



Australian
Competition &
Consumer
Commission

ACCC

Regulation Impact Statement

**Telstra customer access network record keeping
and reporting rule**

September 2007



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Contents

Introduction	4
Issues	4
Overview of Telstra’s customer access network.....	4
ACCC Communications Infrastructure Audit.....	5
The Telstra CAN RKR.....	5
Review of relevant RKR currently in place	7
Options	8
Status quo	8
Introduce the Telstra CAN RKR, whilst maintaining the two current RKR.....	9
Introduce the Telstra CAN RKR, and revoke the two current RKR	9
Impact Analysis	9
Consultation	10
Conclusion	10

Introduction

In accordance with the *Trade Practices Act 1974*, the Australian Competition and Consumer Commission (ACCC) must exercise its telecommunications regulatory functions (declaration, dispute settlement and assessment of access undertakings, as well as ancillary functions such as determining pricing principles to be applied in access disputes) to promote the *long-term interests of end users*. This is pursued by:

- the objective of promoting competition;
- the objective of achieving any-to-any connectivity in relation to carriage services that involve communication between end-users; and
- the objective of encouraging the economically efficient use of and investment in infrastructure supplying telecommunication services.

The Trade Practices Act enables the ACCC to require telecommunications carriers to maintain certain records and provide them to the ACCC. These requirements known as record keeping and reporting rules (RKR) provide the ACCC with critical information required for the exercise of its statutory functions.

This regulation impact statement (RIS) consider the case for imposition of a new RKR and the consequential revocation of two existing RKR.

Issues

Overview of Telstra's customer access network

The telecommunications customer access network (CAN) represents the link between the telephone exchange and the customer.¹ From a telecommunications competition perspective, the CAN is of considerable significance as it represents a potential 'access bottleneck' ie it is uneconomic to duplicate in particular geographic regions of Australia. Telstra's CAN is the most extensive in Australia in terms of geographic extent and overall customer penetration.

In order to promote competition, the ACCC has exercised its powers to declare particular services which utilise the CAN. Declaration by the ACCC enables competing carriers to access the service in order to provide communications products to their customers. The most relevant declarations for the purposes of this RIS are the:

- the declaration of the Unconditioned Local Loop Service (ULLS). The ULLS declaration enables competing carriers to access Telstra's copper

¹ ACIF Code C569:2005 defines the customer access network as enabling the connection of customer equipment to switching equipment in a telecommunications network. It consists of a network of conduits and pipes with a mixture of cables.

wire between an exchange and a customer in order to provide communications services.

- the declaration of the Line Sharing Service (LSS). The LSS declaration enables a competing carrier to access the non-voice spectrum of Telstra's copper wire between an exchange and a customer for the provision of internet services, where the voice spectrum is being used to provide by another carrier to provide voice services

ACCC Communications Infrastructure Audit

Where the market is delivering effective, sustainable competitive outcomes, the ACCC has indicated that declarations should be wound back if they are no longer required to promote the interests of end-users. Any decisions in this regard should be based on robust geographically delineated empirical data. However, while the Commission receives data on an ad hoc basis to various reviews and assessment processes, this information is generally not provided by parties in a manner amenable to time series analyses. This is a significant impediment to the ACCC's capacity to consider future adjustments to the scope of declarations.

Accordingly, in order to properly examine this issue, the ACCC issued a discussion paper in March 2007 proposing a Communications Infrastructure Audit which would utilise the RKR framework to collect (and regularly update) information regarding the nature and location (including take-up in certain circumstances) of competing infrastructure.² The discussion paper proposed issuing record keeping requirements covering a number of categories of information including Telstra's CAN. A clear majority of submissions supported the audit.

The Telstra CAN RKR

The RKR seeks the following information from Telstra on a quarterly basis:

- the name, code, state and ULLS banding of each Telstra exchange;
- the number of Telstra services in operation (SIO's) being provided by Telstra's equipment in the following categories:
 - ⇒ the total number of retail and wholesale voice only SIO's broken down by exchange service area;
 - ⇒ the total number of retail and wholesale DSL only SIO's broken down by exchange service area;

² ACCC, *Proposed audit of telecommunications infrastructure assets—discussion paper*, March 2007.

⇒ the total number of retail and wholesale voice and DSL bundles broken down by exchange service area.

- the names of access seekers (ie competitors) in each exchange;
- the number of ULLS being used by each access seeker in each exchange;
- the number of LSS being used by each access seeker in each exchange.

The collection of this information will allow the ACCC to commence its analysis at the correct 'building block' level in order to consider the aggregation of those geographic areas which exhibit similar competitive characteristics. This will assist the ACCC not only to more accurately geographically delineate markets to reflect genuine differences in competitive dynamics and intensity, but will also improve its ability to accurately assess the state of competition in relevant markets, however defined. This will therefore improve the ACCC's capacity to consider future adjustments to the scope of declarations.

Review of relevant RKR currently in place

In seeking additional data from industry, the ACCC is especially mindful of appropriately minimising regulatory burdens while ensuring that its information needs are met. Accordingly, the ACCC has undertaken a review of its existing RKRs to ensure that the new proposal avoids imposing similar requirements on industry. This review has identified two RKRs which could be revoked were the Telstra CAN RKR to be issued.

These are:

- Unconditioned Local Loop Access Record Keeping and Reporting Rules (the 'exchange access RKR') and
- Unconditioned Local Loop Access (Service Delivery) Record Keeping and Reporting Rules (the 'service delivery RKR').

