



Submission by AAPT Limited (14 October 2011)

Public Version

in response to

ACCC issues paper titled

Inquiry into varying the exemption provisions in the final access determinations for the WLR, LCS and PSTN OA services



Introduction

1. AAPT Limited (**AAPT**) welcomes the opportunity to comment on the ACCC issues paper titled “*Inquiry into varying the exemption provisions in the final access determinations for the WLR, LCS and PSTN OA services*” (**Issues Paper**) dated September 2011.
2. AAPT commends the ACCC in taking the step to properly consider, and seek further information to determine, whether the current wholesale line rental (**WLR**), local carriage service (**LCS**) and PSTN originating access (**PSTN OA**) geographic exemptions should be removed (**Exemptions**).
3. AAPT considers that the facts and market information provided by industry, when considered in the context of the legislative criteria and framework, strongly supports the removal of the Exemptions. Accordingly, AAPT strongly urges the ACCC to vary the final access determinations for WLR, LCS and PSTN OA services (**FADs**) to completely remove the Exemptions.

Executive summary

4. AAPT considers that the Exemptions are and will continue to be detrimental to the long term interests of end users (LTIE) because, among other things, the Exemptions:
 - will not promote competition in the fixed voice market and instead will result in reduced competition; and
 - will not promote efficient use of, and efficient investment in, infrastructure.
5. Moreover, the Exemptions have not met the ACCC’s objective of encouraging investment in voice-capable DSLAM infrastructure and creating a wholesale market for supply of ULLS-based services that are substitutable for the WLR, LCS and PSTN OA resale services.



6. AAPT notes that the ACCC granted the Exemptions in heavy reliance on the ladder of investment theory. AAPT considers that while that theory has some merits, it has fundamental flaws. In any case, the principle of encouraging facilities based competition no longer has any application given investments in the legacy copper network (which will be decommissioned as the National Broadband Network (**NBN**) is rolled out) would clearly be inefficient. Accordingly, the ACCC's main basis for granting the Exemptions in the first place no longer exists (see AAPT's response to questions 4.1 and 4.2 below for further detail). Rather, the NBN creates an additional reason to support the removal of the Exemptions.
7. During the transition to the NBN, Telstra will have great incentive to firm up and expand its fixed line customer base in order to migrate them over to the NBN and pick off competing retail service providers. It is significant that AAPT and other competitors currently rely on Telstra's copper network to compete during the transition period before Telstra has to compete on the same basis as everyone else (see AAPT's response to questions 6.19 and 6.20 below for further detail). As it stands, there are already limitations on the market available to access seekers in the form of large pair gain systems (**LPGS**) and the deployment of new sub-exchanges which are impediments to ULLS access (see AAPT's response to question 3.2 below for further detail).
8. Sub-Exchanges and LPGS significantly reduce the number of prospective customers which access seekers can gain in an exchange service area (**ESA**). The creation of new sub-exchanges involves Telstra re-allocating a geographic portion (ie a set of distribution areas) within an existing ESA (main exchange) into a new sub-exchange. This may result in major delays in accessing Telstra's Telephone Exchange Business Access (**TEBA**) space, as according to AAPT's experience, Telstra only informs an access seeker about the new exchange after the access seeker has wasted time queuing at the main exchange building. In most cases, it will take an access seeker



twice as long to finally access the sub-exchange facility and this is only if TEBA space is actually available in the new exchange. In some sub-exchanges, no TEBA space is available (as they are much smaller than the main exchange buildings). If this is the case, an access seeker will have no means (besides WLR) of accessing the customers allocated to the new sub-exchange area. This is despite the access seeker having already installed a DSLAM and made significant investment in the main exchange, based on what was originally a larger contestable market. Moreover, the impact of LPGS and sub-exchanges will only get worse as AAPT has noticed that the numbers of both are growing. In light of this, keeping the Exemptions in place will only further facilitate Telstra to act on its incentive to weaken the competition.

9. Based on the above reasons, and the remainder of this submission, AAPT strongly urges the ACCC to vary the FADs to completely remove the Exemptions.

The Exemptions will have detrimental impact on competition

10. AAPT agrees with concerns expressed in the OECD Paper¹ that prematurely removing regulation could be harmful, including reversing developments of increased competition in the market. AAPT shares the concerns that premature removal of ex ante regulation on a geographically segmented basis can result in the following:

- unfair bundling of regulated and non-regulated products/markets;
- margin or price squeeze - Telstra is likely to have more scope to apply margin squeeze tactics (by either setting an access charge that is “too high” or by a retail price that is “too low” to allow a sufficient

¹ OECD (2010), “Geographically Segmented Regulation for Telecommunications”, OECD Digital Economy Papers, No. 173, OECD Publishing (**OECD Paper**). p 5.
<<http://dx.doi.org/10.1787/5km4k7mggw7f-en>>



margin for sustainable competitive supply of the downstream service)²;

- predatory pricing and cross-subsidisation - increased risk of cross-subsidies by Telstra between competitive and non-competitive areas could result in a reduction of competition in the “competitive areas” (because there is no ex ante regulation preventing discriminatory practices and cross-subsidies)³;
- under investment in regulated areas - it is possible that investment in areas which remain regulated (e.g., sparsely populated rural areas) will be adversely affected by geographic regulation⁴;
- geographic price differentiation - where national price averaging is the norm, at the wholesale and retail level, de-averaging the price may be necessary and this could further complicate price regulation of both wholesale access services and retail end-user services and increase uncertainty⁵; and
- refusal to supply wholesale services.

