Interconnectivity of the new carrier

Ian Philip examines the policy and legal issues surrounding interconnection and argues the issues are more complex than the government appears to recognise

Interconnection with the Telecom/OTC network is an essential right for the second carrier because that second carrier will not have its own facilities in place from day one.

Interconnection is also essential for private network and value added services providers as they must rely on the facilities of the duopolists carriers to provide their services.

Added to this, there is a public benefit in all customers being able to speak to all other customers, notwithstanding a multiplicity of facilities put in place for so-called micro-economic reform reasons.

While identifying the importance of interconnection for a competitive second carrier the November Statement published by the Department of Transport and Communications (DOTAC) does not, however, grapple clearly with the way interconnection will be put in place or the interconnection implications for value added and private network service providers, both domestically and internationally.

Several approaches

There would appear to be several approaches that could be taken to providing for the second carrier's right of interconnection to Telecom circuits, that is, local, trunk and international circuits.

One method would be to impose on Telecom an obligation to interconnect the second carried in a manner similar to the obligation to connect non-carrier private network services and value added services found at Section 97 of the Act. Another method would be the way in which carriers under the Act can currently seek facilities from each other. That is, there would be a basic right to be provided by legislation, but the detailed terms would be the subject of an agreement which will be entered into between the parties.

The November Statement adopts the approach of requiring commercial agreement first then arbitration. The problem with this approach is that important details of public interest would be left to an agreement between Telecom and the second carrier.

This approach does not seem to have worked well in Britain or New Zealand, in establishing a level playing field for the second carrier. It is quite clear that Telecom has an unequal bargaining position and the results of any agreement, if the United Kingdom and New Zealand are any example, will mean that the second carrier will come off second best in relation to important aspects of interconnection such as numbering, billing information and other technical aspects. In the end, the losers are the customers.

There is one advantage to the approach of the November Statement. It will be simple for the legislators and easy to put in place. It just leaves the hard problems until later.

The second carrier perspective

A different approach is to be very particular about all of the aspects of the right of interconnection on behalf of the second carrier. Most prospective second carriers will take the view that this is appropriate. This detailed view can be accommodated again in two ways. The detailed rights could be incorporated in legislation, or to take the matter of enforcement of rights a step further, in the form of an agreement between the Government, Telecom and the second carrier. The second alternative would give the second carrier contractual remedies against Telecom for the failure to honour interconnection obligations in addition to those rights provided for in legislation.

Such an agreement could certainly reflect the interconnection requirements of the second carrier which will be part of the tender process that the Government expects to go through in the lead up to September 1991.

Following on from the reliance on the commercial agreement between Telecom and the second carrier in the November Statement, AUSTEL has indicated that it would be happy to provide supervision of interconnection. In this way the November Statement adopts the British example by which, again, the two carriers (British Telecom and Mercury) attempt to establish an agreement between themselves and only on failing agreement would AUSTEL become involved. It should be noted, however, that the Department of Trade and Industry in Britain has expressed concern that its regulator, OFTEL, could be overburdened with requests to settle disputes.

It will be evident from the following discussion of what should be included in an interconnection arrangement that much can't be accommodated in a commercial agreement.

Interconnection fees

The ALP's Special National Conference declared that the cost charged to the second carrier for interconnection to Telecom's network would at least cover Telecom's related costs in providing such interconnection, which the November Statement defines as directly attributable incremental costs.

In this way, the interconnection fees to be borne by the second carrier are to cover all Telecom's actual additional costs in providing access to and usage of its network (including allowance for any additional assets required to achieve interconnection and for the opportunity cost of capital).

The November Statement specifies that fees will be the subject of negotiation on a commercial basis between Telecom and the second carrier in the first instance, and to final determination by AUSTEL.

The only guidance given to AUSTEL is that the costs assessed as reasonably achievable under internationally competitive standards of efficiency in user interests. This assessment will not be an easy task, as there has never been much agreement about Telecom's and OTC's relative in cost efficiencies.

Most importantly, the actual additional cost formula is only one ingredient of the fee setting process.

Community service obligations

The November Statement clearly requires the fees payable by the second carrier to underpin Telecom's community service obligations ("CSOs") "on a pro rata basis".

The November Statement refers to the CSO question to an inter-departmental committee. It is unlikely, while they await this report, that the second carrier and Telecom will make much headway in commercial negotiations in relation to any component of interconnection charges reflecting CSOs.

As to what it means to include in interconnection fees an amount by which the CSOs are underpinned on a pro rata basis, it must be right that this cannot mean that the second carrier will have an equal responsibility for Telecom's CSOs at current costing from day one. To require equal sharing would ignore

Telecom's market power, and the substantial time it will take for the second carrier to break even.

