



**Australian  
Competition &  
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Commission**

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Our Ref: M2006/28, 30733  
Contact Officer: Kim Huynh

5 March 2008

Dr Tony Warren  
Executive Director  
Regulatory Affairs  
Telstra Corporation Limited  
Level 2, Engineering House  
Unit 11 National Circuit  
BARTON ACT 2600

**By facsimile: 02 9261 8390**

Dear Dr Warren

### **ULLS ordinary access undertaking dated 3 March 2008**

I refer to your letters of 3 March 2008; one relating to Telstra's withdrawal of its ULLS undertaking dated 21 December 2007, and the other relating to Telstra's submission of a new ULLS undertaking. Telstra also submitted as supporting material version 1.0 of the Telstra Efficient Access (TEA) model, a user guide and other documents to accompany the TEA model. Public versions of the submitted documents have been placed on the ACCC website.

Your letter stipulated six conditions on access to the TEA model and the Costing Document. These six conditions are the same as those Telstra proposed for access to the TEA model for its withdrawn ULLS undertaking of 21 December 2007. As you are aware, the ACCC wrote to Telstra on 14 January 2008 clearly rejecting all of these six conditions and the reasons for this rejection. The ACCC's previous letter on this issue has been posted on the website. The ACCC again rejects the six conditions Telstra proposes on access to the TEA model and the Costing Document. The reasons for rejecting these conditions are consistent with the ACCC's stated policy on the use of information. This policy is attached.

Your letter also notes that Telstra has sent two forms of confidentiality undertakings to access seekers for signature by their employees, external consultants and legal advisors so they may access the TEA model.

The ACCC is aware of difficulties access seekers have been experiencing in coming to agreement with Telstra on the confidentiality undertakings. The ACCC reminds Telstra that interested parties require reasonable access to (amongst other things) the

TEA model - in terms of both sufficient review time and the terms and conditions on which they access the model. Should the ACCC not be in a position to properly assess Telstra's supporting material, including receiving independent critical assessment by interested parties, the ACCC will necessarily be constrained in the weight to which it will be able to attach to that material. The ACCC will continue to stay informed as to the progress of negotiations between Telstra and access seekers in relation to the confidentiality undertakings.

Should you have any questions, please contact Kim Huynh on (03) 9290 1960 or [kim.huynh@acc.gov.au](mailto:kim.huynh@acc.gov.au) or Nicole Hardy on (03) 9290 1957 or [nicole.hardy@acc.gov.au](mailto:nicole.hardy@acc.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Michael Cosgrave', written in a cursive style.

Michael Cosgrave  
Group General Manager  
Communications Group

# ACCC Policy on Use of Information

The ACCC's policy on the use of information provided to it is set out in the ACCC Publication *Collection and Use of Information – October 2000*, available on the ACCC website at [www.accc.gov.au](http://www.accc.gov.au)

For your information, the key points are set out below.

## Confidentiality

The ACCC recognises that it is critical to maintain the confidence of voluntary information providers in the way that information is obtained and handled.

The ACCC and its staff are subject to a number of general limitations on use of collected information:

- The ACCC cannot disclose or use information other than for the performance of its statutory duties.
- Where information provided under a statutory power is confidential, the ACCC must comply with any specific statutory restrictions on disclosure. In any event it has a broad duty to consider whether to consult with the provider of that information before deciding to disclose it.

The ACCC can be compelled to produce material in its possession, either voluntarily or under a statutory power, in certain circumstances such as:

- In response to a request under the *Freedom of Information Act 1982*.
- As part of its duty to provide discovery or comply with a notice to produce in proceedings it initiated or in proceedings against it.
- In response to a subpoena regarding proceedings between third parties.
- In response to a statutory discovery obligation.

As a general rule, before releasing any document or information, the ACCC will seek to first advise any party who has provided confidential material, whether voluntarily or otherwise, to produce the material in compliance with its obligations. The ACCC will not consult with parties about the release of non-confidential information in its possession.

Confidential information or documents should be clearly identified as such.

## Use of Information

As a general rule, the ACCC takes the view that if it has legitimately obtained information for one purpose and that material discloses information relevant to another of its statutory functions, it is under no general duty to disregard the information in the context of that other function.

Given that it could lead to inappropriate results if the ACCC were to ignore relevant information in its possession, it will generally consider itself free to use that information for its other functions or in other contexts.

The ACCC will generally only accept information on the following terms:

- There is no restriction on the internal use, including future use, the ACCC may make of the information consistent with the statutory functions of the ACCC.
- Disclosure of the confidential information to third parties, including external advisors and consultants will be consistent with section 155AAA of the TPA.
- Any external party provided with the confidential information will, to the extent possible consistent with relevant law, be obliged to keep the information confidential.

The ACCC will consider on a case by case basis any claim for enhanced confidentiality or other conditions on the use of information provided to it.