



## **Submission on Revised SSU**

**December 2011**

The Competitive Carriers' Coalition welcomes the opportunity to comment on the revised Telstra Structural Separation Undertaking.

That the CCC has committed so much time and energy to the process of assessing the SSU to date is a reflection of the importance its members place on getting the outcome from this process right. There can be no more important issue for consumers over the next few years than the conditions under which competitors are able to gain access to the Telstra access network and associated regulated services.

This is not only because these regulated services will continue to be bottleneck through which most Australians access fixed line communications services for most of the next decade, but also because the state of competition on that network will be inherited by the NBN as consumers are cut over from copper to fibre.

Ensuring that competition at the retail level is as vigorous and robust as possible will be central to ensuring that the NBN business is financially sound and that consumers are in a position to understand and utilise the new broadband capabilities as they become available.

The CCC submits that this is the policy rationale that underlies the requirements the Government has placed on Telstra to demonstrate how it will provide equivalent treatment to access seekers to that which it provides its own retail business units.

The SSU in its original form was, in the view of the CCC, not capable of being accepted because it did not meet the equivalence requirements.

The changes to the SSU in combination with other initiatives by the Commission itself in recent weeks create a marked improvement on the original SSU.

However, the CCC believes there are still aspects of the revised SSU that require further development.

The Commission's initiatives to remove from exemption from regulation for certain exchange areas and to begin a process to consider declaring a wholesale DSL service potentially resolves one very important area of deficiency in the Telstra SSU. Subject to the ADSL inquiry resolving that the wholesale service should be declared, the CCC believes that the serious deficiencies in the SSU that would have excluded many consumers from the benefits of the equivalent pricing obligations, and caused the pricing of wholesale DSL to be calculated by an inappropriate methodology should be resolved or be able to be resolved by the Commission's actions. The CCC strongly believes that a cost-based methodology for the pricing of Wholesale DSL should be implemented as soon as possible.

The overarching commitment to equivalence, while improved considerably from the earlier draft that was presented by Telstra for discussion, still gives rise to significant concerns with regard to some of the restrictions and limitations it places on the Commission. A particular concern is in relation to the limitation that Telstra not be required to implement functional separation or elements of functional separation. The CCC submits that to define functional separation in terms of ANY of its elements is unreasonable and provides too wide a licence for Telstra to avoid remedial action that might be sought by the Commission at some later stage of the duration of the SSU – potentially in 10 or more years

The continued proposed use of monetary caps to limit the requirements on Telstra to remedy breaches of its equivalence obligation is unjustifiable and is not consistent with the legislative requirements. While the proposal for the Commission to be an alternative to the ITA for dispute resolution is a common sense improvement to the SSU, the processes for raising and dealing with disputes remains unsatisfactory.

The CCC believes that the enforcement process continues to be unnecessarily bureaucratic. It is inappropriate that access seekers should be required to raise complaints through a new process designed and controlled by Telstra and in circumstances where Telstra has not provided sufficient clarity of arrangements to give confidence that the process would be effective and appropriate.

The CCC is unable to form a conclusion about the proposal to satisfy the price equivalence obligation by the use of the Telstra Economic Model to provide insights to the Commission. Telstra has chosen not to publish the outputs of the TEM before the Commission has accepted its undertaking.

The proposed ring fencing arrangements are not yet sufficient to ensure that wholesale pricing decisions are not made independently of retail pricing interests.

The requirement for access seekers to pay for reserved TEBA space can only be considered equivalent if the costs are based on the TEM model.

The CCC believes that these issues should be addressed before the Commission accepts Telstra's undertaking.

The CCC is happy to discuss these or other issues further if the Commission wishes.

Please contact:

David Forman

[d.forman@cprcomm.com.au](mailto:d.forman@cprcomm.com.au)

0438121114