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TELECOM GROUP

Submission to WADSL Declaration Inquiry

28 July 2016

Summary

Macquarie Telecom Group welcomes the opportunity to comment on the future of the Wholesale DSL declaration. Macquarie submits that the declaration should be continued beyond 13 February 2017. The underlying market conditions that gave rise to the declaration in 2010 are substantially unchanged, and the problems of anti-competitive conduct would likely re-emerge in the absence of the declaration. Indeed, the short term incentives for anti-competitive discrimination are likely to be even stronger.

Background and Discussion

As the discussion paper describes, there were many years of complaints to the ACCC about price squeeze conduct by Telstra in the supply of WADSL services that ultimately caused the ACCC to declare a wholesale service.

These complaints were serious enough to give rise to action under Part XIB in 2004. But complaints continued even after this strong intervention. The evidence of market failure culminated in the Part XIC declaration in 2012. The declaration was made because the Commission recognised that the underlying conditions in the market were such that declaration was the only response available to it that could promote effective competition and efficient investment.

Macquarie Telecom Group strongly supported the declaration and strongly believes it should remain in place.

The conditions that gave rise to the original decision persist, suggesting competition concerns would re-emerge if declaration was revoked. In fact, the incentives for Telstra to behave in ways contrary to effective competition in the absence of declaration could even be more powerful in 2016 than they were in 2012.

Market share at the retail level remains heavily imbalanced, with Telstra's market share almost unchanged at levels that reflect a dominant position.

There is emerging evidence that this is market power in broadband markets delivered on ADSL networks is resulting in Telstra emerging as increasingly dominant in wholesale markets for NBN access services. The Commission's first report on NBN wholesale market shares records Telstra as having more than 47 percent share of wholesale services on services delivered over the FTTH footprint, rising to more than 58 percent in the early FTTN rollout footprint.

This suggests Telstra is enjoying success in moving its dominant ADSL broadband market share into the emerging NBN broadband world.

There are very strong incentives for Telstra to maximise its retail and wholesale market share during the period that customers are migrating from the legacy Telstra-owned access network to the independent, structurally separated NBN access network.

Removing regulated access to Telstra's legacy network risks inviting conduct intended to further disadvantage competitive access seekers at this critical time in communications markets.

The inadequate state of competition is also reflected in the stagnation of prices for telecommunications services. The ACCC'S telecommunication services prices index shows prices have reached a plateau. This needs to be seen in the context of the fact that Australia consistently records very poor outcomes in OECD fixed line price comparisons. Australia has for years been the worst or near-worst performer in price comparisons across the various fixed line services baskets measured.

These data also suggest that the on-going rollout of the NBN has not and will not change the competitive dynamics and underlying market problems that led to the WADSL declaration.

It is unlikely the NBN will emerge as a constraint on ADSL pricing for two reasons.

Firstly, NBN only operates as a replacement for ADSL as it is rolled out location by location, not in parallel. In those places where the NBN is not operational, it has no impact on the WADSL market.

Secondly, NBN's wholesale AVC prices were explicitly set to meet the market, which, in effect, meant it was priced to match ADSL pricing, not to reduce it. These prices therefore create no downward pressure on WADSL pricing.

However, the NBN rollout is changing the equation for ULLS/LSS investment and the impact it has as a competitive constraint on anti-competitive conduct in the WADSL market.

The uptake of ULLS/LSS was always limited by the economics of rolling out beyond Band 2. As the NBN approaches, re-investment and increased investment in Band 1 and 2 also becomes less economic.

This investment will naturally continue to fall as the timeframes available to recover investment are shortened by the approaching cutover of the copper to NBN. This is creating a greater reliance on WADSL to provide retail competition, and reducing ULLS/LSS competitive pricing pressure on WADSL.

In the regional and rural locations where competition is weakest, Telstra is expected to continue to operate a vertically integrated copper access network in many of these areas, and has a Commonwealth contract to subsidise this activity via the USO arrangements. Access to a declared WADSL in these locations will continue to be crucial.

For further information, please contact:

David Forman
Senior Manager, Industry & Policy
Macquarie Telecom Group
dforman@macquarietelecomgroup.com