

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates, 16 & 17 February 2005

Question: Add 5

Topic: ACCC – Mobile Termination and Declaration

Hansard Page: Written

Senator Conroy asked:

1. What progress has there been since the issuance of the new declaration for the mobile terminating access service in reducing mobile terminating access rates in the market.
2. The declaration provided for mobile terminating access service rates to fall in an incremental manner. The first incremental reduction in prices provided that mobile terminating access charges would fall to 21c per minute from 1 July 2004. Has this occurred?
3. We understand that disputes have been notified between Telstra, Powertel and Hutchison v Vodafone and Optus, and between AAPT and Vodafone. Why has this declaration caused so many disputes?
4. There is significant evidence, acknowledged by the ACCC, that the FTM market is not competitive and that we should be worried that reductions in mobile terminating access rates would never reach consumers. By the ACCC's own admission, FTM rates for residential customers increased by 5% in real terms during the reporting period 2002-03. Appreciating that the declaration will improve competition in the FTM market by removing the ability of vertically-integrated fixed and mobile carriers (ie Telstra and Optus) to raise the costs of fixed only operators allowing more price competition in this respect, isn't it obvious that even aside from this, the FTM market is not competitive?
5. The ACCC estimates that the underlying costs of the service is 10-17c per minute but the current average price is 38.5c per minute. Does the ACCC attribute all of this margin to gouging by the mobile terminating access providers.
6. If the FTM market is not competitive, is there a need to include an obligation, in the price cap regime or in a declaration, requiring fixed operators to pass on the price reductions in mobile terminating access to their consumers? Otherwise aren't you just moving the profiteering centre from the mobile operators to the fixed operators and leaving residential consumers in the cold?
7. The ACCC also states in its report that FTM rate pass through is not an issue as the savings from lower mobile terminating access may be passed through in other

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ways (eg "reductions in the per call prices of other services sold in the same pre-selected bundle of fixed-line services that also includes national long-distance and international long-distance calls). Is the ACCC really advocating further cross-subsidisation in the telecommunications market as a positive outcome?

8. The ACCC also notes in this report that "pass through (resulting from competition in the FTM market) may not be uniform across all classes of consumers." Is this just a euphemistic way of saying that as has occurred in the telco market in the past, business customers will enjoy the benefits of lower prices but residential customers will only be able to dream of seeing a cent of these reductions?
9. Does the ACCC believe that residential FTM rates will fall in proportion to the reduction in mobile terminating access rates?

Answer:

1. There have been several new developments in relation to provision of the mobile terminating access service (MTAS) involving the ACCC since the new declaration and pricing principles came into effect on 30 June 2004.

In the first instance, on 27 July 2004, Vodafone commenced legal action in the Federal Court, challenging the validity of the indicative prices set out in the Commission's pricing principle Determination on administrative law grounds. In particular, it has challenged the validity of the price related terms and conditions set out in the pricing principle Determination. This matter is scheduled to be heard on 6 June 2005.

Secondly, and as indicated in response to question (3) below, the ACCC has been notified of a number of access disputes in relation to the MTAS. At this point, ten access disputes have been notified to the Commission. In particular, AAPT Limited (AAPT), Hutchison Telecommunications (Australia) Limited (Hutchison), Hutchison 3G Australia Pty Limited (H3GA), PowerTel Limited (PowerTel); Primus Telecommunications Pty Ltd (Primus) and Telstra Corporation Limited (Telstra) have notified the ACCC of access disputes with Vodafone Network Pty Limited (Vodafone); while Hutchison, H3GA, PowerTel and Telstra have notified the ACCC of access disputes with Optus Mobile Pty Limited.

The ACCC was notified of these disputes between December 2004 and March 2005. Telstra has subsequently withdrawn the two notifications of its disputes with Optus and Vodafone.

Finally, the ACCC has also received ordinary access undertakings (separately) from Optus and Vodafone in relation to the MTAS. Optus's undertaking, lodged on 24 December 2004, specifies some of the price and non-price terms and conditions on which it proposes to supply the service on its GSM mobiles network.

