



Competition Notice issued pursuant to section 151AL of the
Trade Practices Act 1974 ('the Act')

PREAMBLE

This Notice relates to the Service which came into operation on or about 4 August 1997, the terms and conditions of which are contained in Telstra's Transfer Conditions.

DEFINITIONS

The following terms used in this Notice have the following meanings unless the contrary intention appears:-

- "AAPT" means AAPT Limited (ACN 052 082 416)
- "CSP" means a carriage service provider as defined by the *Telecommunications Act 1997* which carries on business in Australia as a supplier of fixed local telephony services
- "end-users" are customers using fixed local telephony services provided by CSPs
- "gaining lessee" means a CSP, other than Telstra, to which a fixed local telephony service of an end-user is to be transferred
- "Macquarie" means Macquarie Corporate Telecommunications Pty Ltd (ACN 082 930 916)
- "Optus" means Cable and Wireless Optus Limited (ACN 052 833 208) and/or Optus Networks Pty Limited (ACN 008 570 330)
- "PDS" means Partial Debt Severance as defined in Telstra's Transfer Conditions
- "Primus" means Primus Telecommunications (Australia) Pty Limited (ACN 061 754 943)

- “Spectrum” means Spectrum Global Telecommunications Pty Limited (ACN 071 174 582)
- “Switch” means Switch Telecommunications Pty Limited (ACN 073 878 716)
- “TDS” means Total Debt Severance as defined in Telstra’s Transfer Conditions
- “Telstra” means Telstra Corporation Limited (ACN 051 775 556), Principal Place of Business, Level 41, 242 Exhibition Street, Melbourne, Victoria 3000
- “Telstra’s Transfer Conditions” means the terms and conditions of the Service being the terms and conditions which were notified to CSPs on or about 17 July 1997 as amended on about 27 September 1998, which amendments were notified by Telstra to CSPs on about that date
- “the Service” means the Telstra service commonly known as the “Commercial Churn Service”, which came into operation on or about 4 August 1997, by means of which end-users wishing to change suppliers of telephony services are transferred from one CSP to another, the terms and conditions of which are set out in Telstra’s Transfer Conditions
- “transfer” means the transfer of an account or service for telephony services as described in Telstra’s Transfer Conditions.

STATEMENT (as required by s.151AL(1)(a))

1. Telstra has contravened, and is contravening, the competition rule during the periods and in the manner particularised below:-
 - (a) from on or about 28 September 1998 to the present requiring CSPs, namely, AAPT, Macquarie, Optus, Primus, Spectrum and Switch, wishing to be in a position to effect the transfer of end-users from Telstra to that CSP, to continue to be bound by terms and conditions, applicable to such transfers on a PDS basis, namely clause 2.6 of Telstra's Transfer Conditions, which are unreasonable;
 - (b) from on or about 28 September 1998 to the present, refusing to process and effect the transfer of end-users from Telstra to another CSP, namely AAPT, Macquarie, Optus, Primus, Spectrum and Switch, unless that CSP abides by terms and conditions applicable to such transfers on a PDS basis, namely clause 2.6 of Telstra's Transfer Conditions, which are unreasonable.

PARTICULARS (as required by s.151AL(1)(b))***Telstra is and was a carrier***

2. Telstra is and was at all material times a corporation within the meaning of the Act, duly incorporated pursuant to the laws of the Australian Capital Territory.
3. Telstra does and did at all material times hold a carrier licence issued on 1 July 1997 pursuant to s.s 56(1) of the *Telecommunications Act 1997*.
4. By reason of the matters set out in paragraphs 2 and 3, Telstra is and was at all material times a "carrier" as defined in s.151AB of the Act.

