

The logo for Optus, consisting of the word "OPTUS" in a bold, teal, sans-serif font.

Submission in response to  
ACCC Draft Decision

**Wholesale ADSL service  
declaration inquiry**

Public Version

November 2016

## INTRODUCTION

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1. Optus supports the ACCC's Draft Decision to extend the current declaration of Wholesale ADSL service for a further five year period.
2. The WADSL service is an important wholesale service required to compete in the market for fixed broadband during the transition to the NBN. For reasons summarised below, the continued declaration will be in the long term interest of end-users (LTIE):
  - (a) The 2015 Fixed Line Final Access Determination (FAD) is currently in force until 31 December 2019. This included access pricing for the supply of WADSL port and VLAN/AGVC charges.
  - (b) There is no rationale for any geographic exemption to be applied for the supply of WADSL services. Telstra holds the dominant position in both the national retail and wholesale markets for high speed fixed line services.
  - (c) The delay in the NBN roll-out means that access seekers are likely to rely on access to legacy wholesale services for a longer period.
  - (d) Competition for end-users prior to the NBN roll-out is becoming more important, especially since Telstra's auto-migration of its customer base from ADSL to NBN undermines the 'customer-choice' that is central to NBN competition and structural separation of Telstra.
3. In addition, Optus reiterates that competition could be further enhanced by amending the service description to make it clear that the declared WADSL service acquired must be able to deliver the full WADSL service between the end-user and the access seeker's network without the requirement to purchase any other bottleneck service. If any additional elements are required there should be no additional charge over and above the FAD price.
4. Following declaration, it is also intended that the current price terms for WADSL service as set out in the Fixed Line FAD would remain in place until its expiry.
5. As a result, Optus supports:
  - (a) The continued declaration of the WADSL service for five years;
  - (b) The continued application of the FAD; and
  - (c) The inclusion of a further clarification to make clear the full WADSL service is between the end-user and the access seeker's network.

## DECLARATION PROMOTES THE LTIE

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6. There has been near unanimous industry support for the proposition that continued declaration of the WADSL service will promote the LTIE. In particular, during the transition to the NBN, the declaration will:
  - (a) Promote competition;
  - (b) Achieve any-to-any connectivity; and
  - (c) Encourage the economically efficient use of, and investment in, infrastructure.

7. DSL technology is currently the major technology for fixed-line broadband internet connections in Australia. This will continue to be case as the NBN is being rolled out and services are progressively migrated from Telstra’s legacy network to the NBN network.
8. Furthermore, the declaration of the WADSL service was, and remains, a key component of Telstra’s Structural Separation Undertaking (SSU). The ACCC made clear that the declaration of WADSL (and the relevant pull-through provisions) was a condition for acceptance of the SSU as was the commitment by Telstra not to challenge the declaration.
9. Since WADSL is a copper-based service, these connections will ultimately be required to migrate to the NBN. The case for continued declaration is discussed below.

### **Declaration promotes competition**

10. Optus supports the ACCC’s views that declaration of the WADSL service will promote competition in the national markets for high speed fixed-line broadband services.
11. In particular, the Draft Decision reaffirms the view that *“superfast broadband services are in separate but related market to high speed fixed-line broadband services and currently does not consider wireless broadband services to be effective substitutes.”*<sup>1</sup>
12. Optus further considers that:
  - (a) There should be no geographic exemptions applied to the declaration of the WADSL service.
  - (b) Clarification should be provided to make it clear that no additional services are required in order to acquire the WADSL service.
13. These are discussed below.

#### **There should be no geographic exemptions**

14. Telstra continues to retain the dominant position in both the national wholesale and retail markets for high speed fixed-line broadband services.
15. Despite being in support of continued declaration of the WADSL service, Telstra has also proposed that the ACCC exempt from declaration the 289 exchange areas where it claimed effective competition already exists.
16. Telstra submitted that geographic exemptions should be provided where competition is strong. In particular, that this is warranted because:
  - (a) Diverse alternative inputs exist – such as, copper-based alternatives (through regulated ULLS and LSS services) and alternative infrastructure (such as NBN services, FTTB and wireless broadband services)
  - (b) Alternative substitutable final services exist – this relates to the availability of downstream services, as evidenced by retail customers having a wide range of choices when it comes to acquiring broadband services.
17. Based on the two tests above, Telstra has identified and proposed for exemption 289 exchanges from ADSL regulation on the basis that these exchanges comprise the *“most*

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<sup>1</sup> ACCC, 2016, Wholesale ADSL service declaration inquiry, Draft Decision, October, p.13

*competitive exchanges out of the over 600 which have at least one, and often more than one competitor present.”<sup>2</sup>*

18. Telstra remains in a unique position as the only supplier with a national network. The existence of alternative inputs and alternative downstream services does not address the fact that the inputs and retail services are not effective substitutes for Telstra’s WADSL service.
19. First, the diverse alternative inputs do not cover the same geographic reach as the WADSL service. This is evidenced given the network boundary for Telstra’s DSL network occurs at the IGR and not the Telstra exchange. Second, the alternative downstream services that have been cited similarly are not available in all areas.
20. Geographic exemptions can be problematic particularly given that the retail broadband market requires RSPs to compete on a national basis, which often requires access to alternative wholesale services as inputs where they do not have an existing network. Further, even where alternate inputs are available (such as ULL) it would not be efficient to encourage investment in these services given that they will be shared by the NBN rollout.
21. Optus therefore supports the ACCC’s view that *“the opportunities and environment for competition would be reduced were the service to be declared with geographic exemptions for the 289 ESAs, than if the service were declared without exemptions.”<sup>3</sup>*

