



Wholesale ADSL service declaration inquiry

Consultation and position paper

July 2021



Australian Competition and Consumer Commission

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Abbreviations and acronyms

ACCC	Australian Competition and Consumer Commission
ADSL	Asymmetric Digital Subscriber Line
AER	Australian Energy Regulator
CCA	<i>Competition and Consumer Act 2010</i>
C-I-C	Commercial in Confidence
CMUX	Customer Multiplexer
DSL	Digital Subscriber Line
DSLAM	Digital Subscriber Line Access Multiplexer
FAD	Final Access Determination
L2TP	Layer 2 Tunnelling Protocol
LTIE	Long-term Interests of End-users
Mbps	Megabits Per Second
NBN	National Broadband Network
POI	Point of Interconnection
RIM	Remote Integrated Multiplexer
RSP	Retail Service Provider
SIO	Services in Operation
Telecommunications Act	<i>Telecommunications Act 1997</i>
WADSL	Wholesale ADSL service

Executive summary

The ACCC has commenced a public inquiry into the wholesale asymmetric digital subscriber line (WADSL) service declaration to consider whether to remake, extend, revoke, vary or allow the WADSL service declaration to expire.¹

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.

Declaration of a telecommunications service allows access seekers (RSPs or wholesalers) to obtain access to an infrastructure owner's service on request, in accordance with the standard access obligations set out in Part XIC of the *Competition and Consumer Act 2010* (CCA) and any related terms set out in a corresponding access determination.

The ACCC first declared the WADSL in 2012 and in 2017 extended the declaration until 13 February 2022.² The WADSL is one of seven declared fixed line services provided by Telstra over its legacy copper network. The ACCC has declared the other six services until 30 June 2024.³ Final Access Determinations for the seven declared services, setting prices and non-price terms and conditions for access, are also in place until 30 June 2024.⁴

Demand for WADSL and retail ADSL services has declined considerably since 2017 and the ACCC expects this to continue due to Telstra's obligations to migrate its services to the NBN within the NBN fixed line footprint.

The ACCC's position is that declaration of the WADSL service should continue at least until 30 June 2024, prior to which the ACCC would conduct an inquiry jointly considering the future declaration for the WADSL service and Telstra's other declared fixed line services.

This paper seeks submissions on the ACCC's position, the questions raised in this paper and any other relevant matters stakeholders want to raise.

¹ CCA, paragraph 152ALA(7)(a).

² ACCC, [Wholesale ADSL service declaration inquiry, Final decision](#), February 2017.

³ ACCC, [Fixed line declaration inquiry](#), 2018.

⁴ ACCC, [Fixed line declaration inquiry, Final decision](#), 2018.

1. Introduction and consultation approach

The ACCC is considering whether to remake, extend, revoke, vary or allow the WADSL service declaration to expire.⁵ The WADSL service declaration is due to expire on 13 February 2022 and the ACCC is required to hold a public inquiry in the 18 month period before expiry, pursuant to subsection 152ALA(7) of the *Competition and Consumer Act 2010* (Cth) (CCA).

The ACCC has commenced this public inquiry under Part 25 of the *Telecommunications Act 1997* (the Telecommunications Act). The ACCC's *Guideline to the declaration provisions for telecommunication services under Part XIC of the Competition and Consumer Act 2010* provides guidance on the declaration process and the ACCC's general approach to declaration decisions.⁶

After considering submissions to this paper, the ACCC intends to make a final decision on declaration of the WADSL service. Given the past substantive consideration of issues for the WADSL service declaration and our positions stated in this document, we do not intend to issue a draft decision prior to making our final decision, but we are able to do so if significant issues arise in consultation.

1.1. Views expressed in preliminary consultation

In April 2021 the ACCC held preliminary discussions with a number of industry stakeholders to seek their views on whether we should extend declaration of the WADSL service or let it expire.

