

**Australia Post response
to the ACCC's draft**

***Guide to inquiries into disputes about bulk
interconnection services***

18 September 2012

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1. Introduction

This document has been prepared by Australia Post in response to the draft guidelines '*Guide to inquires into disputes about bulk interconnection services*' (The Guide) released by the Australian Competition and Consumer Commission (ACCC) on 10 August 2012.

To date, no dispute about the terms and conditions for Australia Post's bulk interconnection service has ever been notified to the ACCC. Notwithstanding this, Australia Post views the drafting of the guidelines as a positive step to inform the public and Australia Post as to how the ACCC would conduct an inquiry.

Australia Post's bulk interconnection service

A requirement of the Australian Postal Corporation Act, 1989 (APC Act), is that Australia Post provides a bulk interconnection service.

A bulk interconnection service is a service where bulk quantities of letters are delivered in Australia at a reduced rate provided that the letters are:

- lodged at specific offices of Australia Post; and
- have, before being lodged, been sorted in accordance with the terms and conditions of the service.

The major users of the bulk interconnection service are large corporations and government departments.

Australia Post meets its requirement to provide a bulk interconnection service through the PreSort letter service, which accounts for over half of total domestic reserved letter volume.

The pricing structure for the PreSort letter service reflects commercial and market needs which include recognition that bulk interconnection prices, in addition to requirements of the APC Act, reflect the level of work saved by Australia Post through work carried out by customers.

The level of work undertaken by customers largely involves the application of a delivery point identifier (DPID), in a four state barcode, to each letter and sorting of letters into trays in accordance with the Barcode Sort Plan. As a result of this pre-work, the letters may bypass a certain step(s) in the processing function i.e. the major cost difference occurs in the Processing function.

Section 32A of the APC Act, also requires Australia Post to provide a rate reduction that includes '... a component that is Australia Post's estimate of the average transport costs per letter avoided by Australia Post...'. Australia Post complies with this requirement by offering a 'same state' and 'other state' prices within its PreSort letter service pricing structure.

While Australia Post offers discounted prices for other letter services the prices for these services are not generally based on any pre-work undertaken by the customer but rather may be priced to encourage certain behaviour.

2. Overview of an ACCC inquiry into a bulk interconnection service dispute

Australia Post believes the process outlined in Chapter 2 provides an insightful overview of the ACCC inquiry process.

An area we believe that some further clarity would be helpful is regarding the arrangements for dealing with members of the public who consider they have a sufficient interest in the dispute and apply to become a party to the inquiry.

At the moment Chart A does not identify the 'cut off' point as to when an application to become a party to the inquiry will no longer be considered.

From Australia Post's perspective (and from reading The Guide) when the notice of the dispute is publicised (e.g. generally posted on the ACCC website) it may assist if the notice identifies the time by which members of the public should make an application by.

3. Commencement of an inquiry

3.1 Do you have any comments on the proposed use of a pre-notification process in a bulk interconnection service dispute?

Australia Post supports the use of a pre-notification process.

A pre-notification (pre-lodgement) process ensures that the issues within more complex or novel matters are clearly understood by the complainant and Australia Post and the ACCC has sufficient information to undertake an inquiry.

Therefore, Australia Post views the use of pre-notification process as a practical step in ensuring that in the event a dispute is notified, the subsequent inquiry will progress in a timely and efficient manner.

3.2 Do you have any other comments on how the ACCC would commence a bulk interconnection service inquiry that are discussed in this chapter?

In reaching a decision as to whether the parties are unable to agree (and therefore whether an inquiry would commence), Australia Post notes that the complainant may provide the ACCC with confidential commercial information and, that in assessing a claim for confidentiality, the ACCC will have regard to the ACCC / AER Information Policy.

Although not explicit in The Guide, Australia Post would expect that the same claim for confidentiality provisions (i.e. claim the protection of regulation 21) also applies to Australia Post.

4. Stages of an inquiry after notification of a dispute

4.1 Do you have any comments on the proposed use of a case management meeting to assist the dispute resolution process?

As noted previously, no dispute about the terms and conditions for Australia Post's bulk interconnection service has ever been notified.

However, in the event that a dispute is notified, Australia Post believes a case management meeting would be beneficial as it will ensure that all parties to the dispute:

- understand the nature of the dispute;
- understand the dispute resolution process; and
- have the opportunity to raise any concerns.

As case management meetings will be the forum where requests from people who wish to become parties to the inquiry are considered, it is not clear to Australia Post how, or when, the decision on the request is made (e.g. would it be in the minutes, with the release of an issues paper, etc?).

4.2 Do you have any comments on the possible use by the ACCC of a 'top down' avoidable cost methodology in determining an access price in a bulk interconnection service inquiry?

As noted in the Preface of The Guide, the ACCC has a role to inquire into a dispute about the terms and conditions on which a rate reduction in relation to the bulk interconnection about is or will be provided. By its very definition a rate reduction is a reduced rate.

In the case of the PreSort letter service, Australia Post sets the rates of the PreSort letter service relative to other domestic letter rates (e.g. the basic postage rate). This approach is in line with Australia Post's Letter Pricing Principles (Principles) where the basic postage rate is the keystone of the letter pricing structure.

