

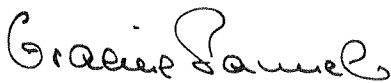
ACCESS DISPUTE BETWEEN TELSTRA CORPORATION LIMITED (ACCESS PROVIDER) AND CHIME COMMUNICATIONS PTY LTD (ACCESS SEEKER)

LOCAL CARRIAGE SERVICE (LCS)

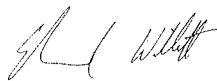
Access Dispute Notified under Subsection 152CM (1) of the *Trade Practices Act 1974*
on 18 April 2007

Interim Determination under Section 152CPA

1. Except where the parties agree otherwise, the charge payable by Chime to Telstra for the LCS is to be 17.92 cents per call for the period 7 June 2007 to 31 December 2007.
2. Except where the parties agree otherwise, other terms and conditions on which Telstra currently supplies the LCS to Chime are to continue to apply.
3. This interim determination shall take effect as and from 7 June 2007, and will remain in force until:
 - it expires on 31 December 2007;
 - the date a final determination comes into effect; or
 - this interim determination is revoked.



Graeme Samuel
Chairman



Ed Willett
Commissioner

DATED: 6 June 2007

ACCESS DISPUTE BETWEEN TELSTRA CORPORATION LIMITED (ACCESS PROVIDER) AND CHIME COMMUNICATIONS PTY LTD (ACCESS SEEKER)

LOCAL CARRIAGE SERVICE (LCS)

Access Dispute Notified under Subsection 152CM (1) of the *Trade Practices Act 1974*
on 18 April 2007

Statement of Reasons for the Interim Determination

Background

The Local Carriage Service (LCS) is a service for the carriage of telephone calls from customer equipment at an end-user's premises to separately located customer equipment of an end-user in the same standard zone. However, the LCS does not include services where the supply of the LCS originates from an exchange located within a Central Business District Area of Sydney, Melbourne, Brisbane, Adelaide or Perth and terminates within the standard zone, which encompasses the originating exchange.

After holding a public inquiry, the Australian Competition and Consumer Commission (the Commission) declared the LCS pursuant to section 152AL(3) of the *Trade Practices Act 1974* (the Act). A copy of the declaration was published in the Commonwealth of Australia Gazette No. GN 31, 9 August 2006.

The Commission set out its pricing principles, including price-related terms and conditions, in the document titled *Pricing principles and indicative prices, Local carriage service, wholesale line rental and PSTN originating and terminating access services - Final Determination and Explanatory Statement*, (Pricing Principles and Indicative Prices Determination), dated 29 November 2006. The Commission is required to have regard to any pricing principles determination, including price related terms and conditions, made under section 152AQA of the Act when arbitrating an access dispute.

On 18 April 2007, the Commission received written notification (the notification) from Telstra Corporation Limited (Telstra) of an access dispute in relation to the supply by Telstra of the LCS to Chime Communications Pty Ltd (Chime). Telstra's notification was provided to the Commission under section 152CM(1) of the Act.

The notification states that Telstra provides the LCS to Chime under an access agreement (Access Agreement), dated 9 October 2003. The notification states that Telstra and Chime cannot agree on the charge per untimed local call for the supply of the LCS.

The Commission has formed the view that the requirements of section 152CM (1) of the Act are satisfied. That is:

- Telstra is a carrier;
- Telstra supplies the declared LCS;

- Standard access obligations apply to Telstra in relation to the LCS; and
- Telstra is unable to agree with Chime about the terms and conditions on which Telstra is to comply with those obligations.

Discussion

In correspondence with the Commission (copied to Chime), Telstra has submitted that the LCS access dispute is related to the access dispute notified by Chime on 28 March 2007, in relation to the Wholesale Line Rental Service (WLR). Telstra submits that although the WLR and LCS access disputes between Telstra and Chime, were notified separately, the interrelated nature of these services has resulted in the parties undertaking negotiations in relation to the access charges for the WLR and LCS, as a single issue.

Telstra submits that the access price charged to Chime for the WLR and the LCS, involve common issues pertaining to the recovery of costs incurred in the delivery of services over the local loop; the allocation of common costs between the WLR and the LCS access charges and recovering the combined costs of providing the WLR and LCS.

Telstra submits that the Commission should not make an interim determination in either the WLR access dispute, notified by Chime on 28 March 2007 or the LCS access dispute, notified by Telstra on 18 April 2007, until the parties have made further submissions on the substantive issues pertaining to these two access disputes. Telstra submits that it recognizes that the Commission does not need to have reached a view on all outstanding issues in an access dispute, to make an interim determination. Telstra submits, in this instance, however, the determination of whether the Commission's Pricing Principles and Indicative Prices Determination provides an appropriate basis to determine the access charge for the WLR and the LCS services, merits further consideration by the Commission.

Telstra further submits that if the Commission does make an interim determination in relation to the LCS, pursuant to section 152CPA(3), or otherwise, then it should do so, with effect, from the same date that it makes an interim determination, in relation to the WLR.

