



Proposed change to the pricing of AGVC/VLAN and implications for the prices of other fixed services

Introduction

1. Foxtel appreciates the opportunity to provide a submission in response to the ACCC's proposed change to AGVC/VLAN pricing and implications for the prices of other fixed services as part of the ACCC's fixed line services final access determination (FAD) inquiry.

Concerns about Draft Decision on AGVC/VLAN pricing

2. The ACCC notes in its consultation paper that:
 - Some access seekers are currently operating at very high AGVC/VLAN utilisation levels per SIO for the wholesale ADSL service and that further requirements for increased bandwidth at the proposed price for the AGVC/VLAN charge in the June draft decision could render the service uneconomic to purchase.
 - Some access seekers are finding it necessary to acquire substantially more AGVC/VLAN capacity as a direct consequence of markedly increased consumption of video and streaming content in recent months.
3. The ACCC states that applying a uniform price change across all fixed line services may disproportionately impact acquirers of wholesale DSL services.
4. The ACCC proposes setting the price of the AGVC/VLAN at \$17.90 per Mbps per month independently from the uniform price reduction applying to other fixed line services and adjusting the price reduction (5.6 per cent) on these other services.

Consideration of the proposed change to AGVC/VLAN pricing

5. Foxtel's submission considers the proposal in relation to broader competition concerns. The ACCC must take into account a range of matters in section 152BCA of the *Competition and Consumer Act 2010*, including whether a FAD will promote "the long term interests of end-users" (LTIE), which is also the overarching objective in section 152AB of Part XIC.
6. In considering whether something promotes the LTIE, regard must be had to the extent that it:
 - Promotes competition in markets for carriage services,
 - Promotes any-to-any connectivity, and

Foxtel Management Pty Ltd
ABN 65 068 671 983

5 Thomas Holt Drive
North Ryde NSW 2113 Australia
GPO Box 99 Sydney NSW 2001

T: +61 2 9813 6000
foxtel.com.au

- Encourages the efficient use of and investment in infrastructure.¹
7. Foxtel supports the ACCC's proposed change to set AGVC/VLAN pricing independently of other fixed line services and considers it will promote competition in downstream markets and efficient use of existing infrastructure while industry transitions to the National Broadband Network (NBN).
 8. Foxtel has concerns, however, that while this change in the AGVC/VLAN pricing approach will clearly promote competition and the interests of end-users, it may not be a *long term* solution to the issue of sustained, significant (expected or unexpected) traffic growth. To address this, Foxtel considers it would be in the long term interests of end-users if the ACCC also included an adjustment mechanism during the FAD term and adjusted AGVC/VLAN pricing as necessary to ensure there is no cost over-recovery and to promote competition and the LTIE for the duration of the FAD term.

The promotion of competition

9. Foxtel recently began providing residential fixed line telephony and broadband services as part of a bundled service with its subscription television service. More and more ISPs are bundling their communications services with content offerings (for example, Fetch TV, TPG IPTV, BigPond Movies, Presto, Stan or Netflix).² As competition in bundled services has increased, ISPs have offered added benefits to attract consumers beyond the usual bundle discounts, such as unmetering some data/content. These are features consumers expect to be offered by major ISPs. Indeed consumer organisation Choice encourages consumers to look for them when considering streaming services³ and it would be difficult for ISPs to compete in offering bundled services without having such features.
10. In general, new entrants promote competition by increasing choice to end-users and encouraging existing firms to develop new products or offer improved value to consumers. Foxtel's recent launch of home phone and broadband services has been identified as one potential factor in some recent bundled broadband service price competition.⁴
11. Foxtel offers subscription television services nationally (either via cable or satellite). With the recent launch of home phone and broadband services it

¹ Foxtel notes the ACCC must take into account other criteria in s. 152BCA.

