

## TELSTRA'S 2008 ULLS UNDERTAKING

### ACCESSING TELSTRA'S CONFIDENTIAL INFORMATION

#### Introduction

During the ULLS Undertaking process, Telstra will submit material which includes commercially sensitive, confidential information. This includes information within the TEA model and also supporting documents outside the model. Telstra wishes to keep that information confidential while providing access seekers and their external advisers with a reasonable opportunity to participate in the ULLS Undertaking process. Therefore, a practice which provides for access to confidential material on the one hand and reasonable protection of that information on the other is appropriate.

Telstra has already released the TEA model, available since February 2008, and many access seekers and external advisers have obtained copies of the model after agreeing and executing a TEA model undertaking. Telstra is now beginning to provide further supporting material for its ULLS Undertaking and has prepared a confidentiality undertaking for all such further information. Like the TEA model, there will be a separate undertaking for access seekers and an undertaking for external advisers, which will reflect the level of sensitivity of the information to be disclosed. This structure provides for both disclosure and reasonable levels of protection for Telstra's confidential information.

Further details of the confidentiality arrangements are provided below.

#### A. Accessing the Telstra Efficient Access model

- 1 From 25 February 2008, Telstra has provided to interested parties:
  - (a) two forms of confidentiality undertaking document pursuant to which access to the TEA model is given; and
  - (b) notification of Telstra's approval of individual access seeker employees ("**Access Seekers**") and external advisors to access seekers ("**External Advisers**").
- 2 Since 25 February 2008 therefore, approved Access Seekers and approved External Advisers have been able to enter into confidentiality undertakings with Telstra pursuant to which access to the TEA model is given.
- 3 These confidentiality undertakings were brought into existence at a time when access seekers, the Commission and Telstra were keen for Access Seekers and their External Advisers to gain access to the TEA model promptly - shortly after Telstra's 2007 ULLS Undertaking was filed and at a time when no other confidential supporting material had been lodged.
- 4 Given the commercial sensitivity of certain information contained in the TEA model, the fact that access seekers are Telstra's competitors and the TEA model contains a great deal of information which would be commercially beneficial to Telstra's competitors - and therefore its disclosure would be detrimental to Telstra, Telstra has prepared an 'access seeker' version of the TEA model (which is available to approved Access Seekers upon provision of an appropriate confidentiality undertaking to Telstra) and a complete version (which is available to approved External Advisers upon provision of an appropriate confidentiality undertaking to Telstra). Logically, this has necessitated two

separate confidentiality undertakings being prepared - one for Access Seekers, another for their External Advisers.

- 5 Since their provision by Telstra, numerous approved Access Seekers (and their approved External Advisers) have executed and returned the appropriate form of TEA model confidentiality undertaking, and have been given access to the TEA model. As both versions of the TEA Model have now been available for some months, Telstra encourages those who have been provided with but not yet executed and returned the appropriate form of TEA model confidentiality undertaking to do so promptly. A copy of the TEA model undertakings for Access Seekers and External Advisers is attached. Access Seekers and External Advisers should note that Telstra's approval of individuals is required before a confidentiality undertaking will be accepted and an appropriate version of the TEA model provided.
- 6 The TEA model confidentiality undertakings have the advantage of permitting use of the TEA model for the purposes of Telstra's ULLS Undertaking and, in addition, in relation to any arbitrations under Part XIC of the *Trade Practices Act 1974* involving the relevant access seeker. Telstra sees this as a means of facilitating the immediate desire for interested parties to gain access to the TEA model and as a means to assist access seekers in the arbitral context.

## **B Accessing other Telstra confidential information**

- 7 Telstra has filed submissions in support of its ULLS Undertaking and will file further material as necessary. Some of those documents are likely to contain material that is of a commercially sensitive and confidential nature.
- 8 Telstra has prepared a confidentiality undertaking which will permit access to the balance of that material to be made available to Access Seekers and/or their External Advisers – the Confidential Material confidentiality undertaking. Like the TEA model, there will be a version for Access Seekers and a separate version for External Advisers which will reflect the fact that some of the confidential material to be made available will have differing levels of sensitivity. The intention is that the confidentiality arrangements would provide External Advisers with access to a set of information the substance of which is equivalent in all material respects to that which the Commission receives from Telstra in support of the ULLS undertaking with Access Seekers receiving the less sensitive, yet still highly confidential, information. If there is information that requires a higher level of protection (which Telstra does not presently envisage) then Telstra will assess it on a case by case basis and raise the matter with the Commission as circumstances arise. Telstra has not to date placed the substance of any information lodged into this category.
- 9 Together, this new Confidential Material undertaking and the TEA model undertaking will enable access to all confidential supporting information which will be made available, or is to be made available in future, to External Advisers. Access Seekers will receive the bulk of that material, albeit sometimes in an altered form. The Confidential Material confidentiality undertakings for Access Seekers and External Advisers are attached.
- 10 These forms of Confidential Material undertaking will complement the TEA model undertakings which numerous Access Seekers and External Advisers have already executed. The Confidential Material undertakings are based upon the TEA model form, which was distributed to access seekers in February 2008, and incorporates commonly accepted terms.

- 11 So far, in addition to the TEA model itself, Telstra has lodged with the Commission confidential information in the form of an O&M Factor Study, Factor Calculation Excel documents and Access Network Costing Information. Public versions of the O&M Factor study and Factor Calculation Excel documents are already available on the Commission's website. Once approved External Advisers have executed the appropriate form of Confidential Material undertaking, they will be able to gain access to the confidential versions of the O&M Factor Study, Factor Calculation Excel documents and a redacted version of the Access Network Costing Information (although it should be noted that External Advisers already have access to the substance of the redacted information contained in the redacted Access Network Costing Information directly through the TEA model).
- 12 An additional feature of the undertakings is that Access Seekers and their External Advisers may use the confidential information they are enabled to access not only for the present ULLS Undertaking process but also for the purposes of a Part XIC access dispute an access seeker may bring against Telstra. This means that should the parties be in dispute in relation to the monthly ULLS charge, then no further confidentiality arrangements need to be put in place for the parties to debate the TEA model in that forum.

