



# Inquiry into final access determinations for fixed line services

## Draft Decision

August 2019



Australian Competition and Consumer Commission

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## Contents

List of abbreviations and acronyms .....	1
Glossary.....	2
Executive summary.....	5
1. Introduction .....	8
1.1. Background.....	8
1.2. Inquiry and consultation process.....	8
1.3. Making a submission .....	9
1.4. Structure of draft decision .....	10
2. ACCC approach to pricing and terms and conditions for the fixed line services.....	11
2.1. Legislative requirements .....	11
3. Key issues in making new FADs for the declared fixed line services .....	13
3.1. Price terms of fixed line services.....	13
3.2. Duration of the access determinations .....	19
3.3. The application of fixed principles to new FADs .....	20
3.4. Non-price terms and conditions.....	22
Appendix A    Legislative framework .....	24
A.1 Content of final access determinations.....	24
A.2 Fixed principles provisions .....	24
A.3 Varying final access determinations.....	24
A.4 Commencement and expiry provisions .....	24
A.5 Matters to consider when making FADs.....	24
Appendix B    Description of the declared services .....	32
B.1 Unconditioned local loop service.....	32
B.2 Line sharing service.....	32
B.3 Wholesale line rental.....	32
B.4 Local carriage service .....	33
B.5 Fixed originating access service .....	33
B.6 Fixed terminating access service .....	33
B.7 Wholesale asymmetric digital subscriber line .....	33
Appendix C    List of submissions received .....	34

## List of abbreviations and acronyms

PSTN	Public switched telephone network
DSL	Digital subscriber line
CCA	<i>Competition and Consumer Act 2010 (Cth)</i>
ULLS	Unconditioned local loop service
LSS	Line sharing service
WLR	Wholesale line rental
LCS	Local carriage service
FOAS	Fixed originating access service
FTAS	Fixed terminating access service
FAD	Final access determination
NPTCs	Non-price terms and conditions
ACCC	Australian Competition and Consumer Commission
LTIE	Long term interests of end-users
ADSL	Asymmetric digital subscriber line
NBN	National Broadband Network
FLSM	Fixed line services model
BBM	Building block model
RAB	Regulatory asset base

## Glossary

<b>access determination</b>	Written determinations made by the ACCC relating to access to a declared service after conducting a public inquiry, specifying any or all of the terms and conditions for compliance with any or all of the standard access obligations.
<b>access seeker</b>	Telecommunications companies that seek access to the declared service (that is, the right to use the declared service).
<b>access provider</b>	Telecommunications companies that provide access to a declared service.
<b>ADSL</b>	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).
<b>declared service</b>	A service that the ACCC regulates under Part XIC of the CCA. Once declared, a service provider must supply the service to other parties in accordance with the standard access obligations.
<b>end-user</b>	Retail consumers of telecommunication services.
<b>FAD</b>	Final Access Determination. The FAD is made by the ACCC and sets the terms and conditions (including prices) relating to access to a declared service.
<b>FOAS</b>	Fixed Originating Access Service. Enables a telephone call to be connected from the caller to a point of interconnection with another network. The new name of the previously declared PSTN OA service.
<b>FTAS</b>	Fixed Terminating Access Service. Enables a telephone call to be carried from the point of interconnection to the party being called on another network. The new name for the previously declared PSTN TA service.
<b>fixed line services</b>	Telecommunications services provided over fixed networks, such as Telstra's copper network and HFC networks. The 'declared fixed line services' are the seven fixed line services – the ULLS, LSS, WLR, LCS, FOAS, FTAS and wholesale ADSL.

<b><i>fixed principles provision</i></b>	A FAD may contain a fixed principles provision, which allows a provision in a FAD to have an expiry date after the expiry date of the FAD. Such a provision would allow the ACCC to 'lock-in' a term so that it would be consistent across multiple FADs.
<b><i>FLSM</i></b>	The Fixed Line Services Model (FLSM) is used as part of the ACCC's building block model approach to determine prices for the declared fixed line services.
<b><i>internal interconnection cable</i></b>	Internal interconnection cable (IIC) is a twisted copper pair cable connecting an access seeker's equipment to Telstra's customer access network and is essential to an access seeker being able to obtain an unconditioned local loop service or line sharing service.
<b><i>LCS</i></b>	The declared Local Carriage Service. Enables 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.
<b><i>listed carriage services</i></b>	<p>The <i>Telecommunications Act 1997</i> (Cth) defines listed carriage services as:</p> <ul style="list-style-type: none"> <li>• a carriage service between a point in Australia and one or more other points in Australia</li> <li>• a carriage service between a point and one or more other points, where the first mentioned point is in Australia and at least one of the other points is outside Australia</li> <li>• a carriage service between a point and one or more other points, where the first mentioned point is outside Australia and at least one of the other points is in Australia.</li> </ul> <p>A point includes a mobile or potentially mobile point, whether on land, underground, in the atmosphere, in outer space, underwater, at sea or anywhere else. A point is taken to be a point in Australia if that point is: in the atmosphere, in or below the stratosphere and above Australia.</p>
<b><i>LSS</i></b>	The declared Line Sharing Service. Enables 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.
<b><i>PSTN</i></b>	Public Switched Telephone Network. The fixed telephone network that allows the public to make and receive telephone calls via switching and transmission facilities and utilising analogue and digital technologies.

<b><i>retail service provider</i></b>	Companies that offer telecommunications services to end-users.
<b><i>ULLS</i></b>	The declared Unconditioned Local Loop Service. Allows access seekers to use the copper line connecting end-users to the local telephone exchange, allowing them to provide both fixed internet (broadband) and voice services using their own DSLAMs and other exchange equipment.
<b><i>Wholesale ADSL</i></b>	The declared Wholesale ADSL service. Allows access seekers to purchase a Wholesale ADSL product from a service provider and resell internet services to end-users.
<b><i>WLR</i></b>	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.

## Executive summary

The ACCC has reached its draft decision on price and non-price terms and conditions in final access determinations (FADs) for the seven declared fixed line services that at present are mainly supplied by Telstra on its copper PSTN and DSL networks.<sup>12</sup> The seven declared fixed line services are the:

- unconditioned local loop service (ULLS)
- line sharing service (LSS)
- wholesale line rental service (WLR)
- local carriage service (LCS)
- fixed originating access service (FOAS)
- fixed terminating access service (FTAS)
- wholesale ADSL.

The ACCC's draft decision is to make new FADs for all seven declared fixed line services on the same terms of access as the existing FADs, to apply until 30 June 2024. This means that all prices and non-price terms and conditions (NPTCs) of access for the declared services as at 30 June 2019 will apply for the duration of the new FADs.<sup>3</sup>

The ACCC's position is that the long-term interests of end-users (LTIE) will be promoted by the continuation of existing price and non-price terms and conditions of access for the declared fixed line services to apply until 30 June 2024.

The ACCC considers that maintaining existing price relativities for declared services will continue to provide stability to the industry during the transition to the National Broadband Network (NBN), which is scheduled for completion in mid-2020.<sup>4</sup> The ACCC's view is that stability in prices (and price relativities) for declared services will maintain efficient use and investment in declared fixed line assets and provide a stable environment for access seekers as customers migrate to the NBN.

The ACCC commenced its inquiry into making the fixed line service FADs in December 2018 and commenced preliminary consultation.<sup>5</sup> The ACCC received four submissions as part of its preliminary consultation. In March 2019, the ACCC released a Consultation and Position paper and received a further five submissions.

Most of the submissions were strongly supportive of a continuation of existing price and access terms for the declared fixed line services. However, Vocus and Vodafone Hutchison Australia (VHA) did not support a continuation of existing FTAS prices. Vocus considered that the costs of the declared services should have decreased since the existing FADs were determined. According to VHA, FTAS prices should be reduced and set with specific reference to Mobile Terminating Access Service (MTAS) pricing.

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<sup>1</sup> FOAS and FTAS are technology neutral and supplied by a number of providers.

<sup>2</sup> The ACCC made its declaration decision on the ULLS, LSS, WLR, LCS, FOAS, and FTAS services on 26 November 2018, available at: <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services-declaration-inquiry-2018>. The ACCC declared the wholesale ADSL service on 3 February 2017, available at: <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/wholesale-adsl-service-declaration-inquiry-2016>.

<sup>3</sup> This includes all primary prices, connection charges applying to the LSS, ULLS and wholesale ADSL and the internal interconnection cable charge.

<sup>4</sup> NBN Co, *Corporate Plan 2019-22*, August 2018, p.4, <https://www1.nbnco.com.au/corporate-information/about-nbn-co/corporate-plan/corporate-plan>.

<sup>5</sup> ACCC, *Fixed line services FAD inquiry 2018*, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2018>.



The ACCC's view is that it is not at present appropriate to review FTAS pricing in isolation of the other declared fixed line services or with particular reference to MTAS pricing as a benchmark.

The ACCC considers that the review of pricing of one declared fixed line service in isolation of the other declared fixed line services risks unduly advantaging some access seekers over others. The ACCC supports a stable pricing environment over the medium term, which will also reduce the risk of the access provider over or under-recovering its costs of supplying those services. The ACCC does not consider a review involving a full reconsideration of pricing for all declared services is warranted or to be in the LTIE given, among other things, the potentially significant regulatory costs to industry of contributing to such a review and its uncertain benefits during the remaining period of transition to the NBN.

The ACCC's reasons for not accepting VHA's proposal are discussed further in this draft decision. We note Optus' view that pricing for fixed voice interconnection services should be given further consideration in future access determinations following completion of the NBN rollout and agree this could involve consideration of an appropriate pricing methodology applicable to both fixed and mobile voice interconnection services.

