



TELSTRA CORPORATION LIMITED

TELSTRA'S RESPONSE TO ACCESS SEEKERS' SUBMISSIONS REGARDING THE
PUBLIC INQUIRY TO MAKE FINAL ACCESS DETERMINATIONS FOR THE DECLARED
FIXED LINE SERVICES

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1. EXECUTIVE SUMMARY

- 1 In the exemption Exchange Service Areas (**ESAs**), and across metropolitan Australia more broadly, there has been a substantial and inexorable expansion of infrastructure-based competition over the last five years. This has manifested itself in the form of: strong and ongoing growth of ULLS based services by multiple DSLAM based entrants; lower prices; increased value through bundled packages; differentiated service offerings; more innovation; technological development; increased substitution between competing technologies; and more choice for consumers.
- 2 Both the Commission in 2008 and the Australian Competition Tribunal in 2009 recognised that it was appropriate to remove resale regulation in areas which are effectively competitive in light of these market developments. The pace of expanded competition has continued since that time and will not abate as a result of the initial deployment of NBN.
- 3 Accordingly, Telstra agrees with the Commission's view as set out in the Discussion Paper that, at a minimum, the effect of the Exemption Determinations should be incorporated into the FADs for the WLR, LCS and PSTN OA services. These should apply until 30 June 2016 to align with FAD pricing in order to deliver certainty and stability to the industry.
- 4 Today, the competitive conditions within the relevant metropolitan ESAs have continued to strengthen:
 - in December 2010, 181 ESAs met the exemption threshold. By June 2011, this had increased to 215 ESAs;
 - within these 215 ESAs, the number of ULLS lines has tripled since September 2007, to more than [c-i-c commences] [c-i-c] [c-i-c ends] lines as at March 2011. Over the same period, the average number of ULLS-based Access Seekers present in these ESAs has increased from [c-i-c commences] [c-i-c] [c-i-c ends] to [c-i-c commences] [c-i-c] [c-i-c ends], and more than 128 of the ESAs have [c-i-c commences] [c-i-c] [c-i-c ends] or more ULLS-based competitors present (in addition to Telstra); and
 - the ULLS SIOs now account for an average of more than [c-i-c commences] [c-i-c] [c-i-c ends] of wholesale basic access lines within these 215 ESAs (up from [c-i-c commences] [c-i-c] [c-i-c ends] in September 2007).
- 5 In these highly competitive ESAs, there is no imperative to reintroduce resale-based regulation. Telstra's market power (in both wholesale and retail markets) is constrained, Access Seekers are competing effectively and winning market share, and end users are benefiting from innovative new service offerings and greater value. The evidence contained in this submission and *Part C of Telstra's Response to the Commission's Discussion Paper (Telstra Primary Submission)* clearly demonstrates that, in respect of the exempt ESAs, all of the market characteristics that the Commission and the Tribunal considered necessary for the removal of regulation, are satisfied.
- 6 Contrary to the claims made by Access Seekers, the observed market conditions since the exemptions were first determined and have subsequently come into effect, all reinforce the previous conclusions of both the Commission and the Tribunal that where ULLS-based entry has occurred, ongoing resale-based regulation is not warranted, and would in fact run counter to the promotion of the statutory criteria. Indeed, the threshold test for exemptions is conservative, self-executing and stringent. Where the threshold has been met, the market conditions at both the retail and wholesale level indicate the relevant markets are effectively competitive for the reasons set out below.
- 7 **First**, Telstra's actions since the Exemptions came into effect reflect the real, competitive constraints it faces within these ESAs. Contrary to suggestions made prior to the exemptions coming into effect, Telstra has maintained supply of the WLR, LCS and PSTN

OA services. Further, rather than raising prices, Telstra has maintained its commercial rates for these services.

- 8 This behaviour is entirely consistent with what one would expect in an effectively competitive market. Within the exempt ESAs, Telstra faces competition for the supply of WLR/LCS and PSTN OA services (as well as its retail services) primarily from ULLS-based competition (either self-supply or resale services provided by ULLS acquirers). Crucially, the price of the ULLS within the exemption area has not changed. Therefore, the build-buy decision facing Access Seekers has not changed within the exemption areas.
- 9 The fact that the Commission is proposing different pricing for the WLR service in non-exempt areas is not relevant to the decision-making of either Telstra or Access Seekers within the exempt areas and is not evidence of an uncompetitive market within the exemption ESAs.
- 10 Further, the existence of alternative WLR providers has little bearing on the competitive nature of the market for wholesale voice services, given that there exist wholesale voice only competitors, barriers to entry to the supply of WLR are not significant, and there are both wholesale and retail substitutes to the WLR service, including the availability of the declared ULLS at regulated prices.
- 11 **Second**, market evidence clearly shows that Telstra is unable to exert market power with respect to voice only services – at either the retail or wholesale level. The market for voice only services is particularly competitive, with the rate of decline for PSTN voice only services and WLR voice only services within the exempt ESAs being even greater than that experienced for voice and broadband bundled services.
- 12 Rather than constituting a “hard core” of services, with few substitutes, PSTN voice only services are clearly substitutable for a large range of services offered by ULLS acquirers and other Access Seekers (as well as services offered over mobile and other networks), as is evidenced by the continual, significant decline in the number of voice only PSTN services within the exemption area.
- 13 Although some Access Seekers appear preoccupied by the technical underpinnings of various services, it is clear that end users (and by extension wholesale acquirers) are competing for, and winning, the supply of services to customers with PSTN voice only lines by offering a range of voice and voice and broadband services.
- 14 **Third**, there is no credible evidence that the rollout of the NBN is reducing the competitive constraint that DSLAM-based market entry and the ULLS exert on Telstra with respect to the exempt services. DSLAM-based entry is still occurring within (and outside) the exemption ESAs – as reflected in the continuing growth in the number of ESAs meeting the Tribunal’s exemption criteria.
- 15 There are still strong incentives to continue investment in DSLAMs and there is no credible evidence that the deployment of the NBN has negatively affected the competitive conditions within the 380 exemption ESAs. Contrary to their claims in submissions to the Commission, the public statements of Access Seekers clearly demonstrate that they are committed to ongoing investment in DSLAM-based infrastructure.
- 16 **Fourth**, the Exemption Determinations do not impact upon the ability of Access Seekers to compete for customers in the corporate and government sector. In particular, the need to service a small proportion of a corporate and government customer’s premises with resale WLR does not jeopardise the ability to win that customer’s business, given that these customers typically require a broad range of telecommunications services and the contracts are typically of a high value. Moreover, observed outcomes indicate that the market for enterprise and government services is strongly competitive.
- 17 **Finally**, the benefits of effective competition apply broadly to customers within the exemption ESAs (and beyond) as Telstra and other service providers respond to increased competition in the market for voice and bundled services. It is therefore not necessary to introduce a condition that any exemptions not apply to lines affected by pair gains,



