



Telstra Corporation Limited

**ACCC Declaration Inquiry into the Proposed Variation to
Make the GSM Service Declarations Technology Neutral**

1 Executive Summary

Telstra welcomes the opportunity to respond to the issues raised in the Australian Competition and Consumer Commission's ("ACCC") September 2001 Discussion Paper Proposed Variation to make the GSM Service Declarations Technology-Neutral.

Telstra does not consider that there is any plausible rationale for extending the existing declaration of GSM to CDMA. Any variation to the current declaration may only be made where the ACCC is satisfied that to do so would promote the long-term interests of end-users ("LTIE") according to the LTIE criteria in Part XIC of the *Trade Practices Act 1974* (Cth) ("TPA"). In Telstra's view, there is no compelling evidence or argument to suggest that the LTIE would in fact be promoted in any way by the proposed variation. As a result, Telstra believes that variation of the current GSM declaration to extend it to all technologies already in use is not warranted.

In Telstra's view the mobiles services market is highly competitive. There are currently five mobile networks, four network operators and numerous service providers retailing mobile services to end-users. Mobile prices have reduced substantially over the past five years, output has increased dramatically and a range of new services has been introduced. With the low mobile prices now offered by service providers, competition is now focused on improving service quality, including initiatives to increase service coverage and to reduce call drop-out.

The highly competitive nature of the market is further evidenced by the lack of disputes over CDMA access. The experience to date has been that commercial contracts are routinely negotiated with similar terms and conditions offered for access to both CDMA and GSM networks. In Telstra's view, it is unlikely that a Part XIC arbitration would produce a more efficient price outcome than that which is already attained through commercial negotiation.

The ACCC has noted that there appears to be an increasing level of competition in the mobiles services market.¹ Relatively recent ACCC decisions not to declare mobile originating access for long distance mobile services and domestic inter-carrier roaming noted that the market, although supposedly concentrated, is "reasonably competitive" by world standards, with a high degree of penetration and strong growth in mobile services, and showing signs "that competition is intensifying and this is likely to continue over the foreseeable future".²

In the current competitive environment, it is highly unlikely that declaration of CDMA would further promote the achievement of any-to-any connectivity. In Telstra's view, this objective is already attained through commercial negotiation.

¹ Pricing Methodology for the GSM Termination Service, *Australian Competition and Consumer ACCC, July 2001, at 24-31 and 43-45.*

² Competition for long distance mobile telecommunications services - a report about declaration of a long distance mobile originating service, *Australian Competition and Consumer ACCC, January 2000; see page 39; and see also Public Inquiry into Declaration of Domestic Intercarrier Roaming under Part XIC of the Trade Practices Act 1974 - a report prepared pursuant to section 505 of the Telecommunications Act 1997, Australian Competition and Consumer ACCC, March 1997.*

While Telstra acknowledges the possibility of allocative efficiency losses due to high terminating rates for fixed to mobile calls, these are likely to be minimal. Experience to date suggests that there are unlikely to be significant differences in termination rates for CDMA and GSM. Further, any allocative efficiency losses that may result from inefficiently high termination charges must be weighed against the potentially large dynamic efficiency losses that are likely to result from extending regulation to the CDMA networks. In Telstra's view, extending the existing regulation to other mobile technologies is likely to discourage otherwise efficient investment in these networks.

In short, Telstra considers that a variation to the GSM declaration as proposed is inconsistent with the legislative criteria to which the Commission is required to have regard. Furthermore, as the ACCC has stated its intention to review the appropriateness of retaining mobile regulation in two years,³ Telstra is concerned that the ACCC would consider introducing an additional layer of regulation at this stage.

This submission is further divided into three sections:

- section 2 asks whether there is a need for regulation. In concluding that there is no need for regulation, this section poses a number of possible explanations as to why regulation of CDMA might be justified and what might be driving the ACCC's concerns. It concludes that there is no plausible rationale for the ACCC declaring CDMA or even contemplating such a decision;
- section 3 sets out Telstra's view of the proposed variation by reference to the relevant legislative provisions governing the making of such a variation;
- section 4 comments on the proposed service descriptions of domestic GSM and CDMA Originating and Terminating Access Service.

