

19 August 2003

Mr Arek Gulbenkoglu
Project Officer
Telecommunications Branch
Australian Competition and Consumer Commission
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Dear Mr Gulbenkoglu,

ACCC Draft Determination

Model Non-Price Terms and Conditions (the “Determination”)

This letter constitutes Primus Telecom’s response to the ACCC’s draft determination- model non-price terms and conditions issued June 2003.

Background

Primus has provided the ACCC with submissions directly relevant to the development of the model non-price terms and conditions;

1. by fax dated 25 September 2002 and addressed to Mr Michael Cosgrave, General Manager Telecommunications; and
2. by fax dated 7 February 2003 also addressed to Mr Michael Cosgrave.

Primus also provided the ACCC with a submission regarding the ACCC’s discussion paper, key performance indicators for non-price terms and conditions, by fax dated 20 May 2003 addressed to Mr Doug Campbell.

This letter is intended to compliment these previous submissions and comprises 2 parts:

1. Summary;
2. Comments on Principles– being Primus’ response to Part 2 of the Determination.

Where no comment is made Primus supports the Determination.

Primus has not provided comments regarding the drafting of the model non-price terms as they largely reflect the principles. However Primus would welcome the opportunity to comment on the model non-price terms when they are presented in their final form.

1. SUMMARY

In general Primus supports the ACCC’s draft standard non-price terms and conditions. Primus has some concerns regarding the provisions relating to access to information systems however these concerns remain the subject of ongoing bi-lateral negotiations. Otherwise Primus comments are more to seek clarification of the ACCC’s meaning than specific

suggestions for amendment. Upon receipt of such clarification Primus may wish to make further comment.

2. COMMENTS ON PRINCIPLES

A. Billing and Notifications

Does the commission intend that standard payment terms be 20 Business Days from rendering of an invoice? Primus considers that such a result to be appropriate.

B. Creditworthiness

No comments.

C. Liability (Risk Allocation) Provisions

Liability caps regarding property damage

Primus is confused about the ACCC's discussion on liability caps regarding property damage appearing at the bottom of page 21 of the Direction. Is it the ACCC's intention that the party causing property damage indemnifies the other party for direct and indirect (consequential) loss and damage for an unlimited amount?

The LCS and the customer service guarantee

Current legislation provides that the access seeker satisfy their CSG obligations to its customer before the access provider is required to reimburse the access seeker. This results in significant inefficiencies. (ie the access seeker must obtain information from the access provider regarding the access provider's CSG obligation, investigate to determine its own obligations to the end user, satisfy that obligation to the end user then make a claim to the access provider). The better situation would be for the access provider to provide, with the information regarding its obligation, payment in respect of that obligation.

D. General Dispute Resolution Procedures

No comment.

E. Confidentiality Provisions

The cost of an independent auditor may be prohibitive if borne by a single access seeker. What is the ACCC's view to access seekers sharing information between themselves and with the independent auditor and sharing the cost of the independent auditor?

F. Communications with End Users

What is the ACCC's view regarding contact with end users in the event of insolvency of the access seeker or termination or expiry of the supply of a service by the access provider to the access seeker? Primus considers that the access provider has no more right to contact the end-users than any other entity and certainly should not use confidential information to do so except in an Emergency.

G. Service Migration

No comment.

H. Suspension and Termination

No comment.

I. Faults and Maintenance

Provided the model terms state that the access provider must comply with those codes specified Primus makes no comment.

J. Ordering and Provisioning

Primus assumes that the references to provisions of ACIF C659:2001 *Unconditional Local Loop Services – Ordering, Provision and Customer Transfer*, are such that the principles alluded to are of general application to all of the core services and that the model terms will be drafted accordingly. If this is not the case Primus would appreciate the opportunity to comment further on this issue.

K. Access to information systems

Primus does not wish to make comment regarding the ACCC's non-price terms and conditions regarding IT systems. However Primus is concerned that the ACCC is aware of difficulties Primus is currently experiencing, and has been experiencing for some time, with existing information systems and proprietary inter-carrier interfaces. Primus is attempting to resolve its issues, primarily relating to system reliability and availability, disaster recovery activity and system content, in bi-lateral negotiations. Negotiations are progressing very slowly and Primus may wish to raise its issues with the ACCC, either independently or in conjunction with other carriage service providers, if negotiations appear stalled. If Primus considers an approach to the ACCC is warranted, at that time Primus is likely to reconsider the model non-price terms relating to access to information systems. Such approach may be to make requests for their amendment or enforcement.

3. COMMENTS ON DRAFTING

None at this time.

If you have any questions please do not hesitate to contact me on (03) 9923 3794 or 0429 478 467.

Yours sincerely,

James Blackmore
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Primus Telecom