



IP 021302
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Shane Adams
Assistant Director
Communications Group
Australian Competition and Consumer Commission

By email

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cc: grahame.oleary@acc.gov.au

Dear Mr Adams,

Infrastructure Record Keeping Rules

Macquarie Telecom Pty Limited ("**Macquarie**") welcomes the opportunity to make this submission to the Australian Competition and Consumer Commission ("**ACCC**") in response to its consultation paper concerning the above.¹ In this submission, Macquarie addresses each of the consultation issues raised in the Consultation Paper.

Consultation Issues

Are the proposed amendments to the list of telecommunications infrastructure providers required to report under the RKR appropriate?

Macquarie agrees that the current list of record keepers under the Infrastructure RKR² is out of date and requires updating. The additional record keepers that the ACCC proposes to add to the list seem appropriate.

However, Macquarie queries whether all of the infrastructure of some major operators is captured by the ACCC's proposed amendments to the list of record keepers. For example, would iiNet report only on its Agile and TransACT related infrastructure, and thereby not report on its Internode related infrastructure? *Prima facie*, Macquarie is of the view that each of iiNet, TPG and M2 should report on all telecommunications infrastructure under their control and not simply report on infrastructure which may be identified with a given brand name that they have acquired.

Macquarie also notes that there is no mechanism to ensure that the list of record keepers under the Infrastructure RKR will remain current. Given that Nextgen is on the list of record keepers and is currently on the market, the list will almost certainly become out of date in the near future. Accordingly, Macquarie suggests that the ACCC should consider reviewing the

¹ ACCC, Infrastructure Record Keeping Rules, An ACCC Consultation Paper on proposed amendments to the Audit of Telecommunications Infrastructure Assets - Record Keeping Rules 2007, November 2012, ("**Consultation Paper**")

² Audit of Telecommunications Infrastructure Assets - Record Keeping Rules 2007, ("**Infrastructure RKR**")



list of record keepers every 12 months and should also amend the list whenever there is a change of ownership in a listed record keeper.

Are there additional entities that are not included on the proposed list but who should be included on the list?

Macquarie suggests that Adam Internet should be included on the list because it is a major player in Australia's telecommunications sector.

Should any entities on the proposed list not be required to report? For what reason?

Macquarie believes that the entities on the proposed list are the major players in Australia's telecommunications sector and should be required to report.

Are there any significant impediments in providing the additional information proposed to be reported under the amended RKR?

Macquarie understands that the ACCC proposes three amendments to the Infrastructure RKR which involve the provision of more detailed information from record keepers. Such information concerns:

- infrastructure deployed over the previous year;
- ownership / lease / operation of infrastructure; and
- decommissioning of infrastructure.

Macquarie believes that the additional information sought by the ACCC would be likely to be captured within the existing information systems of each operator. However, such information would require extraction and formatting to meet the reporting requirements of the ACCC which would impose a cost burden on record keepers. Whether such burden would be a significant impediment for any given operator would largely depend on the amount of infrastructure that it controls and whether its information systems capture the relevant information.

Should the information reported under the RKR be updated to include identification of CAN and core infrastructure deployment in the preceding 12 months?

Macquarie believes that there must be a rational argument to justify the ACCC's proposal to seek more detailed information from record keepers under the Infrastructure RKR. *Prima facie*, where a market is operating efficiently, there is little need for any form of regulatory intervention.

Macquarie, however, considers that the ACCC's proposal to seek more detailed information is justified given:



- the current state of Australia’s telecommunications market;
- some key regulatory decisions that the ACCC will make; and
- the need to monitor the industry’s transition to the NBN.

Macquarie notes that Telstra’s dominant market position is evidence of ineffective competition in Australia’s telecommunications sector. Telstra’s uniquely holds market leadership positions in fixed, mobile, pay TV, digital content and broadband service market segments when compared to its global peers. Telstra is a vertically integrated operator and as such is a wholesale service provider to the same operators that it competes with in retail markets.

The ACCC has on its agenda over the next two years, declaration inquiries in respect of fixed line access services and the domestic transmission capacity service. Moreover, it will also make access determinations in respect of these services.

Macquarie notes that under the Government’s policy settings, Australia’s telecommunications sector is undergoing significant structural change with the transition to the NBN. In this context, it seems entirely appropriate for the ACCC to have available relevant information concerning CAN infrastructure deployment and decommissioning so that it is equipped to address any competition concerns that may arise and to monitor policy performance.

Should the identification of major infrastructure ownership, lease and operating arrangements be reported separately?

Macquarie understands that the ACCC proposes the reporting of major infrastructure ownership, lease and operating arrangements only in respect of core infrastructure, i.e., CAN infrastructure is not covered by the ACCC’s proposal. Further, the ACCC justifies this information requirement to “... assist the ACCC to better understand the extent of infrastructure based competition and the use of such infrastructure.”³

Macquarie reiterates its views in its response to the previous question that the ACCC’s proposal to seek more detailed information is justified given:

- the current state of Australia’s telecommunications market;
- some key regulatory decisions that the ACCC will make; and
- the need to monitor the industry’s transition to the NBN.

Are there any obstacles that might prevent record keepers reporting the decommissioning of infrastructure assets in the preceding 12 months?

An operator’s ability to report the decommissioning of infrastructure assets in the preceding 12 months is largely a function of whether such information has been recorded in the first place. Moreover, if such information has been recorded it would then require extraction and formatting to meet the reporting requirements of the ACCC. A further potential obstacle is the amount of infrastructure decommissioned by a given operator. However, Macquarie

³ Consultation Paper, page 7



considers it unlikely that a responsible and diligent operator would not already record relevant information about the decommissioning of infrastructure assets.

Is the additional six months allowed for compliance with the amended RKR sufficient time to lodge returns? If not, what impediments are there to meeting this timeframe and what period of time would be needed?

Prima facie, Macquarie believes that the additional six months allowed for compliance with the amended Infrastructure RKR provides sufficient time for operators to lodge returns.

Do you have any additional comments on the proposed changes to the Infrastructure RKR as marked-up in the attached draft instrument?

Macquarie has no further comments on the proposed changes to the Infrastructure RKR.

Closing

Macquarie welcomes the opportunity to make this submission and wishes to reiterate the following key points:

- the ACCC's proposed additions to the list of record keepers seem reasonable;
- proposed amendments to the list of record keepers should ensure that all telecommunications infrastructure under the control of the record keepers is captured;
- processes should be in place to ensure that the list of record keepers stays up to date; and
- the ACCC's justification for its proposed additional information requirements is appropriate given the state of competition in the telecommunications sector, upcoming ACCC decisions and the industry's transition to the NBN.

Macquarie would welcome an opportunity to discuss this submission with you.

Yours sincerely

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