



---

# **TELSTRA CORPORATION LIMITED**

## **Wholesale ADSL declaration inquiry**

### **Telstra’s response to the Commission’s draft decision**

**Public version**

**14 November 2016**



---

## CONTENTS

<b>EXECUTIVE SUMMARY</b>	<b>3</b>
<b>01 Declaration in highly competitive areas will not promote the LTIE</b>	<b>5</b>
1.1. A competitive national service offering can be supplied without declaring the 289 ESAs	5
1.2. Effective competition in the 289 ESAs constrains Telstra’s incentive and ability to engage in conduct that raises competition concerns	7
<b>02 The current service description adequately captures the service</b>	<b>10</b>
<b>03 Aligning the declaration period creates regulatory synergies</b>	<b>13</b>



---

## EXECUTIVE SUMMARY

Telstra welcomes the opportunity to respond to the Australian Competition and Consumer Commission’s (ACCC) draft decision for the Wholesale ADSL declaration inquiry.

Whilst Telstra is broadly supportive of the draft decision, it does raise questions about whether the current legislative framework is able to accommodate the roll-back of access regulation in circumstances where segments of the national fixed line market are highly competitive. Telstra is concerned that the ACCC has been compelled to make a decision that is inconsistent with regulatory best practice in the current context, despite geographic exemptions having been implemented or contemplated in other contexts (for example, for the Domestic Transmission Capacity Service).

Telstra does not consider that exempting the identified 289 Exchange Service Areas (ESAs) from declaration would reduce the ability of access seekers with DSLAM networks to compete on a national basis in wholesale and retail markets. AAPT and Vocus currently use a number of third party infrastructure providers to maintain the breadth and comprehensiveness of their wholesale networks, and Exetel acquires services in the wholesale market from multiple providers. This suggests that there are not “significant incremental costs” to sourcing wholesale ADSL services from multiple suppliers.

Competition is better able to deliver reasonable price and non-price terms than regulation. This is supported by Exetel’s submission that the wholesale cost of services from alternative wholesale providers is lower than the ACCC declared rates for Telstra Wholesale equivalent services. Access seeker market share across these ESAs has increased to **[c-i-c]** of services in these areas supplied via ULLS or LSS. Competition in the 289 ESAs, when combined with regulated access to Telstra’s Wholesale ADSL service outside of the 289 ESAs, ensures that access seekers have access to the Wholesale ADSL service in all geographic locations on reasonable terms.

Rather than promoting competition in national markets, Telstra considers that declaration of the 289 ESAs could have a negative impact, to the extent that all carriers come to rely on Telstra’s Wholesale ADSL service. This could potentially occur even where some carriers have their own DSLAM networks, to the extent that their existing capacity on, and incentives to invest in, these networks are limited (e.g. due to the nbn roll-out).

Finally, if the ACCC removed the 289 ESAs from the declaration Telstra would have no incentive or ability to engage in conduct that would raise competition concerns in those ESAs. If Telstra were to engage in such conduct, competition from alternative DSLAM networks means Telstra would lose customers to competitors. The forces of competition remove both the incentive and the ability to engage in conduct that raises potential anti-competitive concerns. Telstra is also constrained by the broader competition law framework.

Telstra re-iterates its submission that the declaration period should be aligned to the other declared services that utilise the PSTN (i.e. expiring on 31 July 2019). Whilst the ACCC’s intention in its draft decision to minimise regulatory burden is welcome, aligning the expiry dates is the best way to achieve this. There is substantial overlap in the issues that need to be considered in deciding whether to declare Wholesale ADSL and the other fixed line services. Allowing for them to be submitted upon via a single process would reduce the resources the sector needs to dedicate to take part in regulatory matters.



---

Telstra agrees with the service description adopted by the ACCC in its draft decision. This submission provides information to further support the ACCC’s understanding of Telstra’s Wholesale Business Grade Ethernet (TWBGE) product.



---

## 01 Declaration in highly competitive areas will not promote the LTIE

The ACCC’s draft decision finds that exempting the 289 ESAs from declaration would lead to a reduction in competition, and that by preventing this reduction in competition, declaration is likely to promote competition.<sup>1</sup> This chapter explains why exempting the 289 ESAs would not lead to a reduction in competition, and why declaring the 289 ESAs would not be likely to promote competition.

