



Optus Submission

In response to the ACCC's Position Paper on

Draft Building Block Model RKR

May 2012

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## Section 1. Introduction

- 1.1 Optus welcomes the opportunity to respond to the ACCC's position paper on the draft Building Block Model (BBM) Record Keeping Rules (RKR).
- 1.2 Optus supports the ACCC's use of its information gathering powers, in the form of the BBM RKR, to collect information relevant to ensuring the quality of information and forecasts to apply in its BBM for setting price terms for fixed line services. In particular, the need for the BBM RKR is emphasised by the role it plays in the implementation of the BBM framework: *"To effectively implement the FLSM, the ACCC requires forecast and actual data from Telstra relating to operating expenditure, capital expenditure, depreciation and demand."*<sup>1</sup>
- 1.3 The requirement on Telstra to provide actual data on expenditures, demand and usage will enable the ACCC to monitor and establish a process for the ex-ante review of the quality of the information to be included in the BBM (as well as, provide a guide for future ex-post assessment on the information provided). As such, this will place the ACCC in a more informed position to assess the forecast information being provided by Telstra during future price reset reviews. Where the information significantly deviates from the observed historical trend, this must be supported by additional documentation to ensure that prudence has been met. In turn, this will provide greater regulatory certainty and industry confidence in the ACCC's approach to setting price terms for regulated fixed-line services.
- 1.4 Section 2 outlines Optus' views in response to the issues ACCC raised in its position paper.

## Section 2. Optus' response to issues raised in the ACCC's position paper

### NBN

- 2.1 Optus supports the ACCC's view that the impacts of the NBN may require adjustments to the FLSM in future regulatory period. This applies in particular to the payments Telstra would receive from NBN Co in exchange for access to infrastructure, progressive migration of customers from its copper and cable access networks to the NBN and transfer of Telstra's assets (ie the conduits that connect a house to the network at street level) to NBN Co.

### Adjustments to the RAB or ongoing regulatory depreciation

- 2.2 The substantial payments Telstra will receive in relation to the NBN should be taken into account either in consideration of the RAB or in the context of ongoing regulatory depreciation. This ensures that Telstra is not overcompensated by access seekers for the use of its network.
- 2.3 Optus submits that both the migration payments and the ownership transfer payments should be viewed as a 'return of capital' to Telstra shareholders for capital invested in the CAN. Accordingly once received Telstra should no longer earn either a return on capital or a return of capital associated with the asset for which the payment was made. So the asset value should be removed from the RAB.
- 2.4 The ownership transfer of Telstra's conduits that connect a house to the network at street level is an asset disposal and as a result the payment value Telstra will receive can be deducted from the RAB.

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<sup>1</sup> ACCC, Draft Building Block model RKR, ACCC Position Paper, March 2012, p.6

- 2.5 Similarly, the migration payment can be treated as an asset disposal since Telstra will no longer be able to use the asset to provide declared services. Accordingly the payment value can be deducted from the RAB and so a return on and return of capital should no longer be included in the revenue requirement associated with those assets.
- 2.6 Further, a large component of NBN Co's lease payment to Telstra will relate to the use by NBN Co of assets which form part of Telstra's RAB for fixed line services.
- 2.7 Telstra would receive lease payments from NBN Co for use of its assets (such as ducts and pipes). Ducts, trenches and pits form part of the RAB for the CAN. Compensation for the use of RAB assets is a component of total compensation to Telstra, which represents a 'return of capital' to shareholders for capital invested in the network. Accordingly, the ACCC should deduct this RAB-related element of lease payments from Telstra's RAB for fixed line services.
- 2.8 Both the RAB and regulatory depreciation deal with compensating Telstra for its capital investment in its network. Given that this is the same investment for which NBN Co will compensate Telstra, there is a very real risk that Telstra will effectively be compensated twice for the same investment.
- 2.9 Accordingly, Optus submits that the ACCC should request data from Telstra on asset disposals and payments it receives from NBN Co under the BBM RKR.

### **Forecast expenditure**

- 2.10 Optus supports the ACCC's proposed approach to collect information on operating expenditure (opex) and capital expenditure (capex) forecasts for each FLSM Asset Class for each financial year of the Regulatory Period. The criteria associated with the provision of these forecast expenditures (and requirement that these reflect prudent and efficient costs) were identified in the ACCC's FAD instruments for the declared fixed line services.
- 2.11 In addition to the provision of the forecast expenditures, the proposed BBM RKR further strengthens these criteria by stating that:
- "... the draft BBM RKR requires that Telstra provide an explanatory statement containing:*
- *the method used to determine the forecasts*
  - *the assumptions used to determine the forecasts; and*
  - *the basis for the assumptions*
  - *[for capital expenditure this also includes] any internal guidelines used by Telstra to assess the prudence of forecast capital expenditure or to tender or contract out capital expenditure projects."*<sup>2</sup>
- 2.12 The ACCC has also set out further requirements on Telstra to ensure that the above information can be adequately addressed.
- 2.13 For opex forecasts, this includes the provision of information relating to cost drivers, cost allocations and an explanatory report setting out reasons for any differences, trends and drivers that may explain any significant discrepancies between previous forecasts with actual data for that period.<sup>3</sup>

