



TELSTRA CORPORATION LIMITED

Wholesale ADSL service declaration inquiry

Telstra’s response to the Commission’s Discussion Paper

Public version

29 July 2016



CONTENTS

EXECUTIVE SUMMARY	3
01 The high speed broadband market is evolving	5
1.1. The nbn rollout is fundamentally changing the broadband market	5
1.2. ULL-based competition continues to grow	5
1.3. In competitive areas, competition to supply wholesale ADSL allows smaller resellers to compete with infrastructure owners	6
1.4. Alternative technologies provide options for end users	7
02 The current wholesale ADSL service description promotes stability and certainty during the transition to nbn	8
03 Geographic exemptions should be provided where competition is strong	9
3.1. Best practice regulation requires forbearance in competitive areas	9
3.2. Infrastructure-based competition is delivering benefits to customers	12
3.3. A threshold test for exemptions should be implemented	13
3.4. Exemptions would not lead to anti-competitive pricing conduct	15
04 The duration of the declaration should align to other fixed line services	16
ATTACHMENT A: Responses to the ACCC’s questions	17
ATTACHMENT B: Exchange Services Areas proposed for exemption	24



EXECUTIVE SUMMARY

This submission is in response to the Australian Competition and Consumer Commission's (Commission's) Wholesale ADSL service declaration inquiry discussion paper, July 2016 (Discussion Paper).

The high speed broadband market is undergoing a period of significant change driven by both the nbn rollout and a decade of investment in competitive DSLAM infrastructure. Industry consolidation has created a more competitive market place which has been underpinned by ULL growth of 41% since 2012. In 289 of the most competitive areas, access seeker market share has increased to [c-i-c], with [c-i-c] of services in these areas supplied via ULLS or LSS. These changes have delivered better outcomes for customers - DSL prices have declined 20% since 2007 while data allowances have increased 190% in the last 2 years alone.

Regulation in this context needs to be effective, and to be effective it needs to adhere with the principles of best practice. Those principles guide between the sometimes conflicting approaches of the regulator using the powers it has, and the regulator developing an environment in which competition and suppliers deliver outcomes for the community. Given change in the telecommunications market, it is incumbent on regulators to ensure regulation remains appropriately targeted. When regulation departs from the principles of best practice it is less likely to foster an environment encouraging innovation, competition and investment, and discourages the market from delivering better outcomes for customers.

Stability is important for successful industry transition to the nbn

In considering whether to re-declare the wholesale ADSL service, the Commission should ensure certainty and stability is achieved while the industry transitions to nbn based supply. Such certainty and stability would be best served by maintaining the current form of service description which appropriately captures the internet grade, best efforts nature of the service. Any change may trigger product, service and technical changes which all come with additional costs for both Telstra and access seekers, which is inappropriate given the limited life span of wholesale ADSL. This service description was defined in 2012 and was debated in both the 2012 wholesale ADSL FAD and the more recent fixed services FAD processes (finalised in October 2015) with no changes required.

Declaration is unnecessary in highly competitive areas

The Commission should account for extensive infrastructure based competition by implementing geographic exemptions. The declaration should not apply to ESAs which are demonstrably competitive in both the retail and wholesale markets. Specifically, the declaration should not apply to exchange services areas (ESAs) where the four main competitors (Optus, TPG/iiNet, Vocus/M2, and Telstra) compete and where non-Telstra competitors have a combined broadband market share of at least 30%. At the end of March 2016, 289 exchanges satisfied this dual criteria, and in those areas Telstra's retail market share was [c-i-c] and its share of retail and wholesale ADSL was [c-i-c].

Removing regulation from competitive areas is consistent with best practice regulation, particularly when regulation needs to be removed as the PSTN is replaced by nbn.



The declaration period should be aligned to the period for other fixed services

Given the dynamic nature of the market as a result of the rollout of the nbn, declaring the Wholesale ADSL service for another five year period would not be in the long term interests of end users (LTIE). Telstra suggests it would be more appropriate for the Commission to declare Wholesale ADSL (outside highly competitive areas) for a shorter period and bring the declaration period into line with the other fixed services. This would provide the Commission with the opportunity to holistically consider common issues relating to the future of PSTN regulation and opportunities for regulatory rollback and eventual removal as nbn migration occurs, when the declarations for other fixed services expire in 2019.



01 The high speed broadband market is evolving

Consumers have benefited from an evolving high speed broadband market characterised by increasing data allowances, reducing prices and the introduction of new value-added services such as streaming video and music subscriptions and exclusive content. Providers are constantly reviewing and updating their offers to attract and retain customers in response to intense competition and consumer demand.

1.1. The nbn rollout is fundamentally changing the broadband market

The nbn rollout is having a profound effect on the way retail service providers (RSPs) supply services to end users. Over the next four years, Telstra will be required to progressively migrate customers from its copper network onto the nbn – both wholesale and retail. In May 2016, the nbn rollout had reached more than 2.5 million customers with over 1 million of those already connected to the new network. In just two years this is expected to grow to 9.1 million premises passed and over 4.4 million connected¹. It is clear that this rapidly changing infrastructure landscape requires all RSPs to refocus their commercial activities in order to attract and retain customers. The Commission notes in its Discussion Paper:

...anecdotally it appears RSPs are seeking to obtain market share in high speed fixed-line broadband services prior to transitioning customers onto the NBN (where they will acquire superfast broadband services). A reason for this is that it may be easier, with fewer costs, to transition an existing customer to a NBN service rather than win that customer in the process of transitioning.²

The ACCC’s observation of a 3.8% average annual increase in wholesale ADSL services since December 2012 aligns with the 3% overall growth of PSTN-based broadband services over the same period. Competition and market growth has been underpinned by 10.3% average annual ULLS growth since 2012. While all broadband providers are actively seeking to gain customers ahead of an area becoming ready for service (RFS), in order to be well positioned to continue supplying those customers post-migration, access seekers in competitive areas are increasingly competing on the basis of ULLS / LSS rather than wholesale ADSL. Providers are competing by offering ADSL / nbn deals that provide continuity for customers, pre and post migration, including by providing network devices (modems) that operate with both ADSL and nbn. This pre-nbn activity is observable in the highly competitive ULL / LSS footprint as well as the Telstra Wholesale ADSL footprint.

