Telstra submission – Senate Environment and Communications Committee inquiry into a proposed new licence condition

Executive summary

Telstra welcomes the opportunity to provide a submission to the Committee on this matter. Telstra believes the proposal to impose a carrier licence condition requiring Telstra to produce any printed and online national number directories within Australia is inappropriate and should be rejected on the following grounds:

- The proposed licence condition would be a very significant extension to the scope of Telstra's existing licence condition in two key ways: it would add a requirement for Telstra to produce online directories; and it would require onshore production by Telstra of all national number directories that it produces in print or online, including those directories produced commercially and independently of the current licence condition applicable to Telstra.
- Telstra's directories are a business in transition facing significantly declining usage of print directories by Australians. At the same time, there's growing aggressive competition from both domestic and global online directories and search companies who are not constrained by any licence conditions around print or around local production.
- The proposal does not result in an overall public benefit. Rather, the proposal is likely to be detrimental to consumers and Australian business as it will increase the overall costs of providing directories services.
- The proposal would be inequitable as it will significantly reduce Telstra's ability to compete in the highly contested directories space, in which foreign, global entrants are rapidly gaining share and will significantly constrain Telstra's ability to meet its White Pages® directory licence condition in the most economically and competitively viable manner.
- A requirement on Telstra to produce White Pages® and Yellow Pages® directories entirely within Australia is very likely to constitute a breach of Australia's international trade law commitments.
- The proposal fails basic principles of good regulation, for example that the regulatory solution is not worse than the perceived problem that it is trying to solve. The Australian Government's Office of Best Practice Regulation has more information on best practice regulation. [1]

The proposed licence condition would be a very significant extension to the scope of Telstra's existing licence condition

Telstra is currently bound by a carrier licence condition to produce and deliver White Pages® books only.[2] This obligation does not extend to the White Pages® online directory or to the Yellow Pages® print or online directories.

The proposal would expand the scope of Telstra's current licence condition in two key ways: first, it would add a requirement for Telstra to produce online directories; and second, it potentially requires onshore production of all national number directories produced by Telstra in print or online, including those directories that it produces commercially and independently of the current licence condition applicable to Telstra.

The relevant licence condition is set out in clause 9 of the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Cth)* and it requires Telstra to:

- produce, publish and distribute an alphabetical telephone or public number directory, annually;

[1] http://www.finance.gov.au/obpr/about
[2] http://www.comlaw.gov.au/Details/F2012C00836/Html/Text#_Toc341867060

- to its own customers and to customers of other carriage service providers;
- in specified volumes by geographic area;
- for free as a book or if the customer agrees, in another form;
- the directory must include:
    - all customers of carriage service providers (excluding unlisted numbers); and
    - one free standard entry for each customer, listing the customer's name and address and either their geographic or mobile number (at the customer's request).

This licence condition substantially reflects the equivalent licence condition that formed part of the original licence granted to Telstra in 1991 when it was known as the Australian and Overseas Telecommunications Corporation.

The original and continuing purpose of this obligation is to ensure that people with a telephone service have access to information about how to contact other people with a telephone service, thus enhancing overall network utility. Telstra believes it is inconsistent with the original intent of this licence condition - and unnecessarily onerous - to add onshore employment obligations to this licence condition.

There is no apparent net benefit – rather, the proposal is likely to be costly and detrimental to Australian business and consumers

It is also difficult to see how an expanded licence condition would achieve any overall public benefit. Expanding the scope of the licence condition and adding an onshore employment condition would raise Telstra's total costs, which would have to be passed on to Sensis' customers (largely small to medium businesses). The licence condition could impact on not just the printing of directories, but potentially <u>all work in relation to producing directories</u>, including sales operations and call centres, design and layout, and software and other IT services.

This will increase costs, to the detriment of Australia's international competitiveness and Australian consumers (as explained below).

Telstra's directories business is a business in transition and competition is vigorous

Telstra believes that it is important for the Committee to consider these issues in the context of local and international developments in a rapidly changing competitive landscape of print and online directories.

Sensis is a business in transition in an industry in transition. White Pages®, which has been in operation since 1880, spans print, digital and voice and has been, along with Yellow Pages®, a trusted source of information for consumers, businesses and governments for more than a century. Sensis has experienced significantly declining usage of print directories by Australian consumers at the same time as growing aggressive competition from both domestic and global online directories and search companies who are not constrained by any licence conditions in respect of print or local production.

Customer expectations and usage patterns are changing around what information is published and how it is delivered. There are several reasons for this:

- <u>Multiple addresses</u> – Australians have gone from home telephone to personal mobile and digital profiles, from surname and initial to multiple 'identities';

- Accessibility of devices – the expansion in devices (for example smart phones and touch screen devices) and channels (for example mobile, online and Voice over IP) has changed accessibility and expectations about utility and convenience;
- New entrants – there are many new content sources to choose from including entrants in social media like Google, Facebook and LinkedIn; and
- Move to online directories – the shift to online search for products and services. On the other hand, for consumers without regular access to the internet, Sensis print directories remain an essential service.

The changing competitive environment for the provision of directories was recognised in the Frost and Sullivan 2012 report on digital media: [3]

> "*The online directories business model is under pressure… Search functionality is being continually improved and refined by Google, and Yahoo/Bing. The percentage of users whose first port of call is a search engine rather than a directory continues to increase, whereas the willingness of advertisers to pay for listings continues to decline*."

