

# **Framework for Negotiation of Discounted Network Tariffs**

## **Background**

1. The Framework set out in this document is the Commission's elaboration of principles and processes broadly agreed at a round-table of interested parties chaired by the Commission on Friday, 17 May 2002.
2. The Framework is drafted on the basis that the access applicant will be a retailer. In cases where the access applicant is a generator or an end-use customer rather than a retailer, the Framework's references to a retailer should be read where applicable as references to the generator or the end-use customer.

## **Principles**

3. The following principles underlie the Framework:
  - (a) the nature of the negotiation process – and the respective rights of the various parties in that process – should be known to all parties in advance of any negotiations (transparency principle);
  - (b) any discount negotiated below the approved reference tariffs should be based on a common approach for all network users consistent with clause 74(b) of the Network Access Code (non-discrimination principle);
  - (c) any discount negotiated below the approved reference tariffs – and the negotiation process involved – should not discriminate between competitors in upstream and downstream markets (competitive neutrality principle);
  - (d) no other network user should be worse off as a result of any discount negotiated below the approved reference tariffs than would be the case were the discount not given (ACCC Guideline 2<sup>1</sup>); and
  - (e) the Framework should discourage excessive or frivolous applications for discounts.

## **Eligibility for discounts**

4. Network tariffs may be negotiated below the approved reference tariffs in the following limited number of situations:
  - (a) where below-standard network access services sought by a particular end-use customer may result in cost savings to the network provider; or
  - (b) where there is a genuine threat of network “by-pass” by a particular end-use customer – either in whole or in part.
5. The network provider will advise retailers of the eligibility criteria to be met by end-use customers seeking a discount against the network reference tariffs. These criteria will elaborate on (a) and (b) in para. 4 above. The Commission's requirements of the network provider are that:
  - (a) in respect of 4(a), the network provider is to publish a general indication of the service-level basis of the network provider's costs factored into the regulated network revenue cap; and
  - (b) in respect of 4(b) above, the threat of bypass is to be independently verifiable, with the bypass scenario being shown to be technically and commercially credible.
6. The retailer is to document an end-use customer's claim of eligibility against the criteria nominated by the network provider under para. 5. The retailer will be responsible for the accuracy and completeness of the documentation so provided.

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<sup>1</sup> ACCC, *Guidelines for the Negotiation of Discounted Transmission Charges*, May 2002

7. The network provider will be ultimately responsible for establishing a particular end-use customer's eligibility for a discount in terms of para. 4 above.

### **Negotiating process**

8. Where a retailer applies to the network provider for a discount on an end-use customer's behalf, the network provider is to treat such an application as commercial in confidence.

9. Where more than one retailer applies for a discount on a particular end-use customer's behalf, the network provider is to negotiate with each retailer separately. Different retailers may seek different standards of service on the end-use customer's behalf. The network provider must negotiate with each retailer on a non-discriminatory basis.

### **Quantum and period of discount**

10. If an end-use customer meets the eligibility criteria set by the network provider (under para. 5 above), the network provider is ultimately responsible for establishing the quantum of any discount in view of the end-use customer's circumstances *and* the standards of service being sought on the end-use customer's behalf.

11. In negotiating the quantum and period of a discount, the network provider is to negotiate with the retailer in terms of the underlying/inherent merits of the case for a discount given the end-use customer's circumstances and the standards of service being sought on the end-use customer's behalf, and not on the basis of the bargaining strength of – or the circumstances of – the retailer.

12. In respect of 4(a) situations, the discount to apply is to be no more than the cost savings to the network provider as a direct result of the below-standard level of network access services as measured against the network provider's costs factored into the regulated network revenue cap.

13. In respect of 4(b) situations, the discount to apply is to be no larger, nor for longer, than necessary to prevent the resultant network access charge altering the end-use customer's behaviour to the point of adopting the (complete or partial) bypass alternative (ACCC Guideline 1). The retailer should, as part of the documentation provided, nominate the minimum discount required for this purpose.

### **Role of the regulator**

14. After the end of the regulatory year, when the network provider advises the Commission of the recovery of regulated network revenue against the determined revenue cap, the network provider must also supply details of all discounts negotiated in that year.

15. If, in the opinion of the Commission, the requirements on the network provider under this Framework have not been met in full or in part (especially in relation, but not limited, to paras. 5(a) and (b), 12 and 13), the network provider's "unders and overs account" will be adjusted to ensure that the network provider – rather than other network users – absorbs in full the costs of any discounts that were in the opinion of the Commission unwarranted. The network provider may, however, seek to recover these costs from the retailer or end-use customer concerned where the network provider has acted in good faith on information provided by these other parties when determining a discount that is later disallowed by the Commission.

16. Aggregate information about negotiated discounts will be included in information published by the Commission as part of its annual evaluation of revenue cap unders and overs.