² See for example, Table 4: ISP OVC services in the ACMA Research Snapshot, *Supply & Demand: Catch up TV leads Australians' online video use*, February 2015 at <http://www.acma.gov.au/theACMA/engage-blogs/engage-blogs/Research-snapshots/Supply-and-demand-Catch-up-TV-leads-Australians-use-of-catch-up>. There is also a broader trend of traditionally non-telecommunications companies beginning to offer telecommunications services as a convenient value add (for example, in mobiles Woolworths Connect offers mobile voice / broadband services. See <https://www.woolworthsconnect.com.au/>)

³ Choice, Have you got enough data for streaming? April 2015, <https://www.choice.com.au/electronics-and-technology/home-entertainment/home-entertainment-networks/articles/internet-data-plans-and-streaming>.

⁴ See for example, The Australian Financial Review, 'Credit Suisse backs TPG/iiNet deal but cautions on competition risk', 12 June 2015 at <http://www.afr.com/street-talk/credit-suisse-backs-tpgiiNet-deal-but-cautions-on-competition-risk-20150611-ghm6bf>

needed to have a broadband footprint that as closely as possible matched that of its national TV footprint, in order to be able to compete effectively with existing ISPs' bundled offering. Wholesale broadband services are the only viable means for a new participant like Foxtel to quickly and effectively compete with existing national services.

12. Furthermore, the current access seeker DSLAM footprint has most likely peaked in terms of its geographic coverage. At the time the ACCC declared the wholesale DSL service, it noted that the DSLAM footprint had expanded slowly in the two years prior to declaration.⁵ Since that time there has been slight growth in 2013, but, predominantly the DSLAM footprint has been stagnant since September 2013.⁶ Therefore, wholesale DSL services continue to be necessary for ISPs with their own DSLAM network to be able to compete in providing national services, Foxtel is also aware of several other significant (or potentially significant) industry participants that are actively planning on re-establishing, or deploying for the first time, retail broadband and home phone services in areas where they do not have their own DSLAM infrastructure to build scale ahead of transitioning to the NBN.

Increased internet traffic

13. The ACCC's consultation paper notes concerns about AGVC/VLAN pricing were raised in relation to increased capacity requirements due to increased consumption of on-line video streaming services. Increases in traffic have a direct impact on volume based charges like the AGVC/VLAN charges. Higher volumes result in higher per SIO costs and can impact a CSP's ability to directly engage in price competition or may impact the provision of services in other ways (e.g. greater than expected costs to maintain the same level of service could delay development of other product enhancements or investments).
14. While Foxtel has not provided confidential forecast data in this inquiry, there are general observations about changing consumer usage and traffic volumes that are relevant to considering the impact of AGVC/VLAN pricing on costs in future. These include:
- Recent years have seen growing increases in internet traffic;
 - There are an increasing number of platforms and devices used to view content online;
 - Subscription video on demand (SVOD) has experienced significant growth in the last 6 months, and is forecast by most industry commentators, analysts and industry participants to continue to grow strongly over the foreseeable future; and

⁵ ACCC, Declaration of the Wholesale ADSL service under Part XIC of the Competition and Consumer Act 2010 – Final Decision, February 2012, p. 20.

⁶ ACCC, Snapshot of Telstra's customer access network, data from reports from March 2012 – March 2015. The presence of an active ULLS/LSS DSLAM can be inferred from looking at the number of ESAs with zero ULLS/LSS access seekers.

