



Submission in response to
ACCC Consultation and
Position Paper

**Wholesale ADSL service
declaration inquiry**

Public Version

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INTRODUCTION

1. Optus welcomes the opportunity to provide comments to the inquiry into the continuing declaration of the wholesale ADSL fixed line service.
2. The regulation of fixed line services has been the cornerstone of competition in the Australian communications markets. The declaration of fixed line services – including both the continuation WADSL services with the current suite of declared fixed line services – will ensure competition and the orderly migration of the remaining PSTN premises to the NBN.
3. The WADSL service allows retail service providers (RSPs) to purchase a wholesale telecommunications service from Telstra and provide retail ADSL services without the need to install their own infrastructure at a Telstra exchange
4. The ACCC most recently considered declaration of the WADSL service in 2017 (as well as the six declared fixed line services in 2019) and found that declaration continued to promote the long-term interest of end-users (LTIE).
5. At the time, the ACCC also made a number of key findings:
 - (a) Telstra remains the dominant provider in both the national wholesale and retail markets for high speed fixed-line broadband services, and that infrastructure competition on a national level is limited. The ACCC also maintains the view that market share in the high speed fixed-line broadband market is likely to have flow on effects on the market for superfast broadband.¹
 - (b) Telstra's fixed line dominance has not been significantly eroded so far in the transition to the NBN despite some losses in regional areas where its dominance has been greatest.²
 - (c) Stability in prices (and price relativities) for the declared fixed line services [including WADSL services] will maintain the economically efficient use of and economically efficient investment in the assets that are used to provide the fixed line services and provide a stable environment for access seekers as customers migrate to the NBN.³
6. Despite a declining subscriber base for WADSL and declared fixed line services, more generally, the reasons for declaration continue to hold true in 2021. It is also important to acknowledge that the Fixed Line Services Final Access Determinations (Fixed Line FAD) made in 2019 includes the WADSL service and applies until the end of the fixed line services declaration period.
7. Optus supports the ACCC's position that declaration of the WADSL service should continue and apply until 30 June 2024 to align with the expiry of the current fixed line services declaration period. This will also allow any future declaration inquiry for legacy fixed line services and FADs to be considered as part of a holistic process.

¹ ACCC, 2017, Wholesale ADSL service declaration inquiry, Final Decision, February, p.15

² ACCC, 2018, Communications Sector Market Study, Final Report, April, p.5

³ ACCC, 2019, Inquiry into final access determinations for fixed line services, Final Decision, November, p.6

CONTINUED DECLARATION OF THE WADSL SERVICE WILL PROMOTE THE LTIE

8. The consultation and position paper proposes that it would promote the LTIE for the WADSL Declaration to continue to be in effect until 30 June 2024. The ACCC considers the declaration should continue to apply in all exchange service areas, and that this would promote competition in relevant markets and efficient use of infrastructure.⁴
9. The ACCC considered future scenarios with and without the WADSL declaration and considers that without the declaration, RSPs using the WADSL input to supply retail services to end-users may face barriers to competing for market share and maintaining existing service plans for their customers in the latter stages of NBN migration.⁵

Current WADSL service description remains fit for purpose

10. The ACCC does not propose altering the WADSL service description.
11. Optus considers the existing WADSL service description remains fit for purpose, consistent with the objectives to promote the LTIE.

Continued declaration will promote competition, efficient use of infrastructure and regulatory certainty