#### Clarification of the WADSL service description

22. Optus supports the ACCC’s view that the WADSL service description is retained to apply to a national coverage. However, we remain concerned with Telstra Wholesale’s requirement that additional services must be acquired in order to facilitate the supply of the WADSL service.
23. For example, in order to provision the resale DSL service to end-users, access seekers must also acquire an additional backhaul product from Telstra to interconnect between the defined Telstra DSL network demarcation point (i.e. Telstra’s IGR) and the access seeker’s network demarcation point (i.e. the access seeker’s network handover point).
24. **[CiC]** Optus is therefore of the view that this additional backhaul product from Telstra continues to fit the definition of a bottleneck service; it cannot be avoided and there is no option of self-supply.
25. During the declaration process of the WADSL service, little mention was made of the compulsory TWBGE charge. Rather, the WADSL service as described suggested that the backhaul component could be acquired through alternate means:

*The backhaul interface can be either an AGVC or VLAN (using either ATM or Gigabit Ethernet as the transport protocol respectively). The access seeker acquires an interface and then acquires capacity over that interface to a specified throughput that it chooses.*

*In acquiring a wholesale ADSL service an access seeker must pay both a ‘port charge’ for the local access component and a variable AGVC charge for the backhaul component.<sup>4</sup>*

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<sup>2</sup> Telstra, 2016, Wholesale ADSL service declaration inquiry: Telstra’s response to the Commission’s Discussion Paper, 29 July, p.14

<sup>3</sup> ACCC, 2016, Wholesale ADSL service declaration inquiry, Draft Decision, October, pp.31-32

26. The ACCC has also noted that *“the DTCS could, however, be used as an alternative to TWBGE.”*<sup>5</sup> However it has been Optus’ experience that this is not an option.
27. [CiC]
28. [CiC]
29. [CiC]
30. As shown above, it is clear that Telstra imposes an underlying requirement that additional services are compulsorily acquired for the supply of WADSL services.
31. Without addressing the competitive implications raised as result of mandating the purchase of other products, the Draft Decision is flawed as it maintains the view that the current service description is appropriate and adequately describes the WADSL service.
32. Optus therefore reiterates that competition could be further enhanced by amending the service description to make it clear that no additional services are required in order to acquire the WADSL service. That is, the standalone WADSL service acquired must be able to deliver the full WADSL service between the end-user and the access seeker’s network without the requirement to purchase any other bottleneck service. If any additional elements are required there should be no additional charge over and above the FAD price, as these costs should already be captured within the regulated asset base in the fixed line service model.
33. The requirement imposed on access seekers to acquire an additional bottleneck service, in particular where all access options (such as the TWBGE) can only be supplied by the same access provider is concerning. Failing to purchase this additional service from the same access provider supports the case that the WADSL service is not able to deliver a functional WADSL service between the end-user and the access seeker’s network.
34. [CiC]
35. The main concern that arises from this requirement has been the failure to recognise that the TWBGE imposes an additional cost on access seekers on top of the regulated WADSL port and VLAN charges set out in the Fixed Line FAD. The structure of the TWBGE service also means that the utilisation of the TWBGE capacity will also always be constrained by the capacity of the purchased VLAN service.
36. In this case, the effective cost of the WADSL capacity is best described to be a VLAN+ charge (where the ‘VLAN’ charge is based on the regulated rate and the ‘+’ is based on the additional cost attributed to the backhaul service). This is currently not available to be purchased by access seekers through an unbundled option.
37. Optus considers that this issue needs to be addressed. In particular, the WADSL service description should be clarified to ensure that the WADSL service supplied by the access provider, whether to themselves or others, is able to be delivered without the underlying requirement to purchase a further bottleneck network access service that is only available to be supplied by the same access provider.

### **Any to any connectivity**

38. Optus supports the ACCC’s view that declaration of the WADSL service will not have an impact on any-to-any connectivity. In particular,

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<sup>4</sup> ACCC, 2012, Declaration of the wholesale ADSL service under Part XIC of the Competition and Consumer Act 2010, Final Decision, February, section 2.3

<sup>5</sup> ACCC, 2016, Wholesale ADSL service declaration inquiry, Draft Decision, October, p.39

*The ACCC notes that the wholesale ADSL service continues to be an input to an end-to-end service with no switching capability and does not in and of itself involve communications between end-users.<sup>6</sup>*

39. This continues to be the case.

### **Efficient use of and investment in infrastructure**

40. Given the rollout and migration of fixed-line services to NBN, there will be considerably reduced incentive to invest in competing DSL networks.

41. The state of competition will inevitably be impacted during this transition to NBN. This will vary in both the size and scope for a number of reasons:

- (a) Demand for high speed broadband services will continue to exist. It is unlikely that overall demand for broadband services will diminish over time, rather it may simply shift from legacy (copper-based) technologies to those delivered over the NBN network.
- (b) Continued investment in DSL networks will be limited. For example, the payback period for new investments due to NBN policy and shutdown of legacy copper network will be narrowed as a result.
- (c) The current access platforms for downstream DSL services are not fully effective substitutes for ADSL. The ability for access seekers to supply end users will be constrained by access to available ports at an exchange.

42. Even with the continued roll-out of NBN, it is still expected that there will be an increase in the number of ADSL services that could be supplied by Telstra's DSL.

43. In broad terms, access seekers cannot compete against Telstra for geographic reach without access to Telstra's WADSL service. This was the case when WADSL was declared in 2012, and it continues to remain the case today.

### **Duration of the WADSL service declaration**

44. Optus supports the Draft Decision to extend the current declaration of Wholesale ADSL service for a further five year period to provide certainty during the NBN roll out.

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<sup>6</sup> ACCC, 2016, Wholesale ADSL service declaration inquiry, Draft Decision, October, p.33