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Dr Tony Warren
Executive Director, Regulatory Affairs
Public Policy & Communications
Telstra Corporation Limited

By facsimile: 02 9261 8390

Dear Dr Warren

First DTCS exemption application

I refer to the first domestic transmission capacity service (DTCS) exemption application submitted by Telstra on 24 August 2007.

As you are aware, under section 152AT of the *Trade Practices Act 1974* (the Act), the Commission has six months after receiving an application to make an exemption order or refuse the application. However, when calculating the six month period, the Act provides that a day in the period starting on the day that the Commission publishes the application and invites public submissions, and ending on the closing date for submissions that is specified by the Commission when it publishes the application, is to be disregarded. Further, the Act provides that if the Commission makes a request for further information about the application under section 152AU, a day during which any part of the request remains unfulfilled is also to be disregarded.

In this matter, the Commission published the application and its discussion paper in respect of Telstra's application on 18 October 2007, seeking submissions by 9 November 2007.

In addition, the Commission issued an information request to Telstra pursuant to section 152AU on 4 January 2008. The Commission is currently assessing the completeness of the information provided by Telstra on 28 March 2008 in response to this request. While Telstra has provided some of requested information, at present it appears that some parts of the request (for example, the names of competitors on each of the relevant routes) remain unfulfilled. Accordingly, the 'clock' remains stopped in relation to the time by which the Commission must make a decision whether to make an exemption order or refuse the application.

Under section 152AT(12), the Commission is able to extend the six month decision making period by up to three months. To do so, the Commission must provide a written notice to the carrier advising of the extension and stating why it has not been able to make a decision within the six month period.

In this instance, notwithstanding that the 'clock' remains stopped due to Telstra's outstanding response to the information request, the Commission considers that it will likely be unable to make a decision on the exemption application within the initial six-month period for the following reasons:

- This is the first time that the ACCC has had to consider an exemption application in respect to the DTCS. The application relates to significant services and requires careful consideration of conflicting and complex arguments.
- It is likely that extensive and detailed market inquiries will be required in order to ascertain the competitive conditions on the relevant transmission routes.
- The Audit of Telecommunications Infrastructure Assets – Record Keeping Rules 2007 (infrastructure RKR) will provide essential information to assess the state of competition on the relevant routes. However, responses to the infrastructure RKR have only recently been received, do not include key information from Telstra and require careful and detailed analysis.

In this regard, I note that Telstra's failure to comply with the infrastructure RKR may leave the Commission in a position where, due to a lack of reliable information, the Commission will be unable to form a view that granting all or part of the exemption application will be in the LTIE. In this event, the Commission would be obliged to refuse the application.

For the above reasons, the Commission considers that it requires an extension of the initial six-month decision-making period. Accordingly, pursuant to section 152AT(12) of the Act, the Commission gives Telstra notice of the Commission's decision to extend the six-month decision-making period for a period of three months and the reasons for it.

Pursuant to the requirements of the Act, a copy of this notice will be posted on the Commission's website.

Yours sincerely



Robert Wright
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Compliance and Regulatory Operations
Communications Group