Stakeholders' preliminary views generally showed a preference to extend the declaration to June 2024 to align its expiry with Telstra's other declared fixed line services.

Telstra's preliminary view was that if the ACCC is not inclined to allow the declaration to expire in February 2022 (which is Telstra's preference), Telstra would support the declaration simply rolling over and aligning in term to the declarations that apply to the remaining fixed line services (expiring June 2024).

Stakeholders considered that extending the WADSL declaration until 30 June 2024 would enable a more holistic approach to consideration of whether wholesale access to Telstra's remaining legacy fixed line services should continue after the NBN migration is complete.

1.2. Making a submission

The ACCC encourages industry participants, other stakeholders and the public more generally to consider and make submissions on the ACCC's position and the issues set out in this paper.

To foster an informed and consultative process, the ACCC will consider all submissions as public submissions and will post them on the ACCC's website. Interested parties wishing to submit commercial-in-confidence material to the ACCC should submit both a public and a commercial-in-confidence version of their submission. The public version of the submission should clearly identify the commercial-in-confidence material by replacing the confidential material with an appropriate symbol or 'c-i-c'.

⁵ CCA, paragraph 152ALA(7)(a).

⁶ ACCC, [A guideline to the declaration provisions for the telecommunications services under Part XIC of the Competition and Consumer Act 2010](#), 11 August 2016

The ACCC expects that claims for commercial-in-confidence status of information by parties will be limited in nature in order to allow the widest possible participation in the public inquiry.

The ACCC-AER information policy: the collection, use and disclosure of information sets out the general policy of the ACCC and the Australian Energy Regulator on the collection, use and disclosure of information. A copy of the guideline is available at the ACCC's website.⁷

The ACCC prefers to receive submissions in electronic form, in either PDF or Microsoft Word format, which allows searchable texts.

Submissions are due on **Friday 10 September 2021**.

Please email submissions to fixedline@acc.gov.au

⁷ [ACCC/AER Information Policy](#), 4 June 2014.

2. Legislative framework

There is no general right of access to telecommunications services in Australia and access is usually unregulated unless the services are declared. Once declared, an access seeker can seek access to that service and the access provider (the owner of the network or facility) must provide access in accordance with the access obligations set out in the CCA. The regulatory arrangements do not preclude access seekers and providers agreeing to terms of access through negotiation.

The ACCC may only declare a service, or vary a declaration, after holding a public inquiry under Part 25 of the Telecommunications Act, if it is satisfied that doing so would promote the long-term interests of end-users (LTIE).⁸

Once declared, the ACCC must hold a public inquiry about a proposal to make an access determination for that service. An access determination may include a broad range of matters, but if it includes terms and conditions relating to access to the service it must specify price or a method of ascertaining price.⁹ An access determination usually serves as a fall back that parties can rely on if they are unable to reach agreement on the terms and conditions or price of access.

In deciding whether declaration will promote the LTIE, the ACCC must consider the extent to which declaration is likely to result in the achievement of the following three objectives:

- promoting competition in markets for telecommunications services
- achieving any-to-any connectivity
- encouraging the economically efficient use of, and economically efficient investment in, telecommunications infrastructure.

The ACCC is required to consider only these objectives when determining whether declaration would be in the LTIE.

The Telecommunications Act allows the ACCC to have regard to prior evidence, submissions and other material and information and prior findings (e.g. from the WADSL service declaration inquiry – Final decision, February 2017¹⁰) when undertaking a declaration inquiry.¹¹

2.1. Promoting competition

To determine the extent to which declaration will promote competition, we:

- identify and define the relevant markets
- assess the current state of competition in those markets
- assess how declaration may affect competition in those markets.

In identifying the relevant markets, we consider the market(s) that are relevant to the supply of the service and any downstream markets that may rely upon this service. We generally give most attention to the markets for downstream (or retail) services, as these (rather than the upstream or wholesale markets) are usually the markets in which declaration may

⁸ CCA, section 152AL.

