Fixed Services Review 2013

Submission by the Australian Communications Consumer Action
Network to the ACCC

August, 2013

About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will activate its broad and diverse membership base to campaign to get a better deal for all communications consumers.

Contact

Xavier O'Halloran
Policy Officer

Jonathan Gadir
Senior Policy Advisor

Suite 402, Level 4
55 Mountain Street
Ultimo NSW, 2007
Email: info@accan.org.au
Phone: (02) 9288 4000
Fax: (02) 9288 4019
TTY: 9281 5322

Contents

Glossary	
Access seeker	Telecommunications companies that seek access to the declared service.
ADSL	Asymmetric Digital Subscriber Line. A technology for transmitting digital information at high data rates on existing copper phone lines. It is called asymmetric because the download and upload speeds are not symmetrical (that is, download is faster than upload).
DSLAM	Digital Subscriber Line Access Multiplexer. A device which makes use of the copper access lines to provide high data rate services, enabling broadband services to be provided over copper lines. It is located in a telephone exchange that links many customer DSL connections (copper wires) to a core IP network via a backhaul system.
fixed line services	Telecommunications services provided over fixed networks, such as Telstra's copper network and HFC networks. The 'declared fixed line services' are the six fixed line services declared in 2009 – the ULLS, LSS, WLR, LCS, PSTN OA and PSTN TA.
HFC network	Hybrid Fibre-Coaxial Cable network. A combination of fibre optic and copper coaxial cables able to deliver large amounts of data. Typically used to deliver internet services and pay television services.
LCS	The declared Local Carriage Service. For a 'per-usage' charge, allows access seekers to resell local calls to end-users without having to invest in their own network and switching equipment. The LCS is purchased in conjunction with the WLR service.
LSS	The declared Line Sharing Service. Allows access seekers to share the use of the copper line connecting consumers to the telephone exchange, allowing them to provide fixed internet services using their own equipment. An alternative provider provides the voice services.
MTAS	The declared Mobile Terminating Access Service.

	A wholesale service provided by a mobile network operator (MNO) to fixed line operators and other MNOs to connect – or 'terminate' – a call on its mobile network. It enables calls to be made to consumers on mobile phone networks.
PSTN	Public Switched Telephone Network. The telephone network that allows the public to make and receive telephone calls via switching and transmission facilities and utilising analogue and digital technologies.
PSTN OA	The declared PSTN Originating Access service. Allows a telephone call to be connected from the caller to a point of interconnection with another network.
PSTN OTA	PSTN Originating and Terminating Access services. Used to refer to the PSTN OA and PSTN TA services together.
PSTN TA	The declared PSTN terminating access service. Allows a telephone call to be carried from the point of interconnection to the party being called on another network.
SIO	Service In Operation. Refers to an active telecommunications service provided to an end-user.
ULLS	The declared Unconditioned Local Loop Service. Allows access seekers to use the copper line connecting end-users to the local telephone exchange, allowing them provide both fixed internet (broadband) and voice services using their own DSLAMs and other exchange equipment.
WLR	The declared Wholesale Line Rental service. For a monthly 'per-user' charge, it allows access seekers to purchase a line rental service from Telstra, which includes access to the copper line and associated services (including a dial tone and telephone number) supplied using Telstra's equipment.

1. Responses to Fixed Services Review 2013

> Recommendation 1:   That ULLS, LSS, LCS, WLR, PSTN OA and PSTN TA services should be re-declared.

Declaration of these fixed services remains an important element in promoting the long-term interests of end users and has been successful in improving retail competition in recent years. The basic market conditions which underpinned the ACCC's original decisions to declare have not changed. An NBN rollout is still in its early stages and is subject to policy change. No assumptions should be made about the impact that an NBN policy will eventually have on the market. For the vast majority of consumers, services are currently being delivered in the same way; over the same Telstra network infrastructure as has historically been the case. Moreover, the same commercial realities that have led Telstra to maintain a monopoly position remain in place.

Accordingly ACCAN believes an extension of the declarations over ULLS, LSS, LCS, WLR, PSTN OA and PSTN TA is the best way of achieving the ACCC's objectives in promoting the long-term interests of end-users through:

- Promoting competition in markets for telecommunications services,
- Achieving any-to-any connectivity in relation to carriage services that involve communication between end-users; and
- Encouraging the economically efficient use of, and the economically efficient investment in, the infrastructure by which telecommunications services are supplied.[1]

1.1. Promoting competition

ACCAN notes that there are a range of factors which impact on competitiveness in the retail market for these services. The following is a snapshot of key issues ACCAN believes should be taken into account when considering the re-declaration of these services. It analyses factors such as market concentration, competition on pricing and issues around bundled offers.