The November Statement obliges the second carrier, through Aussat, to continue to provide capacity for Remote Commercial Television Services and the ABC's Homestead and Community Broadcasting Satellite Service, together with defence requirements. These constitute community service obligations akin to those of Telecom and yet there is no provision in the calculation of interconnection fees as between the second carrier and Telecom to accommodate this.

Fees and market information

The duration of the period for which interconnect fees may be fixed is not addressed in the November statement.

It may be appropriate that, particularly in the light of the sunset provision to take effect on 30 June 1997, interconnect fees be fixed until that time to enable the second carrier to have some certainty in relation to investment planning.

As interconnection fees are meant to reflect costs and, at most, an additional share of CSO costs, it seems inappropriate that interconnection fees be subject to any increase in accordance with any CPI - X price cap which applies to Telecom's services.

The November Statement requires Telecom to provide the second carrier with full access to information about traffic created and carried on its facilities and other information needed to ensure efficient interworking between networks.

The November Statement says that Telecom would be obliged to provide all relevant supplementary services including billing, operator and directory services and customer information required by the second carrier, with the government to consider further the control of telephone directory publications. Again, the services would be paid for by the second carrier, presumably on the basis of the same formula for interconnection fees.

The second carrier may require more information than this and, in particular, market information in relation to the roll out and modernisation of facilities. It may be that if a level of playing field is to be created at the outset, then all of this information should be provided to second carrier bidders as part of the tender process and not on the successful grant of a licence.

Numbering

The November Statement does not mention numbering as a specific interconnection issue. Numbering is, however, crucially important to the competitiveness of the second carrier's services. Multi-numbering access requirements in relation to different services and in different areas are extremely prohibitive if imposed on the second carrier.

The November Statement does say that overall control of numbering for telecommunications services will be transferred to AUSTEL from Telecom as soon as practicable, but this does not recognise that numbering will be an essential element of interconnection.

Numbering is equally important to customers. Will customers need to change numbers when changing between carriers? Will they be able to have the same number if they are customers of both carriers?

Technical standards

The November Statement refers to technical interconnection standards being a matter of agreement between Telecom and the second carrier, or as determined by AUSTEL in the case of disputation.

Consistent with its role under the current Act, technical standards should be determined by AUSTEL from the outset and form part of the interconnect arrangements from the outset.

In Britain, it has been recognised that it is essential, in relation to interconnection interfaces, that the Government take an active role in formalising standards, rather than permitting this to be resolved by way of commercial negotiation on a bit-by-bit basis. Otherwise one set of customers may be locked off from another set of customers. This may extend under interconnection arrangements to obliging carriers to provide protocol conversion interfaces.

Directory services and equal access

A customer of one carrier should be able to ascertain the numbers of the customers of the other carrier. If the two carriers are left to themselves, then it may be that these types of services are not interconnected, but are duplicated.

It would appear essential that government intervention in the terms and conditions of interconnection would be required to ensure that these services are provided on a standardised basis to all customers.

The November Statement requires Telecom to share with the second carrier ducts and radio sites where practicable and where these have been acquired as a result of Telecom's legislated rights of access, rather than on a commercial basis.

The second carrier will no doubt seek similar legislated rights as Telecom currently has over land for the construction of its facilities. Consideration should be given to the extent to which access to land by both the second carrier and Telecom should be co-ordinated, particularly with a view to the environmental damage that would be exacerbated through duplication.

Equal access

A benefit of competition for all customers may be said to be the implementation of the idea that the customer of one carrier should be able to call any customer of the other carrier. Are the customers of the carriers, regardless of with whom they have discrete contracts, going to be able to determine on whose trunk or international circuits their calls are carried? This will constitute the adoption of an open access system.

This is an interconnection issue and will arise once the second carrier has established trunk circuits and perhaps also international circuits. It would not be expected that the second carrier will move immediately to establish local circuits and will continue to rely on an interconnection right with Telecom for local circuits.

Equal access, however, does require sophisticated technology which is not yet onstream, even in Britain. It is likely that the imposition of equal access in interconnection arrangements, as a service obligation, may be the subject of resistance from both carriers. One of the implications of an equal access policy, which has been identified in Britain, is that equal access may itself retard entry of the second carrier into the local circuit market.

Conclusion

Even though AUSTEL will have powers to arbitrate between the carriers and make determinations it considers necessary to promote competition, to protect consumers and effect appropriate safeguards, a commercial agreement between the carriers will not be an efficient way of promptly establishing an even playing field for the second carrier.

This is one of the tensions of the November Statement that needs to be resolved and reflects the haste adopted by the Government in preparing the document.

For this reason, the November Statement should really be treated as a discussion draft and realistically no substantial investment decisions should be made on basis of the totality of the pronouncements of the November Statement, including full resale, being realised.

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