⁹ CCA, subsections 152BC(3) and (8).

¹⁰ ACCC, [Wholesale ADSL service declaration inquiry, Final decision](#), February 2017.

¹¹ Telecommunications Act, sections 505A and 505B.

promote competition. When defining a relevant market, we also consider whether there are effective substitutes for the relevant service.

The ACCC does not need to take a definitive position on market definition, and market analysis under Part XIC of the CCA is in the context of showing whether declaration would promote competition. When assessing the current state of competition in a relevant market, we will consider a number of factors including market share and concentration levels, whether there are any barriers to entry, and any dynamic market characteristics such as growth, product differentiation and the potential for competition to emerge.

In considering the effect that declaration will have on competition in a relevant market, we consider the likely future state of competition in the relevant market, with and without declaration of the service. Among other things, this requires consideration of whether declaration will establish conditions under which competition will improve and whether these conditions would develop without declaration.

2.2. Achievement of any-to-any connectivity

Declaration of a service will promote any-to-any connectivity if it allows end-users of a telecommunications service to communicate with other end-users, whether or not they are directly connected to the same network. This is particularly relevant when considering services that require interconnection between different networks. When considering other types of services (such as carriage services which are inputs to an end-to-end service), the ACCC will generally give this factor less weight.

The ACCC does not consider that any-to-any connectivity is directly relevant to declaration of the WADSL service. This is because the WADSL service is an input to an end-to-end service and, with no switching capability, does not in and of itself involve communications between end-users. However, this does not prevent stakeholders from making a submission on this issue.

2.3. Economically efficient use of, and economically efficient investment in, infrastructure

We must have regard to a number of matters when assessing whether declaration will promote the economically efficient use of, and economically efficient investment in, telecommunications infrastructure. We consider:

- whether it is technically feasible to supply the service
- the legitimate commercial interests of suppliers of the service
- the incentives for investment in the infrastructure used to supply the service under consideration, and other telecommunications services.

When considering incentives for investment in infrastructure, we will consider how declaration may affect incentives for investing in existing infrastructure as well as how it may affect decisions about maintenance, improvement and extension of existing infrastructure, and investment in new infrastructure.

3. The WADSL service description

The ACCC's WADSL service declaration inquiry – Final decision, February 2017 retained the service description for the WADSL service from the ACCC's 2012 declaration.

The ACCC's 2017 final decision considered the existing service description was an appropriate functional description of the declared service and accurately described the wholesale access service that was technically feasible to regulate through price and non-price terms of access.

As set out in the ACCC's 2017 final decision, the WADSL service is described as an internet-grade, best efforts point to point service for the carriage of communications in digital form between a point of interconnection and an end-user network boundary that:

(a) is supplied by means of Asymmetric Digital Subscriber Line (ADSL) technology over a twisted metallic pair that runs from the end-user network boundary to the nearest upstream exchange or RIM or CMUX; and

(b) uses a static Layer 2 tunnelling protocol (L2TP) over a transport layer to aggregate communications to the point of interconnection.

The ACCC does not propose to alter the WADSL service description from that used in the 2017 final decision on declaration.^{12 13}

Question 1

The ACCC's position is that the WADSL service description in the ACCC's 2017 final decision on declaration remains current and appropriate. Do you agree?

¹² As set out in the ACCC's 2017 final decision on the WADSL service declaration: Asymmetric Digital subscriber Line technology or ADSL means the protocols, recommendations and standards set out in the ITU-TG.992 Recommendations. Layer 2 has the same meaning as in the Open System Interconnection (OSI) Reference Model for data exchange. A point of interconnection means an interface that is: (a) a physical point of interconnection which allows the interconnection of facilities in accordance with subsection 152AR(5) of the *Competition and Consumer Act 2010*; and (b) located in the same state/territory that the access provider associates with the exchange service area in which the end-user network boundary is located. An end-user network boundary means the boundary point of the telecommunications network that is: (i) associated with the end-user premise; and (ii) ascertained in accordance with section 22 of the Telecommunications Act.

