



Submission by AAPT Limited (31 May 2013)

on

**Australian Competition and Consumer Commission
(ACCC) Draft Decision to vary “A Code of Access to
Telecommunications Transmission Towers, Sites of
Towers and Underground Facilities (October 1999)”,
dated May 2013**

PUBLIC VERSION

Introduction

1. AAPT Limited (AAPT) welcomes the opportunity to comment on the Australian Competition and Consumer Commission (ACCC) draft decision to vary “*A Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities (October 1999)*” (**Draft Decision**), dated May 2013.
2. Although AAPT is disappointed with the ACCC’s preliminary view that it considers that declaration of a facilities access service “may be premature”, AAPT is encouraged by the indication that the ACCC will consult on, or consider facilities access issues as part of a declaration review of the currently declared fixed line services and the Domestic Transmission Capacity Service (DTCS) commencing this year.
3. However, AAPT is concerned that the scope of a consultation relating to facilities access in the context of considering the declaration of fixed line services and the DTCS may be limited to considering access to facilities only for the purpose of facilitating access to those declared services (i.e. treating facilities access as an ancillary service).
4. As previously submitted, AAPT’s view is that access to TEBA and Telstra’s underground facilities including external interconnect cables, ducts and pits (**External Interconnect Facilities**) should be declared services. Accordingly, AAPT urges the ACCC to ensure its enquiry will give full consideration to the need for declaration of these crucial facilities access services, rather than treating them as ancillary services.

Declaration of a facilities access service

5. In its submission on the related ACCC consultation paper¹, AAPT presented what it considers are compelling reasons why there is a clear need for access to TEBA and Telstra's External Interconnect Facilities to be declared.
6. In addition, AAPT notes that access to Telstra's bottleneck facilities services has become increasingly important to AAPT, for the following reasons:
 - o [Start c-i-c] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [End c-i-c];
 - o in AAPT's views, Telstra's TEBA and External Interconnect Facilities charges are excessive and that if based on Telstra's efficient costs, the charges would be significantly lower than the charges that Telstra currently imposes on access seekers;
 - o the TEBA and External Interconnect Facilities charges have continually increased each year, rather than coming down to reflect efficient costs;
 - o [Start c-i-c] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [End c-i-c];
 - o given that Telstra will own and operate the passive infrastructure (i.e. TEBA and External Interconnect Facilities) which AAPT will be reliant

¹ ACCC Discussion Paper to examine "A Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities (October 1999)" (FAC Paper), dated July 2012

upon to access NBN Co's facilities at the bulk of the NBN POI locations, there are a myriad of ways in which Telstra will be able to take advantage of its position to the detriment of AAPT and other access seekers and ultimately the long term interest end users (**LTIE**); and

- o Telstra's history of using its considerable market power in a manner that is contrary to competition and the LTIE strongly suggests it is likely to continue to overcharge for TEBA and External Interconnect Facilities access services, impose unreasonable access terms or to implement access in a manner that is detrimental to its competitors.

Power to declare access to facilities

7. AAPT does not agree with Telstra's submission that the ACCC does not have the power to declare access to facilities. On the contrary, there is nothing in the wording of the legislation that would preclude or prohibit the ACCC from declaring a service for access to facilities provided the relevant legislative criteria have been met.
8. In AAPT's view, the two access regimes (the Telecommunications Act 1997 regime and the regime in Part XIC of the Competition and Consumer Act 2010 (CCA)) can apply to the same facilities because they are clearly intended to be complementary.

Conclusion

9. For the reasons expressed above, AAPT urges the ACCC to give stakeholders proper opportunity to make submissions on the declaration of a facilities access service. In particular, stakeholders should be allowed to submit on whether a TEBA and Telstra External Interconnect Facilities access service should be declared based on the legislative criteria for declaration. In addition, the scope of such a consultation must not be limited to access considerations merely for the purpose of facilitating access to the fixed line declared services or DTCS.