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# TELSTRA ACCESS UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION UNDER DIVISION 5 OF PART XIC OF THE TRADE PRACTICES ACT 1974 (CTH)

**Date:** September 1999

**Parties:** **TELSTRA CORPORATION LIMITED (ACN 051 775 556)** of 242 Exhibition Street, Melbourne, Victoria, 3000 (“**Telstra**”)

in favour of:

**AUSTRALIAN COMPETITION AND CONSUMER COMMISSION** being a body corporate established under section 6A of the Trade Practices Act 1974 (Cth) (“**ACCC**”)

## Recitals:

- A. Telstra holds a carrier licence and is a carriage service Provider under the Telecommunications Act 1997 (Cth) (“**Telecommunications Act**”).
- B. Pursuant to Division 5 of Part XIC of the Trade Practices Act 1974 (Cth) (“**TPA**”), Telstra undertakes to the ACCC to comply with the price-related terms and conditions specified in this Undertaking in relation to the standard access obligations that are applicable to Telstra in respect of Telstra Domestic PSTN Originating Access and Telstra Domestic PSTN Terminating Access, which were deemed declared services by the ACCC under section 39 of the Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997 (Cth).

## Operative provisions:

### 1 Definitions and Interpretation

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- 1.1 The following terms shall have the meanings set out below unless the context otherwise requires:

**Access Seeker** means a carrier or carriage service provider who seeks the supply of a Service by Telstra.

**Legislative Event** means:

- (a) the enactment, amendment, replacement or repeal of the Telecommunications Act, the TPA or other telecommunications related legislation or subordinate legislation;

- (b) the registration, making, promulgation, issue, amendment or replacement of any code with which Telstra is required or obliged to comply;
- (c) the making of a determination or finding by a Regulator or a court of law that all or any part of this Undertaking contravenes any provision of any law, except to the extent that the making of such determination or finding constitutes a Regulatory Event; or
- (d) the determination, addition, variation or removal of a Service Provider Rule (as defined in section 98 of the Telecommunications Act) applicable to Telstra.

**Regulator** means the ACCC, the Australian Communications Authority or the Minister administering Part XIB and Part XIC of the Trade Practices Act or the Minister administering the Telecommunications Act, as the context requires.

**Regulatory Event** means:

- (a) the issue of a Competition Notice by the ACCC to Telstra; or
- (b) the grant of an injunction against Telstra in relation to a breach or alleged contravention of the TPA; or
- (c) the declaration, addition, variation or removal of a condition applying to Telstra's Carrier Licence; or
- (d) the giving of a lawful directive to Telstra by a Regulator; or
- (e) the giving of a direction to Telstra by the Minister.

**Services** means Telstra Domestic PSTN Originating Access and/or Telstra Domestic PSTN Terminating Access.

**Telstra Domestic PSTN Originating Access** means the access service specified in Attachment A.

**Telstra Domestic PSTN Terminating Access** means the access service specified in Attachment B.

**Undertaking** means this undertaking to the ACCC.

**Undertaking Term** means the period set out in item 1 of the Schedule.

1.2 In this Undertaking unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) a reference to an agreement or another instrument includes any variation or replacement of either of them;

- (c) a reference to a Recital, Schedule or Attachment is a reference to a recital, schedule or attachment to this Undertaking and a reference to this Undertaking includes a Recital, Schedule or Attachment;
- (d) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) the word person includes a firm, body corporate, unincorporated association or an authority;
- (f) a reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and permitted assigns;
- (g) all dollar amounts are expressed in Australian dollars;
- (h) a reference to a period of time:
  - (A) which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
  - (B) which commences on a given day or the day of an act or event is to be calculated inclusive of that day;
- (i) an expression which is given a particular meaning in the Telecommunications Act or the TPA and which is not otherwise defined in this Undertaking has that meaning in this Undertaking; and

1.3 Headings are included for convenience and do not affect the interpretation of this Undertaking.

## **2 Commencement and Duration**

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- 2.1 This Undertaking takes effect immediately after the Undertaking is accepted by the ACCC under Division 5 of Part XIC of the TPA and continues until the earlier to occur of:
  - (a) the expiry of the Undertaking Term; or
  - (b) termination in accordance with this Undertaking or the TPA.
- 2.2 For the avoidance of doubt, this Undertaking (including, without limitation, any prices in this Undertaking) has no effect in respect of any Services that have been supplied by Telstra to an Access Seeker prior to the date on which the Undertaking is accepted by the ACCC under Division 5 of Part XIC of the TPA.

