

Attachment (PUBLIC VERSION)

Criteria for Selection of ESAs in Exemption Area

This information supplements Telstra's information request response dated 30 June 2008 in relation to application for exemption from the SAOs applicable to the DTCS in CBD and metro areas. Defined terms have the meaning given in that response of the Exemption Applications.

1. CBD IEN Exemption Area

- 1.1 There are 17 ESAs in the CBD IEN Exemption Area. These are all Band 1 ESAs. They comprise all the ESAs in the CBD areas of Sydney, Melbourne, Brisbane, Adelaide and Perth.
- 1.2 The ESAs are included in the CBD IEN Exemption Area on the basis that they are competitive primarily because the threat of new entry is effective at every ESA in a CBD area and secondarily because there are 3 or more IEN fibre owners competing in all ESAs except 3.

Physically Contiguous

- 1.3 The ESAs which fall within each CBD are contiguous (see the example of Sydney CBD in slide 1 of **Appendix 1**).
- 1.4 There are no additional ESAs which would be captured by the definition of "CBD Exemption Area" referred to in Telstra's CBD IEN Application.

Competitive ESAs (i.e. 3 or more IEN fibre owners)

- 1.5 Of the 17 CBD ESAs:
 - (a) 5 ESAs are in NSW. These 5 ESAs are known to have 3 or more IEN fibre owners, as set out in the Market Clarity report, Appendix 5 - Table 4 in the column entitled "Summary - Known IEN Fibre" (Table 1). They are also identified in the map in **Appendix 1** slide 1.

Table 1

CBD ESAs with 3 or more IEN fibre owners (Total: 5)	Number of IEN fibre owners
City South (Sydney CBD)	[c-i-c]
Dalley (Sydney CBD)	
Haymarket (Sydney CBD)	
Kent (Sydney CBD)	
Pitt (Sydney CBD)	

- (b) 9 ESAs are in states other than NSW. These 9 ESAs are considered to have 3 or more IEN fibre owners (based on the presence of 3 or more access fibre owners, as set out in the Market Clarity report, Appendix 4 in the column entitled “Number of Access Fibre Infrastructure Owners”).

Telstra has applied the proposition in the Smart statement that the number of owners of inter-exchange network fibre in an ESA is equivalent to the number of owners of access fibre in that ESA. Accordingly, Telstra has determined that because these 9 CBD ESAs have 3 or more owners of access fibre infrastructure, these ESAs will also have 3 or more inter-exchange network fibre owners (Table 2). See the maps in **Appendix 1** slides 2-5.

Table 2

CBD ESAs considered to have 3 or more IEN fibre owners (Total: 9)	Number of access fibre owners
Batman (Melbourne CBD)	[c-i-c]
Exhibition (Melbourne CBD)	
Lonsdale (Melbourne CBD)	
Edison (Brisbane CBD)	
Spring Hill (Brisbane CBD)	
Flinders (Adelaide CBD)	
Waymouth (Adelaide CBD)	
Bulwer (Perth CBD)	
Wellington (Perth CBD)	

Competitive ESAs (i.e. threat of new entry is effective)

1.6 Of the 17 CBD ESAs, the remaining 3 ESAs were identified by Market Clarity as having less than 3 access fibre owners (based on the Market Clarity report, Appendix 4 in the column entitled “Number of Access Fibre Infrastructure Owners”), but are nonetheless included in the CBD IEN Exemption Area. They are included because there is no material barrier to entry for the installation of fibre in CBD areas for the reasons set out below (Table 3). These are identified in the map in **Appendix 1** slides 3 and 5.

The Smart statement observes that there are 3 CBD ESAs which do not meet the 3 fibre owner threshold, (namely Roma Street, Charlotte and Pier). Mike Smart nevertheless finds that sufficient competition exists for inter-exchange transmission in those ESAs because there are no plausible barriers to entry given the short payback period for new fibre installation in CBD areas (Smart statement, para 12, 7th bullet point). This rationale applies to CBD ESAs because it is self-evident that CBD areas are densely populated with a high proportion of business customers requiring fixed voice and data services. The high demand for fixed voice and data services together with the relatively short distances involved make it economical for a competitor to build their own inter-exchange networks.

