

The logo for Optus, consisting of the word "OPTUS" in a bold, teal, sans-serif font.

Submission in response to
ACCC Consultation Paper

**Fixed line
telecommunications
services declaration inquiry**

Public Version

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INTRODUCTION

1. Optus welcomes the opportunity to provide comments to the inquiry into the continuing declaration of fixed line services. The regulation of fixed line services has been the cornerstone of competition in the Australian communications markets. The declaration of fixed line services during the migration to NBN will ensure continuing competition and ensure the orderly migration of the remaining PSTN premises to the NBN.
2. The ACCC most recently considered declaration of the fixed line services in 2014 and found that declaration continued to promote the long-term interest of end-users (LTIE). At the time, the ACCC also made a number of key findings:¹
 - (a) Telstra is either the only provider, or has significant market power, in the wholesale market for network access services, resale services and interconnection services. Telstra also has significant market power in the retail markets for fixed voice services, fixed broadband services and bundled fixed voice and broadband services;
 - (b) Telstra's market power arises from its control of the copper access network infrastructure required to provide wholesale and retail services, as well as its vertically integration, which provides it with the incentive and ability (absent discrimination) to discriminate against Access Seekers in providing wholesale services on reasonable terms and conditions; and
 - (c) Telstra has a dominant market share and large customer base in the wholesale market for network access services, resale services and interconnection services provided on the copper network.
3. The reasons for declaration in 2014 continue to hold true in 2018. Telstra's copper customer access network (CAN) continues to provide six million fixed-line services in the market, of these around 1.1 million depend on the supply of ULLS to Access Seekers.
4. Telstra's CAN is the only ubiquitous national access network until the NBN roll-out is complete (which is not expected until 2022). The CAN will continue to exhibit natural monopoly characteristics and remain a bottleneck for competition in related downstream markets. Importantly, the ACCC considered that, in the absence of declaration, the wholesale markets and retail markets would not display the characteristics of effectively competitive markets. This view has not changed. The early removal of regulation would have serious consequences for competition in the transition to the NBN.
5. Optus therefore supports the continued declaration of the six fixed-line services currently within the scope of this inquiry for a further five-year period. These services are generally provided over Telstra's copper network, and include the following:
 - (a) Unconditioned Local Loop Service (ULLS);
 - (b) Line Sharing Service (LSS);
 - (c) Wholesale Line Rental (WLR);
 - (d) Local Carriage Service (LCS);
 - (e) Fixed Originating Access Service (FOAS); and
 - (f) Fixed Terminating Access Service (FTAS).

¹ ACCC, 2014, Public Inquiry into the fixed line service declarations, Final report, April, p20

ACCESS TO THE CAN STILL ESSENTIAL FOR COMPETITION

6. Broadband and voice services are essential communication services on which all individuals and businesses rely. During the transition to the NBN, Telstra's CAN is still the only ubiquitous fixed line access network; it remains an enduring bottleneck and access to the CAN is still essential to promote competition in downstream telecommunications markets.
7. Access to Telstra's ubiquitous CAN is required in order to participate in any of the related downstream markets. For example, Access Seekers are able to procure wholesale access service offered over Telstra's CAN using the declared fixed-line services, such as ULLS, WLR and LSS, and use these network inputs as an input for retail services using their own equipment (i.e. partial infrastructure-based competition).
8. Optus therefore supports the continued declaration of the six fixed-line services currently within the scope of this Inquiry. Optus also submits that the fixed-line service declarations should continue to be regulated for a further five years.