Chime submits that although the parties have held discussions regarding the WLR, since 2 November 2005 and the LCS, since approximately January 2006, the parties have not been able to reach agreement in relation to the access charges for either of these services. Chime further submits that although it has offered to pay Telstra a higher access charge for the LCS in return for a lower access charge for the WLR, Telstra has rejected these proposals.

Chime submits that it is currently paying Telstra [c-i-c] per call for the LCS, which is [c-i-c] below the access charge of 17.92 cents per call set by the Commission in its Pricing Principles and Indicative Prices Determination. Chime submits that it is willing to pay Telstra a similar access charge for the LCS, to that set by the Commission in its Pricing Principles and Indicative Prices Determination, if the access charges payable by Chime to Telstra for the WLR is \$23.12 per month for Home Line Part and \$25.84 per month for Business Line Part.

Section 152CP of the Act provides that, unless the Commission terminates the arbitration under section 152CS, the Commission must make a written determination on access by the

access seeker to the declared service. Section 152CP(4) provides that, before making a determination, the Commission must give a draft determination to the parties.

Section 152CP(5) provides that when the Commission makes a determination, it must give the parties to the arbitration its reasons for making the determination.

Section 152CPA(1) provides that a determination may be expressed to be an interim determination.

Section 152CPA(3) of the Act provides that the Commission is not required to observe any requirements of procedural fairness in relation to the making of an interim determination if both:

- the declared service is covered by a determination in force under section 152AQA; and
- the price-related terms and conditions in the interim determination are consistent with the price-related terms and conditions in the section 152AQA determination.

In accordance with sections 152CPA(1) and (3), the Commission has made an interim determination in the arbitration of this dispute.

As noted above, the LCS is covered by a determination in force under section 152AQA. The determination includes, *inter alia*, price-related terms and conditions for the LCS specified at 17.92 cents per call.

Under section 152AQA(6) of the Act, the Commission must have regard to the Pricing Principles and Indicative Prices Determination if it is required to arbitrate an access dispute in relation to the LCS.

Section 152CR(1) of the Act sets out matters that the Commission must take into account in making a final determination. Section 152CR(4) specifies that, in making an interim determination, the Commission does not have a duty to consider whether to take into account a matter referred to in a paragraph of subsection (1). Under section 152CR(3), in making an interim determination, the Commission may take into account a matter referred to in a paragraph of subsection (1) or any other matters that it thinks are relevant.

As outlined in the Commission's *Resolution of telecommunications access disputes – a guide, March 2004 (revised)*, (the Access Dispute Guidelines), the Commission considers that, for the purposes of making an interim determination, it does not need to have all the information necessary for making the final determination, nor to have reached a view on all outstanding issues between the parties. Rather, the Commission considers that the information should provide a reasonable basis for the terms and conditions set out in the interim determination.¹

The Commission is of the view that the Pricing Principles and Indicative Prices Determination, provides a reasonable basis for making an interim determination in this dispute. The Commission notes that the Pricing Principles and Indicative Prices

¹ *Resolution of telecommunications access disputes – a guide, March 2004 (revised)*, p. 51.

Determination was the outcome of a thorough review process based on input from a variety of stakeholders, including the parties to this dispute.

In making the interim determination, the Commission has had regard to the Pricing Principles and Indicative Prices Determination which sets out the supporting reasons in relation to the LCS pricing principles and indicative prices.

The Commission has made an interim determination of 17.92 cents per call in relation to the price of the LCS that Telstra charges Chime for the period from 7 June 2007 to 31 December 2007. Accordingly, the price-related terms and conditions in the interim determination are consistent with the Pricing Principles and Indicative Prices Determination.

Further, the information available from Chime indicates that the parties continue to be in dispute in respect to the LCS. The Commission considers, therefore, that a decision to make an interim determination that is consistent with the Pricing Principles and Indicative Prices Determination provides a degree of regulatory certainty to the parties. The Commission is also of the view that an interim determination that is consistent with the Pricing Principles and Indicative Prices Determination also promotes commercial certainty by contributing to a more timely resolution of disputes.

A more timely resolution of disputes meets the aims of the interim determination process. That is, as discussed in the Access Dispute Guidelines, the Commission sees interim determinations as being important for the smooth operation of the access regime, as they help ensure access seekers get timely access to declared services.² Accordingly, an interim determination that is consistent with the Pricing Principles and Indicative Prices Determination contributes to meeting the aims of the interim determination process.

The Commission also considers that the making of an interim determination in this dispute at the same time as the making of an interim determination in the WLR dispute (for the reasons set out in the statement of reasons relating to that dispute) will ensure that the linkages between the LCS and WLR pricing structures are recognised. Given that the Commission is making an interim determination in the WLR dispute and there is an inter-relationship between WLR and LCS pricing, it is appropriate for the Commission to make an interim determination in this dispute also.

The Commission notes that the price-related terms and conditions contained in the Pricing Principles and Indicative Prices Determination are indicative only, and that the Commission has stated that in the event of arbitration it would look at specific issues, raised by the parties on their individual merits for the purposes of the final determination. Further, the Commission may, if appropriate, decide to backdate the final determination in this arbitration. The Commission will have regard to information submitted by the parties regarding LCS pricing for the purpose of the final determination.

² Ibid, p.50.