

TRADE PRACTICES ACT REVIEW

SUBMISSION BY THE SMALL ENTERPRISE TELECOMMUNICATIONS CENTRE LIMITED (SETEL)

1. Background

The Small Enterprise Telecommunications Centre Limited (SETEL) is a not-for-profit public company limited by guarantee. Membership comprises industry associations, with members predominantly from the Small Business sector, & businesses expressing their interests as users of telecommunications services. Sector coverage, through member associations, exceeds 600,000 small businesses.

SETEL participates in a wide variety of telecommunications industry fora. Our work is supported by the Commonwealth Government, through the 'Grants to Fund Telecommunications Consumer Representation' program of the Department of Communications, Information Technology and the Arts. The primary role of SETEL, in terms of grant funding, is to advance the interests of the Small Business sector as users/consumers of telecommunications services.

SETEL liaises extensively with industry, government and regulators on telecommunications matters affecting Small Business and has substantial involvement in the Australian Communications Industry Forum (ACIF) consumer code/guideline development processes. SETEL maintains active input into the Australian Competition and Consumer Commission (ACCC), the Australian Communications Authority (ACA) and the Department of Communications, Information Technology and the Arts in response to discussion papers and inquiries on telecommunications matters. A significant level of involvement is maintained with the TIO Council.

Small Business sector support for SETEL continues through the direct involvement of ACCI, the Small Business Coalition and Australian Business Limited in particular. SETEL co-hosts a website for the Small Business Coalition. SETEL also provides administrative and technical support for the Small Business Coalition E-commerce and Telecommunications Advisory Group (ETAG).

SETEL seeks to raise the levels of awareness of telecommunications issues, products and services in the Small Business sector. This is achieved via Newsbriefs to members plus the publication of material on a website. SETEL seeks to assist small businesses to make informed decisions as in the telecommunications market. The website features telecommunications material from Government and industry sites.

A key component of SETEL's activities in the 2002/2003 financial year will be to focus on the extent and quality of supply of telecommunications services to small businesses in non-metropolitan, rural and remote regions of Australia, particularly in areas where competition is either non-existent or not adequately developed. This does not mean that SETEL is satisfied with the general level of communications services provided to SMEs in urban areas, particularly in relation to provisioning of extra lines, mobile 'black spots' and internet access speeds.

Emphasis will be placed on determining the telecommunications needs of home-based and micro businesses, as the majority of these entities are not represented by industry associations.

SETEL will seek involvement in the proposed ACIF Consumer Advisory Council as the creation of this new body is considered to be a vital element in addressing many of the consumer concerns with the self-regulatory process. SETEL is looking forward to developments within ACIF involving a Consumer Advisory Council and also to negotiating a more effective process by which small business interests can be better represented in ACIF and other self-regulatory programs.

SETEL's Objectives

Advance and represent the interests of Small Business in telecommunications:

- To Governments
- To the Federal Public Service (in particular the Department of Communications, Information Technology and the Arts)
- To the Australian Communications Authority and the ACCC
- To the telecommunications industry
- To other government-related areas impacting on the Small Business sector.

Actively participate in ACIF code development programs and other ACIF activities, which have a bearing on Small Business.

Raise awareness of telecommunications issues in the Small Business sector.

Promote developments in telecommunications to the Small Business sector to increase the level of understanding of telecommunications issues and policy development and to foster greater input into policy debates on such matters.

Provide briefing on telecommunications to the Small Business sector, mainly through industry and member associations.

Seek to raise the level of participation by the Small Business sector in telecommunications industry fora.

Provide a forum and co-ordinating role for Small Business in relation to the widespread adoption of electronic commerce.

Continue liaison with consumer and user group bodies and representatives in the telecommunications sector and other industry associations involved in the telecommunications industry.

Seek to recognise and promote the needs of different size related categories of small business - home-based and non-employed businesses, micro businesses (5 or less staff), larger small businesses (including rural businesses) and medium size businesses which make up the SME sector.

Seek to raise small business awareness of how telecommunications can be used as a driver of business success, particularly through involvement in e-commerce activities.

Seek to determine and address solutions for the adoption of e-commerce by associations and their members and the implementation of outcomes from an E-commerce Roundtable/Forum for SME's.

Seek remedies to address SETEL's capacity to serve the interests of small business in domain name administration and to facilitate access to reliable internet connections at speeds sufficient to encourage the uptake of productive new web-based development tools.

Project Plan

SETEL seeks to continue its range of activities, including:

- fostering awareness of telecommunications issues throughout the small business sector,
- representing the interests of small businesses (as consumers of telecommunications services) in the development of Government and industry policy in relation to telecommunications,
- facilitating discussion of and research into telecommunications issues, and
- informing and educating small businesses and small business associations on telecommunications issues.

An integral part of this project involves efforts to improve the self-management of telecommunications issues and services by small businesses.

SETEL contends that it is necessary to address the business or value proposition in seeking to interest small businesses in telecommunications issues. In so doing it is considered essential to include information on related matters such as e-commerce, security, privacy and domain names.

SETEL adopts both a pro-active as well as a re-active stance in relation to telecommunications policy and market developments, recognising that small businesses in general prefer to operate in a competitive environment.

E-commerce Uptake by SMEs

SETEL, with support from small business, Telstra and Pacific Access established an SME E-commerce Roundtable/Forum process to make recommendations in relation to accelerating the uptake of e-commerce by SMEs. SETEL chaired a Task Force to progress the outcomes from the Forum and the recommendations have just been published.

In response to the Telecommunications Service Inquiry Report SETEL advocated the need for a new consumer service to raise awareness and understanding of telecommunications products and services.

A key challenge will be to derive increased focus on the telecommunications service situations facing small businesses in non-metropolitan areas to determine whether there are serious inequities in terms of service delivery.

