

RG 051202
8 May 2012

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By email

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Draft Building Block Model RKR

Dear Jessica,

Macquarie Telecom Pty Limited ("**Macquarie**") welcomes the opportunity to make this submission to the Australian Competition and Consumer Commission ("**ACCC**") in relation to the ACCC's position paper concerning the above.¹ The ACCC has promulgated its Position Paper together with a draft Building Block Model record keeping and reporting rule.² The BBM RKR is designed to ensure that the ACCC has timely access to relevant financial and non-financial information that is essential input to the ACCC's fixed line service model ("**FLSM**") which in turn is used for setting the prices of declared fixed line services.

This submission is presented in two main parts. The first part addresses each of the consultation questions raised in the Position Paper. The second part raises other matters of potential concern with regard to the BBM RKR.

Responses to Consultation Questions

In this section, Macquarie addresses each of the consultation questions raised in the Position Paper. For ease of reference, each question has been reproduced in a shaded text box which is then followed by Macquarie's response.

1. Do submitters have any comments on the need for this BBM RKR?

Macquarie supports the ACCC's initiative to prepare a draft BBM RKR. Macquarie is of the view that the draft BBM RKR is necessary for a range of reasons including:

- recognition of the importance of the ACCC's role in setting the prices of declared fixed line services;
- establishment of a consistent data set which spans multiple financial periods; and
- promotion of regulatory certainty, regulatory transparency and efficient regulation by formalising an on-going information requirement.

¹ ACCC, Draft Building Block Model RKR, ACCC Position Paper, March 2012, ("**Position Paper**")

² ACCC, Draft Building Block Model Record Keeping and Reporting Rule, March 2012, ("**BBM RKR**")



2. The ACCC seeks submitters' views on the criteria by which the ACCC proposes to assess Telstra's forecast operating expenditure.

Macquarie understands from the Position Paper that the ACCC proposes to assess the validity of Telstra's forecast operating expenditure by having regard to certain principles which were specified in the fixed principles provisions accompanying the ACCC's fixed line services final access determinations ("**FADs**"). Such principles are concerned with:

- a comparison with previous levels of operating expenditure;
- reasons for proposed changes between periods;
- the impact of regulatory obligations; and
- other matters concerning prudent and efficient costs.

Macquarie considers such criteria to be reasonable and appropriate. In addition to the above, Macquarie suggests that the ACCC should also consider other criteria to assess the validity of Telstra's forecast operating expenditure including, for example:

- trends in Telstra's level of business activity measured by actual usage data; and
- statements made by Telstra management concerning Telstra's future business activities at, for example, institutional investor briefings.

3. The ACCC seeks submitters' comments on whether the information relating to forecast operating expenditure to be provided in the proposed explanatory statement is sufficient and reasonable.

Macquarie considers that the information relating to forecast operating expenditure to be provided in the proposed explanatory statement as set out in section 3.2 of the Position Paper is *prima facie* sufficient and reasonable. That is, the information, if provided by Telstra, would appear to be:

- sufficient for the ACCC to assess the validity of Telstra's forecast operating expenditure against the specified principles; and
- reasonable for Telstra to provide such information to the ACCC.

Macquarie is, however, concerned that the information items specified in the BBM RKR do not match the information items as set out in the Position Paper. That is, the BBM RKR actually requests fewer information items than the Position Paper proposes. In particular, there is no requirement in the BBM RKR for Telstra to provide any of the following information items which are set out in section 3.2 of the Position Paper:

- the cost drivers used for each expenditure class;
- cost allocations; and
- a report comparing forecasts for the previous regulatory period with the actual operating expenditure for that period.

Given this deficiency, Macquarie is concerned that the ACCC may not have sufficient information for it to adequately assess the validity of Telstra's forecast operating expenditure.



Macquarie also notes that the BBM RKR does not require Telstra to provide any form of undertaking or certification by a responsible officer of the company that the information it provides under the BBM RKR is of a certain standard, i.e., reliable, accurate, reasonable, fair etc. Macquarie believes that some form of management sign-off on Telstra's forecast (and usage) data is appropriate and therefore should be incorporated into the BBM RKR. Macquarie does, however, acknowledge that such sign-off does not currently apply to information which is provided by Telstra pursuant to other ACCC record keeping rules.

4. The ACCC seeks submitters' views on the proposed criteria by which the ACCC intends to assess Telstra's forecast capital expenditure.

