Review of rents for communication sites on certain Crown land - Draft Report

IPART

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Public submission

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Submission

TPG Telecom welcomes the opportunity to respond to the *Review of rents for communication sites on certain Crown land Draft Report* (**Draft Report**). TPG Telecom's submission focusses on the recommendation to continue charging co-user fees and the approach to small cell technology.

We maintain our position the recommendation is not in line with the principles detailed in the Terms of Reference. Such fees cannot be considered representative of fair, market-based commercial returns, nor as representative of market rentals achieved for similar communications sites.

Co-user fees remain unjustified

TPG Telecom remains of the view co-user fees are unjustified and represent a fee for no service. The 2019 Review recommended the abolition of co-user fees. This was considered to be reflective of private market practice.[1] These recommendations were subsequently rejected by the NSW Government on the basis the data set pre-dated COVID-19 and did not reflect current market conditions.[2] The Draft Report has not provided sufficient evidence as to how the market has shifted in the period since the 2019 Review to invalidate its findings.

The Terms of Reference for the review requires IPART to have regard to the following:[3]

- updating current rents to reflect fair, market-based commercial returns
- recent and representative market rentals agreed for similar communication sites, reflective of different site conditions and locations across the State
- the land management agencies' requirements under legislation as well as any relevant state strategic plans and policies
- consultations with key stakeholders.

TPG Telecom believes the Draft Report through its recommendation to retain co-user fees does not adequately reflect the Terms of Reference.

The current fee regime charges different rates to identical towers based on their ownership structure

The impact of co-user fees is particularly pertinent given mobile network operators (**MNO**) have largely divested their passive infrastructure (towers) to third party tower companies in the past few years.

[1] IPART, *Review of rental arrangements for communication towers on Crown land Final Report*, 2019, page 84.
[2] NSW Department of Planning and Environment, *Crown Land Communication Licence rent 2022 – 23*, May 2022.
[3] Hon. Stephen Kamper MP, *Terms of Reference – Review of Rents for Communication Sites on Certain Lands of the Crown,* December 2023.

Under the recommended and current regimes, this results in the perverse situation where a physically identical tower can be levied different rents based on its ownership structure, as shown in Table 1.

Table 1: Indicative rents due to land owners of tower sites (%)

Ownership structure	Typical private site leasehold	Tower company, 30% infrastructure provider discount and co-user fee	MNO owns tower, sub-let to 2 other MNOs with 50% co-user fee	Tower company, no infrastructure provider discount, 50% co-user fee
Primary user rent (% primary user fee)	100	70	100 (Primary user fee paid by MNO)	100
1st occupant	0	50	50	50
2nd occupant	0	50	50	50
3rd occupant	0	50	N/A	50
Total	**100**	**220**	**200**	**250**

This means:

- For a tower with 3 MNOs co-locating, a tower owned by a tower company will return 25 per cent more in total rent to the land owner (i.e. Crown Lands) compared to the same tower directly owned by an MNO. For a tower with 1 MNO located on it, the total rent is 50 per cent higher for a tower company-owned site compared to an MNO-owned site.

- Assuming primary rent was equal, the total rent due to a Crown site with 3 MNOs co-located on a tower company-owned tower would be 2.5 times that of an equivalent site on private land, where co-user fees are very rare.

- The difference was partially offset by the 30 per cent infrastructure provider discount, however, this was removed following IPART's 2013 Review.

- The Draft Report estimates the new pricing schedule will reduce combined annual revenue by approximately $2.2 million per annum.[4] TPG Telecom believes this figure likely overstates the reduction given all MNOs have sold some or all their towers to tower companies. These towers will be subject to an additional co-user fee as a result.

- In essence, Crown Lands will benefit from increased co-user fees following widespread tower divestment. TPG Telecom queries whether IPART factored this into revenue calculations.

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[4] IPART, *Review of rents for communication sites on certain Crown land Draft Report*, 2024, page 49.

- The Draft Report states ‘co-user fees ensure that the rental received by the land management agencies reflect the intensity of land use by all land users’.[5] Charging a different fee for physically identical towers based on the ownership structure of the tower does not reflect the intensity of land use.

The 2019 Review concluded the infrastructure provider discount should not be reinstated given "…primary users, including infrastructure providers, should not be treated differently based on their business model".[6] Charging physically identical towers different rents based on their ownership structure does not align with this position.

Primary user fees already reflect the ability of tower owners to sublet tower space

Private market sites almost always include the right to sub-let tower space, which is factored into the primary rent charged. Relevantly:

- IPART's analysis found market prices for communications sites were lower than Crown fees in all density categories.[7]

- Private site rentals obtained by TPG Telecom overwhelmingly permit the primary lease holder to sub-let tower space to other parties with no fee charged by the landlord to the co-users.

- For sites where TPG Telecom is co-located on private sites, additional rent is generally only paid where additional land is required.