¹³ The declaration does not apply to NBN Co by operation of subsection 152AL(8A) of the CCA, as a declaration only applies to NBN Co if it is expressly named.

4. Market developments

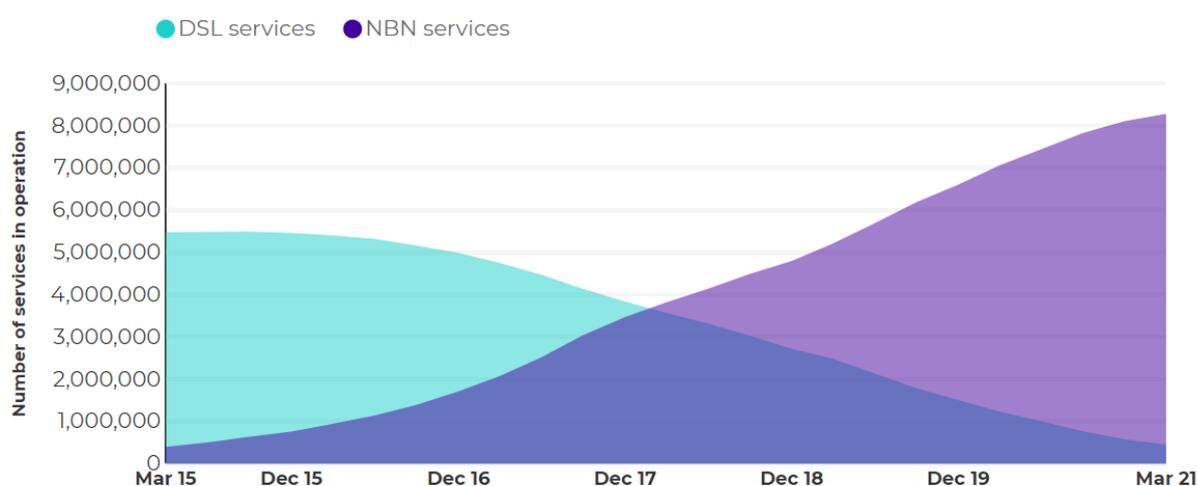
Due to the progressive migration of broadband services to the NBN since the ACCC's 2017 WADSL service declaration, there has been a marked decline in the number of users of WADSL and retail ADSL services¹⁴ over this period.

As shown in Figure 5.1, Telstra's Digital Subscriber Line (DSL) services¹⁵ in operation (SIOs) have declined significantly over the past five years. However, in March 2021 around 450,000 DSL SIOs remained on Telstra's copper network. Some end-users do not currently have access to other high speed or superfast broadband services that would provide an equivalent or better service than ADSL.

The decline in the number of SIOs connected to Telstra's copper network reflects Telstra's obligations under its Structural Separation Undertaking and the Migration Plan. Telstra has been required to refuse new ADSL service orders and service modification requests within the NBN fixed line footprint when the NBN rollout has reached specified milestones, and disconnect ADSL services after location-specific NBN switchover periods for migration have ended.

As these requirements have taken effect within the NBN fixed line footprint, Telstra's standard access obligations under the WADSL service declaration have progressively been wound back by operation of subsection 152AR(4) of the CCA, which provides exceptions to the standard access obligations. However, Telstra's standard access obligations under the WADSL service declaration outside the NBN fixed line footprint are not affected.

Figure 5.1: Telstra DSL and NBN SIOs (2015-2021)



Source: ACCC, NBN Wholesale Market Indicators Report, March 2021¹⁶

¹⁴ ADSL was the dominant fixed-line broadband technology in Australia prior to the NBN rollout used by residential or small business customers. ADSL services are specified as being capable of supporting maximum download / upload data rates of 24 Mbps / 2.5 Mbps. However, actual attainable speeds are dependent upon line length and quality and localised interference with the consequence that deployed speeds are below the specified maximums.