1.2. ULL-based competition continues to grow

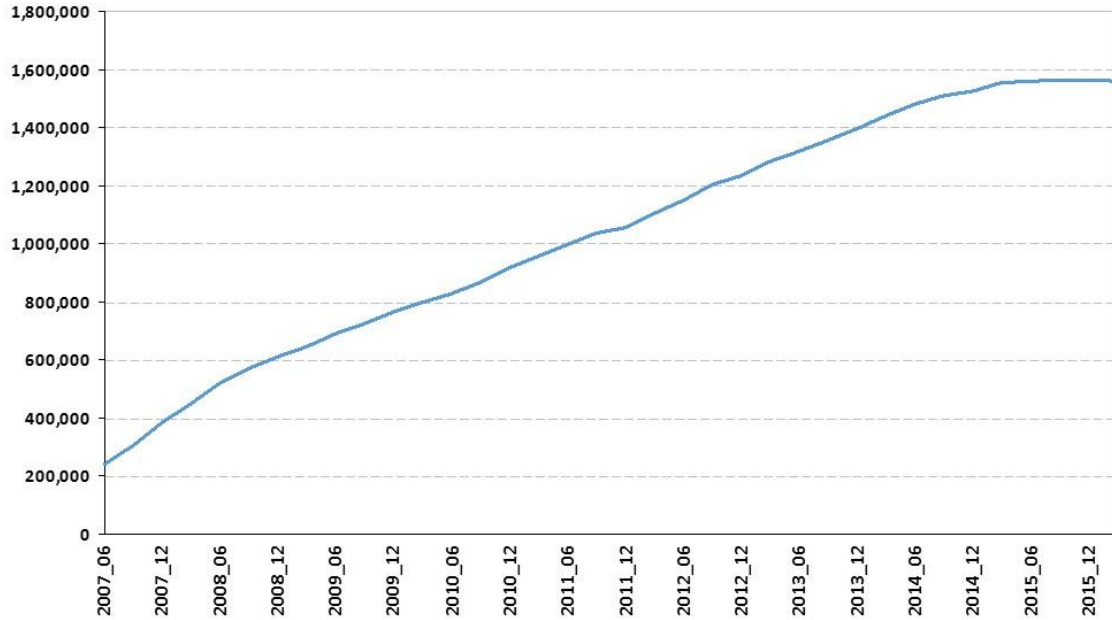
The industry transition to nbn has triggered access seekers to continue to invest in ULL-based delivery of ADSL services. In the four years following the declaration of wholesale ADSL in 2012, the total number of ULL services acquired from Telstra has grown by 41% to over 1.5 million lines by March 2016, albeit with a flattening off in the last 12 months corresponding to a general acceleration in nbn connections. This ongoing investment predominantly took place in areas where at least one access seeker already had DSLAM equipment with the overall competitive footprint growing at a slower rate. This is demonstrated in the following charts. This activity underpins the intense competition observed in ULLS band 1 and 2 areas and is addressed further in section 3.

¹ NBN Co, Corporate Plan 2016, p. 12, <http://www.nbnco.com.au/corporate-information/about-nbn-co/corporate-plan/corporate-plan.html>

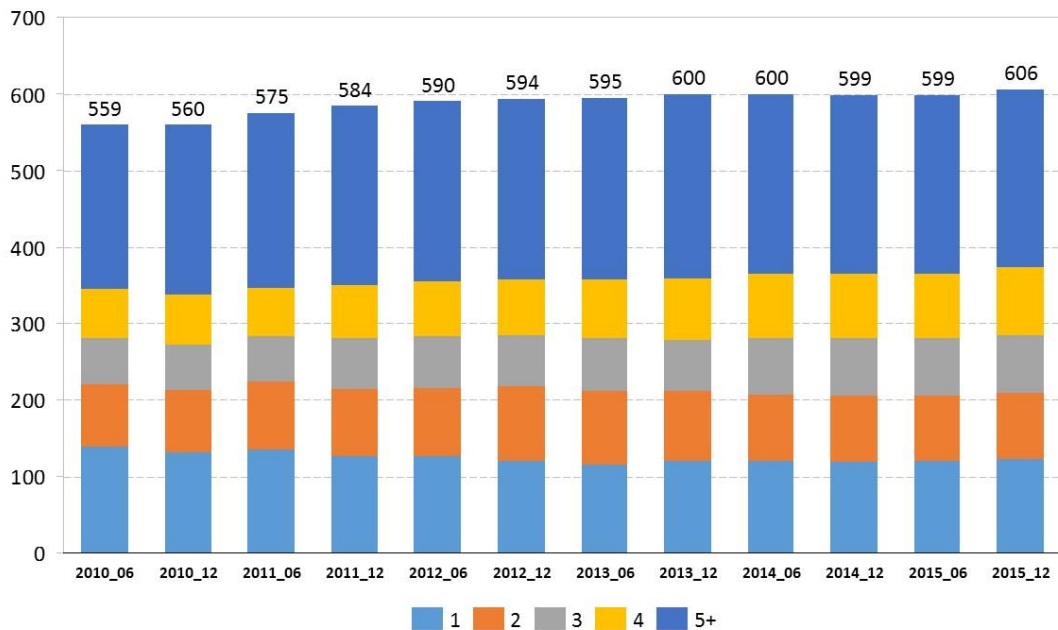
² ACCC, July 2016, Wholesale ADSL service declaration inquiry – Discussion Paper p.26



ULL services in operation



DSLAMs installed in Telstra exchanges



1.3. In competitive areas, competition to supply wholesale ADSL allows smaller resellers to compete with infrastructure owners

In competitive exchanges, DSLAM operators compete to provide wholesale ADSL services to smaller access seekers. Additionally, some infrastructure owners provide a national solution by reselling the



Telstra Wholesale ADSL service outside their own footprints, or using an alternative wholesale supplier in competitive areas and Telstra Wholesale elsewhere. For example:

- Spintel’s website outlines that ‘urban’ services are delivered over the Optus wholesale network whilst others are over Telstra Wholesale ADSL.³
- Eftel boast of five supply arrangements (including Telstra, Optus, Wideband, AAPT and Amnet) which provides their customers with a national footprint.⁴

1.4. Alternative technologies provide options for end users

As correctly identified by the ACCC, there is a small but increasing percentage of the population who have low data requirements and can therefore rely solely on a mobile broadband service⁵. Mobile broadband data allowances are typically lower than those of comparably priced fixed broadband services, however these have been increasing considerably in the last two to three years as network operators invest considerable amounts into their mobile networks in order to differentiate their offerings in a highly competitive national market.

