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By email

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Public inquiry into making an access determination for wholesale ADSL – request for submissions on congestion in ADSL networks

Macquarie Telecom Pty Limited (“**Macquarie**”) wishes to make a submission in response to the open letter of the Australian Competition and Consumer Commission (“**ACCC**”) concerning the above.¹ Macquarie notes the specific points on which the ACCC seeks comments as set out in the Open Letter. However, Macquarie is of the view that it is not appropriate for the ACCC to draw the industry into a detailed discussion of congestion in the context of the ACCC’s current inquiry for the reasons discussed in this submission. While reserving its right to fully respond to the specific points in the Open Letter, Macquarie has in this submission chosen to respond more generally commenting on the following matters:

- Telstra’s gaming of the ACCC’s inquiry process;
- congestion in telecommunications networks;
- the appropriate pricing methodology for fixed line services;
- preclusion of congestion pricing from the BBM; and
- alternatives for managing congestion.

Macquarie’s position on each of these matters is discussed below.

Telstra’s Gaming of the ACCC’s Inquiry Process

Macquarie submits that Telstra’s submissions² concerning congestion pricing to the ACCC are clear evidence of Telstra gaming the ACCC’s inquiry process. Macquarie is particularly concerned that the Submissions are effectively hidden behind Telstra’s claims that they are confidential. This has made open, timely and informed analysis of Telstra’s proposal for congestion pricing impossible.

The ACCC commenced an inquiry into making a final access determination for the wholesale

¹ ACCC, Open Letter Re: Public inquiry into making an access determination for wholesale ADSL – request for submissions on congestion in ADSL networks, 5 September 2012 (“**Open Letter**”)

² Telstra’s submissions include: Telstra, Response to the Commission’s Issues Paper (a second discussion paper) into the public inquiry to make a final access determination for the wholesale ADSL service: Pricing to Improve Customer Experience 24 August 2012; Frontier Economics, ADSL network congestion pricing and use of RMRC, August 2012; Gowrisankaran and MacKie-Mason, Efficient Pricing of ADSL Wholesale Services, 23 August 2012. (“**Submissions**”)



ADSL (“**wholesale ADSL FAD**”) in February 2012. The ACCC promulgated a second discussion paper concerning this inquiry in July 2012 which sought submissions on a range of non-price matters. In this paper, the ACCC stated in particular:

“The ACCC considers that submissions on pricing methodology in response to the February FAD Discussion Paper are sufficient for present purposes. In order to progress its consideration of the appropriate price terms for the FAD, the ACCC will—during the period for submissions in response to this issues paper—seek information regarding costs, demand forecasts and other relevant parameters directly from Telstra as the dominant provider of wholesale ADSL services. The ACCC may also seek relevant information from other providers of wholesale ADSL.

The ACCC will then develop draft price terms which will be published in the draft FAD, and interested parties will be invited to make submissions in response to those draft terms in due course.”³

Despite the unambiguous direction from the ACCC that submissions on pricing issues were not sought, Telstra decided to address pricing matters in its Submissions. Macquarie considers this to be a deliberate and provocative act which has the effect of:

- disrupting the inquiry process that the ACCC has embarked upon;
- causing an unnecessary delay in the finalisation of the ACCC’s decision on making a wholesale ADSL FAD;
- advocating an increase in the regulated price of the wholesale ADSL service; and
- harming the interests of access seekers by delaying access seekers’ access to the wholesale ADSL service on regulated terms.

Macquarie is strongly of the view that the ACCC should not have allowed Telstra to dictate how the ACCC conducts its public inquiries and should have stuck to the process that it had commenced. Accordingly, the ACCC should proceed with the publication of its draft wholesale ADSL FAD and, if necessary, address pricing issues in that process.

Congestion in Telecommunications Networks

Managing congestion in telecommunications networks is nothing new. Fundamental to the design of any network is the capacity of traffic aggregation points to cope with the expected volume of traffic. In this context, Macquarie is perplexed by Telstra’s proposal to introduce congestion pricing for the wholesale ADSL service. That is, there is nothing unique about the wholesale ADSL service which requires its pricing to reflect the management of congestion.

