

The Senate

Environment and Communications
References Committee

Impacts of imposing a certain carrier licence
condition on Telstra Corporation Limited

July 2013

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Committee members

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Chapter 1

Telstra's carrier licence conditions

Conduct of the inquiry

1.1 On 27 June 2013, the Senate referred the following matter to the Environment and Communications References Committee (the committee) for inquiry and report by 19 July 2013:

All matters relevant to the impacts of imposing on Telstra Corporation Limited a carrier licence condition that would require it to produce printed and online national number directories within Australia.¹

1.2 In accordance with usual practice, the committee wrote to stakeholders inviting submissions by 4 July 2013. Details of the inquiry were also made available on the committee's website at [www.aph.gov.au/senate ec](http://www.aph.gov.au/senate_ec).

1.3 The committee received eight submissions which are listed at Appendix 1. No public hearing was held for the inquiry. The committee thanks those organisations that made submissions to its inquiry.

Background

1.4 The Australian Communications and Media Authority (ACMA) administers the regime that licenses telecommunications carriers.² Owners of a network unit used to supply carriage services to the public are generally required to hold a carrier licence.³

1.5 Division 3 of Part 3 of the *Telecommunications Act 1997* (the Act) provides for the imposition of licence conditions on telecommunication carriers. Section 63 of the Act provides that a carrier licence may be subject to any conditions declared by the minister administering the Act including:

- conditions in addition to those referred to under sections 61 and 62 of the Act, applying to all carrier licences; and

1 *Journals of the Senate*, No. 154—27 June 2013, p. 4214.

2 Australian Communications and Media Authority, Information for carrier licence applicants, p. 1.

3 Australian Communications and Media Authority, Information for carrier licence applicants, p. 1.

- conditions of specific carrier licences.⁴

1.6 Pursuant to subsection 63(3) of the Act, Telstra Corporation Limited (Telstra) is subject to the additional conditions of its carrier licence (Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997). Clause 9 of the Declaration requires Telstra to produce an alphabetical public number directory annually, in volumes by geographic area.⁵

1.7 The Department of Broadband, Communications and the Digital Economy (DBCDE) advised the committee that Telstra fulfils the obligations under Clause 9 of its carrier licence condition through the production and distribution of the White Pages directory.⁶ DBCDE further explained that there is no obligation for Telstra to provide online telephone number directories. Telstra's licence conditions also do not cover the production of the Yellow Pages directory which Telstra produces 'on the basis of its own commercial decisions'.⁷

1.8 In February 2013 Sensis, the wholly owned subsidiary of Telstra which produces the White Pages and the Yellow Pages in Australia, announced that 'as many as 698 positions could go, more than half of which would be in back-office roles that would be sent offshore'.⁸ It is this announcement by Sensis that forms the basis of the committee's inquiry into Telstra's carrier licence conditions.

4 Australian Communications and Media Authority, Register of licenced carriers as at 10 May 2011, p. 10, http://www.acma.gov.au/webwr/assets/main/lib310146/licensed_carriers.pdf (accessed 1 July 2013). See also Explanatory Memorandum to the Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997, p. 1.

5 Clause 9, Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997:

- produce, publish and distribute an alphabetical telephone or public number directory, annually;
- 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). Telstra, *Submission 7*, p. 2.

6 DBCDE, *Submission 2*, p. 2.

7 DBCDE, *Submission 2*, p. 2.

8 John McDuling, 'Telstra cuts 700 jobs from Sensis', *Australian Financial Review*, 22 February 2013, http://www.afr.com/p/technology/telstra_cuts_jobs_from_sensis_9tVIWBUvbxiiyAxCMwJHV (accessed 1 July 2013). See also Mike Keating, 'Yellow Pages jobs to go offshore', 25 June 2013, <http://www.news.com.au/business/markets/yellow-pages-jobs-to-go-offshore/story-e6frfm30-1226669569336> (accessed 1 July 2013).

Discussion of key issues

1.9 Submissions from a number of stakeholders supported the imposition of a new carrier licence condition on Telstra to require it to produce printed and online national number directories within Australia. Concerns were raised, however, in respect of how such an obligation would interact with Australia's international trade commitments.

Support for a new licence condition

1.10 Submitters identified Telstra as holding a 'special and historic' place in Australia's history and expressed concern that, in the absence of a new carrier licence condition, offshoring in the telecommunication industry would lead to job losses, affect the quality of directories and put information security at risk.⁹ The Australian Manufacturing Workers Union (AMWU) commented that it was aware of anecdotal information 'showing that language and cultural barriers have contributed to mistakes in copy and advertisements and notices published with mistakes which sit for the life of the directory'.¹⁰ The Printing Industries Association of Australia (PIAA) raised similar concerns.¹¹

1.11 In addition to concerns regarding quality, the Community and Public Sector Union (CPSU) suggested that there would be 'disquiet about privacy' if production of Telstra's directories was taken offshore.¹² The PIAA also raised this matter as a risk associated with offshoring production:

The transfer of Telstra's directory operations also understandably raises concerns and issues about offshore production. These include the risk of exposing private information on Australian citizens which Telstra holds, risk to intellectual property, risk of security breaches and data theft. Both offshore locations [Philippines and India] have high levels of poverty which could tempt the data handlers to engage in data theft and thus compromise the security and privacy aspects of the data.¹³

1.12 The CPSU suggested that '[o]nly by ensuring work is done in Australia can users and customers be certain that their data will be secure and protected by Australia's regulatory system'.¹⁴

9 Australian Manufacturing Workers' Union (AMWU), *Submission 1*, pp 1–2. The Printing Industries Association of Australia (PIAA) in its submission expressed the view that Telstra's decision to offshore its directory production processes was in direct conflict with the intentions of Australian policy makers when they were initiating Telstra's phased privatisation. See PIAA *Submission 6*, p. 3.

10 *Submission 1*, p. 3.

11 *Submission 6*, p. 4.

12 *Submission 4*, p. 2.

13 *Submission 6*, p. 3.

14 *Submission 4*, p. 2.

1.13 The Communication Workers Union (CWU)¹⁵ raised concerns about loss of jobs and skills. While the CWU acknowledged that it was 'hard to see why Telstra should be subject to such a requirement when no such legal restrictions on offshoring have...been placed on other Australian companies, including Telstra's competitors', it supported the imposition of a new licence condition.¹⁶ The CWU advised the committee that, in its view, imposing an 'Australian made' condition on directories will not in itself stem the flow of skilled work, but it would 'draw a visible line in the sand'.¹⁷ Submitters also expressed the view that offshoring was not in the national interest.¹⁸

Telstra's response

1.14 In response to the concerns raised, Telstra explained to the committee that Clause 9 of its carrier licence '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'.¹⁹ Telstra noted that the 'original and continuing purpose of this obligation was 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'²⁰ and that such a change would be both inconsistent with the original intent of the licence condition and unnecessarily onerous.²¹

1.15 Telstra contended that the imposition of the mooted new condition represented a 'significant extension' of the scope of the current licence in two 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.²²

15 The Communication Workers Union (CWU) is a Division of the Communications Electrical and Plumbing Union (CEPU). The CWU is the largest union in the telecommunications sector. It is the major union in Telstra and has sole coverage of Optus. CWU members can also be found in a number of smaller companies, in NBN Co and in the contracting companies, which carry out maintenance and construction work on behalf of telecommunications carriers. See CWU, *Submission 8*, p. 1.

16 CWU, *Submission 8*, p. 2.

17 CWU, *Submission 8*, p. 4.

18 See AMWU, *Submission 1*, p. 3 and CPSU, *Submission 4*, pp 4–5.

19 Telstra, *Submission 7*, p. 2.

20 Telstra, *Submission 7*, p. 2.

21 Telstra, *Submission 7*, p. 2.

22 Telstra, *Submission 7*, p. 1.

1.16 Telstra explained that the extension of the scope of the licence would increase its costs in an increasingly competitive global market²³ and stated that, as the amendment would not apply to competing directories or 'other commercial services in telecommunications, utilities or banking produced partly offshore', competition would be distorted and the higher cost structure would undermine its ability to meet its existing directory licence conditions and compete in the market.²⁴

1.17 DBCDE informed the committee that the direction of regulatory policy for the telecommunications industry 'has been to gradually reduce the number of obligations placed on Telstra in areas where there is now a competitive market'.²⁵ DBCDE therefore noted that:

...it would be important to consider the intended scope of the proposal and whether it would regulate products that are not currently regulated or required by telecommunications legislation, but are provided by Telstra on the basis of its own commercial decisions.²⁶

Trade concerns

1.18 In its submission, DBCDE commented that the imposition on Telstra of a licence condition requiring it to produce its directories in Australia may have 'implications associated with Australia's trade obligations' and advised the committee to seek advice from the Department of Foreign Affairs and Trade (DFAT).²⁷

1.19 DFAT informed the committee that the proposed condition could affect 'trade in services', which is broadly defined under the World Trade Organisation General Agreement on Trade in Services (GATS) and Australia's free trade agreements (FTAs).²⁸ DFAT explained that Australia has made specific commitments on a variety of service sectors under the GATS and FTAs:

Two important commitments made in the GATS and Australia's FTAs are to allow access to the Australian market (market access), and not to discriminate against like services and services suppliers of other parties (national treatment), in certain sectors.²⁹

1.20 DFAT therefore advised that a relevant consideration when determining if such a condition (requiring the local production of national number directories) was in breach of Australia's international trade commitments would be 'whether Australia has

