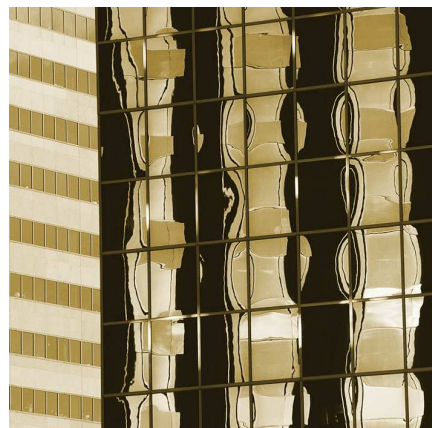


Report in response to ACCC Draft Decision on metro/CBD exemptions—Public version

Author: Mike Smart
Date 24 October 2008



About LECG

LECG is a global expert services firm with highly credentialed experts and professional staff with specialist knowledge in regulation, economics, financial and statistical theories and analysis, as well as in-depth knowledge of specific markets and industries. The company's experts provide independent testimony, original authoritative studies and strategic advice to both public and private sector clients including legislative, judicial, regulatory, policy and business decision-makers.

LECG is listed on the NASDAQ Stock Exchange and has approximately 1000 experts and professional staff worldwide. These experts are renowned academics, former senior government officials, experienced industry leaders and seasoned consultants.

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1 Introduction

My name is Michael Smart. I have previously prepared a report in connection with Telstra's 21 December 2007 applications for exemption from the DTCS declaration of inter-exchange and tail-end transmission in certain exchange service areas.¹ My experience and qualifications are set out in Appendix 1. My instructions are set out in Appendix 2.

The ACCC published its Draft Decision² on Telstra's applications for exemption from the DTCS declaration in September 2008. In this report I concentrate on aspects of the ACCC Draft Decision that refer to the exemption of inter-exchange and tail-end transmission services in metro and CBD areas.

The structure of this report is as follows. First I outline the points on which I agree with the economic analysis contained in the Draft Decision. Then I outline the points on which I disagree. I turn then to consider how efficient competition could be better promoted by varying the conclusions of the Draft Decision. In the final section I conclude by noting that the Draft Decision has not caused me to change the opinions I have previously expressed in this matter.

2 Points of agreement

I have been instructed to assess the economic aspects of the Draft Decision which I agree with. Generally speaking, I am in agreement with the ACCC conclusions regarding the definition of relevant markets. In particular, the decision to treat inter-exchange and tail-end transmission services as occupying separate product markets is congruent with the opinions I expressed in my previous reports on this matter.

I am also in agreement with the Commission's use of the 3-competitor rule for inter-exchange and tail-end transmission, meaning that competition is judged to be sufficient to warrant exemption in cases where three or more service providers own fibre-optic transmission facilities in a particular market.

¹ Statement of Michael Smart of CRA International on the economic considerations for Metro and CBD domestic transmission capacity service exemptions, submitted to ACCC on December 2007.

² "Telstra's domestic transmission capacity service exemption applications--Draft decision, Public version," ACCC, September 2008.

I agree with the Commission's method of application of the market definitions and 3-competitor rule to determine the scope of exemptions, with one qualification. The qualification is that I do not believe it is necessary for the competing inter-exchange fibre owners to be located at the Telstra exchange in a particular exchange service area ("ESA"). In my view, it should be sufficient that a competitor has inter-exchange fibre terminating at any POP within the ESA for that competitor to pose competitive discipline over inter-exchange transmission services offered by the incumbents.

I am not in a position to comment on the specific empirical material on which the Commission relied in its application of this method.

3 Points of disagreement

I have been instructed to assess the economic aspects of the Draft Decision which I disagree with. There are three points of principle on which I disagree with the conclusions reached in the Draft Decision. In my view:

- (a) Inter-exchange transmission competitors need not have their POP at the Telstra exchange in order to exert competitive discipline over the incumbents in a given ESA;
- (b) The Commission has not given sufficient weight to evidence of actual competitive entry to CBD tail-end transmission markets, with the result that it has underestimated the extent of competition in these markets;
- (c) The Commission's dismissal of ULLS-based tail-end transmission services overlooks important evidence of the substitutability of copper for fibre tails and appears inconsistent with the notion that substitution threats may discipline behaviour of an incumbent, whether the threat is based on actual or potential entry.

