

Telecommunications regulation by the ACCC

In mid-1997 the ACCC became the competition regulator for the domestic telecommunications sector as part of the Government's plan to liberalise market entry and enable greater competition.

Broadly, the ACCC's role is to promote the long-term interests of end-users (the legislation's term for consumers) by promoting competition in the market. It's a long-term task, not one that can be accomplished overnight.

First, the infrastructure services to which third party access applies must be determined. After a public inquiry process to assess whether declaring a particular telecommunications service or services would benefit consumers, the ACCC will decide whether or not to 'declare' that service or services. Alternatively the Telecommunications Access Forum, the relevant industry self regulator, can recommend declaration. An inquiry enables the ACCC to identify areas of market power arising from monopoly control. It will declare an infrastructure service where access to that infrastructure will:

- ♦ promote competition in the telecommunications sector;
- ♦ enable end-users to be connected to any other end-user in Australia, regardless of whether the particular end-users are using competitors' networks; and
- ♦ encourage efficient investment in telecommunications infrastructure.

Second, access providers such as Telstra may need to develop wholesale systems and the industry will need to develop network standards to provide the technical basis for access.

Declaration and the development of new systems and standards may not be enough. If an access seeker and provider cannot agree, or where the provider gives the ACCC an undertaking in relation to the terms and conditions on which it will provide access, the ACCC will need to decide what terms and conditions of access are reasonable. A crucial aspect is determining the access price that promotes competition and encourages efficient investment.

The beginning

One of the ACCC's first tasks as regulator was to decide whether access should apply to certain infrastructure services to which access was already being provided (i.e. amongst existing market participants at that time — namely Telstra, Optus and Vodafone). These services included the domestic public switched telephone network (PSTN — used for transporting long distance and international phone calls) and the digital mobile (GSM) network.

At that time the ACCC also reduced access charges to the lowest previously listed, which meant that new entrants could enter the market immediately on reasonably acceptable rates.

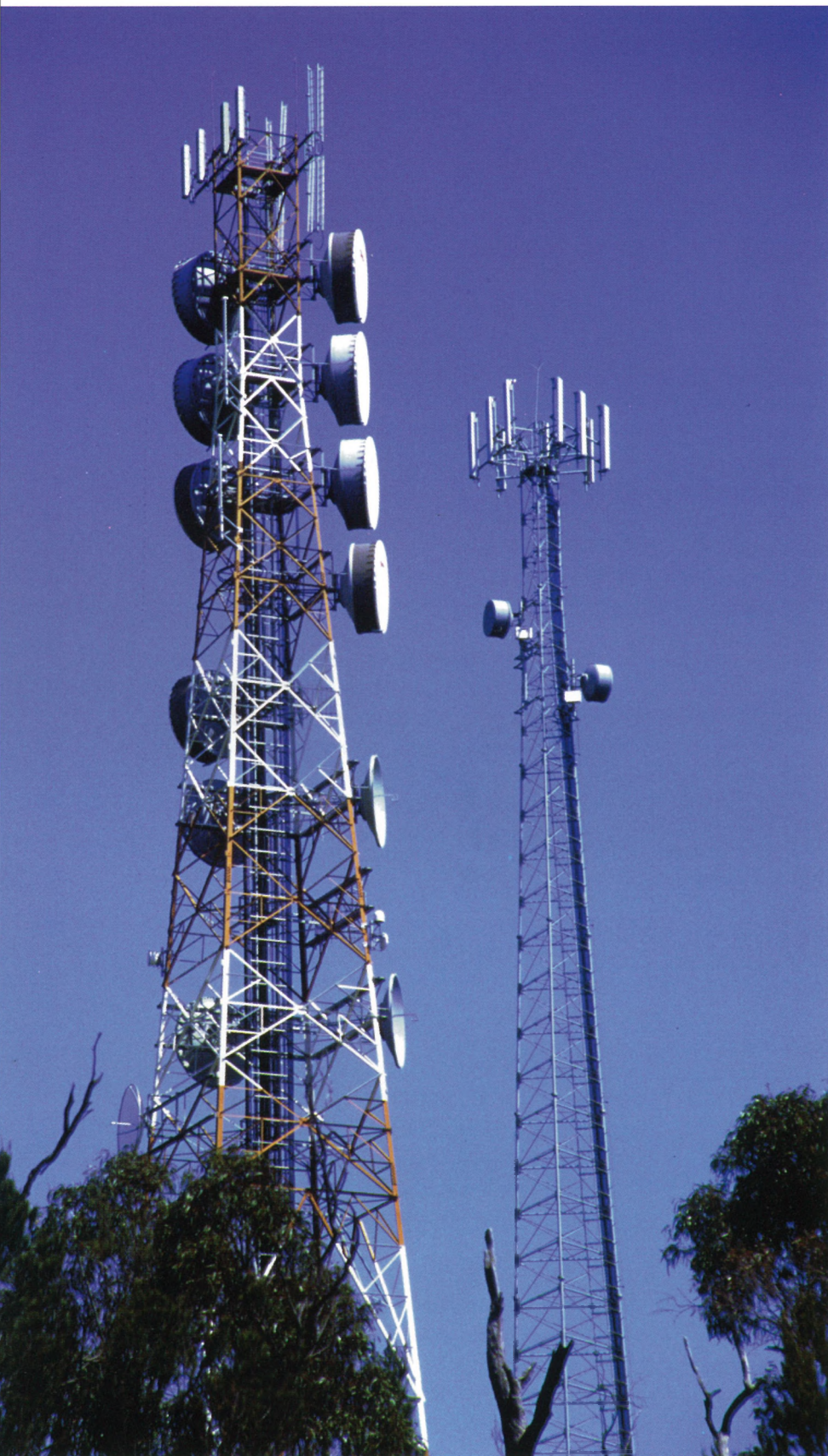
Since then it has conducted a number of major public inquiries to consider what other services should be declared, such as local telecommunications services, mobile phone services and (analogue) cable for pay-TV.

