Act which included the insertion of s. 152BBA. This section provides that, if requested by either party to a negotiation about the terms and conditions on which access to a declared service will be provided, the Commission can direct the negotiating parties in the conduct of the negotiation. Further details on such directions are provided in section 5.5 of this report. The Commission issued a s. 152BBA notice in relation to negotiations surrounding access to the unconditioned local loop service. Subsequently, the parties involved reached a commercial resolution on access to exchanges.

2.2.4 Internet peering

Between July 1997 and April 1998 the Commission conducted an investigation into various industry complaints that Telstra was taking advantage of its market power to affect competition between ISPs, including itself. The investigation resulted in the Commission issuing two competition notices to Telstra under part XIB of the Act in May and June 1998.

The Commission alleged that Telstra was contravening the competition rule by charging other Internet access providers (IAPs) for national Internet backbone provider services provided by Telstra, but refusing to pay for similar services it received from other IAPs. In essence, backbone provider services are intermediary network transit services linking two or more networks.

The common thread in these complaints was their reference to a lack of reciprocal interconnection arrangements. The Commission was responsible for investigating these complaints under the Act, but also recognised that industry-based resolution is often preferable to a regulated outcome.

In February 2000 the Commission announced its intention to promote the development of an Internet interconnection model suited to Australian conditions. The model will identify a set of principles that will assist the industry in negotiating commercial arrangements governing the exchange of data, whose transmission is controlled by the TCP/IP suite of Internet protocols.

The first step in the process was to consolidate the Commission's initial position through the development of a discussion paper. The paper aimed to encourage industry to develop a sustainable Internet interconnection model to guide commercial negotiation of interconnection arrangements. The discussion paper, *Internet interconnection: factors affecting commercial arrangements between network operators in Australia*, was released in February 2000. It canvassed the issues and factors that, in the opinion of the Commission, are relevant to the interconnection of Internet networks.

The Commission sought comments from interested parties, including a number of overseas regulators and carriers, on the issues and questions discussed in the paper. Consideration of the issues was continuing at the end of the 1999–2000 financial year.

2.2.5 Internet domain names

In response to complaints concerning anti-competitive practices received during April 2000, the Commission investigated the arrangements under which Internet domain names are issued and acquired in Australia. Allegations were raised about the barriers to entry faced by potential registrars of domain names, such as ISPs.

The historical development of the Internet meant that the issuing of second level domain names within the .au space (such as .gov.au, .com.au and .net.au) had been delegated to specific Australian individuals under what amounts to a monopoly arrangement. To promote increased competition in the supply of domain name services, an industry body, the .au Domain Administration Advisory Panel (auDA), has been established. As a result, the Commission considered that no enforcement action was appropriate pending the outcome of any framework established by auDA to promote the competitive supply of second level domain names. Further details on the panel are provided in section 8.4 of this report.

3. Consumer safeguards provisions

This section of the report details the major investigations undertaken by the Commission involving potential breaches of the consumer protection provisions in part V of the Act which are specifically related to telecommunications. The Act does not have consumer protection provisions that are specific to telecommunications.

The Commission experienced a significant increase in the number of consumer protection complaints specifically related to telecommunications during the 1999–2000 financial year. These totalled approximately 820. Over the financial year the Commission undertook three major investigations into possible contravention of the consumer protection provisions. Details of these investigations are outlined below.

3.1 Misleading advertising

In April and May 2000, after receiving numerous complaints from consumers, the Commission investigated GoConnect — an ISP that promoted a service offering free access to the Internet.

GoConnect promotional material advertised its service Australia-wide and made representations that, once registered, consumers could have free Internet access and 'endless free Internet time'. GoConnect also represented that it would be launching a full access service to all registered members from March 2000. The Commission received complaints from consumers that had registered with GoConnect for Internet access but had not been offered a connection. The Commission was of the view that consumers viewing GoConnect's advertisements and website would have been entitled to think that once they had registered with GoConnect, their Internet service would be activated immediately when in fact GoConnect did not have the capacity to provide this service.

The Commission's investigations revealed that although more than 300 000 consumers across Australia registered with GoConnect expecting to take advantage of the free Internet service from January 2000, less than 5 per cent of these end-users had been offered connections to the Internet by GoConnect. Furthermore, GoConnect could not predict the availability of its service to subscribers beyond the 60 000 connections it expected by 1 June 2000 with any certainty. Further investigations revealed that subscribers were currently only being offered connections in Melbourne, Sydney and Brisbane, and that this situation was unlikely to change before the end of 2000.

The matter was resolved when GoConnect provided an undertaking (under s. 87B of the Act) to the Commission that it would amend its advertising and website, and conduct a mail-out to all members. This was to ensure that consumers were made aware of the current availability of GoConnect's services, realistic projections about future availability of its service and the possiblity of delays of several months for the majority of consumer connections.

3.2 Acceptable user policies

In June 2000 the Commission investigated the operation of several acceptable user policies which have been used by ISPs to limit or even withdraw services if they believe a consumer is taking advantage of an 'unlimited' or 'free offer'. While the Commission recognises the need for such policies to deter abuse in network industries, it was particularly concerned about the policies being adopted by a number of carriers and CSPs.

The use of these policies can be of concern because they do not provide certainty to the consumer contracting for the services. Due to this uncertainty, consumers are unable to compare similar offerings by various competitors. The Commission has received a number of complaints from consumers about acceptable user policies and will continue to monitor the use of such policies. In one case investigated by the Commission, Optus Internet and Excite@Home Australia, who jointly provide Optus@Home residential cable Internet services, provided the Commission with an undertaking (under s. 87B of the Act) and withdrew advertisements that referred to 'unlimited' Internet access.

3.3 Slamming

During the latter part of the 1999–2000 financial year the Commission commenced formal investigations into the practice by carriers and CSPs of 'slamming' — the unauthorised churning of end-users from one telecommunications provider to another. The Commission remains concerned about the continuing number of complaints about slamming and it is anticipated that this will be a considerable focus of consumer protection enforcement work in the 2000–2001 financial year.

4. Tariff filing and record keeping rules

This section of the report outlines the tariff filing and RKR provisions of the Act, including the development of the new regulatory accounting framework that captures financial information for specified carriage services.

The Commission has specific information-gathering powers relevant to performing its functions or exercising its powers under parts XIB or XIC of the Act (in addition to the Commission's general powers to obtain information under s. 155 of the Act). These powers allow it to examine the pricing conduct of carriers and CSPs where there are concerns about anti-competitive conduct, or for use in determining appropriate access prices. They enable the Commission to be aware of market behaviour within the telecommunications industry and develop appropriate regulatory responses.

4.1 Tariff filing

The Commission's tariff filing powers can be divided into two distinct parts:

- general telecommunications tariff filing (division 4 of part XIB); and
- Telstra-specific tariff filing (division 5 of part XIB).

4.1.1 Tariff filing directions under division 4 of part XIB

Where the Commission is satisfied that a carrier or CSP has a substantial degree of power in a telecommunications market, it may direct the carrier or CSP under division 4 of part XIB to provide the Commission certain information on charges for specified carriage services and/or ancillary goods or services (including goods or services for use in connection with a carriage service) or information on its intentions regarding those goods or services.

In the 1999–2000 financial year the Commission did not issue any tariff filing directions under this division.

4.1.2 Tariff filing by Telstra under division 5 of part XIB

Telstra is required under division 5 of part XIB of the Act to file information for all charges relating to its basic carriage services (BCS) with the Commission. These are services that allow for communication between two or more distinct places, and which are supplied by means of fixed line or satellite based facilities. They do not include supply of customer equipment.

Telstra is specifically required to provide the Commission with a written statement setting out such information about Telstra's proposed pricing changes as the Commission requires at least seven days before imposing, varying or ceasing to impose a charge on BCS. The Commission may shorten the seven-day period or exempt a charge for a specified BCS from filing.

A strict interpretation of this requirement would require Telstra to provide complete details about charges for all BCS, both standard and individualised (non-standard), along with all variations that are made to the charges. However, provision of this information was seen as being administratively burdensome for both Telstra and the Commission. Accordingly, a streamlined process was developed by identifying the relevant BCS and charging information which would assist the Commission in detecting potential anti-competitive behaviour.

In this regard an agreement was developed in June 1998 between the Commission and Telstra that required the provision of relevant information for certain BCS while not causing practical and resource difficulties. It also met the fundamental objectives of division 5.

The agreement consists of the following elements.

- Telstra is to provide its standard form of agreement on a weekly basis, along with a list of all amendments (additions, variations and withdrawals) that have taken place during that week.

  In the 1999–2000 financial year the Commission continued to use this information to remain informed of the variety of BCS offered by Telstra and associated charges.

- Telstra is to provide a monthly summary report of any non-standard form of agreements that it entered into for that calendar month.

  In the 1999–2000 financial year the Commission continued to review the monthly summary reports. On the basis of one monthly report the Commission initiated considerations on Telstra's deep discounting for certain non-standard form of agreement customers, for longer contract periods (i.e. a market foreclosure issue).

- Telstra is to provide briefing to the Commission where it has introduced, varied or withdrawn an offering for a BCS and considers that change to be significant.

  In May 2000 Telstra briefed the Commission on significant changes to its standard form of agreement for the public mobile telecommunications services. These changes involved a re-balancing exercise to simplify a range of old pricing plans.

- The Commission may also request a briefing to obtain information about any amendments to Telstra's standard form of agreement or where further detail is required on a non-standard form of agreement.
- Exemptions exist for particular BCS because of the potential likelihood for anti-competitive conduct, the information already available to the Commission through the access regime and the previous tariff filing agreement between Telstra and AUSTEL. Examples of exempted BCS are services which are declared or which are provided for defence purposes. The Commission may request a briefing from Telstra for these exempted services.

During the 1999–2000 financial year Telstra complied with all requirements to provide tariff filing information to the Commission.

4.2 Record keeping rules

Under s. 151BU of part XIB of the Act, the Commission has the power to make RKRs by written instrument and require that carriers and CSPs comply with these rules. The rules may specify what records are kept, how reports are prepared and when these reports are provided to the Commission. If the Commission notifies a carrier or CSP that particular RKRs apply to them, the Commission must give that carrier or CSP a copy of the rules.

The Commission cannot require the keeping of records unless they contain information that is relevant to the responsibilities of the Commission. For the purpose of s. 151BU of the Act, these responsibilities include the operation of parts XIB and XIC of the Act (e.g. establishing if a carrier or CSP is complying with the competition rule).

4.2.1 Financial record keeping rules

In 1998 the Commission established the Record Keeping Rules Working Group, comprising industry representatives and Commission staff. The purpose of the working group was to develop new financial RKRs to replace the existing financial reporting obligations set out in the AUSTEL Chart of Accounts and Cost Allocation Manual. This working group developed a broad conceptual model that separated a carrier's or CSP's activities between its wholesale and retail components and provided relevant financial information on these aspects.

The Commission then engaged Arthur Andersen to recommend an accounting framework that would capture financial information for all declared services including retail, internal and external wholesale services, applying the conceptual model developed by the working group.

In April 1999 the Commission released a discussion paper for public comment which outlined the findings of the Arthur Andersen draft report. The Commission received submissions from industry in response to the discussion paper in July and August 1999 and in light of these comments Arthur Andersen submitted a final report in December 1999. The recommendations of the final report were similar to the draft report. In summary, the report developed:

- a reporting architecture specifying the services which carriers and CSPs may be required to report against;
- details of information to be provided for each service, particularly the associated revenues, costs and capital;
- descriptions of financial statements for each service;
- principles for allocation methodologies;
- audit guidelines for ensuring accuracy and appropriateness of information; and
- an overview of the adjustments needed to convert historical costs to current costs.

