

11th June 2013

Review of Communications Towers on Crown Land
Independent Pricing and Regulatory Tribunal
PO Box Q290
QVB Post Office, NSW 1230

Dear Sir,

IPART Review of rental arrangements for communications Towers on Crown land – Draft Report

The MCF, a Division of the Australian Mobile Telecommunications Association (AMTA), welcomes this opportunity to comment on IPART's draft report on the Review of rental arrangements for communication towers on Crown land. MCF and its members, which include Telstra, Optus, and VHA (Vodafone Hutchison Australia), have previously made submissions to your review and attended the roundtable discussion held at IPART's offices in Sydney in March 2013.

As we have previously described, the three mobile network Carriers operate networks comprising more than 18000 facilities across Australia, servicing the needs of more than 30 million mobile telecommunications subscriptions.¹ In addition to their existing networks they are currently undertaking a significant deployment program of new and upgraded mobile network facilities across Australia to cater for the expanded network coverage required to deliver advanced mobile telecommunication services, in particular to mobile broadband subscribers.

The mobile telecommunications industry is thus a significant contributor to, and stakeholder in, the State of NSW's economic and social productivity and has considerable experience in establishing communications facilities on Crown land in NSW.

This submission seeks to address IPART's draft report *Review of Rental Arrangements for Communication Towers on Crown Land*, issued 14th May 2013, in particular those matters already raised in our previous submission of 12th February 2013 but which have not been addressed in the draft report.



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¹ ACMA, Communications Report 2011-12

1 Discriminatory rental regime

In our previous submission, the MCF expressed an overarching concern that the premise of the existing rental regime is for a variable rental to be applied depending upon the type of user and the perceived capacity of that user to pay the rental demanded.

We have pointed out that the current rental scheme is discriminatory to Carriers and therefore in breach of the Telecommunications Act 1997, Clause 44, as it applies to licensed telecommunications Carriers such as the MCF members. We also advised IPART that this view was being tested by one of our members in legal proceedings it has brought against the Department of Environment and Resource Management (DERM) in Queensland and which is currently being heard in the Federal Court of Australia. We therefore recommended:

1. The result of the Telstra v DERM proceedings, and any directions given, will have a material impact on IPART's own strategy regarding this rental review. It is likely that this matter will be determined in the fourth quarter of 2013, and it is therefore recommended that IPART defer finalising its report to the NSW Government until finalisation of the Telstra v DERM proceedings and the resolution of any directions given by the FCA.
2. The MCF recommends the IPART adopt a single user category rental regime based on the land value of the parcel occupied, where this is consistent with the directions provided by the FCA in the matter of Telstra v DERM

The MCF notes that IPART has sought to address this concern in its draft report by the adoption of a single user category applying to all users under its proposed new rental scheme. However, IPART has also recommended a schedule of rebates which reduce the single high notional rental by up to more than 98% for users fitting into a range of categories that had enjoyed lower rentals under IPART's previous scheme. It is notable that Carriers do not qualify for any such rebates and are therefore required to pay the full rental in all cases.

The MCF members are of the view that this approach may still discriminate against Carriers and is therefore in breach of the Telecommunications Act as noted above. The MCF therefore cannot support the rental scheme proposed in the draft report and reiterates its recommendation that IPART await the outcome of the DERM proceedings to ensure that any proposal it makes is consistent with the findings of the FCA action.

2 Fair market return

In undertaking this review, IPART notes some key principles including:

- ensure the fee schedule reflects fair market-based commercial returns
- consider the government's preference for a fee schedule that is as simple, transparent and cost reflective as practicable.

While the scheme nominated by IPART in its draft report may be simpler than that currently in operation, the MCF does not believe that the scheme necessarily reflects a fair market-based return. The full notional annual rental fee that users such as Carriers would be required to pay can exceed the entire value of the parcel of land in some cases, in particular for some remote locations.