At the same time, other network services are impacted by the need to manage congestion. Yet there is no provision for congestion pricing in any of the declared services for which the ACCC sets prices. The corollary of this is that the ACCC should not be entertaining Telstra’s proposal for congestion pricing within its current inquiry which is focussed on the making of a wholesale ADSL FAD.

Telstra’s attempts to specifically link congestion with the wholesale ADSL service further provides evidence of Telstra’s gaming of the ACCC’s inquiry process. Accordingly, the

³ ACCC, Public inquiry to make a final access determination for the wholesale ADSL service, Issues Paper (a Second Discussion Paper), July 2012, page 7



ACCC should put aside Telstra's proposal for congestion pricing and proceed with the publication of its draft wholesale ADSL FAD.

The Appropriate Pricing Methodology for Fixed Line Services

Assuming for the moment that price matters are under consideration, Macquarie submits that the building block model ("**BBM**") is the appropriate pricing methodology for the wholesale ADSL service. In 2009, the ACCC commenced consultation with industry on new pricing principles for fixed line declared services. This involved a shift from the ACCC's previous pricing methodologies, i.e., TSLRIC+ and RMRC to a BBM pricing methodology.

Macquarie notes the following views expressed by the ACCC on the use of BBM:

*"The December 2009 Discussion Paper suggested adopting a BBM approach to calculating prices for all the declared fixed line services. It noted that a BBM would improve certainty for the access provider and access seekers by 'locking in' the initial value of the regulated assets."*⁴

*"Submissions to the September 2010 Draft Report revealed continued broad industry support for moving away from the TSLRIC+ and RMRC pricing approaches to a BBM pricing approach for the declared fixed line services. The ACCC has taken these submissions into account in deciding to adopt a BBM approach for estimating prices for the declared fixed line services."*⁵

*"In the April 2011 Discussion Paper, the ACCC confirmed its intention to adopt a BBM pricing methodology to estimate prices for the declared fixed line services. There has been broad industry support for moving to a BBM approach."*⁶

*"In the final report accompanying the FADs, the ACCC noted that it would use a BBM approach to determine prices for the Fixed Line Services in future Regulatory Periods."*⁷

On the basis of the above, Macquarie submits that the industry's collective expectation on the use of the BBM pricing methodology encompasses the following:

- access seekers and Telstra support the ACCC's adoption of the BBM pricing methodology;
- the BBM pricing methodology would be used by the ACCC to set prices for declared fixed line services; and
- there would be no change to the BBM pricing methodology or in its use in order to provide certainty for access seekers and the access provider.

On the basis of the above, and given that the wholesale ADSL service is a declared fixed line service, Macquarie submits that it is inappropriate for (i) Telstra to propose changing the pricing methodology for this service through using congestion pricing and RMRC and for (ii)

⁴ ACCC, Public inquiry to make final access determinations for the declared fixed line services, Discussion Paper, April 2012, page 25

⁵ *ibid*, page 27

⁶ ACCC, Inquiry to make final access determinations for the declared fixed line services, Final Report July 2011, page 27

⁷ ACCC, Draft Building Block Model RKR, ACCC Position Paper, March 2012, page 6

the ACCC to entertain Telstra's proposition. Telstra's provocative action demonstrates that it is gaming the ACCC's inquiry process and delaying access seekers' access to the wholesale ADSL service on regulated terms.

Preclusion of Congestion Pricing from the BBM

Assuming again for the moment that price matters are under consideration, Macquarie submits that the BBM is the appropriate pricing methodology for the wholesale ADSL service and that importantly this methodology precludes congestion pricing. As such, Telstra's claims for making an allowance for congestion pricing in the wholesale ADSL FAD should be dismissed by the ACCC.

As explained by the ACCC:

"The BBM accounts explicitly for each cost category or 'building block' faced by the regulated business, including:

- *operating expenditure*
- *return of capital*
- *return on capital, and*
- *tax liabilities."*⁸

Macquarie submits that nowhere in the BBM pricing methodology is there any provision for congestion pricing. Congestion pricing is essentially a surcharge imposed by a supplier to ration demand for services which are subject to excess demand at certain periods of time. Key examples of congestion pricing apply in respect of rationing the demand for space on urban roads and at airport terminals by applying a surcharge on motorists and airlines at certain times of peak demand. That is, users are actively deterred from using the service at peak times as they will be subject to an additional charge.

The following table assesses congestion pricing against the ACCC's description of the components of the BBM pricing methodology as noted above.