particularly given that compliance with such a condition would be extremely costly and impracticable to implement.

- 18 In the remainder of this submission, Telstra responds to a number of assertions and inaccuracies set out by the Access Seekers in their submissions.
- 19 In support of its submissions, Telstra provides evidence, including the expert report of Mr Aleksandr Sundakov of Castalia Strategic Advisors, entitled "On-going Exemption from Access Regulation for WLR, LCS and PSTN-OA Services where Workable Infrastructure Competition Exists", dated 12 July 2011 (**Sundakov Report**). Telstra submits that Mr Sundakov's views are supported by evidence, and thus should be accepted by the Commission.
- 20 A number of the submissions now being raised by the Access Seekers had previously been raised in proceedings before the Tribunal and dismissed by the Tribunal.¹ Accordingly, those submissions should also be dismissed by the Commission when deciding whether to incorporate the Exemption Determinations into the FADs.
- 21 Some of the Access Seekers have relied upon confidential information. Despite several attempts by Telstra to obtain copies of that confidential information from the Commission and the Access Seekers (subject to the execution of confidentiality undertakings), the confidential information contained in Macquarie's submission and the report prepared for Macquarie by Frontier Economics, has not been provided to Telstra. Given that Telstra is not in a position to review and respond to that material, Telstra submits that the Commission should give that material little - if any - weight. In that regard, Telstra only recently received Optus' confidential information today and is in the process of reviewing and considering that information.
- 22 Finally, where these submissions do not respond to a specific part of the submissions of the Access Seekers, this does not indicate that Telstra agrees with those submissions. Except where otherwise indicated, Telstra disagrees with the Access Seekers' submissions in their entirety.

2. COMMISSION'S POWERS WITH RESPECT TO EXEMPTIONS

- 23 Various Access Seekers challenge the Commission's jurisdiction to give effect to the Exemption Determinations in the FADs. These submissions are on the basis of the following:
- (a) the repeal of former ss 152AS and 152AT of the TPA means that the Commission no longer has the power to issue ordinary exemptions.² Further to this, it is suggested that the Commission no longer has the power to incorporate the effect of the Exemption Determinations into the FADs or otherwise include provisions in the FADs having that effect;
 - (b) it is inconsistent with the general policy objectives behind the *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010 (CCS Explanatory Memorandum)* for the Commission to incorporate the effect of the Exemption Determinations into the FADs or otherwise include provisions in the FADs having that effect;³ and

¹ See: *Application by Chime Communications (No 2)* [2009] ACompT 2 (**Chime 2**); *Application by Chime Communications (No 3)* [2009] ACompT 4 (**Chime 3**); *Application by AAPT Limited* [2009] ACompT 5 (**AAPT 1**) and *Application by AAPT Limited (No 2)* [2009] ACompT 6 (**AAPT 2**).

² AAPT, *Submission by AAPT Limited to ACCC Discussion Paper Public inquiry to make a final access determination for the declared fixed line services*, 3 June 2011 (**AAPT Submission**), [19]; Letter from Chris Zull, Macquarie Telecom to Jana Kacir, ACCC dated 3 June 2011 re Public Inquiry - Final Access Determinations - Fixed Line Services (**Macquarie Submission**), pp 5-6; Letter from Brendan Coody, Maddocks, on behalf of Macquarie Telecom, to Jana Kacir, ACCC dated 6 June 2011 re Exemption Determinations - Final Access Determinations (**Maddocks Submission**), p 5.

³ Maddocks Submission, pp 5-6; Macquarie Submission, p7.

(c) incorporating the effect of the Exemption Determinations into the FADs or otherwise including provisions in the FADs having that effect is an incorrect application of subss 152BC(3)(h) or (i) because it is in effect the creation of a new SAO.⁴

24 As set out at paragraph 1 of the Telstra Primary Submission the Commission has power under subss 152BC(3)(h) and (i) of the CCA to incorporate the effect of the Exemption Determinations into the FADs or otherwise include provisions in the FADs having that effect.

25 Sub-sections 152BC(3)(h) and (i) of the CCA must be read in accordance with s 15AA of the *Acts Interpretation Act 1901* (Cth) which provides that the construction of a provision of an Act which would promote the object underlying that Act shall be preferred to a construction that would not promote that object. However, prior to considering the objects of Part XIC of the CCA to clarify the FAD-making powers intended to be given to the Commission, subss 152BC(3)(h) and (i) must be read literally and in accordance with their ordinary meaning.

