



Australian
Competition &
Consumer
Commission

Fixed line services FAD inquiry:
Disclosure notice given to Telstra
regarding Building Block Model
Record Keeping Rule information

Statement of reasons

June 2014

Australian Competition and Consumer Commission
23 Marcus Clarke Street, Canberra, Australian Capital Territory, 2601

First published by the ACCC 2014

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Glossary

access seeker	Telecommunications companies that seek access to the declared service (that is, the right to use the declared service).
ADSL	Asymmetric Digital Subscriber Line. A technology for transmitting digital information at high data rates on existing copper phone lines. It is called asymmetric because the download and upload speeds are not symmetrical (that is, download is faster than upload).
BBM	Building Block Model
BBM RKR	BBM record keeping rule
CCA	Competition and Consumer Act 2010
declared service	A service that the ACCC regulates under Part XIC of the CCA. Once declared, a service provider must supply the service to other parties in accordance with the standard access obligations and the terms and conditions set in the final access determination.
downstream	Further along the supply chain. For example, mandating access to network services can promote competition in downstream retail broadband services.
FOAS	Fixed Originating Access Service. The new name of the currently declared PSTN OA service.
FTAS	Fixed Terminating Access Service. The new name for the currently declared PSTN TA service.
FAD	Final Access Determination. The FAD is made by the ACCC and sets the terms and conditions (including prices) on which a service provider must supply a declared service.
fixed line services	Telecommunications services provided over fixed networks, such as Telstra's copper network. The 'declared fixed line services' are the seven fixed line services declared in 2012 and 2014 respectively. They are the ULLS, LSS, WLR, LCS, FOAS FTAS and Wholesale ADSL.
FLSM	Fixed Line Services Model
LSS	The declared Line Sharing Service. Allows access seekers to share the use of the copper line connecting consumers to the telephone exchange, allowing them to provide fixed internet services using their own equipment. An alternative provider provides the voice services.

PSTN	Public Switched Telephone Network. The telephone network that allows the public to make and receive telephone calls via switching and transmission facilities and utilising analogue and digital technologies.
PSTN OA	This declared service is now referred to as FOAS. The declared PSTN Originating Access service. Allows a telephone call to be connected from the caller to a point of interconnection with another network.
PSTN TA	This declared service is now referred to as FTAS. The declared PSTN terminating access service. Allows a telephone call to be carried from the point of interconnection to the party being called on another network.
RAF	The RAF is a Record Keeping Rule that specifies the information that carriers and CSPs are required to report on, how these reports are prepared and the timeframes associated with preparation and lodgement of reports to the ACCC.
ULLS	The declared Unconditioned Local Loop Service. Allows access seekers to use the copper line connecting end-users to the local telephone exchange, allowing them provide both fixed internet (broadband) and voice services using their own DSLAMs and other exchange equipment.
Wholesale ADSL	The declared Wholesale ADSL service. Allows access seekers to purchase a Wholesale ADSL product from Telstra and resell internet services to end-users.
WLR	The declared Wholesale Line Rental service. For a monthly 'per-user' charge, it allows access seekers to purchase a line rental service from Telstra, which includes access to the copper line and associated services (including a dial tone and telephone number) supplied using Telstra's equipment.

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Introduction

On 11 July 2013, the ACCC commenced a combined public inquiry into making final access determinations (FADs) for the seven declared fixed line services, (FAD inquiry).¹ This inquiry is part of the overall review of the regulated fixed line services — the Fixed Services Review. The FAD inquiry includes a pricing review in relation to declared services delivered over Telstra's copper network infrastructure.

The ACCC uses a building block model (BBM) known as the Fixed Line Services Model (FLSM) to determine prices for the declared fixed line services.² In order to obtain the required inputs for the FLSM, the ACCC issued a written information request to Telstra pursuant to Rule 15 of the [BBM Record Keeping Rule](#) (BBM RKR) on 13 September 2013.

