



**Submission by AAPT Limited**

**3 June 2011**

**to**

**ACCC Discussion Paper**

**Public inquiry to make a final access determination for the  
declared fixed line services, dated April 2011**



## **Introduction**

1. AAPT Limited (**AAPT**) welcomes the opportunity to comment on the Australian Competition and Consumer Commission (**ACCC**) discussion paper "Public inquiry to make a final access determination for the declared fixed line services", dated April 2011.

## **Executive summary**

2. In summary, AAPT:
  - welcomes the ACCC's proposed shift to BBM on the basis that such an approach will promote the LTIE;
  - supports the adoption of a relatively longer regulatory period but considers that five years is excessively long given that the ACCC is proposing to set prices (for that entire five year period) that already appear expensive by international standards and in circumstances where these prices continue to fall over time;
  - is concerned that the initial RAB value appears inflated and that the pricing does not appear to have factored in the significant payment pending from NBN Co to Telstra for access to its ducts and pits;
  - supports nationally averaged prices for WLR, LCS and LSS but does not support nationally averaged prices for ULLS and PSTN OTA as this would involve a significant departure from the real underlying costs of supply; and
  - considers that the ACCC's draft decision to continue the WLR and LCS exemptions is not within the powers of the ACCC, has caused considerable uncertainty, and unless reversed prior to the completion of this review will



have had significant detrimental effect on competition in wholesale and retail markets for voice and broadband services and on the LTIE.

### **Five Year Regulatory Period**

3. The ACCC proposes a regulatory period of five years (1 July 2011 to 30 June 2016) on the basis that a five year regulatory period will be in the LTIE as it gives certainty to prices and allows participants to plan investments.
4. AAPT welcomes the stability and certainty that comes with a longer regulatory period, however, AAPT submits that five years is an excessively long period of time. Internationally benchmarked pricing may continue to progress down in nominal terms over time (for example, AAPT believes that PSTN OTA is heading towards "bill and keep") while the ACCC is proposing to hold prices flat for five years. This is likely to make prices in Australia appear very expensive by international comparisons by 30 June 2016, if not well before that time.
5. AAPT considers that a three year regulatory period would provide the optimal balance between certainty and competitiveness.
6. AAPT is also concerned that during the five year regulatory period the formal agreement between NBN Co and Telstra will be finalised resulting in potentially \$9B payment from NBN Co to Telstra. AAPT considers that such a payment should be taken into account in setting access prices, or in the alternative, that access prices should be re-assessed once the formal agreement has been finalised between Telstra and NBN Co (and should not be delayed into the next regulatory period).



## **Pricing Structure**

7. AAPT supports:
  - a national WLR and LCS price due to the fact that at a retail level both line rental and local calls are priced by all significant competitors on a national basis and because there is no geographical break up of costs available;
  - a national LSS price on the basis that the only costs involved in providing the LSS are provisioning costs which are not dependent on geography.
8. AAPT does not support a geographically averaged ULLS price or a geographically averaged PSTN OTA price.

### ***Averaged ULLS pricing***

9. The ACCC has previously stated that average prices for ULLS will not promote competition or the economically efficient use of and investment in infrastructure and that average pricing would depart significantly from the real underlying costs of the ULLS.
10. AAPT agrees and considers that there are significant cost differences between the geographic bands Band 1 through to Band 3 and that averaging the price of ULLS across these bands would therefore result in a significant departure from the underlying costs of supply which is clearly not in the LTIE. AAPT submits that ULLS pricing should be geographically differentiated across four bands.



### *Averaged PSTN OTA pricing*

11. AAPT agrees with the approach previously adopted by the ACCC for geographically differentiated PSTN OTA prices as being in the LTIE. AAPT considers that there are significant price differences between the geographic bands (CBD, Metro, Provincial and Rural) and that averaging the price of PSTN OTA would involve a significant departure from the real underlying costs of provision. Differentiated charges for PSTN OTA promote competition and efficient investment and use of infrastructure, for the reasons set out in Frontier Economics' submission, which reasons AAPT fully supports and endorses. Averaged PSTN OTA pricing is therefore not in the LTIE.
  
12. AAPT agrees with the Optus letter dated 23 September 2010 which advocated a revision of the PSTN OTA pricing break up using more current data including the need to factor in shorter call holding times. However, AAPT strongly disagrees with the alternative proposition made in that same letter that the ACCC should consider setting a nationally averaged PSTN OTA rate because there are significant price differences between geographic bands.