The ACCC has had regard to the views provided by stakeholders in reaching this draft decision.

The key issues the ACCC considered in its draft decision are outlined below.

### **Price terms of fixed line services**

The ACCC considers that maintaining existing fixed line prices in nominal terms will promote the LTIE by providing price stability to access seekers in the remaining period to the completion of the NBN rollout and by reducing the regulatory burden on industry compared to a full reconsideration of fixed line prices applicable during this relatively short period.

### **Duration of the access determinations**

The ACCC's draft decision is that the price terms and non-price terms set out in the 2019 fixed line services FAD will apply until 30 June 2024.

The ACCC considers that this duration for the FAD is sufficient to ensure pricing stability and regulatory certainty for the declared fixed line services to support industry investment and planning in the remaining period to the completion of the NBN rollout. This will also provide a stable pricing environment over the medium term reducing the risk of the access provider over or under-recovering its costs of supplying access services during this period.

### **The application of fixed principles to new FADs**

The existing FADs contain a set of fixed principles that relate only to price terms and conditions. These fixed principles give form to the building block model (BBM) pricing methodology used by the ACCC to determine prices for the declared fixed line services.

The existing fixed principles expire on 30 June 2021, which is part way through the proposed term of the new FADs.

As set out in the ACCC's Consultation and Position Paper of March 2019, the ACCC has to decide whether it should make new fixed principles to cover the full term of the new FADs and, if not, how it should treat the existing fixed principles that are due to expire part way through the period of the new FADs.

The ACCC is not intending to make new fixed principles to cover the full term of the new FADs. The ACCC considers there is currently uncertainty about whether the declarations for

the fixed line services will be extended past their current expiry date, and at this time does not consider it appropriate to lock in new fixed principles for FADs.

The ACCC does not intend to apply the fixed principles for their remaining life and is not proposing to update the Fixed Line Services Model (FLSM). Instead, the ACCC will maintain the current nominal prices set in the existing FADs for the full term of the new FADs. This approach will maintain the effect of the existing FADs by not allowing Telstra to be compensated through the FADs for the reduced utilisation of its network as a result of the NBN rollout.<sup>6</sup> As noted in the ACCC's 2015 final decision on the fixed line services FADs, Telstra has been provided with an alternative avenue for cost recovery through the Definitive Agreements entered into with NBN Co.<sup>7</sup>

### **Non-price terms and conditions**

The ACCC draft decision is that NPTCs should be maintained. The ACCC considers this approach will promote the LTIE by ensuring, on an as needs basis, there is a regulatory fall back for matters that have typically raised competition concerns or are potentially the subject of dispute between the access provider and access seekers. The ACCC notes that no issues were raised in relation to the current NPTCs in submissions. This supports the ACCC's assessment that they are fit for purpose and appropriate for the new FADs.

### **Consultation on the draft decision and next steps**

Submissions on this draft decision are due by 30 September 2019.

The ACCC is inviting submissions from stakeholders on all aspects of the draft decision. It will take into account the information provided in submissions in making its final decision.

The ACCC intends to release its final decision in November 2019.

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<sup>6</sup> By the end of the NBN migration period, only Telstra's fixed line network in the NBN fixed wireless and satellite footprints in generally remote areas will remain in operation.

<sup>7</sup> ACCC, *Public inquiry into final access determinations for fixed line services - Final Decision*, October 2015, <https://www.accc.gov.au/system/files/FSR%20FAD%20Final%20Decision%20Report%20-%20Public%20Version.pdf>.

## 1. Introduction

The declared fixed line services are mainly supplied by Telstra over its copper public switched telephone network (PSTN) and digital subscriber line (DSL) network at present.<sup>8</sup> They form an important input used by retail service providers to supply voice and broadband services to downstream fixed telecommunications markets.

The ACCC is conducting a public inquiry under Part 25 of the *Telecommunications Act 1997* (Cth) into making FADs under section 152BC of the *Competition and Consumer Act 2010* (Cth) (CCA) for the seven declared fixed line services (FAD inquiry). The seven declared fixed line services are the:

- Unconditioned Local Loop Service (ULLS)
- Line Sharing Service (LSS)
- Wholesale Line Rental (WLR)
- Local Carriage Service (LCS)
- Fixed Originating Access Service (FOAS)
- Fixed Terminating Access Service (FTAS)
- Wholesale ADSL.

A description of the declared fixed line services is at [Appendix B](#) to this draft decision.

### 1.1. Background

On 26 November 2018, the ACCC made a decision to extend the declaration of six fixed line services (ULLS, LSS, WLR, LCS, FOAS, FTAS) until 30 June 2024. The Wholesale ADSL service is declared until 13 February 2022.

Once a service is declared, the ACCC can make regulated terms of access through a FAD. A FAD can specify how an access provider is to comply with any or all of the standard access obligations.<sup>9</sup> These FAD terms and conditions will apply where there is no commercial agreement between an access seeker and the access provider.

The ACCC has made FADs that are currently in force for the declared fixed line services (the existing FADs). These existing FADs outline price and NPTCs of access to the declared services. Further details are outlined in the current FAD instruments.<sup>10</sup>

On 16 June 2019, the ACCC extended, under subsection 152BCF(10) of the CCA, the expiry date of the existing FADs to be the day immediately before the day on which the access determination for the next regulatory period comes into force.

### 1.2. Inquiry and consultation process

On 12 December 2018, the ACCC commenced a public inquiry into making new FADs for the fixed line services and advised stakeholders that it was undertaking preliminary consultation on the next FAD and seeking submissions by 25 January 2019.<sup>11</sup> The ACCC received four submissions in response to this request.

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<sup>8</sup> FOAS and FTAS are technology neutral and supplied by a number of providers.

<sup>9</sup> Subsection 152BC(3) of the CCA.

<sup>10</sup> ACCC, *Final Access Determinations Nos. 2 to 8 of 2015 for Fixed Line Services*, <http://registers.accc.gov.au/content/index.phtml/itemId/1190014>.

<sup>11</sup> ACCC, *Fixed line services FAD inquiry 2018*, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2018>.

On 29 March 2019, the ACCC released a Consultation and Position paper.<sup>12</sup> It sought submissions by 26 April 2019 in response to a range of questions and on the ACCC's position to extend the current FAD price and NPTCs until 30 June 2024. The ACCC received five submissions. The submissions can be accessed on the ACCC website.<sup>13</sup>

On 6 June 2019, the ACCC extended the period for making FADs for the declared fixed line services until 12 December 2019.<sup>14</sup>

The ACCC has made a draft decision on making new FADs in light of all submissions received and other relevant considerations.

### 1.3. Making a submission

The ACCC encourages industry participants, other stakeholders and the public more generally to consider and make submissions on the issues set out in this draft decision.

To foster an informed and consultative process, all submissions will be considered as public submissions and posted on the ACCC's website.

Interested parties wishing to submit commercial-in-confidence material to the ACCC should submit both a public and a commercial-in-confidence version of their submission. The public version of the submission should clearly identify the commercial-in-confidence material by replacing the confidential material with an appropriate symbol or 'c-i-c'. The ACCC expects that claims for commercial in confidence status of information by parties will be limited in nature in order to allow the widest possible participation in the public inquiry.

The *ACCC-AER information policy: the collection, use and disclosure of information* (2014) sets out the general policy of the ACCC and the Australian Energy Regulator on the collection, use and disclosure of information. A copy of the guideline is available on the ACCC's website.<sup>15</sup>

The ACCC prefers to receive submissions in electronic form, either in PDF or Microsoft Word format which allows the submission text to be searched.

Please contact Mr Robert Wright, General Manager, Insurance, Water and Wireline Branch regarding any questions you have concerning this consultation ([robert.wright@acc.gov.au](mailto:robert.wright@acc.gov.au)).

Submissions are due by 30 September 2019.

Please email submissions to: [fixedline@acc.gov.au](mailto:fixedline@acc.gov.au)

When it has considered submissions received on the draft decision, the ACCC will decide whether further consultation is required before it makes its final decision. The ACCC's expectation is that it will release its final decision in November 2019.

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<sup>12</sup> ACCC, *Inquiry into final access determinations for fixed line services*, Consultation and Position paper, March 2019, <https://www.accc.gov.au/system/files/Fixed%20line%20services%20FAD%20Inquiry%20-%20Consultation%20and%20position%20paper.PDF>.

<sup>13</sup> ACCC, *Fixed line services FAD inquiry 2018 - Consultation & submissions received*, 29 March 2019, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2018/consultation-submissions-received>.

<sup>14</sup> ACCC, *Fixed line services FAD inquiry 2018 - Extension of inquiry period and existing FADs*, 7 June 2019, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2018/extension-of-inquiry-period-and-existing-fads>.

<sup>15</sup> ACCC, *ACCC & AER information policy: collection and disclosure of information*, 4 June 2014, <https://www.accc.gov.au/publications/accc-aer-information-policy-collection-and-disclosure-of-information>.

## 1.4. Structure of draft decision

The ACCC's draft decision is structured as follows:

- Chapter 2 summarises the legislative framework under which the ACCC may make a FAD
- Chapter 3 sets out the key issues the ACCC considered in this draft decision
- Appendix A details the relevant legislative framework for making FADs and the ACCC's approach under this framework
- Appendix B sets out the service descriptions of the declared fixed line services
- Appendix C lists the submissions to this inquiry received by the ACCC to date.

## 2. ACCC approach to pricing and terms and conditions for the fixed line services

The following summarises the legislative framework under which the ACCC may make a FAD. Further detail in relation to the relevant legislative frameworks for making a FAD is provided at [Appendix A](#).