Macquarie understands from the Position Paper that the ACCC proposes to assess the validity of Telstra's forecast capital expenditure by having regard to certain principles which were specified in the fixed principles provisions accompanying the ACCC's fixed line services FADs. Such principles are concerned with:

- a comparison with previous levels of operating expenditure;
- reasons for proposed changes between periods;
- whether Telstra's asset management and planning framework reflects best practice;
- the impact of regulatory obligations; and
- other matters concerning prudent and efficient costs.

Macquarie considers such criteria to be reasonable and appropriate.

5. The ACCC seeks submitters' comments on whether the information relating to forecast capital expenditure (and the asset classes they relate to) to be provided in the proposed explanatory statement is sufficient and reasonable.

Macquarie considers that the information relating to forecast capital expenditure to be provided in the proposed explanatory statement as set out in section 4.2 of the Position Paper is *prima facie* sufficient and reasonable. That is, the information, if provided by Telstra, would appear to be:

- sufficient for the ACCC to assess the validity of Telstra's forecast capital expenditure against the specified principles; and
- reasonable for Telstra to provide such information to the ACCC.

Macquarie is, however, concerned that the information items specified in the BBM RKR do not match the information items as set out in the Position Paper. That is, the BBM RKR actually requests fewer information items than the Position Paper proposes. In particular, there is no requirement in the BBM RKR for Telstra to provide any of the following information items which are set out in section 4.2 of the Position Paper:

- an explanation of the investment program;
- a report comparing forecasts for the previous regulatory period with the actual capital expenditure for that period;
- for discretionary projects, an explanation of any major differences in the types of



- investments undertaken compared to the forecasts; and
- evidence that a review of capital expenditure projects was undertaken in accordance with the investment guidelines.

Given this deficiency, Macquarie is concerned that the ACCC may not have sufficient information for it to adequately assess the validity of Telstra's forecast capital expenditure.

6. In particular, do submitters have any comments on whether the asset classes into which capital is categorised appropriate and reasonable?

Macquarie understands that Appendix A of the Position Paper sets out the asset classes into which forecast capital expenditure is to be categorised. Macquarie further understands that these asset classes are consistent with the requirements which the ACCC has already established with respect to the FLSM. On this basis, Macquarie considers that these asset classes are appropriate and reasonable for the categorisation of Telstra's forecast capital expenditure.

7. The ACCC seeks submitters' views on the criteria by which the ACCC will assess Telstra's forecast demand.

Macquarie understands from the Position Paper that the ACCC proposes to assess the validity of Telstra's demand forecasts by having regard to certain principles which were specified in the fixed principles provisions accompanying the ACCC's fixed line services FADs. Such principles include:

- an appropriate forecasting methodology;
- reasonable assumptions;
- using the best available information; and
- taking into account current demand and economic conditions.

Macquarie considers such criteria to be reasonable and appropriate.

8. The ACCC seeks submitters' comments on whether the information relating to forecast demand to be provided in the proposed explanatory statement is sufficient and reasonable.

Macquarie considers that the information relating to forecast demand to be provided in the proposed explanatory statement as set out in section 5.2 of the Position Paper is *prima facie* sufficient and reasonable. That is, the information, if provided by Telstra, would appear to be:

- sufficient for the ACCC to assess the validity of Telstra's forecast capital expenditure against the specified principles; and
- reasonable for Telstra to provide such information to the ACCC.

Macquarie is, however, concerned that the information items specified in the BBM RKR do not match the information items as set out in the Position Paper. That is, the BBM RKR actually requests fewer information items than the Position Paper proposes. In particular,



there is no requirement in the BBM RKR for Telstra to provide any of the following information items which are set out in section 5.2 of the Position Paper:

- the key demand drivers taken into account;
- the data sources used; and
- a report comparing forecasts for the previous regulatory period with the actual usage data for that period.

Given this deficiency, Macquarie is concerned that the ACCC may not have sufficient information for it to adequately assess the validity of Telstra's forecast demand.

9. The ACCC seeks submitters' comments on the proposed data sets.

Macquarie understands that the proposed actual usage data sets are consistent with the requirements which the ACCC has already established with respect to the FLSM. On this basis, Macquarie has no concerns with the proposed actual usage data sets.

10. Do submitters have comments on the proposed timeframe for Telstra to report the forecast data component of the proposed BBM RKR?

Macquarie understands that in respect of forecast data, Telstra will have eight week's notice to provide the specified information and the explanatory statement. Given that this is a longer than usual timeframe for ACCC information requests, Macquarie considers this proposed timeframe to be reasonable.

