



Australian
Competition &
Consumer
Commission

GPO Box 520
Melbourne Vic 3001

Level 35, The Tower
360 Elizabeth Street
Melbourne Vic 3000

tel: (03) 9290 1800
fax: (03) 9663 3699

www.accc.gov.au

28 March 2008

Dr Tony Warren
Executive Director
Regulatory Affairs
Telstra Corporation Limited
Level 2, Engineering House
Unit 11 National Circuit
BARTON ACT 2600

cc: Paul McLachlan
Legal Counsel
Regulatory Legal Group
Telstra Corporation Limited
Level 11, 231 Elizabeth Street
SYDNEY NSW 2000

By facsimile: 02 9261 8390

By facsimile: 02 9261 2401

Dear Dr Warren

Telstra's Metro and CBD domestic transmission capacity service (DTCS) exemption applications: request for further information

I am writing in respect of Telstra's four exemption applications made pursuant to section 152AT of the *Trade Practices Act 1974* (the Act) and lodged with the Australian Competition and Consumer Commission (ACCC) on 21 December 2007 (**the Applications**). This letter formally requests that Telstra provide the ACCC with further information under section 152AU of the Act about Telstra's Applications.

Request for further information pursuant to section 152AU of the Act

1. Telstra in its Supporting Submission defines the following geographical market¹:

- "i. a cluster of contiguous ESAs, each of which contains inter-exchange fibre transmission infrastructure that includes a CBD ESA for that capital city; or
- ii an ESA containing inter-exchange fibre transmission infrastructure that is, or is contiguous with, an ESA that is connected to the CBD of the closest capital city by a fibre-optic regional transmission route."

In relation to this market definition, please clarify, including by illustrating with maps or diagrams, the meaning of "a cluster of contiguous ESAs" and show how the definition was applied to derive the set of ESAs for which exemption is requested.

¹ Telstra Corporation Limited, *Submission to the Australian Competition and Consumer Commission - Telstra's Domestic Transmission Capacity Service Exemption Applications - Supporting Submission Confidential Version (Supporting Submission)*, December 21, 2007 p31.

2. Please identify any additional ESAs which would be captured by the definition of 'Inter-Exchange DTCS' extracted below:

- (a) *two Transmission Points where both of those Transmission Points are located within the Adelaide CBD Area, the Brisbane CBD Area, the Melbourne CBD, the Perth CBD Area or the Sydney CBD Area; and*
- (b) *a Transmission Point located within the Adelaide CBD Area, the Brisbane CBD Area, the Melbourne CBD, the Perth CBD Area or the Sydney CBD Area and a Transmission Point in an ESA adjoining that CBD Exemption Area,*

but where neither Transmission Point is located at an end-user's premises'

on page 2 and 3 in Telstra's *Application for exemption from supplying inter-exchange transmission capacity in CBD areas*² that are not listed in Attachment A to that application.

3. In Appendix 5 to Telstra's Supporting Submission, Market Clarity provides data regarding the number of access fibre owners in each ESA for which exemption is sought. Please provide the following further details in relation to this information for each ESA requested for exemption including any ESAs listed in response to Question 2:

- a. the identity of the competing access fibre owner.
- b. whether the competing access fibre owner owns infrastructure or leases capacity from Telstra or a third party and where the contract is with Telstra, the length of the lease contract.
- c. whether the competing access fibre owner provides tail transmission or inter-exchange transmission or both, for states other than NSW, as defined in Mr Smart's Statement.³
- d. the retail and wholesale services the competing access fibre owners provide; and to what extent, these services could be used as a substitute for the declared DTCS.
- e. if a competing access fibre owner owns infrastructure:
 - i. where and how this infrastructure connects to the Telstra network (in MapInfo TAB vector format using the GDA94 coordinate system).
 - ii. the identity and location of each fibre owners point of presence (PoPs) in each of the ESAs in the format set out in **Attachment 1, Table 1**.

4. Appendix 5 of Telstra's Supporting Submission, the Market Clarity *CBD Fibre Deployment Report (the Market Clarity CBD Fibre Report)*, on page 10 in Table 1,

² Telstra, *Application for exemption from standard access obligations - Domestic Transmission capacity service - Inter-exchange transmission capacity in CBD areas*, 21 December 2007.

³ Supporting Submission, Appendix 3 - Statement of Michael Smart (**Smart's Statement**), p18.

provides information which is identified as 'an aggregate of the total number of buildings connected to fibre networks in each CBD'. This aggregated data does not provide sufficient detail to enable analysis by the ACCC.