12. Optus agrees with the ACCC's views that continuing declaration of the WADSL service will promote competition, efficient use of infrastructure and regulatory certainty.
13. Broadband and voice services are essential communication services on which all individuals and businesses rely. These are delivered across a mix of both NBN and non-NBN access platforms, with the ACCC reporting around 6.2 million fixed line voice⁶ services in operation in 2019-20.
14. The ACMA also reported around 7.9 million fixed internet subscriptions⁷ over the same period, of which 912,000 are still delivered using ADSL technologies. For example, Optus acquired **[CiC Begins] [CiC Ends]** WADSL services from Telstra in July 2021. This compares against the 7,885 DSL only SIOs reported by Telstra over the same period.⁸ This shows a large number of WADSL and retail ADSL services are still currently in use, and that access to the Telstra ubiquitous customer access network (CAN) is still essential for competition.
15. While the NBN rollout has been officially declared 'complete' by the Minister, not all premises are NBN serviceable. There still remain premises within the NBN fixed line footprint that are not yet serviceable by the NBN.
16. This nature of the NBN rollout with unserviceable premises or pockets within NBN service areas also means it is not possible to geographically separate declaration by exchange service areas. Similarly, for end-users outside the NBN fixed line footprint there would be clear competitive benefits from WADSL services being declared. If WADSL was no longer declared, there would be no competitive constraint to stop Telstra

⁴ ACCC, Wholesale ADSL service declaration inquiry – Consultation and position paper, July 2021.

⁵ ACCC, Wholesale ADSL service declaration inquiry – Consultation and position paper, July 2021, p. 13.

⁶ ACCC, 2020, Communications Market Report 2019-20, December, p.6

⁷ ACMA, 2021, Communications and media in Australia: Supply and use of services 2019-20, April, p.21

⁸ ACCC, Snapshot of Telstra's customer access network as at 30 June 2021, Table 1

from increasing wholesale prices, lowering service quality or refusing access, which would have negative impacts on competition in downstream markets and end-users.

17. In addition, the same considerations related to efficient use of infrastructure examined in the 2017 inquiry are still relevant today. Continued declaration of the WADSL service would allow existing Telstra and access seeker infrastructure to be efficiently used until all premises within the NBN fixed line footprint are NBN serviceable. Declaration also continues to allow for efficient use of infrastructure outside of the NBN fixed line footprint.
18. Therefore, even though the NBN rollout has progressed, it does not alter the enduring bottleneck characteristics of the CAN and that access to Telstra's CAN is essential for Access Seekers to be able to provide downstream telecommunications services. While WADSL is an old technology and its use is declining, it would be premature to allow declaration to lapse now before all premises in the fixed line footprint are serviceable by the NBN.
19. Rolling over the WADSL declaration provides regulatory certainty to RSPs (and ultimately their end-users) that input prices, access terms or service quality are not going to change as could occur without the declaration. This will ensure a smoother transition for industry and end-users to the NBN. The WADSL declaration continues to benefit those end-users who are otherwise not yet NBN serviceable and does not adversely affect other users. There remains an overall net benefit from continuing declaration of the WADSL service that promotes the LTIE.

WADSL declaration period should align with other fixed line services declarations

20. The ACCC notes Telstra's preferred position that if the ACCC is not minded to let the WADSL Declaration expire in February 2022 (which was Telstra's preference in April 2021), the WADSL Declaration should be rolled over and aligned to the expiry date of the other fixed line services declarations (June 2024).⁹ However, the ACCC's view is that the Declaration should continue until the expiry date of other fixed line services declarations in June 2024.
21. Optus supports the ACCC's views. Optus notes that Telstra's views are from April 2021, prior to the widespread (and in some cases extended) lockdowns that have been occurring over recent months due to the Covid-19 pandemic. It appears that this may have impacted NBN Co's activities in addressing remaining serviceability issues as Optus is aware the serviceability of some premises has been pushed out until after February 2022 (the existing expiring date of the WADSL declaration).
22. As noted above, there are clear benefits in continuing the WADSL Declaration and it would promote the LTIE. As it is not clear when all premises, particularly within the fixed line footprint, will be serviceable, Optus considers the WADSL declaration should be extended to June 2024 to align with the existing other fixed line services declarations so that a holistic review of arrangements can be conducted prior to their expiry and the state of competition be examined at that time.
23. Therefore, Optus supports the continued declaration of the WADSL service to 30 June 2024.

⁹ ACCC, Wholesale ADSL service declaration inquiry – Consultation and position paper, July 2021, p. 5.