Telecommunications Markets

Market for fixed local telephony services

5. By reason of the following matters there is and was at all material times a market in Australia for fixed local telephony services (the "fixed local telephony market"):-
- (a) there is and was at all material times a substantial demand in Australia by end-users for fixed local telephony services, being services comprising:-
 - (i) a physical connection from an end-user's telephone or other terminal device to a public switched telephone network;
 - (ii) the provision of a dial tone; and
 - (iii) the carriage over that network of communications between one end-user and another end-user located within the same or an adjacent local call charging area;
 - (b) fixed local telephony services in Australia are and were at all material times almost entirely provided by means of Telstra's telecommunications network infrastructure and where such services are and were provided by other CSPs including AAPT, Macquarie, Optus, Primus, Spectrum and Switch, they are and were predominantly provided by means of fixed local telephony services acquired from Telstra for resale;
 - (c) fixed local telephony services supplied within Australia are and have at all material times been supplied for a price which is untimed, in that the price for a fixed local telephone call is not determined by reference to the duration of that call;

- (d) end-users of fixed local telephony services cannot choose their CSPs on a call-by-call basis;
 - (e) there are and were no services which are and were reasonably substitutable for, or in close competition with, fixed local telephony services in Australia; and
 - (f) significant numbers of telephone customers in Australia willingly subscribe to both fixed local telephony services and mobile telephony services, indicating that they are considered as complementary services rather than as substitutes.
6. The fixed local telephony services supplied by CSPs to end-users (as referred to in paragraph 5 above) are and were carriage services within the meaning of paragraph 151AF(a) of the Act.
7. By reason of the matters set out in paragraphs 5 and 6 above, the fixed local telephony market is and was at all material times a telecommunications market as defined in s.151AF of the Act.

Market for fixed long distance telephony services

8. By reason of the following matters there is and was at all material times a market in Australia for fixed long distance telephony services (the "fixed long distance telephony market"):-
- (a) there is and was at all material times a substantial demand in Australia by end-users for fixed long distance (i.e. national and international) telephony services;
 - (b) fixed long distance telephony services in Australia are and were at all material times provided by some CSPs by means of their own infrastructure and by other CSPs including Macquarie and Switch by means of fixed long distance telephony services acquired from other CSPs for resale;

- (c) fixed long distance telephony services supplied within Australia are and have at all material times been almost entirely supplied for a price which is timed, in that the price for a fixed long distance telephone call is determined by reference to the duration of that call;
 - (d) pre-selection and over-ride dial codes for fixed long distance telephony services mean that end-users can choose their CSPs for fixed long distance telephone calls on a call-by-call basis;
 - (e) there are and were no services which are and were reasonably substitutable for, or in close competition with, fixed long distance telephony services in Australia; and
 - (f) significant numbers of telephone customers in Australia willingly subscribe to both fixed long distance telephony services and mobile telephony services, indicating that they are considered as complementary services rather than as substitutes.
9. The fixed long distance telephony services supplied by CSPs (as referred to in paragraph 8 above) are and were carriage services within the meaning of paragraph 151AF(a) of the Act.
10. By reason of the matters set out in paragraphs 8 and 9 above, the fixed long distance telephony market is and was at all material times a telecommunications market as defined in s.151AF of the Act.

The transfer of end-users from one CSP to another CSP

11. At all material times, a CSP, other than Telstra, who wishes to arrange for an end-user customer of Telstra to be transferred to the telephony service of that CSP to become a customer of that CSP ("the gaining lessee") cannot arrange the transfer without requesting Telstra to process and effect that transfer.
12. At all material times, in order for a CSP other than Telstra to be able to compete effectively in the fixed local telephony market and/or in the fixed long

distance telephony market, it is and was at all material times essential for that CSP to be in a position to be able to arrange the transfer of end-user customers of Telstra to the telephony service of that CSP on reasonable terms.

