



**Australian
Competition &
Consumer
Commission**

GPO Box 520
Melbourne Vic 3001

Level 35, The Tower
360 Elizabeth Street
Melbourne Vic 3000

tel: (03) 9290 1800
fax: (03) 9663 3699

www.accc.gov.au

Our ref: 44576
Contact officer: Damien Kelly
Contact phone: 02 9230 3820

Open Letter
13 March 2012

Re: Lodgement of wholesale ADSL access agreements by providers other than Telstra

The purpose of this letter is to inform providers of the declared wholesale ADSL (WDSL) service other than Telstra (alternate providers), of:

- the retrospective impact subsections 152BE(2) and 152BEA(2) of the *Competition and Consumer Act 2010* (CCA) on the obligation to lodge WDSL access agreements, and
- the ACCC's decision to grant a conditional extension in relation to the lodgement of WDSL access agreements made or varied from 1 January 2011.
 - the extension is conditional in that the alternate providers of the WDSL service would only become obligated to lodge WDSL access agreements in the event that that ACCC were to make an access determination which extended the standard access obligations to them – at which point the alternate providers would have a six month period in which to lodge the relevant access agreements.

The ACCC declared the WDSL service on 14 February 2012. Following declaration, carriers and carriage service providers (CSPs) who provide the declared WDSL service, are subject to legislative obligations in relation to that service. This includes the obligation to lodge with the ACCC commercial agreements (access agreements) for access to the declared WDSL service.

Sections 152BEA and 152BEB of CCA require carriers and CSPs to lodge access agreements, variation agreements and notifications of termination of access agreements with the ACCC. This obligation is imposed on the access provider who supplies, or who proposes to supply, the service to which the agreement relates.

Access agreements must be lodged with the ACCC within 28 days after the day on which the agreement was entered into, or 28 days after the service was declared, as relevant.¹ The obligation to lodge access agreements applies to agreements entered into from the commencement of the lodgement provisions (1 January 2011).

¹ Section 152BEA of the *Competition and Consumer Act 2010* (CCA).

The declaration of the WDSL service has enlivened subsections 152BE(2) and 152BEA(2) of the CCA. These sections require that providers of WDSL lodge access agreements, made or varied from 1 January 2011 to 14 February 2012, within 28 days after the date of declaration. In addition, providers of the WDSL service must also lodge WDSL access agreements, made or varied after the date of declaration (from 15 February 2012), within the 28 day statutory timeframe.²

Clause 5 of the WDSL interim access determination (IAD) provides that a carrier or CSP other than Telstra is not required to comply with any or all of the standard access obligations (SAOs) as defined in section 152AR of the CCA.³ In practice, this means that only Telstra is required to supply the WDSL service on regulated terms.

The ACCC may prior to the 28 day period of compliance, extend the lodgement period for access agreements.⁴ On 7 March 2012 the ACCC decided to grant the alternate providers of the declared WDSL service a conditional extension to lodge access agreements relating to WDSL, made or varied from 1 January 2011. The extension is conditional in that the alternate providers of the WDSL service would only become obligated to lodge WDSL access agreements in the event that that ACCC were to make an access determination which extended the standard access obligations to them – at which point the alternate providers would have a six month period in which to lodge the relevant access agreements.

The ACCC would be required to consult with industry before making such an access determination for a declared service. Further, the ACCC would publish a decision to make an access determination in relation to the declared WDSL service.

If you have any questions regarding the contents of this letter, please contact Damien Kelly on (02) 9230 3820 or damien.kelly@accc.gov.au.

Yours sincerely



Michael Cosgrave
Group General Manager
Communications Group

² Subsections 152BEA(1) and 152BEA(3) of the CCA.

³ The standard access obligations are set out in section 152AR of the CCA. Once a service is declared an access provider supplying the declared service to itself or another person must also supply the service, upon request, to access seekers in accordance with the standard access obligations (SAOs). The SAOs comprise basic obligations, for instance, supplying services on request, ensuring technological and operational equivalence, providing billing information and providing service fault information.

⁴ Subsection 152BEA(9) of the CCA.