



**Australian
Competition &
Consumer
Commission**

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Our ref: M2007/535
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2 July 2008

Dr Tony Warren
Executive Director Regulatory Affairs
Telstra
Lvl 2, Unit 11 National Circuit
BARTON ACT 2600

Dear Dr Warren

Telstra's domestic transmission exemption (DTCS) application of 24 August 2007 – response to information request and further information request

I am writing regarding Telstra's correspondence received on 2 June 2008 and 19 June 2008 in response to the Australian Competition and Consumer Commission's (ACCC) information request of 4 January 2008 and further information request of 13 May 2008 (the Information Request and Further Information Request).

Telstra's correspondence referred to above included reports by Market Clarity dated 30 May 2008 and 12 June 2008 respectively. I note that both Market Clarity reports, which are marked 'commercial-in-confidence' and 'ACCC only', contain statements that may be interpreted as purporting to limit the purpose for which the reported information can be used by the ACCC.

The ACCC has a general position that if it has legitimately obtained information for one statutory purpose and that material discloses information relevant to another of its statutory functions it is under no general duty to disregard the information in the context of that other function. Given that it could lead to inappropriate results if the ACCC were to ignore relevant information in its possession, it will generally consider itself free to use that information for other functions in other contexts.

Accordingly, the ACCC does not accept any limitations on the purpose for which it can use the information contained in the Market Clarity reports. I note that if Telstra or Market Clarity objects to the ACCC dealing with the reports on this basis, it is unlikely that the ACCC will accept the reports as satisfying relevant aspects of the Information Request or Further Information Request.

If Telstra and Market Clarity do not object to the ACCC dealing with the reports on the above basis, the ACCC intends to contact the competing optic fibre infrastructure providers which are identified in the reports to verify their presence on the routes in question. Other than undertaking those inquiries, the ACCC would be prepared, in this case, to deal with the confidential versions of the Market Clarity reports (i.e. the unredacted versions) on the basis that the reports will not be published or provided to interested parties.

However, I note that there may be instances in which the ACCC is required to hand over confidential material – for example if required by law or in the course of review proceedings. In such an event the ACCC would ordinarily notify the party concerned to allow it to seek appropriate confidentiality protections for the documents concerned and/or, if appropriate, seek appropriate confidentiality arrangements to limit access to the documents.

If Telstra or Market Clarity objects to the basis on which the ACCC proposes to accept and deal with the information in question, Telstra must notify the ACCC of those concerns by Monday **14 July 2008**. The ACCC notes that it has not written separately to Market Clarity.

If you have any questions regarding the issues raised in this letter, please contact Caitlin Garner on (03) 9290 1485 or Kelvin Binning on (03) 9290 1861.

Yours sincerely



Robert Wright
General Manager
Compliance and Regulatory Operations