On 25 November 2013, Telstra responded to the ACCC's request and lodged a report ('the report'). Telstra also provided further explanatory material to assist the ACCC's understanding of the report on 10 February 2014 ('other relevant material'). The report and other relevant material (collectively 'the Telstra material') comprises both historical and forecast information about capital expenditure, operating expenditure and demand relating to the declared fixed line services.

On 19 March 2014, the ACCC gave Telstra a notice in accordance with subsection 151BUA(5) of the *Competition and Consumer Act 2010* (CCA). The notice included a draft version of the disclosure notice that stated the ACCC's intention to disclose the Telstra material to certain persons, including access seekers, on terms and conditions, and to disclose certain extracts to the public. The ACCC invited Telstra to provide submissions on the draft version of the disclosure notice by 17 April 2014.

On 20 March 2014, the ACCC also issued a consultation paper outlining the factors that the ACCC intends to consider in deciding whether and how to disclose the Telstra material under s151BUA of the CCA. Interested parties were invited to provide submissions by 17 April 2014. Telstra gave the ACCC a submission on the draft version of the disclosure notice on 17 April 2014. Macquarie Telecom, Optus, iiNet and Telstra gave the ACCC submissions in response to the consultation paper by the due date of 17 April 2014.

On **11 June 2014**, the ACCC gave Telstra a final version of the subsection 151BUA(2) disclosure notice. The notice states that the ACCC will disclose:

- the whole of the Telstra material on certain terms and conditions, including the execution of confidentiality undertakings, to legal and regulatory employees of access seekers, or consultants engaged by access seekers
- extracts from the Telstra material that are not commercially sensitive to the general public.

The ACCC will disclose the Telstra material from 9 July 2014.

¹ The declared fixed line services are the unconditioned local loop service (ULLS), line sharing service (LSS), wholesale line rental service (WLR), local carriage service (LCS), public switched telephone network originating access service (PSTN OA), and the public switched telephone network terminating access service (PSTN TA).

² ACCC, *Inquiry to make final access determinations for the declared fixed line services – final report*, July 2011, p. 130; ACCC, *Public inquiry to make a final access determination for the Wholesale ADSL service - final report*, May 2013, p. 6.

This statement sets out the reasons for the ACCC's decision under section 151BUA of the CCA.

Background

The ACCC may issue a notice to a carrier or carriage service provider under section 151BUA of the CCA stating that it intends to disclose a report or particular extracts of a report lodged by that carrier or carriage service provider (disclosure notice).³

In order to issue a disclosure notice, the ACCC must be satisfied that the disclosure would be likely to:

- promote competition in markets for listed carriage services; or
- facilitate the operation of any of:
 - Parts XIB or XIC of the CCA
 - the *National Broadband Network Companies Act 2011* or regulations under that Act
 - Division 3 of Part 20 of the *Telecommunications Act 1997*
 - Part 9 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

In deciding whether to issue a disclosure notice, the ACCC must have regard to the legitimate commercial interests of the carrier or carriage service provider that provided the report and any other matter it considers relevant.⁴

Before issuing a disclosure notice, the ACCC must also invite the carrier or carriage service provider concerned to make a submission on a draft of the disclosure notice, and consider any submission made by it within the time limit.⁵

The ACCC may disclose the Telstra material to the general public under paragraph 151BUA(2)(c) of the CCA.

The ACCC may disclose the Telstra material to specified persons under paragraph 151BUA(2)(d) of the CCA. The notice may specify a class of persons, and the terms and conditions that apply to the disclosure.

Subsection 151BUA(8) of the CCA states that the ACCC must make the material specified in its disclosure notice available for inspection and purchase.

³ CCA s 151BUA(2).

⁴ Ibid s 151BUA(4).

⁵ Ibid s 151BUA(5).

Reasons

Purpose of disclosure

The ACCC is satisfied that the disclosure of the Telstra material would be likely to:

- promote competition in markets for listed carriage services; and
- facilitate the operation of Part XIC of the CCA.