Market concentration

It is important to note that without declaration the bottleneck and natural monopoly characteristics of large scale telecommunications infrastructure would prevail. This would lead to an inefficient use of the network infrastructure, resulting in a failure to realise the benefits of economies of scale, scope and density. Not only would this cause increased costs for providers, but likely lead to higher retail prices for consumers due to a reduction in competition.

Over the life of the last declaration period there was a fall in the number of fixed line voice services in operation (SIOs)[2] with the dominant fixed line voice operator, Telstra, falling at a greater rate

---

[1] *Competition and Consumer Act 2010* s154AB(2)

[2] ACCC, 2013, 'Fixed Services Review – Discussion Paper on the Declaration Inquiry', July 2013, p.16

than the rest of the market.[3] This is possibly an indication that the declaration of fixed line voice service is continuing to promote competition through decreased barriers to entry for access seekers.

Despite the positive impact on market concentration, Telstra still remains the dominant service provider in fixed line voice services, accounting for about 66 per cent of retail subscribers.[4] As total revenues fall in this market, due to the impact of mobiles, it is important that the declaration remains in place. Without it, Telstra will again be in a position to hinder retail competition and consumers will suffer with higher prices during this transition phase.[5]

Fixed voice telephony pricing

One of the measures of success of the declaration of these services has been the reduction in fixed telephony pricing over the life of the current declaration. There has been on average a 6 per cent fall year-on-year in the PSTN services index over the life of the current declarations.[6] This index measures annual price fluctuations in real terms indexed against a measure of fixed line voice service prices in 1997-98.

Retail basic access prices (ie line rental) only dropped by 1.4 per cent in 2011-12 and have experienced below average drops over the current declaration period. This small decrease is especially important since basic access accounts for 56 per cent of total consumer PSTN expenditure in 2011-12 compared with just 19 per cent in 1997-98.[7] This small drop is a possible indication that the declaration is failing to adequately drive down prices in the line rental component. ACCAN notes that price falls are not always consistent across components.

The ACCC acknowledges there are a number of limitations in adequately mapping these price fluctuations, especially when products are bundled and their components are difficult to individually price. The rise in the use of bundled products and its impact on the ACCC price measurement methodology may need to be reassessed to improve confidence in these figures. Overall the price decrease reinforces the importance of re-declaring fixed line services, particularly ULLS, so that there is continued downward pressure on basic access through competition.

Furthermore, as ACCAN noted in its Mobile Terminating Access Service (MTAS) submission, while these decreases are positive, they come off traditionally high pricing in fixed line service provision when compared to mobile pricing.[8]

ACCAN notes that current pricing data collected by the ACCC also does not take into account changes in service quality or functionality.[9] While not directly relevant to this inquiry, quality and functionality may become increasingly important measures in mapping pricing as we transition to a VoIP/Uni-V environment for voice telephony.

---

[3] ACMA, 2012, 'Communications Report 2011-12', November 2012, p.19

[4] ACCC, 2012, 'Telecommunications Reports 2011-12, December 2012, p.19

[5] ACCC, 2012, 'Telecommunications Reports 2011-12, December 2012, p.73

[6] ACCC, 2012, 'Telecommunications Reports 2011-12, December 2012, p.73

[7] ACCC, 2012, 'Telecommunications Reports 2011-12, December 2012, p.74

[8] ACCAN, 2013, 'Review of the declaration of the Domestic Mobile Terminating Access Service', July 2013, p.6

[9] ACCC, 2012, 'Telecommunications Reports 2011-12, December 2012, p.20

Although more pertinent to the determination phase, it is important to note that PSTN revenues continue to fall as mobile and over the top (OTT) develop as substitutable services and the NBN is rolled out. Telstra, for example, had a 9.5 per cent decline in PSTN revenue over the FY13 period.[10] This has come on the back of the number of fixed line originating call minutes halving since the last declaration.[11]