The report also recommended a number of ancillary reports, including reports containing usage information for major services and for network assets underlying PSTN based services, average

unit cost models of declared services, supplementary service profit and loss reports and capital employed reports based on a segmentation of interest to the Commission such as geographic regions.

After receiving the final report the Commission decided which recommendations to accept and undertook the process of developing the draft RKR instrument to implement the new regime. In the process of drafting the RKR instrument the Commission decided to accept most of the Arthur Andersen final report but, importantly, some of the ancillary reports were rejected because the compliance cost was likely to be greater than the benefit they could bring (although the Commission has left open further consideration of ancillary reports). The Commission also believed that further analysis and discussion was required as to the scope of application of the rule. Development of the draft RKRs was still continuing at the end of the 1999–2000 financial year.

4.2.2 Non-financial record keeping rules

In November 1999 the Commission released a discussion paper on non-financial RKRs. The purpose of the paper was to consider the development of non-financial RKRs which would assist the Commission in safeguarding and promoting competition in the telecommunications industry. The paper discussed a number of potential areas of the Commission's work where non-financial RKRs could be used and concluded that one specific area needed more information. This area was about the provision of information showing compliance with the principle of non-discrimination as set out in the standard access obligations. The paper proposed using access to operational support systems as the basis on which to develop performance measures, against which the Commission would be able to assess compliance with the standard access obligations.

The Commission received submissions from interested parties in December 1999 and January 2000. In light of these submissions the Commission decided not to create a similar general regime for non-financial RKRs as for financial RKRs. Rather, it decided that it would apply the non-financial RKRs on a case-by-case basis, where this was seen as necessary to fulfill its regulatory responsibilities. The Commission did conclude, however, that it would generally be considered appropriate to apply the non-financial RKRs to determine compliance with the standard access obligations, as opposed to determining compliance with the anti-competitive conduct provisions in part XIB of the Act.

In deciding not to impose a pre-determined set of non-financial RKRs, the Commission was conscious that the ACIF was considering the establishment of an electronic information-gathering and reporting process that would capture information from the operations support systems. A more prescriptive approach to developing a framework for non-financial RKRs was therefore not seen as necessary. As noted in section 2.2.1, such an electronic process (known as ToLI) is being established by the ACIF and it is expected that this will override any need for the Commission to create a non-financial RKR regime.

5. Access to telecommunications network services

This section of the report details the Commission's involvement in regulating access to telecommunications networks, including the declaration of telecommunications services and arbitrating access disputes. It also describes the process of developing pricing principles for particular services, which are likely to be used by the Commission to settle access disputes.

Part XIC of the Act establishes the industry-specific access regime for the telecommunications industry. The primary objective of part XIC is to promote the LTIE, which is determined by assessing whether an action is likely to achieve the objectives of:

- promoting competition in telecommunications markets;
- achieving any-to-any connectivity (i.e. ensuring communication between users of different networks); and
- encouraging the economically efficient use of, and investment in, infrastructure.

In administering part XIC the Commission encourages industry participants to negotiate and settle their own disputes. Consistent with the general policy guiding the telecommunications regulatory provisions, as provided in s. 4 of the Telecommunications Act, the Commission also encourages the industry to implement self-regulatory processes where possible. However, where intractable disagreements arise or anti-competitive conduct occurs, the Commission will seek to use its regulatory powers efficiently and effectively.

5.1 Framework for access to declared services

The part XIC access regime only applies to services which are 'declared' or were deemed to be declared. Deemed services are telecommunications services which were supplied under pre-existing access agreements before part XIC was introduced on 1 July 1997 and for which the Commission decided declaration was in the LTIE.

Declaration is the process of determining whether a service should be brought within the regulatory net. The two ways in which a service can be declared are:

- through the recommendation of the Telecommunications Access Forum (TAF), which is an industry body representing the interests of both access providers and seekers of telecommunications carriage services, and which was established to assist in the self-regulation of the telecommunications industry; or
- after a public inquiry is held by the Commission.

The Commission seeks to use the declaration process to develop the optimal scope for telecommunications access regulation. This may mean, particularly in the earlier stages of the access regime, the declaration of new services. However, as competition increases through the entry of new carriers and CSPs, and greater substitutability between different technologies, the extent of regulation required may diminish. In this light, public inquiry processes are increasingly expected to focus on revoking, or varying existing declarations.

Once a service is declared, the access provider is subject to the standard access obligations. These require the access provider to provide the service, on request, to the access seeker. In doing so, the access provider must take all reasonable steps to ensure that the technical and operational quality of the service is equivalent to that which the access providers provides to itself. While the terms and conditions of access are not specified in the Act, it does provide three ways in which they can be determined, namely:

- by commercial negotiation between the access provider and access seeker;
- if commercial negotiations cannot reach an agreed outcome, the Commission, following notification of an access dispute, determines the access terms and conditions in an arbitration between the access seeker and provider of the declared service; and
- the Commission can accept an undertaking by the access provider, which will determine the terms and conditions of access.

5.2 The Commission's guide to the declaration provisions

In July 1999 the Commission released a guide to the declaration provisions of part XIC, *Telecommunications services — declaration provisions*. The guide outlines the Commission's approach to particular declaration issues, including the matters that the Commission must consider and the way in which it will consider them in performing its declaration functions.

The guide outlines the part XIC regime with particular reference to the policy issues underpinning the regime. It focuses on the issues pertaining to:

- service description — in particular the degree of technical specification required; and
- the LTIE — in particular who are the end-users, what are their long-term interests and applying the test.

The guide also contains a section dealing with procedural issues, such as the public inquiry process. This replaces a previous publication, *Declaration of telecommunications services: the public inquiry process*, published in July 1997.

5.3 Public inquiries into declaration of telecommunication services

During the 1999–2000 financial year the Commission initiated or finalised public inquiries into:

- local telecommunications services;
- long-distance mobile services;
- transmission services; and
- broadcasting access services.

5.3.1 Local telecommunications services inquiry

On 19 March 1998 the Commission commenced a public inquiry into whether to declare, under part XIC, particular services which it initially described as 'local call' and 'local interconnection' services. These services are essentially inputs used in the supply of communications services to end-users.

After considering material received during the inquiry, including in response to a technical advice paper which proposed draft service descriptions for comment, the Commission developed specifications for four services, each of which it considered to be an eligible service as defined in sub-s. 152AL(1) of the Act. The services are the:

- unconditioned local loop service;
- local PSTN originating service;
- local PSTN terminating service; and
- local carriage service.

The Commission released its final report on the declaration of these services, *Local telecommunications services*, in July 1999. The findings of the report are detailed below for each of the service descriptions.

Unconditioned local loop service

The unconditioned local loop service involves the use of unconditioned copper telephone lines between end-users' premises and a point at which those lines terminate (usually an exchange building). Telstra was (and remains) the only carrier supplying this service. Carriers or CSPs able to gain access to this service would be able to connect their own electronic components and switching equipment to the lines to supply telephony and high bandwidth carriage services for carrying data (e.g. Internet traffic, video on demand, remote LAN access and interactive multimedia) directly to end-users.

The Commission was of the view that declaration was likely to promote competition in the markets in which local telephony services and high bandwidth carriage services are supplied to a significant extent, with consequent benefits to end-users.

The report noted that the market in which high bandwidth carriage services are supplied is expected to experience significant growth in the foreseeable future. This growth is expected in both the residential and business segments of the market. By gaining access to the unconditioned local loop service, carriers and CSPs would be able to provide end-users with an alternative source of supply for high bandwidth carriage services. These end-users would no longer be solely reliant on Telstra's choices in terms of service range and timing of deployment.

The Commission considered that the unconditioned local loop service was unlikely to be supplied to access seekers in the absence of declaration (in a manner which would meet their demand). The Commission also considered that the costs involved in supplying and charging for the unconditioned local loop service were likely to be reasonable and that industry self-regulatory processes could address interference and related issues which may impact upon the operation of telecommunications networks. Declaration was therefore viewed as being likely to encourage the economically efficient use of, and economically efficient investment in, telecommunications infrastructure.

Consequently, declaration of the unconditioned local loop service was seen as being likely to promote the LTIE of carriage services and services provided by carriage services.

It is noted that since declaring the service in July 1999 the Commission has been particularly concerned to ensure the unconditioned local loop service is made available on a timely basis and on reasonable terms and conditions. To this end the Commission has examined Telstra's proposed prices for the service and is also closely monitoring its provision and that of associated ADSL wholesale and retail services.

Local PSTN originating and terminating services

The local PSTN originating and terminating access services involve the carriage of communications between customer equipment at the end-users' premises and a point on the local trunk side of the local switch. Carriers or CSPs able to gain access to these services would be able to interconnect at the local switch, thus unbundling inter-exchange switching and transmission from the other components of the already declared PSTN services. The Commission was of the view that carriers and CSPs would be most likely to use the local PSTN originating and terminating services in providing long-distance services.

The report noted that there was a level of ambiguity about whether the service descriptions of the already declared PSTN services provide for interconnection at the local exchange level. However, the Commission was of the view that declaration of the local PSTN originating and terminating services would provide a mechanism to facilitate interconnection at the local switch and lower costs for carriers and CSPs.

It was also noted that declaration would allow carriers and CSPs to reduce their reliance on Telstra and reduce the quantum of inputs purchased from Telstra. This would be likely to improve the cost structure of carriers and CSPs and improve conditions for effective competition in the long-distance telephony market. That said, the report noted that the market in which long-distance services were supplied had a number of competitors and that declaration was not expected to enable end-users to gain access to an increased range or choice of services. Rather, the benefits from declaration were likely to be in the form of lower prices to end-users.

Declaration of the local PSTN originating and terminating services was also viewed as being likely to improve the contestability of infrastructure for the carriage of calls between switches and reduce the level of switching required when calls are handed over to an access seeker. Improving the contestability of infrastructure for the carriage of calls between switches would also increase the competitive pressure on access providers to supply them in the most efficient manner. This would be likely to encourage the economically efficient use of, and investment in, this infrastructure.

It was noted that as interconnection in some instances already occurs at the local switch level, it is likely to be technically feasible to supply and charge for the local PSTN originating and terminating services. Any negative effects in terms of the operation or performance of telecommunications networks could be dealt with on a case-by-case basis through the provisions of s. 152AT of the Act.

Consequently, declaration of the local PSTN originating and terminating services was viewed as being likely to promote the LTIE of carriage services and services provided by carriage services.

Local carriage service

The local carriage service involves the supply of an end-to-end call between two points within a standard zone. Carriers or CSPs able to gain access to the local carriage service would be able to provide local calls to end-users (local call resale). In re-supplying the local carriage service to the end-user the carrier or CSP may seek to 'value add' or simply resell.

The report noted that the ability of service providers to compete effectively in the local telephony market through re-supplying the local carriage service is largely influenced by the terms and conditions on which the local carriage service is supplied. The Commission considered that the declaration of the local carriage service would constrain the ability of access providers to influence competition in the local telephony services market. This is likely to promote competition in that market and in the long-distance telephony services market where local telephony services are bundled with long-distance calls for end-users who prefer to acquire those services from a single provider.