11. AAPT knows from firsthand knowledge and experience that some of the above concerns have already manifested to the detriment of competition. This supports AAPT’s view that the Exemptions should never have been granted as the market for wholesale supply of WLR, LCS and PSTN OA was never competitive to begin with, and to continue the Exemptions would clearly not be in the LTIE.

12. **Examples of unfair bundling** - AAPT notes for example that, [Start c-i-c]

² OECD Paper, p. 47.

³ OECD Paper, p. 47.

⁴ This is because the incumbent’s priority could become investment in areas open to competition to enhance its competitive prowess, and this could, in turn, result in competitive operators also focusing more attention to these areas rather than in rural areas, OECD Paper, p. 6.

⁵ OECD Paper, p. 6.

[Redacted text block]

13. As AAPT has previously asserted:

- The Exemptions alone will force access seekers to enter contracts that may limit their ability to leverage alternate suppliers and the benefits that may result from the FADs, resulting in price increases or lack of price decreases. This is clearly not in the LTIE.
- It is common knowledge in the industry that Telstra is utilising its market power to raise the WLR price in Exemption areas above the price in declared areas, despite there being no possible cost-based justification for such differentiation. [Start c-i-c] [Redacted text block]
- [Redacted text block] [End c-i-c] Telstra has argued it has rebalanced its prices to obtain a more efficient pricing structure by setting lower variable charges (such as call charges) and recovering a higher component of fixed costs through higher fixed charges (such as the WLR charge). However, AAPT considers that this is just cross-subsidisation between the competitive variable charges and the non-competitive WLR charges.
- The Exemptions clearly give Telstra the ability to force access seekers

to commit to "whole of business" deals for WLR (in both exempt and non-exempt areas) at a blended price higher than the determined price for WLR in non-exempt areas. This will lead to price increases for consumers and is further damaging to the LTIE.

14. The above circumstance pointing to anti-competitive conduct by Telstra provides strong impetus for the ACCC to remove the Exemptions and reinstall regulation. As noted in the OECD Paper: *“there will be need for vigilance regarding these risks, especially since **an operator may be able to use ‘bundles’ to margin squeeze competitors at the retail level (ERG, 2009). Hence it may be sensible to provide for pricing freedoms resulting from a withdrawal of ex ante regulation to be reversed and regulation reinstated should a market review reveal anti-competitive action, including deliberate margin squeeze**”*. [Emphasis added]

A wholesale market based on the ULLS is unlikely to emerge

15. The ACCC placed considerable weight on the ladder of investment theory which it relied on in forming the following views which underpinned the granting of the Exemptions:
 - increased competition at the wholesale level for line rental, LCS and PSTN OA services, (equivalent to Telstra’s WLR, LCS and PSTN OA services) was likely once access seekers had established the capability to supply fixed line voice services using their own equipment and the ULLS; and
 - ULLS-based competitors would have an incentive to provide wholesale services to other access seekers either to exploit unused capacity on their networks or to take advantage of economies of scale.
16. It appears to AAPT that the hopes and expectations the ACCC held with respect to the Exemptions have not been, and are unlikely to be, realised.



No ULLS-based wholesale market has emerged. This is because:

- The ACCC's decision was based on the mistaken view that the ULLS is capable of providing the same voice functionality as the resale services. The theory of pushing an access seeker up the next rung in the investment ladder only holds if the ULLS (which is above the resale services rung) can be used to offer products and services which are both technical and economic substitutes for WLR and LCS.
 - The ladder of investment theory has proven unreliable. In any case, AAPT considers it is now irrelevant in the context of the NBN environment (see AAPT's response to questions 4.1 and 4.2 below for further detail).
17. AAPT has always maintained that there is no real alternative to WLR where an end user demands a WLR-equivalent single-line, voice-only product. As detailed in AAPT's letter to staff of the ACCC dated 25 May 2011, stand-alone WLR competition has still not developed despite a decade of ULLS-based regulation. Moreover, the NBN rollout is now a reality and this is likely to further discourage if not freeze investment.
18. AAPT has (and understands other access seekers also have) no incentive to supply a ULLS-based, WLR-equivalent single-line, voice-only wholesale product because:
- it is simply not economically feasible to do so (refer to page 2 of AAPT's response to the ACCC's request for market information dated 18 August 2011 for further detail, "**RFI Response**"); and
 - voice services proposed to be provided via the ULLS are inferior in quality (eg SLAs, service quality, uninterrupted power source and ubiquity) to the traditional WLR and this cannot be substituted where customers demand the traditional WLR-type voice service.