I discuss the reasons for my disagreement on these points under the three following subheadings.

3.1 IEN POP need not be Telstra exchange

My instructions ask me to address in particular the ACCC's draft view that exempting inter-exchange transmission in CBD or metro ESAs is in the LTIE if, and only if, an ESA has at least three inter-exchange fibre infrastructure competitors (including Telstra) which have a POI at the Telstra exchange (emphasis added).

I disagree with this view to the extent that it would fail to count an inter-exchange fibre infrastructure competitor that had a POI within the ESA that was located somewhere other than the Telstra exchange. My reasons for disagreement are as follows.

Inter-exchange transmission connects exchanges in different ESAs to each other. The essential character of this type of service is its ability to bring different ESAs within a global trunk transmission network. To draw an airline analogy, the inter-exchange transmission service is like the inter-hub network of airline trunk routes. Different airlines compete for trunk transport business, even if the hubs are not located in the same cities.³

As the Draft Decision recognised, this service is different in character and sits within a different product market from tail-end transmission services. Tail-end transmission connects end-user premises within an ESA to an exchange within that ESA from which inter-exchange transmission services can be accessed. To pursue the airline analogy, the tail-end transmission service is like the feeder service that assists passengers from various smaller centres get to and from major transport hubs from which they can access the trunk routes. It is frequently the case in air transport that different airlines specialise in providing feeder services using smaller aircraft.

In my view, it is not logically necessary that a Telstra exchange be the only point of access to a global inter-exchange transmission network. Other carriers' POPs that form part of their own inter-exchange networks would serve that purpose equally well, as long as end users are able to access those POPs located away from the Telstra exchange.

By virtue of the fact that tail-end transmission services of bandwidths higher than 2 Mbps would continue to be declared in metro ESAs,⁴ carriers operating inter-exchange networks whose POPs were located away from the Telstra exchange in a given ESA would be able to rely on declared high bandwidth tail services to make any link that may be required between their POP and the Telstra exchange. This fact makes it unnecessary, in my view, to insist that inter-exchange transmission competitors be located at the Telstra exchange before they may be counted under the three competitor rule. The declared link between the POP and Telstra exchange would not form part of the inter-exchange network, but rather would serve the function of connecting the aggregation point of most tail-end services in the ESA to the competing carrier's inter-exchange network.

³ For example, a number of airlines that compete to serve the Sydney – London market, but they do not all use the same hub as a stopover. Singapore Airlines uses Singapore. British Airways uses Bangkok. Emirates uses Dubai. Korean Airlines uses Seoul. The fact that these airlines use different hubs as part of their trunk network does not in any way diminish the competitive tension between them.

⁴ Noting that Telstra's application for tail-end exemptions in band 2 ESAs is only for bandwidths up to 2 Mbps.

3.2 Evidence of actual entry in CBD tail-end markets

The Commission concluded that Telstra had provided insufficient evidence that barriers to entry in the CBD tail-end markets are low (Draft Decision, s6.2.3, p. 63). That section of the Draft Decision noted the following three points in this regard:⁵

1. *“The ACCC also notes that Telstra’s analysis does not include the pay back period for a 2 Mbps service.”*
2. *“Further, the ACCC has no other information which would satisfy it, nor is it aware of other information which could be obtained which would satisfy it that barriers to entry in the CBD tail-end market are low.”*
3. *“In particular, the pay back calculations do not take account of increased competition likely to reduce the price of transmission services, extending the period over which an investment could be recouped.”*

Telstra’s submission that barriers to entry are low for a 2 Mbps transmission tail service in CBD areas does not rely on payback period analysis. Instead it relies on the ability of carriers to obtain ULLS on declared terms and thereby provide 2 Mbps tail transmission services to [C-I-C] [C-I-C]% of all band 1 SIOs. The Commission expressed scepticism regarding the substitutability of ULLS for DTCS. In my opinion, that scepticism is not warranted, and I provide my reasons in the following subsection of this report.