### 2.1. Legislative requirements

Under the CCA, the ACCC may make a FAD that specifies terms and conditions of access to a declared service, which must include terms and conditions relating to price or a method of ascertaining price.<sup>16</sup> This enables the ACCC to determine pricing as well as other terms and conditions for access for a declared service which access seekers can rely on if they are unable to commercially agree on prices with the access provider.

The CCA requires the ACCC to take a number of matters into account when making a FAD, which are:

- whether the FAD will promote the LTIE, which involves considering the extent to which the FAD is likely to result in the achievement of the following objectives:
  - promoting competition in markets for listed services
  - achieving any-to-any connectivity
  - encouraging the economically efficient use of, and economically efficient investment in, the infrastructure by which the listed services are supplied, and any other infrastructure by which listed services are, or are likely to become, capable of being supplied
- the legitimate business interests of a carrier or carriage service provider who supplies, or is capable of supplying, the declared service, and the carrier's or provider's investment in facilities used to supply the declared service
- the interests of all persons who have rights to use the declared service
- the direct costs of providing access to the declared service
- the value to a person of extensions, or enhancement of capability, whose cost is borne by someone else
- the operational and technical requirements necessary for the safe and reliable operation of a carriage service, a telecommunications network or a facility
- the economically efficient operation of a carriage service, a telecommunications network or a facility.<sup>17</sup>

In considering whether a FAD is likely to encourage the economically efficient use of, and economically efficient investment in, infrastructure by which listed services are supplied, or are capable of being supplied, the ACCC must have regard to:

- whether it is or is likely to become technically feasible for the services to be supplied and charged for having regard to certain matters<sup>18</sup>
- the legitimate commercial interests of the supplier or suppliers of the services, including the ability of the supplier or suppliers to exploit economies of scale and scope

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<sup>16</sup> Subsections 152BC(1) and (8) of the CCA.

<sup>17</sup> Subsection 152BCA(1) of the CCA.

<sup>18</sup> Subparagraphs 152AB(6)(a)(i), (ii) and (iii).

- the incentives for investment in the infrastructure by which the services are supplied, or any other infrastructure by which services are, or are likely to become, capable of being supplied, which must involve consideration of the risks involved in making the investment.<sup>19</sup>

The ACCC may also take into account the supply of other eligible services by the access provider and any other matters that it considers relevant.<sup>20</sup>

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<sup>19</sup> Subsections 152AB(6) and (7A) of the CCA.

<sup>20</sup> Subsections 152BCA(2) and (3) of the CCA.

### 3. Key issues in making new FADs for the declared fixed line services

The ACCC has considered the following key issues in making new FADs for the declared fixed line services:

- price terms of fixed line services
- the duration of new FADs
- the application of fixed principles to new FADs
- non-price terms and conditions.

The ACCC has considered these issues in light of submissions (as part of its preliminary consultation process and in response to its March 2019 Consultation and Position paper) and legislative requirements under section 152BCA of the CCA.

#### 3.1. Price terms of fixed line services

##### 3.1.1. 2015 Final Access Determination decision

The ACCC's 2015 FAD decision was for a uniform 9.4 per cent fall in the prices of all the declared fixed line services.<sup>21</sup> This decision reflected the ACCC's estimation of the prudent and efficient costs that should be recovered by Telstra for provision of its fixed line services.

The ACCC dealt with a number of complex issues in making this decision including the unique circumstances of the rollout of the NBN and its impact on Telstra's fixed line assets. In particular, the ACCC's decision reflected a view that access seekers should not incur higher charges as a result of costs associated with arrangements in place between Telstra and NBN Co. These arrangements allowed for a commercially agreed shutdown of Telstra's copper network in conjunction with the NBN network rollout. In reaching this position the ACCC considered the commercial arrangements that Telstra entered into with NBN Co. These arrangements, known as the Definitive Agreements (DAs), include the lease and transfer of assets and migration of services from Telstra to NBN Co and Telstra receiving periodic infrastructure and migration payments from NBN Co.

The ACCC's assessment was that it was not in the LTIE for costs to be allocated to users of the fixed line services due to under-utilisation of Telstra's network because of the migration of services to NBN Co, given Telstra has been provided with an alternative avenue for cost recovery through the DAs.

Table 1 presents the final FAD primary prices for the 2015 final decision.

**Table 1. Access charges applying to fixed line services**

Service	Unit	Final decision charges
ULLS Bands 1 to 3	\$ per line per month	14.68
ULLS Band 4	\$ per line per month	43.65
WLR	\$ per line per month	20.69
LSS	\$ per line per month	1.63

<sup>21</sup> This also applied to the AGVC/VLAN service.



<b>LCS</b>	¢ per call	8.06
<b>FOAS &amp; FTAS</b>	¢ per minute	0.86
<b>Wholesale ADSL Zone 1</b>	\$ per port per month	22.14
<b>Wholesale ADSL Zone 2/3</b>	\$ per port per month	26.87
<b>Wholesale AGVC/VLAN<sup>a</sup></b>	\$ per Mbps per month	29.27

<sup>a</sup> AGVC/VLAN is the capacity component of the wholesale ADSL service

### 3.1.2. Judicial review

On 5 November 2015, Telstra applied to the Federal Court for judicial review of the ACCC's final decision on the 2015 fixed line services FAD. On 28 March 2017, the Federal Court dismissed Telstra's application for judicial review. Telstra had sought review on the basis that the ACCC's decision would lead to under-recovery of costs. The Court rejected all of Telstra's grounds for review.

### 3.1.3. ACCC Consultation and Position paper

The ACCC's preliminary view in relation to making new FADs was that it favoured the continuation of existing prices (including price relativities) for the declared fixed line services.

The ACCC's view was that stability in prices (and price relativities) for declared services will maintain efficient use of investment in declared fixed line assets and provide a stable environment for access seekers in the remaining period to the completion of the NBN rollout.

The ACCC also considered the approach appropriate:

- given the regulatory costs of undertaking a detailed reconsideration of fixed line service prices applicable for a relatively short period would be likely to outweigh the benefits, and would place an unnecessary regulatory burden on industry
- as it would produce an outcome that would promote the LTIE.

The ACCC sought submissions on whether the LTIE was best served by maintaining the current prices of the declared fixed line services.

### 3.1.4. Submissions

Telstra supported the ACCC's preliminary position that the LTIE is best served by maintaining existing prices at nominal levels.<sup>22</sup> Telstra stated that this position is supported by:

- the declining relevance of the legacy copper network as the rollout of the NBN nears completion
- the benefits of competition that end-users on the legacy network continue to experience<sup>23</sup>
- potential price shocks if the FLSM were applied to set prices.<sup>24</sup>

<sup>22</sup> Telstra, *Submission in response to Consultation and Position paper, Fixed line services FAD inquiry 2018*, 13 May 2019, pp. 1-3, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2018/consultation-submissions-received>.

<sup>23</sup> Telstra notes that the ACCC's *Communications Market Report 2017-18* (available at: <https://www.accc.gov.au/publications/accc-telecommunications-report/accc-communications-market-report-2017-18>) assessed prices on non-NBN fixed broadband services to have fallen by 12 per cent between 2013-14 and 2017-18.

Telstra suggested that introducing complexity into the next FAD should be avoided given that the NBN is expected to be completed during the next FAD period. According to Telstra, a move to more cost reflective pricing relativities would create price shocks and would mean higher prices for end-users who remain on Telstra's legacy copper network.<sup>25</sup>

Optus supported a roll-over of existing prices, stating that price stability over the term until 30 June 2024 will allow for timely implementation over the remainder of the NBN rollout, and ensure that end-users are not adversely impacted by significant price changes.<sup>26</sup> Optus noted that a cost-based approach (as in the previous inquiry) is time and resource intensive and a delay in making new FADs will create pricing uncertainty. Optus also submitted that any potential benefits of new pricing would likely be outweighed by resource demands on industry, given the late stage of the NBN rollout.<sup>27</sup>

Optus also argued that pricing for fixed interconnection services should be considered further in future ACCC access determinations. Optus' view is that fixed and mobile termination services should be considered together and that prices for these services should be set using the same cost methodology. Optus is concerned that if prices for FTAS and MTAS are not set using the same cost methodology or taking into account relativities between the two services, mobile termination rates could approach, or even fall below, fixed termination rates.<sup>28</sup>

The Australian Communications Consumer Action Network (ACCAN) submitted that maintaining existing prices will provide a degree of stability as wholesale users transition to the NBN, and provides Telstra immediate certainty regarding its wholesale revenue without a prolonged and potentially problematic regulatory process.<sup>29</sup>

Vocus disagreed with a continuation of existing fixed line prices, outlining its view that the efficient and prudent costs of Telstra providing declared services should have decreased since the existing FADs were determined.<sup>30</sup> Vocus' expectation was that regulated prices for these services should decrease and not continue at their current levels.

VHA did not support a continuation of existing fixed line prices, and argued that FTAS prices should be reduced immediately to reflect a reduction in ongoing maintenance of the fixed line network. VHA had concerns about the transparency of payments received by Telstra due to the Universal Service Obligation (USO) and NBN migration payments. According to

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<sup>24</sup> Telstra submits that their preliminary update of the FLSM indicates a uniform 30 per cent price increase over the next regulatory period. Telstra justifies this as driven by rapidly declining services in operation (SIOs) and higher costs to service end-users in regional and rural areas, which will comprise the majority of remaining SIOs.

<sup>25</sup> Telstra, *Telstra submission to ACCC fixed line services FAD preliminary consultation – Public*, 30 January 2019, pp. 2-3, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2018/preliminary-consultation>.

