



17 April 2014

Ms Jane Goldwater  
Director  
Access Pricing and Financial Analysis  
Australian Competition and Consumer Commission

By email: jane.goldwater@acc.gov.au  
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Dear Ms Goldwater

Please find below Optus' comments in response to the ACCC's consultation paper '*Fixed line services FAD inquiry: Disclosure of report provided by Telstra under the Building Block Model Record Keeping Rule*'.

The consultation paper notes that Telstra's response to the building block model (BBM) record keeping rule (RKR) may contain commercially sensitive information to Telstra and as a result invites submission on its proposed approach in disclosing Telstra's report. The ACCC's preliminary view is that:

- (a) General public information that is not commercially sensitive should be disclosed;
- (b) Commercially sensitive information should only be disclosed to specified persons and subject to restrictions including executing a confidentiality undertaking in favour of Telstra; and
- (c) Highly commercially sensitive information should not be disclosed.

#### Public information

Optus supports the ACCC's preliminary view to disclose public information that is not commercially sensitive. This includes information that is already in the public domain; information that is not specific to Telstra including CPI estimates and methodology by which they are derived by Telstra; and information relating to the approaches and assumptions used by Telstra.

The disclosure of non-commercially sensitive information will cause no harm to Telstra. On the other hand, it will bring greater transparency to the FAD process.

#### Commercially sensitive information

With respect to Telstra's commercially sensitive information, the ACCC identified the following four categories:

- (a) Actual capex, opex and demand data;
- (b) Forecast capex, opex and demand data for 2013-14 and the next regulatory period;
- (c) Proprietary information (eg formulas for calculating demand forecasts); and
- (d) Fault data.

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It is difficult to assess whether Telstra's information is commercially sensitive without reviewing specific elements. However, Optus understands that Telstra publishes actual capex and opex data in annual report and other public documents (e.g. ASX announcements). Where information is disclosed publicly, or can be derived from publicly disclosed data, the information should be treated as public information.

Nevertheless, Optus agrees with the ACCC's preliminary view that subject to executing a confidentiality undertaking in favour of Telstra, commercially sensitive information can be disclosed to legal or regulatory staff of access seekers, and external consultants engaged by access seekers. Optus agrees with the ACCC that Telstra's legitimate commercial interests can be protected when such restrictions are imposed.

Optus further agrees with the terms proposed by the ACCC in the draft undertaking.

#### Highly commercially sensitive information

The ACCC states that "*parts of the material that are highly commercially sensitive should not be disclosed.*"<sup>1</sup>

Optus is unclear what would be highly commercially sensitive material in the context of the BBM RKR. Optus accepts that highly sensitive information may relate to retail plans or specific retail prices, but in context of data required to complete the BBM, Optus is of the view the data would not be highly sensitive.

Irrespective of this, Optus does not consider Telstra's legitimate business interest will be hampered if highly commercially sensitive information is restricted to legal or regulatory staff of access seekers subject to execution of a confidentiality undertaking in favour of Telstra.

Such an approach would allow access seekers to have a thorough review of the BBM and provide comments in response. Given the importance of the BBM to fixed line competition, the public benefit of limited disclosure outweighs any potential detriment.

If you have any comments or questions, please do not hesitate to contact me.

Regards

Luke van Hooft  
Manager, Economic Regulation

<sup>1</sup> ACCC, Fixed line services FAD inquiry: Disclosure of report provided by Telstra under the Building Block Model Record Keeping Rule Consultation Paper, March 14, p.14