Table 3

CBD ESAs with less than 3 access fibre owners but no material barrier to installation of fibre (Total: 3)	Number of access fibre owners
Charlotte (Brisbane CBD)	[c-i-c]
Roma Street (Brisbane CBD)	
Pier (Perth CBD)	

2. CBD Tail Exemption Area

2.1 There are 17 ESAs in the CBD Tail Exemption Area. These 17 comprise all ESAs in the CBD IEN Exemption Area.

2.2 The ESAs are included in the CBD Tail Exemption Area on the basis that they are competitive because the threat of new entry is effective at every ESA in a CBD area and because all except 3 of these ESAs (see Table 3) are connected by 3 or more competing IEN fibre owners .

3. Metropolitan IEN Exemption Area

3.1 There are 115 ESAs in the Metropolitan IEN Exemption Area. The ESAs are included in the Metropolitan IEN Exemption Area on the basis that they are competitive because there are 3 or more IEN fibre owners competing in all ESAs and the ESAs are contiguous with:

- (a) a CBD ESA; or
- (b) a cluster of ESAs each with 3 or more inter-exchange infrastructure and containing CBD ESAs.

Elimination of ESAs connected to nearest capital city by competitive capital-regional transmission route

3.2 Telstra considered that it was not necessary to apply for exemption in respect of inter-exchange transmission for ESAs at the regional end of exempt capital-regional routes, on the basis that those ESAs were effectively exempt for the purpose of IEN transmission.

3.3 Accordingly, for the purposes of selecting the Metropolitan IEN Exemption Area, Telstra eliminated ESAs which are connected to the nearest capital city by a regional transmission route that is either:

- (a) already outside the scope of the DTCS declaration under Part XIC of the Trade Practices Act 1974; or
- (b) the subject of an exemption application by Telstra on the basis that competition on that route is effective.

In **Appendix 1**, the regional ESAs coloured green were excluded because they are already excluded from the declaration in 2004. The regional ESAs coloured orange were excluded because they are subject to Telstra's capital-regional transmission exemption applications of December 2007.

Competitive ESAs (i.e. 3 or more IEN fibre owners)

3.4 Consequently, a list of Band 2 ESAs with 3 or more IEN fibre owners was compiled based on the findings in the Market Clarity report. This provided a list of 129 ESAs (Table 4).

- (a) For ESAs in NSW, Telstra relied on the data of Market Clarity's report in Appendix 5 - Table 4 in the column entitled "Summary - Known IEN Fibre".

- (b) For ESAs in states other than NSW, Telstra applied the finding in the Smart statement that the number of owners of inter-exchange network fibre in an ESA is equivalent to the number of owners of access fibre in that ESA. Accordingly, Telstra determined that the ESAs with 3 or more inter-exchange network fibre owners were those ESAs with 3 or more owners of access fibre infrastructure, as set out in Market Clarity’s report in Appendix 4 in the column entitled “Number of Access Fibre Infrastructure Owners”.

Table 4

	Contiguous Exemption Area	Metropolitan IEN ESA Name	Number of IEN Fibre Owners	Number of Access Fibre Owners
1	Sydney	ASHFIELD	[c-i-c]	
2	Sydney	BALGOWLAH		
3	Sydney	BALMAIN		
4	Sydney	BANKSTOWN		
5	Sydney	BAULKHAM HILLS		
6	Sydney	BLACKTOWN		
7	Sydney	BLAKEHURST		
8	Sydney	BOTANY		
9	Sydney	BURWOOD		
10	Sydney	CAMPSIE		
11	Sydney	CARLINGFORD		
12	Sydney	CARRAMAR		
13	Sydney	CASTLE HILL		
14	Sydney	CHATSWOOD		
15	Sydney	CONCORD		
16	Sydney	COOGEE		
17	Sydney	CREMORNE		
18	Sydney	DEE WHY		
19	Sydney	DRUMMOYNE		
20	Sydney	EAST		
21	Sydney	EASTWOOD		
22	Sydney	EDENSOR PARK		
23	Sydney	EDGECLIFF		
24	Sydney	EPPING		
25	Sydney	FIVE DOCK		
26	Sydney	FRENCHS FOREST		
27	Sydney	GLEBE		
28	Sydney	GRANVILLE		
29	Sydney	HARBORD		
30	Sydney	HOME BUSH		
31	Sydney	HORNSBY		
32	Sydney	HUNTERS HILL		
33	Sydney	HURSTVILLE		
34	Sydney	KELLYVILLE		
35	Sydney	KENSINGTON		
36	Sydney	KILLARA		