26 The provisions are clear on their face, that is, that a FAD:

*"may provide that **any or all** of the obligations referred to in s 152AR are not applicable to a carrier or carriage service provider...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..."* [emphasis added]

27 To suggest that these words do not confer on the Commission the power to exempt Telstra from its SAOs in certain defined geographical areas - being for example, a restriction on the application to Telstra of its standard access obligations - is simply incorrect. The power to incorporate the effect of the Exemption Determinations into the FADs or otherwise include provisions in the FADs having that effect is clearly consistent with the literal meaning of subss 152BC(3)(h) and (i). This sensibly applies to a geographical restriction on the SAOs without creating a "new" standard access obligation.

28 It is also an interpretation which is wholly consistent with the express policy objectives of Part XIC of the CCA. Section 152AB of the CCA provides that *"the object of this Part [XIC] is to promote the long-term interests of end-users of carriage services or of services provided by means of carriage services"*. Again, it would be a nonsense to suggest that interpreting subss 152BC(3)(h) and (i) to give the Commission the power to exempt Telstra from its SAOs in certain circumstances would not promote the object of Part XIC ie to promote the LTIE. The exemption of carriers and CSPs, including Telstra, has previously been held to promote the LTIE by both the Commission and the Tribunal in the making of the Exemption Determinations.

29 That Parliament intended, by the drafting of subss 152BC(3)(h) and (i) of the CCA, for the Commission to have the power to incorporate the effect of the Exemption Determinations into the FADs or otherwise include provisions in the FADs having that effect is confirmed by the CCS Explanatory Memorandum:⁵

"One of the reforms to Part XIC implemented by the Bill is to change the system of exemptions from the standard access obligations...Item 137 repeals section 152AS... The need for ordinary class exemptions is removed because the ACCC will be able to include provisions in an access determination which remove or limit the obligation of carriers or CSPs to comply with some or all of the standard access obligations (see proposed paragraphs 152BC(3)(h) and (i))".⁶

and

"Item 144 repeals section 152AT, which provides for ordinary individual exemptions from the standard access obligations at section 152AR. The consequences of, and reasons for, the

⁴ Maddocks Submission, pp 6-7.

⁵ To this rule of statutory interpretation see s 15AB(1) of the *Acts Interpretation Act 1901*.

⁶ CCS Explanatory Memorandum, p 170.



repeal of ordinary exemptions are discussed above at item 137⁷ [being the passage quoted directly above].”

- 30 The idea that somehow the exemptions power is inconsistent with the general policy of reforms contained in the CCS Explanatory Memorandum is not relevant. These general policy reforms relating to equivalence as opposed to the promotion of infrastructure competition, to the extent that they might arguably apply to the Part XIC access regime, cannot override the specific objects of Part XIC. To this end, Telstra refers to paragraph 28.
- 31 In repealing former ss 152AS and 152AT, the legislature has streamlined the process for exemption. A carrier or CSP can no longer make an application to the Commission for exemption from their SAOs. However, this does not mean that the Commission’s power to make a decision having that effect has been removed. On the basis of all applicable rules of statutory interpretation, it is absolutely clear that Parliament has reserved that power to the Commission, and that the Commission has the power under subss 152BC(3)(h) and (i) of the CCA to incorporate the effect of the Exemption Determinations into the FADs or otherwise include provisions in the FADs having that effect.

3. COMPETITION WITHIN THE EXEMPT ESAS

- 32 A number of Access Seekers allege that there is a lack of competition in the exempt ESAs. For example, the Maddocks Submission alleges that incorporating the Exemption Determinations into the FADs will further damage competition in the voice only retail and wholesale markets.⁸
- 33 Telstra submits that, for the reasons set out below, there is clear evidence of effective competition in both the retail and wholesale markets in those ESAs which have already satisfied the threshold for exemptions.
- 34 Further, Telstra refers to and relies upon its submission at paragraph 8 of the Telstra Primary Submission to the effect that nothing significant has changed in the relevant markets for telecommunications and data services, including the NBN roll out and its consequences, to cause the Commission to reconsider the Exemption Determinations. Indeed, as the evidence set out below shows, to the extent that there have been changes in the relevant markets, those changes further justify incorporating the Exemption Determinations in the FADs. That there is effective competition in these markets is demonstrated by the fact that a further 34 ESAs have met the threshold requirements for exemption following the Commission’s latest round of exemption calculations.⁹

3.1. COMPETITION IN RETAIL MARKET

- 35 Telstra submits that effective competition in the retail market for fixed line voice services in the 215 ESAs that have met the exemption threshold is evidenced by:
- (a) the ongoing (and accelerating) decline in Telstra’s retail market share for fixed line basic access services within the exempt ESAs. Figure 1 below shows that Telstra’s retail market share for fixed line basic access services in the exempt ESAs declined by approximately [c-i-c commences] [c-i-c] [c-i-c ends] between September 2007 and March 2011, compared to a decline of approximately [c-i-c commences] [c-i-c] [c-i-c ends] in all ESAs;

Figure 1: [c-i-c commences] [c-i-c] [c-i-c ends]

⁷ CCS Explanatory Memorandum, p 171.

⁸ Maddocks Submission, p 10. See also *Optus Submission in response to the ACCC’s discussion paper: Public Inquiry to make Final Access Determinations for the Declared Fixed Line Services*, June 2011 (**Optus Submission**), p 35 at [4.12]; Macquarie Submission, p 8; Herbert Geer Submission, p 23.

⁹ See <http://www.accc.gov.au/content/index.phtml/itemId/934407>.