The ACCC notes that information disclosure will be likely to promote competition where it is likely to improve conditions or the environment for competition by addressing information asymmetries. Disclosure will be likely to facilitate the operation of Part XIC where it is likely to improve the quality and timeliness of ACCC decisions and the timely implementation of the standard access obligations.

The ACCC considers that the disclosure of the Telstra material will enable access seekers and the public to provide informed submissions to the FAD inquiry. As a result of this inquiry, the ACCC will make access determinations setting terms and conditions for access to a declared service.⁶ These access determinations will include terms and conditions relating to price or a method of ascertaining price.⁷

Disclosing the Telstra material will promote transparency about the inputs to the FLSM and assist the ACCC in determining prices for the declared fixed line services. Greater transparency about the inputs and assumptions in the Telstra material will reduce information asymmetries and enable interested parties to make informed submissions to the public inquiry. This will assist the ACCC in ensuring that the inputs to the FLSM reflect the efficient costs of supplying the fixed line services, thereby allowing the ACCC to determine efficient prices in the FADs. In turn, this will be more likely to promote competition in markets for downstream services and facilitate the operation of the access regime in Part XIC of the CCA than would otherwise be the case if the Telstra material was not disclosed.

Legitimate commercial interests of Telstra and other relevant matters

In deciding whether to issue the disclosure notice, the ACCC has had regard to the legitimate commercial interests of Telstra and other matters that the ACCC considers relevant.⁸

The ACCC recognises that the disclosure of information that is commercially sensitive to Telstra has the potential to cause harm to Telstra's legitimate commercial interests. For example, it might affect Telstra's ability to compete effectively in downstream markets or negotiate commercial agreements with suppliers or customers.

In addition, the ACCC considers that there are other matters relevant to the ACCC's decision to give a notice under subsection 151BUA(2). In particular, there is a public interest in having public inquiries that are open and transparent. The ACCC considers that interested parties should be given an opportunity to consider, review and comment on the material that is provided to and relied on by the ACCC in the course of the Fixed Services Review. Disclosure would also ensure that stakeholders are fully

⁶ CCA s 152BC(3).

⁷ CCA s 152BC(8).

⁸ Ibid s 151BUA(4).

informed about the basis on which the ACCC is making its decision, and are in a better position to make submissions that enable the ACCC to assess the accuracy and reliability of information that has been provided.

The ACCC must balance the public benefits that would result from disclosure against any harms that might be caused to Telstra's legitimate commercial interests. The ACCC considers that this should be first accomplished by identifying those parts of the Telstra material that are commercially sensitive in the disclosure notice.

The ACCC considers that some of the Telstra material should be disclosed to the public pursuant to subsection 151BUA(2)(c) of the CCA. These parts of the Telstra material are referred to as 'public extracts' in the remainder of this statement of reasons and are discussed further below.

The ACCC considers that disclosure of the remainder of the Telstra material should be limited to specified persons and subject to restrictions pursuant to subsection 151BUA(2)(d) of the CCA, in order to protect Telstra's legitimate commercial interests. These parts of the Telstra material are referred to as 'restricted extracts' in the remainder of this statement of reasons and are discussed further below.

The ACCC confirms that all of the Telstra material can be classified as either public extracts or restricted extracts.

The ACCC notes that submissions from Telstra, Macquarie Telecom, Optus and iiNet agree with the approach to distinguish the public extracts and the restricted extracts in the disclosure notice.⁹

Public extracts

The ACCC considers that the following parts of the Telstra material are not commercially sensitive and should be included in the public extracts:

- The Telstra material contains some information that is already in the public domain. For example, some of the information is available in Telstra's annual reports or has been released to analysts or the media.¹⁰ Similarly, some of the information has been published (albeit in a slightly different form) by the ACCC under the accounting separation regime.¹¹ Other information has been published by Telstra or by third parties on the Internet.¹² Finally, some of the information relates to matters of public record, such as the legal and regulatory obligations that apply to Telstra. The ACCC considers that publicly available information is not commercially sensitive.

