

ACCESS DISPUTE BETWEEN
ADAM INTERNET PTY LTD (ACCESS SEEKER)
AND TELSTRA CORPORATION LIMITED (ACCESS PROVIDER)
LINE SHARING SERVICE (LSS)

**Access Dispute Notified under subsection 152CM(1) of the *Trade Practices Act 1974*
on 15 November 2006**

Final Determination under section 152CP of the *Trade Practices Act 1974*

Background

1. On 15 November 2006, the Australian Competition and Consumer Commission (the Commission) received written notification (the notification) from Adam Internet Pty Ltd (Adam) of an access dispute relating to the supply, by Telstra Corporation Limited (Telstra), of the Line Sharing Service (LSS). Adam's notification was provided to the Commission pursuant to subsection 152CM(1) of the *Trade Practices Act 1974* (the Act).
2. The LSS is an access service that allows access to the higher frequency spectrum of a line (metallic pair) on which a PSTN voice service is being supplied. It typically allows two carriers to provide separate services over a line. Access to the higher frequency spectrum is generally used to supply broadband (DSL) services, while the PSTN voice service is supplied over the lower frequency spectrum.
3. The LSS is a declared service. After holding a public inquiry, the Commission declared the LSS on 30 August 2002, pursuant to subsection 152AL(3) of the Act. A copy of the declaration was published in the *Commonwealth of Australia Gazette* No. GN41, 16 October 2002. Following a further public inquiry, the Commission extended the LSS to expire on 31 July 2009. A copy of the extension notice was published in the *Commonwealth of Australia Special Gazette* No. S214, 29 October 2007.
4. The notification states that the dispute relates to the prices charged by Telstra for the supply of the LSS to Adam.
5. The Commission has formed the view that, with respect to the notification, the requirements of subsection 152CM(1) of the Act are satisfied. That is:
 - Telstra is a carrier;
 - Telstra supplies the declared LSS;
 - Telstra has an obligation under subsection 152AR(3) of the Act to supply the LSS to Adam and an obligation under subsection 152AR(5) of the Act to permit Adam to interconnect its facilities in order to acquire the LSS; and
 - Adam is unable to agree with Telstra about the terms and conditions of access to the LSS, including the charges and other terms and conditions that are the subject of this final determination.

6. Pursuant to subsection 152CP(1) of the Act, this instrument is the final determination relating to the terms and conditions of access by Adam to the LSS provided by Telstra.

Final Determination

Terms and conditions of access

7. This Final Determination specifies a number of terms and conditions of access as follows:
 - (a) LSS annual charges, as per Schedule 1;
 - (b) LSS single connection and disconnection charges, as per Schedule 2; and
 - (c) Terms and conditions to apply to a Managed Network Migration (MNM) involving the LSS, as per Schedule 3.
8. Subject to clause 8, other terms and conditions upon which Telstra and Adam have agreed for the supply of the LSS are to continue to apply.
9. Except where the parties expressly agree otherwise, in the event of any inconsistency between the terms and conditions upon which Telstra and Adam have agreed for the supply of the LSS and the intended operation of this determination, this determination is to apply and overrides any pre-existing agreement to the extent of the inconsistency.
10. All charges in this Final Determination are expressed on a GST exclusive basis.

Settlement of over or under paid amounts and interest

11. The total amount that arises from the difference between charges that have been paid by Adam and the charges specified in this determination ('the settlement amount') is to be paid:
 - (a) where the charges paid by Adam are less than the charges specified in this determination, by Adam to Telstra; or
 - (b) where the charges paid by Adam are more than the charges specified in this determination, by Telstra to Adam.
12. Interest is payable on the settlement amount, compounded daily at the applicable monthly rate specified in the Large Business Variable Indicator Rate published by the Reserve Bank of Australia, for the period commencing on the date that the charge specified in this determination commences, and ending on the date that this determination takes effect.