TPG Telecom disagrees with the Draft Report's assertion primary user fees do not always fully compensate land management agencies for the use of their land or reflect the intensity of land use on the site.[8]

Primary user fees are on average higher for Crown sites than equivalent private sites, which overwhelmingly include the ability to sublet. It is not ‘like-for-like’ to compare site rents without accounting for private sites overwhelmingly including the ability to sub-let tower space without additional charge.

Charging based on intensity of land use is not in line with fair, market-based commercial returns

The Draft Report claims co-user fees ensure rents ‘reflect the intensity of land use’ of Crown land.[9] This conflicts with the requirements of the Terms of Reference to regard fair, market-based commercial returns, given ‘intensity of land use’ is priced for in the primary user rent on private sites.

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[5] IPART, *Review of rents for communication sites on certain Crown land Draft Report*, 2024, page 39.
[6] IPART, *Review of rents for communication sites on certain Crown land Final Report*, 2019, page 90.
[7] IPART, *Review of rents for communication sites on certain Crown land Draft Report*, 2024, page 3.
[8] IPART, *Review of rents for communication sites on certain Crown land Draft Report*, 2024, page 39.
[9] IPART, *Review of rents for communication sites on certain Crown land Final Report*, 2019, page 39.

- The Draft Report states 'a co-user does not cause the land footprint of the leased site to increase and for this reason, co-users do not impose any additional cost on the land owner. The right to be a co-user and situate one's communication equipment at a particular site is a valuable right. It is efficient to charge a non-zero price for that right'.

- Tower companies would have no demand for tower sites without the right to sublet tower space. Their only revenue stream is leasing tower space. They would not seek private market rentals without this conditionality.

- A fair, market-based commercial return includes the right to sub-let tower space in the primary rent charged, as is the case with almost all private rentals.

- It is difficult to reconcile the view co-user fees reflect the intensity of land use, while IPART also acknowledges co-users do not impose any additional costs on the land owner.

A fair, market-based commercial return would be one with a similar total return and conditionality to a comparable private market lease. Crown land is on average more expensive and has more stringent conditionality, including the levying of co-user fees, compared to private leases. TPG Telecom believes this does not meet the stated aim of delivering a fair, market-based commercial return.

Levying a co-user fee is out of step with recent and representative market rentals agreed for similar communication sites

The Draft Report claims rents for communications sites on Crown land were to be based on 'similar commercial sites'.[10] A valid comparison must include pricing and the terms and conditions of Crown leases compared to private sites:

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- Private site rentals almost exclusively involve a tower company leasing a site from a landlord, and TPG Telecom leasing tower space from the tower owner. There is no financial relationship between TPG Telecom and the landlord, except where additional land is required.

- The Department of Planning, Housing and Infrastructure's submission claimed 'co-users commonly pay between 75% and 83% of the primary use charge in the private market'.[11] We believe the Department has conflated a co-user fee with rent paid to the tower owner for tower space, and/or rent charged to a secondary leaseholder where additional land was required.

- TPG Telecom recognises where a site requires additional land, a real cost is imposed on the Crown which it is entitled to price for, as a private landlord would do. However, this is not the case where

[10] IPART, *Review of rents for communication sites on certain Crown land Draft Report*, 2024, page 14.

[11] NSW Department of Planning, Housing and Infrastructure*, Submission to IPART's review of rental arrangements for communication sites on certain Crown land*, March 2024, page 5.

no additional land is required, which as the Draft Report acknowledged imposes no cost on the land owner.

Charging a fee rarely levied in the private sector cannot be representative of rents achieved for similar commercial communications sites, nor reflective of the conditions applying to those sites.

Recommending co-user fees conflicts with the Terms of Reference requirement to pay regard to consultations with key stakeholders

Primary and secondary leaseholders of communications sites overwhelmingly concurred co-user fees were not reflective of commercial practice and discouraged co-location. A recommendation in line with the Terms of Reference would account for feedback provided by key stakeholders. Examples are:

- As TPG Telecom stated in our initial submission, and as confirmed by submissions from Amplitel, AMTA, BAI Communications, Free TV Australia, Indara, NBN Co, Optus, and Telstra, charging a co-user fee is not common commercial practice, makes co-location less viable and charges for land already provisioned under rent paid by the primary user.
- The 2019 Review Consultation included submissions from diverse bodies including the Australian Narrowcast Radio Association, Australian Radio Communications Industry Association, Axicom, Broadcast Australia, Commercial Radio Australia, Community Broadcasting Association of Australia, Digital Distribution Australia, Free TV Australia, Mobile Carriers Forum, NBN Co, NSW Rural Fire Service, Optus, Telstra, TX Australia and Vodafone Hutchison Australia supportive of the proposal to reduce co-user fees and/or confirming co-user fees are not common commercial practice. None of these respondents provided views to the contrary at the current inquiry.
- No respondent to the current inquiry apart from the NSW Department of Planning, Housing and Infrastructure claimed a co-user fee was common commercial practice.