⁹ Macquarie Telecom, *Submission: Fixed Line Services FAD Inquiry – Disclosure of Report Provided by Telstra*, 16 April 2014, p. 2; Optus, *Submission in response to ACCC's consultation paper 'Fixed line services FAD inquiry: Disclosure of report provided by Telstra under the Building Block Model Record Keeping Rule'*, 16 April 2014, p. 1-2; iiNet Limited, *Fixed Line Services FAD inquiry: Disclosure of report provided by Telstra under the Building Block Model Record Keeping Rule, Consultation Paper Submission by Thomson Geer Lawyers on behalf of iiNet Limited*, 16 April 2014, p. 1.

¹⁰ See, for example, percentage changes to key product revenue on page 13 of the *Telstra Annual Report 2013* and the capital expenditure to sales ratio on page 12.

¹¹ For example, see ACCC, *Current Cost Accounting Record Keeping and Reporting Rules Report - 2H 2012-13 and FY 2012-13*, <http://www.accc.gov.au/publications/current-cost-accounting-report-cca/current-cost-accounting-record-keeping-and-reporting-rules-report-2h-2012-13-and-fy-2012-13>

¹² For example, information about the names of Telstra's databases is available here: http://www.wahlstrom.com.au/database_management.php

- Some of the Telstra material consists of information that is not specific to Telstra. For example, CPI estimates and the methodology by which they were derived by Telstra are included in the Telstra material. The ACCC considers that national economic factors are not commercially sensitive.
- Disclosure of the general assumptions and the high-level approach used to prepare the Telstra material for lodgement to the ACCC is unlikely to reveal sensitive information about Telstra's operations or commercial intentions. The ACCC therefore considers that general assumptions and the high-level approach used by Telstra are not commercially sensitive.

The ACCC considers that information that is not commercially sensitive should be disclosed to the public pursuant to subsection 151BUA(2)(c) of the CCA. Given that there is little or no likelihood of harm to Telstra's legitimate commercial interests, the balance clearly tilts towards the public benefits of disclosure. This position was supported in submissions by Telstra, Optus, iiNet and Macquarie Telecom.¹³

The ACCC will make the public extracts of the Telstra material available for inspection by appointment at the Melbourne, Canberra and Sydney offices of the ACCC during standard business hours, and \$1 per page for purchase of a physical copy.¹⁴ The ACCC also proposes to make the public extracts available for inspection and purchase on its website at no charge.

Electronic copies may include a copy of the Excel workbook containing the FLSM model and the relevant level of data from the extracts.

Restricted extracts

The ACCC considers that the following parts of the Telstra material are commercially sensitive and should be included in the restricted extracts:

- Actual capital expenditure, operating expenditure and demand data
- Forecast capital expenditure, operating expenditure and demand data for 2013-14 and the next regulatory period. Specifically Excel workbook (provided 25 November 2013) including:
 - Table B1: Historic cost by vintage
 - Table B2: Written down values by vintage
 - Table C1: Forecast Operating Expenditure for the Regulatory Period

¹³ Telstra, *Submission: Fixed Line Services FAD Inquiry – Response to ACCC Consultation Paper on Disclosure of Report Provided by Telstra under the Building Block Model Record Keeping Rule*, 17 April 2014, p.5. Optus, *Submission in response to ACCC's consultation paper 'Fixed line services FAD inquiry: Disclosure of report provided by Telstra under the Building Block Model Record Keeping Rule'*, 16 April 2014, p. 1; Macquarie Telecom, *Submission: Fixed Line Services FAD Inquiry – Disclosure of Report Provided by Telstra*, 16 April 2014, p. 2-3; iiNet Limited, *Fixed Line Services FAD inquiry: Disclosure of report provided by Telstra under the Building Block Model Record Keeping Rule, Consultation Paper Submission by Thomson Geer Lawyers on behalf of iiNet Limited*, 16 April 2014, p. 1.