Bundling

The impact of 'bundling' is another important consideration in developing a useful metric for measuring price fluctuations and market competitiveness. Telstra has stated they are attempting to stem the flow of customers away from fixed voice telephony by bundling PSTN, fixed broadband and entertainment packages on a two-year contract.[12] This approach appears to be working with lower than expected revenue declines in PSTN and carriers reporting increases in the number of bundled products sold. For example, Telstra reports that the number of customers buying a bundled plan has almost tripled since June 2010 to 1.4 million in June 2012.[13] Ninety per cent of Optus' customers on its hybrid fibre co-axial (HFC) network took a bundle in June 2012, compared to 87 per cent in June 2011.[14] Furthermore, the average number of products taken by iiNet customers has increased from 1.5 in 2009–10 to 2.1 in 2011–12.[15] While bundling has many benefits for industry and consumers it can have a negative impact on competition.

Bundling has aided industry in offsetting declining PSTN revenues; however, its increased use can be detrimental to consumers. While there are potential benefits such as cost savings when products are bundled, in general bundling makes it more difficult for consumers to compare deals and make informed purchasing decisions. Bundling is usually offered as a part of a two year contract and may lead to reductions in movement of consumers between service providers. This in turn limits a consumer's ability to seek out better suited or cheaper alternatives.

The continued importance of declaring individual components such as voice and broadband services is reinforced by these practices. By declaring separate parts of the copper wire, there is an increased likelihood that providers will compete on these individual components without the need to offer a full bundle of services. For example, ULLS enable service providers to supply telephone services separately or bundled with internet services. This allows consumers to pick individual products from different providers and be serviced though the same copper wire. This creates competition on individual elements of a consumer's telecommunications package.

Bundling is also problematic for competition where it is offered on services that rival networks cannot offer. For example Telstra's Foxtel bundle is a strategically important offering for consumers wanting to bundle pay TV with telecommunications services. This strategic advantage is likely to be widened as Foxtel acquires exclusive rights to high demand content, such as the HBO series *Game of Thrones*.[16] Competition is further stifled by the fact Foxtel's video streaming service, Foxtel Play,

---

[10] Telstra, 2013, 'Telstra delivers customer, revenue and profit growth in FY13', 8/8/2013 < http://telstraglobal.com/news/504-telstra-delivers-customer-revenue-and-profit-growth-in-fy13>

[11] ACCC, 2012, 'Telecommunications Reports 2011-12, December 2012, p.17

[12] Graeme Philipson, 2013, 'Some questions for David Thodey', *Communications Wire* 10/8/2013

[13] Telstra, *Annual Report, 2011–12*.

[14] Singtel, *Annual Report, 2011–12*.

[15] Mitchell Bingemann, 'Strategic acquisitions fuel iiNet's best result', *The Australian*, 17 August 2012.

[16] Giles Hardie, 'Foxtel and HBO get Exclusive', *The Sydney Morning Herald,* 23 October 2012 < http://www.smh.com.au/entertainment/box-seat/foxtel-and-hbo-get-exclusive-20121023-282gh.html >

offers 'unmetered' access to Telstra BigPond home broadband services customers.[17] This means consumers accessing the service through rival telecommunications providers have to use up to an additional 1,325MB per hour to access the same service.[18] This has the potential to deplete in a matter of hours even the more generous competitor's included data. As the demand for online streaming grows, Foxtel's exclusive content rights, when bundled with telecommunications services and unmetered access on Telstra's network, may lead to a significant curtailment of competition.

This raises the need for the ACCC to assess the way telecommunications providers are leveraging their IPTV assets, such as Foxtel Play, in a way which is potentially anti-competitive. Exclusive content rights and unmetered access are two factors which are likely to weigh heavily in a consumers mind before they choose a telecommunications product.

> Recommendation 2:   The ACCC investigate the way providers bundle strategic assets such as IPTV services with their telecommunications products.

1.2.   Any-to-any connectivity

ACCAN agrees with the ACCC that PSTN OA and TA remain important declarations. When coupled with appropriate pricing principles they allow consumers to communicate with one another at reasonable rates. It is particularly important in the Australian market, where the disparity in market size between players has the potential to lead to disparity in bargaining power. Without a regulated approach this disparity could lead to price discrimination which would hinder any-to-any connectivity.

