

Competitive Carriers' Coalition

15 March 2003

Mr Chris Pattas
Senior Director
Australian Competition and Consumer Commission
GPO Box 520J
Melbourne VIC 3000

Dear Mr Pattas

Telstra Undertakings – PSTN OA, ULLS and LCS Services dated November 2003

Competitive Carriers' Coalition (CCC) Submission

The CCC, comprising PowerTel, Primus Telecom, Macquarie Corporate Telecommunications and Comindico makes this submission to the ACCC's public consultation process into whether it should reject Telstra's undertakings dated November 2003.

Background

On 29 July 2003, the CCC provided the Commission with an extensive submission on Telstra's January 2003 undertakings. That submission argued that the Commission should reject Telstra's undertakings.

Since that time the Commission determined its indicative pricing for "core" services comprising PSTN OA, ULLS and LCS. Subsequent to the Commission making that determination Telstra withdrew its January 2003 undertakings and in November 2003, replaced them with new undertakings. The new undertakings essentially replace the prices in the January undertakings with those determined by the Commission in its indicative pricing. Further, in December 2003 the Commission released a paper "Assessment of Telstra's core services undertakings – preliminary view" in which the Commission indicated that it is likely to accept the November 2003 undertakings.

The CCC is of the view that nothing in Telstra's November 2003 undertakings alters or assuages the concerns the CCC expressed in its submission to the January 2003 undertakings. Therefore the CCC resubmits to this inquiry the submission it made to the Commission's inquiry into the January 2003 undertakings. That submission is attached.

The CCC also makes the following comments in addition to those included in the attached submissions.

Undertakings have not led to desired outcomes

Market impact must be a core consideration of the acceptability of undertakings. The reality is that these prices are being presented as non-negotiable in the market. Undertakings prices, as distinct from indicative prices, must be considered with a full appreciation of the impact upon “commercial negotiations”. Present outcomes are contrary to government’s policy objective that recent legislative changes relating to undertakings, indicative pricing and arbitrations, would encourage commercial negotiation. More than ever access seekers are in a “take it or leave it” position with respect to Telstra’s pricing for core services.

Inquiry process is flawed and lacks transparency

In addition the CCC has major concerns about the process the Commission has adopted in assessing the undertakings and has raised those concerns with the Commission over the last several months. The CCC considers that these concerns are relevant to the acceptance or rejection of the undertakings and therefore copies of that correspondence are attached as part of the submission to this inquiry.

It is also not clear to the CCC that in its paper, “Assessment of Telstra’s core services undertakings – preliminary view” the Commission took into account the concerns raised by the CCC in its submission to the January 2003 undertakings. In the past whenever the Commission has conducted an inquiry and called for submissions it has been customary for the Commission to address issues raised by submitters when it released any draft, preliminary or final decisions. This has provided the necessary transparency for an open and fully informed inquiry, kept interested parties appropriately informed of the Commission’s reasoning, stimulated debate of critical issues and afforded parties the opportunity to make further submissions on issues that the Commission consider important as a result of its analysis of submitters views. The CCC believes that this transparency is lacking in the Commission’s paper and raises doubts as to what consideration, if any, was given to the CCC’s submission.

For example the CCC raised serious concerns about Telstra’s PIE 2 model in its submission to the January 2003 undertakings. However whilst these concerns appear to be supported by the Commission in its preliminary view paper (the Commission appears to reject many of Telstra’s supporting arguments and modelling) it accepts the price outcomes from this modelling. The paper does not explain the Commission’s reasoning or logic behind this thinking. The CCC submits that it is inappropriate to accept undertakings that propose prices which are unsupported by the underlying cost analysis.

The CCC holds the strong view that the ACCC must commission the development of an independent, unbiased model, to objectively and transparently assess the relevant costs associated with Telstra’s network.

The CCC also argued in its first submission that industry cannot be expected to incur ongoing expense in evaluating a succession of unreasonable undertakings.

Anticipating that Telstra would exploit the undertakings process, the CCC argued that in the event Telstra submitted revised undertakings, the form of those revised undertakings must be such that it makes clear where revisions and/or variations have been made to the original undertakings, and how those revisions and/or variations address concerns or reasons why the original undertakings were either rejected or withdrawn.

This clearly has not happened and the November undertakings do not identify variations to the January undertakings.

Telstra's recent pricing of DSL services

Also the recent issue over Telstra's pricing of DSL services and the Commission's subsequent and current investigation into whether Telstra has breached the Trade Practices Act is highly relevant to the undertakings. Telstra's retail price of \$29.95 for an "entry level" broadband service makes a non sense of Telstra's ULLS undertaking price. Clearly this is an unsustainable proposition and calls seriously into question Telstra's undertakings and the underlying cost basis supporting them.

The CCC may wish to make further submissions to the undertakings once an outcome to this issue is known. We would also strongly urge the Commission to extend the undertakings inquiry until this issue is resolved.

The CCC would be pleased to discuss its submission with the Commission should it wish to do so.

Yours sincerely

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(On behalf of the CCC)

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