

TELSTRA CORPORATION LIMITED

Fixed line services FAD inquiry

Response to ACCC discussion paper on extending and varying the fixed line final access determinations

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Executive Summary

Telstra welcomes the opportunity to comment on the ACCC's *Fixed Services Review: Extension of existing fixed line services and wholesale ADSL final access determination / Inquiry into varying the WLR, LCS, ULLS and LSS final access determinations – Discussion Paper, April 2014 (Discussion Paper)*.

The Discussion Paper:

- explains the ACCC's decision to extend the term of the fixed line services final access determinations (**FADs**) from their current expiry date (30 June 2014) until a date immediately prior to new FADs coming into force; and
- commences an inquiry into proposed variations to the current FADs for the unconditioned local loop service (**ULLS**), line sharing service (**LSS**), local carriage service (**LCS**) and wholesale line rental (**WLR**) to specify for the first time:
 - price and non-price terms for the supply of LCS and WLR in CBD areas; and
 - an internal interconnection cable (**IIC**) charge as part of the ULLS and LSS FADs.

Whilst the extension of the FADs amounts to a largely administrative exercise and is explicitly contemplated in the Competition and Consumer Act (**CCA**), the ACCC's proposal to vary the FADs is significant and raises a number of material legal, economic and commercial issues.

Proper consultation and consideration of relevant matters is essential to the interests of Telstra's customers

Telstra aims to achieve the best outcomes for its customers and believes that any decision to impose ex ante regulation of supply terms must only be made after a thorough consideration of the relevant statutory criteria (including the state of competition in the market and the direct costs of providing the service). The imposition of price terms without a thorough consideration of relevant factors could lead to pricing in the market which discourages investment and adversely affects outcomes for end-users, in terms of innovation and product differentiation.

Extending the term of the existing FADs

The ACCC has commenced a public inquiry into making replacement FADs for each of the declared fixed line services, but has indicated that it is unlikely to be in a position to make these replacement FADs prior to 30 June 2014. Telstra recognises that the process for making the replacement FADs will be complex, and the ACCC will require sufficient time to obtain data and information, consult with stakeholders and properly take into account all relevant matters in order to set new FAD terms, which will then apply for the next several years.

Telstra does not object to extending the term of the existing FADs for each of the declared fixed line services to the day before replacement FADs for these services come into force. However, Telstra suggests that the ACCC should be clearer in setting out timelines for completing the FAD inquiry, as this will provide stakeholders with more certainty in setting their business plans for the coming financial year.

Proposed variations to the WLR and LCS FADs

In its Discussion Paper, the ACCC proposes to apply the price and non-price terms set out in the current LCS / WLR FADs for non-CBD areas, within CBD areas. This is a significant change and is quite distinct from any extension of existing FAD terms. If such a variation were

to be made to the current FADs, this would be the first time in over a decade that price and non-price terms of supply for either LCS or WLR had been regulated in CBD areas.

The ACCC acknowledges in the Discussion Paper that what it is proposing is a major and substantive variation to the existing FADs.¹ The legislative process for making a FAD (or any substantive variation to a FAD) requires extensive consideration of a range of relevant matters to deal with various complex and technical issues which go to whether the variation will promote the long term interests of end-users (**LTIE**). All relevant issues and the best available market data needs to be carefully considered when determining whether new terms of access will be in the LTIE.

Telstra is concerned that the proposed variations set out in the Discussion Paper, and the timing of the variation inquiry, do not reflect the best available information with respect to the time period over which the terms would apply and do not consider all relevant issues. Telstra is concerned that by not fully considering the relevant issues and the best available data in setting price and non-price terms, the ACCC risks negative outcomes for end users. Given these risks to customers, Telstra considers that the ACCC should not vary the existing FADs at this time, but rather progress to the consideration of these and other issues in its current FAD Inquiry.

The process for making a FAD, or a substantive variation to a FAD, can be contrasted with the separate processes for:

- making interim access determinations (**IADs**) under section 152BCG;
- making binding rules of conduct (**BRoCs**) under section 152BD; and
- making minor variations to a FAD, contemplated under section 152BCN.

The processes for making IADs, BRoCs and minor variations to a FAD were directed at allowing for quick (and in the case of IADs or BRoCs, temporary) resolution of issues. This was reflected, amongst other things, in the legislation permitting the ACCC to make IADs or BRoCs without being required to take into account the requirements of procedural fairness (see sub-sections 152BCG(4) and 152BD(6)).²

The matters raised in the Discussion Paper cannot be addressed through minor variations, nor are they urgent matters which can be addressed through a temporary IAD. The ACCC must therefore undertake a full and proper inquiry, properly observing the principles of procedural fairness.

Telstra does not consider that the ACCC's proposed approach to these variations provides the ACCC with sufficient time to properly consider the matters it needs to take into account and does not provide Telstra (or other stakeholders) with a fair opportunity to respond to the complex and material issues raised by the proposed variations.

Telstra considers that a variation of this nature cannot be made without taking into account several important and potentially complex matters, including:

- the efficient cost of supplying these services;
- the likely effect of the determination on future competition and investment;

¹ Discussion Paper, p 13. The ACCC notes that the proposed variations are not minor and that parties' consent has not been sought, meaning that public inquiry is required.

² Section 152BCN(2) which applies to minor variations to a FAD does not expressly permit the ACCC not to observe procedural fairness, but instead provides that the ACCC can make any such variation without undertaking a public consultation.

- whether or not price and non-price terms for the LCS and WLR should apply uniformly across all CBD areas;
- whether it may be appropriate for the FADs to also provide that some or all of the standard access obligations are not applicable to a carrier or carriage service provider, either unconditionally or subject to conditions or limitations; and
- whether it may be appropriate to restrict or limit the application to a carrier or carriage service provider of any or all of the standard access obligations.

The ACCC does not currently have sufficient information to properly assess all of these relevant matters and, in those cases where the ACCC has identified “relevant” information, it has not properly taken this into account in the Discussion Paper.

The very fact that the ACCC has needed to extend the existing FADs demonstrates that there is not currently sufficient information that would allow for a reasonable determination of prices for LCS and WLR in any geographic area for the period beyond June 2014. The only basis on which the extension of the existing FADs can be made is that the ACCC is not yet in a position to make a reasonable determination of price terms for the period beyond June 2014.