<sup>26</sup> Optus, *Submission in response to Consultation and Position paper, Fixed line services FAD inquiry 2018*, May 2019, p. 1, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2018/consultation-submissions-received>.

<sup>27</sup> Optus, *Submission in response to Consultation and Position paper, Fixed line services FAD inquiry 2018*, 13 May 2019, p. 2, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2018/consultation-submissions-received>

<sup>28</sup> Optus, *Submission in response to Consultation and Position paper, Fixed line services FAD inquiry 2018*, 13 May 2019, p. 6, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2018/consultation-submissions-received>

<sup>29</sup> ACCAN, *Submission in response to Consultation and Position paper, Fixed line services FAD inquiry 2018*, 13 May 2019, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2018/consultation-submissions-received>.

<sup>30</sup> Vocus Group, *Vocus submission to ACCC fixed line services FAD preliminary consultation – Public*, 30 January 2019, p. 1, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2018/consultation-submissions-received>.

VHA these payments need to be tested to ensure that Telstra is not 'double (or triple) dipping'.<sup>31</sup>

VHA stated that FTAS pricing is too high relative to MTAS, leading to a one-way subsidising effect from mobile operators to Telstra. VHA suggested this distorts competition and does not support the LTIE. VHA proposed that either FTAS rates should decrease or MTAS rates should increase.<sup>32</sup>

VHA considered that the ACCC's approach to pricing fixed line services should be consistent with its approach to pricing MTAS. According to VHA it is not justifiable for the ACCC to maintain a fully allocated cost recovery approach to FTAS but impose an incremental cost recovery approach to MTAS. In VHA's view, the ACCC's approach to both FTAS and MTAS should be based on incremental cost recovery as this better reflects efficient costs and hence best promotes competition and the LTIE.<sup>33</sup>

Telstra lodged a supplementary submission responding to VHA's submission. According to Telstra, maintaining existing prices for all fixed line services is in the LTIE and the issues raised by VHA are not material to the fixed line services FAD and should not delay its finalisation.<sup>34</sup> Telstra commented that the MTAS/FTAS relativity should not be a primary regulatory consideration and that the setting of access prices should focus on the recovery of efficient costs. Telstra argued that given the migration of customers to the NBN and declining importance of the legacy copper network, any pricing focus should be on MTAS rather than FTAS. Telstra also observed the declining importance of FTAS as a revenue stream for Telstra. Additionally, Telstra stated that its preliminary updating of the FLSM suggests that FTAS prices should increase by over 30 percent.<sup>35</sup>

Telstra, however, noted that as convergence of fixed and mobile services continues, the relative pricing of interconnection services will become more relevant. According to Telstra, when there is a common IP Management system which it expects will exist in 3-5 years the pricing of interconnection services (i.e. FTAS and MTAS) should be considered more holistically.<sup>36</sup>

Telstra also argued that it has been transparent about its USO and NBN migration payments. It noted USO payments are deducted in the FLSM and the NBN migration and related payments are taken into account using the NBN adjustment mechanism.<sup>37</sup>

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<sup>31</sup> Vodafone, *Submission in response to Consultation and Position paper, Fixed line services FAD inquiry 2018*, 13 May 2019, p. 1, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2018/consultation-submissions-received>.

<sup>32</sup> Vodafone, *Submission in response to Consultation and Position paper, Fixed line services FAD inquiry 2018*, 13 May 2019, pp. 1-3, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2018/consultation-submissions-received>.

<sup>33</sup> Vodafone, *Submission in response to Consultation and Position paper, Fixed line services FAD inquiry 2018*, 13 May 2019, pp. 2-3, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2018/consultation-submissions-received>.

<sup>34</sup> Telstra, *Supplementary Submission in response to Consultation and Position paper, Fixed line services FAD inquiry 2018*, 29 May 2019, p. 1, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2018/consultation-submissions-received>.

<sup>35</sup> Telstra, *Supplementary Submission in response to Consultation and Position paper, Fixed line services FAD inquiry 2018*, 29 May 2019, pp. 1-3, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2018/consultation-submissions-received>.

<sup>36</sup> Telstra, *Supplementary Submission in response to Consultation and Position paper, Fixed line services FAD inquiry 2018*, 29 May 2019, p. 2, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2018/consultation-submissions-received>.

<sup>37</sup> Telstra, *Supplementary Submission in response to Consultation and Position paper, Fixed line services FAD inquiry 2018*, 29 May 2019, p. 3, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2018/consultation-submissions-received>.

### 3.1.5. ACCC's draft decision

The ACCC's draft decision is to make new FADs for the declared fixed line services on the same terms of access as the existing FADs, to apply until 30 June 2024. This means that all prices for the declared services as at 30 June 2019 will apply for the duration of the new FADs.<sup>38</sup>

The ACCC notes VHA's concern regarding existing FTAS pricing. The ACCC recognises that FTAS is a technology neutral service and applies to the termination of calls to a geographic number regardless of whether the voice service is provided over the legacy copper network, the NBN or other fixed line networks. This means that the FTAS is likely to remain an important bottleneck service even after the migration to the NBN is complete.

The ACCC's view is that at present it is not appropriate to review FTAS pricing in isolation of the pricing of the other declared fixed line services provided over Telstra's network.

The ACCC considers that the review of pricing of one declared fixed line service in isolation of the other declared fixed line services risks unduly advantaging some access seekers over others. The ACCC supports a stable pricing environment over the medium term, which will also reduce the risk of the access provider over or under-recovering its costs of supplying those services.

The ACCC considers there are potentially significant regulatory costs to the industry if the ACCC was to undertake a full reconsideration of the FLSM, having regard to among other things how the FLSM shares common asset costs across the seven declared services to determine their prices. The ACCC does not consider a review involving a full reconsideration of pricing for all declared services is warranted or to be in the LTIE given, among other things, the potentially significant regulatory costs to industry of contributing to such a review and its uncertain benefits during the remaining period of transition to the NBN.

The ACCC has considered VHA's views about FTAS and MTAS pricing. As noted in its 2015 MTAS FAD draft decision, the ACCC did not consider it was appropriate to align the MTAS rate with the FTAS rate, or set the MTAS rate at a ratio to the FTAS rate, as it would not result in a MTAS price that reflects the cost of providing the service.<sup>39</sup> In addition, the ACCC considered that it was appropriate to use the BBM for pricing fixed line services and an incremental cost approach for the MTAS due to the differences in the fixed line services market and the mobiles market, especially the different pace of technological change.<sup>40</sup>

However, the ACCC notes Optus' view that pricing for fixed interconnection services should be given further consideration in future access determinations. In particular, the ACCC recognises that FTAS is technology neutral and applies to the termination of calls to a geographic number regardless of whether the voice service is provided over the legacy copper network, the NBN or other fixed line networks. This means that the FTAS is likely to remain an important bottleneck service even after the migration to the NBN is complete. On this basis, it may be appropriate, once the NBN migration is complete, to consider whether to separate out the consideration of the FTAS from the other copper-based declared fixed line services. It may also be appropriate and practical, as suggested by a number of stakeholders, to then consider the FTAS and the MTAS together, including questions of

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<sup>38</sup> This includes all primary prices, connection charges applying to the LSS, ULLS and wholesale ADSL and the internal interconnection cable charge.

<sup>39</sup> ACCC, *MTAS FAD - Explanatory Statement*, 7 December 2011. ACCC, *MTAS FAD - Draft Decision*, May 2015, p. 11, [https://www.accc.gov.au/system/files/MTAS%20FAD%20Draft%20decision%20-%206%20May%202015\\_0.pdf](https://www.accc.gov.au/system/files/MTAS%20FAD%20Draft%20decision%20-%206%20May%202015_0.pdf).

<sup>40</sup> ACCC, *MTAS FAD - Explanatory Statement*, 7 December 2011. ACCC, *MTAS FAD - Draft Decision*, May 2015, p. 11, [https://www.accc.gov.au/system/files/MTAS%20FAD%20Draft%20decision%20-%206%20May%202015\\_0.pdf](https://www.accc.gov.au/system/files/MTAS%20FAD%20Draft%20decision%20-%206%20May%202015_0.pdf).

declaration and pricing. Concurrent with this fixed line services FAD inquiry, the ACCC is currently conducting a public inquiry on the access determination for MTAS. The discussion paper for this inquiry is available on the ACCC website.<sup>41</sup>

Regarding VHA's claims about Telstra's USO and NBN Co payments, the ACCC can confirm that USO payments to Telstra together with payments from NBN Co were taken into account in the FLSM when setting fixed line services prices for the existing FADs.

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, and reduces the regulatory burden on industry compared to a full reconsideration of the FLSM. This will allow for price stability in relation to fixed line pricing over the remainder of the transition to the NBN, and ensure that access seekers and end-users are not adversely impacted by significant price changes during this period.

Consistent with the approach it adopted in its 2015 final decision on the fixed line services FADs, the ACCC has balanced several considerations in maintaining existing price relativities for fixed line services. In particular, the ACCC has balanced the maintenance of relative price stability against the degree of responsiveness of prices to changes in demand and cost relativities between services, in order to produce an outcome in the LTIE. The ACCC recognises, however, that changes in relative prices that reflect changes in relative costs can promote the economically efficient use of, and the economically investment in, telecommunications infrastructure.<sup>42</sup>

The ACCC considers that the retention of existing prices (and price relativities) maintains consistency and continuity of prices for the fixed line services and minimises the scope for some access seekers to be disadvantaged over others in the migration to the NBN. As noted above regarding VHA's claims, it is not appropriate at present to review FTAS pricing in isolation of the pricing of the other declared fixed line services provided over Telstra's network.

