

Our Ref: M2008/238, 31600
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15 April 2009

Dr Tony Warren
Executive Director Regulatory Affairs
Unit 11, Level 2
11 National Circuit
Barton ACT 2600

cc: Rebecca Mitchell
Legal Counsel
Public Policy & Communications
Level 11, 231 Elizabeth Street
Sydney NSW 2000

By facsimile: 02 9261 8390

Dear Dr Warren

Telstra's Band 2 ULLS undertaking

I refer to your letter dated 9 April 2009, indicating that you intend to submit a publication titled *Accounting for Regulation in UK Utilities*. Your letter indicates that Telstra have ordered the above publication, and expect to be able to provide a copy of this to the ACCC within 14 days of the date of your letter.

As you would be aware, the ACCC requested submissions in response to the ACCC's Draft Decision on Telstra's ULLS Undertaking be lodged by 12 December 2008. However, in order to ensure interested parties had sufficient time to make informed comments, the ACCC extended this deadline until 23 December 2008. The ACCC believes these timeframes were reasonable.

However, Telstra and other interested parties have continued to make submissions since 23 December. This has necessarily delayed the ACCC's consideration of the Undertaking. Further, submissions delivered outside the established timeframes has the real potential to affect the ACCC's ability to conduct an open and transparent process in which all interested parties are given a reasonable opportunity to assess and respond to the submissions of others. As the ACCC has previously noted on numerous occasions, this may affect the weight that can be given to submissions and material. The problem is particularly acute where the ACCC is subject to statutory deadlines.

The ACCC is of the view that it has been more than reasonable in the time that has been provided to Telstra to produce the material on which it relies to satisfy the ACCC of the reasonableness of the Undertaking. If Telstra cannot meet these timeframes, then Telstra should seriously consider whether an Undertaking has been sufficiently developed and is appropriately supported by evidence *prior* to lodging the Undertaking. Telstra is an experienced industry participant and Undertaking

applicant and it has had the benefit of numerous decisions by the Tribunal as to what level of satisfaction and supporting material is required. We have also written to you previously to confirm that the lodgement and assessment of submissions is not an iterative process.

As you would be aware, that statutory deadline is quickly approaching in relation to the Undertaking. Accordingly, the matter is currently being considered by Commissioners, and a decision is expected very shortly. Because of the impending statutory deadline, and taking into account the time that has already been allowed for the lodging of submissions, the ACCC does not intend delaying its decision to enable you to lodge the publication. However, if the publication is received prior to the ACCC's decision, it will be taken into account and included in the relevant s 152CGA statement. How much weight it will be given cannot be determined at this time – this will depend on when the material is received and whether it ought to have been subject to third party comment.

If you have any questions regarding this letter, please do not hesitate to contact Matthew Gillet on (03) 9290 6971.

Yours sincerely



Robert Wright
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Compliance and Regulatory Operations
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