- (b) as at March 2011, Telstra's retail share of total fixed line services in the 215 ESAs currently meeting the exemption threshold was approximately [c-i-c commences] [c-i-c] [c-i-c ends] lower than in the CAN as a whole and has fallen by approximately [c-i-c commences] [c-i-c] [c-i-c ends] since 2007 in the exempt ESAs.¹⁰ It also should be noted that this estimate of Telstra's retail fixed line market share over states Telstra's actual retail share of fixed line services, as it excludes Optus' HFC network customers (currently over 500,000 lines) from the denominator. If these SIOs were taken into account (assuming these customers principally resided within the 215 ESAs currently meeting the exemption threshold), Telstra's effective retail market share would be closer to [c-i-c commences] [c-i-c] [c-i-c ends]. It also excludes the impact of competition from mobile and VoIP substitutes; and
- (c) in an overall declining market (in which the number of total CAN lines in exempt ESAs have declined by an average of [c-i-c commences] [c-i-c] [c-i-c ends] each quarter), ULLS-based services are comprising an increasingly greater share of end-user lines, meaning that Access Seekers are increasing their market share and servicing that increasing market share via ULLS.

Figure 2: [c-i-c commences] [c-i-c] [c-i-c ends]

- 36 Further, a number of Access Seekers allege that there is a lack of effective competition in the voice-only services market and that incorporating the Exemption Determinations in the FADs would perpetuate this to the detriment of the LTIE. Telstra submits that:
- (a) to the extent that a separate market is alleged, this is incorrect; and
- (b) there are sufficient competitive constraints on the provision of voice-only services, from ULLS entrants as well as VoIP and mobile services.
- 37 First, as explained in the Sundakov Report, an argument that there is a separate voice-only market necessarily relies on the assumption that voice-only service providers are the only parties that can service voice-only customers.¹¹ In reality, existing mixed service providers can readily service voice-only customers where those prices warrant it.
- 38 Voice-and-data providers can readily service voice-only customers as they already have a substantial number of voice-enabled DSLAMs in place.¹² These operators can economically supply voice-only services on an incremental cost basis as their *"fixed costs are largely sunk costs and their continued presence in the market suggests their on-going overhead costs are currently being met by other, higher-value services"*.¹³
- 39 Alternatively, these operators can compete for customers who currently have a PSTN voice only service with a voice and broadband bundle offering or a broadband offering which incorporates a carrier-grade VoIP service.
- 40 This is demonstrated by the fact that the PSTN voice-only services supplied by Telstra in the exempt ESAs has declined at a faster rate than voice and broadband bundled PSTN services and CAN lines as a whole.

¹⁰ See Figure 1.

¹¹ Sundakov Report, p 21.

¹² See Sundakov Report, pp 11-12, where it is explained that in March 2011 "ULLS lines make up [c-i-c commences] [c-i-c] [c-i-c ends] of all services fed from competitor DSLAMs in both the 181 and 215 Exemption ESAs". Given that the number of ULLS services in use is growing at [c-i-c commences] [c-i-c] [c-i-c ends] the per annum rate [c-i-c commences] [c-i-c] [c-i-c ends] of LSS services [c-i-c commences] [c-i-c] [c-i-c ends], this indicates a substantial presence of voice-enabled DSLAMs.

¹³ Sundakov Report, p 22; see also Paterson expert reports of 9 July 2007 and 1 November 2007.



Figure 3: [c-i-c commences] [c-i-c]¹⁴ [c-i-c ends]

41 This evidence of competition in voice-only services, contrary to the Access Seekers' arguments, is a clear reflection of the fact that voice-only end users are faced with the greatest number of possible substitutes for their voice service. Those substitutes range from a traditional PSTN voice only service provided by either Telstra or acquirers of WLR (or a resale equivalent), to bundled voice and broadband services, broadband only services offering VoIP voice and mobile services. This is demonstrated in Figure 4 below.

Figure 4: Availability of competitive substitutes for a given end user service

		Competitive substitute			
		Fixed voice only offering	Fixed broadband only offering	Fixed voice and broadband bundle	Mobile offering
End user's service	Fixed voice only offering				
	Fixed broadband only offering				
	Fixed voice and broadband bundle				

Legend: **Green shading** indicates that the competitive substitute is able to provide all of the key functions of the end user's existing service. **Orange shading** indicates the competitive substitute is able to provide some of the key functions of the end user's existing service. **Red shading** indicates that the alternative service cannot provide the key features of the end user's existing service.

42 The fact that voice-only services have a greater range of potential substitutes than voice and broadband bundled services was recognised by the ACMA in its *Communications Report 2009-10*, in which it stated:

"With the rise in adoption of wireless technologies and alternative and complementary communication options such as 3G mobiles and VoIP, the number of fixed-line telephone services continues to decline. With a range of communications technologies available and increased customer adoption of multiple complementary services, industry is offering a wider range of choice to consumers including voice, data and content services".¹⁵

43 The extent of competition is summarised in Figure 5 below, which shows which retail service providers provide voice only, broadband only and voice and broadband bundled services.

¹⁴ [c-i-c commences] [c-i-c] [c-i-c ends]

¹⁵ ACMA, *Communications Report 2009-10*, p 14.