More generally, Telstra queries the capacity of the current legislative framework to accommodate circumstances where segments of the national fixed line market are highly competitive, and should therefore be exempt from access regulation. It is not immediately clear why the framework allows for geographic roll-back of regulation for the Domestic Transmission Capacity Service (DTCS) but appears not to in relation to the Wholesale ADSL service.

### 1.1. A competitive national service offering can be supplied without declaring the 289 ESAs

The ACCC’s draft decision sets out that:

- On a more disaggregated, ESA-basis, the ACCC acknowledges there are instances where there appears to be infrastructure competition in the wholesale market (via the ULLS and access seeker’s DSL infrastructure). However, infrastructure competition does not exist on a national basis and as a result there is limited competition at the retail level on a national basis.<sup>2</sup>
- In the absence of declaration of the 289 ESAs, there would be a reduction in the ability of access seekers with DSLAM networks to compete with Telstra on a national basis in wholesale and retail markets.<sup>3</sup>
- Declaration within the 289 ESAs is therefore needed to promote competition, and ensure access on reasonable terms to national wholesale and retail services.<sup>4</sup>

In relation to the first point, Telstra considers that it is incorrect to infer that regulation is justified in competitive areas, because across all areas there is insufficient competition. Indeed, as applied in the DTCS decision, the act allows the ACCC to ascertain the geographic scope of declaration and carve out competitive areas.

Telstra also does not agree that exempting the 289 ESAs from declaration would lead to a reduction in the ability of access seekers with DSLAM networks to compete on a national basis in wholesale and retail markets. Rather than promoting competition in the national market, Telstra considers that declaration of the 289 ESAs could negatively impact competition, to the extent that all carriers come to

---

<sup>1</sup> ACCC (2016), *Wholesale ADSL service declaration inquiry: Draft decision*, p. 32.

<sup>2</sup> *Ibid.*, p. 19, p. 30, p. 32. Purchasers of wholesale ADSL services are argued to require national coverage so that they can supply business and government customers that have operations in metropolitan and regional areas across Australia. According to IbisWorld, business and government customers reflect 36.6% of total Australian telecommunications market revenues. <http://clients1.ibisworld.com.au.ezproxy.library.uwa.edu.au/reports/au/industry/productsandmarkets.aspx?entid=1730>

<sup>3</sup> ACCC (2016), *Wholesale ADSL service declaration inquiry: Draft decision*, p. 31.

<sup>4</sup> *Ibid.*



---

rely more on Telstra’s Wholesale ADSL service. This could potentially occur even where some carriers have their own DSLAM networks, to the extent that their existing capacity on, and incentives to invest in, these networks are limited (e.g. due to the nbn roll-out).

In contrast, exempting the 289 ESAs would see infrastructure based competitors rely more on their own infrastructure where they have it, thereby increasing the effectiveness of national wholesale market competition in the same way as it has retail market competition.

The conclusion in the draft decision appears to be based on the following views:

- That to service customers with national operations, access seekers need to purchase the Wholesale ADSL service from Telstra or another DSLAM provider in the 289 ESAs as well as outside the 289 ESAs.<sup>5</sup>
- That there may be significant incremental costs to sourcing Wholesale ADSL services from multiple suppliers, which would reduce the ability of access seekers with DSLAM networks to compete with Telstra in supplying Wholesale ADSL services to a significant segment of the wholesale market.<sup>6</sup>

Telstra agrees that non-Telstra suppliers of Wholesale ADSL services are unable to provide their customers with a national service using their own network. However, as the ACCC acknowledges, they are able to do so by reselling Telstra (and others’) Wholesale ADSL services outside their own footprints. For example:

- AAPT (TPG’s wholesale carrier) states that: “AAPT uses a number of third party providers to maintain the breadth and comprehensiveness of our network. We may use third party networks to deliver AAPT Services to you and may change the networks we use from time to time. Our third party providers may include NBN Co, Telstra, Optus, iiNet and other providers as appropriate from time to time.”<sup>7</sup>
- In offering Wholesale layer 2 and 3 DSL services, Vocus states that: “We provide Wholesale DSL services over DSLAM networks managed by Australia’s chief DSL providers — and we design our service to compete against the aggressive pricing seen from the larger DSLAM owners. We aggregate our Layer 2 DSL services nationally, providing access to both on-net and off-net DSLAM’s.”<sup>8</sup>