The exchange access RKR requires Telstra to provide information on a range of issues relating to access by seekers to Telstra's exchanges including:

- The timeliness afforded to Telstra's competitors in gaining access to exchanges;
- The steps taken by Telstra when accepting or rejecting requests;
- The reasons why Telstra rejected an application.

The service delivery RKR requires Telstra to report on the following processes:

- An access seeker's request for a ULL service qualification query ie 'testing the line';
- An access seeker's ordering of a specific ULL service;
- Activation of a copper pair/jumpering the service from the Telstra main distribution frame to the access seekers own xDSL equipment; and
- Fault handling and rectification.

Operational Separation

The case for revocation is also supported by the introduction of the Operational Separation³ framework which requires Telstra to report similar information to that under the exchange access and service delivery RKRs. Specifically, Telstra is required to commit to key performance indicators which measure the equivalence of delivery of services to other telecommunications service providers including the ULLS.

³ Operational separation is implemented as a statutory condition of Telstra's carrier licence specified in Part 8 of Schedule 1 to the *Telecommunications Act 1997* and took full effect on 1 December 2006.

The relevant key performance indicators require Telstra to:

- record the percentage of ULLS individual cutovers completed within a prescribed timeframe;⁴
- record the percentage of ULLS mass network migration⁵ cutovers completed within a prescribed timeframe;⁶
- report the percentage of faults rectified within the target timeframes.⁷

After the end of the financial year, Telstra will compile an annual compliance report and place it on its website. The ACCC notes that Telstra has made available on its website a number of documents about its operational separation performance including on ULL cutovers.

Accordingly, the ACCC has decided to revoke the exchange access and service delivery RKR at the same time as the issuing of the Telstra CAN RKR.

Options

Status quo

Under this option, the Telstra CAN RKR would not be implemented and the exchange access and service delivery RKR would remain in place, requiring Telstra to continue providing weekly returns to the ACCC.

This approach is undesirable for the following reasons:

- It would not respond to the ACCC's publicly expressed requirement for data with which to consider the future adjustment to the scope of declarations;
- It would not respond to the majority of submissions supporting the ACCC's Communications Infrastructure Audit;
- It ignores the introduction of Operational Separation which means that Telstra is reporting similar information under the exchange access and service delivery RKR and the Operational Separation regime;
- The reporting burden is not reduced.

⁴ Metric 15, Key Performance Indicators Operational Document, available from Telstra Wholesale Website

⁵ This refers to the practice whereby an access seeker pools the number of cutovers to be performed in a single instance.

⁶ Metric 16

⁷ Metric 17

Introduce the Telstra CAN RKR, whilst maintaining the two current RKR.

Under this option, the ACCC would introduce the new Telstra CAN RKR, but also maintain the exchange access and service delivery RKR.

This approach would:

- provide the ACCC with the data necessary to consider future adjustment to the scope of declarations;

However by retaining the existing RKR, it would ignore the introduction of Operational Separation which means that Telstra is reporting similar information under the two current RKR and the Operational Separation regime.

Introduce the Telstra CAN RKR, and revoke the two current RKR

Under this option, the ACCC would introduce the Telstra CAN RKR, and revoke the exchange access and service delivery RKR.

This approach would:

- provide the ACCC with the data necessary to consider representations to future adjustment to the scope of declarations; and
- recognise the introduction of Operational Separation which means that Telstra is already reporting similar information under the exchange access and service delivery RKR and the Operational Separation regime.

Impact Analysis

The following considerations are relevant:

- the RKR is directed towards Telstra alone;
- the ACCC has pursued a careful and considered process of consultation on the RKR (discussed in more detail below):
 - Importantly, Telstra's submission to the ACCC's Communications Infrastructure Audit discussion paper supported the inclusion of the nominated data in the RKR; and
 - the discussion paper sought an estimation of the costs of compliance. Telstra's submission advised the provision of the nominated data "would not be likely to impose significant costs" upon it.

- The RKR will provide significant information on the take-up of the ULL and LSS on Telstra's CAN which is a critical input to the Commission's consideration on whether to withdraw *ex ante* regulation where that declaration is not required to promote the long term interests of end users.
- The ACCC is mindful that the frequency by which data under the RKR is required can affect regulatory burdens. Accordingly, the RKR requires the provision of data quarterly. This ensures that data is regularly updated and therefore subject to time series analyses, but avoids the weekly requirement under the exchange access and service delivery RKR.

Consultation

The ACCC issued a discussion paper on the Communications Infrastructure Audit in March 2007. The clear majority of submissions supported the audit. Given that the Telstra CAN RKR is directed towards Telstra alone, the greatest weight has been given to Telstra's submission on its CAN – which supports the ACCC's approach.

Further, as a courtesy, and to assist Telstra in its internal planning for the new RKR, the ACCC provided a full copy of the draft RKR to Telstra for the purposes of comment in July 2007. Telstra has indicated to the ACCC its concurrence with the terms of the RKR.

Conclusion

The ACCC has carefully considered and consulted on its proposal to introduce a new Telstra CAN RKR, and gain the support of the reporting party. The information sought is not currently held by the ACCC and will assist its consideration of future adjustments to the scope of declarations. Regulatory burdens have been managed by minimising the amount of data to be sought and the frequency by which it is required. The ACCC will review the effectiveness of the RKR, once implemented, on an ongoing basis.