2 Is there a need for regulation?

After the announcement of the current inquiry, the Telecommunications Commissioner, Mr Shogren, participated in a radio interview. In that interview, Mr Shogren is quoted as saying that:

“We've put out an issues paper and really it fundamentally goes to the simpler question of should CDMA be treated any differently? *Is there some reason why we shouldn't be able to regulate the price of CDMA where we can for GSM?*”⁴

Telstra is at a loss to understand what is driving the ACCC's concerns about regulating CDMA. One possible explanation is that the ACCC regards declaration of CDMA as necessary to ensure consistency or 'neatness' between the regulation of CDMA and the

³ Proposed Variation to Make the GSM Service Declaration Technology-Neutral Discussion Paper, *Australian Competition and Consumer ACCC, September 2001, p 1; citing Pricing Methodology for the GSM Termination Service, Australian Competition and Consumer ACCC, July 2001, pp 5.6.*

⁴ ABC Regional National Rural News, 12.06pm, 19th September 2001.

declaration of GSM. Telstra does not understand this reasoning and queries on this and several other grounds (below) the ACCC's logic for contemplating the declaration of CDMA. These possible grounds are considered, as are other possible policy justifications, in the context of specific questions in the remainder of this section.

Is declaration of CDMA necessary to ensure consistency with GSM?

If the ACCC is contemplating declaring CDMA because it wants to ensure consistency with the declaration of GSM, then Telstra believes that this logic is flawed. Basic principles of economic efficiency and sound policy indicate that, unless there is some market failure to warrant declaration, there is no justification for declaring CDMA. No market failure is apparent. Moreover, if the declaration of GSM without CDMA causes market distortions, then Telstra considers that any perceived market distortions are best corrected by rolling back GSM regulation expeditiously – perhaps bringing the proposed 2003 review forward. It is somewhat disturbing that the ACCC does not even consider such an option in its Discussion Paper.

Is there some market failure to warrant declaration of CDMA?

As noted, there is no market failure in respect of the supply of CDMA. Commercial arrangements in relation to the access and supply of CDMA services are routinely negotiated between Telstra and access seekers. Furthermore, Telstra is unaware of outstanding disputes or complaints in relation to access to CDMA.

Is there a need to secure the supply of CDMA roaming and/or resale?

The ACCC possibly wants to declare CDMA because it considers that commercial arrangements for the supply of CDMA roaming or resale are not occurring (or are not occurring on a sufficient scale); and that declaration of CDMA services would better secure their supply. This rationale, however, lacks credibility. Telstra has roaming agreement in place with one carrier; and it has resale agreements for CDMA with several other carriers. All roaming and resale arrangements have been commercially negotiated without the need for declaration. Clearly, it cannot be this issue that is driving the ACCC's concerns.

Is there a price differential between wholesale GSM and CDMA prices which the ACCC believes would be removed by it declaring CDMA?

It is conceivable that the ACCC wants to ensure pricing parity between wholesale GSM and CDMA services; and that it believe that declaring CDMA is a means to that end. If the ACCC is concerned about any apparent disparity, then this concern, like those above, is not well-founded. Telstra is rapidly moving towards alignment of its GSM and CDMA wholesale prices and any existing differences between its charges for access to those services will rapidly disappear. Thus, it cannot be this issue that underpins the ACCC's concerns about declaring CDMA.

Is declaration necessary to ensure a technology neutral outcome?

Perhaps the ACCC is contemplating declaring CDMA services, either:

- to ensure that the declared service is non-technology specific; or

- to ensure that any declaration does not impact more severely on one technology than on another.

This reasoning does not seem plausible as it is inconsistent with the ACCC's approach to other declarations. For example, the ACCC has declared a highly technology specific service in the form of analogue subscription Pay TV services. Any concerns that the ACCC may hold about technological neutrality in this inquiry are inconsistent with the ACCC's approach to declaration of analogue cable services, as well as arguably being inconsistent with technology specific declarations such as that of the unconditioned local loop service. Moreover, if the ACCC desires a technologically neutral outcome in respect of mobile services, then such an outcome could readily be achieved by the ACCC rescinding the declaration of GSM and not declaring CDMA.

