OPTUS

Submission in response to ACCC Consultation and Position Paper

Inquiry into final access determinations for fixed line services

Public Version

April 2019

INTRODUCTION

1. Optus welcomes the opportunity to provide input into the fixed line Final Access Determinations (FADs). The ACCC is proposing a nominal price rollover of fixed line FAD prices for a further 5-year period. The ACCC considers that such an approach will deliver regulatory certainty, timely implementation and price stability over the remainder of the NBN rollout and fixed line migration. Optus agrees with the position.

2. The existing FAD rates were developed based on a complex and detailed building block cost model and subject to robust scrutiny which was subsequently affirmed by the Federal Court. However, such pricing consultations took considerable time and resources to complete, starting in July 2013 and finalised almost four years later in March 2017 when the Federal Court dismissed Telstra's appeal.

3. At that time, the NBN rollout was still in the relatively early stages and had not reached peak volume rollout. The length of time to complete the FAD process was still warranted. But the NBN is forecast to reach peak volume rollout this year with the rollout and fixed line migration to be completed in about 2022. And given the impending finalisation of the migration process, a prolonged and costly FAD process can no longer be justified.

4. Optus agrees that the long-term interests of end-users (LTIE) are best promoted by maintaining the existing prices and rolling these over on a nominal basis for the further five year period. Such an approach, while a departure from the traditional cost-based approach, would provide regulatory certainty to all of industry as to prices that will apply to regulated legacy services until the NBN migration is completed.

5. Price stability for legacy services over the next five years will ensure that that end-users are not adversely impacted by significant price changes.

REGULATORY CERTAINTY PROMOTES THE LTIE

6. The ACCC proposes rolling over the terms and conditions in the existing fixed line FADs. Specifically, the ACCC is proposing:

   (a) Prices for regulated fixed line services be rolled over on a nominal basis;

   (b) That existing price relativities should be maintained;

   (c) That prices should apply for a 5-year term to align with the declaration period for the services;

   (d) That it is not appropriate at the current time to develop new fixed principles for the FADs; and

   (e) That non-price terms and conditions continue to apply on the same basis.

7. The ACCC briefly sets out high level reasons in support of this approach, which include:

   (a) Maintaining price relativities will provide stability during the transition to the NBN, the benefit of which will outweigh any potential efficiency losses as a result of not allowing price relativities to move with cost relativities.

   (b) Updating the FLSM or potentially developing a new cost model, would require extending the current inquiry for at least another 12 months, and impose additional resource demands and regulatory burden on industry, which would likely off-set any benefit of new pricing.

   (c) A 5-year time period will align the expiry of the fixed line services declaration and FADs, promote stability and minimise the risk of over- or under-recovering the costs associated with supplying services, noting that the ACCC has the flexibility to consider a variation to the FADs if required prior to the proposed expiry.

   (d) The existing prices were broadly based on the application of the fixed principles (with some limited exceptions) which was upheld by the Federal Court and the ACCC does not think there would be benefits to applying the fixed principles for the first two years of the regulatory period, and that there is not sufficient certainty to develop new fixed principles at this time.

   (e) The ACCC is not aware of any widespread problems with the existing non-price terms and conditions and that to adopt an alternative approach, such as a more comprehensive set of non-price terms and conditions, would be a significant burden to industry and the ACCC to develop.

8. Optus supports the nominal rollover of the fixed line FADs for a further five years as proposed by the ACCC, as the regulatory certainty provided by such an approach will promote the LTIE. It will allow for timely implementation and price stability for industry over the remainder of the transition to the NBN, which will ultimately be to the benefit of end-users.

The FAD period should cover the remainder of the NBN migration

9. We note that the completion of the NBN, replacing Telstra's legacy CAN, is not expected to be finished until about 2022. Until such time, access to regulated fixed line services

supplied over Telstra's CAN will still be needed. The ACCC recognised this with the recent decision to extend the declaration of fixed line services for a further five years.[1]

10. We consider the fixed line FADs should align with the declaration timeframe and be in place for five years. We note that flexibility remains for variation under the legislative framework if this were needed for some reason prior to the expiry of the FADs.

A departure from the traditional cost-based approach is justified in these circumstances

11. Traditionally, the ACCC has taken a cost-based approach to pricing regulated fixed line services. Following the adoption of the building block approach, detailed cost models were developed and used to determine pricing over the last ten years. This approach has addressed the relevant legislative criteria that must be applied to FADs to find a balance in establishing prices that promote the LTIE while taking into account the legitimate business interests of an access provider (including the direct costs of providing access to the service).

12. These past inquiries have been time and resource intensive, often involving consultants to review/develop cost models, detailed submissions and have taken around 12 months or longer to complete. Further, any subsequent judicial challenge to the ACCC's decision delays certainty of final prices. We note the ACCC acknowledges it is likely a detailed price inquiry would involve extending the existing FADs for at least a further 12 months until new prices are finalised. Optus submits this timeframe is more likely to extend to over two years, consistent with previous FAD modelling processes. This time is likely to be extended even further with the possible of judicial appeals. The previous FAD process started in July 2013 and was not finalised until the Federal Court decision in March 2017.

13. This means there would be uncertainty around future pricing for at least at least a further two years, with the possibility of this extending for a longer period. We agree that any potential benefits of new pricing would likely be outweighed by the resource demands and regulatory burden on industry. We consider that at this stage of the NBN rollout, a departure is warranted from the traditional pricing approach.

