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Dear Mr Cosgrave

Telecommunications Final Access Determination inquiries – non-price terms and conditions and supplementary prices

I refer to the Commission's paper *Telecommunications Final Access Determination inquiries – non-price terms and conditions and supplementary prices (Position Paper)* that was published on 23 May 2014. The purpose of this letter is twofold:

- 1) to set out Telstra's concerns with respect to the Commission's proposed approach to supplementary prices; and
- 2) to seek clarification regarding the Commission's proposed process with respect to non-price terms and conditions.

Supplementary prices

Telstra notes the Commission's proposal to separate the consideration of 'supplementary prices' from the consideration of 'primary prices' in the Final Access Determination (**FAD**) inquiries. Telstra agrees with the Commission that determining the primary prices for the declared services is likely to be complex and that there are a number of issues to address in those processes. Nevertheless, by separating the consideration of supplementary prices in the manner proposed, the Commission runs the risk of regulatory error in setting either the primary or supplementary prices.

For example, Telstra notes that in its Position Paper the Commission states that in making its final determination of the Internal interconnect cable (**IIC**) charge in November 2012, it made a number of adjustments to Telstra's IIC cost model to ensure consistency with the Fixed Line Services Model (**FLSM**). Given that the Commission is proposing to utilise the FLSM to set the primary prices for the fixed line services and wholesale ADSL, it would make sense to also use the FLSM to set the price for the IIC at the same time. In particular, if the Commission were to set the IIC price separately from and ahead of the primary prices for the ULLS and LSS (which the IIC is ancillary to) then it would be difficult for the Commission, access seekers or Telstra to have any assurance that costs were not being under- or over-recovered.

The same argument applies to any other services that are deemed to be ancillary to the declared services and where the costs relating to those ancillary services are contained within the FLSM (and perhaps already partially allocated to the declared services).

Telstra also considers that the Commission's proposed approach will not allow it to consider the pricing for each of the declared services in a holistic manner. For example, Telstra understands that the Domestic Transmission Capacity Service (**DTCS**) FAD inquiry is expected to commence shortly. In the event that the Commission proceeds to determine new FAD prices for the DTCS based on its domestic benchmarking methodology, it is likely that the Commission will again collect commercial pricing data from access providers as an input into that process (including data about monthly charges, connection and disconnection charges, and potentially other ancillary charges). Under commercial pricing arrangements, parties can structure their commercial charges for the DTCS in different ways, e.g. having a different balance between once-off connection charges and ongoing charges. As such, Telstra believes that connection and disconnection charges for the DTCS (and any other relevant ancillary charges) can only be assessed at the same time as the monthly charges. Similar issues arise in relation to the other declared services.

In summary therefore, Telstra believes it would be more appropriate to consider any relevant issues relating to supplementary charges as part of the primary pricing FAD inquiries for each of the Fixed Services (including Wholesale ADSL), DTCS and the Mobile Terminating Access Service.

Non-price terms and conditions

Telstra agrees with the Commission's view that there is benefit in conducting a combined consultation process for non-price terms and conditions across the declared services, given that a number of these terms and conditions are similar (or the same) across those services. However, the precise process that the Commission intends to follow with respect to non-price terms and conditions is not entirely clear to Telstra. For example, Telstra notes that the Commission states:

After considering submissions received in response to this position paper, the ACCC will release a draft report outlining its preliminary views on non-price terms and conditions and supplementary prices.

The implication of this comment is that the Position Paper provides a one-time opportunity for stakeholders to make substantive submissions regarding the non-price terms and conditions to be included in the FADs and that the Commission will move to make a draft decision after it has considered responses to the Position Paper. However, this appears to be at odds with the Commission's statements later in the Position Paper where stakeholders are requested to merely set out the terms and conditions that they consider should be covered in the FADs.

If and to the extent that the Commission proposes to specify particular non-price terms and conditions in a FAD, then Telstra believes that the Commission should adopt a process similar to that which it has followed previously. In previous FAD processes, the Commission has included draft non-price terms and conditions in a discussion paper, thereby allowing stakeholders to comment upon the detailed drafting of those non-price terms and conditions before a draft decision is made, with another opportunity to comment then being provided by the draft decision itself. Telstra considers that providing such an opportunity for comment is important, particularly if the Commission is considering substantive changes to the current FAD non-price terms and conditions.

Telstra notes that the Commission states that it will keep stakeholders informed about its processes during the course of the FAD inquiries. Telstra acknowledges that those processes need to be flexible, however, it would be grateful if the Commission could clarify its expectations with respect to responses to the Position Paper. This would enable all stakeholders to provide appropriately targeted and detailed responses to the Position Paper.

Telstra will, of course, provide detailed responses to the issues and questions raised in the Position Paper. In the meantime, if you have any questions, please contact Pauline Crichton on (03) 8649 2010 or Pauline.Crichton@team.telstra.com.

Yours sincerely,



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