

Fixed Services Review

Australian Competition and Consumer Commission's second position paper Submission by Internode

Internode appreciates the opportunity to comment on the Commission's framework for reviewing existing service declarations and the relevant principles in applying forward-looking regulation of fixed line services. Internode agrees with the principle that *ex ante* regulation should focus on enduring bottlenecks in fixed line networks as the lessening of regulation in such areas would quickly remove the benefits that end-users in downstream markets are experiencing as a result of competition.

Even though there has been growth in facilities-based and quasi facilities-based competition in fixed services, the relative level of competition remains insufficient to argue that the competitive stranglehold of bottlenecks have been removed or even particularly diminished. In such market circumstances, it remains an imperative for the Commission to ensure that a robust regulatory environment exists to encourage investment via strong competition. Internode submits that the Commission should be very cautious if it is at all inclined to withdraw *ex ante* regulation and to not redeclare any currently declared fixed services.

The Commission's stated principle, that where it is economically efficient, facilities-based competition is more likely to promote the long-term interests of the end-user (LTIE), is sound. The clear problem is that the considerable capital investment required to install a competing fixed network has to date put such a rollout beyond the reach of the industry. Though Optus, TransACT and Neighbourhood Cable operate fixed networks that compete with Telstra, each is geographically limited. It is also reasonable to say that even in the areas where these networks do operate, the current levels of competition would not exist without regulation under Part XIC of the *Trade Practices Act*.

There are over 4 million broadband subscribers in Australia. Based on a recent report from Gibson Quai – AAS Consulting^[1], this can be broken down amongst the following platforms:

- xDSL – 80%
- Cable – 16.2%
- Satellite – 0.7%
- Wireless – 3%
- Other – 0.03%

Though Gibson Quai – AAS Consulting considers that wireless broadband use will increase, its forecast through to 2011 is that xDSL will continue to grow and remain the dominant broadband technology. Gibson Quai – AAS Consulting forecasts that cable broadband numbers will remain stable over this period. The implication of this is that Telstra's CAN will remain as the primary means for internet access in the foreseeable future. Without regulated access to Telstra's services, even in areas where there is full-facilities based competition, access seekers would face considerable competitive difficulties and most likely be pushed out of the market. For example, Optus has refused to provide wholesale access to its HFC network. Just because alternative delivery methods exist does not necessarily mean that

^[1] <http://www.gqaas.com.au/documents/IndustryBriefingJuly2007TelcoMarketOutlook.pdf>

there is a sufficient level of competition to encourage diverse service providers and promote the LTIE through lower prices and better service. When there are such obstacles to access, a duopoly is little better than a monopoly.

Canberra is a good example of a geographic location where there is extensive full facilities-based competition with TransACT directly competing with Telstra on a network facilities basis, but nonetheless, without *ex ante* regulation of the LSS, access seekers such as Internode would not be able to provide competitive services at all. Access to infrastructure on reasonable terms remains paramount in encouraging new entrants, increasing efficiency and improving competitive conditions. In the foreseeable future, fair access to fixed service networks will not occur unless they are subject to regulation. The removal of regulation, whether in geographic areas such as exchange service areas or at a national level in relation to particular services will in both the short and long term diminish competition, reduce effective use of infrastructure and push up prices, all at the detriment to the LTIE and the industry in general.

Removal of current service declarations, particularly in regards to the ULLS and LSS will damage the legitimate interests of access seekers, ultimately resulting in their DSLAM infrastructure being stranded in the likely event that Telstra denies continued access to Telstra services on any terms, let alone reasonable terms. It would not be productive to remove such support to the stepping stone approach to competition that the Commission has to date endorsed before access seekers are in a position to migrate to full facilities-based competition. It remains too early in this process for access seekers to undertake such investment as many remain fledgling businesses without the capital or backing required for large scale infrastructure builds. If regulated access is withdrawn from exchanges or areas where access seekers have installed equipment, their investments to date would be wasted. Similarly, without regulated re-sale new entrants will never be in a position to even start competing with the incumbent operator. Mandated access at deeper levels of the network is absolutely critical to ensure the continuation of competition. This issue will become increasingly vital if and when there is a widespread FTTN rollout, emphasising the need for the Commission's regulatory framework to be sufficiently flexible to allow for emerging technologies that have the potential to have massive competitive impact.

The large number of access disputes currently before the Commission gives a clear indication of Telstra's unwillingness to negotiate reasonable terms of access with its competitors. The outcomes of these access disputes have already given a clear indication of the Commission's views regarding the reasonableness of the terms that Telstra is willing to agree to by commercial negotiation. This is no surprise, as a privately owned incumbent which controls the vast majority of network facilities, whether fixed or mobile and legacy or emerging technology, Telstra wants to maintain and grow its already dominant market share. It is not in Telstra's interests to allow competitors to access its services at prices or terms that will allow them to compete on their merits and by differentiation of services provided to end-users. Though taking an even larger market share through bundled retail pricing and the use of aggressive techniques to diminish competition may please Telstra shareholders, it has the potential to halt progress in the telecommunications industry and is detrimental to the LTIE as Telstra will have little incentive to improve the services it offers. Telstra's unfavourable attitude towards the concept of competition is frequently demonstrated by the outspoken public stance it has taken in the media. Two recent examples are Telstra's attacks against the jurisdiction of the Commission and its current High Court proceedings. In

the face of Telstra's obvious distaste for competition and the benefits that it brings to the Australian community, it would appear that the Commission should be concentrating on ways to enhance regulation of fixed services rather than ways in which to withdraw current regulation. Australia's telecommunications industry requires a robust and progressive regulatory environment if competition in the provision of fixed services is to survive. The current degree of competition in the fixed services market reflects the Commission's work to date. Winding back the regulatory framework before there is a level of market maturity that can ensure the survival of competition in fixed services would be a retrograde step.

Internode
30 July 2007