

## **Submission to the ACCC's Public Inquiry into the Declaration of the Fixed Line Telecommunications Services**

**October 2018**

Macquarie Telecom Group ('MTG') welcomes the opportunity to make this submission to the Australian Competition and Consumer Commission ('ACCC'). This submission responds to the ACCC's consultation and position paper in relation to its public inquiry into the declaration of the fixed line telecommunications services.<sup>1</sup>

MTG is a retail service provider ('RSP') which has provided a range of fixed network voice and data services to end-user for more than 25 years using wholesale services provided by fixed network operators. MTG welcomes and supports the ACCC's position "...to extend the six existing declarations of the fixed line services for five years until 30 June 2024."<sup>2</sup> MTG supports the ACCC's view because this provides RSPs like MTG with a more certain operating environment through ensuring continuity of service supply and promotes the long-term interests of end-users ('LTIE') by enabling RSPs to offer service and price differentiation to end-users and by ensuring the efficient use of existing infrastructure.

In addition, MTG welcomes the ACCC's decision to take a "*streamlined approach*" to this declaration inquiry given its position to extend the declarations. MTG supports this decision because this minimises the costs of regulation on a matter which is stable, well understood and accepted by industry participants. On this latter point, MTG notes that Telstra supported the declaration of the six services in the ACCC's previous public inquiry in 2014.<sup>3</sup> It is unknown whether Telstra continues to support declaration of the six services. In any case, because Telstra's fixed copper network remains a bottleneck there remains a risk that Telstra could refuse to supply or set unreasonable terms of supply for these services which would be detrimental to competition. As such, MTG submits that the six fixed line telecommunications services should continue to be declared.

Telstra, as the owner of the legacy copper network, has the ability and the incentive to discriminate against access seekers requiring access to its network. This market power pertains to each customer connected to the network.

---

<sup>1</sup> ACCC, Fixed line telecommunications services declaration inquiry, Consultation and position paper, August 2018, ('Consultation Paper')

<sup>2</sup> *ibid*, page 4

<sup>3</sup> ACCC, Public Inquiry into the fixed line services declarations Final Report, April 2014

In this submission MTG has responded to each of the consultation questions raised in the Consultation Paper and has commented on one other matter raised in the Consultation Paper. This submission is presented under the following headings:

- Responses to consultation questions;
- Other matters; and
- Summary of key points.

## Responses to Consultation Questions

### 1. Do you agree that the service descriptions remain current and appropriate?

MTG notes that the service descriptions for the six services are set out in the ACCC's final report of its 2014 declaration inquiry. Having reviewed these service descriptions in the context of the existing operating environment, MTG agrees with the ACCC's view that " ... *the existing service descriptions remain current and appropriate*<sup>4</sup>. In forming this view, MTG notes that a number of relatively minor changes were made to the service descriptions in 2014. These changes reflected the emerging NBN environment and various technical developments and were made to ensure that the service descriptions were appropriate for the existing and emerging operating environment. MTG further notes that the service descriptions have remained substantially the same over a long period of time.

MTG considers that the existing service descriptions are well understood and remain reflective of the existing operating environment. Moreover, MTG is not aware of any concerns arising from the service descriptions that impact on its commercial arrangements with its supplier, i.e., Telstra or its retail customers.

### 2. Do you consider that continued declaration of network access services will promote competition and the economically efficient use of infrastructure? Please explain the reasons for your view.

MTG notes that in deciding whether a given service should be declared the ACCC must be satisfied that declaration is in the LTIE. In turn, the LTIE assessment requires the ACCC to consider the extent to which declaration will serve the following objectives:

- promoting competition;
- achieving any-to-any connectivity; and
- economically efficient use of, and investment in, infrastructure.

---

<sup>4</sup> Consultation Paper, page 8

MTG is of the view that continued declaration of the network access services, specifically the ULLS and the LSS, would promote competition and the efficient use of infrastructure. The reasons for this view are discussed below.