There are various ways of analysing the markets in which print and online directories now compete. Regardless of which market definition is adopted, it is clear that Sensis' directories compete in a highly contested marketplace:

- at its broadest, print and online number directories compete in a market for general advertising, including all forms of advertising such as television, radio and newspaper advertising, as well as online advertising;
- more narrowly, print and online directories compete in a market for online advertising, including online search (includes paid listings on search engines such as Google, Bing and Yahoo), online display (such as banner ads), online classifieds (such as Ebay, Realestate.com.au or Jobsearch.com.au) and online directories advertising (such as Yellow, Google Local Plus, Hotfrog, Dlook and others); and
- at its narrowest, there might be distinct markets for print and online directories and further distinctions within those markets for business listings versus residential listings. Even in these narrowest characterisations, the White Pages® and Yellow Pages® directories compete with search engines, and with independent online and print directories businesses.

Advertisers are also moving to other customer acquisition models, such as their own websites and online search advertising, and as a result moving their advertising spend away from directories.

The proposed licence condition would significantly impede Telstra's ability to compete in the directories space, in which foreign, global entrants are rapidly gaining share

Sensis has responded to these competitive pressures by increasing and enhancing its online directories services. However, its online competitors may have the benefit of:

- low cost operating models;
- the capacity to defray costs internationally;
- no regulatory requirement to produce print directories; and
- low entry and expansion costs for online directories.

[3] P Harpur *et al* Australian Online Search and Directories Market Frost & Sullivan Digital Media Research 2012, section 5.1, page 26.

In order to compete, Telstra needs to retain the flexibility to meet changing customer demands while managing costs. The proposal significantly harms our ability to do this, by raising input costs and compromising Telstra's ability to invest in innovation.

The amendment does not apply to competing directories – the vast majority of which are online – produced by other companies who are unimpeded by regulation in terms of what they are required to produce. Nor would it apply to other commercial services in telecommunications, utilities or banking produced partly offshore, thus distorting competition. Many aspects of the search industry and information economy are already global – for example, companies host, operate and locate their services in the cloud environment thereby taking advantage of a business model with broad economies of scale and operating efficiencies.

A higher cost structure will undermine Telstra's ability to meet its existing print directory licence condition (which requires the production of an essential service to consumers without regular access to the internet) and to compete in the directories/search market.

The proposed condition is very likely to breach Australia's international trade law commitments

Australia is bound by Article XVII of the WTO General Agreement on Trade in Services (GATS) to ensure that governmental measures do not discriminate against foreign services or suppliers (the "national treatment" obligation). Australia has made a similar commitment to accord national treatment to foreign suppliers of services in several bilateral trade agreements, for example in the Australia-US Free Trade Agreement[4] and the Singapore-Australia Free Trade Agreement.[5]

Should a carrier licence condition be imposed on Telstra which requires all work by its subsidiary Sensis to produce the White Pages® [and Yellow Pages®] directories to be carried out in Australia, the requirement would likely bring Australia into breach of those international trade law obligations:

- The licence condition will likely violate Australia's national treatment obligations under WTO GATS Article XVII because it reduces the competitive opportunities available in Australia to offshore suppliers of many of the services needed to produce the directories, e.g. data processing and advertising services. While certain exceptions are permitted under GATS,[6] those exceptions are unlikely to be available to Australia in this case; and
- The licence condition will likely violate Australia's national treatment obligations under some of its bilateral agreements, for example Article 4 in Chapter 7 of the Singapore Australia FTA (the Trade in Services chapter) would apply to printing services that may be capable of being provided by Singaporean suppliers.

Australia's Schedule of Commitments to the GATS includes: online information and database retrieval, data processing services, telephone answering services, advertising services, mailing list compilation and mailing list services – all of which are required to produce Telstra directories.

While printing and publishing services are not specifically listed in Australia's commitments to the GATS, they are covered by the national treatment obligation in several of Australia's bilateral trade agreements, including those with Singapore, the United States, New Zealand, and Chile.

[4] Article 10.2 in the Australia-US FTA, available at http://www.dfat.gov.au/fta/ausfta/final-text/chapter_10.html

[5] Article 4 in Chapter 7 of the Singapore-Australia FTA, available at http://www.dfat.gov.au/fta/safta/SAFTA-chapter-07.pdf

[6] GATS Article XIV ('General Exceptions').

The proposal fails principles of good regulation

Basic principles of good regulation require that:

- the problem to be addressed by regulatory intervention be clearly articulated and defined;
- the proposed solution be the minimal necessary intervention, clearly scoped, and proportionate to the problem;
- a cost-benefit test be performed, to ensure that the regulatory solution is not worse than the perceived problem that it is trying to solve .

None of these have yet occurred in the present case. If offshore production is of itself a “problem”, then countless other industries suffer from the same problem. It is unclear why offshore production of directories is particularly a problem.

Further, the proposed solution is unclear in its scope (for reasons set out above), and is highly expansive.

Moreover, no cost-benefit analysis appears to have been done. Costs include the loss of international competitiveness, increased input costs for production (forcing costs to be recovered elsewhere across Telstra’s business, with resulting impacts on prices and usage) and potential loss of investment in innovation. Currently, Telstra meets its regulated directory obligation without funding from the Australian Government or from industry.

Conclusion

Telstra strongly believes that a licence condition that would expand the current scope of Telstra’s directories obligation and in particular, to add an onshore employment requirement would have no apparent net public benefits and will likely be costly and detrimental to Australian business and consumers.

Telstra also takes this opportunity to reiterate its concerns that the proposed licence condition would place Australia in breach of several international trade law commitments and recommends that the Committee request legal advice on the matter.

A licence condition of this kind is likely to increase the overall costs of providing directories services which will be passed on to consumers as well as substantially impede Telstra’s overall ability to compete for directories services business and therefore to continue to offer high quality directory services across the suite of directory products available.

We believe that the proposal fails basic principles of good regulation and that our customers would be better served if the licence conditions remain as they are and Telstra retains the flexibility to continue to innovate and meet its existing licence condition in the most economically and competitively viable manner.