19. AAPT acknowledges that there has been a growth in ULLS-based services provided by AAPT, but this growth is not a result of WLR being substituted for ULLS-based wholesale or retail offerings, but rather from a growth in demand for multi-line data and voice services by AAPT’s customer base (which comprises mainly business and wholesale customers rather than residential). [Start c-i-c] [REDACTED]
[REDACTED]
[REDACTED] [End c-i-c] However, where an end-users still requires WLR-equivalent services (ie a wholesale single-line voice only product), only WLR provided on a resale basis from Telstra can deliver. [Start c-i-c]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [End c-i-c]
20. It is AAPT’s view that, contrary to the ACCC’s expectations, the Exemptions do nothing to encourage efficient investment. This is because there is little chance that AAPT would invest in response to the increased WLR price in exempt ESAs. For if AAPT were to do so, Telstra would be able to just drop the price of WLR to the regulated price or lower, making it difficult for AAPT to compete with Telstra in a product that provides little or no margin.
21. As the Exemptions do not promote competition in the fixed voice market and instead will result in reduced competition and nor does it promote efficient use of, and efficient investment in, infrastructure, AAPT considers the correct and appropriate decision is for the ACCC to vary the FADs to completely remove the Exemptions.
22. In further support of its position, AAPT provides its responses to the ACCC’s specific questions raised in the Issues Paper below. Numbering of the questions is as per the Issues Paper.



Answers to ACCC questions

3.1 Do interested parties have any comments on the proposed ‘future with and without’ assessment?

AAPT considers that the key issue to be assessed in applying the ‘future with or without’ test is the extent to which access seekers can compete in the retail market for fixed voice services using the ULLS as wholesale input in the absence of regulated access to the WLR, LCS and PSTN OA.

In a ‘future with Exemptions’ assessment based on a scenario where there is no regulated access to WLR, LCS and PSTN OA in exempt ESAs, AAPT considers that an access seeker’s ability to compete in the retail and wholesale voice only markets would be reduced because:

- access seekers like AAPT are unable to provide a commercially viable single-line voice only product in competition to WLR, LCS and PSTN OA;
- Telstra will be able to use its market power to raise the WLR price in Exemption areas above the price in declared areas without any cost-based justification for such differentiation (which it has done) and engage in various conduct that is detrimental to competition (as set out at paragraphs 10 to 13 above); and
- access seekers’ competitiveness in the retail voice and voice and data bundled markets will be reduced in competitive exempt ESAs due to higher WLR prices and the lack of effective alternatives to WLR, LCS and PSTN OA.



3.2 Should the ‘future with’ exemptions scenario incorporate the existing conditions and limitations, as set out in the Tribunal’s Metropolitan Orders and FADs? If any variation is proposed, alternative conditions or limitations should be specified.

AAPT submits that it is open to the ACCC to conclude that, if broad, complicated, impractical or onerous conditions are required before it can be satisfied that the Exemptions should continue, the current Exemptions should be removed completely.

Unlike the old regime which involved the ACCC exercising an express power to grant an exemption on application, AAPT submits the Federal Court’s direction to the Tribunal in *Telstra Corporation Limited v Australian Competition Tribunal* [2009] FCAFC 23 at [150] that considering, “...an application [for an exemption] is to consider whether it should make an order ... and, in doing so, must at all times keep in mind whether the order could be made if appropriate conditions and limitations were imposed”, no longer applies to the present regime.

However, if the Commission is minded to continue the Exemptions, AAPT considers it should retain all the conditions and limitations aimed at addressing the many barriers to entry. In addition, the ACCC should include a condition that:

- the Exemptions do not apply to an access seeker if that access seeker can demonstrate any one of the following:
 - (a) it cannot retain its old resale services supply sources and conditions of supply;
 - (b) it cannot enter into a contract with alternative suppliers (or there are no alternative suppliers); or

(c) it has no business case to invest in its own facilities.⁶

- the Exemptions do not apply where an access seeker requires access to 5 or less voice lines for an end user;
- that the Exemptions do not apply in circumstance where an end-user cannot be supplied by way of the ULLS, in order to address the entry barriers imposed by LPGS and sub-exchanges (this is discussed in further detail below); and
- requires Telstra to inform access seekers about its intention to build, as well as the building of, a sub-exchange in a similar way that it informs access seekers about the deployment of LPGS.

As set out at paragraph 7 above, the number of LPGS being deployed and the creation of new Telstra sub-exchanges, both of which prevent access to the copper network (and therefore the ULLS), is increasing. Both these barriers to entry allow Telstra to retain and build up its fixed line customer base in order to migrate them over to the NBN.

