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Australian Competition and Consumer Commission

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Fixed Services Review - Declaration Inquiry

Your Reference

Our Reference IP 021402

Macquarie Telecom Pty Limited ("**Macquarie**") appreciates the opportunity to make this submission to the Australian Competition and Consumer Commission ("**ACCC**") in response to the ACCC's draft report concerning the above.¹ Macquarie supports the key draft decisions of the ACCC as set out in the Draft Report. In this submission, Macquarie provides comments on the following draft decisions:

- extending the declarations for network access services;
- extending the declarations for resale services;
- removing the CBD exemptions from the WLR and LCS service descriptions;
- extending the declarations for interconnection services;
- considering whether to commence a separate inquiry into declaring new services; and
- extending the declarations for the fixed-line services for another five years.

Each of these draft decisions is addressed in turn.

Extending the Declarations for Network Access Services

The relevant network access services are the unconditioned local loop service ("**ULLS**") and the line sharing service ("**LSS**"). Macquarie supports the ACCC's draft decision to extend the declarations for these services.

Telstra's copper network is the primary network on which fixed voice and broadband services are provided to end-users in Australia. As such, Telstra's copper network is a bottleneck for providing voice and broadband services to end-users. At the same time, Telstra is the major supplier of retail fixed voice and broadband services in Australia. On this

¹ ACCC, Fixed Services Review - Declaration Inquiry, Public inquiry into the fixed line services declarations, Draft Report, December 2013 ("**Draft Report**")

basis, Macquarie agrees with the ACCC's views that Telstra's copper access network will remain an enduring bottleneck at least until the national broadband network ("**NBN**") is rolled out and that by allowing access to Telstra's network, continued declaration of the network access services will be in the LTIE.

Extending the Declarations for Resale Services

The relevant resale services are the wholesale line rental ("**WLR**") service and the local carriage service ("**LCS**"). Macquarie supports the ACCC's draft decision which is to extend the declarations for these services except where they are supplied using NBN infrastructure.

Macquarie agrees with the ACCC's view that the declaration of resale services will allow access seekers to compete effectively in building or maintaining their customer bases. The declaration of these services fundamentally provides the opportunity for access seekers to offer end-users an alternative service provider to Telstra. Moreover, Macquarie agrees with the ACCC's view that there are limited substitutes for the resale services in supplying fixed voice services and that the declaration of the resale services will encourage efficient use of, and investment in, infrastructure. In particular, Macquarie notes that the declaration of the resale services should result in cost-based pricing which is essential for economic efficiency.

Macquarie also agrees with the ACCC's view that it is appropriate to exclude resale services provided using NBN infrastructure from the scope of regulation. Macquarie notes in particular that such services are essentially constructs of a copper-based, circuit-switched PSTN environment which are not relevant in the NBN, IP environment. Macquarie also notes that services supplied by NBN Co will be supplied on terms as set out in its Special Access Undertaking.

Removing the CBD Exemptions from the WLR and LCS Service Descriptions

Macquarie strongly supports the ACCC's draft decision to remove the CBD exemptions from the WLR and LCS service descriptions. This decision will remove a gap in the fixed services regulatory framework which has been exploited by Telstra to the detriment of end-users. The CBD exemptions did not matter when Telstra priced WLR services at the one price point irrespective of the geographic location at which they were provided. This changed in 2011 when the ACCC set a lower price for regulated WLR services and Telstra chose to maintain its existing (higher) price for non-regulated WLR services, i.e., those WLR services supplied in CBD areas. That is, Telstra was (and still is) able to exercise its market power and continue to maintain its higher WLR service charges in CBD areas while applying the lower regulated price for the supply of WLR services in all other areas. Macquarie's comments on various aspects of this draft decision are given below.

Telstra's Market Power

Relevant factors that enable Telstra to exercise its market power and charge a premium over the regulated price when supplying WLR services in CBD areas include:

- the absence of effective substitutes for the supply of WLR services, i.e., the supply of alternative services are not economically viable;
- the needs of CBD customers are satisfied by the supply of PSTN lines, i.e., such customers typically require a voice-only service; and



- Telstra's retail business is most likely to pick up those end-users who (because of excessive wholesale WLR service prices being passed on to them) choose not to acquire services from a non-Telstra retail service provider ("**RSP**").

