Regulatory issues

Telecommunications

Notification of access disputes

The Commission has received several notifications of access disputes.

- Cable & Wireless Optus Limited has notified the Commission of an access dispute under s. 462 of the *Telecommunications Act 1997*. The dispute relates to Telstra's proposed solution to the routing of Telstra calls to ported numbers. Under s. 462 the Commission is required to arbitrate where parties involved in a dispute relating to compliance with the numbering plan are unable to agree. Such arbitration is conducted in accordance with the Telecommunications Arbitration Regulations. The Commission will commence an arbitration hearing.
- Cable & Wireless Optus Limited has notified the Commission of two access disputes with Telstra Corporation under Part XIC of the Trade Practices Act. The disputes relate to certain terms and conditions on which Telstra supplies and proposes to supply Optus with Integrated Services Digital Network (ISDN) originating and terminating services. The Commission has begun the arbitration process.
- Macquarie Corporate Telecommunications has notified the Commission of a number of access disputes under Part XIC of the Trade Practices Act. The disputes relate to Telstra's supply of the Digital Data Access Service to Macquarie, the price to be paid by Macquarie to Telstra for the supply of the DDAS, and the terms and conditions associated with such supply. The Commission has commenced an arbitration hearing.
- AAPT Limited has notified the Commission of three access disputes with Cable & Wireless Optus Limited under Part XIC of the Trade Practices Act. Two disputes relate to terms and conditions on which Cable & Wireless Optus proposes to supply AAPT Limited with domestic PSTN originating and terminating access services. The third relates to the price paid by AAPT for originating and terminating access to the GSM network operated by Cable & Wireless Optus. The Commission has begun the arbitration process.

In accordance with the legislation the arbitrations will be conducted in private.

Mobile number portability issues paper

On 26 May 1999 the Commission issued a discussion paper on number portability in the mobile telephony market.

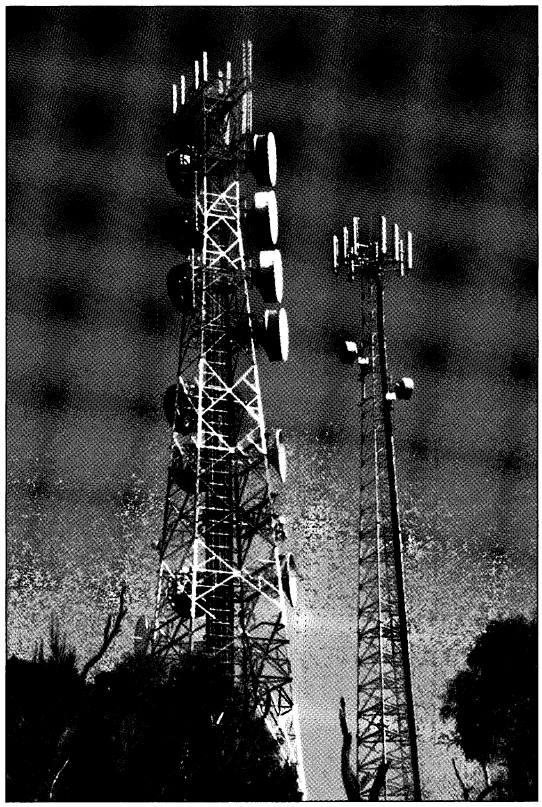
The paper draws on overseas experiences with implementing mobile number portability and on recent Australian developments in the mobile market. It argues that competition in the mobile market may benefit if mobile number portability was introduced.

The paper says that it is technically feasible to implement an integrated solution to mobile number portability allowing portability across different mobile technologies (such as GSM and CDMA).

The aim of the paper is to promote discussion on whether mobile number portability would promote the long-term interests of end-users in Australia. The Commission is also seeking information on the estimated cost of implementing mobile number portability.

The Commission intends to issue a final decision on mobile number portability during the third quarter of 1999.

The discussion paper is available on the Commission's website.



Photography by Arthur Mostead

Financial reporting rules

On 3 June 1999 the Commission issued the report *Record Keeping Rules for the Telecommunications Industry,* which sets out new financial reporting requirements for the telecommunications industry.

The new rules will strengthen the Commission's ability to investigate anti-competitive behaviour and determine appropriate access prices.

The report recommends a reporting structure and key processes for capturing financial information. The Commission will use this information to analyse service costs and profitability. Allocation rules will force consistent costings of different services and help the Commission to detect potential anti-competitive pricing practices.

The Commission is seeking comment from interested parties. Copies of the report are available on the Commission's website or by contacting Mr Chris Pattas on (03) 9290 1858.

Facilities Access Code

On 22 June 1999 the Commission issued the Facilities Access Code, which sets out conditions of access and standards of practice that carriers must adhere to in providing facilities access to other carriers.