It was noted that the extent to which declaration would promote competition would be likely to depend on the prices paid by access seekers for the local carriage service. The Commission gave consideration to the pricing approach it would be likely to adopt if it was called on to assess an access undertaking dealing with the local carriage service, or arbitrate an access

dispute about the local carriage service. The Commission considered that it would be likely to adopt a retail minus avoidable cost approach to determine access prices. Subsequently, pricing principles were developed, details of which are provided in section 5.8.3 of this report.

To the extent that it encourages entry of efficient provision of retail services, and improves the ability of carriers and CSPs to use re-supply as a stepping stone to the roll-out of their own infrastructure, the Commission noted that declaration would also encourage economic efficiency. In this regard declaration would facilitate market entry and enable carriers or CSPs to obtain information about demand characteristics and the likely responses of competitors, thereby reducing the risks associated with infrastructure deployment. This should enable carriers and CSPs to make efficient decisions about when to deploy customer access infrastructure. It appeared to be technically feasible to supply and charge for the local carriage service. Accordingly, the Commission was of the view that declaration was likely to encourage the economically efficient use of, and investment in, infrastructure used to supply local telephony (and possibly other) services.

The declaration of the local carriage service was consequently seen as being likely to promote the LTIE of carriage services and services provided by carriage services. The report noted that once the unconditioned local loop service was available to carriers and CSPs and/or the local PSTN originating and terminating services could be used to supply local calls, the competitive significance of the local carriage service is likely to diminish. At that time, the Commission noted that it may be appropriate to revoke or modify the scope of the declaration of the local carriage service.

5.3.2 Long-distance mobile services inquiry

On 8 October 1998 the Commission commenced a public inquiry into whether to declare a service which would allow carriers and CSPs to determine, and supply, the onward routing service for long-distance and international calls made from mobile phones. The commencement of this inquiry followed consideration of the matter at industry level by the TAF.

The Commission developed a service description of the key features of this service based on industry submissions received in response to its discussion paper. The service was described as a 'long-distance mobile originating service'. As such, it was viewed as a service for the carriage of certain calls from a mobile phone to a point of interconnection. The mobile calls to which this service would apply are:

- calls to international numbers; and
- national 'long-distance' calls to fixed public switched telephone networks.

Before any decision about declaration, the incumbent mobile carriers (Telstra, Cable & Wireless Optus and Vodafone) supplied the long-distance mobile originating service and determined the onward routing of the calls made on their networks. As a result, carriers and CSPs were only able to resell the services as a whole. Declaration would have allowed

a carrier or CSP to purchase the long-distance mobile originating service and combine it with an onward routing option and termination service to supply the call types detailed above.

To stimulate discussion and assist its consideration of these matters, the Commission issued a discussion paper in December 1998. Submissions were received by April 1999. The Commission also undertook market inquiries, consulted with industry and commissioned a paper on technical issues.

On 23 August 1999 the Commission issued, for comment, its draft report on whether to declare the long-distance mobile originating service. It was the Commission's preliminary view that it was not satisfied that declaration of the long-distance mobile originating service would promote the LTIE.

The Commission subsequently received public submissions from mobile carriers, service providers and interest groups.

On 14 January 2000 the Commission announced its decision not to declare the long-distance mobile originating service. Based on the information received during the inquiry, the Commission was not satisfied that declaration would promote the LTIE of carriage services or of services provided by means of carriage services.

In the final report the Commission noted that, in its view, the mobile services market was highly concentrated with only three mobile carriers, of which Telstra accounted for around half of the market. The Commission also considered that there were barriers to entry which limited the extent to which the threat of entry could constrain the behaviour of incumbent mobile carriers. These included the need to acquire spectrum, the importance of national geographical coverage, the establishment of sites for base stations, and the sunk nature of certain capital costs. Actual entry was seen as likely to be necessary to ensure effective competition.

It was noted that new entry was planned or occurring in both capital cities and regional locations. A number of resellers, such as AAPT, Hutchison and One.Tel had, or planned to, enter the mobile services market. Importantly these resellers had acquired spectrum and were starting to roll out their own mobile networks. If successful in their roll-out, Australia would have at least five mobile network operators in its main population areas and up to four operators in regional areas, one of the highest number of suppliers in the world.

The report also noted that the mobile services market had experienced considerable growth since 1992 and that competition existed between both carriers and resellers. At the time of the report it appeared that competition had been focused on handset prices and access charges. Furthermore, competition seemed to be still developing and was likely to intensify over the foreseeable future, particularly as new mobile carriers entered the market.

In light of these significant competitive developments, it was the Commission's view that at that stage declaration would be unlikely to lead to more vigorous competition.

5.3.3 Transmission services inquiry

Transmission capacity above 2Mbps was deemed to be declared in June 1997, except for transmission between the mainland capital cities (known as intercapital transmission). Transmission capacity is used for the transmission of voice, data or other communications between a point of interconnection located in different capital cities. The Commission varied the transmission capacity declaration on 4 November 1998 following a public inquiry process. The variations involved, inter alia, adding intercapital transmission to the declared services except for the Melbourne–Canberra–Sydney route.

When the Commission varied the declaration on transmission capacity, it also noted that it would establish a monitoring program. The Commission initiated consultations on the monitoring program in March 1999 with the aim of assessing aspects of market structure and market conduct for both the declared and undeclared routes. The information collected as a part of the monitoring program was intended to assist the Commission in deciding whether, and when, to review the declaration decision.

The Commission collected quarterly information, initially from Telstra and Cable & Wireless Optus and subsequently from Macrocom, GPU Powernet and Transgrid regarding:

- the movement in wholesale intercapital transmission access prices over time;
- the margins available to suppliers of wholesale intercapital transmission services;
- capacity utilisation of intercapital transmission;
- the level of investment in intercapital transmission services;
- market shares;
- availability of substitutes; and
- the extent of market entry.

The information collected as part of the monitoring program has indicated that:

- the prices for intercapital transmission capacity have fallen since June 1998, with the largest price reductions mainly in intercapital transmission routes on the eastern seaboard;
- intercapital transmission capacity requirements are highest for the Sydney–Brisbane and Sydney–Melbourne routes, but medium to low for all other intercapital transmission routes, including Melbourne–Canberra; and
- new suppliers are in the process of rolling out their own intercapital transmission network, or are planning to do so in the near future — they do, however, tend to concentrate on routes on the eastern seaboard.

In light of this information the Commission decided to review the declaration relating to intercapital transmission capacity. The Commission announced it would hold a public inquiry

into further possible variations of the intercapital transmission capacity declaration in June 2000. It also issued a discussion paper seeking submissions from interested parties at this time. This inquiry was ongoing at the end of the 1999–2000 financial year.

5.3.4 Access to cable networks

The broadcasting access service was deemed to be declared by the Commission in June 1997. In the deeming statement the Commission described this service as follows:

> An analogue service necessary for the purposes of enabling the supply of a broadcasting service by means of line links that deliver signals to end-users, and of a kind that was used for those purposes on 13 September 1996. This is an access service that provides a basic carriage and distribution access function together with other functions as requested.

The precise wording of the existing service description allowed access seekers to choose which services were covered by the declaration. Because of this, concerns were raised with the Commission about the validity of the declaration (these are discussed below).

The Commission considered that the existing service declaration was valid. However, to provide certainty, the Commission commenced inquiries on 23 December 1998 into whether to declare 'analogue-specific subscription television broadband carriage services' and 'technology-neutral subscription television broadband carriage services'. The inquiries involved only services delivered over terrestrial lines.

In August 1999 the Commission released its final reports for these inquiries. The Commission's conclusions were that declaration of the analogue-specific service would promote the LTIE but that it would be premature to declare a technology-neutral service at this time.

Analogue-specific subscription television broadband carriage services

The fundamental argument submitted by those opposed to declaration of the analogue-specific service was that regulatory intervention should only address clear market failure, and that no such failure was evident in any of the markets relevant to the inquiry. Telstra, Foxtel and Cable & Wireless Optus argued that the necessary conditions for the exercise of market power do not exist in these markets. In particular, they argued that there is no bottleneck in the market for carriage of subscription television services, and that without such a bottleneck, there is no basis for the Commission to find that declaration would be in the LTIE. Further, they argued that the prices being charged are close to or below cost, so that no monopoly pricing is involved.

The Commission noted that there is competition between the major providers of retail subscription television services over cable. Nonetheless, the Commission considered the structure of the markets is such that regulatory intervention is necessary. Each of the access providers of wholesale access to cable has an incentive to restrict the extent of access it provides because it also has vertical links with retail pay television services. Pay television services provided by access seekers using wholesale access to cable would compete with the

retail services provided by access providers, given sufficient access was supplied. Further, because of their vertical integration with the retail pay television services, the access providers can restrict access to cable without a serious loss of wholesale business.

In these circumstances, programming services that might otherwise compete successfully with existing retail pay television services or channels cannot do so effectively. The Commission considered competition in the retail pay television market would be promoted if wholesale access to cable was provided to access seekers. The key issue was therefore not merely whether existing pay television charges are excessive, but whether there is sufficient choice of programming.

The Commission noted the submissions that drew attention to the costs to access providers and seekers that may accrue from declaration. Where such costs do arise, the Commission noted that access seekers have shown a preparedness to meet the reasonable costs to cable owners of providing the service.

The Commission would be concerned if declaration of the analogue-specific service inhibited the deployment of infrastructure to deliver broadband services, such as pay television. However, the report noted that the declaration of a similar service in July 1997 had no noticeable effect on the existing or proposed roll-out of services. In addition, the regulatory framework provides for exemptions from the standard access obligations where this will promote the LTIE.

Challenges to the declaration decisions

As noted above, the broadcasting access service was deemed to be declared in June 1997. This declaration applied to the Telstra and Cable & Wireless Optus hybrid fibre-coaxial (HFC) cable networks.

In 1998 the Television and Radio Broadcasting Services Australia Pty Ltd (TARBS) requested wholesale access to Telstra's cable to provide pay television services. Furthermore, they also requested that Foxtel act as a CSP for the pay television services they wanted to supply. Telstra and Foxtel both refused to provide access to the HFC cable network because, among other things, the initial deeming of the broadcasting access service was invalid in their view.

Telstra and Foxtel challenged, in the Federal Court of Australia, the Commission's initial deeming of the broadcasting access service and subsequent decision to declare analogue-specific subscription television broadband carriage services. They maintained that the initial deeming of the broadcasting access service was invalid. Further they argued that declaration, and the required provision of access, would deny Foxtel of a contractual right that was protected under the legislation.

In May 2000 the Federal Court of Australia decided to uphold the validity of the Commission's initial deeming of the broadcasting access service and its subsequent declaration of the analogue-specific broadband carriage service. This decision, together with an earlier decision by Justice Tamberlin, which ruled that Foxtel and Telstra could claim no protected contractual

right, provided a greater level of certainty for those wishing to provide pay television services using the declared cable services.

The decision means that, subject to capacity being available, Telstra must provide access to its HFC cable network to access seekers which in turn allows them to provide pay television services. This will enable alternative content service providers, such as TARBS and Seven Cable Television Pty Limited, to negotiate access with Telstra, and failing agreement, on the basis of arbitration by the Commission.

Technology-neutral subscription television broadband carriage services

After considering the information received during the public inquiry process, the Commission then found it difficult to anticipate the effect of declaration of technology-neutral subscription television broadband carriage services on the LTIE.

While overseas deployment of digital services via cable was increasing, particularly in the United States, it was not yet clear how competition would unfold in the relevant Australian markets. In the Commission's view, declaration would not promote the LTIE due to current uncertainty surrounding the deployment of digital broadcasting technologies.

