

The logo for Optus, consisting of the word "OPTUS" in a bold, teal, sans-serif font.

Submission in response to
ACCC Draft Decision

**Inquiry into final access
determination for fixed
line services**

Public Version

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INTRODUCTION

1. Optus welcomes the opportunity to respond to the ACCC's Inquiry into the final access determination for fixed line services – Draft Decision. The ACCC is proposing a nominal rollover of existing fixed line services prices until 30 June 2024. However, the ACCC does not propose considering FTAS pricing in isolation of other regulated fixed line services, although it acknowledges that pricing relativities between interconnection services (FTAS and MTAS) may require holistic consideration in future.
2. The ACCC does not propose making any new fixed principles and proposes maintaining the existing non-price terms as a regulatory fallback, if needed. The ACCC considers that this approach will promote price stability over the remainder of the transition to the NBN and reduce the regulatory burden imposed by a full and detailed FAD inquiry.
3. Optus supports this approach and notes that price stability over the remainder of the transition to the NBN will continue to encourage efficient use of infrastructure and promote competition in downstream markets. This will continue to promote the long-term interests of end-users.
4. Optus notes the ACCC does not propose addressing pricing relativities of the FTAS and MTAS interconnection services as part of this inquiry. Optus considers the ACCC should commit to considering pricing relativities of these services in future.
5. Optus further supports maintaining the existing non-price terms as a regulatory fall back and does not see a need for new fixed principles to be developed for the duration of the FADs.
6. Optus considers that the ACCC's proposed approach to the FADs in a time of significant fixed line transition is appropriate. It is unlikely otherwise, that significant benefits would flow from the cost and time involved in a full and detailed FAD inquiry. This is a practical approach and we note the ACCC retains the right to initiation a variation to a FAD if warranted.
7. We consider the approach strikes the right balance in the existing circumstances to promote the long-term interests of end-users.

COMMENTS ON THE ACCC'S DRAFT DECISION

8. In its draft decision on fixed line Final Access Determinations (FADs) the ACCC proposes the following:
 - (a) That prices rollover on current terms until 30 June 2024;
 - (b) That the ACCC will not make new fixed principles to cover the full period of the new FADs;
 - (c) That FTAS pricing will not be considered separately at this time but that relativities between interconnection services may be considered in future; and
 - (d) That current non-price terms and conditions be maintained until 30 June 2024.
9. The ACCC considered the above approach would promote price stability over the remainder of the transition to the NBN.¹

Rolling over the existing FAD prices maintains certainty and price stability

10. The ACCC proposes in its draft decision that the prices for regulated fixed line services in the existing FADs should be rolled over on the same terms to apply until 30 June 2024.
11. The ACCC considers that maintaining existing fixed line prices in nominal terms is in the LTIE because it provides price stability to access seekers in the period to the completion of the NBN rollout. The ACCC notes that there could be potentially significant regulatory costs to industry if the ACCC was to undertake a full reconsideration of the FLSM at this time. Rolling over prices will ensure that access seekers and end-users are not adversely impacted by significant price changes during this period.²
12. The ACCC doesn't propose setting a mid-term price review for these FADs. The ACCC states it would be an unnecessary regulatory burden on the industry to require a mid-term price review, although it notes it does retain the discretion to initiate a variation inquiry into the FADs if it considered it necessary. The ACCC notes that any decision to do so would be informed by consultation with stakeholders.³
13. Further the ACCC stated it does not intend to make new fixed principles to cover the full period of the new FADs. The ACCC notes that there is some uncertainty about whether the declarations for all of the fixed line services will be extended past their current expiry date and hence whether future FADs for these services will be required. The ACCC notes there will be limited users of Telstra's copper network in future and the ACCC flagged its intention is to provide early guidance to industry of its approach to pricing fixed line services for future FAD periods.⁴
14. Optus supports the proposed rollover of current fixed line nominal prices and proposed duration of the fixed line FADs. Optus considers that this will, as noted by the ACCC, promote price stability and regulatory certainty over the remainder of the NBN rollout. This will ensure that competition continues to be promoted in downstream markets and the efficient use of infrastructure in the remaining transition to the NBN.

¹ ACCC, Inquiry into final access determinations for fixed line services - Draft Decision, August 2019.

² ACCC, Inquiry into final access determinations for fixed line services - Draft Decision, August 2019, p. 18.

³ ACCC, Inquiry into final access determinations for fixed line services - Draft Decision, August 2019, p. 20.

⁴ ACCC, Inquiry into final access determinations for fixed line services - Draft Decision, August 2019, p. 22.

15. Optus notes the ACCC's proposed approach to fixed principles and considers that early guidance on future pricing for fixed line services will be welcome. The ACCC must consider in future how it will approach pricing for any remaining services supplied over Telstra's copper network in rural areas where the network is not being switched off and replaced with fixed-line NBN services.
16. Optus does not consider there is a need to remake the fixed principles at present, and notes that the ACCC retains the discretion to initiate a variation in the FADs if required in future prior to their expiry.
17. As Optus noted in its submission to the Consultation and Position Paper, a departure from the traditional cost-based approach, with a full and detailed assessment of methodology, costs and inputs, is warranted in these circumstances. The resources and time involved in such an inquiry process could be significant. As such, a nominal rollover of prices will promote the LTIE by providing a timely resolution for prices, as any potential benefits may not outweigh the resources and time involved otherwise in a detailed inquiry.
18. Optus considers the proposed approach in the current circumstances strikes the right balance in taking into account the burden and time necessary for a full and detailed FAD inquiry, with an outcome that will promote the long-term interests of end-users and is warranted in these circumstances.