### 3 Undertaking

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- 3.1 Telstra undertakes to the ACCC that it will comply with the price-related terms and conditions specified in this Undertaking (being the terms and conditions set out in Attachments C and D) in relation to the standard access obligations that are applicable to Telstra in respect of the Services.
- 3.2 This Undertaking does not specify the terms and conditions relating to matters other than price (“**non-price terms and conditions**”) on which Telstra will comply with the standard access obligations that are applicable to it in respect of the Services, and therefore does not constitute an offer by Telstra to provide the Services to an Access Seeker. Subject to section 152AR(9) of the TPA, Telstra will supply the Services to an Access Seeker at the prices specified in this Undertaking but only:
- (a) on such non-price terms and conditions as are agreed between Telstra and the Access Seeker; or
  - (b) failing such agreement:
    - (i) if an access undertaking given by Telstra under Division 5 of Part XIC of the TPA is in operation and specifies the non-price terms and conditions applicable to the Services, on the non-price related terms and conditions specified in that undertaking; or
    - (ii) if no such access undertaking is in operation, on such non-price terms and conditions as are determined by the ACCC in an access dispute under Division 8 of Part XIC of the TPA.

### 4 Notice of Withdrawal, Replacement and Variation of this Access Undertaking

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- 4.1 If the ACCC revokes a declaration relating to the Services under section 152AO of the TPA, Telstra may, by giving notice to the ACCC, withdraw or replace this Undertaking, with effect from a date no earlier than the effective date of the ACCC revocation.
- 4.2 If the ACCC varies a declaration relating to a Service, Telstra may give the ACCC notice of a variation of this Undertaking to effect variations of an equivalent nature, and to the extent reasonably necessary, to maintain consistency between this Undertaking and the varied declaration.
- 4.3 If:

- (a) a Legislative Event occurs and that Legislative Event materially affects the rights or obligations of Telstra under this Undertaking; or
- (b) a Regulatory Event occurs in relation to Telstra; or
- (c) a Regulator or Telstra considers that a part of this Undertaking contravenes any provision of the Telecommunications Act, the Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997 (Cth), the Telstra Corporation Act 1991 (Cth), the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth) or the TPA,

Telstra may give the ACCC notice of a variation or replacement of this Undertaking to effect such variations as are necessary or appropriate to comply with or address the Legislative Event or Regulatory Event or the concerns set out in clause 4.3(c), as the case may be.

- 4.4 Nothing in this clause 4 is to be taken as limiting Telstra's rights in relation to this Undertaking under Division 5 of Part XIC of the TPA.

## 5 Notices

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- 5.1 Any communications in respect of this Undertaking should be made in writing to:

**Attention:** Director of Regulatory  
**Address:** Telstra Corporation Limited

Level 11  
231 Elizabeth Street  
Sydney NSW 2000

**Facsimile:** (02) 9261 8390

# Execution page

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**SIGNED** by )  
 as authorised representative for )  
**TELSTRA CORPORATION** )  
**LIMITED** in the presence of: )  
 )  
 ..... )  
 Signature of witness )  
 )  
 ..... )  
 Name of witness (block letters) )  
 )  
 ..... )  
 Address of witness )  
 )  
 ..... )  
 Occupation of witness )

.....

By executing this Undertaking the  
 signatory warrants that the signatory is  
 duly authorised to execute this  
 Undertaking on behalf of **TELSTRA  
 CORPORATION LIMITED**  
**(ACN 051 775 556)**

## Schedule

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Item 1:

Term: From the date on which this Undertaking takes effect under clause 2 until 30 June 2001.



## Attachment A - Schedule x 111 Telstra Domestic PSTN Originating Access

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## Attachment B - Schedule x121 Telstra Domestic PSTN Terminating Access

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## Attachment C - Price List for x111 Telstra Domestic PSTN Originating Access

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## Attachment D - Price List for x 121 Telstra Domestic PSTN Terminating Access

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**Dated**

**1999**

**TELSTRA ACCESS  
UNDERTAKING TO THE  
AUSTRALIAN COMPETITION  
AND CONSUMER  
COMMISSION UNDER  
DIVISION 5 OF PART XIC OF  
THE TRADE PRACTICES  
ACT 1974 (CTH)**

**Telstra Corporation Limited  
(ACN 051 775 556)  
("Telstra")**

**in favour of**

**Australian Competition and  
Consumer Commission  
("ACCC")**

**Mallesons Stephen Jaques**  
Solicitors

Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
Telephone (61 2) 9296 2000  
Fax (61 2) 9296 3999  
DX 113 Sydney  
Ref: TEJ/CGL/NBC

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