It is not clear whether Optus currently offers a national Wholesale ADSL service based on a combination of its own infrastructure and other parties’ Wholesale ADSL services. However, there is evidence to suggest that it could. In 2015 it revealed plans to expand into regional areas using Telstra’s Wholesale ADSL service for households and businesses,<sup>9</sup> and Singtel’s Q1 2016-17 Financial Results state growth of 344% year on year in the number of Optus’ off-net resale internet subscribers.<sup>10</sup>

---

<sup>5</sup> Ibid.

<sup>6</sup> Ibid., p. 30.

<sup>7</sup> <https://www.aapt.com.au/aapt-as-a-reseller>

<sup>8</sup> Albeit Vocus notes that Wholesale DSL services are available only in Adelaide, Brisbane, Melbourne, Perth and Sydney. <https://www.vocus.com.au/wholesale/wholesale-dsl>

<sup>9</sup> <http://www.smh.com.au/business/optus-launches-bush-broadband-to-take-on-telstra-20150918-gjq2qy.html>

<sup>10</sup> [https://media.optus.com.au/wp-content/uploads/2016/08/Q1-FY16-17-MDA\\_1.pdf](https://media.optus.com.au/wp-content/uploads/2016/08/Q1-FY16-17-MDA_1.pdf)



---

Further, in its submission to the ACCC’s Discussion Paper, retail service provider Exetel provides evidence that it currently acquires wholesale services from multiple providers (Optus, APPT/TPG and Telstra).<sup>11</sup>

The above suggests that there are not “significant incremental costs” to sourcing wholesale ADSL services from multiple suppliers, and that there are not barriers to entry as carriers are already supplying national services in wholesale and retail markets.

Telstra considers that declaring the 289 ESAs could in fact negatively impact competition, by causing ongoing reliance on Telstra’s Wholesale ADSL service. The draft decision envisages this, where it notes: “Declaration will reduce the need for retail service providers to rely upon ULLS/LSS based wholesale ADSL services from non-Telstra suppliers...”<sup>12</sup> Such an outcome would appear to be contrary to promoting competition in the national wholesale market. It could also reduce the effectiveness of competition in the national retail market, because all non-ULLS/LSS based retail service providers would essentially be reselling the same national Telstra Wholesale ADSL product. To the extent that ULLS/LSS based carriers’ capacity on, and incentives to invest in, their existing DSLAM networks are limited (e.g. due to the nbn roll-out), they might also come to rely on Telstra’s Wholesale ADSL service in the 289 ESAs, rather than continuing to invest in maintaining their own networks.

Conversely, if retail service providers have choice between wholesale providers that offer a national service using a combination of their own DSLAM network and Telstra’s Wholesale ADSL service outside their footprint, there is greater opportunity for product differentiation and competitive pricing in wholesale markets. As noted by Exetel in its submission, there is effective competition where multiple wholesaler choice exists, with lower wholesale costs being offered by alternative providers as compared to Telstra.<sup>13</sup>

Finally, Telstra accepts that there is unlikely to be significant further expansion in the footprints of competitors’ DSLAM networks, given the nbn roll-out. However, as the ACCC notes, completion of the rollout will take some time and there may be justification for efficient investment in maintenance and improvements during the coming regulatory period.<sup>14</sup> Telstra considers that this applies to both its DSLAM network and those of its competitors. If declaration of the 289 ESAs increases reliance on Telstra’s network, this could reduce competing DSLAM network providers’ incentives to invest in maintaining and improving the quality of their existing networks. It could also lead to over-use of Telstra’s network. Declaration of the 289 ESAs is therefore unlikely to encourage the economically efficient use of, and the economically efficient investment in, infrastructure.