¹⁵ DSL service is a carriage service for the provision of DSL services along a metallic line using access technology, which allows the transmission of data from a modem at an end-users premises to an exchange, and using the non-voice spectrum of the communications wire.

¹⁶ ACCC, [NBN Wholesale Market Indicators Report](#), March quarter 2021. Total DSL services are derived from the Telstra Customer Access Network Record Keeping Rules Quarterly Snapshots and Total NBN services are derived from the NBN services in Operation Record Keeping Rules Market Indicator Reports.

The ACCC recognises that most ADSL services have already migrated to the NBN and that the number of WADSL and retail ADSL service users will continue to decline with completion of the NBN migration. However, in some areas, such as NBN fixed wireless and satellite areas, it may be commercially viable for ADSL services to continue to operate and coexist with other broadband services.

5. Promoting competition in telecommunications markets

The ACCC must consider whether declaration will promote competition in the markets for services used by end-users (i.e. downstream retail markets) and thereby promote the LTIE.

To deliver retail services, RSPs require access to wholesale services. The ACCC concluded in its 2017 final decision that the relevant markets for the WADSL service are the national wholesale and retail markets for high-speed fixed-line broadband services.¹⁷ We also concluded that there were no strong substitutes for high-speed fixed-line broadband services, and the superfast broadband market is a separate but related market. This remains our position notwithstanding developments in mobile, fixed wireless and other services.¹⁸

In considering whether declaration would promote competition, the ACCC applies a 'with or without' test to declaration. In general, without declaration a provider with bottleneck monopoly infrastructure has the incentive and ability to raise prices, limit access or reduce quality for access seekers' customers.

Further, subsection 152AB(4) of the CCA provides that, in determining the extent to which declaration is likely to result in the objective of promoting competition, regard must be had (but is not limited)¹⁹ to the extent to which declaration will remove obstacles to end-users of listed services gaining access to listed services.

Our 2017 final decision was that declaration of the WADSL service on a national basis, without giving exemptions, would promote competition in the relevant markets. In forming this view, we considered the likely future state of competition with and without declaration.

5.1. Without declaration

The 2017 final decision considered that without declaration, Telstra would have similar incentives and opportunities as there were prior to the 2012 declaration to engage in entry-detering or expansion-detering conduct, to maintain and grow its market share.

At that time, market share in the high-speed broadband fixed-line market (i.e. ADSL) was important for gaining future market share for NBN based services. Also, investment in competing DSL infrastructure was declining due to the future NBN roll-out and because the payoff period for new investment in copper based DSL services would be limited (i.e. due to the NBN migration and eventual decommissioning of Telstra's copper network).

The ACCC considered this would increase the incentive and potential for Telstra to engage in conduct raising competition concerns, as the constraint offered by the threat of competitive entry would diminish. So too would the risk Telstra faced in losing retail market share for broadband services.

The ACCC considered in the 2017 final decision that without declaration the ability of access seekers to compete with Telstra in supplying ADSL services would be reduced. This was because:

¹⁷ At times, we have referred to 'high speed' fixed line broadband in reference to ADSL in various sections of this document consistent with past decisions. However, it is one of the lower speed broadband services available currently (i.e. compared to the various 'superfast' services). ADSL has a maximum potential download speed of up to 24Mbps, but actual transfers are likely to be slower as they depend on the distance between someone's home and a connection.

¹⁸ As noted in the ACCC's [Superfast Broadband Access Service and Local Bitstream Access Service declaration inquiry, Final Decision](#), July 2021, we consider that broadband services offered over wireless alternatives (such as mobile, satellite and fixed wireless) are not comprehensive substitutes to a fixed line broadband connection at this time.

¹⁹ CCA, subsection 152AB(5).

