



**Submission by AAPT Limited and PowerTel Limited to the
Australian Competition and Consumer Commission in
response to the Discussion Paper
Telstra's Transmission Exemption Applications, February
2008**



Introduction

1. AAPT Limited and PowerTel Limited (together **AAPT**) welcome the opportunity to comment on the Australian Competition and Consumer Commission's (the **Commission's**) February 2008 discussion paper concerning Telstra's applications for exemption (**Exemption Application**) from the standard access obligations (**SAOs**) in respect of the domestic transmission capacity service (**DTCS**).
2. AAPT relies heavily on acquisition of the DTCS from Telstra (which has a ubiquitous network) as an essential input for the provision of both wholesale and retail services to its own customers. Based on its current run rate, AAPT acquires more DTCS from Telstra each month, ie the DTCS is not a service of declining importance.
3. AAPT is therefore very concerned that if the Commission were to grant the exemption then Telstra may either cease to supply the DTCS services or increase the price significantly. Such an outcome would severely inhibit AAPT and other access seekers from competing in downstream wholesale and retail markets and consumers would be worse off as a result.
4. In addition, s152AT(4) of the Trade Practices Act 1974 provides that the Commission must not make an order exempting Telstra from any or all of the SAOs unless it is satisfied that the making of the order will promote the long term interests of end-users (**LTIE**). AAPT considers that s152AT(4) sets a high threshold requiring Telstra to prove, with a high degree of certainty, that granting the exemption will in fact promote the LTIE and that Telstra has fallen well short of this requirement.

5. Consequently, AAPT strongly opposes the Exemption Application and urges the Commission to reject it.

Nature and extent of the Exemption Application

6. Telstra’s Exemption Application relates to a number of exchanges serving areas (**ESAs**) and is summarised in the table below.

	Inter-exchange	Tails
CBD	<p>Nature: 17 ESAs, all bandwidths</p> <p>Justification: the presence of at least 3 optical fibre owners</p>	<p>Nature: 17 ESAs, all bandwidths</p> <p>Justification: the presence of at least 3 optical fibre owners</p>
Metro	<p>Nature: 115 ESAs, all bandwidths</p> <p>Justification: the presence of at least 3 optical fibre owners</p>	<p>Nature: 115 ESAs, up to 2 Mbps</p> <p>Justification: the presence of at least 3 optical fibre owners and at least one competitor DSLAM</p>
Regional		<p>Nature: 115 ESAs, up to 2 Mbps</p> <p>Justification: the presence of at least 3 optical fibre owners and at least one competitor DSLAM</p>

7. AAPT considers that the nature and extent of the Exemption Application is alarming.

8. While AAPT acknowledges that it may be reasonable for Telstra to try and argue, for example, that the market for transmission tails is competitive in

certain CBD areas (although a competitive market for transmission tails in CBD areas is not conceded), AAPT considers that the extension of the Exemption Application into metro and regional areas is without foundation.

The state of competition in DTCS markets

9. Telstra asserts that supply of the DTCS in the relevant ESAs is competitive because there exists two (2) or more optical fibre owners (other than Telstra) in each of the ESAs and because the ULLS is a substitute for DTCS tails (up to 2 Mbps) in the relevant metro and regional ESAs. Telstra also points to declining average prices for the DTCS and the small number of DTCS access disputes as further evidence of a competitive market.
10. The mere presence of two additional competing fibre owners in an ESA does not mean that transmission services are competitive in that ESA. For example, do any of the competing fibre owners actually supply wholesale transmission services over their fibre? Effective competition is not a function of the number of competitors in a market and in any event the relevant question is whether granting the exemption will promote competition, ie stimulate or improve competition in some way.
11. AAPT acknowledges that there has been a gradual decline in the price of transmission tails but this has occurred principally in CBD areas where the competition is greater. In many metro and regional areas the DTCS is still very highly priced with Telstra earning above normal profits on these services.
12. AAPT agrees that there has not been many DTCS access disputes, however, AAPT believes that the principal reason for this is that the Commission has not

released indicative pricing for the DTCS. Access arbitrations are lengthy and expensive and so access seekers are reluctant to go down this path without any indication from the Commission about where it believes prices should be. AAPT is aware that the Commission is currently developing a DTCS cost model and eagerly awaits the model's finalisation.

The effect on LTIE

13. Based on the assertion of a competitive DTCS market, Telstra then asserts that:
 - (a) granting the exemption would promote competition by providing further incentive to move from access based competition to facilities based competition; and
 - (b) not granting the exemption would reduce efficient investment on the basis that it would maintain reliance on a sole source for the services, which affects efficient investment by all suppliers which in turn reduces competition.

14. AAPT disagrees with these assertions and considers that granting the exemption would:
 - (a) adversely impact competition in downstream wholesale and retail markets because AAPT and other service providers will be less able to compete as they are unable to obtain access to end users without, for example, an expensive fibre build. As a result, Telstra will face less competition in downstream markets and consumers will be worse off; and

- (b) lead to investments in the form of inefficient access network duplication. It is often the case that gaining access to customers through the acquisition of wholesale transmission services from Telstra is far more timely, practical and economically efficient than undergoing a fibre build or obtaining access to a Telstra exchange (assuming that exchange is not capped in some way), installing a DSLAM and using the ULLS declared service to obtain access.
15. AAPT considers that creating the right incentive for service providers to make efficient build/buy choices is a job best left to the price of the DTCS and not the removal of the applicability of the SAOs to the DTCS.
16. Once the Commission's DTCS cost model is complete and DTCS pricing is adjusted to reflect the TSLRIC+ of supply then the right build/buy decisions will follow.