In Telstra’s view, it is not reasonable to conclude on the one hand that there is insufficient information available to form a view about new pricing for existing services (hence requiring an extension for the current FADs), and conversely conclude that the same existing information is nonetheless sufficient to justify new pricing for new services, over the same period.

The inconsistency of this approach is apparent in the Discussion Paper itself. For example, in relation to the cost of supplying LCS and WLR, the ACCC states that the “best available information” is information obtained during the 2011 FAD inquiry. However the information obtained during the 2011 FAD inquiry is now three years old and only relates to the cost of supplying LCS and WLR up to 30 June 2014. The ACCC notes that it has received more recent information from Telstra, however it has not taken this more recent and more relevant information into account.

As to whether regulation of prices for LCS and WLR as proposed by the ACCC would promote competition and encourage economically efficient use of and investment in infrastructure, the Discussion Paper fails to address a number of relevant matters, including:

- the current state of competition in CBD areas and the very significant differences between competitive dynamics in these areas, compared to other geographic areas;
- the extent to which existing competitive dynamics may be affected by regulation of prices for LCS and WLR;
- the extent of competing infrastructure in CBD areas – including alternative networks and DSLAM infrastructure – and the potential for further investment in competing infrastructure; and
- the likely effect of LCS/WLR price regulation on incentives for efficient use of and investment in infrastructure, including competing infrastructure.

Each of these matters is complex and multi-faceted, and requires a proper inquiry. Previous inquiries into setting of price and non-price terms for the LCS and WLR in other geographic areas have taken several months and involved a number of rounds of stakeholder submissions, reflecting the complexity of the issues that arise in this context.

While some of these matters may have been raised in the context of the ACCC’s recent declaration inquiry, this does not obviate the need for proper consideration of these and other relevant matters for the purposes of making a FAD (or variation to a FAD). The processes for

declaration of a service and making a FAD are separate and distinct, and require consideration of a different range of matters. Most obviously, the process for making a FAD requires consideration of to what extent price and non-price terms of supply should be specified and what those terms should be, matters that will not be squarely addressed as part of a declaration inquiry.

The mere fact that a declaration decision has been made does not, in and of itself, create a basis for specification of price and non-price terms and conditions. Any specification of access terms must be based on a substantive inquiry into making a FAD, taking into account all relevant matters. In short, while declaration is a necessary pre-condition for specification of access terms, it is not sufficient in and of itself.

The approach proposed by the ACCC in the Discussion Paper is also unnecessary and inappropriate, given that the matters raised by the Discussion Paper are all matters that can and should be addressed as part of the comprehensive FAD inquiry that the ACCC has indicated will commence in the very near future. Addressing the above matters as part of a comprehensive FAD inquiry would (and is intended under the Act to) allow for proper consideration of the issues within the broader context of other changes to be made to the FADs and in light of all relevant evidence.

Proposed specification of IIC charge

The Discussion Paper proposes that the ULLS and LSS FADs be varied to specify IIC charges. It is proposed that the IIC charge to be specified in the FADs would be based on arbitral determinations made by the ACCC in November 2012.

Telstra notes that the arbitral determinations in respect of the IIC charge were made around 18 months ago, based on information provided in the course of those arbitrations. Further, the determinations related to bilateral arbitrations with respect to seven wholesale customers conducted under the previous Part XIC regime (i.e. under the now repealed negotiate-arbitrate framework).

In any event, Telstra considers that the outcome of these arbitrations cannot simply be translated into a FAD, without due consideration of several important matters, including the efficient cost of providing access; whether or not IIC charges should apply uniformly across all geographic areas; and whether the FADs should make different provision with respect to different carriers or carriage service providers (or different classes of carrier / carriage service provider), or different access seekers (or different classes of access seeker). In particular, if the ACCC determines to set a price term for IIC as part of the fixed line services FADs then that price term needs to be consistent with and assessed in conjunction the broader review of price terms in the upcoming FAD Inquiry.

Telstra is concerned that the ACCC has not allowed sufficient time for stakeholders to make submissions on each of these matters, and has not allowed itself enough time to take these matters properly into account.

Proposed way forward

For the reasons set out above, Telstra submits that:

- The approach of the ACCC in the Discussion Paper does not provide sufficient opportunity for stakeholders to fairly respond to the complex and significant issues raised by the proposed variations. This is highlighted by the more thorough approach it has previously adopted in similar FAD variation processes.
- As a consequence, the ACCC will not be in a position where it has sufficient up-to-date and reliable evidence to satisfy itself of the important issues raised by the statutory criteria, and canvassed by the ACCC in the Discussion Paper.

- The ACCC has not given itself a sufficient opportunity to obtain cost, market and other evidence necessary to make its decision, meaning that it will not be able to reasonably satisfy itself whether or not the statutory criteria for the proposed variation have been met. The ACCC will also not be able to consider the proposed variations in the context of the wider set of issues to be raised as part of the imminent substantive FAD processes.

Telstra proposes that the most appropriate course is for the two matters raised by the ACCC in its Discussion Paper to be considered as part of the soon-to-commence comprehensive FAD inquiry, rather than as a variation to the existing FADs in order to set what are effectively “interim” prices for these services (where no prices were previously set in the existing FADs).

The substantive FAD process is the appropriate process for these issues to be considered properly and would allow time and opportunity for these issues to be assessed within the broader context of other changes to be made to the FADs and in light of up-to-date evidence.

1. Extension of existing fixed line services and wholesale ADSL FADs

As the Discussion Paper notes, an existing FAD may be extended until the day before a replacement FAD for the same service comes into force, in circumstances where the ACCC has commenced a public inquiry into making the replacement FAD but will not be in a position to make the replacement FAD prior to expiry of the existing FAD.³

Telstra notes that the ACCC has commenced a public inquiry into making replacement FADs for each of the declared fixed line services, but that the ACCC is unlikely to be in a position to make these replacement FADs prior to 30 June 2014.

Telstra recognises that the process for making the replacement FADs will necessarily be complex, and that the ACCC may require some time to obtain relevant data and information, consult with stakeholders and properly take into account all relevant matters.

Telstra considers that it is critical that sufficient time be allowed for a proper inquiry into making new FADs for each of the declared fixed-line services. The issues to be considered in this inquiry are potentially complex and will require consideration of a range of matters. Further, the FADs are likely to have significant commercial implications for all stakeholders. Given the complexity and commercial significance of this FAD inquiry, it is important that it not be rushed.