Note: A copy of the Large Business Variable Indicator Rate is available at <http://www.rba.gov.au/Statistics/Bulletin/F05hist.xls>.
13. Except where the parties agree otherwise, the settlement amount is to be paid within 42 days after the date on which this determination is made.

Commencement and expiry

14. This determination takes effect 21 days from the date it is made, and ceases to have effect on 31 July 2009.



Graeme Julian Samuel
Chairman
DATED: 20 December 2007



Ed Willett
Commissioner

Schedule 1 LSS annual charges

1. Except where the parties subsequently agree otherwise, the LSS Annual Charge payable by Adam to Telstra for the LSS for the period from 14 July 2006 until 31 July 2009 is \$30.00 per LSS per annum (\$2.50 per LSS per month).

Schedule 2 LSS 'single' connection charges and disconnection charges

LSS 'single' connection charges

1. Except where the parties subsequently agree otherwise, the charge payable for the connection of a LSS outside of a managed network migration is as follows:

Until 30 June 2006	\$38.70 (per connection)
2006-07	\$39.30 (per connection)
2007-08	\$41.40 (per connection)
July 2008-31 July 2009	\$43.10 (per connection)

2. The charges specified in clause 1 are not to apply where the line on which the LSS is connected was being used to supply a ULLS.
3. The charges specified in clause 1 are not to apply to connections made in Band 4.
4. Clauses 1 to 3 are not to apply to connections that were made before 2 June 2005 or after 31 July 2009.

LSS 'single' disconnection charges

5. Except where the parties subsequently agree otherwise, and subject to clause 5A, the charge payable for the disconnection of a LSS outside of a managed network migration is as follows:

Until 30 June 2006	\$34.70 (per disconnection)
2006-07	\$35.10 (per disconnection)
2007-08	\$37.10 (per disconnection)
July 2008-31 July 2009	\$38.70 (per connection)

- 5A. A disconnection charge is not payable by Adam if either:
 - (a) the disconnection is made pursuant to the Telstra LSS churn process; or,
 - (b) Adam is participating in the Telstra LSS churn process and Telstra (Bigpond) is not participating in the Telstra LSS churn process.
6. The charges specified in clause 5 are not to apply to disconnections in Band 4.
7. Clauses 5, 5A and 6 are not to apply to disconnections that were made before 2 June 2005 or after 31 July 2009.

Definitions

8. For the purpose of this determination:

- (a) a reference to the connection or disconnection of a LSS outside a MNM refers to all instances of LSS connections or disconnections other than those that are made as part of a 'Managed Network Migration'.
- (b) a 'Managed Network Migration' is the transfer or migration of services that is achieved by the project management by Telstra of a coordinated cancellation and connection of services.
- (c) the 'Telstra LSS churn process' is a Telstra process by which services can be transferred between LSS, and between LSS and DSL services.

Schedule 3 Terms and conditions relating to Managed Network Migrations

Connection charge

1. Except where the parties subsequently agree otherwise, the connection charges payable for the connection of LSS as part of a MNM where the service is to be connected on a line that Telstra is using to supply a wholesale ADSL service are:

- (a) for 2004-05 and 2005-06

Component	Charge
– Fixed amount	\$126.00 (per MNM)
– Variable amount	+ \$28.70 (per connection)

- (b) for the period from 1 July 2006 to 31 May 2007

Component	Charge
– Fixed amount	\$130.20 (per MNM)
– Variable amount	+ \$28.70 (per connection)

- (c) for the period from 1 June 2007 to 30 June 2008

Component	Charge
– Fixed amount	\$134.50 (per MNM)
– Variable amount	+ \$30.90 (per connection)

- (d) for the period from 1 July 2008 to 31 July 2009

Component	Charge
– Fixed amount	\$140.10 (per MNM)
– Variable amount	+ \$32.20 (per connection)

2. The charges specified in clause 1 are not to apply to MNMs in Band 4.
3. Clauses 1 and 2 are not to apply to MNMs that were completed before 9 June 2005 or after 31 July 2009.

