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2 June 2020

The Hon Paul Fletcher
Minister for Communications, Cyber Safety and the Arts
Parliament House
CANBERRA ACT 2600

By Email: Minister@communications.gov.au

Dear Minister

Exemption Extension Requests – Telstra’s South Brisbane and Velocity Estate networks and TPG’s upgraded VDSL and very small scale networks

Thank you for your letters of 15 May 2020 initiating consultation with the ACCC in response to requests by Telstra and TPG for extensions to their exemptions from Parts 7 and 8 of the *Telecommunications Act 1997* (Telco Act). The ACCC notes that the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020* received the Royal Assent on 25 May 2020, resulting in Part 7 of the Telco Act being repealed.

I note that you are minded to grant the extensions for both providers to provide service continuity and certainty for the end-users on these networks. The ACCC agrees with this position and supports the extensions being granted.

However, in relation to Telstra’s networks, the ACCC has strong concerns about the lack of retail competition as well as the proposed duration of the extensions. We consider that competition is not likely to improve until ownership and operation of these networks is transferred to a third party. Therefore, in order to maintain impetus for Telstra to divest these networks and expedite the transfer of customers, we recommend that you limit the extension to two years and that you make the extension of the exemption conditional on Telstra providing six-monthly reports on the status of the sale of the networks and transfer of customers. In addition, we recommend that you impose a non-discrimination condition on Telstra.

Our analysis of the retail market on Telstra’s South Brisbane and Velocity networks indicates that retail competition is very weak, with only one active retail service provider other than Telstra offering services to new customers. This alternative provider does not offer services on all Velocity estates and its services are significantly more expensive on Telstra’s networks than its equivalent services on the NBN. Our understanding is that Telstra now has a near monopoly on retail fixed-line services on these networks whereas, before the establishment of the South Brisbane Fibre network, there were ten service providers supplying competing services using Telstra’s copper access services.

[REDACTED]

While we consider that this is likely to improve retail competition on these networks in the future, we also consider that competitive conditions could be improved on the current networks by setting conditions on the extension to allow greater monitoring of the sale and transition process as well as to limit Telstra's ability to favour its own retail operations.

Consequently, we recommend that you make conditions of the exemptions that:

- (a) require Telstra to report on a six-monthly basis to both your office and the ACCC on the status of the transfer of ownership of these networks and the post-sale transition of customers to the new owner's services; and
- (b) prohibit Telstra from discriminating in favour of itself in relation to the supply of the Fibre Access Broadband (FAB) service prior to full transfer of control of the networks to a third party.

The ACCC will also consider the terms of access to Telstra's FAB service on these networks in the context of the SBAS FAD review next year.

I note that Telstra is seeking an extension for both South Brisbane and the Velocity estates until:

- (a) 90 days after all customers have transitioned to the networks of the new owner(s); or
- (b) 1 July 2023 if Telstra retains ownership of the networks at this date.

Importantly, Telstra has not specified that the exemptions would expire on the earlier of these dates. The ACCC is concerned that this could potentially allow Telstra to benefit from an ongoing exemption while it transitions customers to the new owner's network for of up to 27 months beyond 1 July 2023 provided that it has sold the networks prior to that date.

We consider that limiting the extension to two years will give Telstra the incentive to expedite the sale of the networks and transfer of end-users, and bring it broadly into line with the extension to the TPG exemptions.

We therefore recommend that the Telstra exemptions be extended until **the earlier of**:

- (a) the day which is 90 days after the customer transition completion date; or
- (b) 1 July 2022.

There is a risk that shortening the period may not give Telstra sufficient time to migrate all of its customers, leading it to seek a further extension. However, the proposed six monthly status reports to your office and the ACCC will allow us to monitor Telstra's progress throughout the extension period and potentially address any issues that are delaying the transition.

While the ACCC's assessment is that there is limited competition on the networks that TPG is seeking extensions for, we have fewer concerns than in relation to Telstra's networks, largely on the grounds that the NBN is available in most, if not all, of the footprint of the TPG networks. This provides end-users with choice in network and retail service provider. We note that TPG has indicated that it will lodge a functional separation undertaking for these networks with the ACCC when these provisions come into force in late August 2020. This

will give the ACCC the opportunity to further examine and address any competition concerns.

On this basis, the ACCC does not oppose these exemptions being extended until the earlier of the day after functional separation arrangements are settled for these networks or two years after the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020* receives the Royal Assent.

I trust this information is of assistance and thank you for taking the time to consult with the ACCC on these matters. If you have any questions about this letter, please contact, Sean Riordan, General Manager, Industry Structure and Compliance [REDACTED]
[REDACTED]

Yours sincerely

A handwritten signature in blue ink that reads "Rod Sims". The signature is stylized, with the first name "Rod" written in a large, cursive script and the last name "Sims" in a smaller, more legible script.

Rod Sims
Chair