



TELSTRA CORPORATION LIMITED

Review of the Facilities Access Code

Telstra’s response to the ACCC discussion paper

Public Version

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[CIC begins] = information not to be released without a confidentiality undertaking

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EXECUTIVE SUMMARY

A number of regulatory processes over the past year have facilitated robust discussion about access to facilities, particularly in respect of mobile network infrastructure. While various potential issues were raised as part of the ACCC Domestic Mobile Roaming Inquiry (‘the Roaming Inquiry’), Telstra notes that during most recent discussions at the Regional Mobile Issues Forum (held in February 2018), the conversation focused on co-build arrangements at greenfield sites. Telstra agrees that, in the context of these discussions and the fact that the Facilities Access Code (‘the Code’) was last re-assessed in 2013, it is timely to be conducting the present review. Telstra’s submission focuses on access to mobile infrastructure rather than underground facilities (including to NBN POI sites and data centres) due to the absence of any issues or barriers in relation to the latter.

Telstra agrees with the ACCC’s assessment in the discussion paper that the Code appears to be generally working well; however, pre-build consultations for greenfield sites represents an area for improvement in facilities sharing arrangements. Following the Regional Mobile Issues Forum, Telstra together with other mobile network operators (‘Carriers’) have worked collaboratively to agree a more effective process for the timely sharing of deployment plans for mobile infrastructure in regional areas. The output of this collaboration through the Mobile Carriers Forum (‘MCF’) has been shared with the ACCC by the Australian Mobile Telecommunications Association (‘AMTA’), and Carriers will continue to work together to optimise these industry processes.

To ensure the Code is satisfying the objective of best promoting co-location and infrastructure sharing, Telstra considers it appropriate that the Code be amended to require Carriers to constructively conduct pre-build consultations. However, industry should be left to self-regulate the form and substance of these consultations. This is because industry are best placed to ensure that the consultations retain the inherent flexibility required where co-build facilities are deeply influenced by a range of practical and commercial variables. The willingness of industry to collaboratively develop such processes has been clearly demonstrated. This is further explored in section 1 of our submission.

More generally, Telstra considers that collaboration between access seekers and access providers is at a high level, as demonstrated by the number of access requests, of accepted requests, the level of co-location achieved on Telstra and other Carrier sites and the low number of disputes. This is further evidence that the current facilities access arrangements are generally working effectively. An example of this is effective commercial arrangements for queuing and reservations that make including ‘use it or lose it’ obligations in the Code unnecessary. The inclusion of such obligations could also result in unintended consequences such as delays to network deployment. This is further explored in section 2.

Telstra also considers it appropriate to review the Code in advance of the full rollout of 5G infrastructure. A key element of the current facilities access regulatory settings has been the flexibility they have provided to allow Carriers to maximise efficient and timely investment in network infrastructure. Preserving this flexibility will be important in supporting the transition to 5G technology and, in Telstra’s view, does not require any specific amendment to the Code. This is further explored in section 3.



01 The Code can be updated to require pre-build consultation for mobile facilities, but the consultation process should be self-regulated

Following on from matters raised during the Roaming Inquiry, the ACCC seeks submissions in relation to the co-build infrastructure arrangements for new eligible facilities. In particular, the ACCC seeks feedback on whether any changes are required to section 4.5 of the Code relating to the pre-build consultation process (including changes to notification requirements, whether section 4.5 should be made a mandatory condition and any other potential changes).

1.1. Carriers self-regulate pre-build consultation and notification processes (including through AMTA) and the processes are working effectively

1.1.1. Current consultation arrangements exist through commercial arrangements

Telstra’s observation is that Carriers actively seek to maximise opportunities to conduct pre-build discussions to jointly develop greenfield sites for mobile facilities and establish those facilities as shared facilities.

Telstra has established processes, and agreed commercial arrangements with most Carriers (including VHA, Optus and NBN Co) to jointly develop greenfield sites in this manner. These processes and arrangements apply to both facilities and sites for facilities. Though these processes and arrangements vary between Carriers, they are detailed, and generally deal with:

- site identification and acceptance of the site;
- agreement on which party will be the lead Carrier (and ultimate ‘owner’ of the facility), and which will be the sharing Carrier (and ultimately access the facility under a grant of facilities access);
- the preparation of a development proposal in respect of the site;
- construction of the facility;
- obtaining all necessary permits, licences and consents (including from a relevant Authority or landowner);
- the location of each party’s equipment on the facility;
- arrangements in respect of the lease of the site (where neither party owns the freehold);
- circumstances in which sharing will not occur;
- the ownership interests of each party in the site, the facility and the equipment installed on the facility;
- the grant of facilities access (including the timing of the grant); and
- costs and charges involved in identifying the site and establishing the site as a shared facility.

