



Vodafone Hutchison Australia Submission to the Fixed Services Review Declaration Inquiry

Vodafone Hutchison Australia Pty Limited (**VHA**) welcomes the opportunity to participate in the Australian Competition and Consumer Commission's (**ACCC**) consultation on whether to extend, vary or revoke the declaration of the fixed line services, or whether to make a new fixed line services declaration.

VHA does not intend to address each question posed in the ACCC's discussion paper on the Fixed Services Review declaration inquiry as, with the exception of a few key areas, regulation of fixed line services does not form a large part of VHA's commercial focus. Instead, the purpose of this submission is to set out some key principles which VHA believes should apply to the ACCC's regulation of telecommunications services more broadly, including services the subject of this review and the Domestic Transmission Capacity Service (**DTCS**).

At the outset it should be acknowledged that declaration of fixed line services, including those subject to this review, has undoubtedly promoted the long term interests of end users (**LTIE**) as it has promoted competition, any-to-any connectivity and the efficient use of and investment in infrastructure. There continues to be significant structural issues in the Australian telecommunications market and this warrants ongoing oversight by the ACCC.

One of the key reasons why declaration of fixed line services has promoted the LTIE is that generally the ACCC's application of a rigorous cost-based approach to pricing of fixed line services. When this has been undertaken it has resulted in the pricing of fixed line services that is transparent and accurately reflects the underlying cost of provision, something which would not have occurred without declaration. In the case of the fixed line services this is vital to deliver a level competitive playing field.

However VHA wishes to draw the ACCC's attention to two key problems with its regulation of fixed telecommunication services more broadly:

- the ACCC's pricing principles have not adequately recognised and accounted for Telstra's customer access network and transmission network being largely interconnected, both physically and economically; and
- because the ACCC has not treated the regulation of DTCS in the same way as the fixed services this threatens to deprive consumers of the benefits of competition and innovation.

To address these problems and ensure that the LTIE is promoted, the ACCC should take a comprehensive and consistent approach to the regulation of all telecommunications services, including fixed line services, the DTCS. The economic rationale for this is both straightforward and compelling:

- The DTCS is the foundation product for many fixed line (and mobile) services particularly in regional Australia. If this is not properly assessed it will engender ongoing regulatory failure;
- Telstra remains by far the dominant provider of wholesale fixed line services (including the DTCS); and



- as the dominant provider enjoying massive economies of scope and scale, Telstra has the ability and the incentive to use that market power across the full suite of fixed network services, particularly as it remains substantially vertically integrated and will continue to do so for a significant period.

The ACCC has, in the past, treated Telstra's customer access network (**CAN**) and its transmission network as largely distinct for the purposes of wholesale access regulation. This approach has not recognised that Telstra's CAN and transmission networks are interconnected both physically and economically. Telstra's ability to exercise its market power across both networks has undermined the LTIE and the rationale for declaration. For these reasons, VHA considers that regulation of fixed line services should be harmonised with regulation of the DTCS through an expansion of the regulatory asset base (**RAB**). The cost of Telstra's CAN and DTCS network should form a part of this expanded RAB. Such an approach will allow for a comprehensive and holistic approach to the regulation telecommunications services, from which individual fixed line services can be identified and priced accordingly.

Furthermore, the ACCC should take a consistent approach to pricing of telecommunications services. Currently, with a few exceptions the ACCC determines the prices of fixed line services using a cost-based approach, while it prices the DTCS using a regression model.¹

The ACCC's approach to pricing and regulation of both declared fixed line services and the DTCS should be consistent and reflective of the true cost of providing those services. In VHA's view, the best way to do this is by constructing a robust cost-based model (a building block model based on deprecated historic costs) which is applicable across both the customer access and DTCS networks. Such an approach is crucial to achieving the objectives of declaration, as the methodology for determining the RAB is likely to have the greatest impact on the balance the ACCC strikes between the interests of consumers and the interests of suppliers of regulated services.

Taking a consistent and comprehensive approach to regulation of telecommunications services will encourage transparency in relation to the cost and pricing of the DTCS, and will ensure that the regulated price accurately reflects the underlying cost of provision of telecommunications services more broadly, including fixed line services and the DTCS. This, in turn, will inevitably promote the LTIE and lead to better outcomes for consumers, particularly those in regional and remote areas. VHA proposes to expand upon the principles in greater detail in its submission in response to the ACCC's DTCS declaration inquiry.

Most importantly it will ensure that the ACCC takes a more holistic perspective of the broader competition issues to deliver telecommunications services in Australia and how to ensure that a level competitive playing field is established in Australia.

¹ VHA considers that the ACCC's use of a regression model for DTCS pricing is fundamentally flawed as:

- the benchmarking approach does not reflect the true cost of supplying the DTCS;
- it ignores linkages between purchasing decisions across different markets and transmission routes; and
- most importantly, there is a lack of transparency in the cost and pricing of the DTCS and the manner in which individual services are acquired.