There are also alternative fixed network technologies available to customers, particularly in certain geographic areas. For instance, TPG is rolling out VDSL services in multi-dwelling units in competition to ADSL (and ultimately nbn), fixed wireless services are being established in built up areas⁶, and competition from Optus, Telstra and others’ HFC networks continues.

³ <https://www.spintel.net.au/products/broadband/features>

⁴ <http://www.eftel.com/wholesale/products/ADSL/overview.cms>

⁵ Additionally, the ACCC’s Telecommunications report 14/15 found: “The continued investment in mobile networks and advances in mobile technology mean that an increasing number of consumers may see mobile broadband services as a substitute for fixed broadband services in the future.” (page 2)

⁶ For example, <https://www.lightningbroadband.com.au/>.



02 The current wholesale ADSL service description promotes stability and certainty during the transition to nbn

The wholesale ADSL service description should be retained in its current form. Telstra is not aware of any reason to make changes, especially in this critical time of migration to nbn.

The wholesale ADSL service is well understood in the industry and the service description set by the Commission in the 2012 remains appropriate. The scope of this service description was tested again recently during the first and second FADs for wholesale ADSL, with no justification for change identified. With the nbn rollout accelerating and eventually replacing the Telstra ADSL network, the Commission must ensure stability and certainty are provided during this period. Changes to this well-established service description risk undermining this stability by potentially requiring product, service and technology changes along with the associated costs to Telstra and access seekers.

Telstra agrees with the ACCC’s decision to declare an ADSL specific service rather than a technology neutral broadband service. Telstra has previously suggested that technology specific service descriptions are the most appropriate way to ensure regulation applies only to the identified enduring bottleneck.⁷

⁷ Telstra, Telstra’s submission on the Guideline to the declaration provisions for telecommunications services under Part XIC of the Competition and Consumer Act 2010, July 2019, page 9



03 Geographic exemptions should be provided where competition is strong

Best practice regulation requires that the wholesale ADSL declaration should not apply to areas where there is demonstrable, effective competition. In many parts of Australia, there are at least four competitors to Telstra’s retail and wholesale ADSL services, with a substantial combined market share.

3.1. Best practice regulation requires forbearance in competitive areas

The Australian Government Guide to Regulation points to a number of best practice principles for Government policy makers⁸. The first three principles are that:

- Regulation should not be the default option for policy makers: the policy option offering the greatest net benefit should always be the recommended option.
- Regulation should be imposed only when it can be shown to offer an overall net benefit.
- The cost burden of new regulation must be fully offset by reductions in existing regulatory burden.

The principles of best practice regulation advise regulators to adopt a careful approach, particularly in competitive areas where heavy-handed, ex-ante regulation is likely to be redundant or to distort competitive outcomes. Ex-ante regulation is only likely to be preferable, particularly given the existence of other ex-post powers, if a facility or service is a bottleneck input into the production process of a firm competing in downstream markets. Strictly, a bottleneck service exists only if it passes two economic tests:⁹

1. it is used to manufacture a specific good or service and there must be **no alternative input or process** which enables a competitor to produce an equivalent final good or service at a comparable cost; and
2. there must be **no alternative, substitutable final good or service** that can be manufactured and sold at a comparable price without using that input.

If both tests are met,¹⁰ then an economic problem that may justify access regulation exists. If one or both of the tests are not met, then there is no structural impediment to competition and no economic basis justifying the imposition of regulation. This is because, if one or both of the tests are not met, “*the owner of the essential facility (bottleneck) is constrained from exercising monopoly power due to direct competition from substitutes or indirect competition because substitutes exist to products that use its input.*”¹¹

⁸ Department of Prime Minister and Cabinet, The Australian Government Guide to Regulation, 2014, Page 6.

⁹ See King. S., (1997), “National competition policy”, *Economic Record*, 73, 270-284, p.273.

¹⁰ A third relevant test is that the relevant market is **not** perfectly contestable. See Chapter 11 in S. Martin (1993) *Advanced Industrial Economics*, Blackwell.

¹¹ See King. S., (2013), “Report on essential facilities, access regulation and value-added wholesale services on the NBN”, p.7.



In practice, this means that the two economic tests, which focus on the existence of substitutes (at either the input or final good level), determine the circumstances in which regulation will or will not enhance competition and the LTIE.

In the context of Wholesale ADSL services (and high speed broadband services in general), it is clear that in a number of exchanges, neither of the two tests is met. With regard to wholesale inputs, access seekers have a choice of multiple alternative wholesale inputs within competitive areas, including ULLS (and resale services supplied through ULLS) and services supplied through alternative fibre or wireless networks (either self-supplied, or via wholesale services supplied through those networks).

Test 1: Diverse alternative inputs exist

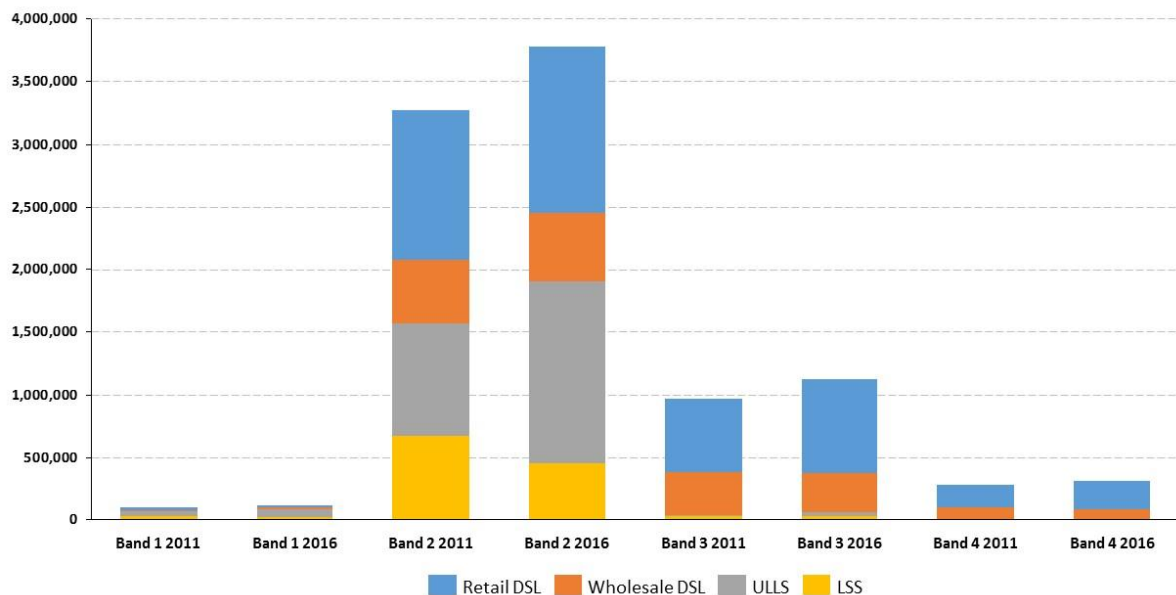
Wholesale competition in certain exchanges has intensified over the last 10+ years of competitive wholesale investment. This is evidenced below.