Large pair gain systems

In *Chime Communications Pty Ltd (No 2)*⁷, the Tribunal found that, to deal with the pair gain barrier, it was appropriate that there be a condition to the effect that the Exemptions do not apply to an SIO in respect of which an end-user cannot be supplied by way of the ULLS. However in *Chime Communications Pty Ltd (No 3)*⁸, the Tribunal accepted Telstra's submission that the imposition of the condition would be disproportionately expensive and that any benefit to be derived from the condition would be outweighed by those costs and difficulties.

⁶ See OECD Paper, p. 55.

⁷ *Chime Communications Pty Ltd (No 2)* [2009] ACompT 2 (27 May 2009).

⁸ *Application by Chime Communications Pty Ltd (No 3)* [2009] ACompT 4 (24 August 2009) at[23]-[24].



AAPT submits that the ACCC is not bound by the Tribunal's finding. It has come to AAPT's attention that the number of lines affected by LPGS appears to be growing and can produce evidence of this. Given this and Telstra's incentives, as a vertically integrated operator (which is going to be structurally separated in the lead up to the NBN), AAPT urges the ACCC that, if it is minded to continue the Exemptions, to include a condition that the Exemptions do not apply in circumstances where an end-user cannot be supplied by way of the ULLS. This condition should also address the issue of sub-exchanges.

Sub-exchanges

Worse than LPGS, a sub-exchange can substantially reduce the number of prospective customers in an ESA which access seekers could gain by annexing a set of distribution areas from the main exchange and re-allocating those distribution areas to the new sub-exchange.

Telstra currently has no requirement to inform access seekers about sub-exchanges. Yet sub-exchanges give Telstra the ability to annex significant areas within an ESA rendering the affected customers un-addressable by access-seekers and thereby completely altering the economics underpinning an access seeker's business case that supported its investment in the main exchange.

At best, this can cost AAPT twice as much and take AAPT twice as long to provide services to prospective customers served by the sub-exchange. At worst, AAPT will have no access to the prospective customers residing in the distribution areas served by the sub-exchange (due to no TEBA space being available).

Examples of the entry barriers caused by sub-exchanges include circumstances involving:



- an access seeker queuing to access TEBA in a particular main exchange, only to later find out it must re-queue for TEBA access at the sub-exchange, resulting in time delays and additional investment;
- an access seeker, who has already made an investment decision to install a DSLAM in an exchange for the purpose of acquiring customers in that ESA, finds out later that it can only access the customers that have been ‘moved’ into a sub-exchange if it makes a further investment and installs a DSLAM in the sub-exchange (if possible);
- a sub-exchange is too small to accommodate access seekers’ equipment, because for example, Telstra’s equipment has taken up all the space – in this case, AAPT will not be able to gain access to those customers at all.

The time delays in queuing can be resolved by addressing the information asymmetry on the part of access seekers. That is, to prevent time wasted queuing at the wrong exchange building, Telstra should be required to inform access seekers about its intention to build, as well as the building of, a sub-exchange in a similar way that it informs access seekers about the deployment of LPGS.

Where an access seeker cannot supply customers in a sub-exchange via ULLS because of the lack of TEBA space, this can only be resolved by access to WLR and the inclusion of a condition that the Exemptions do not apply in circumstance where an end-user cannot be supplied by way of the ULLS.

If Telstra claims that the LPGS and sub-exchange condition described above is unworkable for the same reasons it presented to the Tribunal, then AAPT urges the ACCC to, for the sake of simplification, to instead

include a condition that the Exemptions do not apply to any ESA in which LPGS or sub-exchanges exist.

4.1 How much weight, if any, should the ACCC give to the ladder of investment theory in its ‘with and without’ assessment?

While AAPT agrees with the objectives of the ladder of investment theory, implementation of the approach has not yielded the desired outcomes for competition. While this is in part due to the ACCC’s reliance on the mistaken assumption that a wholesale market for supply of WLR, LCS and PSTN OA equivalent services would arise, the theory itself suffers from flaws.

AAPT agrees with the concerns raised by commentators about the effectiveness of the ladder of investment theory in promoting competition and investment, as set out in the Issues Paper. AAPT notes that one commentator claims that the implementation of the ladder of investment approach cannot “*possibly attain that goal of achieving the deployment of an alternative fixed access network, but rather, hinders it. Accordingly, EU regulators should stop pursuing this approach, not only for the legacy copper network, but most importantly for the new optical fibre networks.*”⁹

Criticisms aside, AAPT considers that the ladder of investment theory has no application in the context of the NBN roll out. Encouraging facilities-based competition over resale-based competition to push access seekers up the ladder will no longer be relevant since access to the NBN will be provided on an equivalent, wholesale only basis. In addition, to encourage investment (in particular, investments in DSLAMs for supply of voice

⁹ Fernando Herrera-González and Luis Castejón-Martín, “The impossibility of the ‘ladder of investment’ approach to regulation Issue”, *Economic Affairs*, Volume 31, Issue 1, pages 90–95, March 2011, p. 95. < <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-0270.2010.02056.x/pdf>>



only services) in the legacy copper network, which will eventually be decommissioned, would clearly be inefficient.