Cost & Revenue Analysis

Macquarie notes the ACCC's cost and revenue analysis of examples of typical CBD customers as provided in the Draft Report. Macquarie considers that this analysis demonstrates very clearly that non-Telstra RSPs face a significant cost disadvantage in competing with Telstra for CBD customers who require PSTN lines. This cost disadvantage means that non-Telstra RSPs are not able to generate sufficient profit margins in serving such customers and consequently have little or no incentive to pursue business opportunities for this type of customer.

LCS Service Description

Macquarie notes the ACCC's draft decision to remove the CBD exemption from the service description of the LCS. While Telstra does not currently apply differential pricing between LCS when supplied in non-regulated CBD areas and regulated non-CBD areas, it may do so and this may be to the detriment of end-users. This would occur if the price for the regulated LCS was to be set by the ACCC at a lower level and Telstra maintained its prices for the non-regulated LCS. As such, Macquarie supports the ACCC's draft decision on this matter as this provides a safeguard against its possible exploitation by Telstra.

Telstra's Supplementary Submission

Macquarie also notes the supplementary submission of Telstra to the ACCC's inquiry on this matter dated 29 November 2013. In its submission Telstra essentially argues that the CBD exemption should not be removed for the following reasons:

- there is overwhelming evidence of infrastructure based competition within CBD areas;
- there are substitutes for WLR services; and
- Telstra's pricing of CBD WLR services does not hinder competition.

In response to Telstra's arguments, the ACCC should note that Macquarie (and other access seekers) has no desire whatsoever to pay Telstra its asking price for WLR services in CBD areas. If suitable alternative wholesale services were available at comparable prices they would be readily acquired by Macquarie. Further, if competition was effective Telstra would not be able to set prices for WLR services in CBD areas at the level that it currently does. The inescapable truth is that the CBD exemption provides an opportunity for Telstra to exploit and it does so because competition is not effective and this is to the detriment of end-users. Accordingly, Macquarie urges the ACCC to dismiss Telstra's arguments.

LTIE Assessment

In terms of the LTIE assessment against the statutory criteria as set out in the *Competition and Consumer Act 2010*, Macquarie makes the following comments in respect of the removal of the CBD exemption for WLR services.

- *Promotion of Competition*

Macquarie believes that the removal of the CBD exemption will stimulate competition in the supply of fixed voice services in CBD areas. This is because non-Telstra RSPs will be able to acquire the WLR service on cost-based prices which would be considerably below Telstra's current wholesale prices. This in turn would provide non-Telstra RSPs with an opportunity to offer services to end-users on profitable margins and at the same time offer end-users lower retail prices. That is, lower wholesale prices would at least in part be passed on to end-users. In addition, cost-based pricing for WLR services in CBD areas would enable non-Telstra RSPs to compete with Telstra on the basis of equivalent cost inputs in the provision of PSTN services to end-users located in CBD areas.

- *Any to Any Connectivity*

Any-to-any connectivity is a concept by which customers of one network can make (and receive) calls to (and from) customers of any other network. This concept has no particular relevance in the case of resale services because such services are not used to connect end-users of different networks.

- *Efficient use of and Investment in Infrastructure*

Macquarie considers that the removal of the CBD exemption is consistent with promoting the efficient use of, and investment in, infrastructure. This is because removal of the CBD exemption will result in efficient cost-based pricing for WLR services in CBD areas. This will remove the excessive returns that Telstra currently enjoys on the provision of such services. At the same time, efficient cost-based pricing will ensure that Telstra receives sufficient compensation when it supplies WLR services in CBD areas. That is, with appropriate pricing signals, Telstra will neither under, or over, invest in network infrastructure.

Extending the Declarations for Interconnection Services

The relevant interconnection services are the PSTN OA and the PSTN TA. Macquarie supports the ACCC's draft decision to extend the declarations for these services. Macquarie notes that the ACCC proposes to change the name of these services to fixed originating access service ("**FOAS**") and fixed terminating access service ("**FTAS**") respectively on the basis that the service declarations are technology neutral. Macquarie supports this proposal noting that the scope of the service being regulated should coincide with how the service is actually being used.

Macquarie notes that the FTAS is essential to enable the customers of a given fixed or mobile network to connect with the customers of another fixed network. That is, FTAS is necessary for an "A Party" on any fixed or mobile network to connect with a "B Party" where the "B Party" is on a fixed network which is different to that of the "A Party". Macquarie also notes that the FOAS is an essential requirement that enables RSPs to provide a range of calling services.

