



19 February 2021

Mr. Darren Kearney

Director
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Australian Competition and Consumer Commission

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Dear Mr Kearney,

Telstra's submission to the Draft Decision for the LBAS and SBAS declarations inquiry

Telstra is pleased to provide a submission to the draft decision of the local bitstream access service (**LBAS**) and superfast broadband access service (**SBAS**) declarations inquiry 2020.

Telstra supports continuation of the SBAS and LBAS declarations for a further five years.

Continuing the declaration for a further five years will provide regulatory certainty against the context of a fast changing superfast broadband market. Further, a declaration period of five years will ensure service continuity for end-users while Telstra's FTTP networks are transitioned to a new owner during the next declaration period.

Telstra supports maintaining current treatment of Telstra's South Brisbane and Velocity networks for the next declaration period, until July 2026.

Allowing existing arrangements to continue, aligns with the Ministerial exemptions for the networks and will ensure service continuity for end-users as the networks transition to new ownership.

As Telstra noted in its submission to the Discussion Paper, implementing a Layer 2 bitstream service would not be achievable by July 2021 and would impose significant financial burden, potentially increasing wholesale prices. Importantly, continuation of existing regulatory arrangements will allow the development of an efficient transition of services to the new network owner, Uniti, and will help ensure minimal service disruption to end-users.

In the context of the co-existence of multiple superfast broadband networks, Telstra supports an exemption framework that excludes networks from future regulation on a case-by-case basis.

The objective of the declaration process (and regulation) is to address instances of market failure, or enduring bottlenecks, where the absence of a competitive



constraint leads to outcomes that are not in the long-term interests of end-users. This is generally the case where there is no overlap between the NBN and competing fibre networks. Where there is overlap – or where there are sufficient alternatives available – regulation could deter future entry and investment.

Telstra does not support inclusion of mobile networks in the SBAS service description on the basis that this will likely deter investment and have a negative impact on competition. Telstra agrees with the ACCC that the telecommunications industry is likely to experience significant transformation in the next few years. This includes the impact of 5G as networks expand and more spectrum is allocated for 5G use. However, Telstra also agrees that the benefits of 5G investment will not be uniform across the population, with those in more densely populated urban areas potentially receiving the benefits of 5G earlier than remote areas, where it is usually not commercially feasible to build infrastructure.

Regulation of 5G, through the inclusion of mobile networks in the scope of the SBAS service description, will reduce incentives to invest in 5G, especially in rural and remote areas, where end-user benefits are material. Similarly, regulation on 5G should be avoided to ensure 5G services are given the best opportunity to impose a competitive constraint against NBN's dominance in fixed broadband markets; or to effectively complement superfast fixed broadband in areas where fibre or cable is not economical. Any regulation of 5G – in this context or otherwise - is not in the long-term interests of consumers.

Telstra does not support regulation of lower speed services, below what has been specified in the current SBAS definition and those available on the NBN. Given the competitive constraints on non-NBN networks, regulation of lower-speed services (relative to higher speed services of 25 Mbps and above as per the current SBAS definition and those available on the NBN) would be detrimental to both investment and competition.

The ACCC's draft decision to adopt an open-ended service description for the SBAS/LBAS declaration which encompasses entry level offerings at speed tiers below 25 Mbps introduces unnecessary new regulation of non-NBN superfast speed broadband services. Regulation would lead to deadweight loss because non-NBN networks are already subject to appropriate competitive and regulatory constraint.

As the ACCC acknowledges in its draft decision, a fixed line 25 Mbps broadband service is the minimum superfast broadband service consistent with both government policy and NBN Co's statement of expectations on the minimum reference standards to ensure that all people in Australia have access to high speed broadband network infrastructure.¹

A more interventionist approach to regulating the supply of lower speed broadband on non-NBN networks would result in a disproportionate and detrimental impact on investment in competing broadband infrastructure, due to several factors:

¹ <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/lbas-sbas-declarations-inquiry-2020/draft-decision>, pp17-18.



- End-customers have no obligation to migrate to these competing services if they see no value in them;
- Wireless alternatives and legacy ADSL and ADSL2+ services, where available, as well as the potential for NBN overbuild, impose competitive constraints on the non-NBN broadband market; and
- Regulation of lower speeds on non-NBN networks will result in an asymmetric degree of intervention between NBN and its competing networks.

The current SBAS Declaration definition of a superfast service draws on the definition of a superfast carriage service in the Telecommunications Act and Telstra sees no justification, based on policy or market developments since then, to depart from this approach.

As per its current consultation response, in the 2016 SBAS Declaration process, NBN Co also submitted that the threshold for identifying superfast networks should be 12 Mbps, rather than 25 Mbps.² The ACCC declined to adopt this approach, stating that it did “*not consider that download rates below 25 Mbps are representative of the basic entry-level superfast broadband service, as is evidenced by current demand on the NBN*” and further noting that “*the lower speed broadband services are also subject to regulation given that wholesale ADSL, ULLS and LSS are currently declared services*”.³

This reasoning remains applicable for the forward-looking declaration period.

Telstra therefore recommends retaining the current definition of a superfast carriage service, covering only services provided over superfast telecommunications networks where the download transmission speed of the service is normally 25 Mbps or more.

Retail competition will continue to increase on non-NBN superfast networks. Telstra notes the ACCC’s view that there is currently an absence of strong retail competition on the South Brisbane and Velocity networks. Telstra does not agree that this is currently the case. The statement in the draft decision that only three RSPs are actively offering services on these networks is incorrect. In fact, there are currently 14 RSPs actively offering retail services on the South Brisbane and Velocity estate networks. Further, the sale of the South Brisbane and Velocity networks to the Uniti Group in December 2020 may lead to further retail competition in those areas, as presumably RSPs that currently offer broadband services over the other Uniti Group networks may choose to also offer services in South Brisbane and Velocity area. Further, Telstra has also agreed with Uniti Group that Telstra will offer retail services on Uniti Group’s other networks (subject to Telstra’s arrangements with NBN Co) and the parties are in the process of negotiating that arrangement.

² See <https://www.accc.gov.au/regulated-infrastructure/communications/superfast-broadband-access-service-declaration-inquiry/final-decision/sbas-declaration-inquiry-final-report>, pp 16 and 20.

³ Ibid, p 20.



If you have any queries in relation to this submission, please contact Justine Bond at Justine.Bond@team.telstra.com.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Iain Little'.

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