



10 January 2008

Mr Robert Wright  
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Compliance & Regulatory Operations  
Communications Group  
Australian Competition and Consumer Commission  
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*By email*

Dear Robert

### **Impact of WLR / LCS Exemptions in the Corporate and Government Market Segment**

The purpose of this letter is to make a supplementary submission with regard to Telstra's July 2007 and October 2007 applications for exemption with respect to the LCS and WLR services. The subject of this supplementary submission is competition in the corporate and government market segment, defined as businesses with at least 200 employees and government agencies (the C&G market segment).

Optus endorses the principle that layers of regulation may be withdrawn where they are not required to promote competition (as noted in Optus' main submission lodged in early November), and supports the granting of exemptions where ULLS-based competition is effective at a level sufficient to ensure that downstream markets are contestable and workably competitive. However, Optus notes that it may not be possible to achieve the same outcomes across all market segments by applying the same regulatory tools.

Optus considers that the ACCC should investigate the impact of the proposed exemptions on the C&G market segment specifically, due to the distinctive features of competition in that segment. Optus submits that if the proposed exemptions were granted, ULLS-based competition would not be effective at a level sufficient to ensure that the C&G market segment is contestable and workably competitive. Accordingly, Optus proposes that the ACCC should exclude the C&G market segment from any exemption granted or set a clear expectation with Telstra that it will continue to provide services required for competition in the C&G market on a commercial basis.

### **Distinctive features of competition in the C&G market segment**

Competition in the C&G market segment has distinctive features which are not present in the consumer and small business market segments, and which make the C&G segment particularly sensitive to the availability of access to Telstra telecommunications infrastructure. These include:

- procurement of services on a 'whole of business' basis with preference for a single bill and a single point of contact for all telecommunications needs;
- requirements for specialised and complex features on top of basic telephony services; and

- customer inertia due to the high cost of changing providers.

#### *Procurement of services on a 'whole of business' basis*

Typically contracts in the C&G market are on a 'whole of business' (WOB) basis. Customers place a premium on simplicity and convenience, with a preference for a single supplier for the following reasons:

- less costly management compared to multiple contracts;
- simple cost reconciliations that enable costs to be allocated to the customer's cost centres;
- lower tariff benefits (intra-fleet vs inter-fleet calls); and
- the ease and convenience of a single help desk.

To compete in the C&G market, providers need to be able to provide complying bids to whole of business tenders. This will often require supplying multiple premises in various geographic locations. This means that before a service provider can even bid for a customer's business, it will need to have arrangements in place with Telstra (the only provider with ubiquitous coverage) to be able to provide all services requested at all the customer's sites, including arrangements to ensure that Telstra delivers on its commitments, eg, SLAs and business critical service faults.

C&G customers typically require vendors to:

- provide telecommunications solutions for all of the customer's sites, or
- be able to invoice for all of the customer's sites (either through direct service provision or through an agency agreement with Telstra), with multiple services and products included on a single invoice.

#### **CIC**

Telstra is the only network operator with ubiquitous network infrastructure. Optus has been able to submit compliant tenders and make contractual commitments on the basis that coverage can be provided using a mix of Optus' own fixed and mobile network, and access to Telstra's network and services for locations outside of Optus' direct coverage. As a result, if Optus and other service providers are to compete in the C&G market and meet the market's requirement for whole of business offerings, there needs to be certainty of access to Telstra infrastructure and products.

#### *Requirements for specialised and complex features*

Corporate customers often require a number of specialised and complex features as minimum requirements that must be complied with as part of a tender, on top of basic services. These specialised and complex features include:

- Fax Duet – two service numbers on a single line, the second for a fax, so there is no need for two line rentals (even though two unique numbers are provided). **CIC**;
- Huntgroups – a typical requirement for SMEs and small branch offices is to have multiple lines and possibly a key system – a few POTS lines are installed and as a call comes in to the main (advertised) line, if it is busy the next available line is "hunted" until a free line is found. **CIC**;

- Voicemail on Huntgroup – eg the ANZ requirement was for a call to go to mail if all services in a Huntgroup were busy. Optus could support voice mail on a single DirectLine – but not on a Huntgroup;
- ISDN services;
- ISDN2 – a typical requirement in most offices is to run a single service with multiple (2/10/20/30) lines to support phone / fax / internet;
- Line hunt (calls come in on one number, but can be picked up on any number of lines; the technology hunts for the next free line and puts the call through so that callers do not have to wait until the main phone line is free);
- Payphones;
- Securitel (security alarm monitoring service);

These services tend to be required by corporate customers and not by consumers since corporate customers require more advanced telecommunications capabilities to service their business needs. In some cases C&G customers demand services that are only available from Telstra, and the volume of services demanded is insufficient to justify investment by other service providers. Telstra is the only network operator currently capable of supplying all of these complex business features to all business sites. This has several significant impacts for competition in the C&G market:

- Telstra, being the monopoly infrastructure owner, has significantly greater bargaining power in any negotiation for the supply of those Telstra products.
- The capability of Optus and other service providers to compete in the corporate and government market is limited by the extent to which access to these Telstra business grade services can be secured on reasonable commercial terms to enable them to be offered at competitive rates.
- To the extent these complex features cannot be provided over Optus consumer grade infrastructure (including DSLAM infrastructure), Optus is unable to migrate customers off Telstra resale services to its own infrastructure, and remains dependent on Telstra resale products including WLR/LCS and PSTN OA.

#### *Customer inertia due to the high cost of changing providers*

The C&G market segment is characterised by long purchase and decision making cycles, due to the high cost and business disruption associated with telecommunications investment and changing service providers. This disruption is manifest in the significant discounts required to compel customers to switch providers.