Concerning the second point, the Commission’s discussion of tail-end transmission presumes market dominance by Telstra and omits to mention the primary evidence presented by Telstra to support the claim of low entry barriers—namely the considerable extent of entry that has already taken place. In summary, that evidence showed that:

- Substantially less than half of CBD buildings are connected to Telstra’s fibre network. The proportion of CBD buildings that are fibred by Telstra is [C-I-C] [C-I-C]% for Sydney, [C-I-C] [C-I-C]% for Melbourne, [C-I-C] [C-I-C]% for Brisbane, [C-I-C] [C-I-C]% for Perth, [C-I-C] [C-I-C]% for Canberra, and [C-I-C] [C-I-C]% for Adelaide.⁶ In my opinion, these facts cast considerable doubt upon any argument that Telstra’s CBD fibre tail network is ubiquitous or that Telstra’s position in this market is dominant.

⁵ These statements all appear on p. 63 of the Draft Decision, although not in the same sequence.

⁶ This evidence is discussed in my report of 30 July 2008, p. 13.

- As of December 2007, there were substantially more CBD buildings connected to the fibre optic networks of carriers other than Telstra than there were CBD buildings fibred by Telstra in each of Sydney, Melbourne, Brisbane and Perth.⁷

Further evidence of the extent of entry is provided by a new report by Market Clarity (dated 24 October 2008) which provides maps of the CBD fibre-optic networks of two non-Telstra carriers in Sydney and three non-Telstra carriers in Melbourne. These maps demonstrate a dense street-by-street coverage of these CBD areas by competing fibre owners. I note that maps were not provided for three of the five non-Telstra fibre owners in Sydney. Maps were not provided for two of the five non-Telstra fibre owners in Melbourne.

While confidentiality issues prevented publication of all the fibre maps, Market Clarity provided the total length in kilometres of CBD tail fibre deployed by non-Telstra fibre owners. In the case of Sydney CBD, there were two non-Telstra fibre owners with approximately equal total lengths of competitive fibre. A map was provided for only one of these fibre owners. That map demonstrated a dense street-by-street coverage of the CBD. As the other fibre owner (for which no map was provided) had approximately the same total length of fibre in the Sydney CBD, I presume that it also had a dense street-by-street coverage.

In the case of Melbourne CBD, there was one non-Telstra fibre owner for which a map was available that showed a dense street-by-street coverage of the CBD. There was another non-Telstra fibre owner (for which no map was provided) that had a greater total length of competitive fibre than the other (mapped) fibre owner. Therefore I presume that the non-mapped fibre owner also had a dense street-by-street coverage of the Melbourne CBD. Market Clarity's assessment of these fibre lengths was based on the situation in 2007 or earlier. These facts suggest that at least as early as 2007, there were two or more non-Telstra fibre owners that had dense street-by-street fibre optic coverage of the CBDs of each of Sydney and Melbourne.

Taking all of these facts together, it is clear in my view that substantial competitive entry to the provision of CBD tail transmission infrastructure had taken place by 2007. The significance of this finding is twofold. First, it shows that barriers to entry have been surmounted and therefore they are not particularly high. Second, it shows that the 2007 Telsyte prices on which my previous pay back analysis relied, were representative of competitive, post-entry conditions.

The post-entry character of Telsyte prices for 2007 is relevant to the third point mentioned at the beginning of this subsection. The Commission said that the pay back

⁷ This evidence is discussed in my report of 20 December 2007 at paragraph 59.

calculations did not take account of increased competition and the consequent reduction in transmission prices. In my view, competitive entry had taken place already by 2007 when the Telsyte prices were sampled. Therefore, the effect on prices of increased competition had already flowed through by that time. I believe this fact invalidates that criticism by the Commission of my payback analysis.