In these circumstances, Telstra agrees with the ACCC that it is appropriate that the term of the existing FADs be extended, as proposed. This will allow time for a proper inquiry into making of new FADs.

Telstra would only request that the ACCC set out a clear timetable for making the replacement FADs, once the process for making these new FADs commences in earnest. It is important that all stakeholders have a clear indication from the ACCC as to when the replacement FADs are likely to commence (and by implication, when the current FADs will expire).

³ Discussion Paper, p 11; CCA, s 152BCF(10).

2. Proposed variations of the WLR, LCS, ULLS and LSS FADs

The Discussion Paper proposes (and purports to consult on) variations to the existing FADs to address what the ACCC describes as “two immediate issues”:⁴

- specification of price terms for the supply of LCS and WLR in CBD areas, as part of the FADs for those two services; and
- specification of an IIC charge as part of the ULLS and LSS FADs.

The ACCC states that these proposed variations “should be considered now given that the substantive FAD inquiry will not be completed before late 2014 [and] commercial negotiations will likely occur before that time”.⁵

The ACCC appears to consider that these matters should be considered separately from the “substantive FAD inquiry”, and as a matter of some urgency, implying that these matters will not be considered in a substantive way in the current process. Rather, the ACCC proposes to make variations to the existing FADs quickly, and without fully considering all relevant substantive matters which may arise as part of the full FAD inquiry.

Telstra does not agree that the two issues raised in the Discussion Paper are “immediate issues” that need to be addressed urgently. There has been no specification of price and non-price terms for LCS and WLR in CBD areas for over a decade, and the change to the service descriptions does not create an immediate or urgent need for this. In relation to the IIC charge, the ACCC’s concern that this may deviate from ‘reasonable’ levels in the absence of a FAD variation are misplaced, as Telstra has no intention of seeking to increase this charge upon expiry of the current arbitral determinations.

The proposed variations to the existing FADs are significant, and raise a number of important economic and legal issues. These are not merely procedural or minor variations. Therefore a proper inquiry is required, taking into account all relevant substantive and procedural matters.

Telstra is concerned that the ACCC’s approach to this variation inquiry means that it will not be able to give stakeholders a fair opportunity to respond to the issues raised, and the ACCC itself will not be in a position to properly take into account all relevant matters or reasonably reach a decision as to whether the statutory criteria for variation are met.

Telstra therefore proposes that the two issues raised by the ACCC be considered as part of the soon-to-commence substantive FAD inquiry, rather than in the manner proposed in the Discussion Paper.

The remainder of this section sets out the relevant legislative requirements for variation of a FAD, and then addresses each of the proposed variations to the FADs, having regard to these legislative requirements.

2.1. Legislative requirements for varying FADs

Section 152BC allows the ACCC to make a written determination relating to access to a declared service (a FAD). A FAD may (inter alia):⁶

- specify any or all of the terms and conditions on which a carrier or carriage service provider is to comply with any or all of the standard access obligations applicable to the carrier or provider; or

⁴ Discussion Paper, p 7.

⁵ Discussion Paper, p 7.

⁶ CCA, s 152BC(2).

- specify any other terms and conditions of an access seeker's access to the declared service; or
- require a carrier or carriage service provider to comply with any or all of the standard access obligations applicable to the carrier or provider in a manner specified in the determination; or
- provide that any or all of the obligations referred to in section 152AR (the standard access obligations) are not applicable to a carrier or carriage service provider, either unconditionally or subject to such conditions or limitations as are specified in the determination; or
- restrict or limit the application to a carrier or carriage service provider of any or all of the obligations referred to in section 152AR; or
- deal with any other matter relating to access to the declared service.

The power to make a FAD includes a power to vary a FAD.⁷ However, the power to vary a FAD must be exercised in a like manner and subject to the same conditions.⁸ This means that variations to a FAD require a public inquiry, and that each of matters to be taken into account in making a FAD (discussed below) apply equally to any material variation of a FAD.

Section 152BCA(1) of the CCA requires the ACCC to take the following matters into account when making a FAD (or varying a FAD):

- whether the determination will promote the LTIE of carriage services or of services supplied by means of carriage services;
- the legitimate business interests of a carrier or carriage service provider who supplies, or is capable of supplying, the declared service, and the carrier's or provider's investment in facilities used to supply the declared service;
- the interests of all persons who have rights to use the declared service;
- the direct costs of providing access to the declared service;
- the value to a person of extensions, or enhancement of capability, whose cost is borne by someone else;
- the operational and technical requirements necessary for the safe and reliable operation of a carriage service, a telecommunications network or a facility;
- the economically efficient operation of a carriage service, a telecommunications network or a facility.

In determining whether a FAD (or variation) will promote the LTIE, regard must be had to the extent to which the FAD (or variation) is likely to result in the achievement of the following objectives:⁹

- the objective of promoting competition in markets for listed services;

⁷ *Acts Interpretation Act 1901* (Cth), s 33(3).

⁸ *Acts Interpretation Act 1901* (Cth), s 33(3). The application of s 33(3) of the *Acts Interpretation Act 1901* (Cth) is subject to certain changes set out in s 152BCN of the CCA. These changes apply where a proposed variation in of a minor nature, and where relevant stakeholders have consented in writing to the variation. However, as noted by the ACCC in the Discussion Paper, neither of these circumstances apply in this case (Discussion Paper, p 13).

⁹ CCA, s 152AB(2).

- the objective of achieving any-to-any connectivity in relation to carriage services that involve communication between end-users;
- the objective of encouraging the economically efficient use of, and the economically efficient investment in:
 - the infrastructure by which listed services are supplied; and
 - any other infrastructure by which listed services are, or are likely to become, capable of being supplied.

Section 152AB then sets out further matters which **must** be taken into account in determining whether a particular thing is likely to result in the achievement of these objectives.

It has been observed that consideration of the LTIE requires proper consideration of all of the matters set out in section 152AB, and that none of the objectives or considerations listed should be given primacy over others. In *Telstra v ACT*, the Full Federal Court observed:¹⁰

“A decision maker confronted with a decision of the type which obliges the decision maker to comply with the requirements of s 152AB(2) must have regard to the extent to which the subject matter of the decision maker’s decision is likely to result in the achievement of each of the objectives set out in (c) to (e) of s 152AB(2), as amplified and explained in the succeeding sub-sections of s 152AB. In our view, no individual objective has primacy in terms of its weight or influence upon the relevant decision over either of the other objectives. Section 152AB(2) requires that the decision maker give consideration as to whether the thing under consideration is likely to result in the achievement of the objectives set out in sub-paragraphs (c) to (e) and, if so, the extent to which it is likely to result in the achievement of those objectives. Necessarily, the decision maker must have regard to each of the objectives and come to a view as to whether the particular thing will promote the LTIE and, if so, the extent to which it will do so...