13. At all material times there were and are only two bases on which transfers of end-user customers of Telstra could be effected, namely, on a PDS basis or on a TDS basis.
14. At all material times transfers of end-user customers of Telstra on a TDS basis were and are effected by means of Telstra's TDS transfer process which was and is cumbersome, slow, inefficient and costly in that;
 - (a) CSPs are required to format transfer requests to a table format, save the information in the table format on disc and physically deliver each disc to Telstra's premises;
 - (b) Telstra staff print out the transfer information received on disc from the CSP and check the information against information held by Telstra in respect of the end-user;
 - (c) Telstra staff then key into Telstra's provisioning system orders to transfer the relevant service or account to the gaining lessee and issue the final bill for that service or account;
 - (d) Telstra staff then sort the completed orders accepted by Telstra's provisioning system from those rejected by the system;
 - (e) Telstra staff then input the completed orders accepted to Telstra's list of accounts or services held by other CSPs and review the rejected orders to ascertain the reason for rejection;
 - (f) Telstra staff then prepare the information to be forwarded to the gaining lessee in a completion advice advising of the completion of the transfer and the transfer fees payable to Telstra; and
 - (g) the completion advices are formatted by Telstra staff in a table format, saved on disc and physically delivered to the CSPs premises.

Telstra's Conduct

15. On about 17 July 1997, Telstra sent CSPs a letter which:
- (a) enclosed a document entitled "*TERMS AND CONDITIONS FOR THE COMMERCIAL CHURN SERVICE OFFERED BY TELSTRA CORPORATION LIMITED*" and which contained the terms and conditions of Telstra's transfer service;
 - (b) advised that the terms and conditions of Telstra's transfer service would become effective on and from 4 August 1997; and
 - (c) stated that:

"... If you want to receive transfers for Services or Accounts after 4 August 1997 you must complete and return the Election Form (document (iii)) to before 5.00pm on Friday, 1 August 1997. Your completion and return of the Election Form will be your acceptance of the terms and conditions of the Commercial Churn Service".
16. On or about 1 August 1997, Optus, under protest and/or with reservations, completed the Election Form and returned it to Telstra.
17. On or about 4 August 1997, Switch, under protest and/or with reservations, notified acceptance of Telstra's Transfer Conditions.
18. On or about 5 August 1997, Macquarie, under protest and/or with reservations, completed the Election Form and returned it to Telstra.
19. On or about 5 August 1997, Primus, under protest and/or with reservations, notified acceptance of Telstra's Transfer Conditions.
20. On or about 5 August 1997, Spectrum, under protest and/or with reservations, notified acceptance of Telstra's Transfer Conditions.

21. On or about 11 May 1998, AAPT, under protest and/or with reservations, completed the Election Form and returned it to Telstra.
22. From on or about 28 September 1998 to the present, Telstra has required and continues to require, CSPs, namely, AAPT, Macquarie, Optus, Primus, Spectrum and Switch, wishing to be in a position to effect the transfer of end-users from Telstra to that CSP, to continue to be bound by terms and conditions applicable to such transfers on a PDS basis, namely clause 2.6 of Telstra's Transfer Conditions, which require the CSP, in respect of transfers on a PDS basis, to accept liability to Telstra for payment of charges incurred by the end-user and not billed by Telstra prior to the date of transfer from Telstra to the CSP in circumstances where there is no reasonable or efficient alternative transfer process available.
23. From on or about 28 September 1998 to the present, Telstra has refused and continues to refuse to process and effect the transfer of end-users from Telstra to another CSP, namely Macquarie, Optus, Primus, Spectrum and Switch, unless that CSP abides by terms and conditions applicable to such transfers on a PDS basis, namely clause 2.6 of Telstra's Transfer Conditions, which require the CSP, in respect of transfers on a PDS basis, to accept liability to Telstra for payment of charges incurred by the end-user and not billed by Telstra prior to the date of transfer from Telstra to the CSP in circumstances where there is no reasonable or efficient alternative transfer process available.

