

TELSTRA SUBMISSION ON IMPLEMENTATION OF ACCC GSM PRICING PRINCIPLES - 29 AUGUST 2001

Introduction

This submission responds to the Commission's letter of 15 August 2001 seeking Telstra's views on the proposed implementation of the Commission's GSM pricing principles.

Telstra notes and welcomes the Commission's conclusion that a light-handed approach to regulating mobile termination charges is appropriate. While Telstra continues to view the CPI-X approach, as detailed in Telstra's various submissions, as superior to that proposed by the Commission, Telstra will assist the Commission in the implementation of its preferred retail benchmarking approach.

Within the framework of the retail benchmarking approach, however, Telstra remains concerned to ensure that implementation is effected in an administratively efficient and commercially appropriate manner. In particular, Telstra believes that implementation must be effected in such a way that there remain incentives for parties to reach commercially negotiated outcomes, with the Commission's intervention only occurring in the limited circumstances where commercial negotiation fails. Accordingly, as submitted below, Telstra is urging the Commission to implement its pricing principles in as pragmatic and simplified a manner as possible so that the retail benchmark approach will assist rather than impede commercial negotiations.

As a final introductory comment Telstra also asks that the Commission have regard to the overarching legislative intent for telecommunications regulating expressed in section 4 of the *Telecommunications Act 1997* that regulation:

- (a) promote the greatest practicable use of industry self-regulation; and
- (b) does not impose undue financial and administrative burdens on participants in the telecommunications industry.

Response to Commission's list of issues

1 Is 1 July 2001 considered an appropriate date from which the lowest price should be taken? If not, what would be a preferred date and why?

- 1.1 Telstra has no difficulty with the Commission setting 1 July 2001 as the initial "starting point" for GSM termination charges, if the starting price is to be set only once. However, it is Telstra's view that the lowest agreed access price of 24.5 cents per minute should apply for the period 1 July 2001 - 31 December 2001, with no retail price reduction adjustment applied. For subsequent periods adjusted prices would apply. For example, for the period 1 January 2002 to 30 June 2002 the fixed-to-mobile GSM termination charge would be 24.5 cents per minute (or whatever rate is finally determined as the lowest agreed access price at 1 July 2001) less the appropriated change in GSM retail prices. In Telstra's view, such an approach would promote commercial negotiations in the current period as it would not require the Commission to refine and implement an appropriate methodology for the initial period, but would provide time to develop this methodology for implementation in the subsequent period.
- 1.2 Telstra notes that commercial negotiations are presently being disrupted because of anticipation that the first adjustment under the Commission's Final Principles will be retrospective from 1 July 2001. In Telstra's submission the regime can be made more proactive and supportive of commercial negotiations if the first adjustment applies from 1

January 2002 as suggested above in paragraph 1.1. Telstra also submits that the sooner the first adjustment is published (to take effect from 1 January 2002), the sooner commercial negotiations will resume.

2 Under a period-on-period approach is it considered appropriate that the starting price for any potential access disputes notified in the future should be the most recent access price agreed between the access seeker and the access provider? If not, what should the starting price be and why?

- 2.1 It is Telstra's view that the starting price for any potential access disputes notified in the future should be the Commission's assessed "starting point" (24.5 cents per minute) adjusted cumulatively each six months (consistent with Telstra's preferred approach to calculating retail price reductions – see paragraph 10 below). In Telstra's view, this approach will provide the most appropriate incentives for commercial negotiation and will minimise arbitrations. If access seekers can obtain a rate equal to the most recent price agreed between any access seeker and access provider, then access providers will have little incentive to negotiate commercially below the maximum rate they could obtain under the Commission's proposed approach. That is, access providers would have little incentive to negotiate a termination rate below 24.5 cents per minute as this rate could then become available to any access seeker that lodges an arbitration with the Commission. Further, if any lower rate is commercially negotiated then other access seekers that become aware of this lower rate are likely to lodge arbitrations with the Commission to also obtain the lower rate that was commercially negotiated with a particular access seeker.
- 2.2 While parties may choose to link commercially agreed rates to the index published by the Commission, this should be left to commercial negotiation which will include other considerations (eg, trade-offs against other business, term and volume commitments, etc).
- 2.3 In Telstra's submission, the Commission ought be seeking to implement an approach which emphasises simplicity and transparency so as to encourage commercial negotiation. These objectives are not achieved with a period-on-period approach or where the Commission's cumulatively adjusted starting point price is superimposed on the most recent access price agreed between the access seeker and the access provider. By adopting a cumulative approach to the Commission's assessed lowest price there will be transparency of information in the marketplace which would encourage negotiation between the parties and the making of commercial agreements. Telstra considers that superimposing adjustments on the most recently agreed access price would over-complicate the calculation and limit transparency.

3 Is a six monthly basis considered an appropriate timeframe for determining retail price movements and in particular the calendar six-month periods 1 January to 30 June and 1 July to 31 December? Will mobile carriers who do not report on the traditional financial year basis of 1 July to 30 June, such as Cable & Wireless Optus and Vodafone, be able to provide information over these timeframes? If not, what would be a preferred basis and why.