4.2 If the ladder of investment theory is adopted, how long should regulated access to the lowest ‘rung’ of the ladder (that is, resale services) be provided?

AAPT submits that if the ACCC is minded to continue to rely on the ladder of investment theory (which AAPT submits it should not) the ACCC should use the following extract from the Tribunal decision in relation to the original ACCC Exemptions decision as guide as to how long should regulated access to the lowest ‘rung’ of the ladder should be provided:

*“When a regulator decides to withdraw regulatory oversight at a certain rung of the ladder, it **needs to be confident** that those previously protected by the regulation will have an equality of opportunity to compete in the market, either by: (a) retaining their old supply sources and conditions of supply; (b) by entering into contracts with alternative suppliers; (c) by investing in their own facilities; or (d) by using excess capacity of other providers operating on the next rung of the ladder.”*¹⁰ [Emphasis added]

In addition the OECD Paper refers to the following guidance: In order to ensure that the ‘ladder’ can work, regulatory authorities may need to:

- Announce a plan showing when the "rungs" of the ladder will be available so that investors can plan ahead.
- Regulate wholesale prices so that operators receive increasing profit margins as they undertake increasing investments in wholesale products.

¹⁰ Application by Chime Communications Pty Ltd [2008] ACompT 4 (22 December 2008) at [52]



- Require incumbent operators to provide easy migration for customers between wholesale products, for example so that migration can be carried out on a large scale, it can be completed quickly, and that migration can be carried out with a minimal loss of service.¹¹

6.1 How does investing in DSLAMs/MSANs (in conjunction with purchasing the ULLS) allow access seekers to better serve their retail customers? Please give details.

While AAPT's investment in Hatteras DSLAMs allows the provision of innovative multi-lined MBE-based voice and high speed data products to AAPT's target customers, it adds nothing to the ability of access seekers to provide a standalone voice only line in competition with the WLR because AAPT cannot offer a comparable wholesale input.

6.2 On what service dimensions do resale-based access seekers compete in attracting and retaining retail customers?

AAPT agrees with the ACCC's views that customer service is a key service dimension on which resellers are able to compete with other retailers and that the availability of voice-only resale services will allow an access seeker to provide the full range of services required by their customers.

In AAPT's case, without access to competitively priced voice-only resale services (ie regulated to WLR and LCS), AAPT would not be able to provide its fixed voice and data bundle using LSS to meet all of the customer's requirements. This allows AAPT to be competitive in both the wholesale and retail market for the fixed line voice and data bundle.

Any alternative voice service provided via the ULLS will have different characteristics to WLR. Customers (eg wholesalers or businesses with

¹¹ OECD Paper, pp. 55-56.



multiple sites) need a ubiquitous service, which is the same across all exchanges (both technically and commercially).

6.3 How important is the availability of (wholesale) resale services for new and potential new retail service providers in entering retail markets? How important is the availability of those services for established retail service providers? Please give reasons, supported, if possible, by examples

As noted above, the fact that Telstra can increase prices in exempt ESAs and there is still no alternative supplier shows there is no substitutability for WLR (ie no competition). Therefore, the availability of competitively-priced voice-only resale services is extremely important in promoting competition at the wholesale and/or resale level.

For potential new retail service providers, AAPT considers that the availability of (wholesale) resale services is crucial. Due to “first-mover advantages”, consumers are likely to perceive the incumbent’s services (ie Telstra’s) as being of higher quality than that of the new entrant’s so that products are vertically differentiated. In this setting, resale-based entry at the initial stages of competition is essential for the new entrant to gain both market share and reputation, thus being successively able to invest.¹² As noted in the Issues Paper, the removal of such resale service could result in an increase in barriers to entry because the potential new entrant would have to enter the market at a higher rung on the ladder of investment theory, before having had an opportunity to learn about the market or build a reputation.¹³

¹² Alessandro Avenali, Giorgio Matteucci, Pierfrancesco Reverberi, “Dynamic access pricing and incentives to invest in alternative infrastructures”, Dipartimento di Informatica e Sistemistica, Università degli Studi di Roma “La Sapienza”, Via Buonarroti, 12 – 00185 Roma, Italia, July 2006., p. 5 < http://www.ingegneriagestionale.uniroma1.it/aiig2006/atti%20convegno/pdf/Avenali_Matteucci_Reverberi.old.pdf>

¹³ See Issues Paper, pages 29 and 53.



AAPT agrees with the view that because the decision to progress between rungs depends on the incremental profit, not on the absolute level of profit, it is likely to be more difficult for an operator already present on the ladder of investment to deploy its own access network, than it is for a completely new entrant.¹⁴ Accordingly, the availability of resale services for established retail service providers is extremely important.

AAPT considers WLR and LCS are essential access products. It is a base fixed line product that all customers need in some form or another. For example, even a large customer who has multiple ISDN based voice services nearly always also need WLR type services. Business customers will need a solution for all their sites. While an ISDN 30 may be the best solution for the head office, the branch office, shop or warehouse may need a single POTs. Most business customers do not want to go to multiple suppliers to meet all their communications needs.