### **Draft Prices**

13. AAPT considers that the access prices proposed in the discussion paper are too high because:
  - they are all (except for LSS) based on an initial RAB value which is set too high;
  
  - in the case of WLR and ULLS specifically, prices appear expensive by international standards, and specifically by UK standards (based on the exchange rate as of 1 June 2011) the current price in the UK for WLR is A\$13.24 per month and for ULLS is A\$11.38 per month. Ofcom is further



proposing to reduce this pricing (in real terms) by between 3% and 6% for WLR and between 1% and 4% for ULLS *every year*. This is particularly concerning for AAPT given that the ACCC is proposing to effectively lock in prices for five years;

- in the case of PSTN OTA specifically, AAPT agrees with many analysts including the highly regarded Wik-Consult and Ovum which both predict that interconnection pricing for both fixed and mobile networks is ultimately heading towards "bill and keep" (that is, a zero price) and that as a result AAPT considers that interconnect pricing should be trending that way.
14. Geographically averaging PSTN OTA prices also effectively represents a significant price increase.
  15. In respect of the initial RAB value, AAPT relies on, and fully supports and endorses, the analysis of Frontier Economics set out in its submission, showing that the initial RAB value is inflated.
  16. In respect of the LCS price, AAPT estimates that applying a three minute call holding time would significantly reduce the LCS price. AAPT has previously provided to the ACCC information regarding its actual average call holding time (in its submission dated September 2010), and requests that the ACCC rely on this evidence.
  17. In respect of the PSTN OTA price, AAPT considers that the comments of Ovum and Wik-Consult set out in detail in AAPT's submission dated September 2010 support the view that interconnect charges are expected to and in fact should, for efficiency reasons, trend downwards towards zero or bill and keep. There are real efficiency risks in maintaining interconnect rates at current levels, including the possibility that it may stall network operators from making the shift from circuit switched interconnection to IP based interconnection.



## Continuation of WLR/LCS/PSTN OA Exemptions

*ACCC does not have the power to incorporate the exemptions into the FAD*

18. AAPT submits that the effect of the WLR, LCS and PSTN OA exemption orders may not be incorporated into the FAD.
19. The relevant exemption determinations were made pursuant to sections 152AS and 152AT of the Competition and Consumer Act 2010 (CCA), which sections have now been repealed. The ACCC therefore *no longer has the power* to make exemption determinations and, by extension, nor does it have the power to incorporate the effect of prior exemptions into FADs. Furthermore, any existing determinations cease to have effect.
20. The ACCC has sought to justify incorporating the effect of the exemptions into the FAD by virtue of section 152BC of the CCA. In AAPT view, this is completely inconsistent with the intent and meaning of section 152BC. No part of section 152BC could be construed to allow exemptions of the kind contemplated. Specifically, the SAOs relate to terms and conditions on which services are supplied, and the ACCC is in effect attempting to create a completely new SAO. This is not within the powers of the ACCC.
21. In AAPT's view, the meaning of the legislation on this matter is clear and unambiguous in this respect. The Parliament has legislated to repeal particular provisions (in relation to the making of exemptions) and has chosen to not make any alternative provision. On this basis, Parliament's clear intention was that neither the exemptions, *nor the effect of the exemptions*, survive under the new regime.



*Detrimental effect on competition and LTIE*

22. AAPT considers that the ACCC's decision to continue the effect of the WLR, LCS and PSTN OA exemption determinations has caused considerable uncertainty and unless reversed prior to the completion of this review will have had significant detrimental effect on competition in wholesale and retail markets for voice and broadband services.
23. AAPT asserts that these exemptions alone will force access seekers to enter contracts that may limit their ability to leverage alternate suppliers and the benefits that may result from the FAD, resulting in price increases or lack of price decreases. This is clearly not in the LTIE.
24. In AAPT's view, the ACCC's reasons for continuing the exemptions are manifestly inadequate and ignores the substantial uncertainty that access seekers currently face.
25. The exemption determinations have clearly failed to promote further investment in network facilities in exemption areas (beyond capacity expansion to meet immediate needs). As detailed in AAPT's letter to staff of the ACCC dated 25 May 2011, stand-alone WLR competition has still not developed despite a decade of ULLS-based regulation. That the National Broadband Network rollout is now a reality further discourages and freezes investment.
26. In addition, it is common knowledge in the industry that Telstra is utilising its market power to raise the WLR price in exemption areas above the price in declared areas, there being no possible cost-based justification for such differentiation. Telstra is thereby extracting a monopoly rent, there has been a significant failure in the competition regime, and competition and the LTIE are being significantly damaged in the process.





27. Furthermore, the continuation of the exemptions clearly gives Telstra the ability to force access seekers to commit to "whole of business" deals for WLR (in both exempt and non-exempt areas) at a blended price higher than the determined price for WLR in non-exempt areas. This will lead to price increases for consumers and is further damaging to the LTIE.
28. There is clear justification for the ACCC to decide to not incorporate the exemptions into the FAD, even if it decides that it has the power to do so.