A final point concerning the payback analysis is that the construction costs estimated by Mr Lordan in his report of 20 December 2007 were for fibre route distances in excess of 500 metres. It is clear from the Market Clarity maps that a fibre owner would not need to construct a new fibre route of anything approaching that distance in order to connect any building in the Sydney or Melbourne CBD to its network. Thus, in retrospect, Mr Lordan's distances (and therefore costs) appear to have been greatly overstated. As the location of the competitor networks was not known when his work was completed, his costings were based on connecting a given building to the Telstra exchange.⁸ To the extent Mr Lordan's costs were overstated, my earlier payback analysis was conservative in the sense of overestimating entry barriers.

3.3 Potential for ULLS substitution

The Commission stated that it did not consider tail-end transmission provided using ULLS is a close substitute for the provision of DTCS (Draft Decision, p. 63). The discussion on which this conclusion relied is contained in section 5 of the Draft Decision (pp. 30-33). The Commission also stated:⁹

“Further the ACCC concludes that even if ULLS could be considered a substitute for DTCS tail-end at 2 Mbps, it would still not be in the LTIE to grant the exemptions. This is on the basis that although Telstra has provided evidence regarding DSLAM presence at Telstra exchanges and technical information regarding the ability of a DSLAM to provide tail-end transmission at 2 Mbps, there is no evidence that in practice any DSLAM owners have entered or are likely to enter the tail-end transmission market at a retail or wholesale level.”

⁸ Mr Lordan's report of 23 July 2008, responding to criticisms by Optus, notes (paragraphs 3.3, 3.5, 3.6) that, “Based on my experience the normal industry approach is to connect fibre to a new customer building by extending the existing fibre network rather than installing a new cable from the POI.” “By installing surplus fibre capacity, joints and access pits at the time of construction, the carrier will have fibre network capacity within approximately 100 metres of every building along that route.” “Any customer request for fibre capacity along that route can be connected quickly and with a short distance of fibre infrastructure installation.”

⁹ Draft Decision, p. 4.

Concerning the question of substitutability, I have read the 24 October 2008 statement of [Telstra employee name withheld] which states that Telstra employs copper lines to provision [C-I-C] [C-I-C]% of its 2 Mbps wholesale tail transmission services in band 1 and 2 ESAs. For band 2 ESAs, Telstra employs copper lines to provision [C-I-C] [C-I-C]% of its 2 Mbps tail transmission services. At paragraph 5.2, [Telstra employee] notes that the percentage of wholesale transmission services that could be provisioned over copper lines is higher than this percentage of tail services that are actually provisioned over copper.

I have also read the 24 October 2008 statement of [Telstra employee name withheld] which states that Telstra Wholesale supplies transmission tails at prices and at service level agreements that are the same whether the transmission tails are provisioned over fibre or over copper lines.

In my view, these statements clearly establish the fact of substitution and therefore the substitutability, from the perspective of Telstra, its wholesale customers, and end users, of copper lines for fibre based transmission tails at 2 Mbps bandwidth or lower.

Given the substitutability of the underlying transmission media and transport technologies, it remains to establish whether ULLS provides a suitable platform from which carriers could offer a competitive 2 Mbps wholesale transmission service. The Draft Decision refers to a number of potential constraints on the substitutability of ULLS for the DTCS. Chief among these constraints are the problems with signal attenuation due to distance of end user premises from the exchange and pair gain systems. These issues were explicitly canvassed in my report of 20 December 2007 (paragraphs 75 – 78). More than half of all SIOs in band 2 ESAs would be capable of receiving 2 Mbps tail service over ULLS, taking full account of the problems of distance-based signal attenuation and pair gain systems.