¹⁴ The ACCC agrees with Macquarie Telecom's submission that the public extracts should also be available for inspection at the ACCC's Sydney and Canberra offices: Macquarie Telecom, *Submission: Fixed Line Services FAD Inquiry – Disclosure of Report Provided by Telstra*, 16 April 2014, p. 5.

- Table C2: Forecast Capital Expenditure for the Regulatory Period
- Table C3: Total asset lives for forecast Capital Expenditure during the Regulatory Period
- Table C4: Forecast Demand for the Regulatory Period
- Proprietary information
- Fault data.

The ACCC accepts Telstra's submission that the public disclosure of this commercially sensitive information could give its competitors an unfair advantage.¹⁵ There is a risk of harm to Telstra's ability to compete with access seekers in downstream markets for voice and broadband services. The ACCC also accepts Telstra's submission that there may also be an adverse impact on its contract negotiations with suppliers, wholesale customers and NBN Co.¹⁶

The ACCC also accepts that there is some potential for confusion due to the different methods for preparation of BBM RKR data and Telstra's published financial statements, for example, due to the longer-range forecasts required by the BBM RKR. Any such confusion could impact on Telstra's share price and ASX reporting obligations if disclosed publicly.

The ACCC notes the submission from Macquarie Telecom, which recommends that the ACCC closely scrutinise Telstra's claims in relation to confidentiality and the commercial harm that would arise from disclosure.¹⁷ Macquarie Telecom submits that the disclosure of the restricted extracts should not cause material harm to Telstra because Telstra has a dominant position in the fixed services business, which Telstra "has effectively agreed to decommission in its \$11 billion deal with the government".¹⁸ The ACCC has closely scrutinised Telstra's claims in making this decision, and remains of the view that disclosure of the restricted extracts could harm Telstra's legitimate commercial interests in the ongoing renegotiations with the government and NBN Co, as well as its ability to compete in downstream markets.

The ACCC's view is that the four categories of information specified above are likely to be commercially sensitive and could cause harm to Telstra's legitimate commercial interests. Hence, this information should not be disclosed without restrictions.

Subsection 151BUA(2)(d) of the CCA provides a way for the ACCC to impose restrictions on the persons to whom the information is disclosed and to require those persons to comply with specified terms and conditions. The ACCC considers that the harm to Telstra from disclosure of the commercially sensitive information in the Telstra material could be mitigated by placing restrictions on:

- the persons to whom the restricted extracts will be disclosed
- the way in which the information is disclosed through terms and conditions.

¹⁵ Telstra, *Submission: Fixed Line Services FAD Inquiry – Response to ACCC Consultation Paper on Disclosure of Report Provided by Telstra under the Building Block Model Record Keeping Rule*, 17 April 2014, p.4.

¹⁶ Ibid

¹⁷ Macquarie Telecom, *Submission: Fixed Line Services FAD Inquiry – Disclosure of Report Provided by Telstra*, 16 April 2014, p. 2.

¹⁸ Ibid.

Persons to whom the restricted extracts will be disclosed

The ACCC notes that the main purpose of the disclosure is to enable stakeholders to make informed submissions to the FAD Inquiry. In this way, disclosure reduces issues of information asymmetries and will ultimately benefit the public by promoting competition in markets for downstream services and facilitating the operation of Part XIC of the CCA.

The ACCC notes that the determination of prices using the FLSM is a complex and technical process, requiring substantial knowledge of the operations of a carrier and economic forecasting. The ACCC notes that the Telstra material contains quantitative data as well as an explanation of the detailed methodology and assumptions on which that data has been derived using Telstra's internal systems. The ACCC considers that it would be valuable for stakeholders with expertise in forecasting the demand for telecommunications services and estimating the costs of operating telecommunications networks to comment on this data.