Summary

Considering all of these potential explanations, Telstra does not see any plausible rationale for the ACCC considering a declaration of CDMA. Telstra therefore submits that the ACCC should decide not to proceed with the proposed declaration. Indeed, the more appropriate course for the ACCC would be for the ACCC to expedite the foreshadowed review of GSM regulation and consider revoking the GSM declaration rather than expanding it to include CDMA networks.

Having considered (and dismissed) these possible policy justifications, Telstra now considers whether declaration is justified according to the statutory criteria relevant to declarations under Part XIC of the TPA. Just as Telstra considers that declaration cannot be justified according to the above explanations, as is demonstrated in the following section, it does not believe that declaration can be justified on the basis of the application of the statutory criteria in the TPA.

3 Long term interest of end users

Before making any declaration, or variation to it, section 152AL(3)(d) of the Trade Practices Act 1974 requires that the ACCC must be satisfied that such action will promote the LTIE.⁵

Unless this threshold is met, the ACCC cannot make a new declaration or vary an existing declaration. Accordingly, while the ACCC's Discussion Paper does not do so, Telstra addresses this statutory issue first in this submission. Unless the LTIE test is met, other questions raised by the ACCC become irrelevant.

To determine whether a declaration would promote the LTIE, section 152AB(2) provides that regard must be had to the extent to which declaration is likely to result in the achievement of the following objectives:

- promoting competition in markets for carriage services and services supplied by means of carriage services;
- achieving any-to-any connectivity for carriage services involving communication between end-users; and

⁵ Section 152AL(3)(d) of the TPA.

-
- encouraging the economically efficient use of, and economically efficient investment in, the infrastructure by which carriage services and services provided by means of carriage services are supplied.⁶

Section 152AB(3) of the TPA specifically prevents the ACCC from taking any other matters into account.

Accordingly, Telstra examines below the likelihood of the proposed variation promoting each of these objectives. In summary, Telstra does not believe that broadening the declaration of mobile services would promote the LTIE because:

- the existing level of competition in relevant markets is both effective and increasing;
- any-to-any connectivity is already ensured through commercial agreements; and
- economically efficient investment in new mobile telecommunications infrastructure would be needlessly and actively discouraged by further regulatory intrusion.

Promoting competition in markets for mobile services and fixed-to-mobile services

The ACCC has previously stated that the LTIE would only be promoted if:

“the existing level of competition in the mobile market is inadequate - declaration would not create benefits for consumers if mobile services were already competitively provided”.⁷

Telstra submits that all the evidence clearly suggests that the market for mobile services is highly competitive.

At the wholesale level, Telstra submits that the number of mobile networks in operation is very clear evidence of the high degree of competition in the Australian market for mobile network services. In Australia, there are four mobile operators and five mobile networks. When Australia’s subscription base is taken into consideration, this represents a significant amount of facilities based competition, particularly when compared with other countries with well-developed telecommunications industries. For instance, the Productivity Commission draft report on telecommunications competition regulation released in March of this year noted that the United States has seven mobile network providers (with seldom more than three or four operating in any one area), Japan, Korea and the Netherlands each have five, while the UK and Germany each have four operators. Aside from the Netherlands, each of these countries has a substantially higher potential subscription base than Australia.⁸

⁶ Section 152AB(2) of the TPA.

⁷ Public Inquiry into Declaration of Domestic Intercarrier Roaming under Part XIC of the Trade Practices Act 1974 - a report prepared pursuant to section 505 of the Telecommunications Act 1997, *Australian Competition and Consumer ACCC, March 1997 at 46*.

⁸ See Productivity Commission, 2001, Telecommunications Competition Regulation, *Draft report, Canberra, March, 4.31*. The information presented by the Productivity Commission is, for the most part, reasonably similar to data presented in the OECD’s Communications Outlook 2001 (see table 2.1 on p. 29).

It is in this context that the recent exit of One.Tel and AAPT's plans to suspend development of a CDMA network must be viewed. More specifically, these two market events, in Telstra's view, do not imply that the likely future state of competition in the mobile market will be any less competitive than what it would have been had these events not occurred. Rather, in Telstra's opinion, these events serve to highlight the extent of competition in the market place, the sustainability of having numerous mobile networks in the market and, in the case of One.Tel, the importance of prudent fiscal management and efficiency in order to compete in the mobile market.⁹

This abundance of competitive supply at the network level is reflected in the market for retail mobile services, where large scale price reductions, dramatic increases in output (both in terms of the number of subscribers and intensity of use) and a significant level of customer churn is persuasive evidence of a highly competitive market. The recent introduction of mobile number portability has enhanced the competitive environment.