To the extent this finding may give rise to concern about the contestability of tail services for SIOs in band 2 ESAs that could not receive a 2 Mbps tail service over ULLS, I refer to my report of 22 August 2008. That report (p. 9) showed that for of all the band 2 ESAs in the Sydney and Melbourne metropolitan areas, there are far more SIOs “needing”¹⁰ a fibre tail than there are Telstra fibre tails available. The number of existing Telstra fibre optic tails is insufficient to provide a fibre alternative for the majority of copper SIOs that cannot receive 2 Mbps tail service over ULLS.

¹⁰ An SIO could be said to “need” a fibre tail if it is unable to receive 2 Mbps tail service over ULLS. In that case, fibre may be the only technology capable of supplying such a service to that end-user.

In my view the constraints on ULLS substitution for DTCS in band 2 ESAs posed by distance from the exchange or pair gain systems do not translate into increased market power for Telstra, because even Telstra has insufficient fibre in these ESAs to serve the majority of these end users.

A number of other constraints on ULLS substitution were raised by the Commission. These were of a relatively technical and factual nature concerning reliability, provisioning times, and exchange capping. I am not well placed to evaluate the materiality of these concerns.

Concerning the question of evidence of actual entry by DSLAM owners into the tail end transmission market, I note first of all that Telstra is a DSLAM owner that has entered this market.¹¹ The picture is somewhat less clear for other carriers. I understand that several non-Telstra carriers do provide business grade symmetric DSL services over copper lines, and that these business DSL services may be close substitutes for wholesale transmission.¹²

Whether or not competitive entry in ULLS-based wholesale transmission is judged to have occurred to date, the threat of entry, which is clearly present to my mind, would serve to discipline the pricing and product quality offerings of the incumbents in the metro tail transmission markets. I do not believe that competitive discipline requires entry to have occurred, given the low barriers to entry for these markets.¹³

4 Potential improvements

I have been instructed to assess whether the Draft Decision could be improved from the perspective of promoting efficient competition. In my view, the following changes would improve the prospects for efficient competition in metro and CBD transmission services and other services that depend upon them.

¹¹ [Telstra employee] statement notes that Telstra employs SHDSL technology to deliver 2 Mbps transmission tail services over copper lines. SHDSL utilises a DSLAM.

¹² The substitutability of these services depends on the particulars of price and service characteristics which I am not well placed to assess.

¹³ Entry requires acquisition of ULLS on declared terms, purchase and installation of a DSLAM, backhaul arrangements, and marketing. Telstra has only applied for tail end exemption for those ESAs where there are three or more IEN fibre providers, meaning that backhaul could be acquired competitively by tail-end transmission entrants.

1. The decision rule for exempting inter-exchange transmission in particular ESAs should be modified so as not to require that there be three or more providers at the Telstra exchange, but only that there be three or more owners of inter-exchange transmission infrastructure with POPs within the ESA.
2. Reflecting the extent of actual competitive entry to date, exemption should be granted for CBD tail-end transmission in the ESAs for which Telstra applied. The continued declaration of these services is likely to continue the distortion of carrier choices toward regulated access for high-cost end-users. In making such choices, carriers would be seeking to take advantages of opportunities created by the averaged pricing that inevitably accompanies regulation.¹⁴
3. Reflecting the threat of ULLS-based entry, exemption should be granted for metro tail-end transmission up to 2 Mbps bandwidth in the ESAs for which Telstra applied. Mindful of the risk that a metro fibre tail, once constructed, may be the subject of a regulated access request, Telstra and other owners of fibre tails would be likely to impose a higher threshold for construction under declaration than under exemption. The consequences of this attitude to risk would be a slower rollout than necessary of metro tail-ends, with all the flow-on consequences for end-to-end connectivity and quality of services available to end users.

5 Reappraisal of my conclusions

I have been instructed to assess the extent to which I see any need to depart from any conclusions in my previous reports in relation to the Exemption Applications. The Draft Decision has not caused me to modify the opinions I have previously expressed in the reports I have prepared in this matter.

