



Submission in Response to ACCC

Draft Rejection Telstra's PSTN and LCS Undertakings

September 2006

CCC Views

The CCC supports the Commission's decision to reject the Telstra undertakings in relation to the LCS and PSTN OT service.

The CCC is specifically concerned that the undertakings represent an attempt to introduce a profound shift in the competitive dynamics of the fixed line marketplace. The specific impact of the proposed change would be to disadvantage those competitors to Telstra that have invested most in alternative network infrastructure.

This shift would be effected by dramatically reducing prices to those reselling Telstra local calls, which requires minimal network investment, while dramatically increasing prices for those competitors who have invested most and require access to interconnection services.

This issue is of even greater concern in the light of the Commission's view that the proposed LCS price is below cost while the PSTN OT prices are significantly above costs. If these undertakings were accepted, it could be expected that Telstra would in the future propose LCS prices that were higher, arguing that it was merely recovering costs.

The CCC believes that such a change would send a signal to the market that the Commission had reversed its views on the need to encourage facilities based competition, and its preference for cost-based pricing of access services for those access seekers who have progressed furthest along the investment "stepping stones". Both of these have been the foundation of the Commission's approach to promoting competition to in turn promote the long term interest of end users.

It is clear, however, that the Commission has not changed its views on these issues, and in these circumstances, it could not accept the Telstra undertakings.

Further issues that the CCC believes support the decision to reject the undertakings include:

- The unreasonableness of the PIE II model. The CCC has commissioned and submitted analysis that comprehensively demonstrates that the PIE II model is unreliable.
- The WACC proposed by Telstra. The Commission has received analysis from Prof Hathaway that clearly demonstrates that the WACC proposed by Telstra in the undertakings is inflated and unacceptable.
- The packaging of LCS and PSTN OT prices. Telstra does not appear to have offered any independent pricing of the LCS and WLR services.

The CCC also believes that the methodology that Telstra has used to calculate retail minus costs is inconsistent with the practice used to establish the model prices in 2003. The CCC has commissioned and submitted separate analysis on this issue from Frontier

Economics, in relation to the Commission's 2006 draft indicative prices for WLR and LCS.

It is notable that these undertakings as submitted do not address several concerns that have repeatedly been brought to Telstra's attention by the Commission. These include the continued failure of Telstra to make adjustments to its PIE II model to allow for greater transparency, despite being told by the Commission that this change is incumbent on Telstra if it expects the Commission to be able to accept its proposed prices.

The fact that Telstra continues to bring forward undertakings that contain elements previously identified by the Commission as being unacceptable leads the CCC to conclude that Telstra is not serious in its use of the undertakings process. The CCC has made several submissions to the Commission in the past regarding Telstra's blatant gaming of the undertakings regime in order to delay and create uncertainty. This is further evidence that the undertakings arrangements are inadequate in the current form.

If Telstra was serious about presenting undertakings that had a reasonable likelihood of being accepted by the Commission, it would make changes to its approach that reflected the reasons previous undertakings had not been accepted.

But this is not the case. Telstra continues to present undertakings that are based on reasoning or modeling that it has been told will not meet the Commission's statutory tests.

The CCC can only conclude that this represents systematic and deliberate gaming of the regulatory process by Telstra. The Commission has previously expressed its dissatisfaction with this practice from Telstra and the CCC urges the Commission to repeat those concerns in its final decision on these undertakings.

Contact

David Forman
Executive Director
Competitive Carriers' Coalition