### *Promoting Competition*

As noted in the Consultation Paper, Telstra's fixed " ... copper network remains relevant to a large number of end-users."<sup>5</sup> Telstra's copper network continues to be used for providing voice and broadband services to end-users in the NBN fixed line services footprint where services are not yet available as well as to end-users in the NBN fixed wireless and satellite coverage areas where Telstra's network will not be "switched-off" at this time. As such, Telstra's fixed copper network continues to be a bottleneck for accessing a large number of end-users.

Telstra is the major supplier of retail fixed voice and broadband services in Australia. As such, Telstra has little incentive to supply the ULLS and LSS which enables its retail competitors (who are also its wholesale customers) to use its fixed copper network to serve their own retail customers. The continued declaration of the ULLS and LSS would enable RSPs to offer end-users voice and broadband services with scope for price competition and service differentiation. Moreover, continued declaration removes the risk that Telstra could refuse to supply or set unrealistic terms of supply for these services which would be detrimental to competition.

### *Efficient use of infrastructure*

MTG believes that the continued declaration of the network access services is consistent with promoting the efficient use of infrastructure. This is because declaration will result in efficient cost-based pricing of these services. In turn, this will ensure that Telstra's fixed copper network is used efficiently. In the absence of declaration, Telstra's pricing of the ULLS and the LSS could be higher than regulated prices. If this was the case, RSPs would demand less which would lead to network infrastructure becoming idle or underutilised, that is, infrastructure would be inefficiently used.

3. Do you consider that continued declaration of resale services will promote competition and the economically efficient use of infrastructure? Please explain the reasons for your view.

MTG is of the view that continued declaration of the resale access services, specifically the WLR, LCS and FOAS (pre-selection and override) services, would promote competition and the efficient use of infrastructure. The reasons for this view are discussed below.

### *Promoting Competition*

---

<sup>5</sup> *ibid*, page 12

As noted in its response to the previous question, Telstra's fixed copper network continues to be a bottleneck for accessing a large number of end-users. Telstra as the major supplier of retail fixed voice and broadband services in Australia has little incentive to provide the resale access services to its retail competitors (who are also its wholesale customers) to serve their own retail customers. The continued declaration of the resale services would enable RSPs to offer end-users voice and broadband services with scope for price competition and service differentiation. MTG considers that the continued declaration of the resale services would ensure that end-users are provided with an alternative to Telstra as a service provider and would create competitive tension in terms of price, service and service bundling. Moreover, continued declaration removes the risk that Telstra could refuse to supply or set unrealistic terms of supply for these services which would be detrimental to competition.

#### *Efficient use of infrastructure*

MTG believes that the continued declaration of the resale services is consistent with promoting the efficient use of infrastructure. This is because declaration will result in efficient cost-based pricing of these services. Cost-based pricing is appropriate for ensuring that network resources are allocated to their most productive use. In turn, this will ensure that Telstra's fixed copper network is used efficiently. In the absence of declaration, Telstra's pricing of the resale services could be higher than regulated prices. If this was the case, RSPs would demand less which would lead to network infrastructure becoming idle or underutilised, that is, infrastructure would be inefficiently used.

4. Do you consider that continued declaration of voice interconnection services will achieve any-to-any connectivity, promote competition and maintain economically efficient use of existing infrastructure? Please explain the reasons for your view.

MTG is of the view that continued declaration of the voice interconnection services, specifically the FOAS (special numbers) and the FTAS would achieve any-to-any connectivity, promote competition and maintain economically efficient use of existing infrastructure. The reasons for this view are discussed below.

#### *Any-to-any Connectivity*

MTG notes that any-to-any connectivity is a concept by which customers of one network can make (and receive) calls to (and from) any other network. The voice interconnection services are essential for promoting any-to-any connectivity. These are the services which enable end-users of one network to connect with end-users and services of another network. That is, without such services, any-to-any connectivity cannot be provided.

#### *Promoting Competition*

As noted in its response to question 2, Telstra's fixed copper network continues to be a bottleneck for accessing a large number of end-users. Telstra as the major supplier of retail fixed voice and broadband services in Australia has little incentive to

provide the voice interconnection services to its retail competitors (who are also its wholesale customers) to serve their own retail customers.