¹⁴ The practicalities of regulated pricing for transmission services are that prices may be cost-reflective on average, but a regulatory pricing system would be unable to tailor prices so that they match costs on each individual transmission tail. Given that basic fact, Telstra's competitors would be inclined to build their own tails when the cost is lower than the averaged regulatory price, but seek declared access when their construction cost is higher. This outcome would be inefficient to the extent that Telstra's tail construction costs are also higher than the average regulatory price for these end-users.

There is some indication that Optus takes such an approach. (See par. 4.25 of Optus submission to ACCC on Telstra's December 2007 exemption applications for tail end and inter-exchange transmission capacity services, April 2008. Optus notes its preference to rely on DTCS instead of its own fibre to serve high-cost CBD buildings, in order to minimise its production costs.)

Appendix 1: qualifications and experience

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BIO/SUMMARY

Mike Smart, based in Sydney, works primarily in competition economics and business strategy. He applies empirical economics to pricing, corporate strategy, regulatory and competition policy issues. He has advised the Australian industry leaders in rail, telecommunications, logistics, gas, mining, electricity and aviation, among other private and public sector organisations. Mike's advice includes the preparation of reports, submissions, board papers, financial models, and testimony. Mike has given expert evidence in the Federal Court of Australia and the Australian Competition Tribunal.

Prior to joining LECG in March 2008, Mike was a Vice President of CRA International and an executive director of the Network Economics Consulting Group (NECG). Before joining NECG, Mike was the Manager of Corporate Strategy for the Rail Access Corporation of NSW during its corporatisation and first three years of operation. That role encompassed commercial and regulatory challenges including development of an access pricing strategy and negotiating access contracts, as well as a significant contribution to the development of the NSW Rail Access Regime.

Prior to that role, Mike advised the Public Accounts Committee of the NSW Parliament, worked as engineering manager in a data acquisition and machine vision firm, and consulted, in California, to the airline and electric power industries.

Mike is a member of the Trade Practices Committee of the Business Law Section of the Law Council of Australia.

EDUCATION

BA Magna Cum Laude (Astrophysics), Harvard University 1979

PRESENT POSITION

LECG Limited, Consulting Director, 2008

PROFESSIONAL EXPERIENCE

- Authored an expert report in the matter of an application by East Australian Pipeline Limited [2005] ACompT 1, heard by the Australian Competition Tribunal, Sydney.
- Testified before the Australian Competition Tribunal in the matter of an Application by Virgin Blue Airlines Pty Limited, No 1 of 2004, Sydney.
- Testified before the Federal Court of Australia in the matter of Australian Gas Light Company v. Australian Competition & Consumer Commission (No 3) [2003] FCA 1525, Melbourne.
- Prepared a quantitative assessment of the external benefits generated by urban rail transport in Sydney.
- Assisted NSW competition regulator IPART in its inquiry into the Port Botany land transport interface (Final report published March 2008).
- Co-authored, with Professor George Hay, an expert report concerning competition impacts of a merger in the plastic bottle industry.
- Provided expert statements to the ACCC regarding applications by Telstra for exemption to declaration for urban, metropolitan and regional transmission capacity services.
- Briefed counsel for the Australian Pipeline Trust in a High Court challenge to the ACCC's Final Decision on the access arrangements for the Moomba – Sydney Pipeline.
- Assisted FOXTEL in obtaining ACCC approval (granted March 2007) for its special access undertaking for its digital set top units.
- Advised IPART on its review of actual coal rail access revenues against the statutory ceiling.
- Provided economic reports in support of the asset valuation for the Roma-Brisbane Pipeline in the 2006-2007 Access Arrangement round.
- Led a team analysing the regulatory test hurdles for a proposed reinforcement investment in the electricity transmission network for WesternPower.
- Assisted AGL to obtain regulatory approval for the acquisition of certain Queensland retail energy business assets.