The code is designed to assist new carriers to gain access to the facilities of existing carriers, including mobile towers and underground ducts, and thereby promote greater competition in the provision of telecommunications services.

It is also expected to assist in the co-location and sharing of facilities, particularly mobile phone towers, and thereby reduce environmental damage that may arise from an excessive number of towers and overhead cables.

The code is also aimed at facilitating more timely and efficient access, by avoiding onerous administrative requirements or disputes over how and when facilities access is to be provided.

The code was developed following extensive consultation with industry and the Australian Communications Authority, which shares regulatory responsibility with the Commission.

The code and its Explanatory Statement are available on the Commission's website.

The code is, however, a disallowable instrument and will be tabled in the Parliament by the Minister for Communications, the Information Economy and the Arts during the August sittings, which begin on 9 August 1999. The date of effect will be published in the Commonwealth *Gazette*.

Local number portability guide

The Commission has issued a guide to pricing principles for local number portability. According to the guide, telecommunications carriers should be responsible for all costs incurred on their own network when providing local number portability to customers.

The Commission considers portability to be very important to the development of competition in the local call market. Local number portability allows customers to change their supplier of local telephone calls but keep their telephone number.

The guide indicates the principles the Commission will apply if it is required to arbitrate a dispute over the terms and conditions of local number portability between the carrier whom the customer leaves and the carrier receiving the customer.

This reflects a change to the approach proposed by the Commission in the draft guide issued in April 1998. Previously the Commission indicated that most costs should be borne by the carrier whom the customer leaves. The carrier receiving the customer would, however, be responsible for any administrative costs of a customer 'porting' their number. However, the Commission has come to the view that the carrier receiving a customer should not be responsible for *any* costs incurred by the carrier that initially provided the local service.

The Commission's decision will allow carriers to attract new customers without fear of bearing the costs of the carrier from whom the customer transfers.

The Commission anticipates that the competition generated will benefit consumers in the form of lower prices and better local call services.

Pricing Principles for Local Number Portability — a guide is available from Commission offices and its website.

Telstra's interconnect charges rejected

The Commission has rejected Telstra's proposed charges to other carriers for interconnecting to its network to provide international and national long distance calls.

In November 1997 Telstra submitted an undertaking setting out its proposed terms and conditions (including the proposed charges) for interconnection. The Commission must not accept the undertaking unless it believes the terms and conditions are reasonable.

The Commission conducted a full investigation, which included: commissioning an independent analysis of the costs of providing interconnection in Australia based on efficient telecommunications practices; an examination of the costs Telstra incurred in the past in providing interconnection; and comparisons with best practice charges for interconnection overseas. Each of these studies led to the conclusion that Telstra's proposed charges should be halved.

Telstra's undertaking provides for an average interconnection charge of 4.73 cents per minute. The Commission's preliminary view, as noted in the draft decision, was that the cost of providing the services was 2.02 cents per minute. After further analysis and consideration of industry comment on the draft decision the Commission now estimates that the efficient cost of providing these services in 1998–99 is between 1.73 and 2.53 cents per minute.

The Commission's assessment is based on the costs that an efficient operator would incur in providing these services.

Interconnection allows carriers to gain access to customers connected to Telstra's network to provide international and national long-distance calls (a $5 billion market). Charges for interconnection are a major part — at least 35 per cent — of the costs of providing national long-distance calls. If interconnect charges were halved to be in line with costs, the prices of national long-distance calls could be reduced by up to 15 per cent.

The Commission has also examined the structure of Telstra's proposed charges, including peak and off-peak charging.

The Commission was concerned that Telstra charges its competitors peak interconnection rates in the period 7 p.m. to 10 p.m. while charging its own retail customers off-peak rates.

The final decision to reject the undertaking was made on the same basis as its draft decision, that is that Telstra's non-price terms and conditions were not reasonable. For example, Telstra is able to reject applications and to suspend services to access seekers on the basis of its reasonable opinion of matters such as credit worthiness. This would provide Telstra with significant discretion and create uncertainty for access seekers. The undertaking also imposes obligations on access seekers that are not imposed on Testra's own operations.

The undertaking assessment will have a major input into the Commission's determinations in the current arbitrations between Telstra and AAPT and Telstra and Primus.

The Commission's report is available on its website.

Draft decision to declare pay TV carriage services

On 3 June 1999 the Commission issued its draft decision to 'declare' pay TV carriage services. The decision applies only to analogue services supplied over cable.

A similar service was declared in 1997. The Commission began inquiries into declaration to address uncertainty in the industry about the validity of the service description.

The Commission was concerned that owners of pay TV cable could block access to services which competed with their fully or partly owned retail pay TV services.

It is of the view that declaration should promote competition in the supply of diverse programming to consumers of such services.

The Commission anticipates that declaration would help suppliers of niche programming services, such as foreign language and special interest channels, to gain direct access to customers. While other technologies exist for delivering such services, these seem less attractive to customers than cable.

