



Submission by AAPT Limited (11 May 2012)

to

Australian Competition and Consumer Commission

**Inquiry into varying the final access determinations for the
WLR, LCS and PSTN OA – where these services are
supplied over the NBN -**

Discussion paper, dated April 2012



Introduction

1. AAPT Limited (**AAPT**) welcomes the opportunity to comment on the Australian Competition and Consumer Commission (**ACCC**) discussion paper titled "*Inquiry into varying the final access determinations for the WLR, LCS and PSTN OA – where these services are supplied over the NBN*", dated April 2012 (**Discussion Paper**).
2. AAPT understands that Telstra has applied for, and the ACCC is considering agreeing to, a variation to the final access determinations for the WLR, LCS and PSTN OA (**FADs**) to exempt Telstra from the requirement to provide those declared services where those services are provided over the National Broadband Network (**NBN**), until March 2013 (**Exemption**). According to Telstra, the Exemption will mainly impact NBN greenfields estates where Telstra's customer access network will not operate as an alternative to NBN fibre services offered during the NBN roll out.
3. Given the experiences of the past, which the ACCC is no doubt familiar with, AAPT is always uneasy when the incumbent service provider, Telstra, seeks an exemption from regulation that could (even remotely) give it some form of competitive advantage over its competitors.

Should the proposed Exemption be provided?

4. In AAPT's view, the proposed Exemption is unlikely to promote the long term interests of end-users (**LTIE**) and should be not agreed to by the ACCC.
5. As the ACCC notes in the Discussion Paper, the WLR, LCS and PSTN OA service, together, allow access seekers to provide end-users with a fixed voice service package to make local, national, long-distance, international and fixed to mobile telephone calls (**Fixed Voice Service**). Accordingly, the proposed Exemption (if provided) effectively means that Telstra will not be required to



provide Fixed Voice Services on the NBN to its wholesale customers until March 2013.

6. Telstra has claimed that although it will be able to provide an interim retail voice service in NBN greenfield estates developed to be compatible with the NBN, it will not be able to provide WLR, LCS, and PSTN OA wholesale voice services before it launches its mass market NBN wholesale products in September 2012. In AAPT's view, this is yet another example of how Telstra currently has strong incentive and ability to favour its own retail arm and act in a non-equivalent manner in respect of its wholesale customers.
7. While it is open to a retail service provider to contract directly with NBN Co to gain access to the NBN, this does not equate to access to a resale voice service. Rather, an access seeker would need to invest in their own infrastructure in order to provide an NBN-based voice service in circumstances where there may not currently be a business case for such investment. The upshot is that the NBN greenfields estates market could effectively become foreclosed to smaller retail service providers or new entrants during the period of the proposed Exemption. Despite the short term nature of the proposed Exemption, this is just another opportunity for Telstra to further entrench its position in the market during the uncertain period of transition to the NBN. In this regard, AAPT does not consider that the proposed Exemption would promote the LTIE and should be not agreed to by the ACCC.
8. If the ACCC is still minded to agree to the proposed Exemption, then it should be clarified that if there does happen to be any PSTN line in a NBN greenfield estate (for whatever reason), then Telstra is still obliged to provide a WLR, LCS and PSTN OA services over those PSTN lines. This clarification is set out in AAPT's response to question 4 below.



Answers to ACCC questions

Below is AAPT's response to some of the ACCC's specific questions set out in the Discussion Paper.¹

- 1) Should the proposed variation expire at a time by which Telstra should reasonably be expected to have its wholesale voice solutions available for supply over the NBN, being 31 March 2013? If not, what is an appropriate time period to exclude the application of the category A SAOs for the provision of WLR, LCS and PSTN OA services over the NBN?

According to the Discussion Paper, Telstra intends to supply its mass market NBN wholesale products by September 2012 but has requested the Exemption operate until March 2013 to accommodate any delays in the release of these services. AAPT considers that the proposed Exemption (if provided) should not be in place for a period longer than the end of September 2012 and certainly should not be for a period longer than the end of 2012 (this buffer should be sufficient to accommodate any delays in the launch date).

- 2) Should the proposed variation allow that the category A SAOs still apply to PSTN OA special services supplied over the NBN?

Yes, PSTN OA special access services (which include '13''1300' numbers (charged at local call rates) and '1800' numbers (toll free)), should be carved out from the scope of the proposed Exemption.

- 3) Should the proposed variation apply to NBN greenfield estates or should it apply to all NBN estates that are, or will be ready for service before 31 March 2013?

¹ Numbering is as per the Discussion Paper.



AAPT considers that the proposed Exemption (if granted) should only apply to NBN greenfield estates and only where there are no coppers services available within that estate or in the surrounding area.

- 4) Do you agree with the ACCC's proposed definition of an NBN greenfield estate? Please provide reasons.

AAPT considers that the ACCC's proposed definition of an NBN greenfield estate should be amended as follows:

NBN Greenfield estates means new developments that can be either broadacre or infill premises connected to the NBN and where there are no coppers service available within that estate or in the surrounding area.

- 5) Comment on the appropriateness of the market dimensions described above for assessing the impact of the proposed variation.

AAPT considers the relevant markets set out by the ACCC are appropriate.

- 6) Do you agree with the ACCC's application of the section 152BCA(1) criteria for making the proposed variation? Please provide reasons.

As set out above, AAPT considers the proposed Exemption is not likely to be in the LTIE.

- 8) What impact will the proposed variation have on NBN access seekers who are unable to obtain an NBN wholesale voice service from Telstra? How many NBN access seekers would be likely to request a wholesale voice service from Telstra to service NBN end users prior to September 2012?

AAPT considers that the proposed Exemption is likely to adversely impact Telstra's wholesale customers who purchase resale Fixed Voice Services as follows:



- *they could effectively be locked out of NBN greenfield estates unless they have made a separate contract with another wholesale provider for the supply of Fixed Voice Services (if one exists); and*
- *given the Exemption is drafted to take effect immediately on the date the proposed variation is made, they are likely to have insufficient time to make arrangements for supply from an alternative service provider, thereby endangering the relationship with their customers or potential customers.*