- Prepared reports submitted to the National Competition Council on behalf of BHP Billiton Iron Ore concerning the Part IIIA application by Fortescue Metals Group to have the Mt Newman railway line declared.
- Assisted in the preparation of expert testimony called by Pacific National in a Federal Court case concerning disputed management and occupancy of the Acacia Ridge rail terminal in Brisbane.
- Worked in a team modelling the competition impacts of the (now approved) merger between Toll Limited and Patrick Corporation.
- Advised a New Zealand firm on potential damages arising from alleged collusive pricing.
- Prepared expert reports submitted to the Australian Competition Tribunal in the merits review of the ACCC's Final Decision on the Moomba-Sydney Pipeline Access Arrangements.
- Worked closely with the Australian Stock Exchange to develop and test options for the strategic review of trading, clearing and settlement prices, culminating in the December 2005 announcement of significant restructuring of prices.
- Expert witness called by Qantas in Virgin's appeal to the Australian Competition Tribunal to have Sydney Airport's airside service declared.
- Conducted a series of imputation tests used in expert testimony in the s46 case brought against Baxter by the ACCC in the Federal Court in Sydney.
- Expert witness called by AGL in its successful court action against the ACCC regarding the purchase of the Loy Yang A power station.
- Assisted the Australian Pipeline Trust by preparing numerous submissions in regard to its campaign to have regulatory coverage of the Moomba-Sydney Pipeline revoked.
- Provided a detailed avoidable cost analysis for an Australian firm responding to allegations of predatory pricing. The ACCC ultimately did not proceed with the case.
- Prepared revenue forecasts and other due diligence reports for Toll Holdings and Patrick Corporation on access prices in their successful bid to acquire Pacific National.
- Assisted in the preparation of expert testimony on behalf of the Coal Compensation Board with respect to a disputed compensation claim in the Coal Compensation Tribunal.
- Prepared a pricing strategy for Airservices Australia concerning the intellectual property embedded in its published aeronautical data.
- Helped the Australian Stock Exchange to design and establish pricing for a new data service.
- Prepared due diligence report on regulatory risk for one of the underbidders for Sydney Airport in 2002.

- Assisted in the preparation of expert testimony on behalf of Duke Energy with respect to their successful action before the Australian Competition Tribunal to have the Eastern Gas Pipeline unregulated.
- Advised the ACCC on a method for valuing the land under Sydney Airport. The recommendations were adopted by the ACCC in the 2000 Sydney Airport decision on aeronautical charges.
- Additionally, Mike has prepared a number of economic reports regarding merger authorisations, declarations under Part IIIA of the Trade Practices Act, matters involving misuse of market power, commercial pricing strategies, and regulatory pricing decisions.

OTHER POSITIONS HELD

2005 – 2008	Vice President, CRA International
2000 – 2005	Executive Director, NECG, Australia
1996 – 2000	Manager, Corporate Strategy and Manager of Systems, Rail Access Corporation of NSW, Australia
1993 – 1996	Director, Smart & Kay Pty Ltd, Australia
1989 – 1993	Independent Consultant, Australia
1986 – 1989	Engineering Manager, Science & Computing Applications P/L, Australia
1984 – 1985	Associate, Decision Focus Inc, Los Altos, CA (USA)
1980 – 1983	Professional Officer, University of NSW, Australia

PUBLICATIONS

“*Value of CityRail externalities and optimal Government subsidy*”, Mike Smart, Report commissioned by the Independent Pricing and Regulatory Tribunal of NSW, June 2008. <http://www.ipart.nsw.gov.au/files/CRAI%20report%20-%20CityRail%20Externalities%20-%206%20June%202008.PDF>

“*Transport demand and spatial equilibria*”, Mike Smart, **Journal of Transport Economics and Policy**, Volume 42, Part 2, May 2008, pp. 323-343.

“*The Prime Minister’s Export Infrastructure Task Force: Two years on—has anything changed?*”, AusIntermodal conference, Sydney, 28 November 2007.

“*The role of economic regulation in reducing bottlenecks*”, conference on economic regulation in transport and logistics, Lloyds List DCN, Melbourne, 6 June 2007.

