

5 September 2008

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**Copy to**  
Caitlin Garner  
Australian Competition and Consumer Commission

Dear Mr Wright

**Telstra's CBD and Metro domestic transmission capacity service (DTCS) Exemption Applications**

I refer to Telstra's supplementary submissions of 17 July and 15 August 2008 in response to the Commission's request for information on the Exemption Applications.

By way of a further response to that information request, Telstra provides additional evidence about the extent of competing IEN fibre infrastructure in Queensland. Attached to this letter at Attachment 1 is a Market Clarity report dated 28 August 2008 containing data on the number of IEN fibre owners by ESA in Queensland.

The additional evidence corroborates the criteria for exemption proposed by Mike Smart and adopted by Telstra and confirms that these criteria are soundly based (for the reasons set out in Attachments 2 and 3). Specifically, it substantiates Mike Smart's inductive rule that ESAs with 3 or more of owners of access fibre are likely to have 3 or more owners of inter-exchange network fibre as well. In fact, it demonstrates that there are a large number of additional Queensland ESAs where exemption is warranted from the perspective of the long term interest of end-users ("LTIE"), even though these ESAs do not fall within the Metro Exemption Area initially applied for by Telstra. To that extent, the Exemption Applications are conservative. The additional evidence also conclusively establishes that the CBD ESAs of Charlotte and Roma Street have 3 or more owners of inter-exchange network fibre as Telstra had assumed to be the case.

If you have any questions about this letter or the attachments to it, please contact Paul McLachlan on 02 9298 5559.

Yours sincerely



Tony Warren  
Executive Director Regulatory Affairs  
Public Policy and Communications

**Attachment 1 -Market Clarity report - “Queensland Access Fibre Availability and Inter-Exchange Network Connectivity” dated 28 August 2008 (confidential)**

**Attachment 2 -ESA Maps for Queensland showing Queensland IEN data (confidential)**

### Attachment 3 -Implications of Queensland IEN data

The ESAs comprising the Exemption Areas (as defined in each of Telstra's four Exemption Applications) were selected, based on the principles set out in the Smart statement of 20 December 2007. The Queensland IEN data contained in the Market Clarity report at Attachment 1 corroborates Telstra's application of those principles.

#### CBD IEN Exemption Area

Every Band 1 ESA in Queensland included in the CBD IEN Exemption Area is demonstrated to have three or more IEN fibre owners. This is set out in the following table:

	<b>Contiguous Exemption Area</b>	<b>CBD IEN ESA Name</b>	<b>Number of IEN Fibre Owners</b>  (based on Market Clarity's August 2008 report) [c-i-c]	<b>Number of Access Fibre Owners</b>  (based on Market Clarity's December 2007 report) [c-i-c]
1	Brisbane	CHARLOTTE	[c-i-c]	[c-i-c]
2	Brisbane	EDISON	[c-i-c]	[c-i-c]
3	Brisbane	ROMA STREET	[c-i-c]	[c-i-c]
4	Brisbane	SPRING HILL	[c-i-c]	[c-i-c]

#### Metro IEN Exemption Area

Twelve (12) out of the fourteen (14) Band 2 ESAs in Queensland previously identified by Market Clarity in its December 2007 report as having three or more access fibre owners also have three or more IEN fibre owners. This is set out in the following table:

	<b>Contiguous Exemption Area</b>	<b>Metropolitan IEN ESA Name</b>	<b>Number of IEN Fibre Owners</b>  (based on Market Clarity's August 2008 report) [c-i-c]	<b>Number of Access Fibre Owners</b>  (based on Market Clarity's December 2007 report) [c-i-c]
1	Brisbane	EVERTON PARK *	[c-i-c]	[c-i-c]
2	Brisbane	MOUNT GRAVATT *	[c-i-c]	[c-i-c]
3	Brisbane	PADDINGTON	[c-i-c]	[c-i-c]
4	Brisbane	SALISBURY *	[c-i-c]	[c-i-c]
5	Brisbane	SOUTH BRISBANE	[c-i-c]	[c-i-c]
6	Brisbane	SUNNYBANK *	[c-i-c]	[c-i-c]
7	Brisbane	TOOWONG	[c-i-c]	[c-i-c]
8	Brisbane	VALLEY	[c-i-c]	[c-i-c]

9	Brisbane	WOOLLOONGABBA	[c-i-c]	[c-i-c]
10	Beaudesert	ASHMORE	[c-i-c]	[c-i-c]
11	Beaudesert	NERANG	[c-i-c]	[c-i-c]
12	Beaudesert	ROBINA *	[c-i-c]	[c-i-c]
13	Beaudesert	SOUTHPORT	[c-i-c]	[c-i-c]
14	Mackay	MACKAY #	[c-i-c]	[c-i-c]

\*These 5 ESAs were reported in the December 2007 report to have three or more access fibres but were not included within the Metro IEN Exemption Area because the ESAs did not meet the contiguity requirement.

#This 1 ESA was reported in the December 2007 report to have three or more access fibres but was not included within the Metro IEN Exemption Area because the ESA was an individual ESA that did not form a cluster of 2 or more ESAs in its local area.

Accordingly, with the exception of [c-i-c] which is discussed below, the Commission can be confident that ESAs that have been included in the Metro IEN Exemption Area on the basis of Mike Smart's inductive rule that ESAs with 3 or more of owners of access fibre are likely to have 3 or more owners of inter-exchange network fibre in that ESA, do in fact qualify for exemption from the declaration of the DTCS.

These findings in relation to the scope of the Metro IEN Exemption Area apply equally to the scope of the Metro Tail Exemption Area.

#### Discrepancy in the list of qualifying Metropolitan IEN and Tail Exemption ESAs

Telstra acknowledges that [c-i-c], which is included in the Exemption Area in Telstra's Exemption Applications, does not currently have 3 or more IEN fibre owners. It is open to the Commission to make the exemption orders requested by Telstra subject to a condition that the exemption has no effect with respect to [c-i-c] if there are less than 3 or more IEN fibre owners present at Ashmore at the time the order comes into effect.

Meanwhile, [c-i-c] is another ESA which also previously had been identified as having three or more access fibre owners but based on Market Clarity's new Queensland report does not have three or more IEN fibre owners. However, [c-i-c] was not included in the Exemption Area in Telstra's Exemption Applications.