Figure 5: Examples of Retail Service Providers for voice only, broadband only and voice + broadband bundled services

Provided over...					
Network	Wholesale Service	Resale Service Providers (eg)	Voice Only	Broadband Only	Voice + Broadband
Telstra PSTN	WLR/LCS	Primus, People Telecom, AAPT, Optus	✓		
Telstra PSTN	WLR/LCS + LSS	iiNet, Internode, Primus			✓
Telstra PSTN	WLR/LCS + WDSL	Primus, People Telecom, AAPT, Optus			✓
Telstra PSTN	ULLS	Optus, TPG, iiNet, AAPT, Primus	✓	✓	✓
Telstra PSTN	wholesale services supplied by ULLS acquirers	Macquarie, Internode, Dodo	✓	✓	✓
Optus HFC	n.a	Optus	✓		✓
TransACT HFC	n.a	TransACT	✓		✓
Optus Mobile	n.a	Optus	✓	✓	✓
VHA mobile	n.a	VHA	✓	✓	✓
Vividwireless	n.a	Vividwireless		✓	✓

Source: Company websites

- 44 Access Seekers are vigorously competing - and winning - market share by supplying voice services over the ULLS infrastructure. This is demonstrated by, for example, the fact that the number of iiNet's VoIP lines has more than tripled since June 2007, from approximately 54,000 lines to 178,000 lines.¹⁶
- 45 Further, Mr Dalby states in his email set out in Annexure 2 of the Herbert Geer Submission, that:
- "We do not consider offering a voice only, PSTN-style product, either for ourselves or for wholesale offering is sustainable. Such a product would compete with or cannibalise residential or business VoIP products that we run..."¹⁷*
- 46 This is effectively an admission from iiNet of the substitutability of VoIP for PSTN voice services. Accordingly, Telstra rejects any Access Seeker assertions that VoIP is not substitutable for voice only services.
- 47 In relation to mobile services, the Sundakov Report sets out various data evidencing the "near-total penetration" of mobile services as well as the rapidly growing number of mobile-only households.¹⁸ Telstra submits that this is a clear indication of the increasingly effective competitive constraint that mobile services place on fixed voice services. The Sundakov Report predicts that this constraint will only tighten as the price of mobile services continues to fall relative to fixed line services.
- 48 Further, as the NBN approaches, mobile operators have signalled that they will aggressively seek to maintain their market share against widespread and very high speed fixed access.¹⁹ Telstra has recently utilised new technology to enable high definition voice across its entire Next G mobile network, promising higher call quality at no additional cost. As the Sundakov Report states, this kind of improvement to call quality, currently the key

¹⁶ See iiNet's Half Year Results, February 2011 at page 14 (available at <http://www.iinet.net.au/IRM/Company/ShowPage.aspx/PDFs/1422-83532977/InvestorPresentation>) and iiNet's Half Year Results, February 2009 at page 14 (available at <http://www.iinet.net.au/IRM/Company/ShowPage.aspx/PDFs/1157-10000000/H1FY09ResultsPresentation>).

¹⁷ Herbert Geer Submission, Annexure 2, p 1.

¹⁸ Sundakov Report, p 23, citing the ACMA report that 14 % of mobile phone users aged 14 and above were without a household fixed line telephone connection in June 2010, up from 6% in June 2006. Also, at June 2010, one third of 18-24 year olds were without a fixed line service at home.

¹⁹ Sundakov Report, p 23.



limitation on substitutability between mobile services and fixed line services, will become widespread as mobile operators seek to retain their customers.²⁰

- 49 Lastly, as discussed at 4.2 below, the Commission should be cautious in interpreting market outcomes in the manner suggested by Access Seekers.

3.2. BENEFITS OF COMPETITION FOR END-USERS IN EXEMPT ESAS

- 50 In order to assess how the increase in DSLAM-based competition has benefited end-users, Telstra has undertaken a comparison of a selection of offers currently available within the exempt ESAs, and offers available in the market as at September 2007. Further information in relation to Telstra's methodology underlying this comparison is set out in Schedule 2 to this submission.
- 51 As at September 2007, Access Seekers had installed DSLAMs in 423 ESAs, which were used (in addition to LSS-based services) to provide 306,000 ULLS-based services. Since this time, the number of Access Seekers offering ULLS-based services has increased with the number of DSLAM-enabled ESAs increasing to 546 (and 215 ESAs meeting the exemption criteria). In addition, Access Seekers have expanded the range of services offered over their DSLAM hardware – including Naked DSL and carrier-grade VoIP services.
- 52 Telstra compared the value offered from a selection of 17 popular fixed line voice only and fixed line bundle plans from major service providers available in the market in September 2007, to the value offered by a selection of 16 popular fixed line voice and fixed line bundle plans from major service providers available as at June 2011.
- 53 The plans selected are indicative of the plans available to end users in the exemption ESAs as at September 2007 and June 2011.
- 54 The comparison provides insight into how end users, and in particular consumers, have benefited from the introduction of new services, the impact of deepening DSLAM-based competition within ESAs, as well as the broadening of DSLAM-based competition.
- 55 As at September 2007, DSLAM-based competition was already impacting on the voice and broadband market, with the introduction of the Optus Fusion offers (offered over ULLS lines within Optus' DSLAM footprint). Other providers of ULLS-based services at that time included AAPT and Primus. However, many ULLS acquirers remained focused on the supply of business and specialist services, typically in CBD ESAs (for example, NEC and Macquarie).
- 56 In summary, since September 2007 there has been a significant increase in:
- (a) the number of market players;
 - (b) the variety of differentiated offers; and
 - (c) generally, value for money for end users.
- 57 These developments are clear evidence of vigorous competition in the retail market in those ESAs, which is evident in Figure 6 below (which sets out the results of the comparison outlined in Schedule 2).

Figure 6: [c-i-c commences] [c-i-c] [c-i-c ends]

- 58 The comparison shows that prices end users have to pay have fallen with the average monthly voice-only plan cost decreasing [c-i-c commences] [c-i-c] [c-i-c ends] and the average monthly bundle plan cost decreasing by [c-i-c commences] [c-i-c] [c-i-c ends].

²⁰ Sundakov Report, p 23.

It is also worth noting that competition at the lower end of the bundled market is particularly vigorous with minimum bundle prices decreasing [c-i-c commences] [c-i-c] [c-i-c ends].

