
Policy developments

Telecommunications legislation

On 5 December 1996 legislation was introduced into Parliament to set out the new regulatory framework and processes to apply to the telecommunications industry from 1 July 1997.

Under the proposed legislation, technical regulation and licensing will come within the jurisdiction of a new body called the Australian Communications Authority. This will be formed through the merger of the existing telecommunications regulator, AUSTEL, and the Spectrum Management Agency.

There will be two new parts to the existing Trade Practices Act. One part will deal with anti-competitive conduct in the telecommunications industry (Part XIB) and the other will set out the rules and procedures for guaranteeing access to network services, for the purposes of interconnectivity and interoperability between carriers and service providers (Part XIC). These parts will apply in addition to other parts of the Act which regulate restrictive trade practices in general.

The proposed new legislative framework is briefly summarised below.

Open market

It is the broad policy intention of the legislation that, as of 1 July 1997, open market access will be established for both telecommunications infrastructure and service providers. Current restrictions on the installation of telecommunications infrastructure will be removed and carrier licences will be required only from persons wishing to use infrastructure to provide services to the public. Non-carrier service providers will be governed by a class licence.

Anti-competitive conduct

Part XIB will be concerned with preventing members of the industry with a substantial degree of power in a telecommunications market from engaging in anti-competitive conduct. It will be a legislative requirement that carriers and service providers do not engage in anti-competitive conduct, and this will be known as a 'competition rule'. The definition of anti-competitive conduct in the industry will be based on the existing Trade Practices Act provision governing misuse of market power, but without the necessity of having to prove a purpose in taking advantage of market power to damage the competitive process.

On identifying anti-competitive conduct, the Commission will be able to issue a 'competition notice' stating that the carrier or service provider has contravened, or is contravening, the competition rule. The competition notice will be prima facie evidence of the matters in the notice. If the carrier or service provider continues with the conduct that is the subject of the notice, the Commission will be able to seek remedy (for example, injunction) and pecuniary penalty (up to \$10 million in fines for each breach) through an order of the Federal Court.

The Commission will be bound by guidelines, which it will be required to publish, on how it will decide whether to issue a competition notice. Applications for exemption orders can be made to the Commission to exempt carriers and service providers from the anti-competitive conduct provisions.

It is also proposed that the Commission will be able to issue tariff filing directions requiring carriers or service providers to provide information to the Commission on present and future tariffs.

In addition, the Commission will be able to make rules specifying the manner in which

specified carriers or service providers are to keep and retain records relevant to, amongst other things, the exercise of Commission powers in regard to the competition rule and ensuring access to competing carriers' services.

Access

The new Part XIC establishes an industry-specific regime for regulated access to carriage services, and reflects policy interests in promoting any-to-any connectivity and reliance on commercial resolution of issues as far as possible.

This will be achieved through the declaration of eligible services by the Commission in consultation with an appointed industry self-regulatory body made up of carriers and carriage service providers. This body will also be encouraged to draft an industry code setting out the terms and conditions for providing access to members. The Commission will have the function of approving the code, and if the industry code is unsuitable the Commission will be able to apply its own. Carriers and carriage service providers will be able to give undertakings on access, and the Commission will have arbitration powers in respect of disputes.

An important related task will be a requirement for the Commission to draft Access Pricing Principles.

Sale of Spectrum

While not part of the above legislative package, the Government is expected to introduce legislation to deem the allocation by the relevant government agency of a licence to use Spectrum as an acquisition of an asset. This would bring the licence allocation within the general provisions of the Trade Practices Act governing the prohibition of mergers and acquisitions of assets that result in a substantial lessening of competition. As a result, the Commission will, in the next few months, be considering the development of a policy for identifying circumstances where licence allocations will result in, for example, unacceptable market concentration.