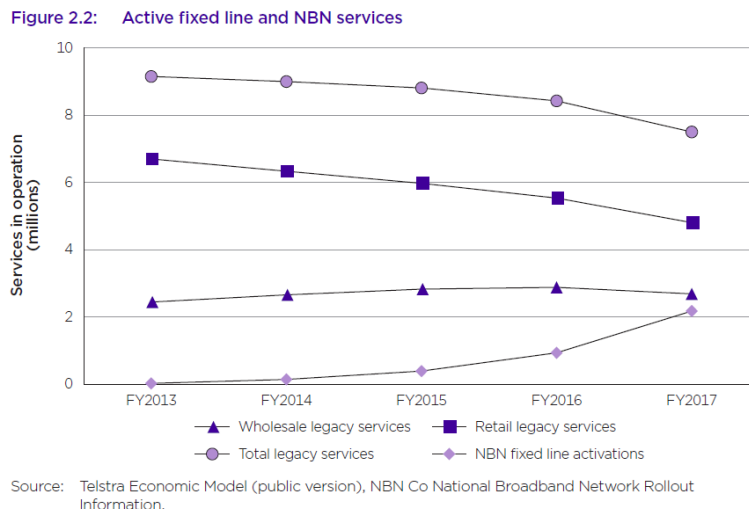
The CAN remains an enduring bottleneck despite the NBN rollout

9. Telstra's CAN remains an enduring bottleneck with monopoly characteristics and access to the CAN is essential in order for Access Seekers to compete and supply services in downstream wholesale and retail telecommunications markets until the rollout of the NBN is complete.
10. Since the last declaration review, the NBN rollout has continued and upon completion it will be the ubiquitous access network over which fixed line services are supplied. As at June 2018, NBN Co reported 4 million activated premises, this is expected to increase to 5.5 million in FY19 and 7.5 million by FY20.² However, the NBN is not expected to be completed until at least 2022.
11. The rollout of the NBN is piecemeal with the CAN being gradually switched off in areas once the NBN rollout is completed in that area. The decommissioning of the CAN means that the NBN is not a competitive alternative for ubiquitous fixed line service coverage.
12. The graph below shows that the NBN is gradually replacing the CAN to be the ubiquitous access network.³ While the composition of fixed line services may be changing with more NBN services being taken up to reflect the increased rollout, there continues to be demand for all fixed line services, including those legacy services supplied using Telstra's CAN.

² NBN Co, 2018, Corporate Plan 2019-22, p.15

³ ACCC, 2018, Competition and price changes in telecommunication services in Australia 2016-17, p.10

13. Figure 1 Demand composition of fixed line services



Source: ACCC

14. During this transition period, while the NBN is being rollout out, Access Seekers continue to rely on access to regulated services in order to supply legacy services to customers using Telstra’s CAN.
15. For example, the NBN rollout does not overlap existing Telstra exchange areas in its entirety, and even if the NBN is available within an ESA, there is still potentially up to two years before the copper disconnection date takes effect as required under the Telstra Migration Plan. It follows that during this intermediary period, there will still remain customers on the legacy network until well after the completion of the NBN rollout.
16. Therefore, even though the NBN rollout has progressed, it does not alter the enduring bottleneck characteristics of the CAN and that access to Telstra’s CAN is essential for Access Seekers to be able to provide downstream telecommunications services. Prematurely relaxing regulation of services offered on Telstra’s CAN could disrupt competition in the transition to the NBN.
17. The geographic coverage of other fixed line networks remains limited, and some are not configured for wholesale access. The hybrid fibre-coaxial (HFC) networks have not been expanded and still cover around 2.6 million premises.⁴ While there are some fixed line networks (such as TPG’s FTTB network) that do offer wholesale access, a very limited geographic footprint and different underlying access technology means these are not a simple, efficient or effective substitute for Telstra’s CAN.
18. Optus supports the current fixed-line services declarations for the period continuing until the NBN roll-out is completed to promote the long-term interests of end-users.

Access to the CAN promotes fixed-line competition

19. In the 2014 fixed line declaration inquiry the ACCC considered that, in the absence of declaration, wholesale and retail markets would not display the characteristics of effectively competitive markets.⁵ It is Optus’ view that this continues to be the case.
20. During the transition to the NBN, the ability to compete in fixed-line telecommunications markets will continue to be dependent on access to existing legacy networks. There is

⁴ See ACCC, Determination on Applications for Authorisations lodged by NBN Co Ltd in respect of provisions of the HFC Subscriber Agreement entered into with Singtel Optus Pty Ltd and other Optus entities, July 2012, para.2.21