The MCF believes a better solution would be for IPART to adopt a single user category rental regime based only on the land value of the parcel occupied, where this is consistent with the directions provided by the FCA in the matter of *Telstra v DERM*. This approach is inherently objective and non-discriminatory, and could, for example, refer to land value as assessed by the NSW Valuer General as a point of reference.

Such a scheme would not only meet the requirement of reflecting fair market-based commercial returns as these are directly linked to land value, but also meets the requirement of simplicity and transparency, particularly where an objective assessment of land value is taken as the reference point.

IPART has noted in its draft report that land valuations are only useful as a proxy for the rental value where there is no market evidence available. IPART has relied heavily on such evidence provided by its consultants, BEM Property Consultants (BEM). However, the MCF contends that such market data as BEM could provide is inherently contaminated by the exceedingly high rental fees commanded by the land management agencies under the current flawed rental regime, and which in no way reflect the fair commercial market-based return that IPART nominates as its principle for this review. Therefore, in the absence of sound market evidence, reference to land value as a proxy for rental returns as MCF has proposed is appropriate.

3 Strategic or high value sites

The MCF notes that in its draft report IPART persists with the concept of high value or 'strategic' sites. The MCF rejects the concept of any site being more 'strategic' than any other for the purposes of setting rentals beyond the inherent land value of the parcel in question.

IPART's view is based on the notion that certain sites enjoy a strategic value due to elevation, ease of access or line of site. Proximity to major population centres or major highways is already a factor in the consideration of land values and does not need to be a specific element in the evaluation of high value sites if MCF's proposal for rental fees to be determined by reference to land value were adopted.

Regarding the purported strategic value of elevation, line of site, or any other physical feature of a given location, this mistakes the current advanced nature of modern mobile telecommunications networks, as we have previously submitted. With the matured networks of most Carriers, sites are generally selected to meet coverage and capacity objectives of an existing network, which does not necessarily require any "so called strategic elevated area" (and in fact often dictates lower rise facilities in order to provide microcell infill coverage). Additionally, all the companion sites neighbouring a given site are critical to the effective operation of the network as a whole, and so no one site can be determined to be more strategic than any other within an established network.

Given that the MCF rejects high value sites as a flawed concept, it is academic by which process IPART recommends high value sites be identified and negotiated. However, the MCF wishes to express the strong view of its members that the open tender process proposed for new sites in the draft report will be rejected by the mobile telecommunications industry if IPART chooses to persist with this recommendation. Additionally, any list of nominated high value sites published by the land management agencies as proposed by IPART will simply serve as a guide to the industry of which sites it will avoid in its deployment planning. The overall outcome would be a reduction of business between the land management agencies and MCF members,

to the probable detriment of both mobile telecommunications consumers (in non-optimal provision of mobile services) and the general public of NSW (in reduced revenues to the State Government).

4 Primary user, co-user and infrastructure provider rental arrangements

IPART's draft report proposes that current arrangements for dealing with multiple users at standard sites be retained (i.e. that co-users pay 50% of the scheduled rental fee charged to the primary user and that infrastructure providers pay 70% of that fee). However, in the case of infrastructure providers, it is proposed that the discount be reduced over time with the aim of infrastructure providers being treated the same as primary users for the purposes of the proposed rental regime.

For high value sites, IPART indicates a preference for a new arrangement where the land management agencies negotiate a head licence agreement with the primary user or infrastructure provider and the primary user/infrastructure provider adopt its own arrangements for co-users. Where this is too costly or difficult to accomplish, IPART proposes a similar arrangement to that for standard sites (co-users pay 50% of the negotiated primary user fee under separate agreements with the land management agencies). Again, over time, infrastructure providers would come to be treated as primary users for the purposes of the IPART scheme.