The ACCC considers that the class of persons most likely to have the expertise to assist the ACCC in this process is the class comprised of access seekers.¹⁹ The ACCC considers that the stakeholders who could best assist the ACCC in its task are access seekers. Access seekers, being carriers or carriage service providers, are likely to have experience and knowledge of the costs of building and operating telecommunications networks. This experience and knowledge particularly in demand forecasting is likely to enable access seekers to review and critique the information in the Telstra material and to provide additional information that may assist the ACCC. Access seekers have also demonstrated their interest in participating in previous ACCC inquiries into the pricing of regulated services and making submissions on the economic models and inputs used to determine prices. In addition, access seekers are the persons whose interests could be most directly affected by the pricing of the fixed line services other than Telstra, and who should therefore have the opportunity to make well-informed submissions to the ACCC.

The ACCC has also incorporated the expression 'access seeker' as defined in section 152AG in Part XIC of the CCA. The ACCC considers that the use of this definition ensures consistency with the object and structure of Part XIC for the purposes of the public inquiry, as well as being well understood by stakeholders.

However, the ACCC notes that access seekers are direct competitors of Telstra in downstream markets for fixed line services. There is therefore a risk that access seekers could use the information in the Telstra material, whether deliberately or inadvertently, to gain a competitive advantage in downstream markets. The ACCC considers that this has the potential to adversely affect Telstra's legitimate commercial interest in preserving its ability to compete in downstream markets.

To address this risk, the ACCC has limited the class of persons to those who require access to the Telstra material to make submissions to the FAD inquiry. Specifically, the ACCC considers that this class comprises employees of access seekers responsible for managing the regulatory or legal affairs of access seekers (regulatory and legal staff). The ACCC also considers that access seekers should be permitted to engage consultants with expertise in the telecommunications industry in order to assist with the preparation of submissions that may require complex economic and engineering analysis.

¹⁹ Section 152AG of the CCA defines an 'access seeker' to be a service provider who makes, or proposes to make, a request for access or interconnection in relation to that service.

To the extent that a member of a regulatory or legal team also has commercial or operational responsibilities relating to services delivered over the copper network, the ACCC recognises that there is also the risk to Telstra's legitimate commercial interests that commercially sensitive information may be used for commercial purposes. For this reason, the ACCC has imposed a specific restriction in the terms and conditions that limits the use of the restricted extracts to the preparation of submissions to the ACCC.

Macquarie Telecom, iiNet and Optus made submissions supporting this approach to disclosure of the restricted extracts.²⁰

Telstra broadly supported this approach to disclosure of the restricted extracts. However, it submitted that access should be provided to persons approved by the information provider and that access should not be provided to persons with dual legal/regulatory and commercial/operational roles.²¹

The ACCC does not consider it appropriate for Telstra to have such an approval role and that the classes of persons for disclosure are suitably defined and limited. The ACCC considers that the most expedient and transparent way of providing the confidential information to access seekers is through a process where access seekers submit signed confidentiality undertakings (between itself and Telstra) to the ACCC and Telstra. The ACCC then provides the confidential information to access seekers.

For clarity, the ACCC notes that only the ACCC will approve the persons to have access to restricted extracts. Under section 152BUA(2) the ACCC has the power to issue a carrier with a disclosure notice that it will disclose information provided under an RKR.

In specifying this class of persons, the ACCC has specifically excluded a class of persons who may have an interest in obtaining access to the Telstra material—persons who are or will be engaged in commercial negotiations with Telstra.

The ACCC notes that the BBM RKR requires Telstra to lodge information regarding internal guidelines relating to the tendering or contracting out of capital expenditure projects.²² In addition, the Telstra material contains forecasts about Telstra's expenditure over the next regulatory period. The ACCC considers that such information could be used by potential suppliers or contractors to gain a commercial advantage in negotiations with Telstra and that this would be adverse to Telstra's legitimate commercial interests.