### **Assessment of approach against section 152BCA matters**

Maintaining the existing pricing is in the LTIE<sup>43</sup> because it provides price stability, and avoids complexity and potentially significant regulatory costs reviewing and updating the FLSM, or developing a new model if it is found to be warranted or proposed by access seekers. Avoidance of delays in making a final decision for the FADs is in the LTIE because it gives certainty to the industry and access seekers, which will assist in the migration of services from Telstra's legacy network to the NBN. The ACCC has also had regard to whether the terms and conditions of access are likely to result in:

- a. Promoting competition
- b. Achieving any-to-any connectivity
- c. Encouraging the economically efficient use of, and economically efficient investment in:
  - i. The infrastructure by which listed carriage services are applied
  - ii. Any other infrastructure by which listed services are, or are likely to become, capable of being supplied.

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<sup>41</sup> ACCC, *Mobile Terminating Access Service access determination inquiry – 2019, Discussion paper*, <https://www.accc.gov.au/regulated-infrastructure/communications/mobile-services/mobile-terminating-access-service-access-determination-inquiry-2019/discussion-paper>.

<sup>42</sup> ACCC, *Public inquiry into final access determinations for fixed line services - Final Decision*, October 2015, p. 12, <https://www.accc.gov.au/system/files/FSR%20FAD%20Final%20Decision%20Report%20-%20Public%20Version.pdf>.

<sup>43</sup> Paragraph 152BCA(1)(a) of the CCA.

The ACCC considers relevant markets for declared fixed line services include: retail and wholesale supply of voice services (including VoIP and excluding mobile originated calls); retail and wholesale supply of broadband; and retail supply of a bundle of voice and broadband services.<sup>44</sup> Maintaining the existing terms is likely to continue promoting a competitive environment for the related markets in the next period given the same price and expected quality of service over this period.

Maintaining prices and price relativities for the declared services, which use many of the same network assets, will promote an efficient level of investment in maintaining the infrastructure for the remaining end-users. This will also provide a stable environment for access seekers as customers migrate to the NBN.

## 3.2. Duration of the access determinations

Access determinations must have an expiry date which aligns with the expiry date of the declaration for the relevant service unless there are circumstances that warrant a different expiry date.<sup>45</sup>

Six of the fixed line services are declared until 30 June 2024 while the wholesale ADSL service is declared until 13 February 2022.<sup>46</sup> Accordingly the ACCC will need to consider in the future if the declaration of the wholesale ADSL service should continue for the same time period as the other six fixed line services.<sup>47</sup>

The ACCC's Consultation and Position paper invited comments on what the appropriate duration of the 2019 FADs should be for all declared fixed line services and whether it should coincide with the expiry of the declaration for the six fixed line services that expire on 30 June 2024. As part of preliminary consultation stakeholders were also invited to comment on whether the ACCC should conduct a mid-term review of pricing, through reference to a pre and post NBN migration period.

### 3.2.1. Submissions

Telstra submitted that aligning FADs with the declaration period of the six fixed line services that expire on 30 June 2024 will promote the LTIE by providing long-term certainty and stability to all industry participants at a time of significant migration to the NBN and reduced relevance of Telstra's legacy copper services. This will allow a smoother transition to NBN and reduce regulatory burden for the industry.<sup>48</sup>

ACCAN agreed with aligning the expiry of the FAD with the expiry of the declarations, as this will provide pricing stability of users as they transition to the NBN.<sup>49</sup>

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<sup>44</sup> ACCC, *Public inquiry into final access determinations for fixed line services - Final Decision*, October 2015, p. 233, <https://www.accc.gov.au/system/files/FSR%20FAD%20Final%20Decision%20Report%20-%20Public%20Version.pdf>.

<sup>45</sup> Subsection 152BCF(6) of the CCA.

<sup>46</sup> ACCC, *Fixed line services declaration inquiry 2018 – Final decision*, 26 November 2018, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services-declaration-inquiry-2018/final-decision>; ACCC, *Wholesale ADSL service declaration inquiry 2016 – Final decision*, 3 February 2017, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/wholesale-adsl-service-declaration-inquiry-2016/final-decision>.

<sup>47</sup> The ACCC will need to consider whether the existing declaration of the Wholesale ADSL service should be remade, further extended, revoked, varied, allowed to expire or extended and then allowed to expire

<sup>48</sup> Telstra, *Submission in response to Consultation and Position paper, Fixed line services FAD inquiry 2018*, 13 May 2019, p. 4, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2018/consultation-submissions-received>.

<sup>49</sup> ACCAN, *Submission in response to Consultation and Position paper, Fixed line services FAD inquiry 2018*, 13 May 2019, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2018/consultation-submissions-received..>

Optus submitted that a FAD period until 30 June 2024 will promote stability and minimise the risk of over-or under-recovering the costs associated with supplying services.<sup>50</sup> Optus and ACCAN both observed that the ACCC has the flexibility to consider a variation to the FADs if required prior to the proposed expiry.

Vocus disagreed with a FAD period until 30 June 2024, noting that prices would be better determined with a reference to two periods; that is, pre and post NBN migration.<sup>51</sup> Vocus considered that a decision on the post NBN migration period would be best determined using empirical data gathered on Telstra's costs at that time.

### **3.2.2. ACCC's draft decision**

The ACCC's draft decision is that the price and non-price terms set out in the 2019 fixed line services FAD (including Wholesale ADSL) will apply until 30 June 2024.

The ACCC considers that this duration for the FAD is sufficient to ensure pricing stability and regulatory certainty to support industry investment and planning in the remaining period prior to the completion of the NBN rollout. This will provide a stable pricing environment over the medium term which will also reduce the risk of the access provider over or under-recovering its costs of supplying those services.

The ACCC's draft decision is to not set a mid-term price review for this fixed line services FAD. The ACCC considers that a mid-term review would unnecessarily increase the regulatory burden on industry. The ACCC is able to initiate an inquiry to vary an access determination at any time if it considers this is necessary. Any ACCC decision to initiate such an inquiry would be informed by consultation with stakeholders.

### **Assessment of approach against section 152BCA matters**

The ACCC considers that a fixed line services FAD that applies until 30 June 2024 will give regulatory certainty and promote the achievement of the matters specified in section 152BCA of the CCA in relation to carriage services that involve communication between end-users.<sup>52</sup>

## **3.3. The application of fixed principles to new FADs**

### **3.3.1. Background**

An access determination may contain 'fixed principles' provisions that lock in certain matters until a nominal termination date.<sup>53</sup> Both price and non-price terms and conditions can be designated as fixed principles provisions. They are intended to give the ACCC the ability to provide regulatory certainty in certain circumstances.<sup>54</sup>

The existing FADs contain a set of fixed principles that relate only to price terms and conditions. These fixed principles give form to the BBM pricing methodology used by the

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<sup>50</sup> Optus, *Submission in response to Consultation and Position paper, Fixed line services FAD inquiry 2018*, 13 May 2019, pp. 3-4, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2018/consultation-submissions-received>.

<sup>51</sup> Vocus Group, *Vocus submission to ACCC fixed line services FAD preliminary consultation – Public*, 30 January 2019, p. 2, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2018/consultation-submissions-received>.

<sup>52</sup> Paragraph 152BCA(1)(a) of the CCA.

<sup>53</sup> Subsection 152BCD(1) of the CCA

<sup>54</sup> Explanatory Memorandum to the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010 (Cth), p. 144.

ACCC to determine prices for Telstra's declared fixed line services by identifying how certain pricing inputs within the BBM framework should be determined and used to estimate efficient prices. In particular, the BBM pricing methodology estimates prices that are based on efficiently incurred costs and enables the access provider to recover those costs, including a commercial return on its investment.

The new FADs for the declared services are proposed to come into force before the termination date specified in the fixed principles. Therefore, the ACCC must include the same fixed principles provisions in the new FADs until the fixed principles expire on 30 June 2021.<sup>55</sup> However, the new FADs are not proposed to expire for another 3 years; that is, on 30 June 2024.

### **3.3.2. ACCC Consultation and Position paper**

As set out in the ACCC's Consultation and Position Paper of March 2019, the ACCC has to decide whether it should make new fixed principles to cover the full period of the new FADs and, if not, how it should treat the existing fixed principles that are due to expire part way through the period of the new FADs.

The ACCC's preliminary view was that it did not consider it appropriate to develop new fixed principles for the full period of the new FADs. And in that event, the ACCC's preliminary view was that it is not in the LTIE to apply the existing fixed principles for the first two years of the regulatory period for new FADs.

Submissions were sought on whether there were any concerns in relation to ACCC's views about the usefulness of the existing fixed principles for future FAD pricing.

### **3.3.3. Submissions**

Telstra submitted that it agrees with the ACCC's position that it is not in the LTIE to apply the fixed principles for the first two years of the regulatory period for the new FADs or update the FLSM. Telstra considers that given the proximity of the NBN rollout completion, the current fixed principles should be allowed to expire on 30 June 2021. However, according to Telstra, if the current fixed principles are allowed to expire the ACCC should consider what guidance can be given on how it will approach pricing of fixed line services in any future FAD periods (and whether the ACCC expects there to be future FADs beyond 30 June 2024).<sup>56</sup>

Optus considered that fixed principles should not be applied as part of this pricing inquiry. According to Optus, applying the fixed principles and undertaking a detailed pricing inquiry with updated cost model inputs could result in outcomes that create price instability and uncertainty which could have negative impacts in downstream retail markets. Optus also noted that updated cost model inputs could result in (potentially) significant changes in wholesale prices, which could then flow through to downstream retail markets during the remainder of the fixed line migration to the NBN.<sup>57</sup>

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<sup>55</sup> Subsection 152BCD(3) of the CCA.