Telstra had and has a substantial degree of power in the fixed local telephony market

24. By reason of the matters in paragraphs 25 to 34 below, Telstra has, and has had at all material times, a substantial degree of market power in the fixed local telephony market, a telecommunications market.
25. Telstra owns the infrastructure known as the "Customer Access Network" (CAN), which is the physical infrastructure from an end-user's telephone or

other terminal device to a public switched telephone network. The CAN constitutes approximately 99% of the physical infrastructure used by Telstra and other CSPs in providing fixed local telephony services in Australia. The remaining infrastructure is constituted principally by the Optus broadband cable network.

26. The approximate market shares of the suppliers of fixed local telephony services in the fixed local telephony market are as follows:-
 - (a) Telstra - 99%
 - (b) AAPT, Optus, Macquarie, Primus, Spectrum, Switch and other CSPs - 1%.
27. Entry barriers to the fixed local telephony market are high due to the sunk nature of the costs of telephony infrastructure and to the savings which arise from Telstra's economies of scale.
28. Telstra possesses unique information about the identity, the telecommunications usage types and quantities, and the choice of telecommunications supplier, of virtually every person within Australia who acquires telecommunications services.
29. End-users in Australia prefer to deal with a single CSP for both fixed local and fixed long distance telephony services and Telstra is the only or practically the only CSP able to provide both fixed local and fixed long distance telephony services to the overwhelming majority of end-users.
30. A significant number of customers do not accept the inconvenience of two bills for fixed local and fixed long distance telephony charges and will remain customers of Telstra for that reason.
31. Telstra's telecommunications network is substantially larger than those of other CSPs in Australia in terms of:-

- (a) geographic spread;
 - (b) capacity; and
 - (c) number of end-users.
32. Telstra is the third largest company in Australia overall and the leading telecommunications company in Australia as evidenced by Telstra's:-
- (a) vertical integration, operating in all or virtually all telecommunications markets or levels of production; and
 - (b) scope, offering a full complement of telecommunications products and services.
33. There is and was at all material times no other CSP in Australia which is and was able to supply as wide a range of telecommunications services as Telstra.
34. At no material time was the conduct of Telstra in the fixed local telephony market constrained, or constrained to any significant extent, by:-
- (a) any competitor or likely competitor in that market; nor by
 - (b) any person to whom Telstra supplied fixed local telephony services.

Telstra has taken advantage of its substantial market power in the fixed local telephony market

35. By engaging in the conduct set out in paragraph 22 above ("the Requiring Conduct"), Telstra has at all material times taken advantage of its substantial degree of market power in the fixed local telephony market.
36. By engaging in the conduct set out in paragraph 23 above ("the Refusing Conduct"), Telstra has at all material times taken advantage of its substantial degree of market power in the fixed local telephony market.

Telstra engaging in the Requiring Conduct and the Refusing Conduct has and had the effect, or likely effect, of substantially lessening, preventing or hindering competition in the fixed local telephony market

37. The effects or likely effects of the Requiring Conduct on competition in the fixed local telephony market were and are:-

- (a) the costs of CSPs carrying on business in the market, comprising,
 - (i) the fee payable to Telstra for the PDS transfer service;
 - (ii) the internal costs incurred in the recovery of outstanding charges incurred by the end-user and not billed by Telstra; and
 - (iii) the loss incurred when required to pay Telstra moneys not recovered from an end-user,

are substantial, thereby substantially hindering the ability of those CSPs to compete with Telstra in the fixed local telephony market;

- (b) the transfer of end-users from Telstra to other CSPs was and is discouraged in that:-
 - (i) it is commercially undesirable to take on the task of collecting from a new end-user customer moneys owing to Telstra as at the date of the transfer;
 - (ii) the CSP has no way of knowing in advance of the transfer the unbilled amount of money owing to Telstra for which that CSP will be required to accept liability pursuant to the transfer;
 - (iii) the costs referred to in sub paragraph (a) above result in the provision of local call services to some new end-user customers being unprofitable or only marginally profitable in the medium term,

thereby substantially hindering the ability of those CSPs to generate additional revenue and to compete with Telstra in the fixed local telephony market; and