In our view, the statute does not authorise an approach which accords primacy to objective (c) [promotion of competition]. Even if it be the fact that the grant of the exemptions to Telstra in the present case may not be likely to or has not been demonstrated as likely to result in the achievement of the objective of promoting competition in markets for listed services, that circumstance does not, of itself, entitle or require the decision maker to cease the process of consideration required by s 152AB(2) and thus to pay no regard whatsoever to the other objectives set out in sub-paragraphs (d) and (e) of s 152AB(2). There may be tension between objectives. One may carry more weight in a given case than the others. But they must all be considered and weighed in every case.”

The Full Federal Court in *Telstra v ACT* also emphasised the importance of approaching questions relating to the LTIE in a holistic manner. In that case (which related to grant of exemptions), the Court observed that the question of conditions or limitations must be approached at the same time as the ACCC is considering whether it is satisfied that an order exempting will promote the LTIE.

Critically, the Court ruled that the question of what exemptions or limitations should apply should not be treated as a separate or second-order consideration.¹¹ The Court observed:¹²

“In our opinion, it cannot be said that there is some threshold that must be reached by the applicant before the question of conditions or limitations arises. As we have already noted, the ACCC is not constrained to either grant or refuse the application. What the ACCC must do on an application is to consider whether it should make an order of the kind in s 152AT(4) and, in doing so, must at all times keep in mind whether the order could be made if appropriate conditions and limitations were imposed.

¹⁰ *Telstra Corporation Limited v Australian Competition Tribunal* [2009] FCAFC 23, [270]-[272].

¹¹ *Telstra Corporation Limited v Australian Competition Tribunal* [2009] FCAFC 23, [290].

¹² *Telstra Corporation Limited v Australian Competition Tribunal* [2009] FCAFC 23, [150]-[153].

This is particularly important in the context of the Discussion Paper, which relates to the approach to specifying terms of access following removal of a past exemption. In this context, the ACCC must consider matters such as any potential limitations or restrictions on the application of standard access obligations in some areas, or possible restrictions on the scope of *ex ante* price regulation. Issues such as: whether or not there should be restrictions on the geographic scope of price regulation; or whether or not there should be restrictions or limitations on the application of the standard access obligations in some geographic areas (including limitations which may be subject to particular thresholds being met), cannot be treated as second-order or subsidiary considerations. In making or varying a FAD, the ACCC must consider all matters that a FAD may address, and properly take these into account in making its determination.

There is therefore a wide range of matters which must be taken into account in making or varying a FAD, and each is potentially complex and multi-faceted. There are likely to be various considerations which will need to be weighed up before the ACCC can be reasonably satisfied that making or varying a FAD will be consistent with the statutory criteria, including promotion of the LTIE.

This is confirmed by the relevant explanatory materials. For example, the explanatory memorandum (EM) to the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010 stated that:¹³

“Access determinations will deal with complex and technical issues relating to the price at which, and the other terms on which, key essential telecommunications services are supplied to other carriers and/or CSPs. ... The terms of supply of one declared service are likely to have flow-on effects on the supply of other declared and non-declared services. When making an access determination, the ACCC will have to undertake an assessment of the costs of supplying the declared service, the current state of competition and investment in relation to the supply of the service, and the likely effect of the determination on future competition and investment.”

The EM makes clear that before making any FAD (or substantive variation to a FAD), the ACCC must undertake a proper assessment of the costs of supplying the service, the current state of competition and investment in relation to the supply of the service, as well as the likely effect of the FAD prices on future competition and investment. This is clearly the legislative intention in respect of introducing new FAD price terms and conditions.

2.2. The distinction between the ACCC making FADs or material changes to FADs and other instruments, such as IADs, BRoCs, minor FAD variations and extensions

The process for making a FAD, or making a substantive variation to a FAD contrasts under the CCA with the processes for making IADs, BRoCs, minor variations to a FAD and extensions to a FAD.

The processes for making IADs, BRoCs, minor variations or extensions to a FAD were directed at allowing the ACCC to make quick (and in the case of IADs, temporary) determinations to address urgent or minor issues, without a need for full consideration of all substantive and procedural matters.¹⁴ The powers to make BRoCs and IADs were seen to be necessary to allow the ACCC to address certain matters urgently. It was recognised that the process for making (or varying) a FAD would necessarily be complex and time-consuming,

¹³ Explanatory Memorandum, Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010 (Cth), 175.

¹⁴ When making an IAD, the ACCC is not required to have regard to the same range of matters as for a FAD and is not required to observe any requirements of procedural fairness (CCA, s 152BCG). The CCA therefore restricts the circumstances in which an IAD may be made (CCA, s 152BCG(5)). Similarly, when making variations of a minor nature, the ACCC is not required to hold a public inquiry (CCA, s 152BCN).

and that additional powers were needed to allow determinations to be made more quickly to address urgent matters.

The EM noted in relation to the BRoC powers:¹⁵

“Binding rules of conduct are intended to enable the ACCC to urgently address problems relating to the terms on which a declared service is supplied, and/or problems relating to the way an access provider is complying with the standard access obligations in relation to a declared service... Binding rules of conduct can be made more quickly than an access determination or a variation to an access determination...”

The ACCC may only make binding rules of conduct if it considers there is an urgent need to do so, where it considers that there is insufficient time to go through the processes set out in Division 4 for varying or making an access determination. Binding rules of conduct permit the ACCC to move quickly to adjust the terms and conditions that apply to access to a declared service, on a temporary basis, while the ACCC goes about the process of conducting an inquiry with a view to putting in place or varying replacing the relevant access determination.”

The ACCC has itself acknowledged that it will use these powers carefully, given the removal of procedural fairness rights for stakeholders. It has also not yet exercised its BRoC powers. It has said in this regard that:¹⁶

“...the circumstances in which BROCs would be made by the ACCC are necessarily few given the requirement that there must be an ‘urgent’ need to intervene...”

