

ACCESS DISPUTE BETWEEN

PRIMUS TELECOMMUNICATIONS 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 21 December 2004

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

Background

1. On 21 December 2004, the Australian Competition and Consumer Commission (the Commission) received written notification (the notification) from Primus Telecommunications Pty Ltd (Primus) that an access dispute exists in relation to the supply, by Telstra Corporation Limited (Telstra), of the Line Sharing Service (LSS). Primus's notification was provided to the Commission pursuant to subsection 152CM(1) of the *Trade Practices Act 1974* (the Act).
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 Primus; and
 - Primus 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 12 July 2006, the Commission made an interim determination in this matter.
6. Pursuant to subsection 152CP(1) of the Act, this instrument is the final determination relating to the terms and conditions of access by Primus 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) *[deleted]*;
 - (b) LSS single connection and disconnection charges, as per Schedule 2;
 - (c) Terms and conditions to apply to a Managed Network Migration (MNM) involving the LSS, as per Schedule 3;
 - (d) *[deleted]*;
 - (e) *[deleted]*; and
 - (f) Charges for LSS service qualifications, as per Schedule 6.
8. Subject to clause 9, other terms and conditions upon which Telstra and Primus 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 Primus 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 Primus and the charges specified in this determination ('the settlement amount') is to be paid:
 - (a) where the charges paid by Primus are less than the charges specified in this determination, by Primus to Telstra; or,
 - (b) where the charges paid by Primus are more than the charges specified in this determination, by Telstra to Primus.

Note: For calculating the amount of money required to be paid, parties must take into account the charge paid by Primus 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: 1 August 2007



Ed Willett
Commissioner

Schedule 1

[deleted]

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	\$40.90 (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 1 February 2004 or after 31 December 2007.

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	\$36.70 (per disconnection)

- 5A. A disconnection charge is not payable by Primus in any of the following circumstances:
 - (i) the disconnection occurs between 15 November 2006 and the date that this determination comes into effect; or,
 - (ii) the disconnection occurs after this determination coming into effect and either:
 - (a) the disconnection is made pursuant to the Telstra LSS churn process; or,
 - (b) Primus 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 1 February 2004 or after 31 December 2007.

Definitions

8. For the purpose of this determination:
 - (i) 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'.
 - (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) 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 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 the period until 30 June 2006

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 February 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 Primus 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 2.21 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, 2.5, 2.6, 2.7, 2.11 and 2.21 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 2.22 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.*

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 Primus cancels an order for an MNM that is scheduled for an exchange, Primus 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 Primus 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, Primus 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 Primus 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

[deleted]

Schedule 5

[deleted]

Schedule 6 Charges for LSS service qualification inquiries

1. Except where the parties subsequently agree otherwise, and subject to paragraph 1A, the charges that are to apply in respect of Service Qualification Inquiries (where Primus makes an inquiry of Telstra in respect of a service and Telstra conducts a Service Qualification for Primus) are as specified in Customer Relationship Agreement 191 (at Table CRA191.2).
- 1A. A charge is not payable by Primus for a Service Qualification Inquiry (where Primus makes an inquiry of Telstra in respect of a service and Telstra conducts a Service Qualification for Primus) when, immediately following the results of the Inquiry being advised to Primus, Primus orders a LSS on the line that is the subject of the Inquiry.
2. Except where the parties subsequently agree otherwise, the charges that are to apply in respect of Service Qualification Not Followed by an Order (where Telstra conducts a Service Qualification in respect of a service at the request of Primus and Telstra is advised at the time of the request that the Service Qualification will not or cannot be followed by an Order for a service) are as specified in Customer Relationship Agreement 191 (at Table CRA191.3).
3. Clauses 1, 1A and 2 are not to apply to Service Qualifications requested before this determination coming into effect or after 31 December 2007.
4. In this determination,
 - (i) a reference to Customer Relationship Agreement 191 is a reference to the agreement of that name between Telstra and Primus current as at the date that this determination is made.