The Principles provide a balanced, structured approach to setting domestic letter rates and detail that the pricing structure will reflect our commercial, social and governmental obligations.

The Principles also note that as the carriage of the ordinary small letter (the basic postage rate) is central to our community service obligations and must be carried at a uniform rate.

While the price for an ordinary small letter is uniform the actual costs will vary based upon a number of factors. Consequently, the basic postage rate will not always recover the costs of providing the service and may require a cross subsidy from other domestic reserved letter services.

Subject to any requirement to cross subsidise, domestic reserved letter prices are set to achieve an appropriate rate of return for the letters business as a whole.

The pricing structure also reflects commercial and market needs. This includes the recognition that bulk interconnection prices, in addition to requirement of the APC Act to provide a rate reduction, reflect the level of work saved by Australia Post, through work carried out by customers.

In determining the level of rate reduction that should apply, Australia Post:

- takes into account the pre-work undertaken by the customer; and
- includes a component that is Australia Post's estimate of the average transport costs avoided per letter (consistent with section 32A(2)(c) of the APC Act).

To encourage the use of efficient payment channels and letter formats, the level of rate reduction Australia Post applies to PreSort letters is generally higher than the cost savings to Australia Post (confirmed by the ACCC in its Decision of 2011).

4.3 Do you have any comments on the possible use by the ACCC of a 'bottom up' avoidable cost methodology in determining an access price in a bulk interconnection service inquiry?

Australia Post does not believe that a 'bottom up' methodology is consistent with the APC Act or the Australian Postal Corporation Regulations, 1996.

The justification for this position is that:

- once the ACCC has formed a view on particular issues within the inquiry it will provide a report to the Minister with its recommendations in relation to the dispute;
- the Minister will then, after consulting with the Australia Post Board, make a decision whether to direct Australia Post to act in accordance with the ACCC recommendation or use his/her discretion not to give such a direction;
- the APC Act states that that the Minister cannot make a direction that is inconsistent with subsection 32A (2) of the APC Act; and
- subsection 32A (2) of the APC Act prescribes that the terms and conditions of a bulk interconnection service must, amongst other things, include in the **rate reduction** a component that is Australia Post's estimate of the average transport costs avoided per letter.

Furthermore, Australia Post believes that rate reduction reflects the notion of costs avoided (i.e. top down) and that this approach is congruent with Australia Post's requirement to provide a uniform rate for ordinary small letters. Conversely, a bottom up approach does not recognise the constraints of a uniform rate.

4.4 Do you have any other comments on matters discussed in this chapter?

The ACCC notes that it may use information it has obtained as part of a price notification (i.e. information obtained under Part VIIA of the Competition and Consumer Act, 2010).

While Australia Post understands that this information could be useful, we would like the opportunity to review this information to ensure the ACCC has the most relevant / current information upon which to base a decision.

In the event that an ACCC recommendation to the Minister includes a rate reduction that should apply, Australia Post believes that;

- the rate reduction is expressed as a monetary amount (e.g. in cents). This is important as it enables Australia Post to maintain relativity with future price changes; and
- the period over which the rate reduction should apply should be specified in all recommendations whether in dispute or not.

4.5 Do you have any comments on the process for involvement of interested parties in a bulk interconnection service inquiry, including when and how this involvement could take place?

As noted earlier, Australia Post believes it would be beneficial if The Guide (and Chart A) detailed to what point 'interested parties' could apply (i.e. when is it too late) and how the decision on an application from an 'interested party' will be communicated.

5. Ministerial consideration of reports and recommendations

Australia Post notes that this chapter largely outlines the process undertaken by the Minister in deciding whether to accept or reject an ACCC recommendation.

In reaching this decision, Australia Post believes it is important to note that under section 32B(1A) of the APC Act, the Minister must not issue a Direction that is inconsistent with section 32A(2) of the APC Act.

6. Termination of an inquiry

Australia Post has no comments on this chapter.

7. Procedural matters

7.1 Do you have any comments on the administrative procedures associated with undertaking a bulk interconnection service inquiry discussed in this chapter?

Australia Post agrees that representation should be by the actual party and that the use of experts may be limited to technical matters (or particular points).

The first paragraph in section 7.4 (Use of experts) notes that the ACCC or a party to an inquiry can engage an expert to provide a better understanding of issues related to the inquiry. However, the second paragraph in section 7.4 states that use of experts is subject to ACCC agreement.

It is not clear to Australia Post on what basis / or what process the ACCC will follow in reaching a decision to agree or disagree to the use of an expert.

7.2 Do you have any other comments on matters discussed in this chapter?

Australia Post believes the third paragraph under 7.4.3 (Expert's report) requires clarification.

Australia Post has interpreted the paragraph as follows:

- when the ACCC engages an expert, the expert's draft report may be circulated to all parties for comment prior to being finalised; and
- once finalised, the expert's report may be provide to all parties.

8. Confidentiality

8.1 Do you have any comments on the proposed approach to managing confidentiality in a bulk interconnection service inquiry discussed in this chapter?

As noted in Section 3 of this document, Australia Post would expect that the consideration of confidentiality for any information Australia Post provides in the pre-lodgement process is subject to the same consideration provisions as those provided to the complainant.

8.2 Do you have any other comments on matters discussed in this chapter?

No further comments.