AAPT has, in the past, been able to use LSS to provide competitive services. However this requires certainty that AAPT can get WLR at reasonable price and non-price terms to allow us to make decisions regarding investments in DSLAM infrastructure. Without this certainty, any competitiveness AAPT might have is likely to be reduced. Due to the price increases in exempt exchanges, the LSS-based services are now less competitively priced and are likely to have the effect of further reducing the usage of the DSLAMs at these exchanges. This is clearly not in the LTIE is an outcome directly contrary to the objectives of the ladder of investment theory.

6.4 How important are integrated product offerings, that is, the supply of a range of telecommunications services by a single supplier, to end-

¹⁴ Fernando Herrera-González and Luis Castejón-Martín, “The impossibility of the ‘ladder of investment’ approach to regulation Issue”, *Economic Affairs*, Volume 31, Issue 1, pages 90–95, March 2011, p. 95. < <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-0270.2010.02056.x/pdf>>



users? How significant is the availability of voice-only resale services in allowing access seekers to supply integrated product offerings? Please identify the types of customers that are most likely to require integrated product offerings and give detail about the services they require.

The ability to make integrated product offerings is very important to business customers.

Medium-sized and corporate businesses generally expect one supplier to deliver all their voice requirements – across multiple sites and of different sizes. Increasingly business customers expect data and voice solutions from the one supplier.

Without access to competitively priced voice-only resale services such as WLR and LCS, AAPT will not be able to meet all of its customer's requirements. For example, AAPT provides the preselectable voice services (using AAPT's own infrastructure) and competes strongly in this area, but needs WLR and LCS to be able to do this.

6.5 What market information is available, or could be made available, to assist the ACCC in assessing the importance of competitively-priced voice-only resale services in promoting competition at the wholesale and/or resale level?

The ACCC should obtain from Telstra information about any bundling requirements it imposes on customers seeking to acquire WLR services from exempt ESAs. AAPT understands that in the wholesale market at present, access seekers appear to be getting similar pricing from Telstra for WLR services (i.e. FAD prices in non-exempt ESAs, and a higher price in exempt ESAs). This means that in the wholesale market it is difficult for competitive carriers to provide preselect services on these WLR. Wholesale customers are just as likely to go to Telstra to get the



same price that AAPT gets from Telstra. [Start c-i-c] [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted] [End c-i-c]

AAPT also considers that the ACCC should review the impact of LPGS and Telstra’s practice in relation to sub-exchanges (see AAPT’s response to question 3.2 above) and assess the impact of this on competition within an ESA, given their numbers appear to be growing in numbers. The ACCC should also seek information about which sub-exchanges AAPT and other access seekers have a presence to facilitate any requirement on Telstra to inform access seekers.

6.6 Does the existence of spare DSLAM/MSAN capacity in an ESA create the potential for resale services to be offered by access seekers with their own infrastructure?

No. AAPT does not, and understands other carriers do not, and have intention to, sell a single line, voice-only WLR-equivalent ULLS-based services. Also refer to page 2 of AAPT’s RFI Response.

[Start c-i-c [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted] [End c-i-c]

Due to the price increases in exempt ESAs, the LSS based services are now less competitively priced and is likely to have the effect of further reducing the usage of the DSLAMS at these exchanges, which goes



against the very objectives of the ACCC in granting the Exemptions, one of which is to increase the use of existing spare capacity.

6.7 Are there any other conditions required to create the conditions for wholesale competition to develop?

As stated above, it is AAPT's view that the competition for WLR (ie single line voice only services) does not exist. ULLS cannot produce suitable substitutes, and given the NBN, the likelihood of this ever occurring is very remote.

6.8 What are the main reasons for access seekers' decisions to invest in their own DSLAM/MSAN infrastructure? What factors are taken into account in making the decision to invest? In your answer, please identify any factors considered to form barriers to investing and indicate how significant they are to the decision to invest.

AAPT's decisions to invest in DSLAM infrastructure is based on the prospect of improving its financial returns. [Start c-i-c] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [End c-i-c] Potential exchanges for DSLAM deployment are identified based on the volume of businesses in the area (demand) and the availability of DSLAM TEBA access, TEBA power, MDF cabling and competitively-priced backhaul (supply). AAPT has deployed a DSLAM in an outdoor cabinet and a commercial building to get around the lack of space and power in Telstra TEBA's. AAPT has also built fibre to exchanges, deployed microwave and used third party carriers to get backhaul to exchanges. Nevertheless, any problem with any of the supply factors can often make deployment uneconomic, such as LPGS and sub-exchanges (refer to AAPT's response to question 3.2 above for further details about LPGS and sub-exchanges).



6.9 What is the cost of installing a DSLAM/MSAN? What are the costs of operating a DSLAM/MSAN once it is installed? What are the costs of expanding the capacity of a DSLAM/MSAN by adding ports? By adding voice cards? What associated infrastructure and/or equipment (such as switching equipment) is required and what are the costs of that infrastructure?