The ACCC notes Macquarie Telecom's submission that potential suppliers and contractors would not be able to use confidential information to Telstra's material detriment because Telstra has strong bargaining power.²³ The ACCC notes that any

²⁰ Optus, *Submission in response to ACCC's consultation paper 'Fixed line services FAD inquiry: Disclosure of report provided by Telstra under the Building Block Model Record Keeping Rule'*, 16 April 2014, p. 2; Macquarie Telecom, *Submission: Fixed Line Services FAD Inquiry – Disclosure of Report Provided by Telstra*, 16 April 2014, p. 3; iiNet Limited, *Fixed Line Services FAD inquiry: Disclosure of report provided by Telstra under the Building Block Model Record Keeping Rule, Consultation Paper Submission by Thomson Geer Lawyers on behalf of iiNet Limited*, 16 April 2014, p. 1.

²¹ Telstra, *Submission: Fixed Line Services FAD Inquiry – Response to ACCC Consultation Paper on Disclosure of Report Provided by Telstra under the Building Block Model Record Keeping Rule*, 17 April 2014, p. 5.

²² BBM RKR, rule 9(e).

²³ Macquarie Telecom, *Submission: Fixed Line Services FAD Inquiry – Disclosure of Report Provided by Telstra*, 16 April 2014, p. 3.

detriment needs to be balanced against the public interest in the disclosure. The ACCC considers that suppliers and contractors have limited access to information that would be able to assist the ACCC, due to the aggregation of costs into asset classes under the BBM RKR. In addition, they do not have an incentive to challenge the cost information provided by Telstra, because this might lower the amount that they would be able to charge Telstra for their goods and services. For this reason, the ACCC does not consider that the benefits of disclosure to potential suppliers and contractors would outweigh detriments to Telstra's legitimate commercial interests.

Similarly, the ACCC notes that the historical costs and forecasts in the Telstra material, and data on the incidence and causes of faults on Telstra's network, could be used in a manner adverse to Telstra's commercial interest in the context of its ongoing negotiations with NBN Co in relation to the NBN. The condition and costs of operating the network are likely to be factors in the renegotiation of the Definitive Agreements between Telstra and NBN Co. These agreements were estimated to have a net present value of approximately \$11 billion when signed in June 2011. For this reason, the ACCC has specifically excluded employees of NBN Co and its related bodies corporate from the class of persons to whom the restricted extracts will be disclosed.

The ACCC notes no other parties (besides Telstra and access seekers) took the opportunity provided by the consultation paper to provide their views on whether and how to disclose the Telstra material.

In conclusion, the ACCC considers that the restricted extracts should be disclosed exclusively to the legal and regulatory teams of access seekers (including persons in those teams who have dual legal/regulatory and commercial/operational roles), and consultants engaged by access seekers, excluding any employees of NBN Co and its related bodies corporate. The ACCC notes that this disclosure is subject to the protections set out in the terms and conditions included in the disclosure notice and confidentiality undertaking. The ACCC considers that this is an appropriate balance between the public interest in disclosure of the information and Telstra's legitimate commercial interests.

Terms and conditions of disclosure of the restricted extracts

The ACCC has specified terms and conditions in the disclosure notice that allow for disclosure while providing protection for Telstra's legitimate commercial interests.

The ACCC considers that imposing terms and conditions under subsection 151BUA(2)(d) (that is, requiring a signed confidentiality undertaking prior to disclosure) would achieve this outcome. Any breach can be enforced in court.

The ACCC has also included a term and condition on recipients of the restricted extracts that they must comply with the confidentiality undertaking. The ACCC notes that failure to comply with such terms and conditions is a criminal offence punishable on conviction by a fine of up to 100 penalty units.²⁴

The ACCC has specified the following limitations on use of the restricted extracts:

- The use of the information in the Telstra material is to be limited to the purpose of providing input and submissions to the current public inquiry on pricing of the seven declared fixed line services.
- The further disclosure of the Telstra material to persons who do not fall within the specified class of persons is prohibited, except that the disclosure of conclusions

²⁴ CCA, subs. 151BUA(11).

or recommendations based on the Telstra material may be made in order to obtain executive and board approval for making submissions to the ACCC provided it does not reveal Telstra's confidential information.

