

**Competitive
Carriers'
Coalition Inc**

**Submission to the Senate Environment, Communications and
the Arts References Committee**

**Inquiry into the Performance of the Australian
Telecommunications Regulatory Regime**

April 2005

Introduction

The CCC welcomes the opportunity to contribute to the Senate ECITA committee's inquiry into the Australian Telecommunications Regulatory Regime. The CCC is an association representing a group of non-dominant telecommunications carriers in Australia.

The CCC stands apart from other representative groups because it speaks exclusively for carriers and carriage service providers that have invested in building their own competitive infrastructure, rather than simply trying to resell Telstra products. Its members have invested over \$4 billion in competitive infrastructure and have been at the forefront of driving competition in markets as diverse as 3G mobile services, corporate data and voice services, wholesale transmission and residential Internet and voice products.

The Competition Failure Issue

The CCC has consistently argued that the Australian regulatory regime is unable to address the core problem undermining the development of effective and sustainable competition in telecommunications markets – the structure of Telstra.

The CCC believes that Telstra's vertical and horizontal integration is at the heart of its market power incentives to discriminate against competitors and only when this is addressed through effective structural reform will sustainable competition develop as was intended when the market was deregulated in 1997. The ACCC has said that it believes the degree of integration of Telstra is unparalleled internationally.¹

The Productivity Commission has said that it believes the Federal Government has an obligation under the National Competition Policy agreement to review the structure of Telstra before it proceeds with any further privatisation.²

The problem of Telstra's integration manifests itself in many instances of market failure, anti-competitive conduct and sub-optimal market outcomes. A few examples that have received attention recently are:

- Vertical price squeezes where Telstra constrains margins for competitors reliant on access to its monopoly network elements
- Bundling of services at a retail level that cannot be matched by competitors because some services rely on monopoly network elements that Telstra does not make available, or are offered at prices that cannot be matched economically
- Price discrimination affecting certain regions that precludes competitive entry, such as the high price of transmission to regional areas relative to metropolitan routes.

¹ ACCC Emerging Markets Report June 2003

² Productivity Commission Discussion Draft Review of NCP Reforms Inquiry

There are dozens of other examples that could be cited.

Under the present regulatory regime the regulator deals separately with each instance of market failure or anti-competitive conduct, and usually with very limited success. The CCC believes this is because the core problem of Telstra's integration underpins almost all of the problems faced by consumers and competitors, yet the regulator has no mechanism to address that problem, and the legislator has not been willing to do so to this point.

The CCC has in the past called for an inquiry into the costs and benefits of structural separation. However, it is aware that the Government wishes to introduce a regulatory reform package as part of the Telstra full privatisation process to address the structural problem, without actually separating Telstra's Retail and Wholesale businesses.

The CCC has therefore, since December 2004, been developing a series of discussion papers considering operational separation and the features that an Australian model of operational separation should possess to address the particular problems in this country.

The CCC has yet to finalise its views on a preferred model of operational separation, but proposes principles that should guide the development of a model.

At the highest level these are:

- Transparency, and;
- Non-discrimination or Equivalency of treatment, both in price and non-price conditions.

Transparency is not an end in itself, and equivalency of treatment must be underpinned by a changed behaviour from Telstra. This can only be lastingly achieved through changing the incentives that operate on Telstra away from incentives to limit growth and innovation as a means of defending market share, to incentives to stimulate total market growth and retail and wholesale innovation.

The central feature that distinguishes operational separation from accounting separation is this desire to change the incentives that guide Telstra's actions and interactions in the market. The goal of operational separation should be to emulate as far as possible the positive competitive outcomes that would be observed in a structurally separated market.

Attached to this submission are the papers that the CCC has produced outlining its developing thinking in relation to operational separation. These papers discuss these ideas in some detail.

The CCC would be pleased to assist the committee further if requested.

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