- (c) substantially increasing the barrier preventing or hindering potential competitors and competitors of Telstra from entering into or expanding within the fixed local telephony market.
38. The effects or likely effects set out in paragraph 37 above constitute the effect or likely effect of substantially preventing, hindering or lessening competition in the fixed local telephony market.
39. By reason of the matters referred to in paragraphs 2-15, 22, 24-35, and 37-38 above, Telstra did engage and is engaging in anti-competitive conduct within the meaning of section 151AJ(2) of the Act.
40. Accordingly, the Commission's view is that Telstra, by the Requiring Conduct, in relation to the fixed local telephony market, has contravened, and is contravening, the competition rule in contravention of section 151AK(1) of the Act.
41. The effects or likely effects of the Refusing Conduct on competition in the fixed local telephony market were and are:-
- (a) the costs of CSPs carrying on business in the market, comprising,
 - (i) the fee payable to Telstra for the PDS transfer service;
 - (ii) the internal costs incurred in the recovery of outstanding charges incurred by the end-user and not billed by Telstra; and
 - (iii) the loss incurred when required to pay Telstra moneys not recovered from an end-user,
- are substantial, thereby substantially hindering the ability of those CSPs to compete with Telstra in the fixed local telephony market;

(b) the transfer of end-users from Telstra to other CSPs was and is discouraged in that:-

- (i) it is commercially undesirable to take on the task of collecting from a new end-user customer moneys owing to Telstra as at the date of the transfer;
- (ii) the CSP has no way of knowing in advance of the transfer the unbilled amount of money owing to Telstra for which that CSP will be required to accept liability pursuant to the transfer;
- (iii) the costs referred to in sub paragraph (a) above result in the provision of local call services to some new end-user customers being unprofitable or only marginally profitable in the medium term,

thereby substantially hindering the ability of those CSPs to generate additional revenue and to compete with Telstra in the fixed local telephony market; and

(c) substantially increasing the barrier preventing or hindering potential competitors and competitors of Telstra from entering into or expanding within the fixed local telephony market.

42. The effects or likely effects set out in paragraph 41 above constitute the effect or likely effect of substantially preventing, hindering or lessening competition in the fixed local telephony market.

43. By reason of the matters referred to in paragraphs 2-14, 23-34, 36, and 41-42 above, Telstra did engage and is engaging in anti-competitive conduct within the meaning of section 151AJ(2) of the Act.

44. Accordingly, the Commission's view is that Telstra, by the Refusing Conduct, in relation to the fixed local telephony market, has contravened, and is

contravening, the competition rule in contravention of section 151AK(1) of the Act.

Telstra engaging in the Requiring Conduct and the Refusing Conduct has and had the effect, or likely effect, of substantially lessening, preventing, or hindering competition in the fixed long distance telephony market

45. The effects or likely effects of the Requiring Conduct on competition in the fixed long distance telephony market were and are:-

- (a) the costs of CSPs carrying on business in the market, comprising,
 - (i) the fee payable to Telstra for the PDS transfer service;
 - (ii) the internal costs incurred in the recovery of outstanding charges incurred by the end-user and not billed by Telstra; and
 - (iii) the loss incurred when required to pay Telstra moneys not recovered from an end-user,are substantial, thereby substantially hindering the ability of those CSPs to compete with Telstra in the fixed long distance telephony market;
- (b) the transfer of end-users from Telstra to other CSPs was and is discouraged in that:-
 - (i) it is commercially undesirable to take on the task of collecting from a new end-user customer moneys owing to Telstra as at the date of the transfer;
 - (ii) the CSP has no way of knowing in advance of the transfer the unbilled amount of money owing to Telstra for which that CSP will be required to accept liability pursuant to the transfer;

