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21 April 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: clarification of 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 (Act)* and lodged with the Australian Competition and Consumer Commission (ACCC) on 21 December 2007 (**the Applications**). I also note the letter, sent by email, from Tony Warren of Telstra of 21 April 2008.

I refer to the meeting on 7 April 2008 between the ACCC and Paul McLachlan and Trish Cameron of Telstra and to the ACCC's request under section 152AU of the Act, dated 28 March 2008, for further information regarding the Applications (**Information Request**).

At the meeting a number of questions in the Information Request were discussed. The ACCC provides the guidance and comments set out below in respect of Questions 3 and 6 of the Information Request, in order to assist Telstra to best satisfy the request.

In addition, on page 3 of this letter, the ACCC withdraws Question 8 of its Information Request, and makes an additional request for further information about the application under 152AU of the Act.

With the exception of Question 8, this letter does not alter the ACCC's Information Request of 28 March 2008.

Guidance and Comments

Question 3(d)

'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. ...
- 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.'

Sub-section (d) of Question 3 is relevant to assessing the level of competition. The ACCC requests information regarding whether transmission services provided by competing access fibre owners could be considered technical equivalents.

Question 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.'

The ACCC clarifies that Telstra should provide SIO information similar to the information it provided in the attachments to Appendix 9 of its Supporting Submission.¹ However, this information should include the additional information requested and be provided in the format as set out in Attachment 1, Table 1.

If Telstra is unable to provide the information in Question 6 regarding:

'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'

¹ Telstra, *Application for exemption from standard access obligations - Domestic Transmission capacity service - Inter-exchange transmission capacity in CBD areas*, 21 December 2007.

on an ESA by ESA basis, it should provide it at a higher level – provided the information is provided at the lowest level possible (for example, regional).

In relation to the request for information in Question 6 on the ‘...capacity for each of Telstra’s transmission products’ Telstra may provide this information as the number of 2Mbps links that there is capacity for, that are spare and that are currently in use for each ESA proposed for exemption, including those ESAs listed in Question 2. The ACCC notes that this information is similar to the information provided on page 7 of Telstra’s, *Application for Exemption in respect to the Domestic Transmission Capacity Service, Response to Information Request* dated 4 January 2008 (confidential version) of March 2008. However, the information should be provided in the format as set out in Attachment 1, Table 2.

The ACCC notes Telstra’s advice that it may not be able to provide SIO information required by Question 6 as at 30 June 2005, 30 June 2006 and 30 June 2007 as requested. Telstra suggested that it could provide information at a point in 2004, 2007 and 2008. The ACCC suggests that Telstra provide information as at the dates that it suggested in the meeting and provide an explanation of why the requested information cannot be provided.

Withdrawal of Question 8 and Further Information Request under s 152AU

During the meeting, the ACCC agreed to review the wording of Question 8 of the Information Request. Accordingly, the ACCC:

1. withdraws Question 8 of the Information Request, pursuant to section 152AU(4) of the Act; and
2. formally requests, under section 152AU of the Act, that Telstra provide the ACCC with the further information about the Applications set out below (**Further Information Request**):

The ACCC requires information on the capacity of Telstra’s network. Please provide:

- a. Telstra’s estimate (in megabits or gigabits) of its own currently utilised and maximum capacity for providing tail-end and inter-exchange transmission services in each of the ESAs requested for exemption, including any ESA listed in response to Question 2 of the Information Request.

The response to this question should be based on existing technology in the respective ESA, and should provide information quantifying, out of the total capacity on cables in use in that ESA, the capacity used for wholesale services and capacity for Telstra’s own use. Where cables are present but not currently used, it is sufficient for Telstra to provide information on the number of unused cables.

- b. which of the ESAs requested for exemption, including any ESA listed in response to Question 2 of the Information Request are scheduled for upgrades in relation to equipment which is necessary or convenient for the purpose of providing transmission services in the next 6, 12 and 24 months.

Telstra's estimated response date

The ACCC notes that Telstra has provided an estimated date of the end of May 2008 by which it will provide its response to the Information Request and Further Information Request. The ACCC considers this estimated date to be reasonable.

In the event that Telstra fails to respond to the Information Request and Further Information Request within the time period which the ACCC considers reasonable, the ACCC may proceed to make a decision on the Applications notwithstanding Telstra's failure to provide information in response to the Information Request or Further Information Request. Information which has been provided within the time period will be taken into account.

Yours sincerely

A handwritten signature in cursive script that reads "R. Wright".

Robert Wright
General Manager
Compliance and Regulatory Operations
Communications Group

Attachment 1

Table 1: To be completed by Telstra using information in answer to Question 6

ESA Code at the 'A end'	ESA Code at the 'B end'	Product description	#SIOs	Speed (Mbps)	Transmission type (Tail-end, inter-exchange, combination)	Transmission product is sold in isolation (yes or no)	Product description of other transmission product or products purchased in combination (if any)

Table 2: To be completed by Telstra using information in answer to Question 6

ESA	Capacity	Spare	Used	%Used

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