As well as being used sparingly and carefully by the ACCC, the removal of procedural fairness in respect of IADs and BRoCs is balanced against statutory protections for stakeholders, including:

- the circumstances in which an IAD or BRoC may be made are strictly limited;¹⁷
- the duration of BRoCs is strictly limited – a BRoC must have an expiry date that is within 12 months of the date on which it is made;¹⁸
- the matters which may be addressed by a BRoC are more limited, compared to a FAD.¹⁹

Moreover, in the case of FAD variations, the CCA is explicit that a proper consultation process in respect of the variation can only be avoided where the variation is of a “minor nature” or otherwise with the consent of stakeholders.²⁰ The ACCC has accepted in this case that the variations being considered in the Discussion Paper are material.

In the case of extensions to a FAD, the ACCC is similarly not required to observe any requirements of procedural fairness.²¹ This is because it was envisaged that any extension would only need to be temporary, and that the ACCC may need to make an extension quickly to avoid a FAD expiring.²²

¹⁵ Explanatory Memorandum, Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010 (Cth), 191.

¹⁶ ACCC, *ACCC submission to the Independent Cost Benefit Analysis Review of Regulation Telecommunications Regulatory Arrangements Paper (s.152EOA Review)*, April 2014, p 14.

¹⁷ CCA, s 152BCG(5).

¹⁸ CCA, s 152BDC.

¹⁹ CCA, s 152BD(1).

²⁰ CCA, s 152BCN(2).

²¹ CCA, s 152BCF(14).

²² Explanatory Memorandum, Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010 (Cth), 183.

Thus, where the legislature intended for the ACCC to be able to avoid appropriate consultation or procedural fairness requirements under Part XIC – including in the interests of resolving issues quickly – it has provided explicitly for that to occur.

This is not the case with FADs or substantive variations to FADs. To the contrary, the process for making or varying a FAD requires full and proper consideration of a range of relevant matters and (as recognised in the EM) deals with complex and technical issues.

The ACCC acknowledges in the Discussion Paper that what it is proposing is a major substantive variation to the existing FADs. The matters raised in the Discussion Paper cannot be addressed through minor variations, nor are they urgent matters which can be addressed through a temporary IAD or a BRoC. The ACCC must therefore conduct a proper inquiry, applying the principles of procedural fairness and take into account all relevant substantive and procedural matters before making a decision whether or not to make the proposed variations.

Telstra considers that in the time that has been allowed for this variation inquiry, and given the range and complexity of the matters which must be taken into account, the ACCC:

- has not observed procedural fairness, by not allowing stakeholders sufficient time to deal with those issues; and
- based on the limited (and now extremely dated) information available to it, cannot reasonably reach a decision whether or not the proposed variations to the FADs will satisfy the statutory criteria.

2.3. Proposed variations to the WLR and LCS FADs

The ACCC intends on making variations to the existing WLR and LCS FADs, to specify price and non-price terms of supply for CBD areas. The ACCC considers this to be necessary to address what it describes as an “immediate issue” – i.e. the absence of regulated terms of supply for LCS and WLR in CBD areas.

Telstra does not agree that there is an “immediate issue” that needs to be addressed with some urgency. Supply terms for WLR have never been regulated in CBD areas before. For LCS, there has been no regulation of supply terms in CBDs for over a decade. The recent changes to the LCS and WLR service declarations do not create an urgent or immediate need to specify price and non-price terms of supply in CBD areas.

Further, as discussed below, Telstra considers these proposed variations to be significant. They raise a number of very important economic and legal issues which require careful consideration by the ACCC, taking into account all relevant information.

Among other things, the ACCC’s approach to varying pricing terms for LCS and WLR fails to adequately address the following issues:

- Firstly, in considering whether specification of price and non-price terms for CBD areas is warranted, the Discussion Paper does not consider up-to-date information on market conditions – and does not properly consider alternatives. Therefore, the ACCC cannot reasonably be satisfied that specification of price terms for supply of LCS and WLR in these areas will satisfy the relevant statutory criteria and be in the LTIE.
- Secondly, in proposing prices to be specified for CBD areas, the Discussion Paper does not analyse up-to-date cost information.

The consideration and analysis of up-to-date information and data is critical in both of these steps. Without doing so, the ACCC runs the risk of failing to take into account relevant matters, and making a decision without proper regard to each of the statutory considerations.

Are CBD price / non-price terms warranted?

The Discussion Paper appears to proceed on the assumption that specification of price terms for supply of LCS/WLR in CBD areas must necessarily follow from the decision to vary the service descriptions. The ACCC appears to consider that price and non-price terms must be specified almost immediately after a service becomes subject to declaration in a particular geographic area.

Variation of the service descriptions does not automatically necessitate the introduction of regulated price and non-price terms in CBD areas. A declaration requires that Telstra comply with the Part XIC standard access obligations in respect of the services specified in the declaration. However, a FAD does not necessarily need to specify the price and non-price terms on which Telstra is to comply with these obligations in each and every geographic region covered by the declaration. The only relevant requirement in this respect is that the terms and conditions specified in a FAD must include “*terms and conditions relating to price or a method of ascertaining price*”, a requirement that is already satisfied in respect of the LCS and WLR FADs.²³

A FAD **may** specify any or all of the terms and conditions on which a carrier/CSP is to comply with any or all of the standard access obligations, but need not specify all relevant terms of supply. Further, a FAD may specify different terms and conditions for different geographic areas, and may also provide that any or all of the standard access obligations are not applicable to a carrier/CSP, either unconditionally or subject to conditions or limitations.

The mere fact that a decision has been made to extend the LCS and WLR declarations to CBD areas does not, in and of itself, create a basis for specification of price and non-price terms and conditions in these areas. The processes for declaration of a service (or variation to a declaration) and making a FAD which specifies access terms are separate and distinct, and require consideration of a different range of matters. Any specification of access terms must be based on a substantive inquiry into making a FAD, taking into account all relevant matters. In short, while declaration is a necessary pre-condition for specification of access terms, it is not sufficient in and of itself.

Whether or not price and non-price terms should be specified for all geographic areas, and indeed whether and how the standard access obligations should apply in all geographic areas, are matters that require consideration by the ACCC. Price and non-price terms should only be specified for a particular service in a particular geographic area after taking into account relevant market conditions in that geographic area.

The ACCC has previously noted that the decision on whether to impose *ex ante* regulation of supply terms must take into account market conditions. In particular, the ACCC has observed that *ex ante* regulation under Part XIC of the Act should only apply in areas where an ‘enduring bottleneck’ persists (i.e. where there is a network element or facility that exhibits natural monopoly characteristics).²⁴ This approach is based on the principle that where it is economically efficient, facilities-based competition (rather than *ex ante* regulation of access terms) is more likely to promote the LTIE.