For example, there is substantial evidence of retail price declines over a sustained period of time with a notable increase in the rate of decline over the past two years. As the Productivity Commission itself has noted:

“There has been a steady decrease in the price of mobile telephony between 1996–97 and 1998–99. Over the two years, the annual decreases were around 3.4 and 3.9 per cent. There was a much sharper decrease between 1998–99 and 1999–2000 of around 12.6 per cent. Over the whole period, the overall cost of mobile telephony decreased by around 18.9 per cent.”¹⁰

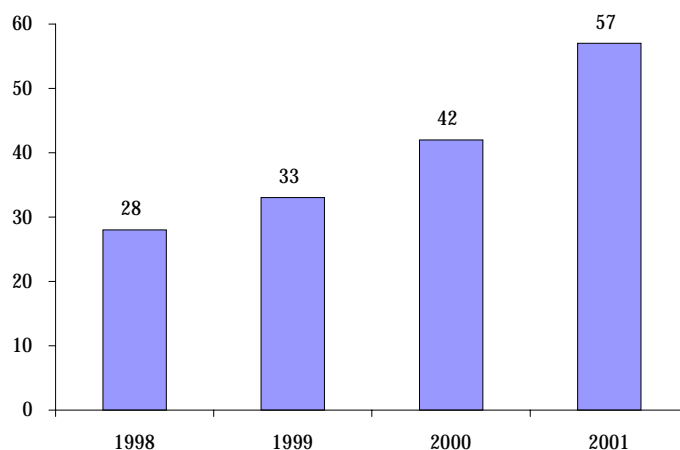
While the steep price reductions observed in past years are unlikely to be repeated in the future, due to the very low mobile prices now available and the relative slowing of output growth, competition is still intense and is likely to focus more on the range and quality of services provided.

The level of competition in the Australian mobile telecommunications market is also clearly evidenced by the substantial increase in total output. Telstra notes that the available data on mobile penetration demonstrates considerable growth in market penetration over the last few years – again a pattern that is consistent with a highly competitive market place:

⁹ The Productivity Commission, at least to some extent, foreshadowed these events. With respect to the introduction of One.Tel and Hutchison as network operators, the Productivity Commission remarked: “Given the smaller subscriber base in Australia, the relatively large number of operators has implications for the viability of the networks and the level of competition.” (Productivity Commission, 2001, *Telecommunications Competition Regulation, Draft report*, Canberra, March, 4.31).

¹⁰ ACCC, 2001, *Changes in the prices paid for telecommunications services in Australia 1996-97 – 1999-00*, p. 28.

Market penetration : FY 1998 to 2001



Notes: (1) Data obtained from Optus, Annual Financial Report 2001, p. 5; (2) Figures are for financial years ending 31 March; (3) Market penetration is calculated as total market mobile users divided by total population.

Finally, the high level of customer churn observed is further persuasive evidence of the level of competition in the Australian mobile telecommunications industry. For example, the ACCC has reported the following mobile churn rates:

Mobile churn rates 1996-2000

<i>Year</i>	<i>Digital</i>	<i>Analogue</i>
1996	21%	42%
1997	24%	32%
1998	31%	46%
1999	40%	N/A
2000	35%	N/A

Source: ACCC (2001): *Pricing Methodology For The GSM Termination Service: Final Report*, July, p. 41, citing *Australia – Mobile – Churn, Roaming, MNP, Fixed-to-Mobile*, Paul Budde Communication, August 2000, p. 1.

The recent introduction of mobile number portability has enhanced the competitive environment still further. A recent media release by the Australian Communications Authority (“ACA”), for example, has noted that over 7,000 numbers were ported in only the first ten days following the introduction of mobile number portability.¹¹

In the face of such evidence on the competitive nature of both the wholesale and retail mobile markets, Telstra submits that the proposed variation cannot be found to promote competition in markets for carriage services and services supplied by means of carriage services. Accordingly, any variation to the GSM declaration to include CDMA originating and terminating access would represent unnecessary regulatory intervention.