Copper-based alternatives

Regulated ULLS and LSS allow access seekers to install their own DSL aggregation equipment in exchanges and provide ADSL services to other access seekers and end users. There has been significant DSLAM investment over more than a decade, and while the number of discrete competitors in exchanges has decreased slightly due to industry consolidation, the absolute number of exchanges that have at least one DSLAM competitor has continued to grow. This has continued since the nbn rollout commenced, albeit at a slower rate.

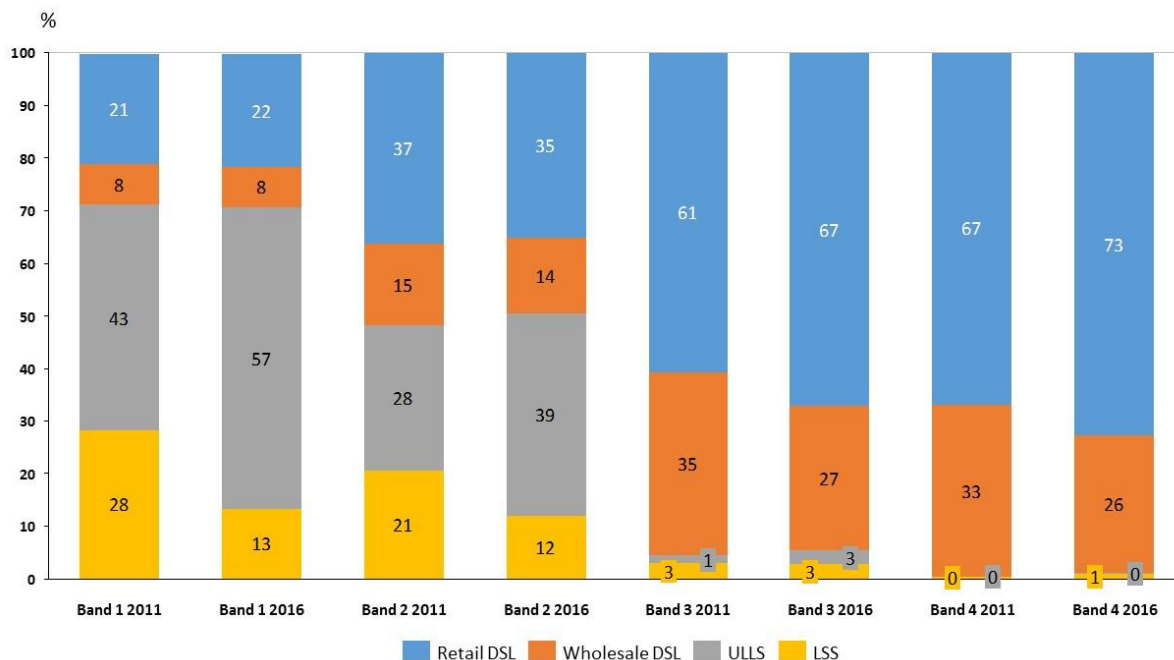
While the competitive footprint has grown, albeit slowly, access seekers have continued to grow their market share in these areas. ULLS services in operation have increased considerably over the past five years. This trend is particularly strong in band 1 where more than 50% of the PSTN-based broadband services were provided using ULLS in 2016. Even in band 2, the ULLS delivers more PSTN-based broadband services than Telstra’s retail business units, and combined with LSS makes up more than 50% of the broadband market. This can be seen in the charts below:

PSTN-based broadband SIOs by technology, 2011 – 2016





PSTN-based broadband market share by technology 2011 – 2016



Finally, access seekers who have limited or no DSLAM footprint of their own have the ability to purchase wholesale ADSL services in these areas from all of the largest infrastructure owners including Telstra, Optus¹², TPG¹³ and the Vocus / M2 group¹⁴.

Alternative infrastructure

In addition to copper-based competition, access seekers are able to utilise alternative networks in order to deliver broadband services to end users, including:

- nbn services – nbn co. are progressively rolling out a ubiquitous wholesale-only broadband network using a range of technologies. When an area is declared RFS, there is an 18 month period for retail service providers to progressively migrate their customers off the PSTN and onto the nbn.
- FTTB – since 2013, TPG have been rolling out a fibre to the building network which is capable of supplying superfast broadband services to over 500,000 end users in built up areas of Sydney, Melbourne, Brisbane, Adelaide and Perth. TPG’s service is available for wholesale acquisition on a functionally separate basis.
- Wireless broadband – the advent of high speed wireless services delivered over 4G networks has enabled access seekers to acquire and supply wireless broadband services into the retail market.

Test 2: Alternative substitutable final services exist

Retail consumers have a wide range of choices when it comes to acquiring broadband services, many of which do not rely on the Telstra Wholesale ADSL service. These include:

¹² <http://www.optus.com.au/wholesale/solutions/broadband-and-nbn>

¹³ <https://aapt.com.au/wholesale/products/wholesale-ADSL>

¹⁴ <https://www.vocus.com.au/wholesale/wholesale-dsl>



- ULL based ADSL which can be bundled with a PSTN or VoIP service or sold as a “naked” ADSL only service;
- LSS based ADSL services which must be acquired with a PSTN voice service (either provided by Telstra retail or an access seeker using Wholesale Line Rental);
- ADSL services provided by 3rd parties accessing alternative wholesale ADSL networks;
- nbn based services;
- HFC based broadband services;
- Fixed wireless services (such as Bigair’s campus broadband solution);
- Mobile broadband utilising any of the 3G / 4G mobile networks; and
- Alternative fibre based services such as TPG’s FTTB products.

3.2. Infrastructure-based competition is delivering benefits to customers

The Commission has on many occasions recognised the LTIE is served through efficient infrastructure-based competition¹⁵. As outlined in the Discussion Paper, investment in DSLAM facilities continued through 2015, albeit at a slower rate compared to previous years (as illustrated in section 1.2). This infrastructure-based competition has provided significant benefit to consumers through lower prices and innovative offerings.

