

TELECOMMUNICATIONS (CONSUMER PROTECTION AND SERVICE STANDARDS) AMENDMENT BILL (NO.1) 2000

Introduction

1.1 On 10 May 2000, the Senate referred the Telecommunications (Consumer Protection and Service Standards) Amendment Bill (No.1) 2000 to the Senate Environment, Communications, Information Technology and the Arts Legislation Committee, (Selection of Bills Committee Report No 6 of 2000). The Committee was required to report to the Senate by 19 June 2000.

The Bill

1.2 The Telecommunications (Consumer Protection and Service Standards) Amendment Bill (No.1) 2000 amends Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, the part of the Act that establishes the universal service regime for telecommunications. The universal service obligation (USO) ensures that the standard telephone service (ie. voice telephony), payphone and other prescribed services are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business. The complementary digital data service obligation (DDSO) underpins access on request to a 64kbps (or comparable) data service.¹

1.3 The Explanatory Memorandum to the Telecommunications (Consumer Protection and Service Standards) Amendment Bill (No.1) 2000 states that the purpose of the Bill is to:

- provide greater advance certainty for industry in relation to USO costs;
- provide greater certainty for prospective tenderers in the Extended Zones Tender about the regulatory environment in which they would be operating should they win the Tender;
- provide the Government with greater administrative flexibility in the context of the Tender and the operation of the USO regime generally; and
- to facilitate greater competition in the supply of services under the Digital Data service Obligation, by reducing regulatory hurdles.²

1.4 Telstra is currently the only universal service provider, a role that it is required by law, to undertake. Telstra's USO costs for 1997/98, 1998/99 and 1999/2000 were capped by Parliament and a review of USO arrangements was undertaken in 1999. The Bill amends section 57 of the current Act to enable the Minister to make a written determination specifying an amount that is to be the USO cost or a method for working out the USO cost for a specified person, or for each person in a specified class, for a specified financial year. In order to provide longer-term certainty, the Minister's determination will be able to

1 Explanatory Memorandum, Telecommunications (Consumer Protection and Service Standards) Amendment Bill (No.1) 2000.

2 Explanatory Memorandum, Telecommunications (Consumer Protection and Service Standards) Amendment Bill (No.1) 2000, P.7

encompass up to three successive years.³ The Explanatory Memorandum states that the Minister would generally seek the advice of the Australian Communications Authority before making such a determination.

1.5 As part of the sale of the second tranche of Telstra in 1998, Parliament allocated \$150 million (referred to as a “Social Bonus”) to provide untimed local calls in remote Australia. In accordance with decisions announced by the government on 23 March 2000, the Bill amends the Act to give the successful tenderer for the provision of untimed local call to a particular region, the certainty that it will become the regional universal service provider (USP).

1.6 Other amendments seek to provide prospective tenderers in the Extended Zones tender ongoing access to information necessary to fulfil their obligations as a USP and greater certainty about the regulatory environment in which they would be operating should they be successful. The Explanatory Memorandum to the Bill gives further details in relation to the proposed amendments.⁴

1.7 In his second reading speech, the Minister flagged that a second Telecommunications (Consumer Protection and Service Standards) Bill (Part 2) dealing with USO matters will be introduced at a later date. More substantive than the Bill under consideration, the second Bill will seek to implement all elements of the Government’s USO package announced on 23 March 2000.

The Committee’s inquiry

1.8 The Committee advertised its inquiry in each State capital city newspaper as well as in *The Weekend Australian* and *The Australian Financial Review*. Details of the inquiry were also placed on the Committee’s homepage on the Internet. The Committee received 4 submissions, 3 of which went to the core of the issues addressed in the Bill. After careful deliberations, the Committee decided to prepare its report to the Senate on the basis of written submissions only without holding a public hearing. All the submissions received are publicly available through the Committee Secretariat. A list of the submissions is at Appendix 1.

The submissions

1.9 One of the submissions received was a complaint about Telstra’s level of service in Telstra’s Call Centres and specifically in relation to a new phone connection in Margate, Tasmania. It was not directly related to the Bill.

1.10 In its submission, Telstra argues that the stated policy of the Government in relation to universal service provision and the remote Australia untimed local call tender “has not been adequately given effect to in the drafting of the Bill”.

1.11 In particular, Telstra argues that other carriers and the community as a whole would have to bear higher Net Universal Service Costs (NUSC) because under the Bill, Telstra’s status as a national universal service provider (USP) will not be affected by another carrier

3 McGauran, P, MP Second Reading Speech, Telecommunications (Consumer Protection and Service Standards) Amendment Bill (No.1) 2000.