¹¹ ACA, Media Release, *Regulator Imposes New MNP Standards on Mobile Carriers*, 4 October, 2001.

While Telstra acknowledges the ACCC's concern regarding the potential bottleneck of termination services and the resulting impact on retail prices for fixed to mobile services, Telstra does not believe that this is sufficient reason to declare CDMA services.

Even if GSM services were not regulated, then Telstra believes that competitive forces would limit the level of CDMA termination charges. It is Telstra's view that together, fixed to mobile preselection, mobile roaming and mobile number portability will provide a competitive discipline on the mobiles market at both the retail and wholesale levels and that this should accentuate the downward trend in termination and retail charges.

Further, as Telstra argued in its submission to the ACCC on GSM pricing principles, there are a number of other constraints that do, and will increasingly, put pressure on termination charges. First, there are competitive substitutes for fixed to mobile and mobile to mobile calls including fixed to fixed calls, email and paging services. Second, mobile customers are concerned about the cost of incoming calls. This is increasingly the case with mobile operators targeting family and business groups where the mobile subscriber pays for incoming calls (through fixed-line charges) and outgoing calls (through mobile charges) to and from the mobile handset. Third, as mobile competition intensifies, the importance of incoming call costs is likely to increase relative to the total mobile package.

Achieving any-to-any connectivity

Declaration of CDMA originating and terminating access services is not necessary to promote the objective of achieving any-to-any connectivity. That objective is already attained by commercial negotiation.

The objective of any-to-any connectivity is intended to ensure that each end-user of a service is able to communicate by means of that service with each other end-user who is supplied with the same or a similar service, even when they are connected to different telecommunications networks.

The Discussion Paper recognises that the proposed variation is unlikely to impact on the achievement of any-to-any connectivity. In addition, previous related inquiries have also recognised the limited relevance of this criterion in the declaration of services.¹² Rather than suggesting that the any-to-any connectivity criterion is irrelevant to this inquiry, what this instead suggests is that any-to-any connectivity is being accomplished through commercial arrangements. This, in turn, suggests that declaration is not needed in order to satisfy this limb of the LTIE. Telstra considers this to be a strong factor weighing against declaration – and that this factor should be given as much weight as the two other elements of the LTIE.

Further, Telstra does not consider that the proposed variation is necessary to provide “regulatory certainty to the industry” as suggested in the Discussion Paper. The fact is that the commercial imperative facing any CDMA network operator requires that it ensure that subscribers to its network have full interconnectivity to all other publicly offered fixed and mobile networks. Declaration of CDMA networks will not add any necessary or desirable certainty to the present situation.

¹² ACCC, *Competition for long distance mobile telecommunications services - a report about declaration of a long distance mobile originating service*, January 2000; see page 39 citing the *Trade Practices Amendment (Telecommunications) Bill 1996* Explanatory Memorandum.

Accordingly, any variation to the GSM declaration to include CDMA originating and terminating access would represent unnecessary regulatory intervention. It has long been a stated objective of the Government and the ACCC to encourage commercial resolution of matters with minimal recourse to regulation. In this regard, such an objective would be more readily achieved without the proposed variation.

Encouraging economically efficient use of, and investment in, infrastructure

Telstra notes that the proposed expansion of the declaration may produce minor benefits in terms of encouraging the economically efficient use of existing infrastructure by ameliorating the allocative efficiency effects associated with asymmetric regulation. However, it is Telstra's view that such benefits would be minimal.

Moreover, any benefits that may result from declaration of CDMA services must be considered carefully against the possible productive and dynamic efficiency losses associated with distorting investment decisions as a result of the continuing and extending regulation of what appears to be a highly competitive market. Consequently, Telstra believes that the LTIE will be promoted by expediting the rollback of mobile regulation more generally, rather than extending such regulation to new areas.

Efficient use of infrastructure

Notwithstanding the merits of some arguments in favour of symmetric regulation of CDMA and GSM (below), Telstra does not believe that these considerations outweigh the strength of the overall efficiency arguments against regulating CDMA. Nor do these considerations outweigh the significance of the competition and any-to-any connectivity limbs of the LTIE, each of which reveals that the CDMA services should not be declared.