2. SETEL Comments to the Trade Practices Act Review.

In relation to telecommunications and e-commerce products and services SMEs can be both suppliers, intermediaries and end users. By virtue of the substantial capital entry costs to these markets most SMEs are 'price-takers' and depend almost exclusively on the actions of the large suppliers. SETEL has been a strong advocate of competition in the telecommunications industry and tends to rely upon the development of future benefits rather than regulated quick fixes.

In recent years SETEL has been concerned that the intended benefits of competition in the telecommunications marketplace have not become obvious, particularly to small business and residential consumers. The five-year scorecard may reveal a reasonable degree of competition in the market, as a whole, but there is very little competition and choice in fixed line markets affecting residential and small business consumers. Moreover there is little competition in most areas outside CBDs and very little choice in regional, rural and remote areas.

A significant factor may be the slowness of the regulatory regime to provide affordable access for competitors of Telstra and to guarantee certainty of market pricing for competitive services. If the concept of "long term interests of end users" is applied then it is a very long wait for most consumers. SETEL believes that the introduction of beneficial new technologies is being hindered by lengthy access battles between the infrastructure provider(s) and intending service providers.

There is a tendency to rely on basic voice grade telephony standards whereas an increasing number of small business and residential consumers want access to much faster bandwidth services.

In earlier submissions concerning regulation in the telecommunications industry SETEL has sought the preservation of the concept of an industry specific regulator and a general regulator with more power and resources to more adequately examine and address the activities of the incumbent major operator in the telecommunications market. However SETEL notes that the current partial ownership of Telstra by the Commonwealth Government, and the 'need' to maximise returns from any future sale of this asset, creates an impediment to the application of proper economic policies, particularly those relating to marketplace efficiency.

SETEL contends that the Australian market, and its population, would be better served by no more than (say) three telecommunications suppliers of a reasonable size. The application of general trades practices type legislation has not been able to achieve this outcome. In fact many market entrants have not achieved sufficient profitability to be able to present a reasonable degree of competitive pressure, except

in the mobiles market. There is reputedly massive over investment in broadband technologies and infrastructure but the majority of suppliers do not want or have not been able to access the residential and small business markets – by far the largest customer base in the nation.

Until this imbalance of supply is corrected SETEL does not wish to see any diminution of powers of the ACCC. In fact we see a need for stronger powers to be exercised by the ACCC.

There are two elements. One involves the implementation of cease and desist powers to cap any activities in contravention of the traditional trade practices regulations relating to unconscionable conduct, misuse of market power etc. This also covers powers to apply an effects test. In SETEL's view the conservative application of an effects test is preferable to the conservative application of an intents test.

The second element is not necessarily size related so there is less of a component of market power manipulation. It relates to unsatisfactory practices in the marketplace, generally in contravention of the Trade Practices Act, that are not countered by the ACCC in a manner so as to provide adequate, and timely, protection to consumers.

The first element relates to increased Competition powers for the ACCC. The second element relates to the need for more stringent observation of the Consumer protection powers within the ACCC. The ACCC needs to be more "consumer" oriented.

The telecommunications market and, to a lesser degree, the e-commerce market have had competition thrust upon them by regulation and legislation. It is true to say that consumers have not yet adjusted to this scenario. Confusion reigns. There are vastly different standards and regulations applying to both markets but these are generally transparent to consumers, who generally fail to see any difference and expect similar performance from both. A reliance on self-regulation has not delivered the required levels of protection to consumers. Faster and more effective intervention by the regulators is necessary to ensure that consumers are given better protection. The ACCC can play a major role in this context.

In summary SETEL wants to see a Trade Practices regime that promotes effective competition, generates a degree of choice in the telecommunications markets in most, if not all, areas of Australia and substantially lessens the number of unsuitable operators in this market and the internet market. Abuse of market power has been a key factor particularly in relation to delays to access to services. There are still too many practices adopted in both sectors of the industry that have a detrimental effect on consumers. In many respects this is tending to restrict the uptake of new technologies, create confusion in the minds of consumers and deter positive action and increased spending.

The market power issue does present a dilemma to SETEL. To date there has been little evidence of willingness by service providers to seek competitive supply of telecommunications services in areas where commercial factors such as short to medium term profitability apply. There are fears that significant areas of Australia will become marginalised if a fully privatised Telstra decides to apply 'normal' commercial policies in relation to supply of services in non-profitable areas. To date

there has been little research to determine whether the lack of competition in many areas is due to barriers to market entry (including cost) or impediments to access to infrastructure.

SETEL has significant concerns about the effectiveness of the self-regulatory regime relating to telecommunications. Any regime relating to internet services is less well developed. The ACCC has sufficient powers at present to address most of the contraventions to the Trade practices Act by some participants in the telecommunications industry and could provide a much improved service to consumers by acting faster. To date there seems to have been a reliance on penalties (fines) to discourage improper activities. In some cases this has been too late to provide tangible benefits to consumers.

An extension of a cease and desist power may be the best solution. Transgressors need to be publicly named so as to prevent more consumers being misled or denied the opportunity to take prompt remedial action to limit losses or restore services.

SETEL is also concerned that a sizeable intermediary market has not developed to assist consumers to understand complex telecommunications and internet offerings in the marketplace. Again there appears to be little research done to determine whether dominant behaviour by large companies is creating a barrier to entry. There is a substantial opportunity for small business to improve the IT skills and levels of usage in the SME sector thus creating greater economic efficiencies. The SME E-commerce Taskforce report makes recommendations for facilitating training and education but was not empowered to determine how greater access to broadband services would improve the uptake of e-commerce by SMEs.

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SME E-commerce Taskforce Report: <http://www.setel.com.au/smeforum2002>