

Telstra Multimedia Access Undertaking (Analogue) to the Australian Competition and Consumer Commission under Division 5 of Part XIC of the Trade Practices Act 1974 (Cth)

Date: 23 December 2003

Parties: **TELSTRA MULTIMEDIA PTY LIMITED** (ACN 069 279 072
ABN 82 069 279 072) having its registered office at Level 4, 400
George Street, Sydney 2000 (“**Telstra**”)

in favour of:

**AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION** being a body corporate established under section 6A
of the *Trade Practices Act 1974 (Cth)* (“**ACCC**”)

Recitals:

- A. Telstra is a wholly-owned subsidiary of Telstra Corporation Limited (“**Telstra Corporation**”). Telstra is the owner and operator of a hybrid-fibre coaxial cable network (“**HFC Network**”).
- B. Telstra holds a carrier licence and is a carriage service provider under *the Telecommunications Act 1997 (Cth)* (“**Telecommunications Act**”).
- C. Pursuant to Division 5 of Part XIC of the *Trade Practices Act 1974 (Cth)* (“**TPA**”), Telstra undertakes to the ACCC to comply with the terms and conditions specified in this Undertaking in relation to all standard access obligations that are applicable to Telstra in respect of the analogue subscription broadcasting carriage service via line links gazetted on 8 September 1999 (“**Declared Service**”).
- D. For the avoidance of doubt, the Undertaking Terms and Conditions do not apply to, and should not be taken as indicative of, any terms and conditions on which Telstra Corporation may decide to offer to comply with its standard access obligations in relation to any other services declared under the TPA.

Operative provisions:

1 Definitions and Interpretation

- 1.1 The following terms shall have the meanings set out below unless the context otherwise requires:

Access Agreement means the documents attached as Attachment B to this Undertaking collectively forming the *Telstra Multimedia Access Agreement - Analogue Services (with transition to Digital Services)*.

Access Seeker means a carriage service provider or content service provider who seeks the supply of the Declared Service by Telstra.

Analogue Services means the “Analogue Services” as defined in the Analogue Services Module attached in **Attachment B** to this Undertaking as part of the Access Agreement.

Undertaking means this undertaking to the ACCC under Division 5 of Part XIC of the TPA.

Undertaking Commencement Date means the date on which this Undertaking takes effect under clause 2.

Undertaking Term means the period from the Undertaking Commencement Date until the date **three years** after that date.

- 1.2 In this Undertaking unless the contrary intention appears:
- (a) the singular includes the plural and vice versa;
 - (b) a reference to an agreement or another instrument includes any variation or replacement of either of them;
 - (c) a reference to a Recital, Schedule or Attachment is a reference to a recital, schedule or attachment to this Undertaking and a reference to this Undertaking includes a Recital, Schedule or Attachment;
 - (d) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (e) the word person includes a firm, body corporate, unincorporated association or an authority;
 - (f) a reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and permitted assigns;
 - (g) all dollar amounts are expressed in Australian dollars;
 - (h) a reference to a period of time:

- (A) which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
- (B) which commences on a given day or the day of an act or event is to be calculated inclusive of that day;
- (i) an expression which is given a particular meaning in the Telecommunications Act or the TPA and which is not otherwise defined in this Undertaking has that meaning in this Undertaking;
- (j) except to the extent the Recitals define terms used in this Undertaking, the Recitals are not intended to have operative effect; and
- (k) Headings are included for convenience and do not affect the interpretation of this Undertaking.

2 Commencement and Duration

- 2.1 This Undertaking takes legal effect when all of the following have occurred (“**Undertaking Commencement Date**”):
- (a) the Undertaking is executed by Telstra;
 - (b) the Undertaking so executed is accepted by the ACCC under Division 5 of Part XIC of the TPA and either:
 - (i) any applicable appeal period in relation to the acceptance referred to in paragraph (b) has expired; or
 - (ii) if an appeal is lodged, there is a final resolution of that appeal and any subsequent appeals in a way which permits the Undertaking to take effect; and
 - (c) the undertaking given by Telstra Corporation and Telstra to the ACCC for the purposes of section 87B of the TPA, dated on or about 20 November 2002, to which a draft of this Undertaking was annexed, takes legal effect in accordance with its terms.
- 2.2 This Undertaking continues until the earlier to occur of:
- (a) the expiry of the Undertaking Term; or
 - (b) termination in accordance with the TPA.

3 Undertaking Terms and Conditions

- 3.1 From the Undertaking Commencement Date and during the Undertaking Term, Telstra undertakes to the ACCC that it will comply with:
- (a) Schedule A (Analogue Channel Allocation) to this Undertaking; and

- (b) the terms and conditions relating to the Analogue Services specified in the Access Agreement attached as Schedule B (Telstra Multimedia Access Agreement) to this Undertaking,

in relation to all standard access obligations that are applicable to Telstra under Part XIC of the TPA in respect of the Declared Services (“**Undertaking Terms and Conditions**”).