## **1.2. Effective competition in the 289 ESAs constrains Telstra’s incentive and ability to engage in conduct that raises competition concerns**

The draft decision finds that, absent declaration in the 289 ESAs, competition in the retail broadband market would reduce because access seekers would be less able to acquire the wholesale ADSL

---

<sup>11</sup> Exetel, *Appendix A: Questions on which submissions are sought – Exetel*, public version, pp. 2-3.

<sup>12</sup> ACCC (2016), *Wholesale ADSL service declaration inquiry: Draft decision*, Executive Summary.

<sup>13</sup> Exetel, *Appendix A: Questions on which submissions are sought – Exetel*, public version, pp. 2-3.

<sup>14</sup> ACCC (2016), *Wholesale ADSL service declaration inquiry: Draft decision*, p. 35.




---

service on reasonable terms.<sup>15</sup> It is argued that this would occur because Telstra would have the incentive and ability to:<sup>16</sup>

- Set wholesale and retail prices above the level expected in a competitive market
- Engage in price squeezes
- Price discriminate to prevent competitors from using their scale to develop their own retail price offerings
- Put in place terms and conditions which would diminish retail and wholesale competition
- Leverage its position in the exempt ESAs to favour its own operations over those of its competitors and reduce competition in the retail market on a national level

Telstra does not agree that it would have these incentives, and therefore that competition would reduce, in the 289 ESAs in the absence of declaration. Competition from ULL/LSS-based carriers in these ESAs means that if Telstra engaged in such conduct, it would lose customers to its competitors. In particular:

- If Telstra were to set wholesale prices above the level expected in a competitive market, retail service providers could switch to non-Telstra ULL/LSS-based wholesale providers. If it did so with retail prices, retail customers could switch to non-Telstra retail service providers.
- If Telstra attempted to price squeeze, price discriminate, or put in place other terms aimed at diminishing competition, its customers could switch to non-Telstra ULL/LSS-based wholesale providers. Combined with the risk of breaching Part IV of the *Competition and Consumer Act 2010*, there is no incentive for Telstra to engage in such anti-competitive conduct.

The above is supported by Exetel’s submission (summarised above) that lower wholesale costs are offered by alternative providers as compared to Telstra where there is wholesaler choice.<sup>17</sup> This clearly suggests that Telstra would have no ability to engage in anti-competitive conduct given the constraint of lower wholesale cost alternatives.

As the ACCC notes, the test for declaration is not whether there is effective competition present. Rather, the test is whether declaration will promote the LTIE, and in determining this, the ACCC must have regard to the extent to which declaration will promote competition. The draft decision finds that declaration in all ESAs would promote competition because:

- The ACCC would set regulated terms and conditions which better reflect those under competitive market conditions.
- Retail Service Providers would have access to the wholesale ADSL service on terms and conditions that reflect competitive market conditions in all geographic areas.
- The opportunity for Telstra to engage in anti-competitive conduct in the 289 ESAs would be limited.

---

<sup>15</sup> Ibid., p. 31.

<sup>16</sup> Ibid., p. 27.

<sup>17</sup> Exetel, *Appendix A: Questions on which submissions are sought – Exetel*, public version, pp. 2-3.





---

Telstra re-iterates that in geographic areas where competition is already effective, declaration will not *promote* competition beyond the level that already exists.

The role of regulation should be to create the conditions for market forces to determine market outcomes, not to determine those outcomes itself<sup>18</sup> – competition is better able to deliver reasonable price and non-price terms than regulation. This is supported by Exetel’s submission that the wholesale cost of services from alternative wholesale providers is lower than the ACCC declared rates for Telstra Wholesale equivalent services.<sup>19</sup> Competition in the 289 ESAs, when combined with regulated access to Telstra’s Wholesale ADSL service outside of the 289 ESAs, is already ensuring that access seekers have access to the Wholesale ADSL service in all geographic locations on reasonable terms.

Further, as noted, declaration would not limit the opportunity for Telstra to engage in anti-competitive conduct beyond the limitations it is already subject to — those imposed by competition, and the general and telecommunications specific competition law provisions contained in Parts IV of the *Competition and Consumer Act 2010*. As noted by the Vertigan Review, Part XIC was not enacted to deal with all telecommunications competition issues, but rather, to be part of a broader framework for dealing with them.<sup>20</sup>

In summary, there is not sufficient grounds from a statutory perspective for the ACCC to be satisfied that declaration of the 289 ESAs will promote competition, relative to if the ESAs are not declared.