- 3.1 Telstra agrees that a 6 monthly basis is an appropriate timeframe for determining retail price movements and that the calendar 6 month periods 1 January to 30 June and 1 July to 31 December are appropriate.
- 3.2 Telstra does not consider that it will have any difficulty in providing information over these timeframes, which are, in general, in keeping with standard commercial practices and financial and accounting information and record-keeping required generally.

4 Is a yield methodology considered to be an appropriate methodology for calculating retail price movements? If not, is a “retail basket” type approach similar to that adopted by the CRU likely to be a more appropriate methodology, and if so, why? Is there another, more appropriate, approach not detailed by the Commission and if so, what is that approach?

4.1 As noted above, Telstra has previously submitted to the Commission that a CPI – X approach be adopted, however this suggestion was not implemented by the Commission. Telstra considers that, as an alternative approach, a retail yield methodology is satisfactory for calculating retail price movements. Telstra does not consider that a retail basket type approach should be adopted. Telstra’s experience with the CRU’s retail basket approach is that it is burdensome on reporting carriers and its implementation is overly complicated. This would be inconsistent with the Commission’s stated objectives of encouraging commercial negotiation.

5 Under the yield methodology is a revenue per minute approach considered to be an appropriate proxy for average price? If not, is a revenue per subscriber approach considered to be a more appropriate proxy and if so why?

5.1 Telstra considers that a revenue per minute approach provides a satisfactory proxy for average price.

6 The Commission’s preliminary views as to the services which should and should not be included in the revenue calculations and minutes of use are outlined above. Are the proposed services for inclusion in the revenue calculations and minutes of use considered appropriate? If not, why not and what would be the preferred approach.

6.1 Telstra generally agrees with the Commission’s view as to the services which should and should not be included in revenue calculations and minutes of use. The object of the index is to provide an accurate gauge of retail activity and accordingly Telstra considers that wholesale revenue and also reseller revenue should be excluded.

6.2 Telstra agrees with the inclusion of the following services in the revenue calculations and minutes of use:

Retail

- outgoing GSM call revenue;
- subscription/access fees
- handset charges;
- connection fees;
- data services and value added services including SMS messaging and voice mail.

7 Is it considered appropriate to include revenue from the resale of mobile services in the revenue calculations?

7.1 Telstra does not currently resell GSM but does not consider that the inclusion of revenue from the resale of mobile services will assist the Commission. Retail yields are likely to be significantly higher than resale yields so that changes in measured overall yield may then reflect changes in mix of business (eg, win/loss of reseller) and not retail market

changes. Further, the reseller of the service sets the retail price, not the access provider, hence inclusion of resale revenues would not provide an accurate guide to an access provider's retail price movements. In any case, resale revenues are more appropriately categorised as wholesale revenues and will not provide an accurate guide to retail price movements.

8 Are there any difficulties which mobile carriers can envisage in providing the Commission with the revenue information outlined above? In particular, can mobile carriers provide a revenue figure for SMS and another revenue figure that incorporates:

- outgoing call;
- access fee;
- handset charges (if any);
- connection fees (if any); and
- voicemail charges.

8.1 Telstra expects to be able to provide the Commission with the revenue information requested.

9 Are there any difficulties which mobile carriers can envisage in providing the Commission with minutes of use information outlined above (including the number of SMS messages) or with subscriber numbers?

9.1 Telstra expects to be able to provide the Commission with minutes of use information requested.

10 Is a period-on-period approach considered to be appropriate for determining retail price movements? If not, is a cumulative approach considered to be more appropriate and if so why?

10.1 Telstra considers that a cumulative approach is a more appropriate method for determining retail price movements than a period-on-period approach. Telstra believes that a cumulative approach is both simpler and more likely to provide an incentive to carriers to reach commercial resolution than a period-on-period approach. Telstra understands that a cumulative approach involves a glide path for prices taken over all subsequent periods. This will avoid any incentive for parties to lodge arbitrations every six months in order to obtain lower termination charges and will provide greater incentive for access providers to commercially negotiate termination charges.

10.2 One question absent from the list of issues provided by the Commission is how the published index of retail market changes should be presented. It is Telstra's understanding that a single composite weighted average index for the industry will be constructed, both for calculating the index that will be used to determine the GSM termination charge and for disclosure purposes. Telstra seeks clarification from the Commission that this is in fact the approach that will be adopted in arbitrations.

10.3 Telstra submits that a single index approach is preferable, for the following reasons:

- there is only one index rather than three indices;

- no individual carrier's weighting is likely to dominate the index
- no individual carrier is identified in the published index
- weights are automatically supplied in reported revenues or minutes
- there is an unambiguous regulatory ceiling for termination rates

10.4 As an alternative, the Commission may consider individual carrier indices, however such an approach suffers from the following disadvantages:

- it becomes complex as the initial 24.5 cents per minute will diverge between carriers;
- it may involve disclosure of commercially sensitive material;
- it rewards carriers who do not reduce retail prices as fast as others;
- it punishes carriers who reduce retail prices;

10.5 In Telstra's submission, in keeping with the Commission's preferred light-handed approach and in the long-term interests of both users and market participants, the weighted average single index approach should be adopted.

