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# Regulatory issues

## Telecommunications

As part of the Commonwealth's policy to establish open market access for both telecommunications infrastructure and service providers, regulatory arrangements for this industry will be changed so that the Commission will assume the primary role for competition and economic regulation of telecommunications services from 1 July 1997. Parliament has passed legislation which provides a new regulatory regime for this industry and gives effect to the Government's policy decisions. This means that the Commission, in consultation with Government and industry (including the current industry regulator AUSTEL), will need to develop approaches on how it will administer its new telecommunications, and particularly its competition and access, responsibilities.

From 1 July 1997, current restrictions on the installation of telecommunications infrastructure will be removed and carrier licences will be required only from persons who own and use infrastructure to provide services to the public. Non-carrier service providers who use infrastructure only in terms of their demand for services will be governed by a class licence.

### Anti-competitive conduct

One of the key aspects of the new regulatory regime is the new Part XIB of the Trade Practices Act which will be concerned with the prevention of industry participants with a substantial degree of power from engaging in anti-competitive conduct. Carriers and service providers must not engage in anti-competitive conduct — this requirement will be known as a 'competition rule'. The definition of anti-competitive conduct in the industry will be based in part on the existing TPA provisions 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. If the carrier or service provider continues with the conduct the subject of the notice, the Commission will be able to seek remedy (e.g. 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 by 1 July 1997 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.

The Commission will have the power to issue tariff filing directions which will require carriers or service providers with substantial market power to provide information to the Commission with regard to present and future tariffs. In addition, Telstra will be required to lodge its charges for basic carriage services (which cover the majority of its services) with the Commission at least seven days prior to taking effect or being amended or withdrawn. In both cases, the Commission may determine whether these tariff filings become public.

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, among other things, the exercise of Commission powers in regard to the competition rule and ensuring access to competing carriers' services. This could be used to impose accounting separation arrangements on carriers and carriage service providers or to require the production of other kinds of information which are relevant to the Commission's responsibilities.

## Access

The new Part XIC of the Trade Practices Act establishes an industry-specific regime for regulated access to services which are required to achieve effective access to telecommunications networks. The basis for such access reflects policy interests in promoting any-to-any connectivity and competition, the efficient deployment and use of telecommunications infrastructure, and reliance on commercial resolution of issues as far as possible.

Access will be achieved through the declaration of eligible services by the Commission. This involves the process of a public inquiry (following requests from industry and the public) where certain criteria relating to the balancing of interests of access providers and access seekers must be taken into account.

Alternatively, service declaration can follow a recommendation by a Commission-approved industry self-regulatory body made up of carriers and carriage service providers, known as the Telecommunications Access Forum (TAF).

The TAF 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 also be able to give undertakings on access which need to be separately approved, particularly where undertakings do not incorporate similar terms and conditions to that of the code. Similarly, the Commission can approve exemptions from standard access obligations for particular carriers or carriage service providers where it is considered that this will not adversely affect the objectives of the access regime.

The Commission will have arbitration powers in respect of access disputes.

An important related task, following a request from the Treasurer, is the development of access pricing principles. These are intended to provide guidance to market participants in terms of their access negotiations, the drafting of access codes, access undertakings and in

relation to the Commission's arbitration of any access disputes.

## Transitional work

As a result of the Commission's expected new responsibilities, considerable work will be required in the period to 1 July 1997 to ensure that the new competition and access regimes are fully functional from that date. This work includes:

- developing a statement of principles for determining access prices. A draft paper on access pricing principles for the telecommunications industry has been prepared and circulated to interested parties for comments;
- preparing and issuing guidelines on administration of competition notice powers;
- preparing a statement of services covered by existing access agreements that will be deemed as declared services for access as from 1 July 1997;
- approving the TAF;
- developing an approach to assess industry access and/or developing an ACCC Code if one is not forthcoming from industry;
- developing arbitration guidelines;
- issuing record-keeping rules relevant to the Commission's competition and access responsibilities;
- reviewing by 1 July 1997 the terms and conditions (including pricing) under which certain current telecommunications services are supplied to service providers by Telstra and to determine whether they are reasonable;
- examining the use of the 'tariff filing directions' provisions from 1 July 1997, taking account of current and prospective market behaviour; and
- establishing processes for public consultation and public inquiries in relation to those functions and responsibilities, such as declaration of services and approval of access codes and undertakings, for which this is required.