

19 May 2014

Australian Competition and Consumer Commission

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Fixed Services - Inquiry into varying the WLR, LCS, ULLS and LSS final access determinations

Your Reference

Our Reference IP 051402

Macquarie Telecom Pty Limited (“**Macquarie**”) appreciates the opportunity to make this submission to the Australian Competition and Consumer Commission (“**ACCC**”) in response to the ACCC’s discussion paper concerning the above.¹ The focus of the inquiry is the ACCC’s proposals to vary the existing final access determinations (“**FADs**”) as follows:

- vary the WLR and LCS FADs to apply both price and non-price terms to services supplied in CBD areas; and
- vary the ULLS and LSS FADs to include price terms for the internal interconnection cable (“**IIC**”).

Relevant circumstances which frame the context in which the ACCC’s proposals are made include the following:

- the ACCC has recently extended the declarations of the fixed-line services, i.e., WLR, LCS, ULLS, LSS, FOAS and FTAS from 31 July 2014 to 31 July 2019;
- the declarations of the WLR and LCS removed the CBD exemption which applied to these services; and
- arbitral decisions made by the ACCC which concern the pricing of the IIC will expire on 30 June 2014 and cannot be extended.

Macquarie supports the ACCC’s proposals to vary the four FADs because the variations ensure that effective regulation of fixed-line services remains in place. Macquarie considers that the variations are essential to protect and promote competition and to deliver end-user benefits. With regard to the proposed variations to the WLR and LCS FADs, Macquarie notes that in the absence of the variations there would be no regulated price for the WLR and LCS in CBD areas. The variations are necessary to give effect to the ACCC’s decision to remove the CBD exemption because the existing FADs do not contain a CBD price for the WLR and LCS and therefore merely extending the FADs would not be sufficient.

¹ ACCC, Fixed Services Review, Inquiry into varying the WLR, LCS, ULLS and LSS final access determinations, Discussion Paper, April 2014 (“**Discussion Paper**”)



With regard to the proposed variations to the ULLS and LSS FADs, Macquarie notes that in the absence of the variations there would be no regulated price for the IIC. The variations are necessary to ensure continuity of the regulated price and to extend the effect of the regulated price to all access seekers, i.e., not just those access seekers who fought Telstra through the ACCC's (now repealed) arbitration process. As the existing ULLS and LSS FADs do not contain a price for the IIC, merely extending the FADs would again not be sufficient.

The ACCC seeks comments from industry stakeholders relating to its proposals. Macquarie's responses to the matters raised by the ACCC in the Discussion Paper are set out below. For ease of reference, the ACCC's questions are reproduced in shaded text boxes which is followed by Macquarie's response.

Variation to the WLR and LCS FADs

The ACCC proposes that the prices determined by the ACCC for the WLR and LCS as set out in the existing FADs in respect of non-CBD areas for these services, i.e., \$22.84 per month and 8.9 cents per local call respectively should also apply to services when supplied in the CBD areas. The ACCC reasons that the prices determined for these services are nationally averaged and are equally applicable to CBD and non-CBD areas. In addition, the ACCC proposes that the non-price terms in the existing FADs which apply to the WLR and LCS services supplied in non-CBD areas should also apply to those services supplied in CBD areas. The existing WLR and LCS FADs would be varied accordingly.

Questions on which the ACCC seeks views in relation to the proposed variation to the LCS and WLR FADs (extending FAD terms to services supplied in CBD areas):

1) Do you agree with the ACCC's application of the subsection 152BCA(1) criteria for making the proposed variation? Please provide reasons.

In making a decision to vary the WLR and LCS FADs, the ACCC is obliged to take into account those matters specified in subsection 152BCA(1) of the *Competition and Consumer Act 2010* ("CCA"). Macquarie notes that the ACCC has considered both the price and non-price terms of the ACCC's proposed variations to the WLR and LCS FADs against all seven specified matters. Macquarie concurs with the ACCC's analysis and supports the overall conclusion that it has reached, i.e., that the proposed variations fulfil the legislative requirements. Accordingly, Macquarie agrees with the ACCC's application of the subsection 152BCA(1) criteria for making the proposed variation.

2) Do you agree with the ACCC's proposed LCS and WLR service CBD prices? Please provide reasons.

The ACCC's proposed LCS and WLR service CBD prices are 8.9 cents per local call and \$22.84 per month respectively. Macquarie notes that these prices have been determined by the ACCC in respect of non-CBD areas and are set out in existing FADs which recently have been extended. The ACCC reasons that these prices are nationally averaged and are equally applicable to both CBD and non-CBD areas, i.e., that the markets in which these



services are supplied are essentially national markets. This means that the services are not tailored to meet specific requirements of different types of customers or to meet the requirements of specific geographic markets.

