

Extract from email of 1 November from Simon Hackett to ACCC - subject: Telstra's Discussion Paper and ACCC Framing Paper

Part One: A case study in the challenges of 'equivalence' - and the subtle capacity of Telstra to be non-equivalent by simply refusing to do paid work for a wholesale customer

I will start this response with a specific example of how subtle the notion of 'equivalence' can be - and how equivalence can (in my view) be denied to a wholesale customer by simply opting not to be paid by that wholesale customer to perform some (reasonably requested) work, where the work is identical to work that Telstra does for its own retail division on a routine basis.

The example relates to a key difference between delivery of a new ULLS service and delivery of a new voice line rental service (retail or WLR), to a premise in which there is not an existing end to end connection to the endpoint required by the end user concerned.

For a Telstra voice service (including WLR), Telstra network staff will connect and test a copper circuit end-to-end, all the way past the customer MDF or network boundary point, and through to the 'first socket'. In addition, the Telstra staff member (for a Telstra retail request) will perform further and additional 'time and materials' wiring services for the end user as a part of the same physical site visit.

However, in the case of a ULLS installation, Telstra 'work to rule' (in strict accordance with the ULLS service description), such that Telstra network staff will walk away once the copper line is established up to (but not beyond) the MDF (possibly in a different floor or area of a multi-tenanted complex), or up to (but not beyond) the external network boundary point in a home. This leaves the wholesale acquirer with additional costs and additional (non-equivalent) customer end to end installation time (to the practical outcome of a working end to end service), and with further inconvenience issues (a second truck roll being required), in order to bring the ULLS service to where the end user actually wants it and to commission it to the point where the practical outcome is the one that the end user requires.

The Telstra SSU information session provided by Telstra Wholesale made it clear (in the supplied presentation and in discussion afterward) that there was no direct barrier in principle to the network division of Telstra having their staff perform additional 'time and materials' work for a wholesale customer at their request (or at the end users request), however there was no compulsion in the SSU that required them to do this.

i.e. nothing forces Telstra to do this extra work - that being extra work that (a) generates equivalency of outcome for ULLS vs, say, WLR), and (b) generates a better capacity for a wholesale competitor to offer equivalent outcomes in terms of what a customer wants (total installation time, and total number of on-site truck rolls to deliver a working service to the *end user* nominated service delivery point).

It is important to note that this issue (constructive refusal by Telstra to be paid to do work useful to a wholesale customer, and that is routinely performed for Telstra Retail customers) is not new, and it is not theoretical.

Subsequent to the SSU information session, I have confirmed specifically (via a question to the managing director of Telstra Wholesale that was answered in turn on his behalf by his

staff) that Telstra Wholesale specifically decline to do this additional work (and to be paid for it), today, and that this refusal is not something that they wish to reconsider.

In other words, this refusal to be paid to perform profitable work at a time convenient to both our end users and to us is something Telstra *do* refuse to do, today. There is no reason to expect any change in this outcome 'post SSU' unless the SSU itself requires that this behaviour is changed (to make it equivalent in a sense that the end user would see as equivalent).

Absent of an equivalency requirement in the SSU that is framed in terms of installation times needing to be for the delivery of a working end to end service delivered to a location that suits the end user (in effect 'to the first socket', not 'to the MDF/NBP'), Telstra will continue to exploit this opportunity to simply refuse profitable, routine, work, because the refusal advantages Telstra Retail, and for no other rational reason.

This is a subtle issue, and one that I believe merits examination in the following contexts:

- That the SSU should require treatment of situations of this sort, such that Telstra must not refuse to perform routine time and materials customer-site wiring work as an adjunct to the installation of any wholesale service, where such work *is* routinely offered or performed on behalf of a Telstra Retail end user for a comparable installation process (in this context, ULLS is reasonably comparable to a WLR installation).
- That while this issue can be made worse due to current potential for Telstra management staff to have 'a leg in both camps', the reality is that (absent of being required to do so), we expect Telstra Wholesale staff to continue their historical refusal to do such additional paid and profitable work because they are simply 'true believers' (i.e. on their own initiative) - as befits their status as employees (ultimately) of Telstra Limited (the single, un-separated entity).

In other words, management authority separation won't fix this, because this real, ongoing example shows that the incentive to make a profit in the process of providing a service is not sufficient motivation for Telstra Wholesale to ask a Telstra Networks staff member to do such work, even though the same staff member routinely does this work for a Retail customer installation.

In effect, the need here is to address a demonstrated history of Telstra being prepared to refuse to offer a technical service (that earns a profit for its shareholders) because (presumably) its staff hold the view that this refusal to be paid to do work that directly generates increased shareholder income and profit is sufficiently offset by the indirect benefits of disadvantaging a competitor.

It is important to note that, far from being silent on this issue, the SSU as currently lodged by Telstra specifically enshrines this discrimination explicitly. It states that additional wiring work (and even further I.T. work beyond merely wiring) will be offered by Telstra on-site staff routinely during a Retail installation, but will not be required to be offered (in demonstrated effect, will *never* be offered) to a wholesale based installation.

Accordingly I propose that equivalency provisions in the SSU must take this form of 'constructive refusal' to provide a paid on-site services to a wholesale customer for their end

user into account, and (in accordance with a table of comparable service offerings), such additional work *must* be offered to wholesale customers where they request it, at reasonable time and materials rates, equivalently to the outcome where the end user is a customer of Telstra Retail.

In this context, it seems fair and reasonable to equate the performance requirements in practical terms (for additional on-site wiring work, for installation time commitments, and for fault management) to be equivalent between:

- a) ULLS and Telstra voice services installations
- b) LSS and Telstra ADSL2+ retail services installations