The recommendations do not pay regard to consultations with key stakeholders while ignoring the evidence provided by all primary and secondary leaseholders of communications sites.

It is unclear what evidence IPART paid regard to in the decision to keep co-user fees.

IPART acknowledged it could not obtain a statistically significant result in determining co-user fees for sites located on private land.[12] Given IPART could not provide evidence of co-user fees on private sites (where additional landholdings are not required), and numerous submissions confirming they are not common commercial practice, IPART should recommend their removal.

[12] IPART, *Review of rents for communication sites on certain Crown land Draft Report*, 2024, page 39.

Specifically:

- Given co-user fees are extremely rare on public telecommunications sites, it is likely not possible to create a statistically significant model of their extent. In this respect, it is difficult for private site occupants to provide data for fees they do not pay, beyond asserting they do not pay them.

- The Draft Report analysed whether there was a price effect from being a co-user.[13] TPG Telecom believes this mischaracterises the market. There is generally no price effect for being a co-user, given co-user fees are not a feature of the vast majority of sites on private land.

- Evidence provided by a wide range of stakeholders including all MNOs, tower companies, NBN Co, and Free TV Australia is sufficient to conclude levying co-user fees do not 'reflect fair, market-based commercial returns' for a site, nor 'recent and representative market rentals agreed for similar communication sites'. There has been little change in the evidence provided by key stakeholders to the 2019 Review and the current review on this point.

- The 2019 Review was rejected by the NSW Government on the basis the dataset did not reflect current conditions. It is unclear what evidence provided to the current inquiry led IPART to conclude the continued levying of a co-user fee is reflective of a 'fair, market-based commercial return', or 'recent and representative market rentals agreed for similar communication sites'.

The 2019 Review found levying a co-user fee was not common commercial practice, and as such should be abolished.[14] IPART acknowledged it could not obtain statistically significant evidence of the extent of co-user fees on private market sites, and feedback from a wide variety of key stakeholders confirmed such fees are not common commercial practice. In the circumstances, the weight of evidence favours removal of co-user fees if the fee schedule is to represent a 'fair, market-based commercial return' and reflect 'recent and representative market rentals agreed for similar communication sites'.

[13] IPART, *Review of rents for communication sites on certain Crown land Draft Report*, 2024, page 41.
[14] IPART, *Review of rents for communication sites on certain Crown land Final Report*, 2019, page 79.

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Co-user fees disincentivise co-location

The Draft Report claims 'We consider maintaining a discount of 50% will maintain incentives for communication site users to co-locate as they do not need to pay the primary user fee'.[15] Paying a co-user fee in addition to the costs of leasing tower space disincentivises co-location.

- The co-user fee should not be characterised as a 'discount'. As numerous submissions showed, such fees are very rarely levied on private sites. A fee that is very rarely levied cannot be said to be discounted.

- Particularly for sites located in areas where the profitability case for co-locating on a new tower is marginal, the co-user fee provides a disincentive to doing so.

Co-location on a private site is considerably more cost-effective than TPG Telecom constructing its own infrastructure. This enables deployment of telecommunications infrastructure where it otherwise would not be economically viable to do so. Having to pay a co-user fee in addition to renting tower space must be accounted for when determining the viability of deploying infrastructure on a site. A site subject to a co-user fee must generate a higher return than one not subject to a co-user fee to be commercially viable, rendering some marginal sites unviable.

TPG Telecom reiterates its point to the initial consultation - the Federal Parliamentary Inquiry 'Connecting the country: Mission critical' report recommended prohibiting Commonwealth agencies from levying co-user fees on telecommunications sites specifically because it disincentivises co-location.[16]

Small cell fees are excessive

A fee of 50 per cent of the primary user fee vastly exceeds market rates. Such a fee would render deployment of small cells financially unviable.

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- A fee vastly in excess of fees negotiated for sites that are an almost perfect analogue of small cell sites on Crown Land cannot be said to 'reflect fair, market-based commercial returns, nor reflect 'recent and representative market rentals agreed for similar communication sites'.

Small cells by their nature provide limited coverage and have a limited customer base to draw a return from. Without a drastically lower site cost than proposed in the Draft Report, they are unlikely to be

[15] IPART*, Review of rents for communication sites on certain Crown land Draft Report*, 2024, page 42.

[16] Inquiry into co-investment in multi-carrier regional mobile infrastructure, House of Representatives Standing Committee on Communications and the Arts, Connecting the country: Mission critical (November 2023), page xvii.

viable for deployment on Crown Land. Small cells provide vital capacity for mobile networks in densely populated areas. Limiting their deployment will be to the detriment of end users.

Appendix 1 [Commercial in confidence]