37	Sydney	KINGSGROVE	
38	Sydney	KOGARAH	
39	Sydney	LAKEMBA	
40	Sydney	LANE COVE	
41	Sydney	LIDCOMBE	
42	Sydney	LINDFIELD	
43	Sydney	LIVERPOOL	
44	Sydney	MASCOT	
45	Sydney	MATRAVILLE	
46	Sydney	MIRANDA	
47	Sydney	MOSMAN	
48	Sydney	NEWTOWN	
49	Sydney	NORTH PARRAMATTA	
50	Sydney	NORTH RYDE	
51	Sydney	NORTH SYDNEY	
52	Sydney	NORTHBRIDGE	
53	Sydney	PARRAMATTA	
54	Sydney	PEAKHURST	
55	Sydney	PENDLE HILL	
56	Sydney	PENNANT HILLS	
57	Sydney	PETERSHAM	
58	Sydney	RAMSGATE	
59	Sydney	RANDWICK	
60	Sydney	REDFERN	
61	Sydney	ROCKDALE	
62	Sydney	ROOTY HILL	
63	Sydney	ROSE BAY	
64	Sydney	RYDALMERE	
65	Sydney	RYDE	
66	Sydney	SEVEN HILLS	
67	Sydney	SILVERWATER	
68	Sydney	SOUTH STRATHFIELD	
69	Sydney	ST LEONARDS	
70	Sydney	ST MARYS	
71	Sydney	UNDERCLIFFE	
72	Sydney	WAHROONGA	
73	Sydney	WAVERLEY	
74	Sydney	WILLOUGHBY	
75	Melbourne	ASCOT	
76	Melbourne	BOX HILL	
77	Melbourne	BRUNSWICK	
78	Melbourne	CAMBERWELL	
79	Melbourne	CAULFIELD	
80	Melbourne	CLAYTON	
81	Melbourne	COBURG	
82	Melbourne	DONCASTER	
83	Melbourne	ELSTERNWICK	
84	Melbourne	FOOTSCRAY	
85	Melbourne	HEIDELBERG	
86	Melbourne	MALVERN	
87	Melbourne	MITCHAM	
88	Melbourne	MORELAND	

[c-i-c]

89	Melbourne	NEWPORT	
90	Melbourne	NORTH MELBOURNE	
91	Melbourne	PORT MELBOURNE	
92	Melbourne	PRESTON	
93	Melbourne	RICHMOND	
94	Melbourne	RINGWOOD	
95	Melbourne	SANDRINGHAM	
96	Melbourne	SOUTH MELBOURNE	
97	Melbourne	SOUTH OAKLEIGH	
98	Melbourne	ST KILDA	
99	Melbourne	TALLY HO	
100	Melbourne	THOMASTOWN	
101	Melbourne	TOORAK	
102	Melbourne	WANTIRNA	
103	Brisbane	EVERTON PARK	
104	Brisbane	MOUNT GRAVATT	
105	Brisbane	PADDINGTON	
106	Brisbane	SALISBURY	
107	Brisbane	SOUTH BRISBANE	
108	Brisbane	SUNNYBANK	
109	Brisbane	TOOWONG	
110	Brisbane	VALLEY	
111	Brisbane	WOOLLOONGABBA	
112	Beaunesert	ASHMORE	
113	Beaunesert	NERANG	
114	Beaunesert	ROBINA	
115	Beaunesert	SOUTHPORT	
116	Adelaide	GEPPS CROSS	
117	Adelaide	GLENUNGA	
118	Adelaide	HAMPSTEAD	
119	Adelaide	NORWOOD	
120	Adelaide	PROSPECT	
121	Adelaide	ST PETERS	
122	Adelaide	UNLEY	
123	Adelaide	WEST ADELAIDE	
124	Canberra	DEAKIN	
125	Canberra	MAWSON	
126	Perth	BASSENDAN	
127	Perth	MANNING	
128	Perth	SOUTH PERTH	
129	Perth	SUBIACO	