The Commission noted, however, that it would continue to monitor the deployment of digital services (i.e. digital broadband and digital subscription television services) and to review whether there is any case for establishing an inquiry into declaration of such services.

In general, the Commission's preference is to specify services in functional, rather than technology-specific terms. This minimises any distorting effects of declaration in terms of technological and innovative developments. It also leaves the access provider with flexibility to determine the most efficient way of supplying the service and gives greater flexibility to the access seeker in terms of the service that can be provided within the ambit of the declared service.

However, where significant technological changes are anticipated, as is the case with the development of digital services, a technology-neutral service description may extend the regulatory framework unnecessarily. In considering digital and analogue carriage for example, the Commission was not choosing between competing technologies delivering the same services (although that was happening to a limited extent). It was considering the introduction of a new technology which may, in the longer term, fundamentally affect the type of services delivered, and the competitive environment in which they are delivered and consumed. In such circumstances the Commission found it prudent to continue to review the effect of technology-specific regulation, if introduced, in the light of technological and market developments to assess whether continuing regulation is appropriate.

Submissions raised the issue of whether declaration of a technology-neutral service, which only applies to cable links, was appropriate. In a sense, such a declaration would not be technologically neutral at all. In any future consideration of this issue the Commission is likely to consider whether the eligible service should be confined to a service delivered over line links.

There is also an issue as to whether broadband digital services other than broadcasting should be subject to declaration. As noted above the Commission is continuing to monitor the development and deployment of such services to determine whether there is any case for establishing a public inquiry into declaration of such additional services.

5.4 Exemption applications

Part XIC of the Act provides that a carrier or CSP may apply to the Commission for a written order exempting it from any or all of the standard access obligations that apply to a declared service. The standard access obligations require an access provider if requested, amongst other things, to supply the declared service to the access seeker. If the Commission is of the opinion that an order made in respect of an application for an individual exemption is likely to have a material effect on the interests of a person, the Commission must publish the application and invite submissions on whether the application should be accepted.

5.4.1 Local carriage service exemption application

On 7 June 2000 the Commission received an application from Telstra for an exemption under part XIC from its obligations to supply the local carriage service to its competitors in the CBD areas of Melbourne, Sydney, Brisbane, Adelaide and Perth. The application noted that it is to be one of several applications designed to phase out Telstra's standard access obligations with respect to the local carriage service over a twelve-month period.

On 29 June 2000 the Commission issued a press release in which it noted that it had begun to consider Telstra's exemption application and that it would provide all interested parties with an opportunity to comment on whether it should make the initial exemption order.

The inquiry into the exemption was ongoing at the end of the 1999–2000 financial year.

5.5 Procedural directions in relation to negotiations

In the 1999–2000 financial year the Government introduced amendments to the Act which included the insertion of s. 152BBA. The amendment arose partly because the Commission was concerned by its inability to issue directions to negotiate to parties, unless it had been notified of an access dispute. The new section provides that the Commission can direct the negotiating parties in the conduct of the negotiation regarding the terms and conditions on which access to a declared service will be provided. This gives the Commission wider scope to direct negotiations and is consistent with it encouraging industry to reach commercial resolutions where possible.

In the 1999–2000 financial year the Commission used this power in relation to negotiations for access to the unconditioned local loop service, as discussed in section 2.2.3.

5.6 Access undertakings

Part XIC of the Act provides a mechanism for voluntary access undertakings to be given by access providers on the supply of declared services. The undertaking must set out the terms and conditions upon which the access provider undertakes to comply with the applicable standard access obligations.

Under the provisions of part XIC the Commission is required to accept or reject an undertaking. If accepted by the Commission, a relevant undertaking must be applied in an access dispute by the Commission.

For that reason undertakings, if accepted by the Commission, provide a degree of certainty to both access providers and access seekers on those matters specifically addressed in the undertaking.

5.6.1 Telstra's access undertakings for the domestic PSTN, GSM and AMPS originating and terminating access services

On 7 November 1997 Telstra submitted to the Commission three undertakings, specifying the terms and conditions by which it proposed to supply the declared PSTN services, the domestic GSM originating and terminating access services (the declared GSM services) and the domestic AMPS originating and terminating access services (the declared AMPS services).

The Commission made a final decision to reject Telstra's undertaking in relation to the declared PSTN services in June 1999. Final decisions were made to reject the undertakings in relation to the declared GSM services and the declared AMPS services in August 1999.

The final decisions to reject all three undertakings were ultimately made on the basis that the non-price terms and conditions (which were identical in each) were not reasonable. It was determined that the non-price terms and conditions would provide Telstra with a significant amount of discretion about how, to whom and when interconnection would be provided to its competitors. This would create considerable uncertainty and give Telstra an advantage over its competitors.

Telstra's new access undertaking

On 24 September 1999 Telstra submitted a new access undertaking relating to the declared PSTN services, which proposed a headline charge for the originating and terminating services of 2.3 cents per minute for 1999–2000 and 2 cents per minute for 2000–2001. The undertaking did not cover non-price terms and conditions.

The Commission released a draft report in April 2000 setting out its assessment of this undertaking. It assessed the prices against estimates of the efficient forward-looking costs of supplying the declared PSTN services calculated by using a cost model prepared by NERA. In the Commission's view Telstra's proposed charges were half a cent too high for both years

— headline (i.e. average) charges based on efficient costs should be 1.8 cents per minute for 1999–2000 and 1.5 cents per minute for 2000–2001.

These charges reflect the efficient costs of carrying calls between an end-user and a point of interconnection in the same call collection area as well as an access deficit contribution. The access deficit contribution made up approximately half of the charge.

During the post-reporting period, the Commission announced it had finalised its assessment of Telstra's undertaking. The Commission's final decision was to reject the undertaking as the proposed charges were too high.

5.7 Access disputes

As part of the Commission's role in regulating access in the telecommunications industry, it has arbitration powers enabling it to issue directions, conduct hearings and make determinations for the purpose of resolving access disputes. The Commission is generally willing to undertake arbitrations, but only after private negotiations, mediation and/or conciliation fail. When a relevant access undertaking exists, the terms of the undertaking will apply. If there are no undertakings relevant to the dispute, then the Commission may determine the terms and conditions on behalf of the parties through arbitration.

Before a dispute is referred to the Commission for arbitration the following criteria must be satisfied:

- a declared service is supplied, or will be supplied, by a carrier or a CSP;
- one or more standard access obligations apply, or will apply, to the carrier or CSP in relation to the declared service; and
- an access seeker is unable to agree with the carrier or CSP about the terms and conditions on which the carrier or CSP is to comply with those obligations.

5.7.1 Notification of access disputes

At the end of the 1999–2000 financial year a total of 23 access disputes had been notified to the Commission under part XIC of the Act. This includes access disputes that had either been completed and/or withdrawn. A further dispute was notified under the Telecommunications Act as outlined in section 6.2.

Table 1 provides details as to the access seekers, access providers, carriage service and status of the access disputes. As matters in access disputes are confidential, more specific details or information cannot be released in a public document.

Table 1. Access disputes as at the end of the 1999–2000 financial year

Access seeker (notifier)	Access provider	Service(s)	Date notified	Determination/ status
Optus (Optus networks and Optus mobiles)	Telstra	Domestic PSTN originating and terminating access	22 November 1998	Withdrawn — 15 May 2000
AAPT	Telstra	Domestic PSTN originating and terminating access	11 December 1998	Interim — 14 September 1999 Variation to interim — 31 May 2000
Primus	Telstra	Domestic PSTN originating and terminating access	5 February 1999	Interim — 4 October 1999 Variation to interim — 31 May 2000
AAPT	Optus	Domestic PSTN originating and terminating access	11 June 1999	Ongoing at 30 June 2000
Telstra	AAPT	Domestic PSTN terminating access — for local data calls to ISPs	22 November 1999	Ongoing at 30 June 2000
Flow Communi-cations	Telstra	Domestic PSTN originating access	7 January 2000	Interim — 31 May 2000
AAPT	Telstra	Domestic data access service	8 March 1999	Interim — 22 December 1999
Macquarie Corporate	Telstra	Domestic data access service	10 May 1999	Interim — 22 December 1999 Variation to interim — 8 June 2000
Telstra	Vodafone	Domestic GSM terminating access	16 June 1998	Withdrawn — November 1998
AAPT	Telstra	Domestic GSM originating and terminating access	16 and 19 March 1999	Ongoing at 30 June 2000
AAPT	Optus	Domestic GSM originating and terminating access	15 June 1999	Ongoing at 30 June 2000
Primus	Telstra	Domestic GSM terminating access	1 October 1999	Ongoing at 30 June 2000
Primus	Optus	Domestic GSM originating and terminating access	1 October 1999	Originating access suspended — 12 April 2000 Terminating access ongoing at 30 June 2000
Primus	Vodafone	Domestic GSM originating and terminating access	1 October 1999	Suspended — 10 April 2000

AAPT	Vodafone	Domestic GSM originating and terminating access	30 November 1999	Ongoing at 30 June 2000
Optus	Telstra	ISDN originating and terminating access	11 May 1999	Suspended — 14 April 2000
Optus	Telstra	Local carriage service	13 August 1999	Interim — 20 June 2000
MCT	Telstra	Local carriage service	29 December 1999	Ongoing at 30 June 2000
Primus	Telstra	Local carriage service	7 March 2000	Ongoing at 30 June 2000
AAPT	Telstra	Local carriage service	21 March 2000	Ongoing at 30 June 2000
Primus	Telstra	Domestic transmission capacity service	February 1999	Withdrawn — 2 April 1999
AAPT	Telstra	Domestic transmission capacity service	8 March 1999	Withdrawn — 7 March 2000
TARBS	Telstra	Broadcasting access service	23 September 1999	Ongoing at 30 June 2000

5.8 Pricing principles

5.8.1 Mobile number portability

On 30 September 1999 the Commission issued directions to the ACA under the Telecommunications Act requiring that MNP be mandated in the Numbering Plan. MNP allows a customer to change from one CSP to another, irrespective of whether the CSPs are on the same mobile network or different mobile networks, and retain their mobile service number(s).

Under the Telecommunications Act, a CSP that holds a portable number in accordance with the Numbering Plan must provide number portability to another CSP on terms and conditions as agreed between the two CSPs. Where parties are unable to agree on the terms and conditions upon which number portability is provided, however, the Commission may be required to arbitrate the dispute.

Following a request from the ACIF the Commission issued a draft guide on pricing principles for MNP in February 2000. It set out the approach the Commission would be inclined to apply if required to arbitrate a dispute over the terms and conditions of providing MNP. Submissions from interested parties were received in March 2000.

The underlying principles in the draft guide were that each prime service deliverer (the service deliverer who contracts to provide a carriage or content service to the A-party customer) and/or CSP should be responsible for their own set-up and maintenance costs and all customer transfer costs incurred in their network to meet their obligations under the Numbering Plan and relevant ACIF codes to provide MNP.

Further, under the draft principles the prime service deliverers should be responsible for all call conveyance costs incurred as a result of the MNP solution they choose. However, to ensure efficient MNP solutions, donor CSPs (the CSP holding the portable number) should only be able to recoup the efficient costs of call conveyance from prime service deliverers.

While there was general support for the draft guide, there was a number of common issues raised by submissions that needed to be addressed. The Commission was also awaiting the outcome of industry deliberation about the precise technical solution(s) to be used to deliver MNP. The Commission therefore decided to delay finalising the pricing principles of MNP until these issues are resolved. The report had not been finalised at the end of the 1999–2000 financial year.