1.3.   Efficient use and investment in infrastructure

The natural monopoly characteristics of the copper wire network make a declaration especially important in ensuring efficient use and investment in infrastructure. The large fixed cost of building and maintaining a ubiquitous network mean that in general the unit cost of supplying products reduces as the quantity of products supplied increases. Without declaration there would be a significant barrier to entry. Competitors would be left with two options; either build their own network over the top of existing infrastructure or be forced to pay monopoly prices to access the existing infrastructure. Neither of these options is likely to promote the efficient use and investment in infrastructure.

1.4.   Should the ACCC make rules to allow telecommunications companies to install their own telephone equipment in exchange buildings and other infrastructure owned by Telstra?

> Recommendation 3:   The ACCC to consider whether a declaration of Telstra Exchange Building Access (TEBA) or some other associated facilities access service

---

[17] Foxtel Go, 2013, < http://www.foxtel.com.au/support/ondemand-apps-extras/get-started-with-foxtel-go-216947.htm>

[18] Foxtel Go, 2013, < http://www.foxtel.com.au/support/ondemand-apps-extras/get-started-with-foxtel-go-216947.htm>

> could compel Telstra to take positive steps to ensure a wholesale customer is
> able to access space in an exchange.

Lack of space in exchanges or alternatively lack of 'ports' appears to be a recurring reason given to consumers for why they cannot get ADSL services from their preferred retail service provider, or sometimes cannot get any ADSL service. We note that under the equivalence and transparency obligations in the Telstra SSU, there are commitments to non-discriminatory access to Telstra's exchange and related facilities. There have been debates which we are not well-placed to adjudicate about whether space limitations in exchanges are real or pretexts for preventing Telstra's retail competitors from increasing market share.

We also note that Australia's population continues to grow, greenfields housing construction continues, as does urban consolidation with an increased number of dwellings in existing built-up areas. The consumer demand for fixed telecommunications services can be expected in the normal course of events also to grow.

We are concerned that by doing nothing to provide more space in exchanges, Telstra disadvantages retail competitors, and does so via inaction rather than any act or measure that would place it in breach of its SSU. Accordingly we would urge the ACCC to consider whether a declaration of Telstra Exchange Building Access (TEBA) or some other associated facilities access service could compel Telstra to take positive steps to ensure a wholesale customer is able to access space in an exchange. We note the *Access* to *Telstra Exchange Facilities Record Keeping and Reporting Rules* may assist in achieving this outcome.

We understand that this issue is one that is expected to be resolved over time with the rollout of a National Broadband Network. It is however no comfort to a consumer to be told that they will have to wait one or three or even six years.

1.5.   Should the HFC networks be declared?

The discussion paper outlined a number of good reasons why HFC networks are not currently declared. These included the expense in enabling access seekers to use these networks, their limited footprint, the fact they largely replicate the footprint as ADSL2+ and the small likelihood that HFC networks would be expanded on account of NBN rollout.

The position with regard to the HFC networks is somewhat complicated by the different NBN models currently being proposed. Decisions about these networks will likely be clarified after the federal election. Under the Coalition's NBN proposal HFC appears to play a part in a number of options being considered. These include permutations of the following: HFC being structurally separated from Telstra, HFC not being overbuilt by NBN Co. or allowing Telstra to continue to operate HFC to provide facilities based competition.[19] Depending on the result of the federal election and subsequent decisions the question of declaring HFC may have to be revisited by the ACCC in the future.

---

[19] Petroc Wilton, 2013, 'Turnbull flags option for NBN Co to buy Telstra HFC net', *Communications Day,* 2/8/2013

1.6. How long should the declarations apply?

The re-declarations should take into account the need for Telstra's competitors to have certainty in investment and the transition to NBN. The continuation of the current declarations is likely to remain vitally important to consumers and access seekers until they are transitioned to the NBN. Any planned investment in infrastructure, such as DSLAMs, will be strongly influenced by transition dates and the life of the current declaration. The length of this declaration should be guided by the NBN rollout completion dates.

2.   Consolidated list of recommendations

Recommendation 1:   That ULLS, LSS, LCS, WLR, PSTN OA and PSTN TA services should be re-declared.

Recommendation 2:   The ACCC investigate the way providers bundle strategic assets such as IPTV services with their telecommunications products.

Recommendation 3:   The ACCC to consider whether a declaration of Telstra Exchange Building Access (TEBA) or some other associated facilities access service could compel Telstra to take positive steps to ensure a wholesale customer is able to access space in an exchange.