



**Australian
Competition &
Consumer
Commission**

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Christine Williams
Acting Executive Director – Regulatory Affairs
Public Policy and Communications

By email: Christine.E.Williams@team.telstra.com

Dear Ms Williams

Proposed declaration inquiry regarding wholesale ADSL

I refer to the ACCC's open letter dated 20 October 2010 (**the 20 October letter**), which discussed complaints regarding alleged anti-competitive pricing of wholesale ADSL services by Telstra. The 20 October letter detailed ACCC concerns regarding:

- The apparent cycle whereby material delays occur between the release of new Telstra retail broadband pricing and the finalisation of negotiations around Telstra Wholesale ADSL pricing.
- The ability of and incentive for Telstra to leverage its position as sole supplier to discourage the use of competitive infrastructure in CBD and metropolitan areas (e.g. by seeking to impose restrictive contractual terms on wholesale ADSL customers).
- The level and structure of prices for wholesale ADSL and wholesale fixed telephony services relative to Telstra's retail pricing.

In the 20 October letter, the ACCC expressed the view that a case could now be made for commencing an inquiry into possible declaration of a wholesale ADSL service. Such an inquiry would focus on geographic areas where effective DSLAM-based competition was unlikely to develop in the foreseeable future.

The ACCC received seventeen responses to its open letter from industry participants (see <http://www.accc.gov.au/content/index.phtml/itemId/952604>).

The ACCC is not required to satisfy a particular threshold before commencing an inquiry into declaration of a service under Part XIC of the *Competition and Consumer Act 2010 (CCA)*. However, in light of the rapidly evolving regulatory and industry

landscape, the ACCC opted to seek detailed further information from wholesale ADSL access seekers in late 2010 and early 2011 prior to reaching a conclusion on the appropriateness of an inquiry.

The ACCC continues to have concerns about Telstra's ability and incentive to leverage its position as sole supplier of wholesale ADSL services in many regional and rural areas. However, the ACCC has decided not to commence a declaration inquiry at this time. This conclusion has been informed by several industry and regulatory developments subsequent to the 20 October letter, including the following:

- There has been some further investment in competing infrastructure in regional and rural areas. For example, Nextep announced in March 2011 that it has deployed DSLAMs in several exchange service areas served by fibre rolled out under the Government's Regional Backbone Blackspots program. Nextep ultimately intends to equip 62 regional exchanges served by new fibre backhaul with DSLAMs, and will offer wholesale ADSL services.
- In early March 2011, the ACCC made interim access determinations (**IADs**) in relation to a range of declared fixed line services. Of relevance to wholesale ADSL, the IADs reduce the Band 3 ULLS price by almost 50 percent. The ACCC has also decided to make an IAD for the Domestic Transmission Capacity Service. In some instances these decisions may improve the business case for infrastructure-based competition in regional and rural areas.

I also note that there has been some improvement in the level of Telstra's wholesale ADSL pricing, and there appears to be potential for commercial negotiations to result in further improvement. It is the ACCC's understanding that a number of existing commercial arrangements expire around the end of the current financial year.

In these circumstances, the ACCC considers that there may be value in adopting a 'wait and see' approach in relation to wholesale ADSL for the present time. The ACCC will closely monitor developments in regional and rural broadband markets to assess whether Telstra's conduct is having a material detrimental impact on competition.

In the event that substantial detriment becomes apparent, and in particular if future conduct raises similar concerns to those detailed in the 20 October letter, the ACCC will reconsider the need for intervention.

Given the broad interest in this matter, the ACCC will publish this letter on its website. If you have any questions, please contact me on (03) 9290 1914.

Yours sincerely



Michael Cosgrave
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Communications Group