- 59 The comparison of the plans available in the market then and now reveals that the number of players offering voice and voice bundled services through the ULLS has increased, with TPG, iiNet, and Internode entering the market since September 2007.
- 60 Further, this influx of new competitors offering fixed line voice and bundled services have enabled end-users to have the benefit of more differentiated offers in June 2011 than prior to the exemptions coming into effect, including Triple Play plans (being bundled plans offering calls, broadband and IP television) and naked DSL bundles. In addition, data offerings in particular have increased exponentially, with the median data allowance included in bundled plans increasing 2,627% from 5.5 GB to 150GB.
- 61 Finally, Telstra submits that the comparison undertaken is conservative for a number of reasons. As the analysis undertaken has been based on publicly available information regarding service offerings it does not take into account "below the line" offers that are commonly negotiated with end-users. Further, the analysis has not taken into account "over the top" or service-layer VoIP offers, which are provided by businesses such as Engin and GoTalk. The analysis also does not take into account the recent introduction of highly competitive mobile capped plans - such as Vodafone's "Infinite Bundles".

3.3. COMPETITION IN WHOLESALE MARKET

- 62 A number of Access Seekers assert that the absence of alternative WLR suppliers is indicative of the absence of competition in the exempt ESAs.²¹ Telstra submits that this assertion is incorrect; competition in the wholesale market exists. The absence of alternative WLR suppliers is not an appropriate indication of the absence of effective competition in the relevant market, or an indication that such an absence is because of the market dominance of one supplier (i.e. Telstra).
- 63 In order to conclude that absence of alternative WLR suppliers is an indication of lack of competition, it would have to be shown that there are significant barriers to entry.²² Mr Sundakov considers that such barriers do not exist in respect of the exempt ESAs. In fact, Mr Sundakov concludes that "*opportunity exists for the provision of alternative WLR products*".²³ This is because the majority of WLR services are being acquired by a small number of Access Seekers. For example, two thirds of WLR services supplied by Telstra within the exempt ESAs are acquired by three Access Seekers.²⁴

Figure 7: [c-i-c commences] [c-i-c] [c-i-c ends]

- 64 There is also ready access by WLR acquirers to ULLS. In that regard, there is a growing number of ULLS acquirers in exempt ESAs: [c-i-c commences] [c-i-c] [c-i-c ends], on average.²⁵ This is reflected in the growing number of ULLS services supplied in the exempt ESAs, as Access Seekers continue to win additional customers. Further, the market "churn" data for the exempt ESAs indicates that, at the margin, competitive pressure is being provided by ULLS-based services rather than by WLR-based services. Figure 8 below shows market "churn" data for the exempt ESAs, which makes clear that during the early years following the introduction of ULLS, Access Seekers used ULLS to supply services to their existing customers (which was reflected in an almost one for one decline in WLR lines). However, over the past couple of years, increase in ULLS SIOs appears to be a

²¹ Optus Submission, p 35 at [4.12]; Macquarie Submission, p 8.

²² Sundakov Report, p 11.

²³ Sundakov Report, p 13.

²⁴ Sundakov Report, pp 12-13.

²⁵ Refer Sundakov Report, p 12.



reflection of the number of retail customers captured from Telstra. This is why the growth in ULLS is outstripping the decline in WLR as Access Seekers win retail customers from Telstra and supply to them over ULLS.

Figure 8: [c-i-c commences] [c-i-c] [c-i-c ends]

65 In light of the fact that ULLS services comprise approximately [c-i-c commences] [c-i-c] [c-i-c ends] of all services supplied by competitor DSLAMs in the exempt ESAs for the March 2011 quarter (which is an increase of approximately [c-i-c commences] [c-i-c] [c-i-c ends] from the September 2007 quarter), Mr Sundakov considers that the presence of voice-enabled DSLAMs is "substantial".²⁶

66 This is further substantiated by the example of iiNet (cited earlier) whose number of VoIP lines has more than tripled from June 2007, to 178,000 lines, consistent with the strategy outlined by their Managing Director, Michael Malone, in February 2011 to offer voice, broadband and other services over its DSLAM infrastructure. As reported by Communications Day:

"The DSLAM strategy continues," Malone explained. "Most of the game for us over the next couple of years is to start seeing if we can roll out additional products for customers. We have about 600,000 households on broadband. We have broadband and phone into most of those... what else can we offer on top of that?"²⁷

67 Thus, Telstra submits that on the basis of the market data, ULLS is clearly substitutable for WLR and the proposed barriers to entry do not exist.

68 Furthermore, as Figure 9 below demonstrates (in respect of WLR voice only and WLR-DSL services), Access Seekers are not "stranded" on WLR. The lines on which WLR is the only service provided to the end user (without retail or wholesale broadband) are falling significantly and much faster than WLR overall. This shows that there are significant substitutes for WLR. In respect of WLR-LSS bundled services, Access Seekers are likely waiting for the LSS to ULLS transfer process to be implemented, before transferring their customers from WLR-LSS bundles to ULLS (with minimal service outages). Once this occurs, there could be substantial reductions in WLR services.

Figure 9: [c-i-c commences] [c-i-c] [c-i-c ends] Source: Refer to the Witness Statement of [c-i-c commences] [c-i-c] [c-i-c ends] dated 12 July 2011.

69 Telstra submits that, notwithstanding the decline of WLR set out above, Figure 10 shows that there are a number of competitors offering wholesale services within the exempt ESAs (in addition to the capability for Access Seekers to self-supply via ULLS). In addition to ULLS competition, mobile services, fixed wireless services (such as Vividwireless) and Optus' and TransACT's cable networks further constrain Telstra in the exempt ESAs.

²⁶ Sundakov Report, p 12.

²⁷ Communications Day, 22 February 2011, p 2.