Macquarie accepts the ACCC's proposals to adopt the LCS and WLR service CBD prices of 8.9 cents per local call and \$22.84 per month respectively in its proposed variation to the LCS and WLR FADs. These prices have been determined by the ACCC in the context of a detail FAD inquiry. Macquarie submits they are the best currently available estimates of appropriate LCS and WLR service CBD prices and as such it is practical and expedient that they be adopted. Macquarie notes that these prices are temporary until the ACCC makes a thorough assessment of all relevant factors in what the ACCC describes as its "substantive FAD inquiry".² Macquarie looks forward to making representations to the ACCC on this matter as part of that inquiry in due course.

While noting that the ACCC's proposed prices for the CBD LCS and WLR service may not be ideal, Macquarie is strongly of the view that such prices are appropriate to be set at this time. This will enable access seekers like Macquarie to compete effectively in CBD areas and will thereby deliver the benefit of lower prices to end-users as quickly as possible.

3) Do you agree with the ACCC's proposed non-price terms? Please provide reasons.

The ACCC proposes that the non-price terms in the existing FADs which apply to the WLR and LCS services supplied in non-CBD areas should also apply to those services supplied in CBD areas. Macquarie agrees with the ACCC's proposed non-price terms for application to the WLR and LCS services supplied in CBD areas. In supporting the ACCC's proposal, Macquarie notes that the WLR and LCS are supplied in national markets and as such there are no evident differences between the supply of such services in CBD and non-CBD markets that give rise to a need for differences in their respective non-price terms of supply.

Variation to the ULLS and LSS FADS

The ACCC proposes to vary the ULLS and LSS FADs to include price terms for the IIC. The IIC is used to connect access seeker network assets to Telstra network assets within Telstra exchanges in order to enable access seekers to use the ULLS and LSS supplied by Telstra. The ACCC has made two final arbitral determinations which set a price for the IIC. These determinations expire on 30 June 2014 and cannot be extended because they were made under legislation which has since been repealed. The ACCC proposes to vary the existing ULLS and LSS FADs to include an IIC price of \$0.056 per month. This price is the same as that set in the ACCC's final arbitral determinations.

² *ibid*, page 8



Questions on which the ACCC seeks views in relation to the proposed variation to the ULLS and LSS FADs (implementing the proposed IIC charge):

4) Do you agree with the ACCC's application of the subsection 152BCA(1) criteria for making the proposed variation? Please provide reasons.

In making a decision to vary the ULLS and LSS FADs, the ACCC is obliged to take into account those matters specified in subsection 152BCA(1) of the CCA. Macquarie notes that the ACCC has considered the price terms of the ACCC's proposed variations to the ULLS and LSS FADs against all seven specified matters. Macquarie concurs with the ACCC's analysis and supports the overall conclusion that it has reached, i.e., that the proposed variations fulfil the legislative requirements. Accordingly, Macquarie agrees with the ACCC's application of the subsection 152BCA(1) criteria for making the proposed variation.

5) Do you agree with the ACCC's proposed IIC charge? Please provide reasons.

Macquarie agrees with the ACCC's proposed IIC charge of \$0.056 per month. This price has been determined by the ACCC through its now repealed arbitration process. Macquarie submits that it is the best currently available estimate of the appropriate IIC price and as such it is practical and expedient that it be adopted. Macquarie notes that this price is temporary until the ACCC makes a thorough assessment of all relevant factors under its substantive FAD inquiry. Again, Macquarie looks forward to making representations to the ACCC on this matter as part of that inquiry in due course.

While noting that the ACCC's proposed price for the IIC may not be ideal, Macquarie is strongly of the view that this price is appropriate to be set at this time. This will enable access seekers like Macquarie to compete effectively and will thereby deliver the benefit of lower prices to end-users as quickly as possible.

Closing

Macquarie welcomes the opportunity to make this submission in response to the Discussion Paper. Macquarie supports the ACCC's proposals to vary the WLR, LCS, ULLS and LSS FADs particularly because the variations ensure that effective regulation of fixed-line services remains in place which is essential to protect and promote competition and to deliver end-user benefits. Macquarie reiterates the following key points made in this submission:

- Macquarie concurs with the ACCC's analysis of the price and non-price terms of the ACCC's proposed variations to the WLR and LCS FADs against all seven matters specified in subsection 152BCA(1) of the CCA;
- Macquarie agrees with the ACCC's proposals to adopt the LCS and WLR service CBD prices of 8.9 cents per local call and \$22.84 per month respectively in its proposed variation to the LCS and WLR FADs;
- Macquarie agrees with the ACCC's proposed non-price terms for application to the WLR and LCS services supplied in CBD areas;
- Macquarie concurs with the ACCC's analysis of the price terms of the ACCC's proposed variations to the ULLS and LSS FADs against all seven matters specified in subsection 152BCA(1) of the CCA; and

- Macquarie agrees with the ACCC's proposed IIC charge of \$0.056 per month.

Please do not hesitate to contact me should you have any queries in relation to this matter.

Yours sincerely



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