



14 March 2008

Ms Nicole Hardy
Director
Compliance and Regulatory Operations
Communications Group
Australia Competition and Consumer Commission
nicole.hardy@acc.gov.au

cc: caitlin.garner@acc.gov.au

Dear Ms Hardy

TELSTRA'S TRANSMISSION EXEMPTION APPLICATIONS

PIPE Networks Limited (PIPE Networks) welcomes the opportunity to comment on the Australian Competition and Consumer Commission's (ACCC's) February 2008 discussion paper relating to 'Telstra's transmission exemption applications'.

About PIPE Networks

PIPE Networks is an Australian Securities Exchange-listed company that owns and operates public peering Internet interconnection points in Brisbane, Sydney, Melbourne, Adelaide, Hobart and Adelaide. PIPE Networks also operates the third largest metropolitan fibre optic cable network in Australia, providing extensive backhaul dark fibre services to the many of the competitive operators of Digital Subscriber Line Access Multipliers (DSLAMs) in Telstra exchanges.

Introduction

PIPE Networks frames its submission as responses to the questions posed by the ACCC (repeated in italics). From the outset it is noted that responses have been only provided to questions that were within the scope of PIPE Networks' experience and expertise. As such not all of the ACCC's questions have been addressed. [**Commercial-in-Confidence**]

Of all the issues raised by the ACCC in its discussion paper, the most pressing, from PIPE Networks' perspective, are those concerning the potential for competition and barriers to entry, specifically the degree of difficulty access seekers have in connecting to Telstra's exchanges. In this regard, PIPE Networks considers that the difficulties posed are comprised of several, inter-related elements. Firstly, there is the number of Telstra exchanges being self-declared as full or 'capped' for access seekers and the refusal to alleviate the situation by creating more space or expanding the resources available to access seekers. This is a substantial barrier to competition and one which is increasing. Secondly, in PIPE Networks' experience, there has been a general reluctance on Telstra's part to allow in-subscriber

connections within their exchanges, despite the mandates contained in Schedule 3 of the *Telecommunications Act 1997 (Cth)* and the Ministerial *Telecommunications Code of Practice 1997*. Thirdly, under Telstra Equipment Building Access (TEBA) PIPE Networks is prevented from entering a Telstra exchange for the purpose of selling capacity to other providers.

Taken together all of the above factors severely restrict existing and potential entrants' ability to compete with Telstra in replicating DTCS services or providing substitute services and do little to encourage infrastructure based competition.

Provided that a streamlined process is implemented which allows for greater ease of access to all (including those which are declared as capped) Telstra exchanges; ensures Telstra's cooperation with other providers and in turn eliminates the conflict often encountered by providers when seeking access; and enables providers to sell backhaul to other carriers, PIPE Networks does not oppose Telstra's transmission exemption applications as all of these measures will in PIPE Networks' opinion promote the long-term interests of end-users.

Are competing fibre optic owners and providers who are present in the relevant exchange areas able to replicate DTCS services with respect to:

- ***CBD inter-exchange transmission services***

Yes. PIPE Networks is able to replicate these services.

- ***CBD tail-end transmission services***

Yes. PIPE Networks is able to replicate these services.

- ***metropolitan inter-exchange transmission services; and***

Partially. PIPE Networks is able to replicate some of these services in the exchanges set out in Annexure A.

- ***metropolitan and regional tail-end transmission services?***

Partially. PIPE Networks is able to replicate some of these services in the exchanges set out in Annexure A.

Should DTCSs with respect to:

- ***CBD inter-exchange transmission services***
- ***CBD tail-end transmission services***

- *metropolitan inter-exchange transmission services; and*
- *metropolitan and regional tail-end transmission services,*

be considered as enduring bottlenecks?

With respect to the CBD inter-exchange and tail-end transmission services, it is PIPE Networks' view that they are not enduring bottlenecks and in this regard endorses the evidence presented by Telstra. However, with respect to metropolitan services, PIPE Networks submits that there is not strong evidence pointing to the presence of competing DTCS infrastructure in metropolitan and regional areas. Refer to Annexure A for details of PIPE Networks' presence in these areas.