The ACCC's decision to declare local call services controlled largely by Telstra has been particularly important — this opens up 'the last mile' of fixed line into households and businesses (from the local exchange to the customer's premises) and promotes much greater competition.

Result so far

The result of competition regulation so far is a more competitive market structure, with new entrants having access to many wholesale services at a reasonable price. The number of carriers and service providers has risen from three licensed carriers and a small number of providers to about 30 and 70 respectively.

Required infrastructure access and lower access prices have played a significant part in increased market entry, falling prices, greater customer choice and greater innovation. Long-distance and international prices in particular have fallen markedly since 1997. For residential consumers, some long-distance call



charges are now almost half what they were in mid-1997, while it is now possible to get international calls at prices a third to a quarter cheaper than in mid-1997.

More recently the ACCC undertook — in the context of assessing an undertaking made by Telstra in relation to PSTN access — to determine the cost-based access price. This was particularly important: first, because determining this price was necessary to assess the efficient price for access to local, long-distance and international services; and second, by publicly releasing the assessment the ACCC indicated the range of prices it may apply in access disputes. This, in turn, will drive down prices reached in access negotiations, with corresponding reductions in retail prices for consumers.

The next phase

Having set the scene for greater competition and lower prices the ACCC is moving to the next phase of regulatory challenges, such as facilitating industry processes and the development of inter-connection standards and wholesale services to declared services, if they don't already exist.

The ACCC is also looking to promote competition by setting out accounting separation rules that provide for the collection of internal information on particular telecommunications firms, that will enable it to gather information on anti-competitive conduct and on network costs. It expects to finish this soon.

Major decisions

Declarations

Local telecommunications services

On 22 July the Commission announced its decision to declare the following local telecommunications services:

- ♦ an unconditioned local loop service — the use of copper wires between an exchange and customer premises;
- ♦ local PSTN originating and terminating services — the carriage of communications between customer premises and a point on the long-distance side of the local switch; and
- ♦ a local carriage service — the supply of telephone calls between two points within a standard zone. (For resale of Telstra's local call services by its competitors.)

Liberalising the supply of these services through declaration should bring about much greater competition for local telephony services and high speed carriage services, as well as enhancing competition for long distance telephony services.

High speed carriage services can be used for Internet access, remote local area network access, video on demand and interactive multimedia applications. It is expected that this market will continue to grow.

Declaration allows service providers to connect their own networks to existing infrastructure to deliver new and innovative services to end-users more efficiently. It reduces the need to fully duplicate networks while encouraging service providers to roll out their own infrastructure where this will be efficient.

Mobile long-distance services

On 23 August 1999 the ACCC announced its preliminary decision not to declare a long distance mobile originating service, being of the view that there are differences in both the structure and dynamics of the mobile services market compared to the fixed market which suggest that declaration is not necessary at this stage. It felt declaration would be unlikely to promote more vigorous competition.

Its view was that, although price competition in mobile services has generally been focused on access and handset prices, there are now increasing signs that competition for call charges is intensifying. Currently there are three mobile carriers and a number of resellers, with new carriers expected to enter the market during 1999–2000.

The final report is expected in October 1999.

Cable for pay-TV

On 30 August the ACCC announced it would declare existing (analogue) pay-TV cable systems. There was some doubt about the previous declaration under the 1997 transitional provisions of the new

telecommunications regime and the ACCC considered that a fresh declaration would, if it met the necessary legislative tests, clarify the situation.

The declaration should ensure the supply of niche and other programming to customers using existing cable channels and, therefore, be likely to promote competition for retail pay-TV services.

The ACCC has decided not to declare a technology-neutral broadcast carriage service, but will monitor developments in digital services, including broadcasting, to assess whether declaration will be appropriate in the future.

Undertakings and interconnection charges

An undertaking specifies the terms and conditions on which an access provider will make access available to third parties. The ACCC has the power to accept or reject an undertaking made to it. When determining access disputes the ACCC must apply the terms and conditions of an undertaking it has previously accepted to its deliberations.

Telstra's first PSTN undertaking

On 24 June 1999 the ACCC rejected Telstra's PSTN originating and terminating access undertaking (i.e. for interconnecting to its network to provide international and national long distance calls) on the basis that the non-price terms and conditions were not reasonable.