The ACCC has also noted that even in areas where infrastructure-based competition is unlikely to emerge, it should not be automatically assumed that *ex ante* regulation would

²³ CCA, s 152BC(8). As noted in the explanatory memorandum, this provision provides the ACCC with flexibility in how it addresses pricing issues (Explanatory Memorandum, Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010 (Cth), 174).

²⁴ ACCC, *Fixed Services Review: A second position paper*, April 2007, pp ii-iii.

promote the LTIE.²⁵ In these circumstances, the ACCC will need to be satisfied that the benefits from *ex ante* regulation would outweigh any regulatory burden associated with this form of intervention.

The Discussion Paper does not properly take into account market dynamics in CBD areas, and the important differences between CBDs and other areas in this regard. Some relevant characteristics of CBD areas, which ought to be taken into account in any decision to specify terms of supply for LCS and WLR in these areas, are identified below.

While some of these matters may have been raised in the context of the ACCC's recent declaration inquiry, this does not remove the need for proper consideration of these and other relevant matters for the purposes of making a FAD (or variation to a FAD). As noted above, the processes for declaration of a service and making a FAD are separate and distinct, and require consideration of a different range of matters.

No bottleneck in CBD areas

Telstra's longstanding position remains that terms of supply for resale services and other 'lower rung' access services should only be regulated where direct access services are not able to provide effective competition in the supply for fixed line voice (and other) services. This is consistent with the previously stated position of the ACCC, referred to above.

Telstra has also previously stressed that WLR/LCS and other resale services could not be considered bottleneck services in CBD areas due to the variety of alternative regulated services and existence of competitive infrastructure which provides substitute service offerings.²⁶

Telstra has previously presented extensive evidence of take-up of alternative ('higher rung') regulated services in CBD areas, and of extensive deployment and use of alternative network infrastructure. This includes:²⁷

- evidence of significant deployment of DSLAM infrastructure in CBD exchange service areas (**ESAs**). On average, there are [**c-i-c**] DSLAM-based competitors in CBD ESAs, compared to an average of [**c-i-c**] DSLAM-based competitors in the 466 Band 2 ESAs;
- evidence that access seekers have installed more interconnect pairs in CBD ESAs than there are active SIOs within CBD ESAs; and
- evidence of extensive deployment of alternative, principally fibre-based networks within CBD areas. The ACCC's RKR data shows that there is an average of over 8 fibre owners in each CBD ESA,²⁸ and the number of fibre owners in the CBD ESAs has increased between September 2011 and September 2013 – the average increasing from 6.6 to 8.4.

The ACCC has long-recognised the existence of effective competition for LCS and WLR in CBD areas, and this has been reflected in its decision to exempt these services from regulation *ex ante* regulation in CBDs for over 10 years.²⁹ In its 2002 decision in relation to

²⁵ ACCC, *Fixed Services Review: A second position paper*, April 2007, p ii.

²⁶ Telstra, *Fixed Services Review: Response to the Commission's Discussion paper on the Declaration Inquiry*, 6 September 2013, p 30.

²⁷ Telstra Corporation Limited, *Fixed Services Review: Response to other parties' submissions to the Commission's Discussion Paper on the Declaration Inquiry and Response to the Commission's request for market information on 9 October 2013*, October 2013.

²⁸ Australian Competition and Consumer Commission, *Infrastructure RKR, ESAs with two or more fibre asset owners*, September 2013.

²⁹ Telstra Corporation Limited, *Fixed Services Review: Response to other parties' submissions to the Commission's Discussion Paper on the Declaration Inquiry and Response to the Commission's request for market information on 9 October 2013*, October 2013.

the LCS, the ACCC explicitly recognised that "...if the market works effectively without regulation, then regulation will impose unnecessary costs to the economy" and "... if it is likely that the market would function efficiently without regulation, granting the exemption should promote the LTIE".³⁰

Telstra submits that the market for LCS and WLR in CBD areas currently works efficiently without regulation and that no relevant bottleneck exists. Accordingly, there is no justification for *ex ante* regulation of price and non-price terms of supply for these services.

CBD areas are highly competitive

In determining whether *ex ante* regulation of access terms is warranted, it is necessary to properly consider the current state of competition for voice services, as well as alternative networks that operate as substitutes. To the extent that there is currently effective competition, *ex ante* regulation of price and non-price terms for LCS and WLR will not be necessary, and may in fact be detrimental to the LTIE to the extent that it distorts market outcomes.

As set out in Telstra's September 2013 submission,³¹ CBD ESAs exhibit highly competitive outcomes in the relevant markets for fixed line voice services – due to the prevalence of effective infrastructure-based competition.

The ACCC concluded in 2002 that "there is sufficient alternative infrastructure (such as fibre loops) and declared services (local PTSN originating access and ULLS) for originating local calls in CBD areas either being used or can readily be used by alternative carriers and carriage service providers".³² The evidence of strong infrastructure competition in CBDs, which has developed in the absence of regulation, is even more compelling now. As noted in Telstra's previous submissions, both the number of DSLAM competitors and the number of alternative network operators in CBD areas has increased significantly in recent years.³³

Given this level of competition, the concern expressed by the ACCC in the Discussion Paper, that "in the absence of regulated prices for LCS and WLR service in CBD areas, Telstra would be expected to charge prices above efficient costs" is unwarranted. As previously acknowledged by the ACCC, competition in CBD areas provides an effective constraint on Telstra's market behaviour.

Unique Demographics

The intensive investment in competitive infrastructure referred to above has been driven by the unique demographic of the CBD ESAs. As stated in Telstra's September and October 2013 submissions, the CBD exhibits very different demographic characteristics including a larger scale and addressable market size, a more significant presence of businesses and a greater likelihood that a given end-user will require multiple basic access lines. This has driven not only intense competition in the markets for the supply of voice and broadband services (through the use of ULLS and LSS) but also supported competition in alternative fibre-based access networks.

Impact of *ex ante* regulation on investment, innovation and product differentiation

³⁰ Australian Competition and Consumer Commission, *Future Scope of the Local Carriage Service*, Final Decision, July 2002, p 9.

³¹ Telstra Corporation Limited, *Fixed Services Review: Response to the Commission's Discussion Paper on the Declaration Inquiry*, September 2013, p 30.