Figure 10: Selected wholesale service providers within the Exempt ESAs

Service Provider	Offering			
	Voice only Services	Broadband only services	Integrated Voice + Broadband Services	Other Services
Telstra Wholesale	✓	✓	✓	✓
Optus ^a	✓	✓	✓	✓
AAPT ^b	✓	✓	✓	✓
iTelecom ^c	✓	✓	✓	✓
Telcoinabox ^d	✓		✓	✓
M2 ^e	✓		✓	✓

^a Optus offer a range of wholesale voice only services including VoIP calling and PSTN and ISDN based basic access offerings, they also offer a range of voice and broadband bundled offerings as well as dedicated data services. Optus also offer a range of mobile and satellite-based wholesale services. (See <http://www.optus.com.au/portal/site/wholesale>). ^b AAPT offer a range of wholesale voice only services including VoIP calling and PSTN and ISDN based basic access offerings. AAPT also offer wholesale layer 2 DSL services as either a bundle with voice offerings, or on a stand-alone basis. AAPT also offer a range of other wholesale services including mobile services. (See further <http://aapt.com.au/services/carriers-service-providers>). ^c iTelecom offer a range of voice services, including PSTN and ISDN basic access services, iTelecom also offer a range of business and residential grade broadband services that can be bundled with a voice service. iTelecom also offer a range of mobile wholesale services (see <http://www.itelecomwholesale.com.au/products.html>). ^d Telcoinabox offer range of fixed line voice services (including PSTN and VoIP services), fixed broadband services and wireless voice and broadband services (see http://www.telcoinabox.com.au/We_Do/Sell). ^e M2 offer a range of wholesale voice services – including fixed lines resale services, pre-selection and override services, broadband services – including ADSL resale services and other services including mobile services and specialist data services. (see http://m2.com.au/m2-wholesale/products_and_services).

- 70 Further, to the extent that some of the services referred to above are offered on a bundled basis, in Mr Sundakov’s opinion, this “does not in itself indicate an absence of workable competition. Bundling is likely to reflect preference on both sides of the market of supplying bundled rather than stand-alone services, mirrors the prevalence of bundling seen in the retail market and is reflected in [the Commission’s] market definitions [in the Discussion Paper]”.²⁸
- 71 Finally, the current low number of DSLAM-based suppliers of WLR ignores the substantial self-supply of WLR by DSLAM-based operators. It is more likely that the low numbers evidence that the current prices are competitive and do not to make it attractive for ULLS acquirers to wholesale line rental and local calls to other suppliers.²⁹

²⁸ Sundakov Report, p 11.

²⁹ Sundakov Report, p 11.



4. ASSESSING EFFECTIVE COMPETITION

4.1. EFFECTIVE COMPETITION AND THE LEGISLATIVE CRITERIA

- 72 Arguments concerning the respective benefits of regulation and exemption were thoroughly considered in previous proceedings regarding the Exemption Determinations. In the context of the declared fixed line services, it was decided that where sufficient market infrastructure existed to facilitate competition, exemptions should be granted. The Sundakov Report identifies three key justifications.
- 73 First, competition will always be preferable to regulation as a means of achieving desired market outcomes. Second, regulating multiple layers of access would create a significant risk of regulatory arbitrage and the near impossible task of setting regulated prices that do not distort investment decisions. Lastly, competitive outcomes in areas with sufficient infrastructure will provide the Commission with invaluable information to improve regulatory decisions where such infrastructure may not yet exist.
- 74 In principle, as set out in the Sundakov Report,³⁰ the Commission should only reach a different conclusion and impose regulation again if either:
- (a) the market environment has changed to such an extent that the previous conclusions on market structure are no longer valid; or
 - (b) the market outcomes in the exempt ESAs demonstrably negate those conclusions.
- 75 Telstra submits that neither of these prerequisites has been established by the Access Seekers, nor for the reasons set out above and below, are they present.

4.2. MARKET OUTCOMES DEMONSTRATE STRONG COMPETITION

- 76 The Access Seekers have argued that certain market outcomes evidence diminished competition.³¹ However, as demonstrated in sections 3.1, 3.2 and 3.3 above, the current market outcomes are actually indicative of vigorous and increasing levels of competition at both the retail and wholesale levels.
- 77 In addition, Telstra submits that due to the short period of time that the Exemption Determinations have been in effect to date, looking at any particular market outcomes in isolation does not provide any "compelling evidence" of competition levels³² nor the medium to longer term impacts of the Exemption Determinations.
- 78 In making the 2009 Exemptions Orders, the Tribunal satisfied itself that where the market structure in a particular ESA meets the threshold requirements and conditions, it exhibits the required characteristics to facilitate competition.³³ Given the medium-term nature of infrastructure investment, product development and pricing decisions in the telecommunications markets, Telstra submits that a decision to overturn the 2009 Exemptions Orders in these circumstances would be premature and unwarranted.
- 79 Given the significant shift in policy that removing the Exemption Determinations would represent, Telstra submits that the Access Seekers' interpretation of a few selective short-term market conditions (taken in isolation and out of context) is misconstrued. Not only does it ignore the vast range of strong evidence indicating the intense and deepening infrastructure-based competition observable in the exempt ESAs that has developed to date, it also fails by definition to observe the effect of the Exemption Determinations across a full range of market outcomes over the medium to longer term as contemplated by the

³⁰ Sundakov Report, p 1.

³¹ See for example, AAPT Submission at [23] - [26] and Optus Submission at [4.5] - [4.6] in relation to WLR pricing; AAPT Submission at [25], Macquarie Telecom Submission at p 8 and Optus Submission at [4.10] - [4.12] in relation to alternative stand-alone providers of voice services.