Telstra acknowledges that if CDMA and GSM networks are found to operate in the same market for the supply of wholesale mobile telecommunications services there are good reasons for avoiding asymmetric regulation. The concept of competitive neutrality is useful for understanding the problems with asymmetric regulation. Given identical products offered at the same prices by two (or more) firms, competitive neutrality occurs where:

- consumers are indifferent to purchasing one product over another; and
- no firm has been provided artificial advantages (or artificial disadvantages) that enable it to lower its costs or raise its quality (or force it to raise its costs or lower its quality) over what they otherwise would be.

Thus, if competitive neutrality does not hold, allocation may not be efficient. In addition to efficiency consequences, different allocations may have different equity implications with some groups advantaged at the expense of others.

It is easy to see why, if a regulator is given scope to implement asymmetric regulation, this will lead to the failure to achieve competitive neutrality in the general sense of the term. The regulator will advantage some firms at the expense of others because some firms end up facing a greater regulatory burden than others (for example, in the form of conduct restrictions which prevent them from competing effectively, higher compliance costs and so forth). As a result of asymmetric regulation, relatively more inefficient or equally efficient firms may even gain market share at the expense of other firms, not due to their relative merits, but simply because of asymmetric regulation.

Along these lines, it has been argued that asymmetric regulation distorts the evolution of markets away from competitive market solutions, thereby increasing the need for continued regulation to correct market failures that may have otherwise ultimately been corrected by competition.¹³ Telstra, however, believes that these considerations are best addressed by the ACCC not regulating either CDMA or GSM services. In any case, these issues do not outweigh the significance of the other efficiency arguments against declaration, including the effect of any declaration on efficient investment in new infrastructure.

Efficient investment in new infrastructure

Telstra acknowledges the importance of these allocative efficiency considerations arising from asymmetric regulation and hence has been a consistent advocate of industry-wide rather than firm-specific regulation. However, Telstra submits that the proposed variation of the declaration is still unlikely to satisfy the investment limb of the LTIE test as such expansion is likely to discourage efficient investment in new mobile communications infrastructure. Put another way, the allocative efficiency problems associated with asymmetric regulation are likely to be swamped by the potential productive and dynamic efficiency losses associated with the proposed variation of the declaration. As such, Telstra urges the ACCC to direct its energies at rolling back what may prove to be inappropriate regulation of GSM networks rather than seek to extend such regulation to other mobile networks.

Telstra has consistently pointed out to the ACCC that inappropriate regulation – that is, regulation of services that are workably competitive – imposes significant costs on Australian consumers over the longer term through its impact on the incentives for investment in new infrastructure. The extensive costs associated with inappropriate regulation have also been clearly exposed in the Productivity Commission draft reports on the operation of Parts XIC and IIIA of the Trade Practices Act.¹⁴

Specifically, declaration alters industry dynamics, as it changes market participants' perceptions of the choices and instruments open to them. As a result, the outcomes that can be observed in the supply of declared services will always differ from those that market forces, left to their own devices, would have yielded. Declaration therefore forecloses the option of allowing market forces to develop unhindered, and only if it becomes apparent that they are failing bringing regulation into play. A regime that allows declaration to proceed before there is compelling evidence of market failure risks preventing markets from ever being allowed the time they need to do their work.

More importantly, declaration brings with it the risks and associated distortions arising from regulated access pricing. Experience indicates that the real costs of access regulation come in the form of dynamic and productive inefficiencies:

- Productive efficiency losses occur when the service is not produced at least cost. Such losses are an almost inevitable outcome of regulators setting interconnection prices at incorrect levels. Unregulated privately owned firms have very strong incentives to attain

¹³ Haring, J, Rohlfs, J H and Shooshan, H M, 1995, "Disabilities of Continued Asymmetric Regulation of AT&T", *Strategic Policy Research*.

¹⁴ See, for example, Productivity Commission, 2001, *Telecommunications Competition Regulation, Draft report*, Canberra, March.

full productive efficiency, since by doing so they maximise returns to their shareholders. Productive efficiency losses are, however, common in a regulated environment.