As a result, the opportunity to win a particular customer only arises every two to three years. Therefore the loss of a customer to a competitor impedes the ability of any service provider to compete for the provision of services to that customer for a number of years.

#### **Impact of proposed exemptions on competition in the C&G market segment**

Whilst Optus accepts the principle that layers of regulation may be withdrawn where they are not required to promote competition, Optus cautions the ACCC against drawing any conclusions about competition in the corporate and government market on the basis of developments in the consumer market.

As a result of the distinctive features of competition in the C&G segment, the impact of the proposed exemptions on competition in the C&G market segment may be quite different from the impact in the consumer and small business segments. In particular, even if the ULLS was sufficient to ensure that the retail markets for services to consumers and small business were contestable and workably competitive in the exemption area, it is unlikely that the availability of the ULLS would be sufficient to ensure that the large corporate and government market was contestable and workably competitive.

A key limitation of the ULLS is that it is not universally available within the exemption areas. For example, where Telstra has deployed pair gain systems or a RIM between the exchange and the customer premise then the ULLS is not serviceable. Further, there are capacity constraints on TEBA space in a number of exchanges. Both of these issues are discussed in more detail in Optus' November 2007 submission.

The key point for present purposes, however, is that while these limitations may impede competition to an extent in the consumer and small business market segments, they will have substantially more severe consequences for competition in the C&G segment, as a result of the typical C&G requirements for ubiquitous service and WOB contracts. If Optus was unable to serve a single *household* due to the presence of a RIM or a capacity constraint at the exchange, the damage may be limited to that household since consumers require connection to only a single residence. By contrast if Optus Business was unable to serve a single *business* premises in the C&G market, an entire corporate account is at stake, since Optus Business would not be able to meet the corporate tender requirement for WOB service. Consequently, Optus Business cannot solely rely on the ULLS. The WLR and LCS wholesale services remain critical to Optus Business' ability to be able to service all of a customer's sites, and its ability to submit complying tenders.

A further limitation of the ULLS is that in many cases it is not possible to provide a customer with the complex features noted in the previous section if the customer is served via the ULLS. As a result of the typical requirements for complex features in the C&G market, it is generally not possible for Optus Business to substitute ULLS-based consumer grade services for business grade offerings to C&G customers. Given these limitations, access to Telstra infrastructure remains critical to Optus Business' ability to submit complying tenders.

Consequently, Optus submits that if the proposed exemptions were granted, ULLS-based competitors could not exert a competitive constraint on Telstra's pricing conduct in the C&G market, and ULLS-based competition would not be sufficient to ensure that the C&G market segment was contestable and workably competitive.

For Optus Business, exemption means that Telstra will have the ability to refuse or withdraw supply of services provided to Optus on a wholesale basis. Even in the current regulated environment Optus Business uses Telstra infrastructure only where necessary in order to win the customer's business; Optus has a preference to leverage its own network as much as possible. If Telstra was to refuse supply, Optus Business would have no immediate alternative means of competitively providing these services. Optus notes that AAPT & Powertel have expressed similar concerns about the potential for Telstra to refuse to supply in their submission to the ACCC on Telstra's exemption application.

The withdrawal of services by Telstra could place Optus Business in breach of its existing customer contracts, and place at risk not only the revenue generated from those services, but all the revenue associated with that customer account. This is because many customers would prefer to move all their services to Telstra for the simplicity and convenience of managing only one telecommunications provider and only one bill, rather than changing service providers for only a small number of sites. With business buying cycles being every two to three years (if not longer)

due to the high cost of changing provider in the C&G segment, once a customer is lost Optus is 'locked out' from being able to compete for those services for a number of years.

## CiC

The ACCC should be under no illusion that Telstra would maintain wholesale supply. Its track record suggests that it would seek to maximise its retail position by ceasing supply to major competitors such as Optus. Its refusal to provide wholesale access to its 3G / 850 MHz mobile network is instructive as to how it will behave if WLR/LCS regulation is relaxed.

### **Proposed exclusion of the C&G market segment**

Optus submits that the ACCC should consider excluding services provided in the C&G market from any LCS/WLR exemption to be granted, on the basis of the distinct competitive features which are present in this segment, as outlined above. Excluding the C&G market would provide robust protection for competition in the provision of services to large corporate and government customers whilst enabling infrastructure-based competition in the consumer market.

If exclusion of business services is not feasible, then Optus proposes that the competitive risk to the C&G market could be mitigated initially by setting a clear expectation with Telstra that it will continue to provide services required for competition in the C&G market on a commercial basis, despite the exemption. The ACCC has previously taken this approach in deciding not to explicitly require the provision of value added services through inclusion in the WLR service description, effectively acknowledging that it may be complex and inefficient for access seekers to replicate the majority of Telstra's switch-based add-on features. To quote from the ACCC's 2006 Final Decision on the Local Services Review (p.55):

*However, the ACCC notes that it has made this decision based on its expectation that Telstra will continue to provide switch-based add-on services to access seekers on a commercial basis. If Telstra's commercial agreements change to exclude these services, and if this were to be shown to be causing competitive detriment, the ACCC would be likely to revisit these matters to determine whether the LTIE would be better served through explicit alterations to the service description for the WLR.*

Optus would encourage the ACCC to reiterate this approach in the context of any LCS/WLR exemption to be granted, and take swift action to address any future refusal by Telstra to supply services required for competition in the C&G market on a commercial basis.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tim Sparks', with a long, sweeping flourish extending upwards and to the right.

Tim Sparks  
Manager, Economic Regulation