Given that a fixed network operator controls originating and terminating access to customers on its own network it is in a position to set uncompetitive terms for such access. As such, declaration of FOAS and FTAS is essential for competition.

Considering Whether to Commence a Separate Inquiry into Declaring New Services

The ACCC has made draft decisions on this matter in respect of three services. Macquarie's comments on each is given below.

Facilities Access Services

The ACCC has made a draft decision to give further consideration on whether to commence an inquiry into the declaration of facilities access services. The Draft Report states that the ACCC will give further consideration to this matter as part of its current inquiry into making final access determinations ("**FADs**") for the fixed-line services. In particular, the ACCC suggests that it may be appropriate to set terms and conditions for facilities access services which are ancillary to declared services through the FAD inquiry process. Macquarie also notes that the ACCC has expressed much the same view in its draft decision concerning its inquiry into the declaration of the domestic transmission capacity service.²

While Macquarie is encouraged by this, it is concerned that the failure to commence an inquiry into the declaration of facilities access services at this time may further delay the appropriate regulation of such services to the detriment of access services and their customers. Macquarie considers that the ACCC does not need any further submissions on this matter and should make the decision to commence an inquiry into the declaration of facilities access services and commence such an inquiry as soon as possible.

Wholesale Business DSL Service

The ACCC has made a draft decision that it would not commence an inquiry into declaring a wholesale business (symmetrical) DSL service. Macquarie concurs with the view of iiNet that "... *competition would be enhanced and barriers to entry reduced if the suite of declared services was expanded to include a resale service which allows high volume and/or symmetrical downstream services to be provided.*"³ Accordingly, Macquarie would support the commencement of an inquiry by the ACCC into declaring a business-grade (symmetrical) DSL service.

Fixed to Mobile Service

The ACCC has made a draft decision that it is not warranted to commence an inquiry into declaring a fixed to mobile service. Macquarie is disappointed with the ACCC's view on this matter and reiterates its view that there is a disconnect between the services that the ACCC regulates and the services that are provided by access providers.

Macquarie further reiterates its view that there is a need for a comprehensive review of Australia's mobile regulatory framework as set out in Macquarie's submission to the ACCC.⁴ In particular, Macquarie believes that in line with practices in a large number of jurisdictions, the ACCC should put in place a regulatory framework to promote the entry and competitiveness of mobile virtual network operators ("**MVNOs**") which may include mandated access to wholesale services together with obligations for network operators to provide services on regulated terms.

² ACCC, Domestic Transmission Capacity Service, An ACCC Draft Report on the review of the declaration for the Domestic Transmission Capacity Service, Public Version, December 2013

³ Herbert Geer, August 2013 submission, p. 8

⁴ Macquarie, Case for an urgent review of Australia's mobile regulatory frameworks, Letter to Michael Cosgrave, ACCC, 21 October 2013, (Reference 101301)



Extending the Declarations for the Fixed Line Services for Another Five Years

The ACCC has made the draft decision that it will extend the declaration of the fixed-line services for a period of five years. Macquarie supports this draft decision on the basis that it provides access seekers with a more certain operating environment which is thereby less risky. While the duration of terms including price for the fixed-line service is subject to a separate FAD inquiry, Macquarie submits that a five year service declaration sits comfortably with a FAD of two years. That is, a two year FAD reflects the period of commercial agreements and different end dates for the FAD and the service declaration eases the workload for the ACCC and industry.

Closing

Macquarie welcomes the opportunity to make this submission in response to the Draft Report. Macquarie reiterates the following key points arising from its review of the Draft Report:

- Macquarie supports the ACCC's draft decision to extend the declarations for the ULLS and the LSS.
- Macquarie supports the ACCC's draft decision to extend the declarations for the WLR service and the LCS.
- Macquarie strongly supports the ACCC's draft decision to remove the CBD exemptions from the WLR and LCS service descriptions as this will remove a gap in the fixed-line services regulatory framework which has been exploited by Telstra to the detriment of end-users.
- Macquarie supports the ACCC's draft decision to extend the declarations for the PSTN OA and the PSTN TA and to change the name of these services to fixed originating access service ("FOAS") and fixed terminating access service ("FTAS") respectively.
- Macquarie considers that the ACCC should make the decision to commence an inquiry into the declaration of facilities access services and commence such an inquiry as soon as possible.
- Macquarie is of the view that there is a need for a comprehensive review of Australia's mobile regulatory framework.

Please do not hesitate to contact me should you have any queries in relation to this matter.

Yours sincerely

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