5.8.2 Unconditioned local loop service

As noted above, the unconditioned local loop service was declared in July 1999. As a newly declared service, there has been considerable debate in the industry about the appropriate pricing of the declared service.

Telstra announced proposed charges for the declared service in June 2000, which involved a number of components, such as a connection charge, a monthly rental charge and other components relating to service quality and provisioning times. The response from access seekers to these charges, particularly in relation to monthly rental, was that these were well above analogous line cost estimates determined as a part of the Commission's network costing work conducted for the assessment of Telstra's undertakings in relation to the declared PSTN services.

In the post-reporting period Telstra and a number of access seekers commenced negotiations over the terms and conditions of supply of the declared service, including the price at which it will be supplied. The Commission was subsequently notified of four access disputes in relation to the pricing of the declared service. The Commission also released a draft discussion paper about the pricing of the unconditioned local loop service and Telstra's proposed charges.

5.8.3 Local carriage service

As noted above, the local carriage service was declared in July 1999 and provides for local call resale. Like the unconditioned local loop service there has been considerable debate about the appropriate pricing of the local carriage service.

Because access seekers use local call resale as part of a bundled package of telephony services to end-users, local call resale is also important for ensuring competition in the long-distance telephony market. This is because end-users prefer to receive one bill from a single carrier for the full range of telecommunications services, rather than multiple bills from multiple carriers.

Soon after the local carriage service was declared, the Commission was notified of an access dispute between Cable & Wireless Optus and Telstra on the terms and conditions of supply of

the service. Subsequent disputes were notified. The Commission decided it was appropriate to develop general pricing principles to assist in the finalisation of these disputes.

The Commission released draft pricing principles in April 2000, which provided for a retail–minus approach to pricing the local carriage service.

The retail–minus methodology determines the local carriage service access price by subtracting the retail costs of providing a local call from the retail price of providing that call. The retail–minus approach therefore ensures that when an access seeker acquires the local carriage service, it does not incur any of the costs of the retail functions (e.g. marketing, customer service, billing, etc.) associated with the supply of a local call.

The draft report proposed that Telstra's unbundled standard local call price (of 22 cents) be the starting retail price. The standard local call price was proposed because of concern that the wholesale access price for the local carriage service would be 'ratcheted down' because access seekers are setting retail prices below cost. This means that any response by Telstra to match its competitor's retail prices will correspondingly reduce the access price, leading to further reductions in local rates by Telstra's competitors, and so on.

The draft report proposed the use of avoidable costs, rather than avoided costs, in deriving an access price for the local carriage service. Avoided costs only include those costs that the access provider actually avoids (i.e. variable costs) if it ceased supplying in the retail market. The use of avoided costs should lead to Telstra being largely indifferent in supplying the local carriage service in the retail or wholesale market, excluding lost revenues due to greater competition in other markets. However, it would mean that the access seeker is in effect contributing to Telstra's fixed retail costs. The use of avoidable costs places access seekers in a more competitively neutral position to Telstra, and was preferred on this basis.

The Commission's consideration of the final pricing principles was ongoing at the end of the 1999–2000 financial year.

5.8.4 Domestic PSTN originating and terminating access services supplied by non-dominant or smaller fixed networks

In the latter half of 1999 the Commission was notified of two access disputes regarding the declared PSTN services supplied by non-dominant or smaller fixed networks and in particular the prices paid for access to these services. To resolve the pricing issues raised in the access disputes, the Commission decided to undertake further analysis to determine the appropriate pricing principles for access to the declared PSTN services.

To develop the pricing principles, the Commission sought economic advice from external consultants about the appropriate pricing principles for non-dominant or smaller fixed networks. In December 1999 the Commission released a discussion paper.

The discussion paper outlined several issues that could potentially confer market power on the non-dominant or smaller fixed networks supplying the declared PSTN services. The features can be summarised as:

- a non-dominant or smaller fixed network has control over PSTN terminating services as an end-user calling another end-user (who is connected to the non-dominant or smaller fixed network) has no alternative but to purchase PSTN terminating services from the non-dominant or smaller fixed network which the end-user has chosen; and
- there is consumer ignorance by the end-user calling about the non-dominant or smaller fixed network being called and the specific access prices for PSTN terminating services — this allows the non-dominant or smaller fixed network to increase the access price for the PSTN terminating services without feeling the full effect of the increase.

Submissions were received from industry in February 2000 and the Commission held a roundtable forum in March 2000. Views expressed in the submissions and at the roundtable, generally agreed with the framework outlined in the discussion paper. Cable & Wireless Optus, however, argued that non-dominant or smaller fixed networks do not possess market power and advocated that access prices be set on the basis of commercial negotiations. The roundtable covered issues such as the consequences of forbearance for non-dominant or smaller fixed networks, whether non-dominant or smaller fixed networks could set access prices above those set by the dominant carrier and, if not, what restrained non-dominant or smaller fixed networks from setting access prices above competitive levels.

The Commission also received supplementary submissions at the end of March 2000. Its consideration of this matter was ongoing at the end of the 1999–2000 financial year.

5.8.5 Domestic GSM originating and terminating access services

In the latter half of 1999 the Commission was notified of several access disputes on the declared GSM services and in particular the prices paid for access to these services. The Commission was initially concerned that its general pricing principles were not appropriate for the regulation of these services and decided to undertake further analysis to determine the appropriate pricing principles for the declared GSM services. These principles are seen as a necessary prerequisite to finalising the access disputes.

To develop the pricing principles the Commission sought economic advice from external consultants about the appropriate pricing principles for these services. In December 1999 the Commission released a discussion paper based on the economic advice received from its consultants.

The discussion paper outlined several issues identified by the consultants that were said to confer market power on the mobile carriers and which were similar to those raised for non-dominant or smaller fixed networks. The features can be summarised as:

- a mobile carrier has control over mobile termination as an end-user calling a mobile subscriber has no alternative but to purchase mobile termination from the mobile carrier which the mobile subscriber has chosen; and
- there is consumer ignorance by the end-user calling a mobile subscriber about the mobile carrier being called and the specific access prices for mobile termination to that mobile carrier — this allows mobile carriers to increase the access price for mobile termination without feeling the full effect of the increase.

The discussion paper also noted that the consultants had concluded that regulation could be used to reduce access charges for the declared GSM services and that marginal cost was the appropriate pricing methodology.

Submissions were received from industry in February 2000 and the Commission held a roundtable forum in March 2000. Views expressed in the submissions and at the roundtable differed from cost-based pricing to regulatory forbearance. The roundtable covered issues such as the access prices for the declared GSM services in the absence of regulatory intervention, the efficiency of setting access prices above marginal cost and the alternative basis upon which access prices should be set.

The Commission also received supplementary submissions at the end of March 2000. The Commission became aware of other international telecommunications regulators considering this issue, although it appeared that the Commission's work was likely to pre-date international experience.

The Commission's consideration of this matter was ongoing at the end of the 1999–2000 financial year.

5.9 TAF telecommunications access code

Under division 4 of part XIC of the Act, the TAF may submit a draft TAF telecommunications access code to the Commission for approval. The draft code sets out model terms and conditions for compliance with the standard access obligations that could be adopted by carriers or CSPs submitting access undertakings to the Commission for possible approval.

During the 1999–2000 financial year the TAF considered several variations to its tele-communications access code, particularly in relation to the terms and conditions for the newly declared local telecommunications services (the unconditioned local loop service, the local PSTN originating and terminating services and the local carriage service). The TAF's considerations regarding these variations were continuing at the end of the 1999–2000 financial year.

In April 1999 the Commission asked the TAF to look at the matter of a service migration code. This was seen as necessary because while network modernisation initiatives planned by access providers are intended to enhance the quality of services to end-users, they may interrupt the supply of a declared service to access seekers, with particular detriment to their end-users. There is the potential for intractable conflict between the access provider and the access seeker, which a service migration code could address.

The TAF considered the issues surrounding a service migration code. It was, however, not able to resolve all critical aspects and submitted a copy of its work to date to the Commission for further resolution. The Commission's consideration of this issue was continuing at the end of the 1999–2000 financial year.

6. Number portability

This section of the report outlines the Commission's legislative responsibilities and associated activities under the Telecommunications Act regarding number portability of telecommunications services.

Division 2 of part 22 of the Telecommunications Act provides for the regulation of number portability. Number portability provides end-users with the ability to change their CSP within specified number ranges (e.g. the number range used to provide mobile services) and retain the same number. Under s. 458 of the Telecommunications Act the Commission has statutory powers to direct the ACA on number portability. The ACA cannot establish rules about number portability in the Numbering Plan unless directed to do so by the Commission and any rules the ACA inserts into the Numbering Plan regarding number portability must be consistent with any directions issued by the Commission. The Numbering Plan is the plan for the numbering of carriage services in Australia and the allocation and use of numbers in connection with the supply of such services.

In exercising its power, the Commission must have regard to whether portability of particular number ranges is required to promote the LTIE of carriage services or services supplied by means of carriage services. The Commission will assess whether the LTIE is promoted using the same criteria as detailed in section 5 of this report.

Under s. 462 of the Telecommunications Act the Commission is also required to arbitrate any disputes that arise on number portability (if the parties fail to agree on an arbitrator).

6.1 Commission directions to the ACA on number portability

6.1.1 Mobile number portability

During 1998 the ACA provided a report to the Commission, *Technical options for mobile number portability implementation in Australia*. Following an examination of the report, the Commission requested the ACA to explore the options available, together with implementation issues, for MNP. The ACA provided updates to the report in late 1998.

In May 1999, after examining the ACA report and the subsequent updates, the Commission issued a discussion paper on MNP which:

- identified the issues that, in its opinion, were relevant to its consideration of whether it should direct the ACA to set out rules about MNP in the Numbering Plan; and
- set out background material about the issues on which the Commission sought comment from industry participants, other stakeholders (including end-users) and the general public.

Submissions in response to the discussion paper were received by the Commission in July 1999 and were taken into consideration by the Commission. A final report on MNP was released in September 1999. The report examined the following key issues regarding MNP:

- the LTIE;
- recent developments in the mobile services market;
- functional requirements of mobile portability;
- network arrangements and possible technical solutions for MNP; and
- the costs of MNP.

The Commission considered that a full cost/benefit study was not required before making a decision on whether MNP is in the LTIE. In its view there was a clear case that MNP is in the LTIE since it promotes competition for existing end-users, particularly businesses, and provides benefits by increasing the incentives for CSPs to offer new and innovative services to maintain their custom.

The Commission's view was that the benefits to competition and end-users resulting from MNP have been recognised in all jurisdictions where the introduction of MNP has been considered. There have been numerous reports from Europe, the United States and Hong Kong which provide cost/benefit analyses of MNP implementation. The Commission considered that undertaking a detailed cost/benefit study would only add unnecessary costs and delay to the introduction and implementation of MNP.

Based on the evidence provided, the Commission concluded that mandating MNP would be in the LTIE. In addition, the Commission concluded that:

- as far as possible, a long-term integrated approach to number portability is preferred to short-term ad hoc solutions;
- any solution should provide an integrated 'future proof' approach to number portability; and
- number portability should be required across all mobile digital technologies (but not analogue technologies which were being phased out).

However, the Commission considered that the eventual technical solution to be adopted for the introduction of MNP is a matter for the industry to resolve in consultation with the ACA. Such an approach should ensure that all technical issues are explored in multilateral forums and that all affected parties have the opportunity to contribute and have ownership of the eventual solution adopted.