<sup>56</sup> Telstra, *Submission in response to Consultation and Position paper, Fixed line services FAD inquiry 2018*, 13 May 2019, p. 4, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2018/consultation-submissions-received>.

<sup>57</sup> Optus, *Submission in response to Consultation and Position paper, Fixed line services FAD inquiry 2018*, 13 May 2019, pp. 4-5, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2018/consultation-submissions-received>.



VHA stated that it ‘disagrees with the ACCC’s initial view that the fixed principles should remain unchanged’.<sup>58</sup> According to VHA, the ACCC’s approach to pricing fixed line services should be updated to be consistent with the ACCC’s approach to MTAS.<sup>59</sup>

### 3.3.4. ACCC’s draft decision

For the purposes of making new FADs, the ACCC is not intending to make new fixed principles to cover the full period of the new FADs.

The ACCC considers there is 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. In particular the ACCC notes that the roll-out of the NBN will result in a relatively limited number of users on Telstra’s copper network in the future. Therefore at this time the ACCC does not consider it appropriate to develop and lock in new fixed principles for the new FADs. The ACCC’s intention is to provide early guidance to industry of its approach to pricing of fixed line services for any future FAD periods. The ACCC notes that this is a unique regulatory situation and the decision to depart from the BBM and the fixed principles is specific to this determination.

As to how the ACCC should treat the existing fixed principles that are due to expire part way through the period of the new FADs, the ACCC intends not to apply the fixed principles for their remaining life.

The ACCC regards the application of the fixed principles as subject to the LTIE assessment and notes that its position was upheld on appeal to the Federal Court.<sup>60</sup> Consistent with the approach adopted in making the existing FADs, the ACCC intends not to apply the fixed principles for their remaining life and is not proposing to update the FLSM. The ACCC intends to maintain the current nominal prices in the new FADs.

## 3.4. Non-price terms and conditions

The ACCC can specify in an access determination some or all of the terms and conditions on which a carrier is to provide an access seeker with access to the declared service. These terms and conditions can take the form of price or NPTCs.

NPTCs cover a broad scope as there can be many non-price aspects of access to the declared service. These can range from commercial terms, such as billing, general dispute resolution processes and operational processes by which the declared services are to be accessed.

Further details about specific NPTCs in the existing FADs are outlined in the FAD instruments.<sup>61</sup>

The ACCC invited submissions on whether there are any concerns with the operation of existing NPTCs.

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<sup>58</sup> Vodafone, *Submission in response to Consultation and Position paper, Fixed line services FAD inquiry 2018*, 13 May 2019, pp. 2-3, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2018/consultation-submissions-received>.

<sup>59</sup> Vodafone, *Submission in response to Consultation and Position paper, Fixed line services FAD inquiry 2018*, 13 May 2019, pp. 2-3, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2018/consultation-submissions-received>.

<sup>60</sup> *Telstra Corporation Limited v Australian Competition and Consumer Commission* [2017] FCA 316, <https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2017/2017fca0316>.

<sup>61</sup> ACCC, *Final Access Determinations Nos. 2 to 8 of 2015 for Fixed Line Services*, <http://registers.accc.gov.au/content/index.phtml/itemId/1190014>.

### 3.4.1. Submissions

Telstra and Optus both supported maintaining existing NPTCs, noting that a detailed review for a comprehensive set of NPTCs would impose significant regulatory burden on industry which would not promote the LTIE. Telstra stated that since the commencement of the existing FADs, wholesale customers have not raised any material issues in regard to the NPTCs.<sup>62</sup>

Optus submitted that the existing NPTCs were subject to detailed consultation when first developed and that factors taken into account in setting the NPTCs are unlikely to have changed.<sup>63</sup>

### 3.4.2. ACCC's draft decision

The ACCC draft decision is that current NPTCs should be maintained until 30 June 2024. The ACCC is not aware of any material problems with the targeted set of NPTCs in the existing FADs. The ACCC also notes that no issues were raised in relation to the current NPTCs in submissions received, which supports the ACCC's assessment that they are fit for purpose and appropriate to be included in new FADs.

The ACCC considers this approach will promote the LTIE by ensuring, on an as needs basis, there is a regulatory fall back for specific matters that might raise competition concerns or potentially be the subject of disputation between the parties.

#### Assessment of approach against section 152BCA matters

The ACCC notes that it has previously had regard to the matters specified in section 152BCA of the CCA in approving existing NPTCs in FADs for the declared services.<sup>64</sup> The ACCC is not aware of any change in circumstances that requires a departure from its prior assessment. Accordingly, the ACCC maintains and adopts its previous assessment for the purposes of this draft decision.

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<sup>62</sup> Telstra, *Submission in response to Consultation and Position paper, Fixed line services FAD inquiry 2018*, 13 May 2019, p. 5, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2018/consultation-submissions-received>.

<sup>63</sup> Optus, *Submission in response to Consultation and Position paper, Fixed line services FAD inquiry 2018*, 13 May 2019, pp. 5-6, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2018/consultation-submissions-received>.

<sup>64</sup> ACCC, *Public inquiry into final access determinations for fixed line services - Final Decision*, October 2015, p. 229, <https://www.accc.gov.au/system/files/FSR%20FAD%20Final%20Decision%20Report%20-%20Public%20Version.pdf>.

## Appendix A Legislative framework

This section sets out the relevant legislative framework in relation to the FADs.

### A.1 Content of final access determinations

Section 152BC of the CCA specifies what a FAD may contain. It includes, among other things, terms and conditions on which a carrier or carriage service provider (CSP) is to comply with the SAOs and terms and conditions of access to a declared service.

A FAD may make different provisions with respect to different access providers or access seekers.<sup>65</sup>

### A.2 Fixed principles provisions

A FAD may contain a fixed principles provision, which allows a provision in a FAD to have an expiry date after the expiry date of the FAD.<sup>66</sup> Such a provision allows the ACCC to 'lock-in' a term so that it would be consistent across consecutive FADs.

### A.3 Varying final access determinations

Section 152BCN allows the ACCC to vary or revoke a FAD, provided that certain procedures are followed.

A fixed principles provision cannot be varied or removed unless the FAD sets out the circumstances in which the provision can be varied or removed, and those circumstances are present.<sup>67</sup>

### A.4 Commencement and expiry provisions

Section 152BCF of the CCA sets out the commencement and expiry rules for FADs.

A FAD must have an expiry date, which should align with the expiry of the declaration for that service unless there are circumstances that warrant a different expiry date.<sup>68</sup>

### A.5 Matters to consider when making FADs

The ACCC must have regard to the matters specified in subsection 152BCA (1) of the CCA when making a FAD. These matters are:

- (a) whether the determination will promote the LTIE of carriage services or services supplied by means of carriage services
- (b) the legitimate business interests of a carrier or CSP who supplies, or is capable of supplying, the declared service, and the carrier's or provider's investment in facilities used to supply the declared service
- (c) the interests of all persons who have rights to use the declared service
- (d) the direct costs of providing access to the declared service
- (e) the value to a person of extensions, or enhancement of capability, whose cost is borne by someone else

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<sup>65</sup> Subsection 152BC (5) of the CCA.

<sup>66</sup> Section 152BCD of the CCA.

<sup>67</sup> Subsection 152BCN (4) of the CCA.

<sup>68</sup> Subsection 152BCF (6) of the CCA.

(f) the operational and technical requirements necessary for the safe and reliable operation of a carriage service, a telecommunications network or a facility, and

(g) the economically efficient operation of a carriage service, a telecommunications network or a facility.

The subsection 152BCA (1) matters reflect the repealed subsection 152CR (1) matters that the ACCC was required to take into account in making a final determination (FD) in an access dispute. The ACCC interprets the subsection 152BCA (1) matters in a similar manner to the approach taken in access disputes.

Subsection 152BCA (2) sets out other matters that the ACCC may take into account in making FADs in certain circumstances.

Subsection 152BCA (3) allows the ACCC to take into account any other matters that it thinks are relevant.

The ACCC's views on how the matters in section 152BCA should be interpreted for the FAD process are set out below.

### A.5.1 Paragraph 152BCA(1)(a)

The first matter for the ACCC to consider when making a FAD is 'whether the determination will promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services'.

The ACCC has published a guideline explaining what it understands by the phrase 'long-term interests of end-users' in the context of its declaration responsibilities.<sup>69</sup> This approach to the LTIE was also used by the ACCC in making determinations in telecommunication access disputes. The ACCC considers that the same interpretation is appropriate for making FADs for the declared fixed line services.

In the ACCC's view, particular terms and conditions promote the interests of end users if they are likely to contribute towards the provision of:

- goods and services at lower prices
- goods and services of a high quality, and/or
- a greater diversity of goods and services.<sup>70</sup>

The ACCC also notes that the Australian Competition Tribunal (Tribunal) has offered guidance in its interpretation of the phrase 'long-term interests of end-users' (in the context of access to subscription television services):

Having regard to the legislation, as well as the guidance provided by the Explanatory Memorandum, it is necessary to take the following matters into account when applying the touchstone – the long-term interests of end-users:

\* End-users: "end-users" include actual and potential [users of the service]...

\* Interests: the interests of the end-users lie in obtaining lower prices (than would otherwise be the case), increased quality of service and increased diversity and scope in product offerings. ... [T]his would include access to innovations ... in a quicker timeframe than would otherwise be the case ...

<sup>69</sup> ACCC, *Telecommunications services – declaration provisions: a guide to the declaration provisions of Part XIC of the Trade Practices Act*, August 2016, in particular pp. 28–31. <https://www.accc.gov.au/publications/guideline-for-part-xic-declaration-provisions-for-telecommunication-services>.