Competitive responses generated by DSLAM-based competition benefits all end users due to Telstra’s national pricing approach. Specifically though, in areas where competitive DSLAMs have been deployed, consumers have access to a number of suppliers who use price as a key differentiator. As the Commission highlights in its Discussion Paper, TPG provide an entry level ADSL 2+ naked service with 50GB included data for \$29.95 which is well below the equivalent product provided through Telstra’s retail channels.

The ACCC’s telecommunications report¹⁶ shows that pricing for internet services has declined consistently over the last 8 years (20% since 2007 for ADSL services), at the same time as data allowances have increased significantly.

Year-on-year percentage changes in the internet services index by service type

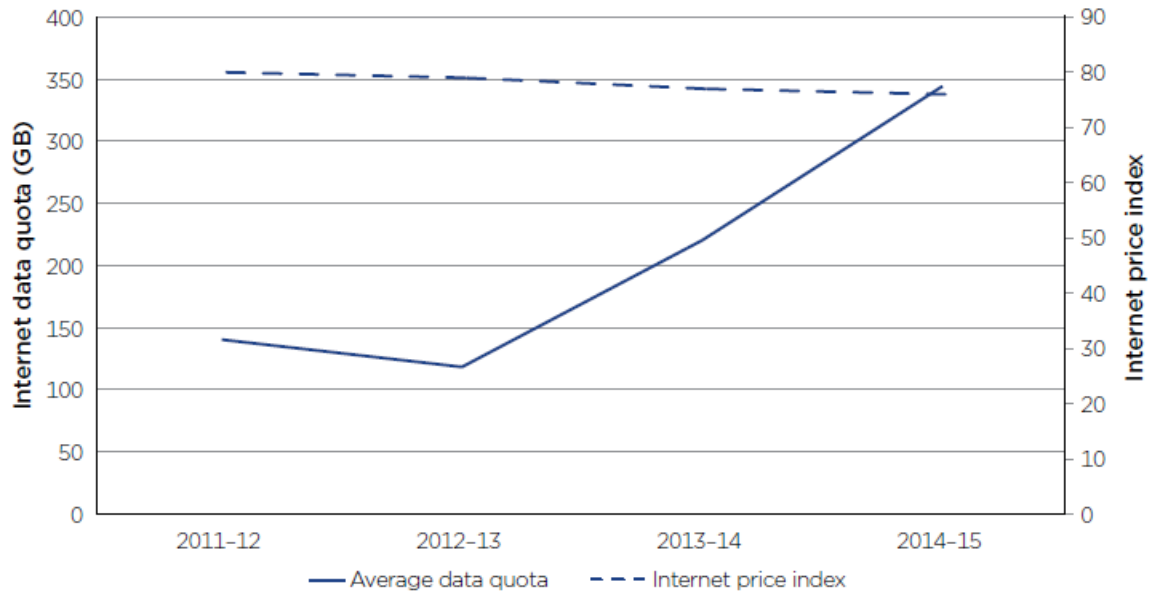
	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
Wireless	n/a	-18.5	-14.7	-3.5	1.7	1.8	-2.7	0.4
DSL	-5.2	-0.4	-2.0	-3.4	-5.7	-2.2	-2.0	-1.8
Cable	-5.9	0.5	-1.1	-3.5	1.0	-1.8	-2.2	-3.4
NBN internet	n/a	n/a	n/a	n/a	n/a	n/a	4.6	-3.5
Overall	-6.2	-4.6	-4.9	-3.6	-2.7	-0.9	-2.2	-1.3

¹⁵ For example Rod Sims, November 2014 speech, Solving the multi-technology puzzle: The ACCC’s perspective

¹⁶ ACCC, Telecommunications reports 2014 – 2015, page 92



Average monthly internet data quotas (GB) and internet services index 2011-12 to 2014-15



[c-i-c]

Over the last decade DSLAM-based investment has supported the following innovations:

- Naked DSL (where customers can have ADSL on a standalone basis – without a PSTN voice service);
- Carrier grade VoIP services;
- Various IP TV and music streaming services; and
- Very large or even unlimited data allowances.

This kind of innovation would not have occurred to the extent it has without significant DSLAM investment.

3.3. A threshold test for exemptions should be implemented

Telstra has previously argued (in 2012) for a conservative test to apply in assessing whether an exchange is competitive and therefore should not be covered by ADSL regulation:

Telstra considers that the Australian Competition Tribunal's (Tribunal's) threshold test for the WLR/LCS and PSTN OA exemptions provides a workable benchmark test as to whether a particular exchange is effectively competitive. Although the Tribunal's threshold test ignores competitive constraints arising from the presence of fixed wireless, HFC, Greenfield, CBD fibre and (most notably) mobile wireless broadband services, it nevertheless provides a robust and conservative methodology.¹⁷

¹⁷ Telstra, Response to the Commission’s Discussion Paper into whether wholesale ADSL services should be declared under Part XIC of the Competition and Consumer Act 2010, para 67



Since this time, industry consolidation has continued with consideration by the ACCC finding that such consolidation would not lessen competition.¹⁸ As a result of this pro-competitive consolidation, exchanges may have a lower number of DSLAM competitors than previously. At the same time, ULL based supply of broadband services has continued to grow rapidly. As such, Telstra now proposes the Commission adopt a simpler assessment to determine whether an exchange is competitive and therefore appropriate for exemptions.

The first part of the test should be whether all four of the largest ADSL providers are present within the exchange. These providers are Telstra, Optus, TPG / iiNet and Vocus / M2 as recognised by Mr Rod Sims in response to the proposed acquisition of the M2 group by Vocus:

Significantly, the merged firm will also face significant competition from Optus, Telstra and TPG. This merger consolidates the fourth player in the market,¹⁹

As outlined in section 3.1, these providers all offer wholesale access to ADSL services delivered over their DSLAM networks. There were 311 exchanges that passed this part of the test in March 2016.

The second part of the test should be whether ULL + LSS SIOs account for at least 30% of the broadband SIOs in that exchange (ULL + LSS + Telstra ADSL - both retail and wholesale). This balances the risks of continued regulation resulting in market distortions, against the risk of premature deregulation before competition has established. This is consistent with the approach accepted by the Australian Competition Tribunal in determining an Exemption ESA in its 2009 WLR Individual Exemption Order.²⁰

The two-part test would result in 289 ESAs being exempted from ADSL regulation. These exchanges include all 16 CBD (ULLS band 1) exchanges and 273 ULLS band 2 exchanges. Notably, these make up only 10% of Telstra’s exchanges that are ADSL enabled, however they account for 47% of all PSTN based broadband services nationally (ULL + LSS + Telstra ADSL).