11 Should retail price movements in the context of the retail benchmarking approach, be adjusted to take into account changes in quality and if so, why? If so, carriers are requested to outline how they would propose to measure such changes in quality and incorporate them into the retail benchmarking approach.

11.1 Telstra is concerned that any proposed adjustment for quality may be ineffective in practice due to difficulties in measurement and complexity in calculation. In the context of a two-year regime Telstra does not consider that the development work required to pursue this quantitative process is justified. Nevertheless, Telstra is willing to consider further detail in relation to such adjustments if considered of benefit by the Commission.

12 Should the information required for implementation of the retail benchmarking approach be sought under voluntary provision or required under a record-keeping rule? Why? Is there another, more appropriate, mechanism for collection of this information.

12.1 Telstra believes that it will be able to provide the Commission with the information required for implementation of the retail benchmarking approach on a voluntary basis. Telstra notes that it already provides the Commission with substantial information of a similar nature to that which would be required. Telstra believes that it will be able to supplement the information already provided with voluntary additional information.

12.2 Telstra acknowledges and welcomes the Commission's comment that compliance costs associated with providing the information should be minimised. In Telstra's submission imposing a uniform reporting format, for example by making a record keeping rule, will increase compliance costs as not all carriers will find it equally convenient to provide identical information. Telstra suggests that rather than imposing a template of information to be provided by all carriers, the Commission ask carriers to voluntarily provide information. A comparison of the information each period will achieve the Commission's goal of accurately measuring the change in retail activity, so long as there is consistency across reporting periods of the information being compared. If the

voluntary approach fails then the Commission should consider other options such as specific record keeping rules.

- 12.3 In this regard, Telstra again reminds the Commission of the overarching legislative intent expressed in section 4 of the *Telecommunications Act* that regulation not impose undue financial and administrative burdens on participants in the telecommunications industry.
- 12.4 Telstra is willing to discuss further with the Commission the specific information likely to be required and the timeframes for the provision of the information. This could more usefully be done when the Commission has finally determined its methodology for implementation discussed at paragraphs 1 to 11 above.

13 Are there any comments regarding the consultation processes outlined above in relation to the treatment of any confidential information, and the disclosure of some, or all, of the collected information.

- 13.1 Telstra acknowledges and welcomes the Commission's comment that information provided by carriers will be commercially sensitive. As the Commission is aware, Telstra has previously expressed concern about the release of commercially sensitive information to other parties. The Commission is also aware of the cost to the Commission, in terms of resources, if there is a need for ongoing debate and discussions between the Commission and various parties as to whether particular pieces of information should, or should not, be released.
- 13.2 In Telstra's submission it is in the interests of all parties that such costs (including both the Commission's costs and the costs of the parties) be minimised as far as possible, consistent with the proper implementation of the Commissioner's pricing principles. Accordingly, Telstra suggests that when receiving confidential information for the purpose of regulating mobile termination charges, the Commission not disclose that information to other parties, but merely publish information detailing the outcome of the Commission's calculations based on the information received, without disclosing the source material.
- 13.3 Consistent with Telstra's suggested weighted average single index approach detailed above, Telstra does not consider that it will in fact be necessary for the Commission to publish or circulate source information provided by carriers to any other parties. If the single index approach is adopted, the Commission could receive information provided by carriers and publish the single market index without needing to detail any information provided by individual carriers.
- 13.4 As indicated above, Telstra is willing to discuss further with the Commission the information to be provided and the manner of its supply when other issues are resolved.

Industry working party for implementation of GSM pricing principles

In order to assist the Commission, and expedite the implementation of its pricing principles, Telstra advises that it is willing to participate in an informal industry working party to discuss ongoing issues relating to implementation of the GSM pricing principles, including the supply of information to the Commission, confidentiality issues and any broader issues which may arise in relation to the operation of the principles.

Telstra would welcome a response from the Commission as to whether it sees such a working party as being beneficial and, if so, the Commission's views on terms of reference for the working party.

GSM Origination - Appendix C to Final Report

Finally, and whilst not a matter referred to in the Commission's letter of 15 August 2001, Telstra wishes to place on record its agreement with the position put by Vodafone in relation to the GSM Originating Access Service that "*the end-to-end call service from the mobile to the 1800 or 13/1300 number is provided by the mobile carrier*".

In Telstra's submission, this position accords with long standing arrangements in the industry for these call cases. These arrangements provide for the mobile carrier to make a terminating access payment to the 1800 or 13/1300 service provider that takes note of the revenue from the 1800 or 13/1300 "commissioning customer" for the service". Telstra asks that the Commission note its views on this subject.