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12 April 2019

Rental Arrangements for Communication Towers on Crown Land
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop NSW 1240

Submitted Online: https://www.ipart.nsw.gov.au/Home/Contact-Us/Make-a-Submission

Dear Sir/Madam,

Review of rental arrangements for communication towers on Crown land

TX Australia Pty Limited (**TXA**) appreciates the opportunity to participate in the Independent Pricing and Regulatory Tribunal's (**IPART**) review of rental arrangements for communication towers on Crown land.

Please find attached TXA's submission addressing the matters discussed in the Issues Paper dated February 2019.

TXA would be happy to further engage with IPART in relation to the principles set out in our submission.

I look forward to your response.

Yours sincerely,

[redacted]

Bernadette McGrath
Company Secretary

EXECUTIVE SUMMARY

TX Australia Pty Limited (**TXA**) has reviewed the Independent Pricing and Regulatory Tribunal (**IPART**) Issues Paper, *Review of rental arrangements for communication towers on Crown land, February 2019* (**Issues Paper**).

This submission sets out TXA's response to the 17 issues on which IPART is seeking comment and presents TXA's broader observations in relation to the approach proposed by IPART, including TXA's proposal for an alternative pricing regime for rental arrangements for communication towers on Crown land.

In summary, TXA's position is that the rent setting mechanism for Crown land should:

- Impose equivalent rents on all occupiers of land rather than having reference to notions of a land occupier's willingness to pay;
- Set rents on the basis of a fixed percentage of the assessed land value of the area of land occupied, consistent with accepted land valuation practices;
- Provide the State Government with a fair market-based commercial return; and
- Be simple and transparent.

TXA is a joint venture company wholly owned by the three metropolitan commercial networks – Seven, Nine and Ten. TXA is a primary user which currently owns towers and other infrastructure at two sites situated on Crown land in the State of New South Wales. TXA (and its predecessors) have incurred substantial sunk costs in building and maintaining the infrastructure that allows these sites to be used for communications purposes. TXA continues to incur significant ongoing costs in the maintenance and operation of this infrastructure for its continued use for communications.

TXA seeks secure tenure at sites for its broadcast transmission / communication facilities via long term leases, which provides certainty to both landlord and tenant alike.

Whilst the primary use of our broadcast infrastructure is for the transmission of television services, our sites have a number of co-users, such as commercial and community radio broadcasters, telecommunications carriers and public mobile radio operators, including community service organisations, who have entered into licence agreements with TXA for access to these established infrastructures.

TXA is also a co-user of infrastructure provided by other parties where the underlying land is state owned.

TXA contends that IPART's recommendations contained in the Issues Paper are inconsistent with accepted land valuation practice, and fall short of achieving the stated objectives of the NSW Government to obtain fair market-based commercial returns through a mechanism that is simple and transparent.

IPART's recommendations are built on the premise that the Land Management Agencies (**LMA**) are entitled to share in the commercial value generated by the improvements to the land and the income derived from those improvements by the tenant in sharing its facilities with other users, rather than the well-established valuation methodology of the rent being based upon the "unimproved value of the land".

TXA is strongly against the primary user / co-user regime proposed in the Issues Paper on the basis that IPART has not provided a sound basis for their rationale for introducing co-user fees.

In the event that IPART rejects our proposed model for establishing rents for communication tower sites and introduces a co-user regime, TXA suggests that such fees should only be imposed on the creation of new sites, with existing site agreements being grandfathered to protect the significant investment already made.

ISSUES ON WHICH IPART SEEKS COMMENT

Proposed approach

1. **Do you agree with IPART's proposed approach for the review? Are there any alternative approaches that would better meet the terms of reference, or any other issues we should consider?**

   In TXA's opinion, IPART's proposed approach, as set out in the Issues Paper, is without rational basis and is simply opportunistic behaviour by the LMA in an attempt to receive a share of the economic value that primary users derive from using the site for transmission purposes and the rent that primary users and infrastructure providers recover from co-users.