- Peak hour traffic is forecast to increase at greater rates than average traffic, driven by the increasingly 'peaky' nature of internet traffic consumption (i.e. the peaks in peak hour are getting higher). This, in turn, is driven by a combination of continued increases in internet-connected devices per household, continued increases in the proportion of these devices being active at the same time (i.e., in peak periods), and increased adoption and use of SVOD and other online-video services, all of which will provide higher quality video content.
15. All of these observations suggest that internet traffic will continue to grow at a great rate, potentially above expectations, driven by more consumption of online video content. These points are discussed in greater detail below.
 16. Even prior to the increase in SVOD services in 2015, data is being consumed over fixed line networks at an ever-increasing rate. In the three months to December 2014 data consumption was 1.1m TB – an increase of 35 per cent from the corresponding period a year earlier.⁷
 17. Increased content consumption (and related internet traffic) comes from a range of platforms including IP delivered services (e.g. Foxtel Play, Fetch TV), pay per view sites (live streaming or sites such as, iTunes, GooglePlay); SVOD services (Presto, Stan, Netflix, Quickflix); free-to-air TV catch up services; video aggregation sites (e.g. YouTube) and social media.⁸ In addition, the easy availability of devices for watching online content (smart TVs, tablets, PCs) often means multiple devices are connected to the internet at the same time contributing to increased traffic. The ACMA notes that while Australia is still in the early stages of using more complex home networks, the majority of on-line Australians (74%) have at least three devices connected to the internet at home.⁹
 18. Subscription video on demand services in Australia have expanded quickly over the last 6 months with Presto, Stan, and Netflix launching services. Early forecasts were that SVOD services would have around 1.5 million subscribers in 2015 and would reach more than 4 million in 2019.¹⁰ Some analysts believe the

⁷ A review of data downloaded over fixed line networks shows a general trend of increasing rates of growth over time. Australian Bureau of Statistics, Internet Activity Australia, March 2015. <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/8153.0Main%20Features5December%202014?opendocument&tabname=Summary&prodno=8153.0&issue=December%202014&num=&view=>

⁸ In the past Sandvine has considered that enhanced social media features (such as Facebook's video autoplay function) have contributed to increased traffic. See Sandvine, <http://www.internetphenomena.com/2014/09/ice-bucket-challenge-sets-facebook-on-fire-thanks-to-autoplay/>. In addition, the ACMA notes that the ABC's iView service doubled its program plays from 2011-12 to 2013-14 to 19 million program plays a month. ACMA Research Snapshot, *Supply & demand: Catch-up TV leads Australians' on-line video use*, February 2015. Available at: <http://www.acma.gov.au/theACMA/engage-blogs/engage-blogs/Research-snapshots/Supply-and-demand-Catch-up-TV-leads-Australians-use-of-catch-up>.

⁹ ACMA, Communications Report 2013-14 series, Report 1 – Australians' Digital Lives, March 2015, p. 8. http://www.acma.gov.au/~/_media/Research%20and%20Analysis/Research/pdf/Australians%20digital%20livesFinal%20pdf.pdf

¹⁰ Australian Financial Review, 'Rise of streaming does not spell the end of TV, says Credit Suisse' <http://www.afr.com/business/telecommunications/rise-of-streaming-does-not-spell-the-end-of-tv-says-credit-suisse-20150414-1mkmqg>

rate of take up may be even faster.¹¹ It is clear SVOD services are growing strongly and will do so for some time and that internet video traffic will grow along with it, particularly as higher quality HD and in some cases 4K or Ultra HD video content becomes increasingly available.

19. Peak hour traffic is forecast to increase at a greater rate than average internet traffic. Cisco VNI forecasts that average internet traffic will increase in Australia (from 2014 to 2019) at a compound annual growth rate (CAGR) of 24 per cent, but, busy (peak) hour traffic is forecast to increase more rapidly at a CAGR of 29 per cent.¹² Cisco also forecasts that most content viewed in 2019 will be HD, with approximately 70% of VOD traffic (up from 40% in 2014). One benefit of greater availability of high quality content (HD and, in particular, Ultra HD) and the increasing take up of SVOD services is that this may assist in driving migration to the NBN once areas are ready for service.¹³ Cisco representatives confirmed in a subsequent CommsDay Crosstalk podcast that the Australian VNI forecasts were prepared before the Australian launch of Netflix, so acknowledged that their forecasts were likely to be understated when factoring in the growth in traffic associated with supporting that (and other) SVOD services.¹⁴
20. Foxtel's view is that busy hour traffic will continue to increase rapidly due to factors such as the expansion of IP delivered content from established players and new entrants alike and as the quality of the content delivered improves. As noted by the ACCC in its consultation paper, increasing traffic growth could result in increased costs per SIO, over-recovery of costs and be detrimental to competition in downstream markets.
21. Foxtel considers that setting the AGVC/VLAN charge independently of other fixed line services will promote competition and the LTIE as it takes into account that:
 - wholesale DSL is a necessary input to supplement the DSLAM footprint of existing access seekers and for new entrants to offer national services; and

