Launtel Response to the Draft decision by the ACCC regarding LBAS & SBAS declarations inquiry 2020

Overall we agree with the draft decision by the ACCC regarding the continuation of the declaration of LBAS/SBAS. We agree with it being continued and we agree that they should be brought together and aligned.

Maximum size before regulations take effect

There is however one exception. Under section 2.4 we see:

“Under the 2017 FAD, SBAS (but not LBAS) providers supplying up to 12,000 end-users are not required to offer regulated wholesale access to their networks. This is because the compliance costs for these operators are expected to be high relative to the expected wholesale revenues, and the aggregate benefits to end-users from retail competition on these smaller networks were not considered to outweigh the compliance costs.”

We believe this level is set way too high. We believe a figure of around 500 connected premises is more appropriate. Remember we are talking about a monopoly here, a provider that has no competitive pressure to provide a good service or at prices that are appropriate for the service provided.

While we understand that compliance is a big deal, we believe that a small (possibly innovative) provider as they are approaching a level where they could hit compliance issues, could instead ensure that that there is an alternative fixed access provider, which would allow them to escape the regulations (because of the lack of monopoly). The point is that they are in a privileged monopoly position and they should realise that this comes with costs.

Even below the threshold, the ACCC should explore ways of reducing the compliance costs, perhaps allowing them to provide limited information or be subject to less onerous oversight. The key thing is that if you are an end user of a provider, you don’t care if the provider is supplying 20 or 20,000 services, you want a good service and have some power over the provider to ensure they provide a good service. Monopoly providers of any size should be encouraged to follow the spirit of the regulations, even if they are not forced to performa all the compliance.

Access to buildings/estates

On a more general level we note that the ACCC has noted that monopolies often occur in individual buildings or estates. We would like the ACCC to lobby the government for more regulation of strata bodies and management corporations forcing them to encourage infrastructure competition. We have seen on numerous occasions where an alternate provider is willing to enter a property and supply services, but ends up in a large legal fight with the strata body to give them access. This strata body is favouring a particular provider and does not want a new entrant in their building. While the current telco laws are often on the side of the new entrant, the legal costs are too prohibitive to make a fight commercially viable. Typically this is just too much effort and the new entrant gives up. The net result is the occupants of the building, who are often rental tenants and have no voice on any strata committees etc, lose out due to the lack of competition.

One of the options in the ACCC's armoury is that any building that has competitive infrastructure allows the incumbent to escape many regulations. This may result in incumbents encouraging strata bodies to allow competition rather than blocking it.

New Developments Charges

While it is clear that New Developments Charges are now well embedded in the standard way that access providers do business, we have significant concerns about it. Firstly understand that this charge is often used to provide "kick backs" to strata owners/developers to encourage them to use one provider over another. While this is clearly allowed, we are concerned that this distorts the market. The key thing to note here is that competition is at best messy. A developer is only concerned with being able to sell their properties, they are under pressure to find the cheapest solution. They are not the people who will be paying the New Developments charge and will not have to put up with the quality of the service provided by that wholesaler.

Worse still the New Developments charge is not necessarily picked up by the owner of the new premises. The rental tenant may be the first to connect and have to pay the charge. Given this becomes essentially an asset of the property (it has now been paid), we find it extraordinary that the tenant should have to pick this up. All state rental tenancy agreements appear to be silent on this.

We would also like to point out the inefficiency of this process, the RSP has to ensure they inform the new customer that this is due and collect the money from the first person to connect (and ensure they don't miss it). Any failures here are rightly worn by the RSP. We do not understand in this day and age when internet is as important as water and power, we may as well assume that every premises will need this - why not include it in the original charge paid by the developer (which will likely be passed onto the eventually owner, but not tenant).

We are also dismayed at the lack of transparency of the New Developments Charge process. If the wholesaler says that it is due, there is no come back. We have had new tenants claim that they are not the first tenant to order an internet, but because they don't have access to the records of the wholesaler is unable to prove it. While I am not accusing the wholesalers of being deceptive, they have absolutely no incentive to keep accurate records and if there is any doubt (this particularly occurs when a network is purchased dueing a consolidation) over a property, they would clearly have an interest in marking it as 'no previous service".

Connection Fees

We note that some (but not all) of the non NBN wholesalers charge a connection fee and a churn fee. There appears to be absolutely no basis for this in recovering costs. Most provisioning is automatic these days and clearly costs a wholesaler provider very little. We call on the ACCC to regulate connection fees in the same way they regulate the monthly fee (by comparing it to an equivalent NBN service).

Connections fees present a number of issues. Firstly it discourages competition, i.e. creates a barrier for a user to change from one RSP to another. While some providers will subsidise this charge, they often have to resort to contracts to do this.

Secondly there is perverse incentive around network quality from the wholesale provider. An end user that is receiving an ongoing poor quality connection due to a wholesalers network issue will often mistakenly believe that this is a RSP issue. So they will change RSP in an attempt to improve the quality of the connection. However given all RSPs share the same wholesale network, this is not possible. Eventually one of the RSPs will explain this (and be believed by the customer) and the churn will cease. However in the process the wholesaler will have gained a number of churn fees. Thus the wholesaler is actually incentivised to provide a poor quality network.

We believe connection charges should be brought into line with NBN pricing.

Incorrect Callout Fees

Many providers will charge incorrect callout fees where the RSP requests a technician be sent out to a customer premises to investigate an issue and the issue is found to be in either customer's or the RSPs equipment.

While we understand that the wholesaler has an expectation that the RSP perform basic troubleshooting to determine the issue. We note that regardless of the issue - even when the

wholesaler admits the the problem must be in their equipment - they request the RSP agree to the ICF. This means that the RSP must carry all the risk in the process. We also note that some wholesaler's charge exorbitant ICFs - over $250 - clearly way more than their cost. This is clearly a money making exercise for the wholesaler.

We call on ICF's application to be reigned in and at least brought down to a reasonable cost recovery.

Network quality

We note that the SBAS/LBAS has tended to use minimum speed at the required level that a wholesaler must supply (25Mb). However we believe this is a very measure of the service provided. We believe that not only should 25Mb be supplied, but also at the speed a maximum level of packet loss and jitter during a certain period be also specified.

We would also like to see limits on the number and length of network outages per month that a service is subject to.

Marketing Funds

We note that the regulations allow wholesalers to provide marketing funds to the RSPs. We believe this a loophole that some wholesalers use to provide preferential treatment to some RSPs that they favour. In particular we have seen "marketing funds" be calculated based on connections performed in a month, sometimes calculated as a simple discount on the connection fee. This is often negotiated on a one-to-one basis between the RSP and the wholesaler. We believe this should either be stopped or be made much more open and transparent, such that all RSPs get an equal chance to participate. Currently there appears to be limited oversight of this practice.

Network boundary

While most wholesalers seem to operate with the ethernet port on the ONT/NTD or the old telephone port for VDSL, we note that this is not codified in the regulations. We have found at least one wholesaler that has designated the ONT as customer premise equipment and will charge to have this replaced/repaired, in other words setting the network boundary at some ill defined fibre connection point. While we understand there needs to be limits due to malicious damage, not setting the boundary at a place where the RSP can easily verify where the issue lies (e.g. by plugging a laptop directly into the ONT), leads to issues with Incorrect Callout Fees.

Final comments

We note that some of the above may not have a place in the request for comments around this particular draft (we‘re not experts in responding to enquiries - we are a small RSP), we would be interested in any feedback in where these comments should be directed - perhaps to a future enquiry.

Damian Ivereigh
CEO Launtel Pty Ltd