The undertaking gave Telstra the opportunity to reject applications and to suspend services to access seekers on the basis of Telstra's opinion of matters such as credit worthiness. This would provide Telstra with significant discretion and create uncertainty for access seekers. The undertaking would have imposed obligations on access seekers that were not imposed on Telstra's own operations.

Although the price terms and conditions were not relied on because most expired on 30 June 1998, the ACCC assessed them on the basis that it could help in developing future undertakings and other PSTN pricing decisions. The ACCC's initial estimate was that the access charge was between 1.73 and 2.53 cents per minute.

In assessing the PSTN undertaking the ACCC accepted that Telstra's capacity to raise line rentals to costs was constrained by Government price cap regulation and that there was therefore a need for other carriers to contribute to the deficit in their interconnection payments. About one third of the ACCC's estimate of the access charge was due to Telstra's access deficit; that is, the shortfall that Telstra incurs because line rentals are less than line costs.

However, the Government recently announced changes to the retail price control arrangements, to apply from 1 July 1999. This meant the ACCC needed to re-analyse charges to see whether the changes would allow greater 're-balancing' by Telstra (i.e. high line rental charges

and lower call costs), which might decrease the access deficit.

On 7 September the Commission issued a discussion paper which suggests that Telstra could reduce charges to around between 1.4 and 1.8 cents per minute. The ACCC believes the paper and any submissions received will help in developing future undertakings as well as in arbitration matters.

Telstra's second PSTN undertaking

On 24 September 1999 Telstra lodged a second PSTN access undertaking with the ACCC in relation to the prices it proposes to charge other carriers for interconnection. Lodgment followed the ACCC's rejection of the June 1999 undertaking.

The undertaking proposes a headline rate of 2.3 cents per minute for 1999–2000 and 2.0 cents per minute for 2000–2001.

The undertaking — if the ACCC accepts it — will determine the terms and conditions on which other carriers obtain interconnection to Telstra's network in the absence of commercial agreement between the parties.

The level and structure of interconnection prices have important implications for the development of competition and investment in the industry. Prices that are either too high or low can be detrimental to the long-term interests of end-users of telecommunications services.

Telstra indicated that it considered an expeditious consideration would

best serve the interests of everyone in the industry and in a 15 October 1999 media release the ACCC said it 'intends to assess the undertaking under a tight timeframe and seeks comments on the undertaking by 12 November 1999'.

During the assessment period parties are free to continue to negotiate access to the services to which the undertaking would apply.

The undertaking and the ACCC's discussion paper are available on its website.

Telstra's undertakings for mobile services

On 23 August 1999 the ACCC rejected Telstra's proposed terms and conditions for other carriers to interconnect with its analogue and digital mobile networks. The decision was based on an assessment of the non-price terms and conditions in Telstra's undertakings, which were identical to those in Telstra's PSTN undertaking.

Number portability

Number portability allows customers to change their supplier of telephone calls (e.g. local and mobile telephone calls) but still keep their telephone number.

Mobile number portability

In May this year the ACCC issued a discussion paper on number portability in the mobile telephony market, hoping to promote discussion on whether portability would promote the long-term

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interests of end-users in Australia. The paper argued that mobile number portability would promote further competition.

The ACCC drew on overseas experiences and recent Australian developments in the market. The paper says it is technically feasible to implement an integrated solution that would allow portability across different mobile services (such as GSM and CDMA) and, were mobile number portability to be implemented, it should be required across all mobile digital technologies.

Local number portability

In June the ACCC released a guide for comment on pricing principles for local number portability, indicating the principles it will apply if required to arbitrate a dispute over the terms and

conditions of local number portability between the carriers losing and the carriers receiving the customers.

The guide reflects a change in thinking by the ACCC. In April 1998 it said that most costs should be borne by the losing carrier and the receiving carrier would be responsible for any administrative costs. It now believes the receiving carrier should not be responsible for any costs.

Accounting separation

On 3 June 1999 the ACCC issued for comment a report on accounting separation rules for the industry. The report, prepared with help from Arthur Anderson, details a recommended reporting structure and key processes for capturing financial information from telecommunications firms. This

includes a comprehensive reporting process specifying the services which carriers may be required to report against, including the separate reporting of wholesale (internal and external) and retail services.

The proposed reporting and information rules will enable the ACCC to investigate anti-competitive behaviour, and determine appropriate access prices by generating detailed financial information for key retail and wholesale services.

Facilities Access Code

The ACCC's Facilities Access Code came into effect on 13 October 1999, the date the formal making of the code by the ACCC was notified in the Government Notices Gazette.

The code sets out how access to telecommunications facilities owned by telecommunications carriers, including mobile towers and underground ducts, is to be provided to other carriers seeking to install equipment at that site.

The code establishes conditions of access and standards of practice that carriers must adhere to in providing access to other carriers and will allow quicker and more efficient access. It has been developed following consultation with industry and the Australian Communications Authority.

Check the Telecommunications page of the ACCC website for more information about these decisions and more.

