

ACCESS DISPUTE BETWEEN

CHIME COMMUNICATIONS 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 28 November 2005

Final Determination under Section 152CP of the Trade Practices Act 1974

Background

1. On 28 November 2005, the Australian Competition and Consumer Commission (the Commission) received written notification (the notification) from Chime Communications Pty Ltd (Chime) that an access dispute exists in relation to the supply, by Telstra Corporation Limited (Telstra), of the Line Sharing Service (LSS). Chime's notification was provided to the Commission pursuant to subsection 152CM(1) of the *Trade Practices Act 1974* (the Act). The notification was amended on 3 February 2006.
2. The LSS allows an access seeker to share the use of a single metallic pair or line. The higher frequency part of the line is used by the access seeker to supply broadband services while another provider supplies a PSTN voice service over the same line.
3. The LSS is a declared service. 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.
4. 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 Chime and an obligation under subsection 152AR(5) of the Act to permit Chime to interconnect its facilities in order to acquire the LSS; and
 - Chime 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.
5. On 2 November 2006, the Commission made an interim determination in this matter. On 21 December 2006, the Commission revoked this interim determination, and made a further interim 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 Chime 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) *[deleted]*
 - (c) Terms and conditions to apply to a Managed Network Migration (MNM) involving the LSS, as per Schedule 3;
 - (d) *[deleted]*;
 - (e) *[deleted]*.
8. Subject to clause 9, other terms and conditions upon which Telstra and Chime 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 Chime have agreed for the supply of the LSS and the intended operation of this determination, this determination is taken to apply to override any such pre-existing agreement to the extent of any inconsistency.

Settlement of over or under paid amounts and interest

10. The total amount that arises from the difference between charges that have been paid by Chime and the charges specified in this determination ('the settlement amount') is to be paid:
 - (a) where the charges paid by Chime are less than the charges specified in this determination, by Chime to Telstra; or,
 - (b) where the charges paid by Chime are more than the charges specified in this determination, by Telstra to Chime.

Note: For calculating the amount of money required to be paid, parties must take into account the charge paid by Chime under the interim determinations.

11. 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>.

12. 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

13. This determination takes effect 21 days from the date it is made, and ceases to have effect on 31 December 2007.



Graeme Julian Samuel
Chairman
DATED: 12 July 2007



Ed Willett
Commissioner

Schedule 1 LSS annual charges

1. Except where the parties subsequently agree otherwise, the LSS Annual Charge payable by Chime to Telstra for the LSS for the period from 1 June 2004 until 31 December 2007 is \$30.00 per LSS per annum (\$2.50 per LSS per month).

Schedule 2

[deleted]

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 an 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

Component	Charge
– Fixed amount	\$134.50 (per MNM)
– Variable amount	+ \$30.90 (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 1 June 2004 or after 31 December 2007.

Minimum connection charge per MNM per exchange

4. Except where the parties subsequently agree otherwise, the minimum connection charge per exchange for an MNM where the LSS is to be connected on a line that Telstra is using to supply a wholesale ADSL service is \$752.50 (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 are completed prior to this determination coming into effect or after 31 December 2007.

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 an 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 December 2007.

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 Chime to be notified to Telstra when the order is made.
9. Except where the parties subsequently agree otherwise, a minimum number of connections is not to 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 December 2007.

MNM migration plans

Migration Plan terms (Forecasting timeframes)

11. Subject to clause 11A, and except where the parties subsequently agree otherwise, the forecasting timeframes to apply are as specified in clauses 2.1 to 2.4 and clauses 3.4 to 3.5 of Part B of the Customer Relationship Agreement 192.
- 11A. Part B of the Customer Relationship Agreement 192 is varied as follows:
 - (i) in clause 2.2 of the Customer Relationship Agreement 192, references to '84 calendar days' and '84 day period' are replaced with '56 calendar days' and '56 day period', respectively.
12. Clause 11A is not to apply in respect of MNMs that are ordered prior to this determination coming into effect, or MNMs that are ordered after 31 December 2007.

Migration plan amendment terms

13. Subject to clause 13A, and except where the parties subsequently agree otherwise, the migration plan amendment terms to apply are as specified in clause 2.5 of Part B of the Customer Relationship Agreement 192.
- 13A. Part B of the Customer Relationship Agreement 192 is varied as follows:
 - (i) in clause 2.5 of the Customer Relationship Agreement 192, paragraph (c) is replaced with:

- (c) *otherwise by agreement between the parties (which may involve renegotiation of the connection charge), such agreement not to be unreasonably withheld.*
 - (ii) in clause 2.5, paragraph (d) is inserted:
 - (d) *where Telstra cannot meet an agreed date for the commencement of a Managed Network Migration, the new commencement date is to be as soon as reasonably practicable to the date that had been agreed.*
- 14. Clause 13A is not to apply in respect of MNMs that are ordered prior to this determination coming into effect, or MNMs that are ordered after 31 December 2007.

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 an MNM.
- 16. Where Chime cancels an order for an MNM that is scheduled for an exchange, Chime must pay to Telstra:
 - (i) a 'standard cancellation' charge per MNM of \$134.50 per cancelled MNM; and,
 - (ii) if applicable, a further '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 \$23.60 per relevant cancelled service.
- 17. Where an MNM was forecast to involve more than 20 services, and Chime 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, Chime must pay to Telstra:
 - (i) 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 \$23.60 per relevant cancelled service.

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 December 2007.

Definitions

19. For the purposes of this determination:

- (i) 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'
- (ii) 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
- (iii) a reference to Customer Relationship Agreement 192 is a reference to the agreement of that name between Telstra and Chime current as at the date that this determination is made
- (iv) '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'.

Schedule 4 Network modernisation terms and notice periods relevant to the LSS

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Schedule 5

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