Given the Commission's conclusions about whether mandating MNP was in the LTIE, the Commission directed the ACA to amend the Numbering Plan to provide for MNP, also in September 1999.

On 8 October 1999 the ACIF established a MNP Project Management Group, of which the Commission is a member with observer status. The aim of this group is to oversee

the implementation of MNP in Australia and in particular to develop a framework document and code of conduct.

In May 2000 the ACA announced that the earliest practicable date for the introduction of MNP was 25 September 2001.

In June 2000 the ACIF released its framework document outlining the technical solution for the provision of MNP for public comment.

6.1.2 National and premium rate services

On 23 February 2000 the ACA wrote to the Commission seeking its consideration of whether number portability should be mandated for national rate number services.

National rate number services are global services specified in the 170X number range. They have now been incorporated into the Numbering Plan. Telstra has an allocation of national rate numbers but these have not yet been allocated to end-users. It perceives a national rate number service as complementing the freephone and local rate number services.

The national rate number services have been specified to be distinguishable from the existing services.

- Premium rate number services (190X number range) are services for which no call charge limit applies. These numbers are generally used to provide end-users with access to various forms of information such as live advice, human interaction and facsimile services.
- Freephone services (180X number range) are services for which no call charge applies. These numbers are generally used for call centre services.
- Local rate number service (13X, 130X number ranges) are services for which the call charge is equal to, or less than, the call charge for local calls. These numbers are generally used for call centre services.

In considering number portability for national rate number services the Commission also decided to consider number portability for premium rate number services. In this regard the Commission's direction to the ACA in September 1997, requiring number portability for freephone and local rate number services, stated that it would consider making directions for the portability of premium rate number services in the future. The Commission therefore considered that it would be appropriate to take this opportunity to also examine whether premium rate number portability is necessary to promote the LTIE.

The Commission consulted with the ACA and industry and its inquiries were continuing at the end of the 1999–2000 financial year.

6.2 Disputes on number portability arbitrated by the Commission

On 30 April 1999 Cable & Wireless Optus notified the Commission of a dispute with Telstra in relation to the routing option for local number portability. The Commission issued a final determination in this matter on 25 May 2000. As with access disputes notified under part XIC of the Act, the Commission considers the matters in dispute to be confidential and accordingly more specific details or information cannot be released in a public document.

7. Other functions and responsibilities under the Telecommunications Act

This section of the report outlines the Commission's other responsibilities and associated activities under the Telecommunications Act. The Commission's powers under the Telecommunications Act include the power to direct the ACA regarding electronic addressing, to develop a facilities access code, and to handle unacceptable conduct by international telecommunications operators.

The Telecommunications Act also requires the ACA to consult with the Commission on technical standards, facility installation permits, industry codes of conduct and standards, service provider rules and preselection.

7.1 Commission directions to the ACA on electronic addressing

Division 3 of part 22 of the Telecommunications Act provides for the regulation of electronic addressing by empowering the ACA to determine that a specified person or association is the declared manager of electronic addressing of a specified kind of listed carriage service. The ACA is then able to direct the declared manager to do, or refrain from doing, specified actions relating to electronic addressing.

The ACA must not determine that a specified person or association is the declared manager unless:

- the ACA is directed to do so by the Commission; or
- the ACA is of the opinion that the person or association is not managing electronic addressing in accordance with generally accepted principles and standards.

The Commission must not give a direction to the ACA unless it considers that compliance with the direction is likely to have a bearing on competition. To determine whether electronic addressing is of public importance, regard must be had to the extent to which electronic addressing is of significant social and/or economic importance to CSPs and end-users of carriage services.

During the 1999–2000 financial year the Commission did not issue any directions under division 3 of part 22 of the Telecommunications Act. The Commission was, however, involved in the competition considerations relating to Internet domain names through its involvement in the auDA (section 8.4 provides further details).

7.2 Facilities access code

Part 5 of schedule 1 of the Telecommunications Act provides that carriers must, under certain circumstances, provide access to requesting carriers to telecommunications transmission towers, related sites and underground facilities. Part 5 also provides that the Commission may make a code setting out conditions of access to these facilities. This code becomes a carrier licence condition and is enforceable by the ACA.

On 13 October 1999, following extensive public consultation involving industry, regulatory agencies and community representatives, the Commission released *A code of access to telecommunications transmission towers, sites of towers and underground facilities.* This sets out the conditions which are to be complied with by carriers in relation to the provision of access to eligible telecommunication facilities under part 5.

The purpose of the facilities access code is to ensure that, as far as possible, telecommunications facilities are co-located. A policy of co-location or facilities sharing is intended to improve environmental amenity and promote competition by permitting new entrants to share the use of existing mobile and fixed line telecommunications infrastructure.

The code seeks to affirm and complement statutory rights of facilities access by providing, in terms of administrative and operational procedures, standards of practice that will allow access to be as timely as possible. Without a facilities access code, access could be unnecessarily delayed or protracted by onerous administrative requirements and disputes over what might constitute compliance with part 5. The facilities access code establishes default or minimum administrative standards intended to ensure speedy access to facilities.

The ACA has responsibility for enforcing compliance with the code and the ongoing monitoring and review of the code. Only where the Commission is notified of a dispute in relation to access to facilities would it have any involvement in the issue. In the 1999–2000 financial year the Commission was not notified of any disputes about access to facilities.

In October 1999 the Commission and the ACA jointly released a guide to facilities regulation. The guide covers the regulation of facilities access, including compliance with the facilities access code, and other aspects of facilities regulation relating to the installation of facilities.

7.3 International rules of conduct

Division 3 of part 20 of the Telecommunications Act provides a mechanism by which the Government can deal with ‘unacceptable conduct’ engaged in by international operators.

An international telecommunications operator is considered to be engaging in unacceptable conduct if it uses:

- market power;
- legal rights or legal status; or

- engages in any other conduct in a manner that is, or is likely to be, contrary to Australia's national interest.

The Minister for Communications, Information Technology and the Arts is empowered by part 20 of the Telecommunications Act to make rules of conduct directed at preventing, mitigating or remedying any unacceptable conduct by an international telecommunications operator.

On 18 June 1997 the Minister determined that the *Rules of conduct about dealings with international telecommunications operators No. 1 of 1997* would take effect on 1 July 1997. The rules of conduct:

- authorise the Commission to make determinations of a legislative nature imposing requirements, prohibitions or restrictions on carriers or CSPs;
- authorise the Commission to give directions to carriers or CSPs of an administrative nature which impose requirements, prohibitions or restrictions;
- require carriers and CSPs to comply with Commission determinations and administrative directions; and
- authorise the Commission to make information available to the public, a specified class of persons or a specified person.

During the 1999–2000 financial year the Commission did not conduct any investigations under division 3 of part 20 of the Telecommunications Act.

8. Commission participation in self-regulation processes

This section details the Commission's involvement in a number of organisations, including participation in the ACIF code committees, the TAF, the Numbering Advisory Committee and the .au Domain Administration Advisory Panel.

Section 4 of the Telecommunications Act states that:

> The Parliament intends that telecommunications be regulated in a manner that:
>
> (a) promotes the greatest practicable use of industry self-regulation; and
>
> (b) does not impose undue financial and administrative burdens on participants in the Australian telecommunications industry.

In this regard, various industry processes have been established, including the formation of the bodies referred to above. The Commission recognises the important role that these organisations perform with regard to the promotion of industry self-regulation and seeks to assist and participate in relevant processes subject to its work priorities and staff availability.

8.1 Australian Communications Industry Forum

The ACIF is an industry owned, resourced and operated company established by the telecommunications industry in 1997 to implement and manage communication self-regulation in Australia.

The ACIF committees comprise representatives of the telecommunications industry, consumer groups, the Telecommunications Industry Ombudsman and government regulators (i.e. the Commission and the ACA).

During the 1999–2000 financial year Commission staff participated as observers on a number of committees organised by the ACIF regarding both consumer protection issues and operational and network issues. In this regard, Commission staff participated in the development of industry codes on a number of specific telecommunications issues, including:

- billing procedures and information;
- complaints handling;
- credit management;
- mobile number portability;
- selling practices;
- spectral compatibility of systems using the local loop service;

- unconditioned local loop service network deployment rules; and
- unconditioned local loop provisioning and customer transfer.

It is noted that where codes developed by the ACIF are registered with the ACA, enforcement action can be undertaken by the ACA against industry participants for failure to comply with these codes, irrespective of whether a particular participant signed up to the code.

Commission staff also participated as observers in the development of a draft Australian standard for analogue interworking and non-interference requirements for customer equipment connected to the declared PSTN services.

8.2 Telecommunications Access Forum and other processes

In keeping with the intention that industry will have an important role in regulating access in the industry, s. 152AI of the Act allows for the Commission to declare a specified body or association as the TAF. On 28 May 1997 the Commission declared the Australian Communications Access Forum Inc. an incorporated association composed of carriers and CSPs, to be the TAF.

The TAF may recommend to the Commission that an eligible service be declared and submit draft TAF telecommunications access codes to the Commission for approval.

During the 1999–2000 financial year the TAF recommended that certain payphone technology as well as a billing and collection service should be declared. The Commission decided not to hold public inquiries into these matters as it determined the payphone technology was not an eligible service and that the billing and collection service matter was better addressed in the context of the access disputes on the terms and conditions of supply of the already declared PSTN origination service, which is the underlying service that is used in this regard.

Commission staff participated as observers in a number of TAF processes during the 1999–2000 financial year, including:

- development of network modernisation rules;
- work on an industry confidentiality code; and
- variations to the TAF telecommunications access code to incorporate the local telecommunications service.

8.3 Numbering Advisory Committee

The Numbering Advisory Committee provides advice and recommendations on issues related to the ACA's numbering functions with the objective of improving the benefits to suppliers and end-users of carriage services and facilitating competition.

The Numbering Advisory Committee comprises representatives of carriers and CSPs (e.g. Telstra, Cable & Wireless Optus and Vodafone), the Commission, the ACA, the Department of Communications, Information Technology and the Arts, telecommunications end-users (e.g. Australian Telecommunications Users Group and Small Enterprise Telecommunications Centre) and the telecommunications supply industry (e.g. Australian Information Industry Association and Australian Electrical & Electronic Manufacturers' Association).

During the1999–2000 financial year the Numbering Advisory Committee met on four occasions to discuss a range of issues pertaining to the Numbering Plan. The range of matters discussed by the committee included:

- proposed amendments to the Numbering Plan;
- the need to request advice from the Commission regarding possible declaration of national rate number services as portable (section 6.1.2 discusses this issue);
- issues regarding the apportionment of annual numbering charges; and
- a review of the Numbering Advisory Committee (including its objective, membership, frequency of meetings, management of issues and confidentiality).

8.4 au Domain Administration Advisory Panel

In April 1999 the national office of the Information Economy established the auDA. This body is responsible for the self-regulation of second level domain name spaces in Australia. Its creation was part of a recognition of the growing economic value of domain names and the benefits to the wider community that are likely to flow from the competitive supply of these domain names.

The historical development of the Internet meant that the issuing of second level domain names within the .au space (such as .gov.au, .com.au and .net.au) had been delegated to specific Australian individuals under what amounts to a monopoly arrangement. The auDA was established to determine a process which would address the deficiencies in the present domain name registration. The panel is to develop recommendations and policies that will apply to the eligibility of applicants to register domain names.