“*The economic value created by the emergence of a national gas pipeline network*”, paper presented at the Australian Pipeline Industry Association’s Annual Pipeline Convention 2006, Alice Springs, 16 October 2006.

“*Track access and regulation*”, presented to a course organised by the Australasian Railway Association in Melbourne, August 30-31, 2006.

“*The relative competitiveness of road and rail haulage*”, presentation to a conference at the National Library on challenges in achieving efficient pricing in freight infrastructure, Canberra, April 28, 2006.

“*Two case studies on road vs rail freight costs*”, Mike Smart and Simon Game, submission to the Productivity Commission inquiry into freight infrastructure pricing, May 25, 2006.

“*Safety fears could derail years of reform,*” Sydney Morning Herald, 23 April 2003, p. 13.

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“*Practical Aspects of Rail Access Implementation.*” Published in the Proceedings: Current Issues in Access. Business Law Education Centre, Sydney, 29 October 1999.

“*Solving the Riddle of Combinatorial Logic.*” Published in the Proceedings 23rd Australian Transport Research Forum, Perth, 30 September 1999. pp. 789-803.

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(Consultant responsible for drafting Parliamentary committee report) Report on the National Parks and Wildlife Service. Public Accounts Committee, Parliament of New South Wales. Report No. 59. December, 1991. ISBN 0 7240 8806 7.

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"*ASYST Applications.*" The First Australian Forth Symposium: University of Technology, Sydney, May 1988.

"*Measuring Solar and Electric Heating Contributions in Occupied Houses.*" Smart and Ballinger. **Energy and Buildings 9**. 213-219 (1986).

"*Fourier-synthesized Weather Data for Building Energy Use Estimation.*" Smart and Ballinger. **Building and Environment Vol.19 No.1**. 41-48 (1984).

"*An Economic View of Passive Solar Design in an Australian Context.*" Ballinger and Smart. Published in the Proceedings: Solar World Congress, Perth, August 1983.

"*Tracking Mirror Beam Sunlighting for Deep Interior Spaces.*" Smart and Ballinger. **Solar Energy Vol.30 No.6**. 527-536 (1983).

"*An Empirical Study of Problem Heat Flow Paths in Simulation Models.*" Smart and Ballinger. Chapter 6 in **Predictive Methods for the Energy-Conserving Design of Buildings**. H.J. Cowan Ed. Pergammon, Sydney (1983).

"*Propagation of Magnetically Guided Acoustic Shocks in the Solar Chromosphere.*" Foukal and Smart. **Solar Physics 69**. 15-25 (1981).

Appendix 2: instructions

By letter dated 7 October 2008, Mallesons Stephen Jaques, on behalf of Telstra, provided me with the following instructions.

“You are instructed to prepare a report on the key economic issues arising from the Draft Decision. Your report should consider the extent (if any) to which the issues raised in the Draft Decision affect the conclusions in your previous reports relating to the Exemption Applications. Your report should provide an assessment of:

- (a) the economic aspects of the Draft Decision which you agree with;*
- (b) the economic aspects of the Draft Decision which you disagree with;*
- (c) whether the Draft Decision could be improved from the perspective of promoting efficient competition; and*
- (d) the extent to which you see any need to depart from any conclusions in your previous reports in relation to the Exemption Applications.*

In particular, please address:

- (e) the ACCC’s draft view that exempting inter-exchange transmission in CBD or metro ESAs is in the LTIE if, and only if, an ESA has at least three inter-exchange fibre infrastructure competitors (including Telstra) which have a POI at the Telstra exchange:*
 - in a cluster of contiguous ESAs, each of which contains at least 2 inter-exchange fibre infrastructure competitors which have a POI at the Telstra exchange; or*
 - that is an ESA which has a POI at the Telstra exchange 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; and*
- (f) to the extent you consider it appropriate based on the information and evidence before you, the ACCC’s view that exempting tail-end transmission in CBD and metro ESAs will not be in the LTIE (for the reasons discussed above at section 2).”*

Section 2 of the letter of instruction referred to the background to the matter.