The FTAS is essential to enable customers of one network to connect with customers of another network. The FTAS is necessary for operators of other fixed and mobile networks to be able to terminate calls to end-users on Telstra's fixed copper network. In addition, the FOAS (special numbers) is used by access seekers as an essential input enabling them to provide a range of calling services, such as long-distance, international and toll-free services. As such, continued access to the FOAS (special numbers) and the FTAS are fundamental for ensuring continued competition and that end-users are offered a choice of service provider for voice services.

MTG submits that, continued declaration of the voice interconnection services would enable access seekers to offer end-users voice and broadband services with scope for price competition and service differentiation. MTG considers that the continued declaration of these services would ensure that end-users are provided with an alternative to Telstra as a service provider and would create competitive tension in terms of price, service and service bundling. Moreover, continued declaration removes the risk that Telstra could refuse to supply or set unrealistic terms of supply for these services which would be detrimental to competition.

#### *Efficient use of infrastructure*

MTG believes that the continued declaration of the voice interconnection services is consistent with promoting the efficient use of infrastructure. This is because declaration will result in efficient cost-based pricing of these services. Cost-based pricing is appropriate for ensuring that network resources are allocated to their most productive use. In turn, this will ensure that Telstra's fixed copper network is used efficiently. In the absence of declaration, Telstra's pricing of the voice interconnection services could be higher than regulated prices. If this was the case, access seekers would demand less which would lead to network infrastructure becoming idle or underutilised, that is, infrastructure would be inefficiently used.

#### *5. Do you support the extension of the six fixed line declarations?*

Yes. MTG supports the extension, or continuation of, the six fixed line service declarations. MTG agrees with and supports the ACCC's position "...to extend the six existing declarations of the fixed line services for five years until 30 June 2024."<sup>6</sup> As noted in its responses to questions 2, 3 and 4 above, MTG considers that the continuation of the six declarations promotes the LTIE by enabling RSPs to offer service and price differentiation to end-users and by ensuring the efficient use of existing infrastructure. In addition, MTG submits that in the absence of declaration there remains a risk that Telstra could refuse to supply or set unreasonable terms of supply for access to the six fixed services which would be detrimental to competition.

---

<sup>6</sup> *ibid*, page 4

6. *Is the extension of the declaration for five years until 30 June 2024 an appropriate timeframe, or should a shorter period be considered?*

Yes. MTG is of the view that an appropriate duration for the declarations of the fixed-line services is five years. MTG bases its view on consideration of the following:

- the ACCC's position is "...to extend the six existing declarations of the fixed line services for five years until 30 June 2024."<sup>7</sup>
- the need to provide RSPs and investors with a more certain operating environment;
- despite the rollout of the NBN network, Telstra's fixed copper network is and will remain relevant to a large number of end-users for the foreseeable future;
- the precedent that the ACCC has set in relation to the current fixed services declaration which has a duration of five years; and
- that there have been no evident concerns with the five-year duration of the current fixed services declaration.

7. *If the six services are declared by the ACCC, are there any issues or views you would like to flag with respect to price and non-price terms for access to the potentially declared services at this stage?*

MTG appreciates the opportunity to raise issues relevant to the ACCC's anticipated final access determination public inquiry which would follow the declaration of the six fixed services. However, at this time MTG does not wish to flag any specific issues that would be relevant to this anticipated inquiry.

### **Other Matters**

There are other factors and context that contribute to the need to have these services re-declared including:

- A. The pace of the rollout. The rollout is now years behind the projections in 2014 and continuing to slip. NBN last month again revised down its expected number of activated premises in June 2019 by 1.4 million SIOs. NBN's projections for activations to uptick beyond 2019 must be treated with caution, given its history of missing targets.
- B. The impact of the Multi-Technology Mix. The MTM has resulted in the continued use of the copper network. This has had two impacts. Firstly, reports of poor user experience by those on FTTN, HFC and, to a lesser extent, FTTC has caused consumer resistance to migrating to the NBN until they have no choice. Secondly, the continued use of the copper means consumers no longer face an disconnect/reconnect event at time they must choose which

---

<sup>7</sup> *ibid*, page 4

RSP will supply NBN-supported retail services. This means competitive choice on the legacy copper services becomes more important. Telstra has a strong incentive to minimise competitive migration, as discussed below. The delays and continuing uncertainty about the fitness for purpose of the HFC component of the NBN, as well as strong consumer dissatisfaction with the NBN HFC service, means the legacy copper in those locations could remain as the only viable access technology for competitors for many years.