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Similarly, Vodafone's first undertaking, lodged on 26 November 2004, specified some of the price and non-price terms and conditions on which it proposes to supply the service on its 2G and 2.5G networks. Vodafone subsequently withdrew this first undertaking following the discovery of errors in its cost modelling. Vodafone lodged its second undertaking on 23 March 2005.

These undertakings are available on the ACCC website at www.aca.gov.au.

Under the *Trade Practices Act 1974*, the ACCC must accept or reject the undertakings based on whether it considers their terms and conditions to be reasonable. ACCC consideration of these matters is ongoing.

The ACCC declaration was accompanied by pricing principles. These pricing principles are not binding on industry, although the ACCC must have regard to them in any arbitral determination.

2. The ACCC is not in a position to provide information from access seekers or service providers about any terms and conditions of access to the MTAS that they might have negotiated since the ACCC's pricing principles took effect on 1 July 2004. Such matters are generally commercial-in-confidence to the parties to any such agreement.

That said, access undertakings provided by Optus and Vodafone indicate these carriers are prepared to offer access seekers rates for the MTAS of 19.25 and 19.83 cpm respectively for the 2005 calendar year, subject to other terms and conditions.

3. As indicated in response to question 1 above, the ACCC has been notified of a number of access disputes in relation to the MTAS.

The existence of access disputes in relation to the MTAS indicates that access seekers and service providers have been unable to agree to all terms and conditions of access to the MTAS, and have seen fit to seek resolution of their disputes through the arbitration procedures.

4. The ACCC takes the view that the market(s) within which FTM services are provided are less than effectively competitive at this point in time. The ACCC believes that declaration of the MTAS will, when combined with the service being provided on reasonable terms and conditions, help to promote competition in the market within which FTM services are provided.
5. In its Final Report on the MTAS, the ACCC estimated the average retail price of FTM calls to be 38.5 cents per minute (cpm), based on Telstra's average FTM yield as reported in its half-year data for the year ending 31 December 2003. The Commission also estimated that non-integrated providers of FTM

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calls were likely to be facing an underlying cost of providing FTM calls of around 27.5 cpm during the 2003-04 financial year. This would imply that providers of FTM services were enjoying, on average, 'economic' profits of about 11 cpm on each FTM call minute they provided.

6. The ACCC has recently considered the issue of retail price controls in a report prepared for the Minister for Communications, Information Technology and the Arts (the Minister) with respect to future retail price control arrangements that could be applied to Telstra. This report did not recommend that the price control arrangements include a requirement to pass reductions in MTAS prices through to consumers. This report has been publicly released. The final determination of retail price controls is a matter for the Minister.
7. The ACCC did not state in its report that pass through is not an issue. Reductions in the cost of FTM calls are clearly one way in which consumers can benefit from reductions in the price of the MTAS. Further, the ACCC concluded that its approach to regulating the MTAS should, over the long-term, work to provide a greater level of FTM pass-through.

That said, the ACCC did indicate in its report that competition can manifest itself in many forms other than just price reductions. Improved competition may be associated with incomplete pass-through if it is also associated with other changes, including reductions in the price of other services provided in the bundle of pre-selected fixed line services.

Reductions in the prices for other services that might result from reductions in the price of the MTAS should not be assumed to be cross-subsidising above-cost prices for FTM call services. As stated in the MTAS report, the ACCC considers it unlikely that either national long-distance or international long distance calls are cross-subsidising FTM services at present, and has no reason to believe that they will do so in future as a result of lower MTAS charges.

8. The ACCC believes it is unclear whether pass-through will be uniform across all consumer groups in the future. The extent to which FTM call service prices reduce for different types of consumer will likely depend on the way in which the effectiveness of competition evolves in the market segments that are serviced by telecommunications service providers.

Over the longer term the ACCC believes pass-through of lower prices for the MTAS into lower prices for FTM call services is likely to occur for residential consumers.

9. As competition develops in this market, the ACCC expects that retail prices will decrease because of both decreases in termination charges and through the market becoming more competitive.