

## **ACCC Draft Building Block Model Record Keeping Rule Telstra's response to the ACCC's draft BBM RKR**

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## 1. Introduction

Telstra welcomes the opportunity to participate in the draft Building Block Model (**BBM**) Record Keeping Rules (**RKR**) consultation process. In anticipation of updating and implementing the Fixed Line Services Model (**FLSM**) for the regulatory period 2014-2016, Telstra has reviewed and assessed the requirements for the provision of data and information in relation to Fixed Line Services (**FLS**).<sup>1</sup> Telstra highlights the following discussion points in respect of the draft BBM RKR.

## 2. Regulatory Framework

The BBM framework is intended to provide a degree of regulatory certainty to Telstra and its wholesale customers, including by locking in and avoiding the repeated revaluation of assets. As in the previous regulatory period, the asset base and capital and operating expenditures forecasts over that period were agreed and committed to on an *ex-ante* basis by the Australian Competition and Consumer Commission (**ACCC**).

This approach promotes the long-term interests of end-users and, in particular, encourages the efficient use of and investment in infrastructure by which FLS are supplied. It does so by creating and maintaining a stable investment environment. Under such a regulatory commitment by the ACCC, Telstra can efficiently manage its investment program within the investment expectations determined by the ACCC after public consultation with Telstra and wholesale customers.

While the *ex-ante* approach promotes the legislative criteria, an *ex-post* review of investment would not. To assess, at a later date, investments that have been made under a previous regulatory period would create greater uncertainty and instability in forecast methodology and planning processes, leading to an increase in investment risks and costs to Telstra and other parties. This in turn will have the likely effect of decreasing ongoing infrastructure investment, because the greater risk will make investment more costly, which is not in the interests of end-users. For the reasons discussed below, an *ex-post* review is likely to be difficult, which would add further risk and aggravate the effect such an approach would have on investment and the long-term interests of end-users more generally.

For these reasons, Telstra considers that the ACCC's request for Telstra's forecasts of costs and demand, and its *ex-ante* assessment of those forecasts, is an important part of the BBM approach. However, Telstra considers that the request for historic cost data, to the extent that this is used for some *ex-post* review of the value of Telstra's assets, would be contrary to the legislative criteria and, in any

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<sup>1</sup> Telstra cited number of practical difficulties with the use of RKRs in the context of a BBM (see Telstra's submission into pricing principles for fixed line services response to the ACCC's draft report 2010)

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case is superfluous given the fixed principles that prevent the value of Telstra's assets from being changed in the FLSM.<sup>2</sup>

### 3. Specific Responses to the Draft RKR

#### 3.1. Information Disclosure

Telstra has concerns about the potential disclosure of confidential information under the BBM RKR.

Some of the information that would be provided by Telstra pursuant to the BBM RKR is highly commercially sensitive. In particular, the disclosure of operating expenditure and capital expenditure forecasts would cause competitive harm to Telstra as rivals would be able to gain a greater insight into Telstra's expenditure patterns and areas of investment focus. In effect, releasing the forecast data would telegraph Telstra's commercial intentions to competitors and hinder Telstra's ability to compete in the market.

The disclosure of forecast data may also prejudice Telstra's position in commercial negotiations with suppliers and wholesale customers. This could affect Telstra's performance in financial markets and its dealings with analysts, investors and shareholders. Similarly, the release of Telstra's internal guidelines would offer competitors an insight into Telstra's internal processes. Telstra does not consider that the harm to Telstra's legitimate commercial interests from the disclosure of this information would promote competition or is otherwise justified under s 151BBUC of the Consumer and Competition Act (**CCA**).

Given the commercial sensitivity of the information provided under the BBM RKR, Telstra requests that if the ACCC receives a disclosure request under s 151BUA of the CCA, Telstra is provided with the opportunity under the information disclosure process to respond to any request and to consider how commercially sensitive information can be adequately protected.

#### 3.2. Rule 6: Actual Usage Data

Rule 6 of the draft BBM RKR would require Telstra to provide actual usage data for Wholesale Line Rental (**WLR**) services and Local Carriage Services (**LCS**). Telstra currently maintains quarterly records of WLR services by geographic band. Telstra also has records of total LCS minutes and LCS average call duration which can be provided to the ACCC under the RKR.

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<sup>2</sup> Telstra considers that the provision of supporting relevant internal decision-making documents including business cases, feasibility studies, forecast demand studies and internal reports and board resolution/management decisions relating to approval of the forecast capital and operating expenditure are sufficient.