⁸ ACCC, Public inquiry to make final access determinations for the declared fixed line services, Discussion paper April 2011, page 2



Table 1: Congestion Pricing Assessed against the Components of the BBM

BBM Component	Assessment	Does Congestion Pricing Fit within the BBM Component?
Operating expenditure	A surcharge for congestion pricing is not an expense item which has been or will be incurred by or charged to the access provider in the course of supplying a service.	No
Return of capital	A surcharge for congestion pricing is not a repayment of the capital employed by the access provider in the course of supplying a service.	No
Return on capital	A surcharge for congestion pricing is not a form of compensation or reward to the access provider for the use of the capital employed by the access provider in the course of supplying a service.	No
Taxation liability	A surcharge for congestion pricing is not a charge that will be imposed on the access provider by a public authority as a result of supplying a service.	No

Source: Macquarie Analysis

As shown in the above table, a surcharge for congestion pricing does not fit within any of the four components of the BBM pricing model. Accordingly, Macquarie concludes that congestion pricing does not fit within the BBM pricing model and while the BBM pricing model is the ACCC’s fixed line service pricing model, Telstra’s claims for congestion pricing to be reflected in the prices which are set for the wholesale ADSL service must be rejected.

Macquarie also notes that nowhere in the ACCC’s consultation with industry on its review of fixed line pricing principles is there any discussion of congestion pricing. If congestion pricing is in anyway relevant to the BBM pricing methodology it would have been addressed in the course of the ACCC’s consultation with industry on this matter. The fact that congestion pricing was not addressed in consultation confirms that it has no place in the BBM pricing methodology.

The Alternatives to Manage Congestion

Telstra’s fundamental proposition in its Submissions is that congestion pricing should be adopted in the wholesale pricing of the wholesale ADSL service in order to manage congestion. Macquarie submits that there are several alternative courses of action to congestion pricing which are available to Telstra to manage congestion in respect of the wholesale ADSL service. Several alternatives are discussed below.

Retail Controls

Macquarie is perplexed by the fact that Telstra seeks to resolve its alleged concerns with network congestion via a wholesale pricing approach. If Telstra was genuinely concerned about network congestion, surely it would seek to address this through as a priority retail controls such as reducing the free data “giveaways”. In particular, Macquarie notes that many of Telstra’s service offerings provide “unmetered” usage which do not count towards the end-users’ monthly usage allowance, for example, BigPond TV and BigPond Videos.

Capital investment

Telstra could make additional capital investments in network assets to increase capacity. The costs of such investment would be recovered by Telstra under the BBM pricing methodology through the return on, and return of, capital. That is, the annual cost base of the wholesale ADSL service would include (i) a return on the additional capital equal to the cost of capital and (ii) a depreciation charge representing a portion of the additional capital investment.

Acquire Transmission Capacity

As an alternative to making its own investment in network infrastructure, Telstra could acquire additional transmission capacity from other network service providers. The costs of such investment would be recovered by Telstra under the BBM pricing methodology through operating expenditure.

Unbundling the ADSL Service

Telstra could offer the wholesale ADSL service on an unbundled basis. Telstra chooses to offer the wholesale ADSL service with a transmission component. Given that congestion occurs in the transmission component of the service, congestion can be ameliorated by enabling access seekers to use their own transmission services thereby taking traffic off Telstra's network.

Closing

Macquarie appreciates the opportunity to make these comments on the ACCC's Open Letter concerning congestion pricing. Macquarie reiterates its very strong views on this matter as follows:

- Telstra's unsolicited Submissions demonstrate clearly that it is gaming the ACCC's inquiry process;
- managing network congestion is nothing new and it is not unique to the wholesale ADSL service;
- the ACCC should proceed with the publication of its draft wholesale ADSL FAD and address pricing issues in that process;
- the BBM is the appropriate pricing methodology for the wholesale ADSL service;
- the BBM pricing methodology precludes congestion pricing; and
- there are several alternative courses of action available to Telstra to manage network congestion other than congestion pricing.

Based on these views, Macquarie considers that Telstra's claims for making an allowance for congestion pricing in the wholesale ADSL FAD should be dismissed by the ACCC.

Please do not hesitate to contact me should you have any queries concerning this submission.

Yours sincerely



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