The Commission is represented on the various competition policy panels established by the auDA, which are charged with establishing the competitive framework model for competition amongst domain name registrars and registers in respect of the .au second level domain name space. The Commission's involvement with auDA was continuing at the end of the 1999–2000 financial year.

9. Telstra's compliance with the price control arrangements

This section of the report details Telstra's compliance with the price control arrangements for the 1999–2000 financial year.

9.1 Price control arrangements

9.1.1 Legislative requirements

Under paragraph 151CM(1)(b) of the Act, the Commission must report to the Minister for Communications, Information Technology and the Arts on the adequacy of Telstra's compliance with price control arrangements.

The price control arrangements affecting Telstra for the 1999–2000 financial year are set out in the *Telstra Carrier Charges — Price Control Arrangements, Notification and Disallowance Determination No.1 of 1999*. Under the determination the Commission has to ascertain whether Telstra has complied with the price control arrangements. It is noted that compliance is a condition of Telstra's carrier licence.

In summary, the determination provides for price caps on four baskets of services.

- A price cap of CPI–5.5 per cent applies to the first basket of Telstra services. This basket comprises of connections,[1] line rentals, local calls, trunk calls,[2] international calls,[3] domestic and international leased lines and digital cellular mobile telephone services. The price cap means that the overall revenue weighted price movements for these services must fall by 5.5 per cent, in real terms, in the financial year.
- A price sub-cap of CPI–0 applies to the second basket of Telstra services. This basket comprises of line rentals and local calls. The price sub-cap means that the overall revenue weighted price movements for these services must not rise in real terms in the financial year.
- A price sub-cap of CPI–0 also applies to the third basket of Telstra services, which comprises of connections.

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1 Connection means establishing the supply of a standard telephone service at a location required by the person requesting the service. It does not include the supply and connection of a telephone handset or other customer equipment.

2 Trunk calls include STD calls (Telstra's brand name for its fixed network domestic long-distance call service), fixed-to-mobile calls, community calls and pastoral calls. They do not include international or local calls.

3 International calls include direct dial and operator assisted calls.

- A price sub-cap of CPI–1 per cent applies to the fourth basket of Telstra services. This basket comprises of five fixed line services consumed by residential customers: connections, line rentals, local calls, trunk calls and international calls. The price sub-cap means that the overall revenue weighted price movements among the 50 per cent of residential customers with the lowest telephone bills for these services must fall by 1 per cent, in real terms, in the financial year.

The determination also provides for a number of other price caps in relation to a range of services.

- The revenue weighted average untimed local call price for residential and charity customers in non-metropolitan Australia in the 1999–2000 financial year is not to exceed the revenue weighted average untimed local call price for residential and charity customers in metropolitan Australia in the 1998–1999 financial year.
- The revenue weighted average untimed local call price for business customers in non-metropolitan Australia in the 1999–2000 financial year is not to exceed the revenue weighted average untimed local call price for business customers in metropolitan Australia in the 1998–1999 financial year.
- The price for untimed local calls is not permitted to increase above 25 cents for calls made from a residential or business phone (except in the case of discount plans where a customer may on occasion be required to pay more than 25 cents per local call) and 40 cents for calls made from a public phone.
- Telstra may not increase line rental charges for residential customers by more than the CPI without prior consent from the Commission.
- Telstra must notify the Minister in advance of an intention to alter charges for directory assistance services. The Minister may disallow the proposed changes if he or she considers that the changes would not be in the public interest.

Telstra is also required to report to the Commission before the end of three months after the end of the financial year in which a price cap applies on its compliance with the price control arrangements.

It is noted that in the second half of the 1999–2000 financial year new price control arrangements were introduced. They came into effect on 21 June 2000 and will be used to assess compliance in the 2000–2001 financial year. The amendments that were introduced addressed the impact of the New Tax System. Other amendments appeared to address Telstra's concern that the determination afforded no flexibility to carry forward small credits or debits in compliance with the geographic pricing parity requirements (while some flexibility existed for local call pricing parity requirements).

9.1.2 Methodology for determining revenue weighted price movements

Under sub-clause 9(3) of the determination, price movements will be calculated according to a methodology the Commission established in consultation with Telstra. Following consultations, the 'Methodology for administration of the Telstra carrier charges price control arrangements' was established. This framework covers the period July 1999 to June 2001.

Under the methodology there are two methods that Telstra can use to determine the price movements for the services subject to the price control arrangements. These are:

- using standard prices — the percentage change in the revenue from usage in period 2 calculated at standard prices less flexi-plan discounts given in period 1, and the revenue from usage in period 2, calculated at standard prices less flexi-plan discounts and specials given in period 2; or
- using gross yields — the methodology does not specify how this should be calculated.

The gross yield method can be applied where it becomes difficult for Telstra to measure price movements using standard prices (e.g. where there are information limitations in relation to standard prices, flexi-plan discounts and specials).

The price movements are then weighted by billed (actual) revenue.

9.1.3 Auditing of Telstra's information

Under sub-clause 9 of the methodology, Telstra must provide a final audited report to the Commission, providing full details of its compliance with the price control arrangements within three months after the end of the price control period.

The objectives of the audit are to determine whether:

- Telstra has met the Commission's requirements as specified in the methodology;
- the information produced and supplied by Telstra within the price control arrangements can be relied on by the Commission to undertake its regulatory obligations; and
- Telstra has exercised consistency in applying the methodology specifications to its data capture systems.

In this respect the auditor is required to form an opinion:

- as to whether Telstra has complied with the procedures and policies set out in the methodology;
- as to the accuracy and completeness of the information produced by Telstra within the structure of the methodology; and
- as to whether Telstra has followed a structured approach in its compliance with the methodology and whether an audit trail exists.

9.2 Telstra's compliance with the price control arrangements in the 1999–2000 financial year

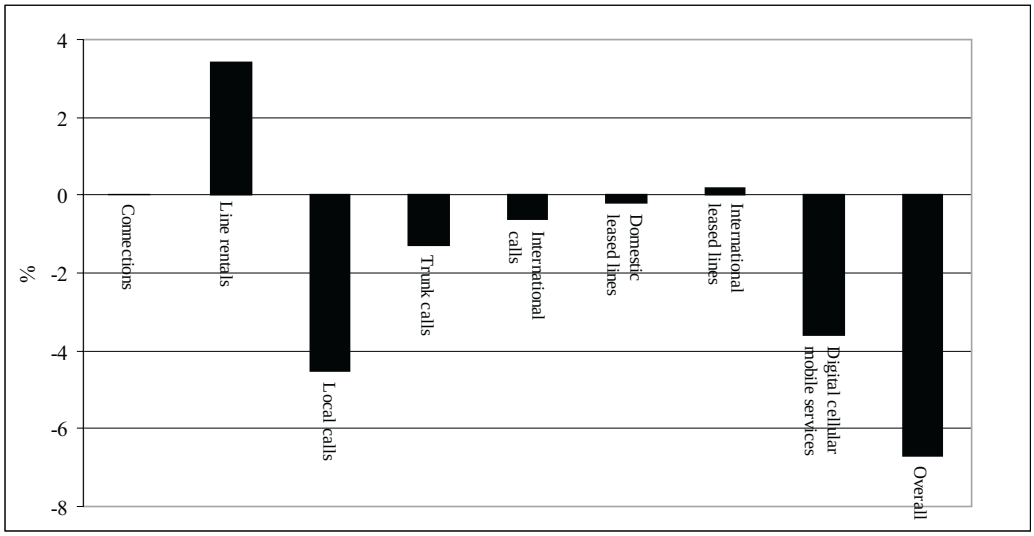
9.2.1 Summary of Telstra's compliance with the price control arrangements

In September 2000 Telstra provided the Commission with an audited report detailing the revenue weighted price movements for each of the four baskets. The Commission assessed this and further information provided by Telstra and is satisfied that Telstra has complied with the price control arrangements for the 1999–2000 financial year. The price cap of CPI–5.5 per cent for the first basket of services, and the price sub-caps of CPI–0 per cent for the second and third baskets and CPI–1 per cent for the fourth basket have been satisfied. Telstra has also complied with the metropolitan/non-metropolitan pricing parity requirement for residential, charity and business customers.

9.2.2 Overview of the revenue weighted price movements for Telstra's services in the 1999–2000 financial year

Figure 1 shows the size of the revenue weighted price movements for each of the Telstra services subject to the price control arrangements and the size of the overall revenue weighted price movement for these services. The revenue weighted price movements illustrate, for each service, their contribution towards the overall revenue weighted price movement. In the 1999–2000 financial year the overall revenue weighted price declined by 6.7 per cent.

Figure 1. Telstra's revenue weighted price movements in the 1999–2000 financial year



It is noted that in the previous two reports on Telstra's compliance with the price control arrangements, standard prices and non-standard prices (flexi-plan discounts and specials) have been reported. However, Telstra has advised that the practice of separately calculating standard price changes and flexi-plan discounts was discontinued in the 1999–2000 financial year for a number of products. This was the result of increased variety and complexity of pricing arrangements and the difficulty associated with many of these arrangements of separately identifying the standard and flexi-plan prices. The standard and non-standard prices have therefore not been reported.

Prices for line rental and local calls

Telstra's revenue weighted price increase of 3.4 per cent for line rentals was largely due to the increase in its standard line rental charge from $11.65 per month to $13.85 per month for residential customers and from $20 per month to $25 per month for business customers. Both increases were implemented in March 2000.

Telstra's revenue weighted price decrease of 4.5 per cent for local calls was due to reductions in the standard price of local calls (from 25 to 22 cents), the introduction of 15 cent neighbourhood calls, changes to a number of local call flexi-plans and changes to concessions to pensioners.

Prices for trunk calls

Telstra's revenue weighted price decrease of 1.3 per cent for trunk calls was largely a result of new standard prices for STD and fixed-to-mobile calls introduced in December 1999. Telstra also offered a number of temporary specials, such as short-term discounts on STD calls made on weekends (e.g. during December 1999 there was a $2 per call per day offer for STD calls).

Prices for international calls

Telstra's revenue weighted price decrease of 0.6 per cent for international calls was due to the increased use of Telstra's 'Easy Half Hour' product. Telstra also offered international call specials, such as the $2 reduction in the 'Easy Half Hour' product between 27–30 December 1999.

Prices for leased line services

Telstra experienced a revenue weighted price increase of 0.2 per cent for international leased line services and a revenue weighted price decrease of 0.2 per cent for domestic leased line services. These price movements reflect shifts in network/circuit configurations, such as consolidations of low bandwidth circuits, rather than substantial changes to prices.

Prices for mobile services

Telstra's revenue weighted price decrease of 3.6 per cent for mobile services was largely due to the number of specials offered throughout the year. These specials were principally designed to encourage migration of customers from the AMPS to the GSM network. The specials offered included substantial discounts on the standard $65 connection price.

In addition, penetration of low access flexi-plans (e.g. Budget 10) and prepaid plans continued to grow.

9.2.3 Telstra's compliance with the price cap for the first basket

The determination provides that the revenue weighted price movement of the first basket (containing all services subject to price control arrangements) must not exceed CPI–5.5 per cent. This basket includes: connections, line rentals, local calls and trunk calls, international calls, domestic leased lines, international leased lines and cellular digital mobile telephone services.