- 3.2 Nothing in this Undertaking is to be taken as an acknowledgment by Telstra that each and every part of the Analogue Services is subject to a standard access obligation applicable to Telstra under Part XIC of the TPA.

4 Notices

- 4.1 Any communications in respect of this Undertaking should be made in writing to:

Attention: Company Secretary

Address: Telstra Multimedia Pty Limited
Level 4
400 George Street
SYDNEY NSW 2000

Facsimile: 02 9230 0461

Copy to: Media Counsel

Address: Telstra Multimedia Pty Limited
Level 2
400 George Street
SYDNEY NSW 2000

Facsimile: 02 9223 5294

Execution page

SIGNED by)
as authorised representative for)
TELSTRA MULTIMEDIA PTY)
LIMITED in the presence of:

.....
Signature of witness

.....
Name of witness (block letters)

.....
Address of witness

.....
Occupation of witness

.....
By executing this Undertaking the signatory warrants that the signatory is duly authorised to execute this Undertaking on behalf of **TELSTRA MULTIMEDIA PTY LIMITED (ACN 069 279 072, ABN 82 069 279 072)**

Schedule A - Analogue Channel Allocation

1. Objective

- 1.1 This Schedule A sets out the procedure Telstra will use to allocate the Available Analogue Channels to Access Seekers during the Undertaking Term.
- 1.2 Capitalised terms in this Schedule A have the same meaning as in the Access Agreement, unless such terms are defined in the main body of the Undertaking.

2. Availability

- 2.1 Only the Available Analogue Channels will be available for allocation to Access Seekers.

3. Initial allocation

- 3.1 The Closing Date for the initial allocation of the Available Analogue Channels will be within 2 months after the Undertaking Commencement Date.
- 3.2 Not less than 1 month before the Closing Date, Telstra will publicly request Applications from interested persons by publishing a notice calling for Applications in one or more Australian national newspapers. In that notice, Telstra will at least:
 - (a) identify the Available Analogue Channels that are available for allocation;
 - (b) invite Applications;
 - (c) state the Closing Date; and
 - (d) state that further information, including Application Forms, can be obtained from Telstra.
- 3.3 Telstra will receive and process Applications in accordance with the terms and conditions set out in each Application Form.
- 3.4 Telstra will allocate each Available Analogue Channel in accordance with the terms and conditions set out in the Access Agreement (including the Analogue Channel Allocation Process).
- 3.5 Telstra will use all reasonable endeavours to ensure that the initial Analogue Channel Allocation Process is Completed within 4 months after the Undertaking Commencement Date.
- 3.6 Telstra must ensure that the initial Analogue Channel Allocation Process is Completed within 6 months after the Undertaking Commencement Date.

4. Subsequent allocation

- 4.1 At any time following the Completion of the initial Analogue Channel Allocation Process, Telstra may advertise that an Available Analogue Channel is available for allocation for the purposes of this Schedule A (“**Availability Date**”) unless an Access Agreement is in force in relation to that Available Analogue Channel.

- 4.2 Telstra will allocate that Available Analogue Channel in accordance with paragraph 3 of this Schedule A. The Closing Date will be not less than 1 week and not more than 8 months after the Availability Date.
- 4.3 Telstra will use all reasonable endeavours to ensure that any such subsequent Analogue Channel Allocation Process is Completed in respect of that Available Analogue Channel within 2 months after that Closing Date.
- 4.4 Telstra must ensure that any such subsequent Analogue Channel Allocation Process is Completed in respect of that Available Analogue Channel within 4 months after that Closing Date.

Schedule B - Telstra Multimedia Access Agreement - Analogue Services (with transition to Digital Services)

The following documents are attached as Schedule B to this Undertaking and comprise the Access Agreement:

- General Terms and Conditions;
- Profile Annex;
- Annex One (Dictionary of Definitions);
- Annex Two (Billing and Payment);
- Annex Three (Operations and Maintenance);
- Annex Four (IT Systems Interface Procedures);
- Annex Five (Analogue Channel Allocation Process);
- Analogue Services Module;
- Digital Services Module;
- Analogue Transmission Specifications; and
- Analogue Conditional Access Specifications.

Dated 23 December 2003

**Telstra Multimedia Access
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under Division 5 of Part XIC
of the Trade Practices Act
1974 (Cth)**

**Telstra Multimedia Pty Limited
(ACN 069 279 072,
ABN 82 069 279 072)
("Telstra")**

in favour of

**Australian Competition and
Consumer Commission
("ACCC")**

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