   TXA objects to this approach, which would afford the LMA a benefit from improvements made to the sites in the form of investment in infrastructure by site users. IPART's recommendations contained in the Issues Paper are inconsistent with accepted land valuation practices, and in our view, fall short of achieving the stated objectives of the NSW Government to obtain fair market-based commercial returns through a mechanism that is simple and transparent.

   TXA rejects the argument that there is strategic value for some sites to be taken into account – this is merely an attempt by the LMA to share in the revenue generated by the infrastructure added to site.

   The most equitable mechanism for determining rents is based on a percentage of occupied land value, with reference to the assessment of unimproved value of land by the office of the Valuer General of New South Wales.

   TXA considers that the rate of 6% of site value would be a fair and reasonable commercial rate of return for occupation of vacant Crown land, particularly given the length of tenure and low risk of tenants. The LMA could consider an additional return or premium to reflect the specific nature of the site, for example, a 2% environmental levy. This would provide certainty of calculation and return on all NSW Crown land communication sites.

Estimate the range for efficient rents

2. **Do you agree with our current proposed definition of efficient rents for communication tower sites on Crown land as the range bounded by a user's willingness to pay and the opportunity cost to the land agency?**

   IPART has proposed that rents for communication tower sites should reflect efficient prices. For TXA, which essentially operates as a co-operative whereby the benefits of the business remain in the financials of the members, rather than in TXA itself, the concept of efficient rents is impossible to apply because the economic value gained from sites does not translate directly into profitability.

   Rather than having reference to notions of a land occupier's willingness to pay, TXA believes that the LMA should impose equivalent rents on all occupiers of land, based on a percentage of occupied land value, with reference to the "unimproved value of the land".

3. **What information should we consider to estimate users' willingness to pay (for example market-based commercial rents paid to private land owners)?**

   The theory of economically efficient pricing is difficult to implement in practice. The existence of asymmetric information and the sheer volume of sites and users means the cost of collecting and analysing information and evidence on the range of factors likely to influence the willingness to pay (for example, site characteristics, types of users, the markets in which they operate, availability of alternative sites), will outweigh the benefits.

   TXA asserts that the proposed methodology is not appropriate for calculating rents for existing sites, where the willingness to pay will be prejudiced due to a significant past investment in infrastructure. Users' willingness to pay will increase after factoring in sunk costs and relocation costs to establish services at an alternative site.

4. **Do market-based rents typically cover all services related to access, use and operation of the land or are there any additional fees charged to users (such as fees for maintenance of access roads)?**

   Yes, market-based rents typically cover all services related to access, use and operation of the land.

5. **What characteristics of a communication tower site are users more willing to pay for? Are these different for users that provide services in different markets?**

   Users of communication tower sites require different characteristics, depending on the type of service they are looking to operate. TXA agrees that, in general, sites with easier access, higher elevation and line of site and little availability of alternative sites are of greater value to communication tower site users.

   For TXA specifically, sites with higher elevation are considered superior for the purpose of television broadcasting. However, TXA rejects the argument that there is strategic value for some sites to be taken into account – this is merely an attempt by the LMA to share in the revenue generated by the infrastructure added to site, rather than to generate a return on the land itself.

6. **How should we estimate the land agency's opportunity cost? Does this vary for sites in different locations?**

   IPART's proposed approach to estimate the opportunity cost by determining the value that could be derived from the next best alternative use for the land is sound. However, this may only be applicable for what IPART classifies as high value sites, but not for those classified as standard or low value sites, where there are limited alternative uses.

   TXA maintains that the concept of efficient rents is not appropriate due to the type and number of sites.

7. **What do you consider to be a 'fair' sharing of any differences between a user's willingness to pay and the opportunity cost of a site?**

   There is not a single formula to apply to achieve a fair sharing of any differences between a user's willingness to pay and the opportunity cost of a site. In some cases, a user may have a maximum amount they can afford and will not be able to pay a cent more, regardless of the minimum amount a LMA would be prepared to accept.

