4 June 2014

Mr Michael Cosgrave  
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Australian Competition & Consumer Commission  
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By email: [Michael.Cosgrave@accc.gov.au](mailto:Michael.Cosgrave@accc.gov.au)

Dear Mr Cosgrave

**Public inquiry into the fixed line services declarations – Final Report**

The purpose of this letter is to place on the record the concerns that Telstra has with the Commission’s Final Report[[1]](#footnote-1) on its decision to remove the longstanding Wholesale Line Rental (**WLR**) and Local Carriage Services (**LCS**) exemptions in the CBDs. Telstra has reviewed the Commission’s Final Report in this matter and is concerned that the Commission has misunderstood or misinterpreted some of the key facts relating to the operation of the voice market in the CBDs. Telstra is not seeking to challenge the decision. However, given that the fixed services review Final Access Determination (**FAD**) inquiry is due to commence shortly, Telstra considers it important that the Commission revisit its understanding of the evidence and facts before it.

For example, it is apparent that the Commission’s decision to remove the exemptions was strongly motivated by the fact that the WLR price in the CBDs is higher than the regulated rate in non-CBD areas, which led the Commission to conclude that there is a competition ‘problem’ in the CBDs that needed to be fixed. However, the Commission has not addressed the fact that the CBD areas have been exempt from the WLR and LCS declarations for over a decade and in that time:

1. Telstra has continued to supply WLR and LCS services in these areas over the entire period and has not raised prices in more than 7 years – with price points for the WLR/LCS bundle being based on previous Commission Retail Minus Retail Cost pricing. Telstra also provided evidence that the effective price (or Average Revenue per SIO) of the WLR/LCS bundle has in fact fallen substantially since 2005 by approximately **[c-i-c begins] xx** **[c-i-c ends]** – itself driven by strong fixed to mobile and VoIP based substitution;
2. By any measure – market entry, market share, services available, service differentiation, levels of innovation etc. – CBDs are the most competitive parts of the voice market in Australia; and
3. The extent to which exemptions for WLR and LCS have promoted investment in fixed infrastructure and led to the expansion of service differentiation and innovation, intense competition across the bundle of telecommunications services (including voice), and overall lower retail prices.

The Commission itself has long viewed the CBDs as being effectively competitive following a long term, sustained period of substantial investment in these areas from competitive fixed infrastructure providers.

As Telstra noted in its recent response[[2]](#footnote-2) to the Commission’s proposals to vary the WLR, LCS, ULLS and LSS FADs[[3]](#footnote-3), Telstra aims to achieve the best outcomes for its customers and believes that any potential decision relating to imposition of 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.

Telstra believes that a number of factors that the Commission considered in its redeclaration inquiry should be revisited as part of the FAD inquiry. With this in mind, Telstra has set out below a number of key areas where it considers that the Commission will need to ensure that it is fully informed as to the facts relating to the voice market in the CBDs:

**Competition in the voice market in the CBDs**

There are a number of aspects to this factor:

* *The availability of alternative fibre infrastructure*. It appears that in the recent redeclaration inquiry, the Commission limited its enquiries to data available under the Customer Access Network Record Keeping Rule, despite the fact that alternative voice services can be and are being provided over well-established and extensive fibre access networks in the CBDs. Self evidently, Telstra is not in a position to quantify the scale of competing fibre networks or provide details of the services being provided over competing fibre networks, however, Telstra considers that this part of the market cannot be ignored in the FAD inquiry.
* *The ubiquity of ULLS-based infrastructure in the CBDs*. The evidence shows that access seekers have installed more interconnect pairs than there are SIOs in the CBDs, which calls into question whether or not WLR exhibits bottleneck characteristics in those areas and whether there is in fact an issue with respect to economies of scale in providing voice services using access seeker equipment.Further, several ULLS-based operators operate PSTN-equivalent, circuit-switched voice networks, enabling end-users to acquire voice-only services, as well as bundles of voice and broadband.
* *The availability of substitutes to the WLR and LCS*. The evidence shows that there are a range of substitutes available in the CBDs, via both alternative fibre networks and via the ULLS. With respect to fibre, clear examples of alternatives can be found in Telstra’s South Brisbane network and other fibre estates in Greenfield areas (which include commercial locations such as Brisbane Airport) in which Telstra does not operate fixed copper infrastructure. Other fibre providers also provide competitive IP-based voice services, which operate as full substitutes to traditional PSTN voice services such as WLR and LCS in CBD areas, including in the highly competitive enterprise and government segment.