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### 3.3. Rule 7: Historic Cost Data

Rule 7 of the draft BBM RKR requires Telstra to establish an electronic record of historic data including historic cost by vintage for each FLSM asset class and written down values by vintage for each FLSM asset class.

Telstra is of the view that the specified historic cost data is not necessary as the initial value of the Regulatory Asset Base (**RAB**) is a fixed principle which cannot be changed. Other fixed principles roll forward this “locked-in” RAB value over time and add forecast capital over the relevant regulatory period. These fixed principles remove a key source of uncertainty by precluding the periodic revaluation of Telstra’s Customer Access Network (**CAN**) and other network assets. This is consistent with recent legislative amendments to Part XIC that were intended to facilitate regulatory certainty.<sup>3</sup>

Furthermore, it may be the case that Telstra’s record of its historic cost of assets by vintage and its written down values are recorded in a way that is inconsistent with the ACCC’s forecast of capital expenditure by asset class for the previous regulatory period. For example, Telstra may, over time, change the asset categories it records capital expenditure to, revalue capital in its accounts or apply other accounting practices that are inconsistent with the approach to which the ACCC forecast capital expenditure in the previous regulatory period.

Identifying and addressing the potentially discrepancies between Telstra’s accounting practices under the Australian Accounting Standards and the ACCC’s forecasts in previous regulatory periods would place a considerable burden on Telstra. This burden would serve no real purpose in supporting the objectives of Part XIC.

Therefore, Telstra requests the ACCC review the necessity of draft rule 7.

### 3.4. Rules 8(a)-(b): Forecast Operating Expenditure and Capital Expenditure

Rules 8(a) and 8(b) of the draft BBM RKR would require Telstra to establish and maintain an electronic record containing forecast total annual operating expenditure specified for each FLSM asset class and forecast total annual capital expenditure specified for each FLSM asset class, respectively.

As part of its corporate planning and investment development processes, Telstra currently undertakes detailed and comprehensive capital and operating expenditure planning for a one-year time-horizon. Telstra develops forecasts for future years based on extrapolations of the one-year forecast.

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<sup>3</sup> “The overarching objective of the reforms to part XIC is to streamline regulatory processes and provide the industry with a greater degree of certainty in relation to regulatory outcomes.” Senator Stephen Conroy, 24 November 2010. <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansards%2F2010-11-24%2F0016;query=id%3A%22chamber%2Fhansards%2F2010-11-24%2F0000%22>

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Data on capital and operating expenditures are not disaggregated to the FLS asset class level specified in the draft BBM RKR. Telstra plans capital expenditure at the project level and operating expenditure at the business unit and activity level. However, in most circumstances it would be feasible for Telstra to map and compute capital and operating expenditures to each FLS asset class. Telstra is prepared to undertake this process to fulfil the requirements of rules 8(a) and 8(b).

Rule 8(i) of the draft BBM RKR would also require Telstra to provide any internal guidelines used by Telstra to assess the prudence of forecast capital expenditure and tendering or contracting out of capital expenditure projects. Prior to the beginning of the last regulatory period, Telstra held discussions with the ACCC on our internal capital management processes. Telstra believes these discussions were very productive and led to a clearer understanding of the methodologies and data requirements and would welcome the opportunity to brief the ACCC again.

### 3.5. Rule 8(c): Forecast Demand

Rule 8(c) of the draft BBM RKR would require Telstra to establish and maintain an electronic record containing forecast annual demand for Unconditional Local Loop Service (**ULLS**), WLR, total Services in Operation (**SIOs**), Public Switched Telephone Network (**PSTN**) OTA minutes, LCS minutes, LCS average call duration, and Line Sharing Service (**LSS**) SIOs.

Demand forecasts perform an important role in the BBM. Adopting appropriate demand forecasts is critical to ensuring the BBM complies with the legislative criteria governing pricing principles, including the legitimate commercial interests of Telstra and recovery of the direct costs of providing access to FLS. Telstra currently forecasts FLS demand for each of the required services, on a two-year time-horizon. While forecasts for ULLS, WLR and total SIOs are typically done on a national basis, they can be disaggregated into geographic bands. Telstra is capable of extending the detailed and comprehensive forecasts to include an additional year.

## 4. Conclusion

For the reasons outlined above, Telstra has concerns about the current form of the draft BBM RKR. In addition, Telstra seeks to ensure that its legitimate commercial interests are protected in the event of the disclosure of the reports, or extracts of the reports.

Telstra looks forward to working constructively with the ACCC in the consultation process of BBM RKR for the purposes of updating FLSM.