Please provide the underlying data that was used to create Table 1 on page 10 of the Market Clarity CBD Fibre Report, being the results of the CBD fibred buildings research which provided Market Clarity with 'an owner level view of the buildings connected in each city', as described on page 5 of the Market Clarity CBD Fibre Report.

5. Please provide a list, description and copy of a sample contract which sets out the specifications of the services provided for all Telstra's products that it considers are or constitute tail-end and/or inter-exchange services, as described by the ACCC in the *Transmission Capacity Service - Review of the declaration for the domestic transmission capacity service - Final Report*, April 2004, page 7 (the 2004 Final Report).
 - a. For each product listed please provide:
 - i. the average contract length for supply
 - ii. the wholesale list price that applied for any part of 2004, 2005, 2006, 2007 and 2008.
6. For each ESA proposed for exemption, including those ESAs listed in Question 2, please provide the number of wholesale transmission SIOs and capacity for each of Telstra's transmission products listed in response for Question 5. Please provide the information broken down by:
 - ESA
 - speed
 - whether the transmission product provided is tail-end, inter-exchange or a service that combines both and
 - whether the product is sold in isolation or in combination with another product which Telstra considers is or constitutes a transmission capacity service as described in the ACCC's 2004 Final Report, page 7 and what that product is.
 - a. The above requested information as at 30 June 2005, 30 June 2006 and 30 June 2007.
 - b. The information requested in this question should be provided in the format set out in **Attachment 1, Table 2**.
7. For each ESA proposed for exemption from the declared DTCS, including any ESAs listed in Question 2, please indicate whether there is space:

- a. to accommodate the installation of standard equipment in the Telstra exchange by a third party, which is necessary or convenient to use the DTCS provided by Telstra
- b. in the Telstra exchange and/or ducts in and between each ESA, to install equipment and fibre which is necessary or convenient to provide transmission services equivalent to DTCS.

In the absence of space in the Telstra exchange and ducts, please identify how such equipment could be installed.

8. Telstra's estimate of its own currently utilised and maximum traffic capacity for providing tail-end and inter-exchange transmission services in each ESA requested for exemption, based on existing technology in the respective ESA, broken down into capacity used for wholesale services and capacity for Telstra's own use.

In accordance with section 152AT(11)(b) of the Act, a day during any part of which this request (or part of this request) remains unfilled, is disregarded in calculating the period within which the ACCC must make a decision about the exemption application.

The ACCC requests that by **5.00pm 4 April 2008**, Telstra provide to the ACCC in writing, an estimated date when it will provide information in compliance with this request (**Estimated Response Date**). The ACCC advises that it will make an assessment regarding the Estimated Response Date and form a view on whether it is reasonable. If the ACCC does not consider the Estimated Response Date to be reasonable the ACCC will set a deadline for compliance with this request which it considers to be reasonable. In the event that Telstra fails to comply with this request by the Estimated Response Date or such other time that the ACCC considers reasonable, the ACCC may proceed to make a decision on the Applications without considering any information provided in response to this request.

Please forward the requested information in electronic format to Caitlin Garner at caitlin.garner@acc.gov.au copying in Nicole Hardy at nicole.hardy@acc.gov.au and in hard copy to:

Caitlin Garner
Compliance and Regulatory Operations
Communications Group
Australian Competition and Consumer Commission
GPO Box 520
Melbourne VIC 3001
Fax: (03) 9663 3699

Should you have any queries regarding this request, please contact Caitlin Garner on (03) 9290 1485 or Nicole Hardy on (03) 9290 1957.

Yours sincerely

A handwritten signature in black ink that reads "R. Wright". The signature is written in a cursive style with a large initial "R" and a distinct "Wright".

Robert Wright
General Manager
Compliance and Regulatory Operations
Communications Group

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Level 35, The Tower
360 Elizabeth Street
Melbourne Central
Melbourne VIC 3000

GPO Box 520
Melbourne VIC 3001

Ph: (03) 9290 1800
Fax: (03) 9663 3699

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TO: Dr Tony Warren Mr Paul McLachlan

ORGANISATION: Telstra Telstra

FAX: 02 9261 8390 02 9261 2401

FROM: Caitlin Garner

TELEPHONE: (03) 9290 1485

FAX: (03) 9663 3699

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Melbourne Central
Melbourne VIC 3000

GPO Box 530
Melbourne VIC 3001

Ph: (03) 9290 1800
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