- C. Uncertainty about the future of the USO. The Government has begun a process to develop replacement for the USO scheme, but there is no clarity as to when it will conclude. In the interim, the obligation to provide a Standard Telephone Service continues to 2032. It is unclear what the implications this are with regard to the copper remaining in service.
- D. Pricing uncertainty relating to NBN services. NBN's pricing model has been the subject of continual review and change, and there is a widely shared view that it continues to be unsustainable. The access prices for regulated copper-based services continues to provide an important benchmark and competitive constraint on NBN pricing.

The above factors combined mean the on-going relevance of the copper declaration is greater than expected in 2014, and is likely to continue into the foreseeable future.

The consultation and position paper also observes the continuation of the declaration is unlikely to have an impact on investment. Investment in alternative last mile access networks will be driven by judgements about the impact of NBN on the recovery of such investment. Investment to utilise ULLS/LSS services will be determined by the timing of the rollout of the NBN on a location by location basis. The removal of the declaration will not increase investment in either last mile infrastructure or ULLS/LSS based services. Removing the declaration could result access to the ULLS/LSS becoming less viable. Telstra continues to have a strong incentive to maximise its retail market share in fixed broadband markets ahead of the cutover of services to the NBN. This means it would have a strong incentive to leverage its existing market power to disadvantage competitors seeking access to unbundled copper services.

MTG also believes the uncertainty created by the stop-start NBN rollout and changes to its strategy, technology choices and pricing have meant the transition to the new network has already created more disruption and undermining to confidence in the industry than need have been the case. The removal of declaration of the legacy copper-based services would add to this disruption and uncertainty, to the detriment of investment, competition and consumers.

MTG also notes that the Consultation Paper raises the issue of internet interconnection. In particular, the ACCC reiterates its earlier commitment in its recent communications sector market study to assess whether access to internet interconnection is available at prices, and on terms, that support competition in downstream markets.<sup>8</sup>

MTG wishes to reiterate its very deep concerns relating to internet interconnection which MTG raised in its submission to the ACCC's market study.<sup>9</sup> In particular, MTG's submission states the following at page 14:

*"MTG has raised its concerns with the "gang of four" peering arrangement with the ACCC on many occasions in the past. MTG submits that the arrangement is a cartel which is prohibited under the Competition and Consumer Act 2010 and as such the ACCC should exercise its appropriate responsibilities. MTG believes that the "gang of four" arrangement is a cartel because it is an agreement between a group of businesses which fixes prices to protect the profits of the members of the group."*

MTG urges the ACCC to undertake, and to report on, its assessment of access to internet interconnection.

## **Summary of Key Points**

MTG welcomes the opportunity to make this submission to the ACCC's fixed services declaration inquiry. The key points in this submission that MTG wishes to emphasise are the following:

- MTG welcomes and supports the ACCC's position "...to extend the six existing declarations of the fixed line services for five years until 30 June 2024" and to adopt a streamlined approach to this public inquiry on the basis of this position;
- MTG considers that the continuation of the six declarations promotes the LTIE by enabling RSPs to offer service and price differentiation to end-users and by ensuring the efficient use of existing infrastructure;
- in the absence of declaration there remains a risk that Telstra could refuse to supply or set unreasonable terms of supply for access to the six fixed services which would be detrimental to competition; and
- the duration of the fixed service declaration should be a period of five years, consistent with past practice and the absence of any concerns.

---

<sup>8</sup> ACCC, Communications Sector Market Study, Final Report, April 2018, page 10

<sup>9</sup> <https://www.accc.gov.au/system/files/Submission%206%20-%20Macquarie%20Telecom.pdf>



MTG would be pleased to provide any further information that you may require and would welcome an opportunity to discuss this submission with the ACCC.

Yours sincerely

Matt Healy  
National Executive - Legal, Industry and Policy