- access seekers had smaller DSLAM²⁰ footprints (compared with Telstra) which meant they were unable to provide their wholesale customers with WADSL services on a national basis using their own network
- many potential purchasers of WADSL services required national coverage so that they could supply their retail customers, specifically business and government customers that had operations in metropolitan and regional areas across Australia
- there were likely to be significant incremental costs to sourcing WADSL services from multiple suppliers.

The ACCC acknowledges that unlike 2017, NBN services are now available on a near ubiquitous basis, either over fixed lines within the NBN fixed line footprint or through wireless or satellite networks in other locations. Also, as noted in section four of this paper, the number of Telstra DSL SIOs has declined significantly since 2017 and a further reduction is expected in coming years, albeit with some end-users likely to remain outside of the NBN fixed line footprint.

A large number of WADSL and retail ADSL services are still currently in use. Without the WADSL service declaration, RSPs using these services may face barriers to competing for market share and maintaining existing service plans for their customers in the latter stages of the NBN migration. Telstra's ability to charge higher prices for the WADSL service than set in the FAD would allow it to offer its retail services more cheaply than other RSPs. This would be advantageous to Telstra for retaining end users as retail customers when they choose an NBN-based or alternative broadband service in the future.

The ACCC considers that without continued declaration and access regulation of the WADSL service there currently is still an incentive and the ability for Telstra to charge access seekers higher prices than set in the FAD for access to these services. This in turn could act to limit the choice of RSPs providing broadband services for end-users and competition for high-speed fixed-line broadband, and by extension, the related superfast broadband market.

The ACCC recognises that the competitive landscape will evolve during the final stages of the NBN migration. We consider that there is an opportunity for a holistic and more informed review of regulatory arrangements for the WADSL service and Telstra's other declared fixed line services in the future.

Question 2

The ACCC's position is that allowing the WADSL declaration to expire would be detrimental to competition for high-speed fixed-line broadband services. Do you agree?

²⁰ A Digital Subscriber Line Access Multiplexer (DSLAM) is a device used by RSPs to route incoming DSL connections to the Internet.

5.2. With declaration

The 2017 final decision considered that a future with declaration of the WADSL service in all Exchange Service Areas was likely to promote competition in relevant markets and therefore, promote the LTIE by:

- providing the opportunity for RSPs to obtain access to the WADSL service on terms and conditions that reflected competitive market conditions in all geographic areas in order to provide alternative national wholesale and retail market offerings
- limiting the opportunity, in an environment where there was the incentive, for Telstra to favour its own operations.

In response to our 2017 WADSL service declaration inquiry, Telstra submitted that declaration could negatively affect network competition to the extent that other carriers relied on Telstra's WADSL infrastructure to supply end-users. Telstra considered that geographic exemptions from declaration in 289 Exchange Service Areas would result in other carriers relying more on their own infrastructure.

The ACCC did not accept there was a need for geographic exemptions. The 2017 final decision considered that carriers would rely on Telstra's WADSL service only to the extent that their own infrastructure could not meet demand due to capacity constraints. In this regard, the final decision considered that regulated access to the WADSL service in all Exchange Service Areas would better allow access seekers to compete and build market share.

The ACCC maintains that declaration of the WADSL service covering all Exchange Service Areas will continue to promote competition in the national retail market for high-speed fixed-line broadband, and by extension, the related superfast broadband market.

To the extent there is potential merit in geographic exemptions from declaration in the future, the ACCC considers this issue is best considered in a broader context. That is, in a future inquiry jointly considering the declaration for the WADSL service and Telstra's other declared fixed line services, as foreshadowed previously in this paper.

Question 3

The ACCC's position is that extending the WADSL declaration in all Exchange Service Areas will promote competition in the relevant markets. Do you agree?

6. Economically efficient use of, and economically efficient investment in, infrastructure

The ACCC must consider certain matters when determining the extent to which declaration is likely to encourage the economically efficient use of, and economically efficient investment in, infrastructure. Subsection 152AB(6) of the CCA requires the ACCC to have regard to the technical feasibility of providing and charging for the services, the legitimate commercial interests of the supplier(s) of the services, and the incentives for investment in infrastructure.