These processes and arrangements usually apply reciprocally, meaning that for a given greenfield site, Telstra may be either the lead Carrier, or the sharing Carrier.

1.1.2. Current notice arrangements are in place including to RNFSAs, MCF and local planning regulations

Telstra notes that industry has well established practices in place to publicly notify other Carriers (and the general public) of proposed builds of mobile facilities on greenfield sites.

These practices include:

- updating the Radio Frequency National Site Archive (‘RFNSA’) with details of proposed locations of greenfield sites for proposed builds, which makes such information publicly available to all Carriers;



- notifying the MCF of proposed mobile facilities, who in turn provide this information to Carriers periodically;
- complying with notification obligations under the Mobile Phone Base Station Deployment Industry Code (C564:2011) where applicable; and
- the general public advertisement obligations required under local planning regulations.

Telstra’s experience is these existing notification practices are operating effectively and Carriers are generally well informed of proposed builds on greenfield sites by other Carriers. An additional notification obligation such as that proposed by the ACCC in the discussion paper, particularly when not specifically targeted to Carriers that are likely to be interested in exploring co-build arrangements, is unnecessary and liable to increase the time and expense associated with the establishment of new mobile facilities.

1.1.3. Existing consultation and co-build processes are working effectively

Telstra’s observations are the existing consultation and co-build processes between Carriers described above are working effectively, contributing to the high number of Level 3 (Design & Construction) applications that are ultimately approved by Telstra. The number of Level 3 applications submitted and approved (which includes applications that follow consultation and co-build processes) is set out in Table 1 below.

Calendar Year	Level 3 (Design & Construction) Application Submitted	Level 3 (Design & Construction) Application Approved
2018 (YTD)	269	266
2017	423	415
2016	452	443
<i>Table 1</i>		

In the few instances where Level 3 applications have not been approved, this is generally due to design issues or the application being withdrawn by the other Carrier, rather than being a reflection on the effectiveness of the consultation processes.

1.1.4. Carriers are agreeing improvements to pre-build consultations on greenfield mobile network facilities through AMTA

Telstra and other Carriers continue to engage collaboratively with each other to improve industry processes relating to pre-build consultations on greenfield mobile sites.

For example, following the ACCC’s Regional Mobile Issues Forum, VHA, Optus, TPG and Telstra have agreed a high level process to enable the timely sharing of short-term deployment plans in outer regional and remote areas. The objective has been to develop a process to encourage Carriers to proactively test interest from other Carriers for co-building opportunities. The high level process includes the sharing of deployment plans in an agreed format, and within a defined timeframe, so that other Carriers may consider co-building and therefore sharing costs associated with development and planning applications and building of infrastructure.

VHA, Optus, TPG and Telstra continue to develop and progress the detail of these processes with each other, together with AMTA. This clearly demonstrates that industry collaboration is delivering positive outcomes absent regulatory intervention or guidance.



1.2. Self-regulation of pre-build consultation processes is required to facilitate efficient and timely network deployment

Telstra considers that Carriers require inherent flexibility in exploring the opportunity to co-build facilities, and the terms on which such opportunities can be developed and progressed. This inherent flexibility is required given that discussions in respect of co-build facilities are deeply influenced by a range of practical and commercial variables including:

- the organisational budget imperatives and how the project fits within network planning for each Carrier;
- the type and nature of the proposed facility;
- the geographic location of the proposed facility;
- the present and future equipment that each Carrier proposes or anticipates to locate at the proposed facility;
- the estimate of costs and proposed sharing of those costs;
- the proximity and available capacity of nearby mains power supply for Carrier requirements or costs to establish or upgrade power supply when mains power is not available;
- the costs to establish and operate backhaul transmission infrastructure from the site to the Carrier's network core;
- the costs to establish and maintain physical access to the site for ongoing operations;
- the nomination of the lead Carrier and the sharing Carrier; and
- the nature of proposals, approvals and consents required.

Equally, Carriers require the flexibility to promptly discontinue consultation with other Carriers where consultations are unlikely to result in agreed co-build arrangements or will impede the timely rollout of the Carrier's network.

1.3. The Code can be updated to require pre-build consultation for mobile infrastructure

Telstra's view is that pre-build consultations facilitate increased upfront collaboration between Carriers before facilities are constructed. This collaboration has the potential to maximise tower sharing opportunities and reduce both the construction of facilities that can only accommodate limited equipment (e.g. of one Carrier only) and unnecessary facility 'over-builds'.

Telstra considers that the Code should be updated (reflecting current industry practice) to require Carriers to constructively conduct pre-build consultations to explore co-building opportunities for mobile infrastructure. However, Telstra remains of the view that the form, substance and timing of such consultations should be left to Carriers to self-regulate for the reasons set out in section 1.2 above. As such, section 4.5 should not be made a mandatory provision of the Code.