- (iii) the costs referred to in sub paragraph (a) above result in the provision of local call services to some new end-user customers being unprofitable or only marginally profitable in the medium term,

thereby substantially hindering the ability of those CSPs to generate additional revenue and to compete with Telstra in the fixed long distance telephony market;

- (c) substantially increasing the barrier preventing or hindering potential competitors and competitors of Telstra from entering into or expanding within the fixed long distance telephony market; and
- (d) the ability of CSPs to effect the transfer of end-users from Telstra to that CSP was and is diminished, which thereby hinders the ability of that CSP to compete with Telstra in the fixed long distance telephony market, having regard to the significant number of customers using fixed long distance telephony services who prefer to purchase their fixed local telephony services from the same CSP that provides their fixed long distance telephony services.

- 46. The effects or likely effects set out in paragraph 45 above constitute the effect or likely effect of substantially preventing, hindering or lessening competition in the fixed long distance telephony market.
- 47. By reason of the matters referred to in paragraphs 2-15, 22, 24-35, and 45-46 above, Telstra did engage and is engaging in anti-competitive conduct within the meaning of section 151AJ(2) of the Act.
- 48. Accordingly, the Commission's view is that Telstra, by the Requiring Conduct, in relation to the fixed long distance telephony market, has contravened and is contravening the competition rule in contravention of section 151AK(1) of the Act.

49. The effects or likely effects of the Refusing Conduct on competition in the fixed long distance telephony market were and are:-

- (a) the costs of CSPs carrying on business in the market, comprising,
 - (i) the fee payable to Telstra for the PDS transfer service;
 - (ii) the internal costs incurred in the recovery of outstanding charges incurred by the end-user and not billed by Telstra; and
 - (iii) the loss incurred when required to pay Telstra moneys not recovered from an end-user,

are substantial, thereby substantially hindering the ability of those CSPs to compete with Telstra in the fixed long distance telephony market;

- (b) the transfer of end-users from Telstra to other CSPs was and is discouraged in that:-
 - (i) it is commercially undesirable to take on the task of collecting from a new end-user customer moneys owing to Telstra as at the date of the transfer;
 - (ii) the CSP has no way of knowing in advance of the transfer the unbilled amount of money owing to Telstra for which that CSP will be required to accept liability pursuant to the transfer;
 - (iii) the costs referred to in sub paragraph (a) above result in the provision of local call services to some new end-user customers being unprofitable or only marginally profitable in the medium term,

thereby substantially hindering the ability of those CSPs to generate additional revenue and to compete with Telstra in the fixed long distance telephony market;

- (c) substantially increasing the barrier preventing or hindering potential competitors and competitors of Telstra from entering into or expanding within the fixed long distance telephony market; and
 - (d) the ability of CSPs to effect the transfer of end-users from Telstra to that CSP was and is diminished, which thereby hinders the ability of that CSP to compete with Telstra in the fixed long distance telephony market, having regard to the significant number of customers using fixed long distance telephony services who prefer to purchase their fixed local telephony services from the same CSP that provides their fixed long distance telephony services.
50. The effects or likely effects set out in paragraph 49 above constitute the effect or likely effect of substantially preventing, hindering or lessening competition in the fixed long distance telephony market.
51. By reason of the matters referred to in paragraphs 2-14, 23-34, 36, and 49-50 above, Telstra did engage and is engaging in anti-competitive conduct within the meaning of section 151AJ(2) of the Act.
52. Accordingly, the Commission's view is that Telstra, by the Refusing Conduct, in relation to the fixed long distance telephony market, has contravened and is contravening the competition rule in contravention of section 151AK(1) of the Act.

DURATION OF COMPETITION NOTICE (see s.151AO)

53. This notice comes into force on Wednesday, 9 December 1998.

54. This notice remains in force until 8 December 1999.

DATED: 2 December 1998.



Professor Allan Fels
Chairperson
Australian Competition and Consumer
Commission