Is it appropriate for an exemption to be granted for the provision of tail-end transmission capacity services only of a certain bandwidth?

No. To have such a limitation is artificial and ignores ongoing technical changes.

What are the substitutes for DTCS?

- *Can ULLS be considered an adequate substitute for DTCS with respect to tail-end transmission services at 2 Mbps bandwidth in metropolitan and regional exchange service areas?*

Yes, where it is capable of providing that bandwidth. Transmission distance and copper quality remain an issue in this regard.

Is there a discrete inter-exchange transmission service market in CBD and metropolitan exchange service areas?

Yes. Ethernet and dark fibre services are regularly being substituted in these areas. PIPE Networks refers the ACCC to PIPE Networks' report on infrastructure assets submitted pursuant to the ACCC Infrastructure RKR.

Are Telstra's submissions about the level of competition in the nominated exchange service areas accurate?

Based on anecdotal feedback within the industry PIPE Networks considers that Telstra's submissions are relatively accurate.

In the absence of a declared DTCS in the exemption areas for either inter-exchange or tail-end transmission or both, would competition in downstream retail markets for relevant services be effective?

Yes. With respect to the exchanges PIPE Networks operates from we are of the view that competition would still be effective.

What alternative DTCS providers (of inter-exchange and tail-end transmission services) to Telstra currently operate in the nominated exchange service areas?

We refer the ACCC to PIPE Networks' report on infrastructure assets submitted pursuant to the ACCC Infrastructure RKR.

What technologies do these alternative providers use?

PIPE Networks uses Ethernet and dark fibre technologies.

In the absence of access to a declared DTCS for inter-exchange or tail-end transmission in the proposed exemption area, would any alternate providers provide a meaningful constraint on the pricing of the DTCS or equivalent services?

As an alternate provider PIPE Networks submits that, in the exchanges from which PIPE Networks operates, its offering is competitive.

Would Telstra be likely to continue to supply the DTCS for inter-exchange or tail-end transmission if the exemption applications were granted?

PIPE Networks expects that Telstra will continue to supply the DTCS for inter-exchange or tail-end transmission, but questions the price at which Telstra will charge to do so.

What infrastructure do alternative wholesale providers use to supply inter-exchange or tail-end transmission services?

Fibre infrastructure, ULL and LSS.

Are there any investments planned by alternative providers for the exemption area to enable the provision of inter-exchange or tail-end transmission services?

PIPE Networks will invest in further infrastructure where there is a demonstrated customer demand.

Would all new DTCS infrastructure have the capacity to provide competitive constraints on existing infrastructure in relation to the provision of inter-exchange or tail-end transmission services?

With respect to inter-exchange transmission, any new PIPE Networks' infrastructure to exchanges, in addition to those contained in Annexure A, would have the ability to provide competitive constraints on existing infrastructure.

In relation to tail-end transmission, the ability of DSL services to range in speed to 30 Mbs (multiple ULL) would provide competitive constraints only on the proviso that access seekers can deploy DSLAMs in the exchanges. However, given current barriers faced by providers, as outlined in the Introduction to this submission, there must be a streamlined access regime in order to achieve any competitive constraints.

Would granting the exemption applications be likely to encourage efficient investment in alternative infrastructure by removing the scope for reliance on the declared DTCS for inter-exchange and tail-end transmission services?

Yes. However, again due to access issues in Telstra exchanges a streamlined process for access to exchanges needs to be implemented if efficient investment in alternative infrastructure is to be realised.

In the event that the ACCC is minded to grant any of the exemption applications, what conditions (if any) should be placed on a granting of the exemption application(s)?

Any grant of the exemption application(s) by the ACCC must be accompanied by the introduction of a more streamlined exchange access regime which addresses existing barriers to competition, including unblocking capped exchanges and Telstra working cooperatively or in a 'no conflict' manner with access seekers in accordance with the intent of Schedule 3 of the *Telecommunications Act 1997* (Cth) and the Ministerial *Telecommunications Code of Practice 1997*.

PIPE NETWORKS LIMITED

14 March 2008

APPENDIX 1

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