02 ‘Use it or lose it’ obligations for established facilities can be successfully implemented through commercial arrangements, and need not be incorporated in the Code

The ACCC has also sought submissions in relation to co-location arrangements for established eligible facilities (in other words, sharing of existing infrastructure). In particular, the ACCC seeks feedback on whether the Code should impose a ‘use it or lose it’ obligation and, if so, how that obligation would operate.

2.1. Access agreements between Carriers have commercial arrangements for reservations and queuing

Collaboration between access seekers and access providers is at a high level, and this is reflected in established commercial arrangements with respect to reservation of capacity on eligible facilities. These arrangements, which operate in conjunction with queuing policies developed under clause 2.3(1) of the Code, sufficiently cover the field and make including ‘use it or lose it’ obligations in the Code unnecessary.

Though commercial arrangements may vary between Carriers, arrangements involving Telstra (as access provider) typically:

- specify that Telstra will not reject access for the reason that Telstra has a plan to locate equipment at that space, unless the plan is to locate the equipment within a specific period of time from the requested access date (Telstra must have a request populated in the reservations database and, if it does not propose to locate equipment at the space within an agreed timeframe, Telstra must not reject access on the basis of its requirements after that agreed timeframe);
- provide an access seeker with a reservation of space for a specified period at the “approval in principle” stage; and
- specify that the reservation will lapse after a specified period of time, or the occurrence, or non-occurrence of an event (such as the failure to install equipment in the reserved space within a specified period of time).

Where these arrangements are documented in a Telstra agreement, the arrangements apply reciprocally, whether Telstra is the access provider or the access seeker.

Additionally, outside of express commercial arrangements, Telstra’s experience is Carriers are willing to, and often reach, bespoke arrangements with respect to exchanging space on facilities on mutually acceptable terms. These bespoke arrangements have included Telstra agreeing to reconfigure both its current and proposed equipment to accommodate the requirements of other Carriers in respect of the facility.

As noted, the commercial arrangements operate in conjunction with Telstra’s queuing policy. Under this queuing policy:

- Telstra may reserve space for itself on a facility where it has genuine plans for a specific future use of a facility;
- Telstra may update reserved space at regular intervals, or whenever a major new Telstra initiative is announced, or whenever a change to Telstra’s technology roadmap occurs;
- Telstra must submit an application through the ordering queue where it wishes to convert that reserved space, even if Telstra has reserved space on a facility; and
- all reservations should be cross-checked against the ordering queue and will be subordinate to any application for that space that is already in the ordering queue at the time the reservation was received.



2.2. Including ‘use it or lose it’ obligations in the Code risks unintended negative consequences

Telstra’s considers that a ‘one size fits all’ approach to reservations and queuing in the Code is not appropriate as it risks unintended consequences and will be unduly cumbersome to manage effectively.

Telstra is concerned that a prescriptive ‘use it or lose it’ regime would risk delays in network deployment. For example, should the Code prescribe a maximum reservation period, Telstra anticipates that most reservations from Carriers will be for the maximum period by default. In those circumstances, a Carrier’s reservation may be unreasonably long for a specific facility (resulting in delays in the use of that facility by another Carrier in the event that reservation ultimately lapses), or equally, may be unreasonably short (resulting in the unmerited loss of a Carrier’s opportunity to use the facility).

A Carrier’s requirements in respect of reservations and queuing will depend on a number of variables, including the nature of the facility, the location of the facility and the Carriers’ current and foreshadowed requirements in respect of that facility. In turn, this needs to be balanced against the legitimate requirements of other Carriers in respect of the same facility. As such, Telstra’s view is that it is better left to Carriers to agree on matters concerning reservations in their commercial arrangements and queuing policies having regard to the specific type of facility and each Carrier’s specific requirements for that facility. Importantly, this includes matters as to the term of any reservation and the circumstances in which that reservation will lapse.



03 The current Code is fit for purpose to enable access to facilities in the context of emerging technologies

Finally, the ACCC seeks submissions in relation to whether there are any emerging issues concerning access to facilities that could be addressed through the Code. In particular, the ACCC seeks feedback on whether any changes are required to facilitate the deployment of distributed antenna systems or 5G technology.

Existing arrangements under the Code are appropriate to facilitate the rollout of 5G (including small cell infrastructure), particularly in that they are sufficiently flexible so as to enable an accelerated deployment. Conversely, the introduction of any new requirements under the Code may discourage investment and slow the rollout of new technology. Telstra expects to observe a ‘spike’ in facilities access requests and sharing activity with the transition to 5G technology. This would be consistent with Telstra’s experience during the past 3G and 4G rollouts¹ and this past experience suggests that the current facilities access regime is fit to manage this deployment activity.

