



Introduction

The CCC welcomes the opportunity to comment on the appropriateness of the exemptions to regulation of fixed line services in certain exchange areas.

The CCC has, on behalf of its members, been strongly critical of the reasoning of the Commission in implementing these exemptions. The CCC is strongly of the view that the Commission should take this opportunity to remove these exemptions at the earliest available opportunity. The CCC understands that the Commission has been advised by competitors as to the serious harm caused to their interests by Telstra's ability to use the exemptions to increase prices above the Commission's determinations for services that competitors have no choice but to acquire.

The Evidence Is In; Exemptions Harming Competitions

The CCC is strongly of the view that

- Telstra remains the dominant supplier of resale services in all markets relevant to this inquiry;
- there is a market for fixed line voice only;
- competition for fixed line services (or resale services) is not effective in any geographic area, and
- there is no realistic prospect of new sources of fixed line voice services emerging which would have any material impact on Telstra's market power in the supply of resale services.

The most unequivocal evidence of this is that Telstra is able to currently charge in excess of \$31 per month for the WLR service in exempt geographic areas compared to the Commission determined price of \$22.84 per month in non-exempt areas, and that access seekers have no practical choice but to pay.

Further, the CCC submits that Telstra retains this market power in an environment where the transition to the NBN creates a powerful incentive for it to exploit its market power. It is clear that Telstra has a strategy to retain its fixed line customer base with a view to migrating customers to the NBN and at the same time weaken the position of competing retail service providers.

CCC's Concern at the Commission's Shifting Rationale for Exemptions

The CCC is concerned that there has been a continual shifting of the goal posts by the Commission as to the intentions of the exemptions and the conditions that would justify them. Access seekers find themselves providing comprehensive evidence that goes to the rationale for the Commission to

implement exemptions, only to find that the Commission chooses to overlook this evidence and continues its determined path to implement exemptions based on different reasoning. The preliminary views of the Commission as described in the discussion paper indicate that this process of rationalisation has taken yet another step.

When the Commission first discussed exempting regulated wholesale voice services in some geographic locations it did so because it believed that the deployment of DSLAMs by competitors in some locations meant that there were alternative sources of wholesale voice services.

Competitors demonstrated that there was no such alternative source of wholesale supply because competitors' equipment was not capable of providing voice services without significant new investment, and because competitors did not want to become wholesalers as well as retailers. Despite this, the Commission decided to continue with its proposed exemptions on the basis that this would force access seekers to invest. This was based on the proposition that there was a business case for investing in voice capability that access seekers were ignoring.

Not only was this a profound departure from the regulatory principles underpinning the ladder of investment theory that the Commission purported to be using as its guide. The ladder of investment theory assumes that competitive investment by entrants will see them progressing "up" to the point where investment is no longer efficient. Responding to competitors' decisions to not invest further by seek to remove the ladder to which they have progressed in order to push them to invest further is fundamentally wrong headed in that it assumed that commercial businesses needed to be forced by regulation to act in their own commercial interests.

Unsurprisingly, the investment in voice capability to provide alternative wholesale voice services has not occurred, as conceded in the discussion paper. Nor has the Commission been able to identify that there has been investment by access seekers even for self-supply of voice services. Again, this is no surprise. Firstly, as discussed above, the underlying economics do not support a business case for this investment, and secondly, why would anyone invest in copper infrastructure when industry is moving to the NBN even if a business case could be made out?

The CCC considers that it can be conceded by the Commission that the outcome of the exemptions has comprehensively failed to meet the objectives. While the ACCC is entitled to have new objectives on which it can rely to maintain and potentially extend exemptions, the objective of stimulating investment by access seekers for self-supply only is, like the objective of stimulating alternative sources of wholesale voice services, doomed to fail. The Commission had conceded that self-supply of voice services has not occurred. In addition, the CCC understands that the Commission has been provided previously with business case analysis from access seekers demonstrating that there is no economic case for investment for self-supply. Accordingly it is a source of great frustration and disquiet to access seekers to see inclusion of yet another expectation of the exemptions that will not be realised as part of the Commission's preliminary views.

The CCC submits that the Commission has moved so far from its original arguments in favour of exemptions that it is now in a position that is a small step from arguing that there should be no regulated access to voice services at all, on the basis that their absence would force prospective competitors to invest for the purpose of self-supply whether they had identified a business case or not. We submit that this would be a bizarre outcome. If the Commission continues down this path, competitors will have no choice but to conclude that the Commission has been guided by ideology all along and not empirical evidence about the state of competition, in what can only be perceived as a blindly determined campaign to implement exemptions over the past five years.

Investment Case Non-Existent

Given the above, the CCC feels it necessary to re-iterate that the position of its member companies about the economics of investing in voice capabilities to provide an alternative to the Telstra regulated WLR, PSTA OA and LCS services has been consistent since the Commission first proposed making exemptions in some geographic locations.

CCC members continue to report that they do not plan to make these investments because; retail

margins are too low, the alternative service would be unable to provide a substitute to the Telstra service because of the different supply conditions and availability pertaining to the underlying ULLS, and, the uncertainty caused by both the potential for exchanges to become capped and the transition to the NBN makes payback too unpredictable.

Exemptions should be removed

The CCC submits that the evidence of prices for fixed line services being inflated above the Commission's estimate of efficient costs in the exempt exchange locations, combined with the risks raised by allowing Telstra to exercise its market power in this way during this crucial period for competition, is argument enough that the Commission should immediately vary the fixed line FADs to remove the exemptions.

It must also be noted that Telstra has proposed that it will not include services delivered in the exempt exchange areas in its proposed wholesale services price list under its structural separation undertaking. The CCC submits that this has the effect of making a mockery of the notion that the SSU can meet the Government's requirement that it deliver equivalence between Telstra Retail and access seekers relying on access to the Telstra bottleneck assets to deliver services to consumers.

Therefore, it is clear that the longer the Commission delays before accepting the reality that the exemptions have been a failed regulatory experiment, the greater the risk that irreversible harm is done to competition and to the LTIE.

Contact

The CCC would be pleased to discuss any of the issues in this submission further if the Commission should wish.

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