*Why have two different confidentiality undertakings?*

- 13 As mentioned above, Telstra distributed the TEA model confidentiality undertakings in February 2008. Those confidentiality undertakings were in the form attached (see para 3 above). This form of undertaking has already been executed by numerous Access Seekers and their External Advisers (while some have requested amendments to one or other of the provisions). Telstra made the TEA model confidentiality undertakings available at that time to allow prompt access to the TEA model by others in the industry.
- 14 Telstra does not consider that approved Access Seekers or External Advisers who have already agreed or executed confidentiality undertakings in relation to the TEA model should have to forego the benefit of those undertakings and re-execute or re-negotiate a new undertaking which will relate to both the TEA model and the further confidential supporting material that Telstra has or intends to file. For this reason, Telstra will allow those parties to retain the benefit of the TEA model confidentiality undertakings, and only ask the parties to sign one further undertaking which relates to access to Telstra's other confidential information.
- 15 The new Confidential Material undertaking will complement the TEA model confidentiality undertaking which numerous Access Seekers and External Advisers have already executed.
- 16 For consistency and simplicity, any approved Access Seeker or External Adviser who has not yet executed a TEA model confidentiality undertaking is encouraged to do so promptly, along with executing the appropriate form of Confidential Material undertaking for the balance of the confidential information to be made available to Access Seekers or External Advisers as the case may be. If approval has not yet been sought, or additional approvals are required, interested parties are encouraged to approach Ms Rebecca Mitchell of Telstra to facilitate the same prior to providing an executed a TEA model confidentiality undertaking or Confidential Material undertaking in appropriate form. Ms Mitchell can be contacted at [rebecca.mitchell@team.telstra.com](mailto:rebecca.mitchell@team.telstra.com) or by telephone on (02) 9298 4841.
- 17 Given the consistency between the TEA model confidentiality undertaking and the Confidential Material undertaking, and the fact that TEA model undertakings have already been executed by numerous Access Seekers and External Advisers, Telstra

considers that this is the best way to proceed from this point and represents a straightforward approach and process which should not place an unreasonable burden on Access Seekers or External Advisers, either from an administrative or legal perspective. However, if any Access Seeker or External Adviser believes that this process is cumbersome, or that it imposes an unreasonable burden upon them, Telstra would be pleased to hear those concerns and seek to address them.

*Will there be any information which only the Commission may access?*

18 Telstra does not presently envisage that there will be any information in this category.

*Advantages of Telstra's confidentiality structure*

19 As can be seen from the terms of the new Confidential Material undertakings, they will facilitate access to any confidential information lodged currently and in the future. The above structure permits Telstra to assess, on a case by case basis:

- (a) what information is confidential and ought to be subject to confidentiality arrangements, and what information need not be protected at all;
- (b) which persons (Access Seekers and/or External Advisers) should have access to that information; and
- (c) what information is of such particular sensitivity that only the Commission should have access to it.

20 At all times, Telstra will seek to balance the nature of the confidential material and the need for its protection against unauthorised use and disclosure, with the interests of having interested parties able to make fulsome comment on the issues involved in the Undertaking.

21 It is for these reasons that the Confidential Material confidentiality undertakings provide for the ability to nominate documents to come within their terms. These arrangements provide flexibility for the status of information submitted to the Commission to be considered on a case by case basis without requiring a blanket or arbitrary claim for confidentiality over information, which may not be necessary or appropriate.

22 Access Seekers and External Advisers will be familiar with this approach, which is traditional and typical in both the Part XIC context and in court proceedings.

23 Telstra considers this to be the best and most workable solution for all stakeholders. It is a simple and straightforward process. It does not, for example, have the complexity and administrative or legal burdens of the structure adopted by the Commission in relation to the WIK model, which required:

- (a) each access seeker or access provider to enter into a confidentiality undertaking with it;
- (b) each individual seeking access to the WIK model to also enter into a confidentiality undertaking in respect of the same information; and
- (c) the execution of a certificate of compliance in relation to the discharge of obligations under the confidentiality undertaking.

The Commission has required this process to be undertaken, each time the Commission releases a new version of the WIK cost model.

- 24 Telstra's arrangements mean that, between them, External Advisers and Access Seekers will have access to Telstra's confidential material put forward in support of its 2008 ULLS Undertaking on the basis outlined above, save only for a possibility (not presently envisaged) that the Commission might have sole access to information of particular sensitivity. This scheme facilitates the ability of parties to make fully informed comments on a timely basis, should they choose to do so.
- 25 Telstra sees it as very much in its own interests to provide interested parties with reasonable access to information submitted in support of its ULLS Undertaking to the greatest extent possible. Telstra considers that the terms of the confidentiality arrangements and the process by which they will operate will ensure such reasonable access while balancing the need to protect Telstra's confidential commercial information. Telstra encourages approved Access Seekers and approved External Advisers to execute the appropriate form of TEA model confidentiality undertakings and Confidential Material confidentiality undertakings in a timely fashion so as to gain access to the confidential material which is available, or to discuss any concerns they may have regarding these arrangements with Telstra. As yet unapproved interested parties are also encouraged to seek Telstra's approval expeditiously in order to facilitate the same.

Dated: 23 May 2008