Further, Telstra considers that there is no need to amend the Code in respect of the deployment of distributed antenna systems (including sharing arrangements where these are appropriate) because effective industry solutions and commercial arrangements are in place. The MCF operates the Distributed Antenna System Memorandum of Understanding (of which Telstra is a signatory) for the co-operative use and operation of such infrastructure which is deployed and used by retail mobile network operators. These commercial arrangements take account of the retail mobile network environment and are appropriately flexible, having regard to the technical complexity of such systems.

¹ See Statement of Robert John Joice, 1 December 2016, paragraph [34]. Annex 2 of 6 to Telstra, *Response to the ACCC’s discussion paper in the domestic mobile roaming declaration inquiry*, 2 December 2016.



Appendix 1: Responses to the ACCC’s specific questions

#	Question	Telstra Response
1	Should the words ‘may choose to’ be deleted and replaced with ‘must’ in Sub-clause 4.5.1 of the Facilities Access Code?	<i>Telstra believes the Code can be updated to require pre-build consultation to occur. However, the substance, form and timing of such consultation should be left to self-regulation to facilitate timely and efficient network deployment.</i>
2	Should the words ‘including by public notice’ be inserted in to Sub-clause 4.5.2?	<i>No – current notice arrangements are in place, and include a combination of updating the RFNSA and notifying the MCF of proposed builds, complying with notification obligations under applicable Industry Codes, as well as public advertisement requirements under local planning laws.</i>
3	Should the co-location consultation process in Clause 4.5 of the Facilities Access Code be made a mandatory condition of the Code? If so, should it relate to all eligible facilities? If not, please specify the eligible facilities to which Clause 4.5 should apply?	<i>No – existing arrangements are working effectively. Additionally (and for reasons set out in section 1.2), the substance, form and timing of such consultation should be left to self-regulation.</i>
4	Should any of the co-location negotiation processes be changed? If so, why?	<i>No – existing arrangements are working effectively. Carriers are agreeing improvements to pre-build consultations on greenfield mobile network facilities through AMTA and the MCF facilitates a high level of industry collaboration.</i>
5	Do any of these co-location negotiation processes require further clarification? For example, should ‘reasonable’ in clause 4.5.2 of the Facilities Access Code be defined?	<i>No – existing arrangements are working effectively and a number of notification practices or obligations already exist.</i>
6	Are there any new processes that should be added to Clause 4.5, or any other part of the Facilities Access Code to promote co-location of eligible facilities?	<i>Yes – as noted above, the Code can be updated to require pre-build consultation to occur. However, the substance, form and timing of such consultation should be left to self-regulation.</i>
7	Should the Facilities Access Code impose a ‘use it or lose it’ obligation as a mandatory or non-mandatory Code condition. If so, should it apply to all eligible facilities and carriers using the facility? What time period should apply?	<i>No – existing commercial arrangements, which operate in conjunction with queuing policies developed under the Code, address processes relating to reservations.</i>
8	How would a ‘use it or lose it’ obligation operate? For example, should a carrier lose access to any	<i>Not applicable – see Telstra’s response to question 7.</i>



	portion of the facility that it does not use within the designated timeframe?	
9	Are there any improvements that could be made to the Facilities Access Code to further facilitate access to eligible facilities owned and/or operated by NBN Co?	<i>No – access to NBN Co facilities is working effectively. Telstra has commercial arrangements in place with NBN Co that enable facilities access [CIC begins] [CIC ends], are satisfied with these arrangements, and have not experienced any barriers to accessing eligible facilities. Telstra further submits that the Code should apply equally to all facilities owners/operators, as such specific amendments in respect to NBN Co would not be warranted.</i>
10	Are there any improvements that could be made to the Facilities Access Code to facilitate the deployment of distributed antenna systems?	<i>Telstra considers that there is no need to amend the Code in respect of the deployment of distributed antenna systems (including sharing arrangements where these are appropriate) because effective industry solutions and commercial arrangements are in place. Refer to submission section 3.</i>
11	Are there any barriers to accessing underground facilities, particularly leading to NBN POI sites and data centres? If so, how could the Facilities Access Code be amended to mitigate these barriers?	<i>Telstra is not aware of any barriers to accessing underground facilities, including to NBN POI sites and data centres. More generally, access and sharing arrangements for underground facilities raise fewer issues than for mobile infrastructure because of lower costs, faster deployment and more effective alternatives in defined situations (e.g. wireless transmission for short-haul).</i> <i>[CIC begins] [CIC ends].</i>
12	Are there any changes to the Facilities Access Code required to facilitate the roll-out of 5G technologies?	<i>No – the current Code is appropriate.</i>
13	Are there any other changes to the Facilities Access Code that are not covered in this Discussion Paper but which would facilitate access to eligible facilities?	<i>Telstra does not consider that changes are required to the Code beyond what has been discussed above in response to the Discussion Paper.</i>