



CONFIDENTIALITY ARRANGEMENTS

**SUBMISSION TO THE
AUSTRALIAN COMPETITION AND
CONSUMER COMMISSION**

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Confidentiality arrangements: Delivering the right level of transparency

Vodafone Hutchison Australia Pty Limited (**VHA**) welcomes the Australian Competition and Consumer Commission's (**ACCC**) objective for an open and transparent process for its Fixed Services Review and its desire for arrangements between parties to enable access to confidential material. We agree that transparency of information is an important part of an effective review process. Wherever possible, information should be shared with interested parties to ensure that they are able to offer fully informed perspectives on the key issues.

Providing access to confidential material supplied by those making submissions does not necessarily ensure the ACCC's objective for an open and transparent process is achieved. An *a priori* condition for an open and transparent process is that all relevant information is put before the ACCC by affected stakeholders. Where parties have an incentive to withhold information then the ACCC cannot be certain that the *a priori* condition has been met. In such circumstances, the elevation of access to confidential material above the provision of relevant material is likely to deliver an asymmetric outcome – parties that have an incentive to withhold information will benefit from continuing to withhold that information while tailoring arguments to counter the confidential material of other parties.

Where relevant information has not been made available the ACCC using its power under section 155 of the *Competition and Consumer Act 2010*(Cth) should compel its provision.

While the ACCC has raised this issue in the context of the Fixed Services Review, we consider the matter relevant to reviews of other declared services. As such, we make some specific observations about transparency and confidential material in relation to the ACCC's Domestic Transmission Capacity Services' (DTCS) Review.

The DTCS Review

The information that is most relevant to the DTCS Review is information relating to the cost of providing the DTCS and similar services. Without this critically important information, the ACCC and stakeholders will be unable to make informed assessments as to whether declaration of the DTCS will promote the long term interests of end users and, indeed, the scope of that declaration.

VHA considers that this information asymmetry is a key roadblock to the delivery of a competitive playing field in fixed and mobile telecommunications markets. In the past, Telstra has been required to provide detailed cost information to the industry (for example, its costs in relation to PSTN originating and terminating access) in order to allow stakeholders to engage in an informed debate about the cost of providing certain services. This is one of the reasons for a marked decrease in the number of disputes relating to PSTN originating and terminating access prices. It is crucial that this also occur in relation to the DTCS, which is a crucial input to downstream competition.

In order to ensure the robustness and transparency of the current ACCC review process, it is crucial that the ACCC request that suppliers of the DTCS (including Telstra) provide verifiable information (which would be subject to appropriate confidentiality arrangements) demonstrating:

- internal costs and margin assessments;



- the actual level of competition in markets where there are only 2 or 3 infrastructure providers in addition to Telstra, in order to ensure that alternative fibre owners actually pose a competitive constraint on Telstra;
- that suppliers of the DTCS are not the beneficiaries of monopoly pricing structures that generate economic rents and limit competition in the Australian telecommunications market; and
- the level of self-supply and cost allocation of self-supply, so that the ACCC can form a view on the level of cost recovery that is occurring from vertically integrated suppliers' own use of its DTCS assets and also whether DTCS pricing delivers a level competitive playing field.

This information should also be requested from other providers of the DTCS that are vertically integrated and are subject to providing the declared service.