23 Telstra, *Submission 7*, pp 2–3.

24 Telstra, *Submission 7*, p. 4.

25 DBCDE, *Submission 2*, p. 2.

26 DBCDE, *Submission 2*, p. 2.

27 DBCDE, *Submission 2*, p. 1.

28 DFAT, *Submission 5*, p. 1.

29 DFAT, *Submission 5*, p. 2.

market access and national treatment obligations in respect of the relevant service sectors and if so, to whom'.³⁰ The committee was informed that Australia has undertaken obligations with respect to e-commerce, and has made commitments on 'printing and publishing services' but that the service sector(s) affected by the proposed measure would 'depend on the scope of the actual measure'.³¹

1.21 Telstra echoed the concerns of DFAT that, in its view, a licence condition requiring the production of directories within Australia would likely:

- violate Australia's national treatment obligations³² 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, those exceptions are unlikely to be available to Australia in this case; and
- 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.³³

1.22 Telstra further explained that:

...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.³⁴

Committee view

1.23 The committee shares the concerns of submitters for local jobs and acknowledges that offshoring the production of directories may lead to the loss of jobs and skills in Australia.

1.24 The committee notes, however, the importance of Australia's international trade commitments to the country's continued participation in a global economy and therefore considers that the concerns raised by the Department of Foreign Affairs and Trade are paramount in the consideration of any proposed new carrier licence condition for Telstra or other participants in the telecommunication industry. In addition, the committee refers to the direction of regulatory policy for the

30 DFAT, *Submission 5*, p. 2.

31 DFAT, *Submission 5*, p. 2.

32 See, http://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm#articleXVII (accessed 9 July 2013).

33 Telstra, *Submission 7*, p. 4.

34 Telstra, *Submission 7*, p. 4.

telecommunication industry which 'has been to gradually reduce the number of obligations placed on Telstra in areas where there is now a competitive market'.³⁵

1.25 In giving consideration to Australia's international trade obligations and the fact that as a private company Telstra (or Sensis) should, as far as possible, be able to make commercial decisions about their operations (even where such operations are required of them by government), the committee is not convinced of the need to amend Telstra's licence conditions at present.

Senator Simon Birmingham
Chair

Government Senators' Dissenting Report

Senators Cameron and Bilyk disagree with the view of the Coalition senators, particularly that expressed at paragraphs 1.16 and 1.17. It is just a bit glib to say that while sharing the concerns of submitters about the loss of Australian jobs and skills, nothing should be done to prevent the loss of those jobs and skills.

In our view, the effect of Australia's trade obligations against which it is said that a license condition such as that proposed might offend, are overstated. To say that DFAT's at best deeply equivocal advice about whether the proposed license condition would offend Australia's trade obligations should be considered "paramount" and should exclude consideration by the Committee of other relevant matters in the public interest; is to completely overstate our trade obligations while undervaluing public interest and job protection considerations.

As DFAT pointed out, the relevant considerations under Australia's trade obligations are whether Australia provides market access and will not discriminate against like services. A license condition requiring Telstra and/or Sensis to produce in Australia the directories they are required to produce is by no means a restriction on access to the Australian market. There may well be other potential market entrants who are willing to produce, as a commercial proposition, a directory for which there is no charge for a customer to list their phone number, which is available free of charge to anyone who wants to obtain a directory and which may or may not be in printed, bound form. But somehow we doubt it.

We do not accept Telstra's contention that it would be inconsistent with the original intent of the license condition that directories be produced in Australia. On the contrary, it is our view that a license condition requiring production of directories in Australia would be a useful supplement to the original intent of the condition that takes account of changed technology and consumer preferences while at the same time serving the public interest. This is especially so when the public interest will be very badly served by the loss of as many as 700 highly-skilled, well-paid jobs that will be transferred to India and/or the Philippines should Telstra proceed to offshore production of directories.

While it may be true, as submitted by DBCDE, that the intent of the policy direction taken by regulation of the telecommunications industry in recent years 'has been to gradually reduce the number of obligations placed on Telstra in areas where there is now a competitive market', we are not convinced that the limits of reducing Telstra's obligations may not have been reached in relation to production of directories. If the production of white pages directories are such a lucrative and profitable part of Telstra's business, then why is it that the continued production of them needs to be the subject of a license condition? The answer, of course, is that but for the condition, they wouldn't be produced in the manner they are required to be produced under the license condition. The license condition is intended to address a market failure. To

remove or weaken the condition and free Telstra of the obligation to produce the directories would give effect to market failure.

In our view, the government should give careful consideration to extending the license requirement for Telstra to produce directories; to require that they be produced in Australia; to protect Australian jobs in the public interest and, as a measure, to take account of changed technology and consumer preference.

Senator Doug Cameron
Senator for New South Wales

Senator Catryna Bilyk
Senator for Tasmania

Appendix 1

Submissions

- 1 Australian Manufacturing Workers Union
- 2 Department of Broadband, Communications and the Digital Economy
- 3 AMWU Sensis delegates committee
- 4 CPSU
- 5 Department of Foreign Affairs and Trade
- 6 Printing Industries Association of Australia
- 7 Telstra
- 8 CWU Australia