The Commission has not yet reached a decision on whether to declare a technology neutral service, which would cover digital services. Its preliminary view is that it would be too early to tell whether declaration may become desirable, given the early stage of the deployment of digital technology to deliver broadcasting services.

The draft report is available on the Commission's website.

Airports

Draft decision on passenger charges at Adelaide Airport

On 2 June 1999 the Commission issued a draft decision to allow introduction of a 'passenger facility charge' of $3.45 per arriving and departing passenger at Adelaide Airport.

The draft decision is in response to an application by Adelaide Airport Limited to pass costs of a multi-user integrated terminal through the price cap. The MUIT proposal combines the currently separate domestic and international passenger terminals in a new terminal building.

The regulatory arrangements covering price capped airports allow airport operators to apply to the Commission to recover the costs of necessary new infrastructure expenditure through charging increases outside the cap.

In assessing such requests the Commission is required to have regard to a number of criteria. These focus on the efficiency and quality outcomes of investment for the airport's operations, the relationship of the proposed charges to costs, and support from users for the proposals.

The draft decision is available on the Commission's website.

Regulatory reports

The Commission has issued its first annual regulatory reports on the privatised airports at Melbourne, Brisbane and Perth.

The reports assess the airports' quality of service, price cap compliance (CPI-X price cap on aeronautical services), financial accounts reporting, and prices monitoring.

Quality of service was assessed through a survey of airlines and passengers, who were asked to rate airport performance on certain service indicators. These included waiting time for check-in facilities; availability of trolleys; flight information displays; and runways, aprons and taxiways. Overall the results indicated strong quality performance from all three privatised airports.

The airline surveys did identify concerns with the standard of some facilities. In general, airport operators acknowledged the need for improvements to such facilities and in a number of cases identified measures being implemented to address concerns.

Quality of service monitoring is complementary to the prices oversight arrangements. Under price cap regulation there may be incentives to increase profits by reducing costs. In some cases such cost cutting may lead to a lower quality of service. Quality of service monitoring can indicate whether such cost cutting might be occurring over time.

The reports are available on the Commission's website.

Declaration of vehicle access services at Melbourne Airport

On 17 May 1999 the Commission determined that the provision of landside roads and associated vehicle facilities for dropping off and picking up passengers at Melbourne Airport was an airport service for the purposes of s. 192 of the *Airports Act 1996*. In effect, the service is declared for the purposes of Part IIIA of the Trade Practices Act.

This is the first determination made by the Commission as part of its regulatory role in the airport industry. It follows a request by Delta Car Rentals for a determination relating to services at Melbourne Airport.

Delta Car Rentals operates off-airport car rental services close to Melbourne Airport. It also offers short and long term car parking for airport users. Delta provides a shuttle bus service from its business site (on Mickleham Road) to the airport. This requires access to the airport to drop off and pick up passengers. So far Delta has not been able to agree on terms and conditions of access with Melbourne Airport.

The determination opens the way for the Commission to arbitrate the dispute if it cannot be resolved by negotiations between Delta and Melbourne Airport.

The service covered by the determination could also affect other access seekers such as buses, taxis and limousines. As always, however, the Commission encourages parties to negotiate

Photography by Arthur Mostead

mutually acceptable outcomes in disputes concerning access.

Should it be called on to arbitrate terms and conditions, the Commission must take account of the interests of the provider and the users as well as the broader public interest. It would also take into consideration existing landside access regimes for ground transport, including existing arrangements for traffic management.

In assessing Delta's request the Commission consulted widely. The process included a discussion paper, submissions from interested parties, a public hearing and a draft determination released for public comment. This determination is the conclusion of the public consultation process related to Delta's request.

The determination is available on the Commission's website.

Electricity

NSW and ACT transmission network revenue cap

The Commission, in accordance with its responsibilities under the National Electricity Code (NEC), is conducting an inquiry into the appropriate revenue cap to apply to the NSW and ACT electricity transmission network for the forthcoming five year regulatory period.

The Commission recently released a draft decision that outlines the maximum revenue that may be earned by TransGrid, the main provider of transmission services in these jurisdictions. The decision also covers the transmission services provided by EnergyAustralia in NSW. TransGrid and EnergyAustralia were formed in the break up of Pacific Power in 1995.

The draft decision is the first made by the Commission as the economic regulator of electricity transmission in the National Electricity Market.

The review was conducted in conjunction with the Independent Pricing and Regulatory Tribunal of NSW (IPART). The Commission's draft decision draws on consultancy reports, the analysis of data and information presented before the Commission and submissions from interested parties. It considers regulatory issues such as the opening asset base, the weighted average cost of capital and the treatment of capital expenditure.