[Start c-i-c] [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted] [End c-i-c]

6.10 What are the costs of supplying resale services (wholesale line rental, local carriage and PSTN originating access services)? Please give details of the cost components. What other factors are taken into account in making the decision to supply resale services?

Refer to AAPT's RFI Response.

6.11 What, if any, technical limitations exist on the supply of resale services? Please give details.

Technical limitations on the ability to supply resale services include:

- None of the DSLAMs currently deployed by AAPT are capable of providing equivalent PSTN voice services;
- ULLS-based voice service are inferior in quality of service, SLAs and ubiquity to the traditional WLR – access seekers are not able to guarantee the ULL will support ADSL/broadband quality due to the



definition of “ULLS Fault” adopted by Telstra and the minimum frequency that ADSL uses being higher than 3400Hz;

- loss of service due to a power failure at the customer’s premises; and
- supply is only possible if bundled with an Integrated Access Device (IAD) on the customer’s premises and a soft switch (plus other supporting infrastructure, like backhaul, routers, switches, etc).

6.12 What conditions are placed on the supply of resale services? Please give details. Why are these conditions imposed? If they are imposed for technical reasons, please give details.

As noted at pages 4 and 5 of AAPT’s RFI Response, [Start c-i-c] [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted] [End c-i-c]

6.13 How many wholesale suppliers of resale services operate in the exempt areas? Please provide numbers for each of the exempt ESAs, if possible, and name the suppliers of resale services.

AAPT does not purchase WLR-equivalent services from any other wholesaler, other than Telstra. Refer to pages 3 and 4 of AAPT’s RFI Response for further detail. Nor does AAPT wholesale WLR-equivalent services other than Telstra’s WLR. AAPT understands that Optus does not offer a single, voice only WLR-equivalent service for resale.

6.14 How do the prices of, and conditions that are placed on, the supply of resale services, vary among different suppliers? Please give details.

Refer to pages 4 to 9 of AAPT’s RFI Response.



6.15 How do the incentives for supplying voice-only resale services differ from those for supplying bundled voice and broadband resale services? Please give details.

Refer to page 2 of AAPT's RFI Response. As it is not economically viable for AAPT to provide a voice-only resale services on a single line, standalone basis, AAPT has little or no incentive to supply single-line, voice-only resale services on a wholesale or retail basis.

[Start c-i-c] [Redacted]
[Redacted]
[Redacted]
[Redacted] [End c-i-c]

6.16 To what extent do bundled voice and broadband services substitute for voice only services? Please comment in relation to both retail and wholesale markets.

AAPT considers there is no substitutability between bundled voice and broadband services and voice only services. If the customer wants a WLR-comparable single line voice only product, it has to be purchased via WLR purchased from Telstra.

6.17 How competitive are wholesale markets for resale products, including voice only and bundled voice and broadband services? Please give reasons.

As set out above, there is no competitive market for voice only services as Telstra is the only wholesaler. [Start c-i-c] [Redacted]
[Redacted]
[Redacted]
[Redacted] [End c-i-c]



- 6.18 How viable is a wholesale-only business model—where an access seeker supplies only resale services to other access seekers and does not supply retail services—as a business strategy? Please explain.**

AAPT is not currently pursuing a wholesale-only business model. [Start

c-i-c]

[End c-i-c]

- 6.19 How has the roll-out of the NBN changed the business strategies adopted by access seekers? For access seekers, please explain how your business strategy is affected by the NBN.**

AAPT considers that NBN will have a positive impact on its ability to sell wholesale services as in principle it would not be competing with a vertically integrated carrier which competes in the same retail market as AAPT. That said, the NBN is a long term project and the full impact will not be felt for a number of years. In the mean time, AAPT's business strategies will necessarily continue to consider the existing regulatory and competitive environment. In this respect, the equivalence and transparency obligations to be delivered via Telstra's structural separation undertaking is crucial to AAPT's and other access seeker's ability to continue to compete with Telstra.

The Exemptions and the rationale of encouraging ULLS based competition are no longer relevant in the NBN environment. All the Exemptions will do is distort access seeker's build and buy decisions and allow Telstra to broaden and deepen its dominant market share in the lead up to the NBN.

- 6.20 How commercially viable is a wholesale-only business strategy expected to be on the NBN? How does such a strategy compare with an alternative strategy of supplying only retail services on the NBN?**



What factors will affect the commercial viability of a wholesale-only business strategy on the NBN?

AAPT's considers that the wholesale market in the NBN world will likely be competitive and viable, due essentially to the removal of the vertically integrated competitor in the same markets.

A wholesale only business model is not AAPT's objective. AAPT intends to participate as retail service provider and a wholesale NBN aggregator.

6.21 How have the exemptions affected the prices, product range or quality of services received by retail customers? Has the overall impact been positive or negative for end-users? Please distinguish between customer groups if the impacts have varied.

