



**Australian  
Competition &  
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Commission**

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Our ref: 50124  
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13 September 2013

Dear

**Re: Fixed Services Review Declaration Inquiry - confidential information**

On 11 July 2013, the ACCC commenced a public inquiry into the declaration of fixed line services and released a Discussion Paper for industry consultation. Submissions in response to the Discussion Paper have now closed.

The ACCC considers that the processes for the declaration inquiry and other inquiries conducted as part of the Fixed Services Review should be open and transparent. Consequently, the ACCC's view is that all parties should be given an opportunity to consider, review and comment on such confidential material provided to the ACCC that relates to these inquiries.

The ACCC is strongly of the view that for any information contained in parties' submissions that is marked as confidential or commercial-in-confidence, there should be genuine reasons for restricting access to that information.

The ACCC may consider placing less weight on the confidential portions of submissions and other information provided to it if the information provider does not allow other parties to view, and comment on, that material.

The ACCC is currently reviewing the operation of the confidentiality arrangements put in place for previous inquiries as a result of concerns raised by some parties and our own concerns about the ability of interested parties to view and comment on material provided to the ACCC in the course of our public inquiries. In particular, the ACCC is concerned to ensure that there is an appropriate balance between protecting the genuinely confidential information of parties and promoting confidence in the robustness of the ACCC's regulatory processes by providing sufficient transparency over the basis for the ACCC's decisions.

We intend to provide, in due course, further guidance to interested parties on the ACCC's general position in regard to the submission and release of confidential material to the ACCC's public inquiries. In the meantime, the ACCC encourages all parties to consider carefully how material that is genuinely commercial-in-confidence

can be made available, with appropriate protections, to other parties for the purpose of making submissions to the ACCC's inquiry processes.

In regard to submissions provided in response to the Discussion Paper for the public inquiry into the declaration of fixed line services, the ACCC therefore encourages providers of confidential information to establish confidentiality arrangements which allow other parties to view their confidential information.

The ACCC considers that the confidentiality arrangements established for the Fixed Services Review should enable parties to use the confidential information for purposes of making submissions to the related ongoing inquiry into making final access determinations (FAD) for the fixed line services, as well as any new inquiry into declaring additional services commenced as part of the Fixed Services Review.

For convenience, the ACCC has prepared a draft confidentiality undertaking that the ACCC considers is appropriate for the purposes of the Fixed Services Review, and which parties may wish to use as a basis for making appropriate confidentiality arrangements.

The draft undertaking is attached to this letter; information that must be inserted by the parties to the undertaking has been highlighted for ease of reference. The draft undertaking is similar to the confidentiality undertakings used in previous ACCC consultation processes. The proposed undertaking requires the information provider to nominate clearly the confidential information that is subject to the undertaking.

The ACCC expects that the parties involved in the declaration inquiry will agree on and establish appropriate confidentiality arrangements amongst themselves. To facilitate this process, the ACCC will provide on its [fixed services review webpage](#) a contact person for each party that has submitted a confidential version of its submission. Parties that wish to obtain a confidential version of another party's submission should contact the relevant contact person to make the arrangements.

To ensure that the ACCC is aware of the arrangements in place for the inquiry, it would be appreciated if copies of finalised confidentiality undertakings could be sent to [fixedservices@acc.gov.au](mailto:fixedservices@acc.gov.au).

If you have any queries in relation to the confidentiality arrangements for the fixed services review declaration inquiry, please contact Annette Weier on (03) 9290 6911.

Yours sincerely

Robert Wright  
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