³² Australian Competition and Consumer Commission, *Future Scope of the Local Carriage Service*, Final Decision, July 2002, p64.

³³ Telstra Corporation Limited, *Fixed Services Review: Response to the Commission's Discussion Paper on the Declaration Inquiry*, September 2013, p 32.

The ACCC states in its Discussion Paper that regulated prices for LCS and WLR in CBD areas will “promote efficient investment and competition in the relevant retail markets” by providing “certainty for both the access provider and access seekers”.³⁴ Telstra does not agree with this analysis, and considers it to be over-simplistic.

Promoting efficient use of and investment in infrastructure requires more than simply providing certainty through specification of access terms. This is particularly the case where there are potentially multiple means of supplying services to end users, and there is scope for regulation of access terms for one means of supply to impact on incentives for investment in and use of alternative means of supply.

In the present case, the availability of alternative means of supplying services to end users is a critical factor. As noted above, CBD areas exhibit particularly unique characteristics, in terms of the deployment and use of alternative infrastructure, including DSLAM infrastructure and alternative networks. Clearly any decision to impose *ex ante* regulation of supply terms for LCS and WLR may impact on incentives for use of this existing infrastructure, and further investment. This in turn is likely to affect outcomes for end-users, in terms of innovation and product differentiation.

The ACCC has previously acknowledged that *ex ante* regulation of LCS and WLR may hinder the investment in and use of alternative means of supply, particularly ULLS-based supply. The ACCC has also observed that increased use of ‘higher rung’ methods of supply (including ULLS-based and alternative network-based supply) is likely to promote the LTIE, as it will allow for greater innovation and product differentiation.

For example, in its 2008 decision to grant exemptions in respect of LCS and WLR, the ACCC observed:³⁵

“Increased ULLS-based provision of voice services will be in the LTIE as it will enable competitors to compete in the downstream market on greater dimensions of supply and allow them to dynamically innovate their services, leading to more sustainable competition compared with pure re-sale models in the longer-term. Increased ULLS-based competition will also stimulate the provision of LCS and WLR from ULLS-based competitors seeking to exploit unused capacity, or to exploit potential economies of scale, on their ULLS-based networks. This will provide increased competitive tension at the wholesale level and constrain Telstra’s ability to price its LCS and WLR services at supra-competitive levels in ESAs in respect of which exemption is granted.

While the ACCC recognises the significance of re-sale services such as the LCS and WLR in facilitating the growth in take-up of ULLS competition, the ACCC is also mindful that ongoing regulation of LCS and WLR may hinder the extent and speed of transition to ULLS-based competition where this supply option may be viable.”

Telstra is concerned that *ex ante* regulation of access terms for WLR and LCS may result in access users substituting alternative services such as ULLS and fibre optic with WLR and LCS. In addition to the use of these services being impacted, the incentive to engage in future investment in these alternative services will be reduced.

The ACCC does not appear to consider such impacts on efficient use of and investment in infrastructure in its Discussion Paper.

³⁴ Australian Competition and Consumer Commission, *Extension of existing fixed line services and wholesale ADSL final access determinations: Inquiry into varying the WLR, LCS, ULLS and LSS final access determinations*, Discussion Paper, April 2014, p 17.

³⁵ ACCC, *Telstra’s local carriage service and wholesale line rental exemption applications: Final Decision and Class Exemption*, August 2008, p 6.

Appropriate level of CBD prices for LCS and WLR

The ACCC proposes to use the nationally averaged pricing in the current FAD and apply that pricing to CBD areas for WLR and LCS. These prices are 8.9 cents for local call for LCS and \$22.84 per month for WLR (the **proposed LCS and WLR CBD prices**). The ACCC notes that these prices were calculated (for non-CBD areas) in the fixed line services model for the previous FAD inquiry three years ago, in 2011 (**2011 FLSM**).

This means that the ACCC intends to set price terms for LCS and WLR in CBD areas for the first time based on cost information which is now three years old, and which is now out of date (having been intended only to determine pricing up to 30 June 2014). Further, the ACCC has not taken into account more recent and more relevant information provided by Telstra.

The ACCC states in its Discussion Paper that:³⁶

“The LCS and WLR service prices, calculated using a BBM pricing methodology, are reasonable estimates of the efficiently incurred costs of supplying those services based on best available information.”

Telstra submits that this conclusion is incorrect.

The current LCS and WLR prices are based on FLSM data and forecasts provided in 2011 and only for the period up to 30 June 2014. The data which the ACCC is relying on is therefore neither up-to-date nor applicable to the period over which it now intends to apply the pricing in CBD areas.

The ACCC goes on to state that:³⁷

“While the ACCC has received more recent information from Telstra under the BBM RKR... this information has not been subject to complete ACCC review and industry consultation.”

Telstra understands from this statement that the ACCC has not taken into account the more recent and more relevant information provided to it by Telstra under the BBM RKR, because this information has not been subject to complete review and consultation.

If the ACCC is to specify price terms for the LCS and WLR in CBD areas, for the first time, this must be based on the most recent and most relevant information available to it. The ACCC must consider relevant information which requires that it allow itself enough time to properly review and consult on the information that has been provided to it. The ACCC must conduct a proper review of all relevant information and take this into account in making any decision to vary the FADs, even if this means some delay in making the decision.

Moreover, there is not an immediate or urgent need to specify price terms for the supply of LCS and WLR in CBD areas, given that *ex ante* regulation has not applied in respect of these services in CBDs for over a decade. Even if such an urgent need could be demonstrated, it would not justify the currently proposed approach. It is not consistent with the statutory scheme for the ACCC to simply ignore relevant information, in the interests of making a decision in respect of a material variation to a FAD more quickly.

2.4. The ACCC acknowledges in the context of its extension decision that it cannot make a reasonable determination of access terms for the period beyond June 2014

The very fact that the ACCC has needed to extend the existing FADs demonstrates that there is not currently sufficient information that would allow for a reasonable determination of prices for LCS and WLR in any geographic area for the period beyond June 2014.

³⁶ Discussion Paper, p 16.

³⁷ Discussion Paper, p 16.

The reason for the extension of the existing FADs is that the ACCC is not yet in a position to make a reasonable determination of price terms for the period beyond June 2014. The ACCC does not currently have sufficient information to make this determination, and has not been able to undertake adequate consultation. As noted in the Discussion Paper, certain information that is necessary for setting price terms for the declared fixed line services beyond 2014 has not yet been subject to complete ACCC review and industry consultation.³⁸

This means that the ACCC cannot reasonably be satisfied that its proposed price terms for the LCS and WLR in CBD areas for the period beyond June 2014 are reasonable and in the LTIE.