<u>**Decide on and apply a rent setting methodology**</u>

8. **Does the current market evidence support continuing the existing schedule of rental fees by location? Would there be benefits to increasing or decreasing the number of location categories?**

   TXA agrees that rents paid for sites close to metropolitan areas or population centres are higher than for regional sites and that the existing schedule of rental fees should continue. Calculating rent based on a percentage of occupied land value will align with this approach since the "unimproved value of the land" will vary based on its proximity to metropolitan areas.

   Changing the number of location categories is not likely to impact the overall rent received by a LMA. Decreasing the number of location categories will disadvantage users at sites deemed to be "low" and advantage those deemed to be "high".

9. **Are the current location categories reflective of recent data on population density?**

   No comment.

10. What is the appropriate rent discount for co-users?

TXA is strongly opposed to the primary user / co-user regime proposed by IPART in the Issues Paper, and have consistently made representations to this effect in previous submissions.

TXA contends that IPART has not provided a sound (commercial or logical) basis for its rationale for introducing a co-user regime whereby the landlord, through no action on its part, benefits from the lessee's investment in improvements on the site.

TXA's broadcast communication facilities would typically cater for five free-to-air television broadcasters, all sharing a common infrastructure (building / services, cabling, and transmission antenna system) for the benefit of the viewing public. The imposition of a co-user regime penalises TXA for the benefits being derived by the community.

11. Should infrastructure providers receive a discount relative to primary users?

There is no logical justification for discrimination between the different types of site users. Infrastructure providers and primary users both utilise the site for the same purpose – to construct, own and operate towers – and both are permitted to host co-users on the site.

Whether site users operate the site primarily for themselves or for third parties should have no bearing on the rent payable to the landowner since the unimproved value of the land is the same, regardless of the type and number of end users.

12. Does the current rebate system adequately address the benefits that community groups and government authorities provide to the public?

Yes, the current system is fair, whereby rebates are applicable to certain users who provide social and community benefits, particularly to those users that have little or no ability to generate revenue.

13. Should the current rent arrangements based on site-by-site negotiation for high-value sites be continued?

TXA is strongly opposed to the definition of "high value" sites. There should be one method of determining rental for all sites, being "unimproved land value", which provides fairness and certainty.

14. Would a valuation formula based on observable site characteristics be a viable alternative for setting rents for high-value sites? If so, what site characteristics would need to be included in the formula to determine the rent?

The most equitable mechanism for determining rents is based on a percentage of occupied land value, with reference to the assessment of unimproved value of land by the office of the Valuer General of New South Wales. TXA considers that the rate of 6% of site value would be a fair and reasonable rate of return for occupation of vacant Crown land, particularly given the length of tenure and low risk of tenants.

For commercial property, standard industry practice is to review to market every 5 years, with annual indexation in between CPI and a fixed 5%.

Due to the quantum of the investment in infrastructure at communication tower sites, the tenure needs to be considered on a site-by-site basis to align with the useful life of infrastructure. Broadcasting transmission service infrastructure requires significant initial capital investment and ongoing preventative maintenance. It is our strong contention that leases should be for a total term of 40 years. Note that TXA's existing Special Leases at its two Crown land sites are for a term of 40 years. Longer tenure will also reduce ongoing negotiation costs.

<u>Transitioning impacts on users and adjusting rents over time</u>

15. **Do you agree with our proposed approach for assessing the impact of our recommendations on users?**

    While a 5-year transitional arrangement seems fair at face value, the majority of agreements between TXA and its third party customers have a 15-year term, and not all agreements allow for an increase to recoup co-user fees. This is likely to be the case with other communication tower site users.

    TXA suggests that any changes to the rental arrangements for communication towers on Crown land should only be imposed on the creation of new sites, with existing site agreements being grandfathered to protect the significant investment already made.

16. **Is the current approach of adjusting rents annually by the CPI appropriate?**

    Yes.

17. **Should the fee schedule continue to be independently reviewed every five years?**

    It is appropriate for rental arrangements for communication towers on Crown land to be subject to an independent review every five years.

    However, TXA maintains that a fee schedule is not an appropriate mechanism for determining rents, but rather rent should be based on a percentage of occupied land value, with reference to the assessment of unimproved value of land by the office of the Valuer General of New South Wales.