14. The existing FAD prices were subject to a detailed inquiry five years ago and then judicial review in the Federal Court where the ACCC's pricing approach was affirmed. Existing FAD prices and the pricing approach has been subject to robust scrutiny when originally determined, which would provide some comfort in departing from a detailed inquiry in this instance and applying these prices going forward. It follows then, that the fixed principles should not be applied as part of this pricing inquiry.

15. Therefore, applying a nominal rollover of prices will promote the LTIE by providing a timely resolution as otherwise any potential benefits may not outweigh the resource demands and regulatory burden involved in a lengthy pricing inquiry.

A price rollover provides regulatory certainty and price stability

16. Optus shares the concern that applying the fixed principles and undertaking a detailed pricing inquiry with updated cost model inputs could result in outcomes that create price instability and uncertainty which could have negative impacts in downstream retail markets.

17. Updated cost model inputs could result in (potentially) significant changes in wholesale prices, which could then flow through to downstream retail markets during the remainder

[1] ACCC, Fixed line telecommunications services declaration inquiry – final decision, November 2018.

of the fixed line migration to the NBN. This could inhibit competition by increasing costs for retail service providers (if wholesale prices were to increase significantly) which may increase retail prices or cause RSPs to cease supplying services; or by potentially delaying migration of customers to the NBN (if prices were to decrease). Neither one of these outcomes are efficient nor in the long-term interests of end-users.

18. Optus does not see the need to include a CPI adjusted price increase (as suggested as an option in Telstra's preliminary submission).[2] Telstra notes that the costs of maintaining the network are not falling at the same rate as customers are migrating to the NBN and the majority of remaining areas where customers are not required to migrate to the NBN are in high cost regional and rural areas (that is, those areas serviced by the NBN fixed wireless and satellite networks).

19. However, Optus does not consider that a CPI adjustment is warranted. Firstly, CPI is currently low, at 1.3% for the year to March 2019[3]. Further, the issue of compensation to Telstra for the migration of customers off its network was considered extensively as part of the last pricing inquiry. It was determined that Telstra was otherwise being compensated and the migration of customers off Telstra's network as a result of the NBN rollout should not be taken into account in setting wholesale charges. Finally, we consider pricing related to regulated services supplied in areas where Telstra is not required to migrate fixed line customers off its copper network is an issue that may require separate and further consideration at a later date once the required fixed line migration is completed.

20. Therefore, Optus considers that a rollover of nominal prices provides timely price stability and regulatory certainty which promotes the long-term interests of end-users by encouraging the efficient use of infrastructure and enabling competition to be promoted during the remainder of the fixed line migration to the NBN.

Non-price terms should remain a regulatory fall-back

21. The ACCC has noted it is not aware of any regulatory issues regarding non-price terms of access and that to develop a comprehensive set of non-price terms would be a burden to industry and the ACCC.

22. Optus also agrees with this view. The existing non-price terms were subject to detailed consultation when first developed and designed to provide a fall-back for key terms if Telstra and an access seeker were unable to negotiate. Further, factors that were taken into account in setting these non-price terms are unlikely to have changed.

23. Optus considers that a rollover of the non-price terms will promote the LTIE by ensuring established fall-back terms continue to apply to regulated services where needed.

[2] Telstra submission to ACCC fixed line services FAD preliminary consultation – public, p. 6.

[3] Australian Bureau of Statistics, Media release, 24 April 2019. At https://www.abs.gov.au/ausstats/abs@.nsf/latestProducts/6401.0Media%20Release1Mar%202019

INTERCONNECTION WILL NEED TO BE CONSIDERED IN FUTURE

24. Notwithstanding Optus' view that the existing fixed line FAD prices should be rolled over on a nominal basis for a further five years, the ACCC will need to further consider the pricing of fixed interconnection services as services are unaffected by the migration to NBN. Optus has previously submitted that both fixed and mobile termination should be considered together and that prices for these services should be set using the same cost methodology given these prices can influence the cost of calls for both fixed and mobile markets.[4]

25. Both interconnection services are bottleneck services, access to which is essential for the completion of calls and achieving any to any connectivity. FTAS is essential to the completion of calls to fixed lines (whether from fixed or mobile origination) and MTAS is essential to the completion of calls to mobile services (whether these originate on mobile or fixed networks). That is, FTAS is a relevant input for services supplied in mobile markets and MTAS is an essential input for services supplied in fixed markets.

26. It is Optus' view that greater efficiencies would be achieved if the price for terminating services in either market were set relative to each other using the same cost methodology. Optus is concerned that if prices are not set using the same cost methodology or taking into account relativities between the two services, that mobile termination rates could approach, or even fall below, fixed termination rates. This could influence consumer decisions about downstream calls and investment decisions for telecommunications companies, leading to inefficient outcomes that do not promote competition in related markets; efficient use of and investment in infrastructure or the long-term interests of end-users.

27. We note there has been a broader trend worldwide to take this relationship into account when setting mobile and fixed termination rates and that common methodologies across fixed and mobile termination rates have been adopted. We recommend the ACCC consider in future termination pricing decisions how best to address this issue.

[4] Optus, Submission in response to ACCC Discussion Paper Mobile terminating Access Serice: Final Access Determination – Public version, August 2014. Pp. 6-10.