In the case of TransGrid the draft decision proposes an opening asset base of $1.8 billion, a figure provided to the Commission by IPART. This compares with the optimised depreciated replacement valuation, submitted by NSW Treasury, of just over $2 billion. The draft decision also proposes a weighted average cost of capital of 7.25 per cent and a revenue cap of $305 million in 1999–2000, which rises to $317 million by 2003–2004. If adopted, the Commission's draft decision will result in a reduction in TransGrid's revenue which, in turn, will result in lower prices for TransGrid customers.

In the case of EnergyAustralia the Commission accepted an opening asset base of $345 million, which was specified by IPART. In determining the weighted average cost of capital the Commission adopted a figure of 7.25 per cent, the same figure used in the TransGrid decision. A revenue cap of $47 million, beginning in 1999–2000, rising to $51 million by 2003–2004 is proposed for EnergyAustralia's transmission assets.

In making the final decision the Commission will take into account the comments made at a public forum and submissions received from interested parties.

The draft decision is available on the Commission's website and from its Canberra office.

Draft Statement of Principles for the Regulation of Transmission Revenues

The Commission recently released its Draft Statement of Principles for the Regulation of Transmission Revenues. The draft regulatory principles set out the Commission's proposed framework for the regulation of electricity transmission revenues, as required under Chapter 6 of the National Electricity Code.

Key points in the proposed regulatory framework include:

- use of a building block approach based on forecasts of the cost of service over the

regulatory period — this forms the basis for an incentive orientated revenue cap or aggregate annual revenue requirement;

- a nominal post tax framework, where taxes are part of the cost of service;
- inflation protection provided via CPI-X adjustment of the revenue cap;
- an optimised depreciated replacement valuation methodology to set a cap on the valuation of the asset base;
- only prudent capital expenditures may be added to the regulatory asset base;
- the depreciation profile is designed to replicate the outcomes of a contestable market;
- each transmission network service provider must propose a single set of service standards, and benchmarks for each standard;
- the Commission's information gathering powers will be used to develop a realistic understanding of the transmission network business;
- a regulatory period of five years;
- a competitive tender process to determine the aggregate annual revenue requirement for a new interconnector in the National Electricity Market will be allowed under certain conditions; and
- ring fencing guidelines adapted from those contained in the National Gas Access Code will apply to electricity transmission.

One of the Commission's objectives in publishing the draft regulatory principles was to provide an opportunity for customers, transmission network service providers and other stakeholders to participate in the development of the regulatory framework.

The draft regulatory principles present the Commission's position on the issues to be addressed in the regulatory process and describe the processes by which the Commission will undertake its regulatory task. To assist interested parties to understand the proposed regulatory framework the Commission hosted three information forums in Brisbane, Melbourne (with a video link-up to Adelaide) and Sydney.

A copy of the draft regulatory principles is available from the Commission's Canberra office.

ACCC regulation of Snowy Mountains Hydro-Electric Authority transmission revenues

The Commission has been asked to conduct an inquiry into the appropriate revenue cap to apply to the non-contestable elements of the

Photography by Arthur Mostead

Snowy Mountains Hydro-Electric Authority transmission network services.

The Commission has sought public comment on the matter and expects to complete a draft determination around August 1999, with the final draft expected to be completed following further consultation.

National Competition Council

NCC report on review of TPA exemptions

On 5 June 1999 the Commonwealth Treasurer asked the National Competition Council to review ss 51(2) and 51(3) of the Trade Practices Act.

These sections provide exemption to some of the restrictive trade practices prohibited by Part IV of the Act.

Under clause 5 of the Competition Principles Agreement all Australian governments are committed to reviewing legislation that restricts competition, and removing any restriction unless it can be demonstrated that:

- the benefits to the community as a whole outweigh the costs; and
- the objectives of the legislation can be achieved only by restricting competition.

Section 51(2) exemptions relate to the negotiation of employment conditions, restrictive covenants in employment contracts, sale of business contracts and partnership agreements, use of approved standards, and export contracts.

The s. 51(3) exemption covers certain conditions in licences or assignments of intellectual property rights in patents, registered designs, copyright, trade marks and circuit layouts.

The NCC report recommended that s. 51(2) exemptions be retained, except for the exemption in s. 51(2)(c) relating to provisions in agreements dealing with recognised standards. It concluded that there was no evidence to suggest that the exemption promoted the development and use of recognised standards and that the exemption was unnecessary.

In the case of s. 51(3) restrictions, it recommended that the exemptions be retained, but amended to remove protection of price and quantity restrictions and horizontal agreements. It concluded that this approach would impose the least costs while preserving most of the benefits provided by the exemption.

It also recommended that the ACCC formulate guidelines for industry explaining the scope of the exemption and the application of Part IV to dealings in intellectual property rights.

Copies of the report are available from Commonwealth Government bookshops or NCC's website at *http://www.ncc.gov.au*