[Start c-i-c] [Redacted text block consisting of multiple yellow bars]

6.22 How important are barriers to new entry in the exempt areas compared with new entry in the non-exempt areas? Please identify the barriers that exist. How will these entry barriers affect the level of competition likely to develop on the NBN?

As stated above, the Exemptions make investment in DSLAMs less possible for LSS based services as the costs (competitiveness) have now increased in exempt areas in comparison to non-exempt areas.



As mentioned in AAPT’s response to question 3.2 above, the barriers in relation to pair gains and sub-exchanging is growing. In addition, other existing entry barriers remain. For example, access seekers must queue to access exchange building and TEBA space. At some exchanges extensive power and/ or TEBA space upgrades are required by the carrier attempting to build. [Start c-i-c] [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] [End c-i-c]

Even in ESAs where AAPT already has a presence, there are barriers. [Start c-i-c] [REDACTED]
[REDACTED]
[REDACTED] [End c-i-c] However power restrictions imposed by Telstra mean that AAPT has not been able to expand.

6.23 Please comment on the appropriateness of the market dimensions described above for assessing the effects of the exemptions on the state of competition in relation to WLR, LCS and PSTN OA services.

AAPT agrees with Macquarie Telecom’s previous submission¹⁵ that there four separate market dimensions, namely:

- retail markets for voice only services;
- wholesale markets for voice only services;
- retail markets for bundled broadband and voice services; and
- wholesale markets for bundled broadband and voice services.

¹⁵ Maddox for Macquarie Telecom, “Exemption Determinations – Final Access Determination Submissions”, June 2011.



Retail and wholesale markets for voice only – AAPT disagrees with the ACCC’s views that the ULLS can provide equivalent voice services to those provided by Telstra and resellers of Telstra’s WLR and LCS services (or line rental and local carriage services purchased from alternative suppliers). AAPT considers that ULLS-based services are not substitutable for WLR and LCS in both the retail and wholesale markets for voice only services. Accordingly, the Exemptions are likely to be detrimental to competition in the voice only retail market and voice only wholesale market.

[c-i--c start] [redacted]
[redacted] [c-i--c start]

6.24 Please comment on whether the retail and wholesale markets for voice and bundled services should be considered as separate markets or a single market. Reasons should be provided for your answer.

See response to question 6.23 above.

6.25 Please comment on whether voice markets are a separate market to the market for bundled services or whether they form a single market. Reasons should be provided for your answer.

AAPT considers that there is a voice market separate to the market for bundled services. For example:



- WLR and LCS are the wholesale inputs for both a single line voice service only market or for a market for bundled services using LSS and PSTN OA ; and
- ULLS is the wholesale input for multi-line voice service market that it may or may not be bundled this with a data service depending on the number of line that are required. [Start c-i-c] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [End c-i-c]

6.26 How substitutable are mobile voice services and VoIP services for traditional PSTN voice services? Please comment on whether they should be included in the relevant market definitions.

AAPT does not consider that either mobile voice services or VoIP services are substitutes for traditional PSTN voice services for business customers. Businesses need a PSTN solution for customers wanting to contact them. VoIP and TDM voice *may* be comparable in the residential market, though VoIP is typically not powered from the exchange so requires battery back-up in power blackouts. However quality differences are more significant in the business market.

VoIP is considered inferior to traditional PSTN voice services. It is not comparable in circumstances where customers demand or require WLR style and quality of services (and a ubiquitous service). Business customers expect fast restoration times in the event of an outage. This means enhanced ULLs, which makes the economics of providing single-voice lines non-viable.



6.27 Please comment on whether voice markets, at wholesale and/or retail level, comprise separate residential markets and corporate/government markets.

As suggested in AAPT's response to question 6.26, AAPT considers that separate residential markets and corporate/government markets exist at both at the wholesale and/or retail level. Corporate and government require a much broader suite of products but nevertheless may still require WLR.

[c-i-c start] [REDACTED]
[REDACTED]
[REDACTED] [c-i-c
end]

6.28 Please comment on whether the exchange service area (ESA) represents the appropriate geographic dimension for assessing the effects of the exemptions on the state of competition in relation to WLR, LCS and PSTN OA services.

AAPT considers that the ESA does not represent the appropriate geographic dimension for assessing the effects of the Exemptions on the state of competition in relation to WLR, LCS and PSTN OA services because:

- it only serves to artificially dilute Telstra's market power by ignoring the commercial reality that a single ESA fails to provide the requisite economies of scale to justify the roll-out of a competitive wholesale offering, let alone the high operational and marketing costs of taking a competitive retail offering to market, nor the rollout of a competitive wholesale offering;



- even if a wholesale market were to emerge in certain ESAs in response to anti-competitive conduct by Telstra, the commercial reality is that it is not workable for access seekers to obtain wholesale inputs on an exchange by exchange basis; and
- the removal - on a geographically segmented basis - of measures that prevent discrimination and anti-competitive behaviour may in fact have the perverse effect of reducing competition in those areas – refer to paragraphs 10 to 13 above for more detail.