<sup>70</sup> ACCC, *Telecommunications services – declaration provisions: a guide to the declaration provisions of Part XIC of the Trade Practices Act*, August 2016, p. 28, <https://www.accc.gov.au/publications/guideline-for-part-xic-declaration-provisions-for-telecommunication-services>.

\* Long-term: the long-term will be the period over which the full effects of the ... decision will be felt. This means some years, being sufficient time for all players (being existing and potential competitors at the various functional stages of the ... industry) to adjust to the outcome, make investment decisions and implement growth – as well as entry and/or exit – strategies.<sup>71</sup>

To consider the likely impact of particular terms and conditions on the LTIE, the CCA requires the ACCC to have regard to whether the terms and conditions are likely to result in:

- promoting competition in markets for carriage services and services supplied by means of carriage services
- achieving any-to-any connectivity, and
- encouraging the economically efficient use of, and economically efficient investment in:
  - the infrastructure by which listed carriage services are supplied, and
  - any other infrastructure by which listed services are, or are likely to become, capable of being supplied.<sup>72</sup>

## Promoting competition

In assessing whether particular terms and conditions will promote competition, the ACCC analyses the relevant markets in which the declared services are supplied (retail and wholesale) and considers whether the terms set in those markets remove obstacles to end-users gaining access to telephony and broadband services.<sup>73</sup>

Obstacles to accessing these services include the price, quality and availability of the services and the ability of competing providers to provide telephony and broadband services.

The ACCC is not required to precisely define the scope of the relevant markets in which the declared services are supplied. The ACCC considers that it is sufficient to broadly identify the scope of the relevant markets likely to be affected by the ACCC's regulatory decisions.

The ACCC's view is that the relevant markets for the purpose of making FADs for the declared fixed line services are:

- the market for the retail and wholesale supply of voice services (including Voice over Internet Protocol (VoIP) but excluding mobile originated calls)
- the market for the retail and wholesale supply of broadband, and
- the market for the retail supply of a bundle of voice and broadband services.

## Any-to-any connectivity

The CCA gives guidance on how the objective of any-to-any connectivity is achieved. It is achieved only if each end-user who is supplied with a carriage service that involves communication between end-users is able to communicate, by means of that service, with each other end-user who is supplied with the same service or a similar service. This must be the case whether or not the end-users are connected to the same telecommunications network.<sup>74</sup>

The ACCC considers that this matter is relevant to ensuring that the terms and conditions contained in FADs do not create obstacles for the achievement of any to any connectivity.

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<sup>71</sup> *Seven Network Limited (No 4)* [2004] ACompT 11 at [120].

<sup>72</sup> Subsection 152AB(2) of the CCA.

<sup>73</sup> Subsection 152AB(4) of the CCA. This approach is consistent with the approach adopted by the Tribunal in *Telstra Corporations Limited (No 3)* [2007] A CompT 3 at [92]; *Telstra Corporation Limited* [2006] A CompT at [97], [149].

<sup>74</sup> Subsection 152AB (8) of the CCA.

## Efficient use of and investment in infrastructure

In determining the extent to which terms and conditions are likely to encourage the economically efficient use of and investment in infrastructure, the ACCC must have regard to:

- whether it is, or is likely to become, technically feasible for the services to be supplied and charged for, having regard to:
  - the technology that is in use, available or likely to become available
  - whether the costs involved in supplying and charging for, the services are reasonable or likely to become reasonable, and
  - the effects or likely effects that supplying and charging for the services would have on the operation or performance of telecommunications networks
- the legitimate commercial interests of the supplier or suppliers of the services, including the ability of the supplier or suppliers to exploit economies of scale and scope
- incentives for investment in the infrastructure by which services are supplied; and any other infrastructure (for example, the NBN) by which services are, or are likely to become, capable of being supplied, and
- the risks involved in making the investment.<sup>75</sup>

The objective of encouraging the ‘economically efficient use of and economically efficient investment in ... infrastructure’ requires an understanding of the concept of economic efficiency. Economic efficiency consists of three components:

- productive efficiency – this is achieved where individual firms produce the goods and services that they offer at least cost
- allocative efficiency – this is achieved where the prices of resources reflect their underlying costs so that resources are then allocated to their highest valued uses (i.e. those that provide the greatest benefit relative to costs), and
- dynamic efficiency – this reflects the need for industries to make timely changes to technology and products in response to changes in consumer tastes and in productive opportunities.

On the issue of efficient investment, the Tribunal has stated that:

An access charge should be one that just allows an access provider to recover the costs of efficient investment in the infrastructure necessary to provide the declared service.<sup>76</sup>

...efficient investment by both access providers and access seekers would be expected to be encouraged in circumstances where access charges were set to ensure recovery of the efficient costs of investment (inclusive of a normal return on investment) by the access provider in the infrastructure necessary to provide the declared service.<sup>77</sup>

...access charges can create an incentive for access providers to seek productive and dynamic efficiencies if access charges are set having regard to the efficient costs of providing access to a declared service.<sup>78</sup>

### A.5.2 Paragraph 152BCA(1)(b)

The second matter requires the ACCC to consider ‘the legitimate business interests’ of the carrier or CSP when making a FAD.

<sup>75</sup> Subsections 152AB (6) and (7A) of the CCA.

<sup>76</sup> *Telstra Corporation Ltd (No. 3)* [2007] ACompT 3 at [159].

<sup>77</sup> *Telstra Corporation Ltd (No. 3)* [2007] ACompT 3 at [164].

<sup>78</sup> *Telstra Corporation Ltd (No. 3)* [2007] ACompT 3 at [159].

In the context of access disputes, the ACCC considered that it was in the access provider's legitimate business interests to earn a normal commercial return on its investment. The ACCC is of the view that the concept of 'legitimate business interests' in relation to FADs should be interpreted in a similar manner, consistent with the phrase 'legitimate commercial interests' used elsewhere in Part XIC of the CCA.<sup>79</sup>

For completeness, the ACCC notes that it would be in the access provider's legitimate business interests to seek to recover its costs as well as a normal commercial return on investment having regard to the relevant risk involved. However, an access price should not be inflated to recover any profits the access provider (or any other party) may lose in a dependent market as a result of the provision of access.

The Tribunal has taken a similar view of the expression 'legitimate business interests'.

### **A.5.3 Paragraph 152BCA(1)(c)**

The third matter requires the ACCC to consider 'the interests of all persons who have the right to use the service' when making a FAD.

The ACCC considers that this matter requires it to have regard to the interests of access seekers. The Tribunal has also taken this approach. The access seekers' interests would not be served by higher access prices to declared services, as it would inhibit their ability to compete with the access provider in the provision of retail services.

People who have rights to currently use a declared service will generally use that service as an input to supply carriage services, or a service supplied by means of carriage service, to end-users.

The ACCC considers that this class of persons has an interest in being able to compete for the custom of end-users on the basis of their relative merits. This could be prevented from occurring if terms and conditions of access favour one or more service providers over others, thereby distorting the competitive process.<sup>80</sup>

However, the ACCC does not consider that this matter calls for consideration to be given to the interests of the users of these 'downstream' services. The interests of end users will already be considered under other matters.

### **A.5.4 Paragraph 152BCA(1)(d)**

The fourth matter requires the ACCC to consider 'the direct costs of providing access to the declared service' when making a FAD.

The ACCC considers that the direct costs of providing access to a declared service are those incurred (or caused) by the provision of access.

The ACCC interprets this matter, and the use of the term 'direct costs', as allowing consideration to be given to a contribution to indirect costs. This is consistent with the Tribunal's approach in an undertaking decision. A contribution to indirect costs can also be supported by other matters.<sup>81</sup>

However, the matter does not extend to compensation for loss of any 'monopoly profit' that occurs as a result of increased competition.<sup>82</sup>

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<sup>79</sup> *Telstra Corporation Ltd (No. 3)* [2007] ACompT 3 at [159].

<sup>80</sup> *Telstra Corporation Ltd (No. 3)* [2007] ACompT 3 at [159].

<sup>81</sup> Application by Optus Mobile Pty Limited and Optus Networks Pty Limited [2006] ACompT 8 at [137].

<sup>82</sup> See Explanatory Memorandum for the *Trade Practices Amendment (Telecommunications) Bill 1996*, p. 44: [T]he 'direct' costs of providing access are intended to preclude arguments that the provider should be

The ACCC also notes that the Tribunal (in another undertaking decision) considered the direct costs matter 'is concerned with ensuring that the costs of providing the service are recovered.'<sup>83</sup> The Tribunal has also noted that the direct costs could conceivably be allocated (and hence recovered) in a number of ways and that adopting any of those approaches would be consistent with this matter.<sup>84</sup>

### A.5.5 Paragraph 152BCA(1)(e)

The fifth matter requires that the ACCC consider 'the value to a party of extensions, or enhancements of capability, whose cost is borne by someone else' when making a FAD.

In the 1997 Access Pricing Principles, the ACCC stated that this matter:

...requires that if an access seeker enhances the facility to provide the required services, the access provider should not attempt to recover for themselves any costs related to this enhancement. Equally, if the access provider must enhance the facility to provide the service, it is legitimate for the access provider to incorporate some proportion of the cost of doing so in the access price.<sup>85</sup>

The ACCC considers that this application of paragraph 152BCA (1) (e) is relevant to making FADs.

### A.5.6 Paragraph 152BCA(1)(f)

The sixth matter requires the ACCC to consider 'the operational and technical requirements necessary for the safe and reliable operation of a carriage service, a telecommunications network or a facility' when making a FAD.