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<sup>2</sup> ACCC, Draft Building Block model RKR, ACCC Position Paper, March 2012, p.11 and p.14

<sup>3</sup> ACCC, Draft Building Block model RKR, ACCC Position Paper, March 2012, pp.11-12

- 2.14 For capex forecasts, this includes the provision of information relating to Telstra's investment programs, whether it is for discretionary or non-discretionary projects, which sets out reasoning for undertaking the project, explains any major differences in the type of investment undertaken compared to forecasts, and evidence that it was undertaken in accordance with the investment guidelines.<sup>4</sup>
- 2.15 Optus considers that the requested information should aid the ACCC's ability to make a reasonable assessment of the validity of Telstra's forecast expenditures.
- 2.16 In addition Optus submits that when the ACCC assesses Telstra's forecast data, the ACCC should take into account the fact that as Telstra is expected to decommission its copper network, both the capex and opex are expected to decline over the next couple of years. This was recently confirmed by Telstra's General Managing Director for Corporate Affairs Tony Warren, who stated at a cross-parliamentary NBN committee hearing:

*"As we migrate customers to the NBN and decommission our copper access network, the network maintenance task that we are currently doing will diminish..."<sup>5</sup>*

## **Depreciation**

- 2.17 Optus agrees that the data Telstra will be required to provide is appropriate. However, Optus also considers it is imperative for Telstra to provide the ACCC with the assumptions used to derive key values, such as asset lives and written down values.
- 2.18 Optus reiterates that the Asset Class for 'Network Land' should not be included in the RAB at all. However should it be included, then this asset class should be treated in just the same way as any other asset (that is, the ACCC should apply the DAC approach consistently and reject any differential treatment of the land asset class).<sup>6</sup>

## **Demand**

- 2.19 Optus supports the ACCC's proposed approach to collect actual SIOs and usage figures for each regulated service on an annual basis. In addition, where forecast demand is required to be provided, this should be supported with the key assumptions used to derive those values.
- 2.20 Further, in line with the ACCC's preliminary position, there should be an onus on Telstra to provide supplementary evidence in support of its forecasts and assumptions, to ensure that only efficient expenditures and demand forecasts can be taken into account in the BBM for future regulatory periods. This should be provided to the ACCC no later than 12 months prior to the commencement of the next regulatory period.
- 2.21 As outlined in the ACCC's final access determination (FAD) for fixed line services, it has noted that the BBM RKR would clearly specify the information (and supporting information) required, the format and timeframes within which Telstra will be required to provide this information.

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<sup>4</sup> ACCC, Draft Building Block model RKR, ACCC Position Paper, March 2012, p.14

<sup>5</sup> Australian Financial Review, NBN rollout to cost jobs at Telstra, 18 April 2012

<sup>6</sup> Optus, Optus submission in response to the ACCC's discussion paper – Public inquiry to make final access determinations for the declared fixed line services, June 2011, p.9

## **Frequency**

- 2.22 Optus agrees with the ACCC's proposal to have the forecast data provided when the ACCC commences a Pricing Review prior to each Regulatory Period. Optus further agrees with the ACCC's proposal to have the actual usage data provided on an annual basis.
- 2.23 However Optus considers that if during a Pricing Review, there is any change of circumstance that may impact on the forecast data provided by Telstra, Telstra should then provide a revised set of forecast data to the ACCC.

## **Duration**

- 2.24 Optus agrees with the ACCC's proposal to align the expiry date of the BBM RKR with the expiry date of the fixed principles provisions.
- 2.25 However, the ACCC has indicated that the BBM RKR will remain in its current form until 30 June 2021 after which the ACCC will conduct a limited review. The ACCC proposes that the review be limited to the forecast data components of the BBM RKR and that the review will include industry consultation. The review will also consider whether the BBM RKR has successfully facilitated the implementation of the BBM.
- 2.26 This appears to be a long time delay to review the RKR.
- 2.27 Since the start of the next regulatory period is 1 July 2014, it would be sensible to conduct a review on the implementation of the BBM in 2016. By July 2014, the ACCC would have obtained forecast data from Telstra for the next regulatory period. Having a review done in 2016 therefore would provide the ACCC sufficient time and information to assess if the BBM RKR has successfully facilitated the implementation of the BBM.

## **Addressee**

- 2.28 Optus supports the ACCC's view that the BBM RKR will require only Telstra to disclose the information sought since it is the owner of the CAN and Core network.

## **Disclosure direction**

- 2.29 Optus submits that it is necessary to disclose the reports provided by Telstra. This promotes transparency and allows industry to comment on the appropriateness of the forecast data, which will be used as inputs to the BBM.