In our previous submission, the MCF commented in relation to co-user and infrastructure provider discounts that it may be argued the provision of a discount for co-users encourages the co-location of facilities and reduces the proliferation of radiocommunications infrastructure. The MCF also noted there should be no differentiation between an infrastructure provider and a primary user on this basis as both achieve the same outcome of rationalising the built network.

An important consideration for MCF members is the potential for a previously 'standard' site to become considered a 'high value' site over time as more co-users establish facilities there. In this situation, users have invested in the site based on a fixed schedule of fees, and any improvements at the site which make it more attractive to other users (such as the provision of access, back haul capability or other services) are as a result of their own capital works. The MCF believes it would be inappropriate for its members to then face the prospect of a substantially increased rental fee due to land management agencies classifying the site as high value and therefore open to negotiation outside the fee schedule, or alternatively facing the prohibitive expense of relocating to a new site. The MCF therefore calls on IPART to explicitly exclude this possibility, or make a provision (such as fixing rentals within the fee schedule for existing users at a standard site) in its recommendations to the NSW Government.

Overall, the MCF reiterates its view that the most equitable basis for establishing charges to all users is a rental based on land value of the area occupied at the site, and further such a scheme does not suggest the need for a discounting regime, thereby retaining its simplicity.

5 Location categories

IPART's recommendations in the draft report provide for an increased number of location categories to better represent metropolitan and large regional centres as well as rural and small municipalities.

While the proposed regime of location categories might provide a simple prescriptive framework within which to fix rental rates, it remains open in practice to the land management agencies interpreting categories for their own convenience to place 'Low' and 'Medium' sites into higher categories contrary to the IPART definitions (as has happened in practice with the current rental regime, despite subsequent clarification of the IPART's intent on this matter following the 2005 review).

As indicated previously, commercial market rentals reflect the underlying value of the land concerned. For this reason, rentals for metropolitan areas are on average higher than those of regional and other areas, reflecting both the land value and demand for occupancy. This is also true of comparative land values for medium and low categories.

Therefore, it remains the MCF's view that the previously proposed method of determining rentals based on a percentage of land value is simple and prescriptive enough to avoid further manipulation, especially if the land value is determined by the NSW Valuer General's office, removing any doubt or discretion that land agencies may seek to exercise on this point. The variation in land values will provide the desired level of variability for remote, regional and metropolitan sites within an equitable and non-discriminatory framework.

Concluding Remarks

The MCF commends IPART for undertaking this review of rental arrangements for communication towers on Crown land. We believe there are strong arguments as to why the current rental regime is inappropriate and discriminatory, and therefore support the urgent need for this review.

However, we also remain concerned that the rental regime proposed in the draft report remains discriminatory towards carriers in our view, and urge IPART to await the findings and directions arising from Telstra's action against the Queensland Department of Environment and Resource Management (DERM) before finalising its recommendations.

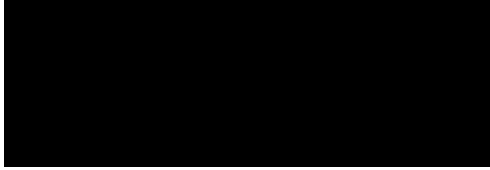
IPART nominates four principles underlying its review: market return, administrative efficiency, transparency and consistency.

The MCF draws to the attention of IPART the significant economic and social contribution of its members' investment in network infrastructure, bringing advanced mobile telecommunications services to all the people and businesses of NSW. The MCF therefore believes a further principle of this review should include the balancing of social and economic benefit to the State of facilitating telecommunications network deployment everywhere, including on Crown lands, against the potential return to those few select Government agencies who reap the benefits of potentially increased rentals on such facilities.

We hope the IPART finds this further submission to be a useful contribution for the refinement of its draft report. Representatives from the MCF would be pleased to discuss any matters raised in this letter with IPART and look forward to participating in the ongoing public consultation process.

If you wish to discuss this submission or any of the matters raised within it, or require any additional information, please do not hesitate to contact me on (03) 9380 2291.

Yours sincerely,



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