¹¹ Telsyte, 'Australians flock to SVOD with two million subscriptions to on-line video streaming services taken up this year', 8 July 2015. <http://www.telsyte.com.au/announcements/2015/7/21/australians-flock-to-svod-with-2-million-subscriptions-to-online-streaming-video-services-taken-up-this-year>

¹² Cisco, VNI forecast highlights (Filter: Australia), accessed 20 August 2015, at http://www.cisco.com/web/solutions/sp/vni/vni_forecast_highlights/index.html

¹³ Telsyte, 'Australians flock to SVOD with two million subscriptions to on-line video streaming services taken up this year', 8 July 2015. <http://www.telsyte.com.au/announcements/2015/7/21/australians-flock-to-svod-with-2-million-subscriptions-to-online-streaming-video-services-taken-up-this-year>. In addition, consumer research by Screen Australia in 2014 showed that internet speeds are a barrier to consuming more online video content which also supports Telsyte's conclusion that take up of SVOD could encourage migration to the NBN once areas are ready for service. Screen Australia, *Online and on demand: trends in Australian online video use*, 2014, p. 10. Available at: https://www.screenaustralia.gov.au/getmedia/d61a7c4b-3abf-444c-9367-aa8dc8b1b8f6/OnlineOnDemand_2014.pdf

¹⁴ Phil Dobbie interviewed Kevin Bloch, CTO of Cisco, about the Cisco VNI forecasts released in May 2015. <http://phildobbie.com/main/podcasts/crosstalk/item/1406-broadband-and-mobile-are-growing-but-is-it-fast-enough>

- the ever increasing volume of internet traffic increases costs per SIO so that purchasing wholesale DSL could be uneconomic in future.

22. However, Foxtel considers that future traffic volumes could mean concerns about wholesale DSL AGVC/VLAN pricing will arise again before the end of the FAD term in 2019.

Term of the Final Access Determination

23. As noted, Foxtel supports the ACCC's change in approach to AGVC/VLAN pricing and thinks it better promotes competition and the interests of end-users than a uniform price change applied across all fixed line services. However, Foxtel does query whether 'setting and forgetting' the volume based AGVC/VLAN charge for four years would be in the *long term* interests of end-users in light of significant recent increases in traffic growth and changing end-user usage habits.
24. In the ACCC's March Draft Decision, the ACCC considered that it may be necessary to include a 'trigger and review' mechanism mid-way through the four year FAD term to deal with any uncertainty around the NBN rollout and related forecasts.¹⁵ The ACCC considered this would provide a balance between certainty and flexibility to ensure the appropriate settings are in place in the transition to the NBN.
25. Foxtel considers that given the negative impact of increased traffic growth on costs per SIO and downstream competition, an adjustment mechanism should be included for AGVC/VLAN charges. Ideally, given rates of traffic growth, adjustments should be made on an annual basis, however, a review of traffic volumes and growth at the mid-FAD point would show whether there is likely to be over-recovery of costs and detrimental impacts on competition in downstream markets for the remainder of the FAD term. AGVC/VLAN pricing could then be adjusted to avoid cost over-recovery and ensure competition and the LTIE continue to be promoted for the remainder of the FAD.

Conclusion

26. Foxtel supports the ACCC's proposed change to setting the AGVC/VLAN charge at \$17.90 per Mbps per month independently from the uniform price reduction. Foxtel also supports an adjustment mechanism to AGVC/VLAN prices during the FAD term to avoid cost over-recovery for the duration of the FAD. Foxtel considers these approaches would promote the long term interests of end-users.

¹⁵ ACCC, *Public inquiry into final access determinations for fixed line services – Draft decision*, March 2015, Chapter 11.