

Telecommunications Deregulation Anniversary Lunch – Primus (5 August)

- Telecommunications regulation has come a long way in the last year. The ACCC has made a number of landmark decisions, establishing the benchmarks for the competitive provision of long-distance and local calls in Australia.
- The ACCC's regulatory work will enable competition to deepen over the full range of voice and data services.
- Looking forward, an important challenge for the ACCC will be the determination of the terms and conditions of access. The ACCC's arbitration role is a vital one to ensure that access occurs on reasonable terms and conditions.
 - However, the ACCC will continue to encourage realistic commercial outcomes.
- Other challenges for the ACCC include:
 - promoting the expeditious implementation of the local loop decision; and
 - continued vigilance in monitoring and responding to anti-competitive conduct.
- The coming year will also bring increasing focus on the second generation of competition regulation including, importantly:
 - accounting separation rules; and
 - ensuring non-discriminatory access to network information, network provisioning and the like.
- Important decisions have also been made by the ACA, such as the fixed to mobile preselection decision, and by the Government, in setting new price caps for Telstra and in its recent amendments to the ACCC's telecommunications powers.
- The ACCC welcomes the recent Government amendments, which will allow greater flexibility in arbitrating access disputes, and in responding to anti-competitive conduct using the competition notice regime.
- The changes to the competition notice regime create two types of competition notice: Part A notices are a gatekeeper to actions under Part XIB of the Trade Practices Act. Part B notices set out the particulars of the alleged contravention, which are prima facie evidence in any proceedings under Part XIB.
 - The ACCC can also issue an advisory notice, advising the recipient of conduct it should consider taking to cease the anti-competitive conduct.
- Participants in the industry will now have to show even greater care in ensuring they do not misuse market power to lessen competition.
- Under the Trade Practices Act, the ACCC is required to issue Competition Notice Guidelines that it must have regard to when deciding whether to issue a competition notice.

- The ACCC issued its first Guidelines in mid-1997, with a supporting Information Paper that assist interested persons on the ACCC's approach to telecommunications investigations.
- The changes to the competition notice regime necessitate amendments to the Competition Notice Guidelines, which the ACCC is releasing today, along with amendments to the Information Paper.
- There should not be too many surprises in the changes, although importantly they set out the indicative timeframes the ACCC will follow when investigating a potential contravention of the telecommunications provisions of the Trade Practices Act.
- The Guidelines and Information Paper increase certainty about how the ACCC will investigate alleged contraventions of the Trade Practices Act, and the factors it will consider in deciding whether to issue a competition notice.
- What the guidelines and, particularly, the Information Paper do show is the importance the ACCC places on responding quickly to anti-competitive conduct in a rigorous manner that draws upon well-established competition law principles.