

Australian Competition and Consumer Commission

Audit of Telecommunications Infrastructure Assets – Record Keeping Rules 2013

Reasons for decision 20 March 2013

Background

The Australian Competition and Consumer Commission (ACCC) administers the telecommunications specific access regime (Part XIC) and competition regime (Part XIB) of the *Competition and Consumer Act 2010* (CCA). Under s 151BU of the CCA, the ACCC can make record keeping rules requiring a carrier or carriage service provider to keep records, prepare reports and provide these reports to the ACCC.¹

The Audit of Telecommunications Infrastructure Assets Record Keeping Rules (Infrastructure RKR) were first issued in December 2007.

Since that time the Infrastructure RKR has become out of date due to changes in the industry so that the list of record keepers in part 1 of schedule 1 of the Infrastructure RKR is no longer accurate.

The ACCC issued a consultation paper in November 2012 proposing to amend the Infrastructure RKR to update the list of record keepers and broaden the scope of the Infrastructure RKR to include records of deployment and decommissioning of assets over the previous 12 month reporting period as well as identifying leased infrastructure and indefeasible rights of use. The ACCC received submissions from Telstra, Optus, Macquarie Telecom, SA Power Networks and NBN Co in response to the consultation paper.

¹ The records must contain information relevant to the ACCC's statutory functions. That is, the ACCC must not exercise its RKR powers unless the records contain, or will contain, information that is relevant to:

- determining compliance with the Competition Rule (s. 151AK of the CCA); or
- determining compliance with tariff filing directions; or
- the operation of Part XIB of the CCA (other than Division 6); or
- the operation of Part XIC of the CCA; or
- the operation of Part 9 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* which deals with regulation of Telstra's charges; or
- the operation of Division 3, Part 20 of the *Telecommunications Act 1997* which deals with the Rules of Conduct relating to dealings with international telecommunications operations.
- the operation of the *National Broadband Network Companies Act 2011* or regulations under that Act

Consideration of submissions

Telstra and Optus submitted that the ACCC's proposed broadening of the Infrastructure RKR requirements to include information relating to the deployment and decommissioning of infrastructure over the previous 12 month reporting period would require updates to their record systems that would be disproportionately burdensome.

In response to these submissions the ACCC has decided not to proceed with the draft amendments to broaden the scope of the information collected.

In relation to the update of record keepers Telstra submitted that it considers the entire list of carriers maintained by the Australia Communication and Media Authority (ACMA) for the implementation of the Universal Services Obligation (USO) Levy Scheme should be used as the basis for the Infrastructure RKR list. Telstra also submitted that the ACCC use its discretion in relation to entities not on the USO list to determine if an entity's infrastructure has considerable significance. The ACCC does not consider that the entire ACMA USO Levy Scheme list is appropriate as submitted by Telstra as the list includes entities which do not own significant CAN or Core infrastructure. However, the ACCC has added to the list several entities suggested by Telstra and by Macquarie Telecom. The ACCC has decided to amend the list of record keepers accordingly

Other proposed minor changes such as the identification of leased infrastructure were supported by Optus and Telstra. NBN Co submitted that the owner of the infrastructure should be the record keeper to provide the information on leased infrastructure. The ACCC considers that the identification of leased infrastructure or infrastructure operated on behalf of third parties will assist the ACCC to identify competition in infrastructure.