Telstra notes that the exchanges proposed for exemption are the 289 most competitive exchanges out of the over 600 which have at least one, and often more than one competitor present. Telstra’s proposed threshold can therefore be considered conservative - in any other industry the presence of four effective direct competitors and a range of strong substitute services would be sufficient to support regulatory forbearance. Telstra’s aggregate retail market share in these 289 exchanges is only **[c-i-c]** and the combined market share of Telstra’s retail and wholesale ADSL services is only **[c-i-c]**.

Finally, the Commission has previously been concerned that the presence of remote integrated multiplexers (RIMs) and Pair Gain systems limit the ability for ULL based competition to certain groups of end users. From a technical perspective this is correct – end users served from non-MDF equipment may not be serviceable via ULLS or LSS. The proportion of lines impacted by these systems are relatively low, particularly in ULLS bands 1 and 2 (less than 1% and 9% respectively). Telstra has previously suggested that this is not sufficient grounds for not providing geographic exemptions, however suggests that if the Commission still holds this view, then it should carve such premises out from an exemption. This would mean that the declaration continues to apply to the supply of wholesale ADSL

¹⁸ Rod Sims, November 2015, Media release: ACCC will not oppose Vocus’s proposed acquisition of M2

¹⁹ *ibid*

²⁰ Application by Chime Communications Pty LTD (no3) [2009] AcompT4, para 14.



services for end users who are in a competitive exchange but are unable to be serviced directly from a competitive DSLAM.

3.4. Exemptions would not lead to anti-competitive pricing conduct

The Commission has previously expressed concern with wholesale pricing in competitive vs non-competitive areas. However, Telstra is not aware of any complaints having been made for conduct of this kind **[c-i-c]**.

Further, whilst Telstra is the only supplier with a national network, even with the exemptions proposed by Telstra, regulated prices for non-competitive areas will continue to be relied upon by access seekers in obtaining the wholesale ADSL service nationally.



04 The duration of the declaration should align to other fixed line services

The nbn rollout will eventually replace Telstra’s copper network, with PSTN based services (including ADSL) to be disconnected and migrated to the nbn. As such, Telstra expects that around the time of nbn completion, the Commission will conduct an inquiry into the revocation of large amounts of PSTN regulation. Telstra notes the Commission’s 2013 re-declaration decision for the ULL and LSS services included the following comments:

The ACCC considers that Telstra’s copper access network will remain an enduring bottleneck until the rollout of the National Broadband Network (NBN) is complete²¹

With all the fixed services except wholesale ADSL having declarations that expire in July 2019, Telstra submits that the lead up to this expiration is the ideal time to consider when and how to wind back PSTN regulation. To achieve this, the wholesale ADSL declaration period should now be aligned to the other declared services that utilise the PSTN network. This will allow for the Commission to consider defining a path to regulatory rollback ahead of the planned nbn completion date in 2020 consistently across all regulated, PSTN based services.

Mr Rod Sims has foreshadowed the substantive issues that will need to be addressed at this time:

As the migration from the old to the new network occurs, the regulatory impost on Telstra will largely fall away. This is a major change in both the structural reform of the industry, but also in the focus of economic regulation and the ACCC’s role²²

Telstra submits that it is sensible that these assessments and decisions be made for all relevant services in a holistic and complete way, and that to have a wholesale ADSL declaration that extends beyond this time would detract from the opportunity for a complete review of PSTN access regulation. As such, the wholesale ADSL declaration duration should be aligned to the other fixed services and should be extended to 31 July 2019.

²¹ ACCC, April 2014, Public inquiry into the fixed line service declarations: Final Report, page vi

²² Mr Rod Sim, November 2013, A regulator’s perspective: The NBN rebooted workshop



ATTACHMENT A: Responses to the ACCC’s questions

Question	Telstra response
1. Do you consider the ACCC’s proposed assessment framework is appropriate for assessing whether declaring wholesale ADSL services would promote the LTIE? That is, will the proposed assessment framework assist the ACCC in assessing whether declaring a service will promote competition in markets for telecommunications services, achieve any-to-any connectivity and encourage efficient use and investment in infrastructure by which the service is supplied?	Yes. However, as set out in Telstra’s response to the ACCC’s Draft Declaration Guidelines, the ACCC should consider the costs and benefits of a number of options relating to the declaration of ADSL. For instance, the ACCC should consider whether declaration only in areas with less than four competitors is in the LTIE; more generally, what level of competition warrants declaration to be removed; whether the LTIE are best served by relying on the ACCC’s ex-post rather than ex-ante powers in competitive areas.
2. What are the relevant markets for the purpose of this inquiry and the application of the LTIE test?	<p>Telstra agrees with the Commission that the relevant market to be considered in the context of this inquiry is national. Telstra competes nationally in supplying broadband services to end users, including by offering national retail prices.</p> <p>However, notwithstanding a broad definition of the market, the Commission needs to consider the level of competition within segments of that market and determine whether declaration of those segments is within the LTIE. There is no requirement, and indeed it would make no sense, to define the scope of the declaration strictly on the basis of one definition of the market.</p> <p>As outlined in part 3.3, Telstra contends that the Commission should apply a threshold test to establish whether effective, infrastructure based competition is present on an ESA basis (in both the wholesale and retail markets). If an exchange is deemed competitive, then the Commission should exclude it from the declaration. The LTIE is not served by maintaining regulation in these exchanges as multiple supply side and demand side substitutes are readily available.</p>
3. Is it appropriate to consider both wholesale and retail markets?	Yes, there are multiple vertical layers of the ADSL markets. As set out in section 3.1, there is significant competition within the different layers (e.g. there are multiple suppliers of wholesale ADSL) and across different layers (e.g. ULLS access seekers compete against Telstra’s wholesale and retail ADSL services).
4. What is your view about the substitutability between different broadband products? What is the substitutability between fixed-line broadband technologies with different data rates?	HFC, ULL / LSS based ADSL, FTTB, nbn and fixed wireless are all strong demand-side substitutes for Wholesale ADSL. RSPs have prepared to place orders with nbn for a variety of FTTP, FTTB, fixed wireless services. RSPs are also actively migrating