⁵ ACCC, Public Inquiry into the fixed line services declarations – Final report, April 2014, p. 17.

still demand for wholesale access services offered over Telstra's CAN using the declared fixed-line services. While this may be in gradual decline, due in part to the NBN rollout, where possible Access Seekers are still using their own equipment to provide wholesale and retail voice and broadband services facilitated by access to ULLS and LSS as key wholesale inputs. This is evidenced through the sustained demand for ULLS and LSS services, with ULLS demand at June 2018 still reported at around 1.1 million services (down 24%, from 1.4 million in June 2014).⁶

21. In the 2014 Declaration inquiry, the ACCC considered that as a vertically integrated company, Telstra has an incentive to either deny access or charge above-cost prices for access in order to give a competitive advantage to its own retail operations, particularly in relation to network access services, such as the ULLS or LSS.⁷ Such behaviour would be detrimental to competition in downstream markets.
22. Optus considers that these concerns are still relevant today. While Telstra has established 'InfraCo' to operate certain fixed line and other infrastructure assets, such as the CAN, this is not a fully structurally separated company and potential incentives remain for Telstra to either deny access or impede competition in the transition to the NBN.
23. Further, the ACCC recently concluded that "Telstra's fixed line dominance has not been significantly eroded so far in the transition to the NBN despite some losses in regional areas where its dominance has been greatest."⁸ Continuing the declaration of regulated services would ensure that other Access Seekers can remain competitive in the supply of fixed line services and continue efficiently using their equipment (such as, DSLAMs) during the NBN transition.
24. It follows that absent declaration of the various fixed-line services, competition in the related markets could be impeded. Therefore, only continued regulation of the current declared fixed-line services will promote the LTIE.

Redeclaring fixed line services for five years would provide certainty and promote the LTIE

25. A key consideration of the 2014 declaration inquiry and the fixed line FAD inquiry was the certainty needed for industry during the transition to the NBN.
26. Telstra's copper access network will remain an enduring bottleneck until the completion of the NBN rollout. There continue to be limited fixed line substitutes for access to network access and resale services delivered over the copper network.
27. These copper-based services will continue to be relied on for the supply of downstream retail services during the transition to the NBN until the switch-off of the legacy copper network is required under contractual and regulatory instruments.
28. Continued regulation of these six fixed line services will provide certainty to industry in:
 - (a) Continuing to compete in downstream fixed line markets,
 - (b) The efficient use of their existing equipment, and
 - (c) Efficiently migrating their customers to the NBN.

⁶ ACCC, Snapshot of Telstra's customer access network, Table 1

⁷ ACCC, Public Inquiry into the fixed line services declarations – Final report, April 2014, p. vi.

⁸ ACCC, 2018, Communications Sector Market Study, Final Report, April, p.5

29. It is Optus' view that declaration of these six fixed line services should continue for a further five years to ensure that the long-term interests of end-users are promoted in the transition to the NBN.

SERVICE DESCRIPTION REMAINS FIT FOR PURPOSE

30. Optus supports the extension of the six fixed line service declarations for a further five-year period. At the very minimum, it should be extended to align with the expiry of the Wholesale Asymmetric Digital Service Line (WADSL) service declaration to ensure consistency with all declared services provided over the Telstra CAN.
31. Regulated access to fixed-line services has resulted in the retail fixed-line services market shares being less concentrated than in the market for access lines. While Telstra retains a dominant share, the ability of alternative providers to gain a small foothold in the fixed-line markets is solely due to effective access regulation.
32. Importantly, and during the transition to NBN, each of these wholesale access services should continue to be declared on a national basis.