[c-i-c]

[c-i-c]

Inclusion of contiguous regional ESAs

3.5 There were 3 ESAs in the regional areas, namely Southport, Ashmore and Nerang, that satisfy the twin conditions that (i) they should be contiguous with an ESA or a cluster of regional ESAs each with 3 or more inter-exchange infrastructure, and (ii) the regional ESA or cluster of regional ESAs should be connected to the nearest CBD of a capital city by a regional transmission route that is either exempt or the subject of an exemption

application by Telstra. These 3 ESAs were included in the Metropolitan IEN Exemption Area. See Queensland in slide 7 of **Appendix 1**.

Under the current DTCS declaration, the capital-regional route of Brisbane-Gold Coast is exempt from declaration. Around the Southport ESA (denoted in green), it is easy to discern that some regional ESAs with 3 or more access fibre owners (namely Ashmore and Nerang) are contiguous with the Southport ESA or form a cluster within that same local call charge area that is contiguous with the Southport ESA - this cluster of ESAs is denoted in blue. On the other hand, there are other regional ESAs with 3 or more access fibre owners that are not contiguous - they are denoted in dark pink.

Not Contiguous ESAs

- 3.6 Telstra then eliminated ESAs which did not satisfy the contiguity requirement for IEN.
- 3.7 There are 17 ESAs in the metropolitan areas that are not contiguous with a CBD ESA or cluster of ESAs each with 3 or more inter-exchange infrastructure and containing CBD ESAs (Table 5).

The process of selecting ESAs which have physical contiguity to an inter-exchange network is illustrated in the maps in **Appendix 1** (slides 5, 6, 7 and 10).

Using the example of Brisbane, slide 6 of **Appendix 1** depicts all CBD and metropolitan ESAs in Brisbane with 3 or more access fibre owners - they are labelled with ESA codes and are denoted in red, blue and pink. The red ESAs are in the CBD area. The blue, dark pink and light pink ESAs are in the metropolitan area. Using the map of the metropolitan area, it is easy to discern that some ESAs with 3 or more access fibre owners are contiguous with the CBD because they form a cluster that is contiguous with the CBD - they are denoted in blue. On the other hand, there are other metropolitan ESAs with 3 or more access fibre owners that are not contiguous - they are denoted in dark pink. The light pink ESAs have less than 3 optical fibre owners and were not included the Exemption Area.

For the purposes of the Metropolitan IEN Application, the ESAs denoted in blue were included in the Metropolitan IEN Exemption Area, whereas those ESAs denoted in both dark and light pink were not.

Table 5

Metropolitan ESAs that have 3 or more inter-exchange fibre infrastructure owners but not contiguous (Total:	Map reference in Appendix 1 (ESA
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17)	Maps) (Denoted in DARK PINK)
EVERTON PARK (ENPK)	Brisbane QLD Slide 6
MOUNT GRAVATT (MGAT)	Brisbane QLD Slide 6
SALISBURY (SSBY)	Brisbane QLD Slide 6
SUNNYBANK (SYBK)	Brisbane QLD Slide 6
ROBINA (RBNA)	Queensland Slide 7
BOX HILL (BOXL)	Melbourne VIC Slide 10
CAMBERWELL (CMLL)	Melbourne VIC Slide 10
CLAYTON (CLAY)	Melbourne VIC Slide 10
DONCASTER (DONC)	Melbourne VIC Slide 10
MITCHAM (MITM)	Melbourne VIC Slide 10
RINGWOOD (RWOD)	Melbourne VIC Slide 10
SANDRINGHAM (SNDM)	Melbourne VIC Slide 10
SOUTH OAKLEIGH (SOAK)	Melbourne VIC Slide 10
TALLY HO (TYHO)	Melbourne VIC Slide 10
THOMASTOWN (THTN)	Melbourne VIC Slide 10
WANTIRNA (WRNA)	Melbourne VIC Slide 10
BASSENDEAN (BSDN)	Perth WA Slide 5