	<p>ADSL customers to nbn. Optus and Telstra are also preparing their HFC networks for migration to nbn.</p> <p>These technologies are also strong demand-side substitutes for retail ADSL services.</p>
<p>5. Are there separate but related markets for high speed fixed-line broadband services and superfast broadband services? What evidence exists to support this?</p>	<p>They are close substitutes – consumers consider options in both markets before deciding on a supplier for broadband services.</p> <p>Communications Chambers Cost Analysis of Broadband and Review of Regulation²³ found that “<i>in 2023, the median household will have ‘technical’ demand (that is, generated by actual application usage) for download bandwidth of 15 Megabits per second (Mbps) and the top 5 per cent will need 43 Mbps. Note the bandwidth consumers purchase may differ from their ‘technical’ demand.</i>”</p> <p>This suggests that high speed and superfast broadband services will remain substitutes for the majority of households for a significant period of time.</p> <p>Further, while mass migration is occurring from PSTN-based to nbn-based services, this does not indicate a lack of substitutability between the technologies. The pace and extent of the migration is largely dictated by the existence of the Structural Separation Undertaking and the Migration Plan, which require Telstra to disconnect PSTN-based services 18 months after RFS. That is, customers have some choice as to when, but ultimately not whether they want to substitute the PSTN with the nbn.</p>
<p>6. Are wireless broadband services (offered over mobile broadband, fixed wireless or satellite) substitutes for high speed fixed-line broadband services and if so, to what extent? What evidence exists to support this?</p>	<p>Yes, for many applications mobile and fixed broadband are substitutes. They are also complements. However, market definition is purposive, and Telstra does not consider that including mobile competition in the market is necessary for the purpose of considering whether to declare wholesale ADSL. Even in areas where Telstra proposes exemptions be applied, the existence of four fixed competitors within a narrower market definition should be sufficient justification for forbearance. The probability of a wider market definition and consideration of additional mobile broadband competition illustrates the conservative nature of Telstra’s proposal.</p>
<p>7. Is it appropriate to consider the relevant markets on a national basis or should they be defined on a more narrow geographic basis? If so, what should that be and why?</p>	<p>The retail and wholesale resale markets are national in scope. However, consideration must be given to geographic areas with intense facilities based competition within those markets.</p>

²³ Independent Cost-Benefit Analysis of Broadband & Review of Regulation, Vol. II, page 23-28



8. What do you consider to be the state of competition in the high speed fixed-line broadband markets?	Intense competition exists in the competitive DSLAM footprint, refer section 3.1
9. Is there effective competition at the wholesale level of the market, and if so why? Please provide subscriber numbers and any market share information to illustrate this, including any information about competitive supply of wholesale ADSL services.	Yes, competition exists in the Wholesale market. All of the major suppliers of ADSL offer services through their wholesale channels. Refer to section 3.1 for further information and examples of retail service providers’ use of multiple wholesale suppliers.
10. Is there effective competition at the retail level of the market? Please provide market share information to illustrate this, including for customers on-net and off-net subscriber numbers. Are access seekers more successful in the retail market when supplying services on-net?	Yes, competition is present in the retail market, refer section 3.1 for market share information. Yes, access seekers are more successful in the retail market when using ULLS due to its lower cost base.
11. Are there any geographic areas where competition at the wholesale or retail levels is considered to be effective, and if so where are these areas and why is competition considered effective?	Yes, there are multiple substitute providers in bands 1 and 2 at the wholesale level (e.g. ULLS / LSS access seekers) and at the retail level (e.g. other ADSL providers, HFC, etc). Telstra has outlined a conservative threshold test to be used to determine whether effective competition exists in an exchange and therefore whether that exchange should be made exempt from the declaration.
12. Are there any particular barriers to entry impacting competition in the wholesale or retail markets for high speed fixed-line broadband services?	No, DSLAM and ULLS investment over the last 10 years has shown the barriers are low, particularly in CBD and metro areas.
13. Are there any implications for competition of the price differentials between on-net and off-net price ADSL services?	No, there are different cost bases for access seekers supplying on-net and off-net.
14. Do you consider that declaration of the wholesale ADSL service will promote competition? How is wholesale ADSL being used for this purpose?	Telstra does not consider that declaration will promote competition where competition already exists – for example where there are at least four competitors.
15. Do you think competition concerns remain in the relevant market for wholesale ADSL since the 2012 declaration, or would remerge if the wholesale ADSL service was not declared? What is, or would be, the nature of these concerns and how significant are they?	No, in the last four to five years there has been increased DSLAM competition that has driven down wholesale ADSL prices and Telstra isn’t aware of any competition complaints during this period.
16. Are commercial wholesale ADSL terms and conditions set with reference to those in the FAD, or independently? Do the terms	Telstra Wholesale does not limit the nature of regulated service offerings. It makes available the regulated terms and conditions through its rate card.



<p>and conditions negotiated inhibit competition in any way, including through restricting the nature of service offerings? Are you aware of any discrimination occurring between prices offered to different access seekers?</p>	<p>Access Providers and Access Seekers are entitled to agree different terms per the statutory hierarchy outlined in part XIC of the Competition and Consumer Act, but they always have access to the regulated terms.</p>
<p>17. Are there any instances whereby delays in the negotiation of revised wholesale DSL charges following Telstra’s retail price changes have affected the ability of access seekers to compete? If so, please specify the duration and impact of the delays.</p>	<p>Following the previous FAD for wholesale ADSL, access seekers reduced their retail prices and Telstra’s retail price reductions occurred in response rather than the other way around.</p> <p>Telstra is not aware of any delays in the negotiation of revised wholesale DSL prices following a retail price change since the last declaration inquiry in 2012.</p>
<p>18. How do the wholesale terms and conditions negotiated with Telstra compare to those from other providers of wholesale ADSL? Please detail the differences.</p>	<p>Telstra is not an acquirer of wholesale ADSL services so cannot comment on competing terms and conditions of supply, however notes that there is a subset of the market which is competitive, with wholesale providers competing to win supply arrangements with RSPs through price levels, constructs and service, including through sub-wholesaling the Telstra Wholesale ADSL service.</p>
<p>19. Do you consider that it is imperative to have a pre-existing subscriber base prior to the complete rollout of the NBN? If so, will an existing market share provide a material comparative advantage? If so, how? Are customers switching to different NBN providers and are there any barriers to customers wanting to switch to a different service provider?</p>	<p>Most current RSPs have a pre-existing subscriber base, except for some new entrants. For instance, in the 289 ESAs Telstra proposes for exemption, Telstra Retail has only [c-i-c] of PSTN-based broadband services. The benefit of pre-existing market share will remain even if the ACCC does not declare competitive areas, because in those areas, most competitors use their own networks rather than Telstra Wholesale ADSL to supply customers prior to nbn migration.</p> <p>Having an existing market share will be advantageous for RSPs as they can directly market their nbn offerings to these customers based on knowledge of their individual requirements rather than relying on mass market campaigns.</p> <p>However, Telstra is not aware of any significant barriers to customers switching providers before or once connected to the nbn.</p>
<p>20. Is wholesale ADSL being used as a vehicle to achieve a pre-existing subscriber base prior to the complete rollout of the NBN?</p>	<p>As per the answer to question 19, Telstra believes RSPs are focussing on securing market share ahead of nbn migration. In areas where access seekers do not have the ability to self-supply using ULL / LSS, they will rely on wholesale ADSL to obtain customers. However, in competitive areas access seekers use the full variety of competitive inputs to support their subscriber base prior to nbn migration.</p>