Continued declaration of the network access services will promote the LTIE

33. The declaration of two network access services – the ULLS and the LSS have been an important enabler of infrastructure-based competition in recent years. It has allowed Access Seekers to purchase the ULLS and install their own equipment in Telstra's exchanges to provide telephony and broadband services.
34. More importantly, it has allowed Access Seekers greater scope to compete with Telstra by; differentiating their retail service offerings so that they can compete on more dimensions of supply; providing quality of service through having greater control over the equipment used to supply their services; and being able to operate and deploy equipment more efficiently.
35. The roll-out of NBN that will, over time, replace Telstra's CAN and the HFC networks as customers on those networks are migrated onto the NBN. Moreover, the impact of the NBN roll-out will be significant since "the closure of the Telstra copper network will also result in the removal of the ULLS-based networks operated by Access Seekers."⁹ This will consequently lead to the potential stranding of network infrastructure and investment by Access Seekers.
36. This does not discount the fact that access to the ULLS enables Access Seekers to compete across all retail dimensions of fixed broadband and fixed voice supply. As such, the continued regulation of the ULLS service is vital to the continuation of sustainable competition in the provision of fixed voice, fixed broadband, and bundled services.

Continued declaration of the resale services will promote the LTIE

37. The declaration of resale services – the LCS and the WLR services – has been an important enabler of retail competition. It has allowed Access Seekers to compete in the downstream markets without having to install their own equipment in Telstra's exchanges to provide fixed telephony services.
38. Declaration of the WLR service has allowed Access Seekers to resell the basic line rental service that allows an end-user to connect to the traditional voice network to make

⁹ ACCC, *Assessment of Telstra's Structural Separation Undertaking and draft Migration Plan*, Final Decision, February 2012, p.31

and receive calls, as well as be assigned a telephone number. In contrast, the declaration of the LCS service allows Access Seekers to resell local calls to end-users without the need for deploying substantial alternative infrastructure and is required for the supply of an end-to-end voice grade carriage service between two points in a standard zone.

39. Commercially, the WLR service is purchased in conjunction with the LCS service, as a bundled offer, and has previously been purchased with WADSL in areas where it was not commercially attractive for Access Seekers to install their own DSLAMs.
40. The impact from the deployment of NBN is such that as NBN roll-out and the decommissioning of Telstra's CAN continues, this will result in the gradual shrinking of the Telstra CAN footprint.
41. As such, the continued regulation of the WLR and LCS service is required for the continuation of sustainable competition in the provision of voice, broadband, and bundled voice and broadband services.

Continued declaration of the interconnection services will promote the LTIE

42. The declaration of interconnection services – the fixed originating access (FOAS) and the fixed terminating access (FTAS) services allow for the interconnection of voice services between different telecommunications network operators.
43. The interconnection services are wholesale inputs used by Access Seekers for the provision of voice services to end-users at the retail level. In particular, the FOAS involves the carriage of telephony calls from the calling party to a POI within an Access Seeker's network, while the FTAS involves the carriage of telephony calls from the POI within the Access Seeker's network to the called party. Telstra continues to have 100% market share over the origination and termination of voice traffic over the PSTN.
44. Without regulated access to the PSTN interconnection services it is likely that competition in the provision of voice services would be lessened relative to the future with declaration. The interconnection services are a vital input used in both the fixed-line market and mobile market. Absent declaration, Telstra may have the incentive and ability to use these interconnection services to damage competition in these markets.
45. Continued declaration would promote competition in long distance communications services. Continued declaration allows this market segment to be unbundled from network access, such that customers can potentially purchase line rental services from one provider and long distance calling from a separate provider. This enables competitive providers to offer long distance services to any given end-user, regardless of which carrier is providing underlying network access to that end-user.
46. Continued declaration would promote competition in the national fixed-line market. Optus also maintains that the continued declaration of the PSTN interconnection services will ensure that any-to-any connectivity is achieved.
47. There are currently no competing fixed-line networks that are comparable to Telstra's CAN on a national scale. Absent declaration, Telstra may have the incentive to withdraw access to the service or offer it on unreasonable terms to Access Seekers. This is due to the asymmetry between the size and reach of networks on a national scale. In addition, Telstra could also leverage its power in the PSTN interconnection services market across to the mobile market by limiting connectivity to its own mobile subscribers.
48. Optus therefore considers that continued declaration of the PSTN interconnection services would benefit both fixed and mobile telecommunications markets. As such, the continued regulation of the FOAS and FTAS service is required for the continuation of

sustainable competition in the provision of voice, broadband, and bundled voice and broadband services.