3.8 After the elimination of ESAs which failed to meet the contiguity requirement (in Table 5), the list of ESAs in the Metropolitan IEN Exemption Area was reduced to 112 ESAs.

Discrepancy in the list of Metropolitan IEN Exemption ESAs

- 3.9 Telstra's Exemption Application for Metropolitan IEN comprises 115 ESAs, three more than the figure stated in paragraph 3.8 above.
- 3.10 The discrepancy concerns 3 NSW ESAs, namely Cronulla, Revesby and Vacluse. Although the Market Clarity report indicated that these 3 ESAs had less than 3 IEN fibre owners, Market Clarity has subsequently confirmed that both Revesby and Vacluse have 3 or more IEN fibre owners. Market Clarity's confirmation is at **Appendix 2**.
- 3.11 Telstra acknowledges that Cronulla does not currently have 3 or more IEN fibre owners. It is open to the Commission to make the exemption order requested by Telstra subject to a condition that the exemption has no effect with respect to Cronulla if there are less than 3 or more IEN fibre owners present at Cronulla.

4. Metropolitan Tail Exemption Area

- 4.1 There are 128 ESAs in the Metropolitan Tail Exemption Area.
- 4.2 These 128 ESAs are:
- (a) all the 115 ESAs in the Metropolitan IEN Exemption Area for the reasons described in paragraphs 3.1 to 3.11 above;
 - (b) an additional 12 regional ESAs (Table 6) that are connected to the nearest capital city by a regional transmission route that is either:
 - (i) already outside the scope of the DTCS declaration under Part XIC of the Trade Practices Act 1974; or
 - (ii) the subject of an exemption application by Telstra on the basis that competition on that route is effective;

Table 6

Regional ESAs that are connected to the nearest CBD by a regional transmission route that is either exempt or the subject of an exemption application by Telstra (Total: 12)
ALBURY (NSW)
BALLARAT (VIC)

BENDIGO (VIC)
CAMPBELLTOWN (NSW)
COFFS HARBOUR (NSW)
GEELONG (VIC)
GOSFORD (NSW)
LISMORE (NSW)
SHEPPARTON (VIC)
WAGGA WAGGA (NSW)
WOLFE (NSW)
WOLLONGONG (NSW)

(c) and Penrith (see paragraph 4.4).

- 4.3 The case for exemption for the Metropolitan Tail Exemption Area is based on the existence of IEN connectivity and the availability of ULLS to provide substitute tail transmission services.

Discrepancy in the list of Metropolitan Tail Exemption ESAs

- 4.4 Telstra acknowledged (by a letter dated 28 March 2008 to the ACCC in the context of Telstra’s August 2007 application for specified capital-regional routes to be exempted) that there were not 3 or more fibre owners for the route Sydney-Penrith route.
- 4.5 It is open to the Commission to make the exemption order requested by Telstra subject to a condition that the exemption has no effect with respect to Penrith if it is not (i) part of a contiguous cluster of metropolitan ESAs having 3 or more IEN fibre owners or (ii) connected to the nearest capital city by an exempt capital-regional route.
- 4.6 Telstra acknowledges that Cronulla does not currently have 3 or more IEN fibre owners. It is open to the Commission to make the exemption order requested by Telstra subject to a condition that the exemption has no effect with respect to Cronulla if there are less than 3 or more IEN fibre owners present at Cronulla.