- Dynamic efficiency losses occur when regulation removes the incentive to invest in innovative higher quality, lower cost technologies. Regulation can distort investment decisions in many ways. A high propensity on the part of regulators to enforce access to networks at inefficiently low rates significantly undermines the incentive to invest in new network technology by reducing the returns to investors. As an adviser to the ACCC has suggested, it may be impossible for the regulator to set a price that will not have a detrimental effect on investment decisions: “whenever the returns from a large infrastructure investment are uncertain, the potential for declaration and access (at non-trivial prices) will tend to deter socially desirable investment”.¹⁵

With respect to mobile telecommunications services, such distortions could have potentially very large impacts. It would appear that a range of carriers and carriage service providers are currently considering the commercial case for investing in the infrastructure needed to supply third generation mobile technologies. These plans involve potential investments of an enormous magnitude; and investors already face a high degree of uncertainty as to future demand patterns. Additional distortions in terms of unwarranted regulation will increase the risks and further delay network roll out.

The inference that would necessarily be drawn if this proposed variation proceeds is that, each time a new technology is developed, the ACCC will seek to add a layer of regulation. In this event, rational investors will necessarily factor the not-insignificant costs of the resultant uncertainty and compliance into their investment assessment. Economically justified and efficient investments will be harder to demonstrate and greater industry uncertainty will result. The mere existence of pricing principles for previously declared services, with a suggestion that the ACCC will apply similar pricing principles to declared services using similar technology, will not detract from this uncertainty. Rational investors will want the flexibility to recover the costs of their investment in the most efficient manner, rather than having their business decisions determined by regulatory rules.

In competitive conditions, where there is no market failure, there is no cause for regulation to intrude into areas where business decisions, rather than regulation, should determine market outcomes. Regulation sends a strong message to investors that they should be wary of investment; and thus has the strong potential to deter efficient investment decisions. In any case, dynamic efficiencies which may be obtained from the efficient deployment of resources between present and future uses for the benefit of society would be greatly undermined.

In the absence of compelling reasons for such regulatory intervention, the potential disadvantages of the proposed variation to the current GSM declaration are therefore severe.

Accordingly, Telstra believes that the objective of encouraging economically efficient use of, and investment in, infrastructure would not be promoted, and indeed would be seriously set back, by the proposed variation.

¹⁵ King, S. 2000, ‘Access: what, where and how?’, Paper presented at the Productivity Commission and Australian National University (Joint Conference) on Achieving Better Regulation of Services, Australian National University, Canberra, 26-27 June, p. 15.

4 Proposed service descriptions of domestic GSM and CDMA Originating and Terminating Access Service

It is Telstra's view that there is nothing to warrant declaration of the CDMA originating and terminating access service.

However, should the ACCC nevertheless disagree with this view and decide to vary the GSM declaration to include CDMA, then, subject to what is said below, Telstra believes that the proposed service description provided in Attachment B to the Discussion Paper would be satisfactory. This should not, however, be taken to imply that Telstra supports the proposed declaration, as this is fundamentally not so.

The proposed service description would add CDMA originating and terminating access to the existing GSM originating and terminating access. Telstra submits that the service descriptions should extend, as proposed, only to originating or terminating access and not to any other aspect of CDMA services.

There is, however, an element of the proposed service description that Telstra believes require further consideration by the ACCC. Telstra draws the ACCC's attention to paragraph 3(a) of the proposed description of GSM and CDMA originating access. In this particular paragraph of the proposed service description, the service is described as

“... access unless the AP has not sought or is not seeking access to the end-customers in question”.

Telstra does not believe that this aspect of the service description fully reflects the intentions of the Telecommunications Access Forum (“**TAF**”) when the GSM originating access service was recommended for the deeming process. Instead, it reflects a last-minute drafting change when the service description was submitted to the ACCC. The intention of the TAF in the drafts that were widely circulated, was that the access be provided–

“...if the AP has not sought or is not seeking terminating access to the end-customers in question”.

Telstra believes that the TAF's intention was reflected in the first set of minor drafting changes that the ACCC recommended to the TAF and was endorsed by the TAF in the documentation that was forwarded when asking the ACCC to review the declarations in relation to the mobile access services in March 2000.

In Paragraph 3.2 of its Discussion Paper, the ACCC suggests that a mobile originating access service is used when providing “13” calls to end-users. This is not the commercial arrangement used between mobile carriers and 13 service providers. Rather, mobile carriers acquire a terminating access service to the 13 service; and pay the 13 service provider for terminating the call through to the end-customer.