

3 August 2012

Ms Kathryn Wood
 Communications Group
 Australian Competition and Consumer Commission
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Dear Ms Wood

Local bitstream access service: Interim access determination and proposal for the final access determination

Telstra welcomes the opportunity to respond to the Commission's paper *Local bitstream access service: Interim access determination and proposal for the final access determination (LBAS paper)*. In large part, Telstra's views remain as set out in its March response¹ to the Commission's previous discussion paper² regarding the LBAS access determination. Telstra notes that the Commission does not intend to issue a draft Final Access Determination (FAD) for the LBAS; instead proposing to move straight to making the FAD. Telstra suggests that the Commission should keep this approach under review and if it appears likely that the FAD will be significantly different from the IAD – for example, in terms of the products covered by the FAD – then the Commission should consider issuing a draft FAD for consultation to seek industry views prior to reaching its final decision.

Price terms and conditions

At this time, the Commission is not intending to adopt a cost based approach for the pricing of LBAS and instead, the Commission intends to set the LBAS price by reference to NBN Co's pricing. For the purpose of the Interim Access Determination (IAD) the Commission has limited the number of LBAS products to one, that is, a residential grade 25/5Mbps service, for which the price has been set at \$27 per month. This amount corresponds with the price for the same speed service in the NBN Co Wholesale Broadband Agreement (WBA). LBAS providers are free to offer other products at commercially agreed prices.

The Commission states that it intends to adopt a similar approach in the LBAS FAD, with the pricing for LBAS product(s) to be set by reference to similar NBN Co products. In principle, Telstra has no objection to the Commission's approach to set price terms by reference to one product, leaving the pricing for other products to be agreed commercially, provided that the product chosen represents an effective "anchor". To assess whether a product is an effective anchor and imposes a meaningful price constraint will depend on such things as the degree of

¹ Telstra Corporation Limited, *Access determination for the local bitstream access service (LBAS) – Telstra's response to the ACCC discussion paper*, 23 March 2012.

² ACCC, *Public inquiry to make an access determination for the local bitstream access service – Discussion paper*, February 2012.

substitutability between the anchor product and the other products. On this basis, Telstra suggests that the Commission should keep this approach under review. For example, if it is accepted and an effective anchor is provided for, the Commission might consider adopting an approach similar to that used in the NBN Co SAU.

Further, Telstra notes that in the IAD no adjustments were made to the NBN Co WBA price. However, Telstra reiterates the view expressed in its March response that FAD adjustments may need to be made to NBN Co's proposed pricing for bitstream services to account for likely differences between the circumstances of NBN Co and operators of non dominant networks. In particular, adjustments may need to be made for:

- a commercial rate of return to be earned by operators of non-dominant networks (to the extent that NBN pricing reflects government rates of return); and/or
- different geographic coverage of non-dominant networks (noting that NBN Co's prices are nationally averaged).

The requirement to provide voice capability

Telstra believes that the inclusion of a voice requirement for specified LBAS products would be appropriate. It is likely that in many developments, the LBAS provider will be the only fixed line operator in that location. Given that many consumers have a preference for fixed line voice services, Telstra submits that the Commission should ensure that LBAS providers make available over their networks a voice telephony service which meets the requirements of the Standard Telephone Service (**STS**). Such an approach would be consistent with that adopted by the Minister in granting the 'Specified TransACT networks' exemptions and the 'TransACT Very Small Scale Networks' exemptions³, which state that TransACT must offer and supply a STS to an end user, upon reasonable request from that end user.

Non-price terms and conditions

In its March response, Telstra suggested that if the Commission was minded to include non-price terms and conditions in the LBAS FAD, then its starting point could be the terms and conditions being developed by NBN Co for its bitstream access services. The Commission has, however, stated that it is minded to base the non-price terms and conditions on those that have been utilised in the various FADs that have already been made (and consulted upon). The Commission proposes to use the non-price terms and conditions that were incorporated in the recent DTCS FAD as a starting point.

Given that the Commission intends to include non-price terms and conditions in its FAD, Telstra considers that it would be appropriate to include the areas specified, that is:

- billing and notifications;
- creditworthiness and security;
- general dispute resolution procedures;
- confidentiality; and

³

[http://www.dbcde.gov.au/broadband/national_broadband_network/Telecommunications Act Parts 7 and 8 requirements and exemptions/ministerial_exemptions_from_parts_7_and_8_of_the_telecommunications_act_1997](http://www.dbcde.gov.au/broadband/national_broadband_network/Telecommunications_Act_Parts_7_and_8_requirements_and_exemptions/ministerial_exemptions_from_parts_7_and_8_of_the_telecommunications_act_1997)

- suspension and termination.

Telstra further considers that it may be appropriate to include the network modernisation and upgrade provisions in the non-price terms and conditions.

Expiry date of the FAD

Telstra notes that the Commission intends to make the FAD for a period of 3 years and is generally supportive of this approach. However, given the lack of information around LBAS products, an even shorter time period for the FAD may be appropriate and would provide the Commission with the opportunity to review the FAD in a timely manner.

Please contact Pauline Crichton on (03) 8649 2010 or Pauline.Crichton@team.telstra.com should you have any queries in relation to this matter.

Yours sincerely,



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