---

<sup>18</sup> Vertigan Panel (2014), *Independent cost benefit analysis of broadband and review of regulation*, p.24.

<sup>19</sup> Exetel, *Appendix A: Questions on which submissions are sought – Exetel*, public version, p. 2.

<sup>20</sup> Vertigan Panel (2014), *Independent cost benefit analysis of broadband and review of regulation*, p.22.



## 02 The current service description adequately captures the service

Telstra agrees with the ACCC’s draft decision that the current service description adequately captures the Wholesale ADSL service. However, the draft decision sets out concerns raised by Optus regarding how Telstra may be interpreting the service description and mandating the purchase of other products, such as the TWBGE product, with the supply of the wholesale ADSL service. This chapter focuses on providing information to assist the ACCC to understand the TWBGE product, including how the TWBGE is sold and purchased. Telstra notes that it has provided much of this information previously, in response to a request issued by the ACCC as part of the fixed line services final access determination inquiry.<sup>21</sup>

Telstra confirms the ACCC’s representation of the wholesale ADSL and TWBGE services in Diagram 3.1, as well as the following propositions made in relation to the TWBGE service:

- It is a service that enables data to be sent from the network-network interface (NNI) that is also the point of interconnect (POI) to a retail service provider’s point of presence (PoP).
- It (or an equivalent transmission product) is required for the transmission of data between the POI and each retail service provider’s PoP. Access seekers must purchase sufficient ‘access capacity’ from Telstra to enable them to supply a retail service to their end customers – this access capacity carries the access seeker’s VLAN / AGVC traffic from Telstra’s POI to their PoP where it hits their network.
- It is different from the Domestic Transmission Capacity Service (DTCS) because unlike the DTCS, TWBGE is a contended service.<sup>22</sup>

The DTCS cannot however be used as an alternative to TWBGE. The nature of the TWBGE product (and other access products) allows for traffic engineering principles to be utilised to dimension the route carrying packet data to facilitate the efficient aggregation of end user traffic for carriage to a retail service provider’s PoP. The efficiencies arise due to the properties of DSL traffic (which is highly bursty and amenable to aggregation) and ‘Queuing Theory’, which suggests that a single larger queue (or network element/transmission pipe) will be more efficient and less amenable to congestion than a series of smaller parallel elements.<sup>23</sup> This is the case even if in aggregate those elements have an equivalent capacity to the single large element. The TWBGE product therefore encourages more economically efficient use of the infrastructure that connects POIs to retail service providers’ PoPs.

Telstra makes available a range of options for access seekers to acquire the required access capacity, allowing them to choose the most appropriate service to match their forecast demand, usage allocation per end user, network redundancy requirements, equipment and network design. These options include TWBGE, Broadband Aggregation and Wholesale Wavelength Service (WWS). Access seekers can therefore influence the end user experience from the POI back towards their network through decisions

<sup>21</sup> Telstra Corporation Ltd (2015), *Re: ACCC’s fixed line services final access determination inquiry: request for further information*, available at: <http://www.accc.gov.au/system/files/Telstra%20response%20to%20request%20for%20information%20wholesale%20ADSL%20-%20Public.pdf>

<sup>22</sup> Telstra notes that the TWBGE is not, however, an asymmetric service.

<sup>23</sup> See: Telstra Corporation Ltd (2012), *Response to the Commission’s Issues Paper (a second discussion paper) into the public inquiry to make a final access determination for the wholesale ADSL service – Non-Price Terms* for a more detailed explanation of the efficiency gains associated with Queuing Theory.



---

made around the amount of VLAN and access capacity acquired, redundancy required, and the way in which the access seeker throttles traffic on an end user by end user basis.

Access seekers make decisions around the amount of access bandwidth required in conjunction their VLAN / AGVC decisions as the total access bandwidth must be equal to, or greater than the amount of VLAN / AGVC purchased to ensure all access seeker traffic is delivered to the end user.