4 Explanatory Memorandum, Telecommunications (Consumer Protection and Service Standards) Amendment Bill (No.1) 2000.

winning the tender to become the new regional USP. Telstra would be obliged to maintain its network (as a USP) even if it were not the successful tenderer.⁵ In its supplementary submission to the Committee, the Department of Communications, Information Technology and the Arts (DCITA) stated:

The Department 's legal advice is that this interpretation of the Bill is incorrect

As a result of the operation of s.21(30) of the Act, the declaration of a new RUSP would remove Telstra's obligation in relation to the region covered by the RUSP declaration. This is irrespective of whether the declaration takes place via the proposed deemed declaration through the untimed local call agreement or through direct declaration.⁶

1.12 In its submission to the Committee the CEPU also expresses concern that the NUS costs are likely to rise as a result of the proposed new framework.

Determination of Net Costs of a Universal Service Provider

1.13 In relation to item 70 of the Bill, the power for the Minister to determine the Net Universal Service Cost (NUSC) of a Universal Service Provider, the Communications, Electrical and Plumbing Union (CEPU) called for greater transparency in the cost assessment methodology and stated that:

In the Union's view, if the Minister is to be empowered to make NUSC determinations, it should be upon the recommendation from the ACA (Australian Communications Authority). If the ACA recommendation is not accepted, the Minister should be obliged to state the basis for any adjustments to the ACA estimate.

At an absolute minimum, the Minister should be required to make public the basis of any universal service cost assessment.⁷

1.14 For its part, Telstra called for the Ministerial power of determination to be conferred by amending section 57 of the Act to be limited so that:

the Minister must be satisfied, after reasonable inquiry, that the figure he determines is a reasonable estimate of the figure that would be derived by application of a methodology set out in the Act or, alternatively, another methodology declared by the Minister under a disallowable instrument.⁸

1.15 The Department of Communications, Information Technology and the Arts stressed in its submission to the inquiry that in determining the USO costs:

The Minister would obtain the advice of the ACA ...

5 Telstra (Submission No.2), pp. 2 & 3

6 DCITA, (Supplementary Submission No.3a, p. 2

7 CEPU (Submission No.4), p. 4

8 Telstra (Submission No.2), p. 7

...Prior to making a determination the Minister will be able to seek the advice of the ACA and consider any other matter that is relevant.⁹

1.16 In its supplementary submission, DCITA pointed out that:

The Government has already asked the ACA to provide forward-looking estimates of the USO costs as the basis for the Minister's determination.¹⁰

1.17 Both Telstra and the CEPU expressed concerns about proposed new sections 20(2A) and 26(A(2A)), which provide that, in making USP declarations, "the Minister is not limited to considering only the persons suitability to provide the services that must be provided to fulfil the universal service obligation".

1.18 Explaining its concern with the breadth of the powers conferred on the Minister under the Bill and in particular with those powers relating to determining USO and DDSO providers, the CEPU stated that "clear public policy criteria need to be specified to guide the process of USP selection".

1.19 Telstra's position was that:

There should be appropriate limitations on the discretion conferred on a Minister in the making of such declarations.¹¹

1.20 The CEPU has a particular concern about the Minister's power to choose a Digital Data Service Obligation provider, "without reference to even the most broad criteria" and calls for greater transparency in this process.

Compulsory information provision

1.21 Telstra expressed its concern at proposed new sections 24A and 26F (items 19 and 49 of the Bill) which in its view, give incoming USPs:

Extensive powers to require the production of commercially valuable, sensitive and unnecessary information from former USPs.

Telstra is concerned that the powers conferred on carrier competitors are far wider than they reasonably ought or need to be.¹²

1.22 Telstra is seeking amendments that would, among other things, limit incoming providers to require:

the production of only that information that is 'reasonably necessary to enable' the incoming provider to do those things that it is "required to do as a USP;...

and it is calling for:

9 DCITA, (Submission No.3, p. 8

10 DCITA, (Supplementary Submission No.3a, p. 4

11 Telstra (Submission No.2), p. 5

12 Telstra (Submission No.2), p. 6

either the Minister or the ACA (to be) given an unequivocal power to declare that information sought is not required to be provided, either because the request is unreasonable or because access to the information sought is not necessary to honour a USP obligation.

1.23 In its submission, the Department of Communications, Information Technology and the Arts explained that USPs cannot simply ask for any information they may feel like having:

Information requested must assist the new USP to do something required (eg service customers) or permitted (eg to claim costs) under Part 2 (ie. the universal service regime)...

The Minister's ability to determine information to be relevant is designed to facilitate the prompt resolution of any disputes.¹³

1.24 In its supplementary submission, DCITA agreed that the Bill provides the incoming USPs with access to a wide-range of information but explained:

The proposed provisions are far-reaching, but it is appropriate given the importance of the information to the maintenance of universal service in regional Australia, and Telstra's past reluctance to provide information.¹⁴

Conclusion

1.25 Having considered the Bill and the issues raised in the submissions it has received, the Committee makes the following recommendation:

Recommendation

The Committee recommends that the Bill be passed.

Senator Alan Eggleston
Chair

13 DCITA, (Submission No.3, p. 13

14 DCITA, (Supplementary Submission No.3a, p. 3