**The impact on competition and end-users arising from the regulation of WLR in the CBDs, including whether, in practice, there will be any benefits to national, whole of business competition for enterprise and government customers**

Again, there are a number of important aspects to this factor:

* + *WLR services make up a small proportion of services nationally* (and in CBDs are greatly outnumbered by ULLS SIOs), therefore the pricing of WLR services in the CBDs is very unlikely to impact on the ability of competitors to compete with Telstra.
  + *The true scale of the reliance upon WLR in the CBDs in order for Telstra’s competitors to provide whole of business, national services.* Given the extensive alternative infrastructure in the CBDs (including both fibre and ULLS), it is likely that any such reliance on WLR is likely to occur outside those areas.
  + *The actual requirements of enterprise and government customers in terms of products and services.* In its redeclaration inquiry, the Commission referred to such customers requiring bundled voice and broadband services whereas in reality, such customers are far more likely to require bundles of voice, data, mobiles and managed services. Telstra considers that the Commission needs to better inform itself as to the actual requirements of large (and sophisticated) retail customers (who negotiate complex, whole of business pricing arrangements with service providers) in order to determine the relevance of WLR to whole of business deals.
  + *Whether the removal of the exemptions will in fact encourage* more *innovation in service for end users.* Telstra notes that the Commission stated that *“Declaring the WLR in CBD areas would promote competition and lead to lower retail prices,* ***more innovation*** *and greater choice for end-users.”[[4]](#footnote-4)* [emphasis added] Telstra considers that this statement is incorrect and notes that it is inconsistent with other statements from the Commission such as *“...resale services do not enable an access seeker to develop innovative product offerings, which would allow it to compete more effectively in the retail market.”[[5]](#footnote-5)*

As noted above, Telstra acknowledges that the Commission states that it considered each of the above factors in the course of the declaration inquiry. However, Telstra is concerned that the evidence and facts before the Commission do not support the conclusions reached by the Commission and are, perhaps, based upon a misunderstanding of that evidence and how the competitive dynamics of the CBD markets operate in practice. Telstra will, of course, provide further submissions on all of the above matters in due course as part of the FAD inquiry and encourages the Commission to conduct a rigorous inquiry to establish the relevant facts and market circumstances in CBD areas.

Finally, Telstra notes that the Commission appears to have misunderstood Telstra’s arguments with respect to the price of WLR in the CBDs. The Commission states that Telstra *“...submitted the reason for this differential is the erosion of its market share, given the declining number of WLR SIOs in these areas.”[[6]](#footnote-6)* This is incorrect. Telstra argued that by focusing solely on the price of WLR the Commission was in error and the fact that the number of WLR SIOs has declined is evidence of competition in the CBDs. Telstra did not argue that the higher price of the WLR was a result of the decline in the number of SIOs.

Please contact me or Pauline Crichton on (03) 8649 2010 or [Pauline.Crichton@team.telstra.com](mailto:Pauline.Crichton@team.telstra.com) if you have any queries.

Yours sincerely

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1. Australian Competition & Consumer Commission, *Public Inquiry into the fixed line services declarations Final Report,* April 2014. [↑](#footnote-ref-1)
2. Telstra Corporation Limited, *Fixed line services FAD inquiry, Response to ACCC discussion paper on extending and varying the fixed line final access determinations,* May 2014. [↑](#footnote-ref-2)
3. Australian Competition & Consumer Commission, *Fixed Services Review, 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. [↑](#footnote-ref-3)
4. ACCC, April 2014, p37. [↑](#footnote-ref-4)
5. ACCC, April 2014, p12. [↑](#footnote-ref-5)
6. ACCC, April 2014, p39. [↑](#footnote-ref-6)