Minimum connection charge per MNM per exchange

4. Except where the parties subsequently agree otherwise, the minimum connection charge per exchange for a MNM where the LSS is to be connected on a line that Telstra is using to supply a wholesale ADSL service is:

- (a) for 2004-05 and 2005-06, \$700 (per MNM);
- (b) for the period from 1 July 2006 to 31 May 2007, \$704.20 (per MNM);

- (c) for the period from 1 June 2007 to 30 June 2008, \$752.50 (per MNM); and,
 - (d) for the period from 1 July 2008 to 31 July 2009, \$784.10 (per MNM).
- 4A. The charge specified in clause 4 is not to apply to MNMs in Band 4.
5. Clause 4 is not to apply to MNMs that were completed before 9 June 2005 or after 31 July 2009.

Disconnection charges

6. Except where the parties subsequently agree otherwise, no charge is payable for the disconnection of a LSS where this is done as part of a MNM, e.g., a migration of the LSS to a ULLS or a wholesale ADSL platform.
7. Clause 6 is not to apply to disconnections that were made prior to this determination coming into effect or after 31 July 2009.

Minimum number of services

8. Except where the parties subsequently agree otherwise, whether a particular service is to be connected or disconnected as part of a MNM, or outside of a MNM, is to be a matter at the discretion of Adam to be notified to Telstra when the order is made.
9. Except where the parties subsequently agree otherwise, a minimum number of connections do not apply as a pre-requisite for requesting a MNM.
10. Clauses 8 and 9 are not to apply in respect of MNMs that are ordered prior to this determination coming into effect, or MNMs that are ordered after 31 July 2009.

Cancellation (standard and pre-wiring) charges

15. Subject to clauses 16 and 17, and except where the parties subsequently agree otherwise, no charges are payable on cancellation of an order for an LSS that was to be connected as part of a MNM.
16. Where Adam cancels an order for a MNM that is scheduled for an exchange, Adam must pay to Telstra:
- (a) a 'standard cancellation' charge per MNM of \$134.50 per cancelled MNM on or before 30 June 2008, or \$140.10 per cancelled MNM after 30 June 2008; and
 - (b) if applicable, a further 'pre-jumping' charge per relevant cancelled service, where the cancellation has followed 'pre-jumping' work performed 20 business days or less before the scheduled date of the MNM by Telstra or its agents as part of the MNM process, of:
 - (i) \$24.10 per relevant cancelled service on or before 30 June 2008; or
 - (ii) \$25.10 per relevant cancelled service after 30 June 2008.

17. Where a MNM is forecast to involve more than 20 services, and Adam revises down its forecast number of services to be connected as part of that migration within 20 business days of the prospective date of the MNM, Adam must pay to Telstra:
 - (a) if applicable, a 'pre-jumpering' charge per relevant cancelled service, where the cancellation has followed 'pre-jumpering' work performed by Telstra or its agents as part of the MNM process, of:
 - (i) \$24.10 per relevant cancelled service on or before 30 June 2008; or
 - (ii) \$25.10 per relevant cancelled service after 30 June 2008.in which case the number of relevant cancelled services is the difference between:
 - (a) the number of services that had been forecast for migration at the relevant exchange immediately prior to 20 business days from the prospective migration date; and
 - (b) the greater of the revised number of services to be migrated, or 20.
18. Clauses 15 to 17 are not to apply to cancellations that were made prior to this determination coming into effect or after 31 July 2009.

Definitions

19. For the purposes of this determination:
 - (a) a reference to the connection or disconnection of a LSS as part of a MNM refers to a LSS connection or disconnection to be made in the context of a 'Managed Network Migration'.
 - (b) a 'Managed Network Migration' is the transfer or migration of services that is achieved by the project management by Telstra of a coordinated cancellation and connection of services.
 - (c) 'Pre-jumpering' work involves, *inter alia*, locating relevant copper pairs and making ready the jumpers that are needed to effect a LSS connection prior to the actual connection or 'cutover'.