11. Do submitters have comments on the proposed annual frequency for the actual usage data component of the proposed BBM RKR?

Macquarie understands that in respect of usage data, Telstra's annual reporting timeframe is aligned with the existing RAF reporting schedule which applies to Telstra. On this basis, Macquarie considers this proposed timeframe to be reasonable.

12. The ACCC seeks submitters' views on the timing and scope of the proposed review of the forecast data component of the BBM RKR at 30 June 2021?

Macquarie understands that the BBM RKR will take effect from 1 July 2012 until 30 June 2021 when it will be subject to a limited review in respect of forecast data components. Macquarie notes that the ACCC's proposed review timeframe aligns with the expiry date of the fixed principles provisions as set out in the ACCC's fixed line services FADs.

While Macquarie in general prefers more regulatory certainty to less regulatory certainty, the review date seems too far away given the significant policy and regulatory changes which Australia's telecommunications sector is presently undergoing. Moreover, it seems odd that the ACCC would commence a review of the BBM RKR after it ceases to have effect. In addition, it seems overly presumptive for the ACCC to propose at this time that in nine year's time " ... the actual usage data requirements will remain in place irrespective of the outcome



of the review.”³

Macquarie suggests that a more appropriate approach would be along the following lines:

- the BBM RKR has effect from 1 July 2012 until 30 June 2021;
- the ACCC undertake a review of the BBM RKR within three months following 30 June 2016, i.e., four years after the commencement of the BBM RKR; and
- the scope of the BBM RKR review be open-end, which would include both forecast data components and usage data components and the possible extension of the date of effect of the BBM RKR.

13. The ACCC seeks submitters' views on: what data might be required to address the impacts of the NBN on the FLSM; and whether this data should be requested under the BBM RKR or a separate process.

Macquarie acknowledges that the roll-out of the NBN will have impacts on the FLSM. In particular, Telstra will receive payments from NBN Co for the use of Telstra's infrastructure and for the migration of Telstra retail customers to the NBN. Macquarie is of the view that such income streams should be incorporated into the FLSM and therefore should be requested under the BBM RKR. This should not preclude the ACCC requesting further information through a separate process as may be considered necessary to capture the impacts of the NBN.

14. In particular, do submitters have any comments on whether the ACCC should request data on asset disposals under the BBM RKR?

Macquarie is of the view that the ACCC should request data on asset disposals under the BBM RKR if such data is necessary for the FLSM. If the ACCC is unclear on the necessity of data on assets disposals at this time, the BBM RKR should not make provision for the ACCC to collect such data. Should the need for such data subsequently emerge, the ACCC would then make an information request through a separate process.

15. Do submitters have comments regarding disclosure of the RKR information to facilitate the regulatory process?

Macquarie is of the view that in general a greater degree of disclosure of information is conducive to a more effective regulatory process. Accordingly, Macquarie encourages to the ACCC to disclose the information which will be provided under the BBM RKR. Such disclosure will ensure regulatory transparency and will enable access seekers to scrutinise Telstra's forecast information.

³ Position Paper, p 19



16. The ACCC seeks from Telstra an itemised estimation of the costs associated with meeting the requirements of the proposed BBM RKR.

Not applicable to Macquarie.

Other Matters of Potential Concern

In this section, Macquarie raises several matters of potential concern with the BBM RKR.

Rule 11 Cross-Reference

Macquarie notes that Rule 11(c) of the BBM RKR contains a cross-reference to “Rule 8 (g)-(j).” Macquarie believes that this cross-reference should in fact be to “Rule 8 (f)-(i)”.

Usage data for the period ending 30 June 2012

Macquarie understands that the BBM RKR would have effect from 1 July 2012. On this basis, it would appear that the usage data specified in the BBM RKR for the financial year ending 30 June 2012 would not be reported to the ACCC. Macquarie queries whether this apparent data gap would adversely impact the effectiveness of the FLSM.

Capture of wholesale ADSL related data

Macquarie notes that the BBM RKR is intended to capture data for the ACCC to use in its FLSM for the purpose of setting prices for fixed line services. Such fixed line services as specified in the Position Paper do not include the wholesale ADSL service.⁴ Macquarie queries whether the ACCC has considered if there are additional information items which would be appropriate to include in the BBM RKR for the pricing of the wholesale ADSL service.

Closing

Macquarie would be pleased to elaborate on its views expressed in this submission. Should you have any queries concerning this submission please feel free to contact me.

Yours sincerely

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⁴ Position Paper, page 8