Interconnection pricing must be considered in future

19. The ACCC has considered the concerns raised by Optus and VHA regarding current FTAS pricing and relativities with other interconnection services (namely, MTAS). In response to the Discussion Paper, Optus noted that pricing for interconnection services would need to be considered further in future and that prices should be set taking into account relativities between the two interconnection services or otherwise this could lead to inefficient decisions and outcomes.⁵ We note VHA argued in response to the Discussion Paper that there are good grounds for examining whether the FTAS rate should be lowered and the rates set appropriately relatively to each other, or otherwise it could lead to a distorted outcome.⁶
20. In contrast, Telstra argued that the relativity between FTAS and MTAS prices should not be a key driver of the current fixed line FAD inquiry. However, Telstra also acknowledged that the relativities between FTAS and MTAS would become relevant in the medium term (3-5 years), when there is a common IMS. Telstra considers that at that time pricing of FTAS and MTAS should be considered more holistically.⁷
21. Optus notes the ACCC's view is that at present it is not appropriate to review the FTAS pricing in isolation of other regulated fixed line services provided over Telstra's network. The ACCC considers that to review FTAS in isolation may risk unduly advantaging some access seekers over others and it supports a stable pricing environment over the medium term to reduce the risk of the access provider over- or under-recovering their costs.⁸

⁵ Optus, Submission in response to ACCC Consultation and Position Paper – Inquiry into final access determinations for fixed line services, April 2019, p. 6.

⁶ VHA submission, Inquiry into final access determinations for fixed line services, consultation and position paper, April 2019, pp. 2-3.

⁷ Telstra, Telstra submission to ACCC fixed line services FAD consultation and position paper – supplementary submission, p. 2.

⁸ ACCC, Inquiry into final access determinations for fixed line services - Draft Decision, August 2019, p. 17.

22. The ACCC noted that the FTAS is technology neutral and applies to the termination of calls to a geographic numbers on fixed line networks (including the legacy copper network or the NBN). The ACCC considers this means the FTAS is likely to remain an important bottleneck service event after the migration to the NBN is complete. On that basis, the ACCC considered it may be appropriate once the NBN migration is complete to consider whether to separate out consideration of the FTAS from other copper-based declared fixed line services and that it may then be appropriate to consider FTAS and MTAS together, including questions of declaration and pricing.⁹
23. Optus notes it would seem there is common recognition amongst industry that the relativities between FTAS and MTAS warrants consideration (although differing views perhaps as to when and how that takes place). Optus included reasons in its submission to the Consultation and Position Paper as to why the pricing for interconnection services should be considered in future. In particular, that pricing that does not take into account the relativities between the two interconnection services and the interaction between fixed line services and mobile services, could result in inefficient investment decisions and outcomes for end-users.¹⁰
24. Optus considers the FTAS clearly does warrant separate consideration to other legacy copper-based regulated fixed line services, given the technology neutral nature of the service and that it will remain an essential bottleneck service on the NBN. However, given that the existing regulated fixed line services are currently in transition to the NBN, it is likely not suitable timing in the current inquiry to consider the pricing relativities between FTAS and MTAS. Therefore, holistic consideration of the relativities between FTAS and MTAS should be done as part of a broader consideration the ACCC must do pricing fixed line services in future.
25. Optus supports this approach and requests that the ACCC clearly acknowledge in the final FAD decisions that it will consider the pricing relativities of interconnection services in future.

Non-price terms should remain a regulatory fall-back

26. The ACCC's draft decision is that the current non-price terms and conditions should be maintained until 30 June 2024. The ACCC states it is not aware of any material issues with the existing non-price terms and considers maintaining the same terms will continue to promote the LTIE.
27. Optus supports the ACCC's draft decision to maintain the existing non-price terms and conditions for regulated fixed line services. As Optus noted in its submission to the ACCC's Consultation and Position Paper, the non-price terms were subject to detailed consultation when first developed and no substantial changes have occurred in the supply of these regulated services that suggest a change in the non-price terms is warranted.¹¹
28. Optus considers that undertaking a detailed regulatory review of non-price terms would not lead to any significant benefit that would outweigh the regulatory burden of such a review. Therefore, Optus considers that maintaining the same terms as a fall back for access seekers if necessary, will continue to promote the LTIE.

⁹ ACCC, Inquiry into final access determinations for fixed line services - Draft Decision, August 2019, p. 17-18.

¹⁰ Optus, Submission in response to ACCC Consultation and Position Paper – Inquiry into final access determinations for fixed line services, April 2019, p. 6.

¹¹ Optus, Submission in response to ACCC Consultation and Position Paper – Inquiry into final access determinations for fixed line services, April 2019, p. 5.