Typically, the minimum access bandwidth an access seeker would acquire is 20Mbps which matches the maximum rate of an ADSL2+ service. The access seekers’ expected SIO volume and their intended per-user peak throughput will dictate their need to purchase incremental access bandwidth. In Telstra Wholesale’s experience, an access seeker will usually aim to have sufficient VLAN / AGVC and access capacity at any point in time to cope with increased traffic generated by SIO growth for the next 2-3 months. Access seeker decisions on access bandwidth increases are usually made in lock-step with VLAN / AGVC increase decisions and are monitored and updated by access seekers regularly.

The TWBGE and WWS options support aggregating wholesale ADSL traffic to a state level. That is, in each state an access seeker wishes to sell wholesale ADSL services, they will need access bandwidth to deliver their end users traffic from the Telstra POI to their PoP. Broadband Aggregation allows the access seeker to aggregate all their wholesale ADSL traffic to a single POP, and is also able to carry an access seeker’s nbn traffic where the nbn services are purchased through Telstra Wholesale.

An access seeker who operates an Ethernet based network, and has total traffic requirements in a state of less than 1Gbps would typically use a TWBGE access service.

The nature of Telstra’s access capacity products allows Telstra to ensure redundancy of the required network elements, in order to provide for service resilience and continuity in the event of element failure. Telstra requires that customers with VLAN requirements greater than 1Gbps purchase an access option which incorporates a degree of redundancy. This requirement ensures that traffic on the ADSL network is balanced. Where access seekers purchase access with redundancy the capacity of both links is measured when accounting for a customer’s total capacity purchased. However, access seekers using TWBGE or Broadband Aggregation are not required to pay for access capacity that exceeds the total of their peak bandwidth requirements.<sup>24</sup>

The pricing for the access service used for wholesale ADSL traffic is highly variable, but makes up a very small proportion of the total costs borne by access seekers in delivering an ADSL service. There are a number of factors which influence the price including:

- Access service used (TWBGE, WWS, Broadband Aggregation)
- Access seeker PoP location relative to the Telstra POI
- Bandwidth acquired
- Service term (typically a longer term results in a discount)

---

<sup>24</sup> In the case of WWS, access seekers must acquire the service in multiples of 2x10Gbps regardless of the underlying VLAN traffic volume. Access seekers that wish to increase their network resilience have the option of acquiring additional access capacity for protection purposes.



- 
- Access seeker protection / redundancy requirements
  - Commercial negotiation

While the prices of the access services aren’t regulated, Telstra does not charge for them “at any level it sees fit”, as claimed by Optus.<sup>25</sup> On the contrary, **[c-i-c]**.

---

<sup>25</sup> Optus, *Submission in response to ACCC Wholesale ADSL Service Declaration Inquiry Discussion Paper, Public version*, July 2016, p.18.



---

### 03 Aligning the declaration period creates regulatory synergies

Telstra re-iterates its previous submission that the wholesale ADSL declaration period should be aligned to the other declared services that utilise the PSTN (i.e. 31 July 2019). As noted, this will allow for the ACCC to consider defining a path to regulatory rollback ahead of the planned nbn completion date in 2020 consistently across all regulated, PSTN based services.

Telstra supports the ACCC’s intention to minimise the regulatory burden faced by the sector in its decision about the appropriate declaration period and appreciates the challenges faced in making this decision due to uncertain timing for completion of the nbn roll-out.

However, Telstra submits that aligning the expiry dates for the declarations will in fact reduce regulatory burden. There is substantial overlap in the issues that need to be considered in deciding whether to declare wholesale ADSL and the other declared services that utilise the PSTN network. Allowing for these issues to be submitted upon via just one process would reduce the resources the sector needs to dedicate to taking part in the process (relative to if two separate processes were undertaken).

Furthermore, the question of regulatory burden will only arise if there is a delay in the nbn roll-out — and if this is the case, the ACCC will need to conduct a declaration inquiry in relation to the other declared services that utilise the PSTN in any event. Considering declaration of wholesale ADSL as part of the same process would not add to the regulatory burden faced by the sector in taking part in that process.

Whilst, as the ACCC notes, it could revoke the wholesale ADSL declaration if the nbn roll-out is completed before the declaration expires, Telstra submits that taking a consistent approach across all services that utilise the PSTN network would reflect better regulatory practice.