The 2017 final decision considered that extending declaration of the WADSL service was likely to promote the economically efficient investment in, and economically efficient use of infrastructure, which provided high-speed fixed-line broadband services. The final decision considered declaration would not raise concerns about technical feasibility in the supply of the WADSL service given Telstra already supplied and charged for the service. The final decision also considered that Telstra's compliance costs for the Standard Access Obligations would be reasonable given it was already providing the service and had relevant systems in place.

In relation to a supplier's legitimate commercial interests, the final decision considered that declaration would not affect Telstra's ability to exploit economies of scale and scope, or its ability to make a return on its investment. The final decision noted that the regulated prices set under a FAD would allow Telstra to make a normal commercial return on investment. The final decision also considered that declaration of the WADSL service would not adversely affect Telstra's efficient investment in its existing network.

Further, the 2017 final decision considered that the declaration did not require Telstra to invest in a new network or additional infrastructure to provide the WADSL service. To the extent that existing DSL infrastructure was insufficient to meet demand and further equipment or ports were required, the final decision expected such investment to be incremental and relatively small compared to the equipment already in place.

The final decision noted there was likely to be continued incentive for non-Telstra competitors to invest in maintenance and improvements to their existing infrastructure during the roll out of the NBN, and declaration of the WADSL service would not adversely affect their efficient investment incentives. This was because competition in the high-speed fixed-line broadband market was important in gaining market share in the superfast broadband market, and access seekers appeared to prefer using their own infrastructure where available so they could better differentiate their products. The 2017 final decision also considered that declaration would promote efficient use of Telstra's existing infrastructure. This was because, without declaration, Telstra would have the ability and incentive to charge prices for the WADSL service that exceeded efficient cost and limited efficient use.

The ACCC considers that extending the WADSL service declaration over the latter stages of the NBN migration will help to ensure that the cost to access seekers for the service continue to be reasonable. Extending the declaration will help maintain economically efficient use of Telstra's DSL infrastructure over this period. That is, declaration will ensure access prices reflect efficient costs, promote the efficient utilisation of the infrastructure and allow for an appropriate return on investment.

Question 4

The ACCC's position is that extending the WADSL service declaration will promote efficient use of relevant infrastructure. Do you agree?

7. ACCC position and next steps

The ACCC's position is that continued declaration of the WADSL service at least until 30 June 2024 would be in the LTIE.

While ADSL services are becoming less relevant in the telecommunications market, it is likely they will continue to be important to many end-users outside (and for some users within) the NBN fixed line footprint during the latter stages of the NBN migration and potentially after the migration is complete.

The ACCC considers that without continued declaration, there remains an incentive and ability for Telstra to charge access seekers higher prices for WADSL services than set in the FAD. The ability to charge higher prices would allow Telstra to offer its own retail services more cheaply, which would in turn be advantageous to Telstra for retaining end users as retail customers, whether on an ADSL network or when they transition to an alternative, superfast network.

With continued declaration, access seekers would continue to be in a position to offer competitive retail broadband services over the legacy copper network and build or maintain market share. It will also help to ensure access prices reflect efficient costs and retail services are competitive and efficiently utilise existing infrastructure.

The ACCC will consider written submissions to this inquiry and, subject to the issues raised by stakeholders, proposes to extend declaration of the WADSL until at least 30 June 2024. Prior to this date the ACCC would conduct an inquiry jointly considering the future of declaration for the WADSL service and Telstra's other remaining declared fixed line services.

After considering submissions to this inquiry, the ACCC intends to make a final decision on declaration of the WADSL service by the end of 2021. We do not intend to issue a draft decision prior to making our final decision, but we are able to do so if significant issues arise in consultation.

Question 5

The ACCC's position is to extend the WADSL declaration at least until 30 June 2024. Do you support this decision?

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