In the 1999–2000 financial year the CPI was 1.1 per cent. As a result, Telstra was required to **reduce** its overall revenue weighted prices by 4.4 per cent (1.1 per cent–5.5 per cent). It is noted that no carryover was permitted from the previous financial year.[4]

Table 2 illustrates that Telstra's overall reduction in revenue weighted prices was 6.7 per cent, which was 2.2 per cent more than was required to meet its requirement under the determination.[5]

Table 2. Telstra's compliance with the price cap for the first basket

Service	Revenue weighted price movement (%)
Connections	0.0
Line rentals	3.4
Local calls	–4.5
Trunk calls	–1.3
International calls	–0.6
Domestic leased lines	–0.2
International leased lines	0.2
Digital cellular mobile telephone services	–3.6
Overall*	–6.7
CPI–X	–4.4
Carryover to 2000–2001	2.3

* Rounded to –6.7%

4 This also applies to the second, third and fourth baskets.

5 Telstra used the standard price method to determine price movements for particular services and the gross yield method for other services. This also applies to the fourth basket.

9.2.4 Telstra's compliance with the price sub-caps for the second, third and fourth baskets

As noted above, the determination specifies that Telstra must meet price sub-caps for the second, third and fourth baskets of services.

The second basket comprises of line rentals and local calls. The overall revenue weighted price movement for these services must not exceed CPI–0 per cent.

In the 1999–2000 financial year the CPI was 1.1 per cent. As a result, Telstra was required not to increase its overall revenue weighted price by more than 1.1 per cent (1.1 per cent–0 per cent).

Table 3 illustrates that the revenue weighted price decrease in local call charges sufficiently offset the revenue weighted price increase in line rentals so as to allow Telstra to meet its price sub-cap. The overall revenue weighted price decrease of 3.0 per cent was 4.1 per cent more than was required to meet its requirement under the determination.

Table 3. Telstra's compliance with the price sub-cap for the second basket

Service	Revenue weighted price movement (%)
Line rentals	8.8
Local calls	–11.7
Overall*	–3.0
CPI–X	1.1
Carryover to 2000–2001	4.1

* Rounded to –3.0%

The third basket comprises of connections. The overall revenue weighted price movement for this service must not exceed CPI–0 per cent.

In the 1999–2000 financial year the CPI was 1.1 per cent. As a result, Telstra was required not to increase its overall revenue weighted price by more than 1.1 per cent (1.1 per cent–0 per cent).

Table 4 illustrates that there was no revenue weighted price movement for connections and as a result Telstra met its price sub-cap (by more than 1.1 per cent).

Table 4. Telstra's compliance with the price sub-cap for the third basket

Service	Revenue weighted price movement (%)
Connections	0.0
CPI–X	1.1
Carryover to 2000–2001	1.1

The fourth basket comprises of fixed line services consumed by residential customers: connections, line rentals, local calls, trunk calls and international calls. The overall revenue weighted price movements among the 50 per cent of residential customers with the lowest telephone bills for these services must not exceed CPI–1 per cent.

In the 1999–2000 financial year the CPI was 1.1 per cent. As a result, Telstra was required not to increase its overall revenue weighted price by more than 0.1 per cent (1.1 per cent–1 per cent).

Table 5 illustrates that the revenue weighted price decreases in local calls, trunk calls and international call charges to the 50 per cent of residential customers with the lowest telephone bills sufficiently offset the revenue weighted price increase in line rentals for such residential customers, so as to allow Telstra to meet its price sub-cap.[6] The overall revenue weighted price decrease of 1.1 per cent was 1.2 per cent more than was required to meet its requirement under the determination.

Table 5. Telstra's compliance with the price sub-cap for the fourth basket

Service	Revenue weighted price movement (%)
Residential connections^	0.0
Residential line rentals^	7.8
Residential local calls^	–7.7
Residential trunk calls^	–0.8
Residential international calls^	–0.5
Overall*	–1.1
CPI–X	0.1
Carryover to 2000–2001	–1.2

^ For the 50 per cent of residential customers with the lowest telephone bills

* Rounded to –1.1%

6 It is noted that the revenue weighted price movements for line rentals, local calls, trunk calls and international calls differ between the first and fourth basket. This is primarily because of the differences in customer segments included in the baskets (the first basket includes residential and business customers but the fourth basket only includes residential customers). It also reflects the different methodologies applied.

9.2.5 Telstra's compliance with the metropolitan/non-metropolitan pricing parity requirements

The determination also includes price control arrangements for Telstra's untimed local calls. It means that price reductions in Telstra's untimed local calls in geographic areas with effective competition flow on to customers in areas where competition may not yet have developed. The price control arrangements require that:

- the revenue weighted average untimed local call price for residential and charity customers in non-metropolitan Australia in the 1999–2000 financial year is not to exceed the revenue weighted average untimed local call price for residential and charity customers in metropolitan Australia in the 1998–1999 financial year; and
- the revenue weighted average untimed local call price for business customers in non-metropolitan Australia in the 1999–2000 financial year is not to exceed the revenue weighted average untimed local call price for business customers in metropolitan Australia in the 1998–1999 financial year.

In the 1999–2000 financial year Telstra complied with these requirements, with the revenue weighted average untimed local call prices for residential, charity and business customers in non-metropolitan areas not exceeding revenue weighted average untimed local call prices for the respective customer segments in metropolitan areas in the 1998–1999 financial year. This is illustrated in table 6.

Table 6. Telstra's compliance with the metropolitan/non-metropolitan pricing parity requirements

Market segment	Lower bound of average price 1998–1999	Average price 1999–2000
Non-metropolitan residential/charity		0.2227
Non-metropolitan business		0.2283
Metropolitan residential/charity	0.2367	
Metropolitan business	0.2341	

9.2.6 Telstra's compliance with the requirement to notify the Commission of line rental increase for residential customers greater than CPI

The determination requires that the Commission must consent to a proposed increase in residential line rental charges that is greater than the CPI. Before consenting to the increase, the Commission must be satisfied that Telstra has available, or will have available at the time the increase takes effect, products which, if taken up by affected customers, would ensure that the average telephone bill of lowest-bill residential customers does not increase by more than CPI.[7]

In March 2000 Telstra informed the Commission that it was proposing to increase line rentals for residential customers from $11.65 per month to $13.85 per month. The Commission was satisfied that Telstra had in place a product (EasySaver Select) which would ensure that the average telephone bill of low-bill residential customers would not increase by more than CPI.

7 Low-bill residential customers are defined as those who are (i) pre-selected to Telstra 30 days before the proposed increase being notified to the Commission and (ii) among the 10 per cent of customers with the lowest telephone bills at that time.

Appendix 1

Australian Competition and Consumer Commission publications on telecommunications released in the 1999–2000 financial year

Reports

July 1999	Local telecommunications services
August 1999	Assessment of Telstra's undertakings for domestic AMPS and GSM originating and terminating access
August 1999	Declaration of an analogue subscription television broadcast carriage service
August 1999	Declaration of a technology-neutral subscription television carriage service
September 1999	Mobile number portability
January 2000	Competition for long-distance mobile telecommunications services
April 2000	Telecommunications charges in Australia: 1995–99
April 2000	Telecommunications competitive safeguards: 1998–99

Draft reports

April 2000	A draft report on the assessment of Telstra's undertaking for the domestic PSTN originating and terminating access services
April 2000	Access pricing paper — local carriage service

Consultation and discussion papers

September 1999	Interconnection charges and Telstra's access deficit
October 1999	Telstra's undertaking for domestic PSTN originating and terminating access
December 1999	Principles for determining access prices for PSTN terminating and originating access on non-dominant carriers
December 1999	Principles for determining access prices for domestic GSM terminating access and domestic GSM originating access services
February 2000	Internet interconnection: factors affecting commercial arrangements between network operators in Australia
February 2000	Pricing principles for mobile number portability — a draft guide
March 2000	Cable and trench lengths in Telstra's public switched telephone network
June 2000	Transmission capacity service

Guidelines and information papers

July 1999	Telecommunications services declaration provisions
August 1999	Anti-competitive conduct in telecommunications markets
August 1999	Telecommunications competition notice guideline (updated)

Codes

October 1999	A code of access to telecommunications transmission towers, sites of towers and underground facilities

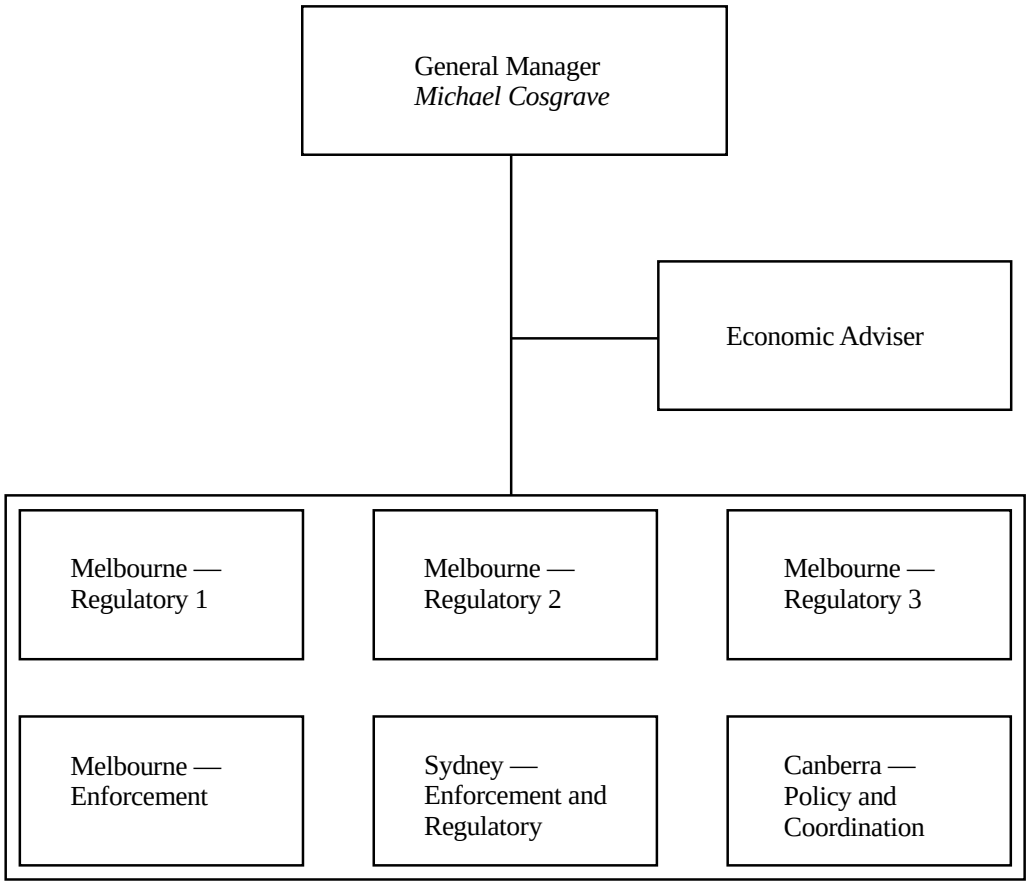
Speeches by Commissioners

(Note: only speeches published on the Commission website have been included)

5 August 1999	Professor Fels, Telecommunications Deregulation Anniversary Lunch — Primus, Melbourne
30 September 1999	Rod Shogren, Telecommunications regulation in practice: perspectives of a practitioner, 1999 Conference of Economists Business Symposium, Melbourne
11 February 2000	Ross Jones, Telecommunications and broadcasting regulation, presentation to MBA students from Finland, Sydney
4 April 2000	Professor Fels, Regulatory developments in the new millennium, ATUG now2000 conference, Sydney

Appendix 2

The Australian Competition and Consumer Commission Telecommunications Group



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