21. Are there any other potential risks to competition that may arise in the transition to the NBN if wholesale ADSL is not regulated? If so, what are they?	No. See answer to Q19.
22. What impact would declaration have on the objective of achieving any-to-any connectivity?	No impact as the service is an end to end service and does not have an interconnect element.
23. Are there still opportunities for efficient investment in competing DSL networks – in terms of either expansion of the existing DSL footprint or increased investment in areas that have already attracted ULLS/LSS based competition? Is this likely to change over time? How would declaration of the wholesale ADSL service impact this?	<p>As outlined in section 1.2, while some competitors are still investing, the competitive DSLAM footprint has only increased by 12 ESAs (or 2%) in the three years to December 2015. This is likely influenced by the accelerating nbn rollout and migration of customers off ULLS and LSS competitive infrastructure.</p> <p>In Telstra’s case, there is an ongoing need to invest to meet customer demand for ADSL, however Telstra’s incentives to invest are complicated by the 2015 Fixed Services FAD, uncertainty about the next FAD and the migration of DSL customers to nbn.</p>
24. What impact does the NBN rollout have on investment in, or use of, wholesale ADSL services as well as incentives to invest in ULLS and DSLAM infrastructure?	Refer response to question 23.
25. Could declaration of the wholesale ADSL service encourage efficient investment in infrastructure that will be used to interconnect on the NBN or provide value-added retail services? If so, please outline how. Could declaration encourage efficient use of NBN infrastructure?	Future investment in facilities for interconnecting to the nbn or to provide value added services will be driven by access seekers’ commercial decisions. These investments will primarily focus on a RSP’s infrastructure and are unlikely to be influenced by the declaration of wholesale ADSL, particularly where wholesale ADSL is competitively supplied.
26. Are there any issues in relation to the technical feasibility of supplying the wholesale ADSL service that the ACCC should be aware of?	No, since the service is already supplied there shouldn’t be any technical issues supplying the same service moving forward.
27. Is the current service description appropriate or have there been changes in either the ADSL technology or relevant markets that necessitate a change to the current wholesale ADSL service description? Should any changes be made to the service description? What are these changes and why are they required?	The current service description is appropriate and to change it would create uncertainty and add costs to both Access Seekers and Telstra in implementing changes. This would be inappropriate given the limited life span of ADSL. Telstra is not aware of any reasons to vary the service description.
28. Should the service description cover wholesale ADSL services nationally or be limited in geographic scope? If it is to be limited, on what basis and to what areas?	The declaration should only apply in areas where there is no effective competition in both the wholesale and retail markets. As such, there are 289 ESAs that should be exempted as outlined in section 3.3. In these areas, Telstra has [c-i-c] retail market



	share, and an additional [c-i-c] share from wholesale ADSL sales.
29. What is the appropriate duration for the declaration? Why?	As discussed in section 4, the wholesale ADSL declaration should be brought into line with the expiration of the other fixed service declarations. This will allow the future of PSTN regulation to be considered across the full suite of declared services.
30. Is there any merit to aligning the declaration period for wholesale ADSL services with the forecast completion date of the NBN? Please provide reasons why or why not.	No. With the observed changes in direction of the nbn rollout over time it would be prudent not to base a regulatory decision on the forecast completion timeframes. Rather, broad questions of the appropriateness of ex-ante regulation in an nbn world should be considered across all declared PSTN services at the same time. Refer section 4.
31. Having regard to the potential costs of declaration listed above, and the issues raised in relation to the coverage of the service description, would declaration of a wholesale ADSL service lead to a substantial increase in regulatory burden? If so, please provide details and where possible evidence of the likely change in regulatory burden, including any particular costs that the ACCC should take into account.	<p>Since wholesale ADSL services are presently declared, re-declaration would not lead to a <i>substantial increase</i> in regulatory burden since those burdens are already being faced. A more relevant question is whether there are net benefits from continued declaration. As outlined in section 3.3, there are many ESAs where competition is strong; in these areas net benefits are unlikely to exist.</p> <p>Further, in considering the regulatory burden, costs associated with impacts on innovation and investment are typically difficult to measure, but such costs can have ongoing detrimental impacts on the LTIE. The Australian Government guide to Regulation states:</p> <p><i>“Regulation can’t eliminate every risk, nor should it. We therefore seek better regulation, not more regulation. Policy makers must seek practical solutions, balancing risk with the need for regulatory frameworks that support a stronger, more productive and diverse economy where innovation, investment and jobs are created.”²⁴</i></p> <p>Telstra submits that a more appropriate question might be: Would a reduction in regulation where effective competition exists encourage more innovation and investment? The distortions to investment, innovation and competitive behaviour caused by regulation could be reduced by removing regulation in the 289 ESAs where effective competition exists.</p>
32. Are there any particular costs that the ACCC should take into account when establishing the regulatory burden	As outlined in the answer to question 31, any decision to regulate should be balanced against any loss of incentives to invest and to innovate.

²⁴ The Australian Government Guide to Regulation, accessed at <https://cuttingredtape.gov.au/handbook/australian-government-guide-regulation>



associated with declaring a wholesale ADSL service?	Telstra also notes that the regulatory burden is broader than the costs faced by the ACCC (as the regulator) and Telstra (as the provider of the regulated service). For example, other industry participants will face costs associated with participation in regulatory processes. The decision to regulate needs to consider all relevant costs in order to establish whether there are net benefits from regulation.
33. Are there any implications for other regulatory processes that the ACCC should consider as part of its wholesale ADSL declaration inquiry?	Telstra submits that the ACCC should align the declaration of the wholesale ADSL service to the expiration of other fixed services, that is 31 July 2019.



ATTACHMENT B: Exchange Services Areas proposed for exemption

[c-i-c]