- The Telstra material and all material derived from the Telstra material is to be clearly marked confidential, security measures should be taken at all times, and the information is to be destroyed or returned to Telstra at the conclusion of the public inquiry.
- For submissions to the ACCC, any confidential information used from the Telstra material is to be redacted from public versions and marked as confidential to Telstra in confidential versions.

The ACCC will make the restricted extracts of the Telstra material available for purchase electronically at no charge, upon lodgement by the recipient of a copy of the signed confidentiality undertaking with the ACCC. A copy of the signed confidentiality undertaking should also be provided to Telstra.

The ACCC may make a copy of the excel workbook containing the FLSM and data from the restricted extracts.

Submissions from Macquarie Telecom, iiNet and Optus supported the above terms and conditions of disclosure.²⁵ Telstra also broadly supported these terms and conditions.²⁶

²⁵ Optus, *Submission in response to ACCC's consultation paper 'Fixed line services FAD inquiry: Disclosure of report provided by Telstra under the Building Block Model Record Keeping Rule'*, 16 April 2014, pp.1- 2; Macquarie Telecom, *Submission: Fixed Line Services FAD Inquiry – Disclosure of Report Provided by Telstra*, 16 April 2014, p. 4-5; iiNet Limited, *Fixed Line Services FAD inquiry: Disclosure of report provided by Telstra under the Building Block Model Record Keeping Rule, Consultation Paper Submission by Thomson Geer Lawyers on behalf of iiNet Limited*, 16 April 2014, p. 1.

²⁶ Telstra, *Submission: Fixed Line Services FAD Inquiry – Response to ACCC Consultation Paper on Disclosure of Report Provided by Telstra under the Building Block Model Record Keeping Rule*, 17 April 2014, pp.6-7.

Appendix A – Information submitted by Telstra

The report submitted by Telstra complies with the requirements specified for requests under Rule 15 of the BBM RKR. However, it does not include a comparison of actual and forecast Operating Expenditure, Capital Expenditure and Demand for 2013-14 because the data was not yet available at the time the report was submitted.

In addition, Telstra has provided other relevant material requested by the ACCC on 17 January 2014. This comprises:

- In relation to Operating Expenditure:
 - operating expenditure forecasts in terms of costs relevant to the FLSM asset classes for Telstra Wholesale, unattributable costs and the Service Operations line of business
 - evidence to support the view that recent levels of the key drivers of aggregate operating expenditure form the best basis on which to forecast operating expenditure for the forecast period.
 - how the key drivers of aggregate operating expenditure and future levels of operating expenditure are forecast to be impacted by the NBN rollout over the forecast period.
- In relation to Operating Expenditure for the 'LSS Equipment' asset class:
 - the data used to estimate the operating expenditure forecasts for the 'LSS Equipment' FLSM asset class, disaggregated by each 'line item' in the RAF
 - for each of the three largest RAF 'line items' making up the total 'LSS Equipment' operating expenditure, a disaggregation of the components of the 'line items', if available, and how they have been allocated. In addition:
 - information on whether costs are direct, attributable or unattributable, and
 - for attributable and unattributable costs, information on how the costs were allocated (e.g. what drivers are used).
- In relation to Operating Expenditure, an explanation of the approach in the explanatory statement compared with the information provided by Telstra's Chief Financial Officer and Chief Executive Officer in Telstra's 2013 financial year analyst briefing on productivity improvements.
- In relation to Capital Expenditure:
 - For the nine most significant capital expenditure programs, a breakdown of total capital expenditure by driver for each year of the forecast period.
 - Steps and calculations to demonstrate how Telstra has mapped the expenditure forecasts from the initial project code to the final 'FLSM asset class' format.
- In relation to Demand:
 - an historical comparison of past period forecasts to actual outcomes for the services, based on the forecasts used by Telstra for the purposes of its corporate planning, for each of the service categories listed in Table C4 of the BBM RKR for the 2010-11 to 2012-13 years.