In Telstra's view it is not reasonable (and would be inconsistent) for the ACCC to conclude that the information it currently has is insufficient to determine new prices for existing services and areas, while at the same time finding the same information sufficient to justify new pricing for new services/areas.

2.5. A reasonable and appropriate alternative is clearly available – the imminent FAD inquiry process

Telstra's concerns with the approach to this variation process are heightened by the availability of a clear alternative.

If the ACCC decides that it is appropriate to specify price (and non-price) terms of supply for LCS and WLR in CBD areas, this should be based on the most up-to-date and relevant information and most appropriately done as part of the full FAD inquiry, where conditions and limitations may also be properly considered in accordance with statutory criteria as outlined earlier.

The ACCC commenced its public inquiry into making new FADs for each of the declared fixed line services in July 2013, and Telstra understands that this inquiry is soon to commence in earnest. The ACCC has indicated that in light of the number and complexity of the pricing issues to be addressed in this inquiry, it intends to undertake extensive consultation with industry.³⁹ The ACCC expects that this inquiry will take most of the coming financial year.⁴⁰

This process is likely to raise a number of issues that are relevant to, and interact with, terms and conditions of supply for LCS and WLR in CBD areas. Most obviously, this process will involve updating the FLSM and obtaining up-to-date information on the cost of supplying these and the other declared fixed-line services. This inquiry is also likely to canvass up-to-date information on market conditions in various geographic areas.

Addressing the issues raised in the Discussion Paper through the substantive FAD process will allow the ACCC to properly take into account all relevant considerations, and have regard to any relevant interrelationships with other matters to be addressed as part of this more rigorous inquiry.

2.6. Proposed variation to the ULLS and LSS FADs

The ACCC proposes to introduce a charge for IIC in relation to the ULLS and LSS. It proposes that the charge should be \$0.056 (excluding GST) per pair per month, which is the price it set in the final arbitral determinations made in November 2012. The ACCC proposes that this pricing would apply upon the expiration of the current arbitral determinations (i.e. from 1 July 2014).

³⁸ Specifically, information received under the BBM RKR, which the ACCC says in "necessary to set price terms" has not yet been subject to complete ACCC review and industry consultation (Discussion Paper, pp 11, 16).

³⁹ ACCC, *ACCC finalises inquiry into regulation of fixed line services*, Media Release, 17 April 2014.

⁴⁰ ACCC, *ACCC finalises inquiry into regulation of fixed line services*, Media Release, 17 April 2014.

The ACCC considers this to be necessary to address what it describes as an “immediate issue” – i.e. the expiry of the current arbitral determinations, creating a risk that access to the ULLS and LSS on reasonable terms would be delayed.

Telstra does not agree that there is an “immediate issue” which must be addressed by variation to the FADs. Contrary to the concern expressed in the Discussion Paper, Telstra has no intention of seeking to increase IIC charges upon expiry of the current arbitral determinations. The ACCC published its Final Determination and Statement of Reasons for Chime in December 2012, hence the arbitrated price is well known to industry. **[c-i-c begins]**

[c-i-c ends] .

Specification of FAD charges for IIC is not a matter of urgency that requires a variation to the FADs, without proper regard to relevant considerations and without appropriate and effective consultation with stakeholders. As noted above, separate processes were established in the CCA to allow for minor variations to FADs without a public inquiry and to allow urgent and temporary determinations to be made without the need for procedural fairness (IADs). However this is not a case where an urgent and temporary IAD is warranted (or available under the Act), nor is it a minor variation to the FADs that is being proposed.

The proposed specification of IIC charges is a *major* variation to the existing FADs, and as such a proper inquiry is required. A variation of this nature can only be made having regard to all relevant matters, including matters which may be raised in the course of consultation with stakeholders.

Relevant matters which must be properly taken into account

Telstra submits that before an IIC charge could be included in the FADs, several important matters must be taken into account. These include:

- the efficient cost of providing access;
- whether or not IIC charges should apply uniformly across all geographic areas;
- whether the FADs should make different provision with respect to different carriers or carriage service providers (or different classes of carrier / carriage service provider), or different access seekers (or different classes of access seeker).

Each of these matters would need to be properly considered on the basis of up-to-date costing and market information. Further, these matters may need to be considered in the broader context of other issues to be addressed in the new FADs, such as updates to the FLSM.

The ACCC cannot reasonably be satisfied of all relevant matters, simply based on the outcome of arbitral determinations which were concluded in 2012, and the information obtained during the course of those arbitrations. It is incumbent upon the ACCC to properly inquire into all relevant matters, rather than seeking to simply transpose the outcome of these arbitrations into the FADs.

Telstra notes that the arbitral determinations in respect of the IIC charge were made around 18 months ago, based on information provided in the course of those arbitrations. The determinations related to bilateral arbitrations conducted under the previous Part XIC regime (i.e. under the now repealed negotiate-arbitrate framework).

Further, in setting an IIC charge in those arbitral determinations, the ACCC adopted what might be described as a “second best” methodology. The ACCC noted in its determinations

that it would be desirable that the FLSM be used in consideration of the IIC charge.⁴¹ However at that time there were difficulties with using the FLSM to determine the IIC charge, and therefore the ACCC decided to use Telstra's IIC cost model, with certain adjustments that the ACCC considered necessary.⁴²

Telstra is concerned that this regulatory process of setting price terms in FADs which would be available to all access seekers should not be used as a means of extending pricing which was set down as part of the resolution of bilateral disputes, and which was based on a "second best" cost estimation methodology.

Telstra is also concerned that the ACCC has not allowed sufficient time for stakeholders to make submissions on all relevant matters, and has not allowed itself enough time to take these matters properly into account.

Telstra considers that, if the ACCC considers it appropriate to specify IIC charges as part of the ULLS and LSS FADs, this should be done as part of the soon-to-commence full FAD inquiry.

⁴¹ ACCC, *ULLS and LSS Access Disputes –Chime Communications Pty Ltd / Telstra: Reasons for Final Determinations*, November 2012, p 15.

⁴² ACCC, *ULLS and LSS Access Disputes –Chime Communications Pty Ltd / Telstra: Reasons for Final Determinations*, November 2012, p 16.