The ACCC considers that this matter requires that terms of access should not compromise the safety or reliability of carriage services and associated networks or facilities, and that this has direct relevance when specifying technical requirements or standards to be followed.

The ACCC has previously stated in the context of model non-price terms and conditions, it is of the view that:

...this consideration supports the view that model terms and conditions should reflect the safe and reliable operation of a carriage service, telecommunications network or facility. For instance, the model non-price terms and conditions should not require work practices that would be likely to compromise safety or reliability.<sup>86</sup>

The ACCC considers that these views will apply in relation to paragraph 152BCA (1) (f) for the making of FADs.

### A.5.7 Paragraph 152BCA(1)(g)

The final matter of subsection 152BCA(1) requires the ACCC to consider 'the economically efficient operation of a carriage service, a telecommunications network facility or a facility' when making a FAD.

The ACCC noted in its publication the 'Resolution of telecommunications access disputes—a guide' (the Guide) that the phrase 'economically efficient operation' embodies the concept of economic efficiency as discussed earlier under the LTIE. That is, it calls for a

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reimbursed by the third party seeking access for consequential costs which the provider may incur as a result of increased competition in an upstream or downstream market.

<sup>83</sup> *Telstra Corporation Limited* [2006] ACompT 4 at [92].

<sup>84</sup> *Telstra Corporation Limited* [2006] ACompT 4 at [139].

<sup>85</sup> ACCC, 1997 Access Pricing Principles, p. 11, <https://www.accc.gov.au/system/files/Fn%2042%20-%20ACCC%20Access%20Pricing%20Principles.pdf>.

<sup>86</sup> ACCC, *Final Determination – Model Non-price Terms and Conditions*, November 2008, p. 8, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/model-non-price-terms-and-conditions/final-determination-2008>.



consideration of productive, allocative and dynamic efficiency. The Guide also noted that in the context of a determination, the ACCC may consider whether particular terms and conditions enable a carriage service, telecommunications network or facility to be operated efficiently.<sup>87</sup>

Consistent with the approach adopted by the Tribunal, the ACCC considers that in applying this matter, it is relevant to consider the economically efficient operation of:

- retail services provided by access seekers using the access provider's services or by the access provider in competition with those access seekers, and
- the telecommunications networks and infrastructure used to supply these services.

#### **A.5.8 Subsection 152BCA(2)**

Subsection 152BCA(2) provides that, in making a FAD that applies to a carrier or CSP who supplies, or is capable of supplying, the declared services, the ACCC may, if the carrier or provider supplies one or more eligible services,<sup>88</sup> take into account:

- the characteristics of those other eligible services
- the costs associated with those other eligible services
- the revenues associated with those other eligible services, and
- the demand for those other eligible services.

The Explanatory Memorandum stated that this provision is intended to ensure that the ACCC, in making a FAD, does not consider the declared service in isolation, but also considers other relevant services.<sup>89</sup> As an example, the Explanatory Memorandum stated:

...when specifying the access price for a declared service which is supplied by an access provider over a particular network or facility, the ACCC can take into account not only the access provider's costs and revenues associated with the declared service, but also the costs and revenues associated with other services supplied over that network or facility.<sup>90</sup>

The ACCC proposes to consider the costs and revenues associated with other services—whether declared or not declared—that are provided over Telstra's network when making FADs for the declared fixed line services.

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<sup>87</sup> ACCC, *Resolution of telecommunications access disputes—a guide*, p. 57, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/dispute-resolution-guidelines-review/revised-guidelines>.

<sup>88</sup> 'Eligible service' has the same meaning as in section 152AL of the CCA.

<sup>89</sup> Explanatory Memorandum, Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010, p. 178.

<sup>90</sup> Explanatory Memorandum, Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010, p. 178.

### **A.5.9 Subsection 152BCA(3)**

This subsection states the ACCC may take into account any other matters that it thinks are relevant when making a FAD.

The ACCC is of the view that considerations of regulatory certainty and consistency will be important when setting the terms and conditions of the FADs.

The ACCC also considers that it should have regard to:

- its previous decisions in relation to the fixed line services (both arbitrations and access determinations)
- consultation documents and submissions in response to those documents
- information provided to the ACCC by Telstra under RKR.

These considerations and documents do not limit the matters that the ACCC may have regard to when making the FADs for the declared fixed line services.

## Appendix B Description of the declared services

This appendix contains service descriptions for the seven declared fixed line services.

- Unconditioned Local Loop Service (ULLS)
- Line Sharing Service (LSS)
- Wholesale Line Rental (WLR)
- Local Carriage Service (LCS)
- Fixed Originating Access Service (FOAS)
- Fixed Terminating Access Service (FTAS).
- Wholesale Asymmetric Digital Subscriber Line (ADSL)

Under subsection 152ALA (4), the ACCC can extend the expiry of a declared service. Declaration to ULLS, LSS, WLR, LCS, FOAS and FTAS was extended from 31 July 2019 to 30 June 2024.<sup>91</sup> Declaration to wholesale ADSL was extended from 13 February 2017 to 13 February 2022.<sup>92</sup>

More information on service declarations is available on the ACCC [public registers](#).

### B.1 Unconditioned local loop service

The unconditioned local loop service is the use of unconditioned communications wire between the boundary of a telecommunications network at an end-user's premises and a point on a telecommunications network that is a potential point of interconnection located at or associated with a customer access module and located on the end-user side of the customer access module.

### B.2 Line sharing service

The line sharing service is the use of the non-voiceband frequency spectrum of unconditioned communications wire (over which wire an underlying voiceband PSTN service is operating) between the boundary of a telecommunications network at an end-user's premises and a point on a telecommunications network that is a potential point of interconnection located at, or associated with, a customer access module and located on the end-user side of the customer access module.

### B.3 Wholesale line rental

The wholesale line rental service is a line rental telephone service which allows an end-user to connect to a carrier or carriage service provider's public switched telephone network, and provides the end-user with:

- (a) an ability to make and receive any 3.1 kHz bandwidth calls (subject to any conditions that might apply to particular types of calls), including, but not limited to, local calls, national and international long distance calls; and
- (b) a telephone number however, the wholesale line rental service does not include services where the connectivity between the end-user and the carrier or carriage

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<sup>91</sup> ACCC, *Fixed line services declaration inquiry 2018*, [acc.gov.au/regulated-infrastructure/communications/fixed-line-services-declaration-inquiry-2018](https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services-declaration-inquiry-2018).

<sup>92</sup> ACCC, *Wholesale ADSL service declaration inquiry 2016*, [acc.gov.au/regulated-infrastructure/communications/fixed-line-services/wholesale-adsl-service-declaration-inquiry-2016](https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/wholesale-adsl-service-declaration-inquiry-2016).

service provider's network is provided in whole or in part by means of a Layer 2 bitstream service that is supplied by an NBN corporation.

#### B.4 Local carriage service

The local carriage service is a service for the carriage of telephone calls from customer equipment at an end-user's premises to separately located customer equipment of an end-user in the same standard zone, however, the local carriage service does not include services where the connectivity between the end-user and the carrier or carriage service provider's network is provided in whole or in part by means of a Layer 2 bitstream service that is supplied by an NBN corporation.

#### B.5 Fixed originating access service

The fixed originating access service is an access service for the carriage of telephone calls (i.e. voice, data over the voice band) to a Point of Interconnect (POI) from end-customers assigned numbers from the geographic number ranges of the Australian Numbering Plan and directly connected to the access provider's network. For the avoidance of doubt, the service also includes a service for the carriage of telephone calls from customer equipment at an end-user's premises to a POI, or potential POI, located at or associated with a local switch (being the switch closest to the end-user making the telephone call) and located on the outgoing trunk side of the switch.

#### B.6 Fixed terminating access service

The fixed terminating access service is an access service for the carriage of telephone calls (i.e. voice, data over the voice band) from a POI to end-customer assigned numbers from the geographic number ranges of the Australian Numbering Plan and directly connected to the access provider's network. For the avoidance of doubt, the service also includes a service for the carriage of telephone calls from a POI, or potential POI, located at or associated with a local switch and located on the incoming trunk side of the switch to customer equipment at an end-user's premises.

#### B.7 Wholesale asymmetric digital subscriber line

The wholesale asymmetric digital subscriber line service is an internet-grade, best efforts point to point service for the carriage of communications in digital form between a point of interconnection and an end-user network boundary that:<sup>93</sup>

- (a) is supplied by means of Asymmetric Digital Subscriber Line (ADSL) technology over a twisted metallic pair that runs from the end-user network boundary to the nearest upstream exchange or remote integrated multiplexer or customer multiplexer; and
- (b) uses a static layer 2 tunnelling protocol (L2TP) over a transport layer to aggregate communications to the point of interconnection.

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<sup>93</sup> ACCC, *Declaration of the wholesale ADSL service - Final decision*, February 2012, p 60, <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/wholesale-adsl-declaration-inquiry-2012/final-decision>.

## Appendix C List of submissions received

<b>Submissions received in response to January 2019 Preliminary consultation</b>
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Australian Small Business and Family Enterprise Ombudsman (ASBFEO), 24 January 2019
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Telstra, (confidential and public versions), 25 January 2019
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Vocus Group, 25 January 2019
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Anonymous, 24 January 2019
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<b>Submissions received in response to March 2019 Consultation and Position paper</b>
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Australian Communications Consumer Action Network (ACCAN), 3 April 2019
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Optus, 3 May 2019
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Telstra, (confidential and public versions), 3 May 2019
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Vodafone, 26 April 2019
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Telstra – Supplementary submission, (confidential and public versions), 27 May 2019
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