³² Sundakov Report, p 7.

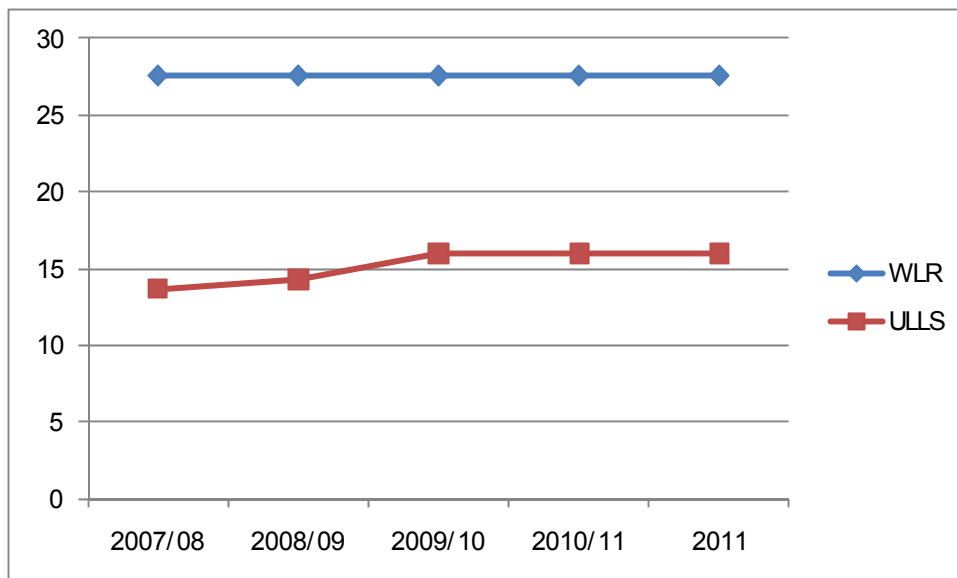
³³ *Chime 3* [2009] ACompT 4 [13], [18]-[20] and [21]-[22].

Tribunal (which set a minimum period of effect of five years before the Exemption Determinations expired) and is therefore clearly not consistent with the statutory criteria.

4.3. PRICING OF WLR

- 80 Access Seekers have argued that exemptions will result in either price increases, or lack of price decreases in line with IAD pricing, and that this evidences a lack of effective competition in the exempt ESAs.³⁴
- 81 Telstra submits that this argument is flawed for the following reasons.
- 82 First, having regard to the arguments above in section 4.2, the Commission should be cautious in interpreting pricing outcomes. There is no evidence submitted by the Access Seekers indicating that pricing outcomes would be different in a more competitive market. As set out in the Sundakov Report, "*regulation is a necessarily imperfect attempt to mimic competition*".³⁵
- 83 Second, Telstra submits that its WLR pricing within the exempt ESAs reflects constraints imposed by an effectively competitive market. This is because ULLS, as a substitute itself for WLR, as well as a platform for the supply of substitute services, is a significant constraint on Telstra's pricing of WLR in the exempt ESAs.
- 84 Telstra's decision to maintain its Standard Offer rates for WLR at the pre-IAD commercial prices within the exempt ESAs, reflects the fact that the regulated price of ULLS – the biggest competitive threat to WLR – has similarly remained relatively constant over this period.

Figure 11: Telstra's standard pricing for residential WLR services and regulated ULLS pricing within the exempt ESAs



- 85 The fact that the Commission's IAD reduced the price of WLR in non-exempt areas, does not impact the competitiveness of Telstra's WLR offering as compared to ULLS within the exempt ESAs. The IAD prices are therefore not relevant to the competitive dynamics in exempt ESAs.

³⁴ See AAPT Submission at [23], Macquarie Telecom Submission at p 7 and Optus Submission at [4.5] - [4.6].

³⁵ Sundakov Report, p 9.



- 86 As a result of the substitutability of ULLS for WLR at the wholesale level discussed above, and other products (such as VoIP and mobile services) at the retail level, Telstra submits that the absence of alternative WLR suppliers is indicative of the fact that WLR is becoming less important in the market. According to Mr Sundakov, *"[s]ince the WLR product is rapidly becoming obsolete, and with Telstra constrained from earning monopoly rents by the threat of competitive entry, the lack of offers from alternative [WLR] suppliers is entirely consistent with how competitive markets handle products at the end of their life cycle"*.³⁶
- 87 In that regard, Mr Sundakov considers that, critically, Telstra is not incented to price WLR at a level at which others will supply WLR, because to do so would draw WLR customers away from Telstra and towards those other suppliers.³⁷ Mr Sundakov is of the view that, *"[i]n the absence of evidence that there exist insurmountable barriers to entry or expansion, it is fallacious to claim that Telstra is free to set whatever price it wants for WLR simply because of a lack of offers from alternative suppliers"*.³⁸ Instead, Telstra is strongly incented to maintain customers on WLR (rather than encouraging them to migrate to ULLS). Increasing ULLS take up actually places downward pressure on WLR prices.
- 88 Third, the prevalence of whole-of-business pricing bundles suggests that Access Seekers prefer to contract for tailor-made arrangements. In this commercial context, Telstra submits that the WLR price should not be examined in isolation as an indicator of competition.³⁹ Rather, while Telstra has maintained its standard commercial prices for the WLR services within the exempt ESAs, it routinely enters into whole-of-business contracts on an individual wholesale customer basis to provide WLR, LCS and other non-regulated services (including for example long distance resale, value added and enhanced calling features, and wholesale DSL, amongst other services), through the use of volume and incremental growth incentives and total spend incentives that can deliver discounts or rebates below standard headline rates for individual services.
- 89 Similarly, Telstra has, for a number of years, been entering into commercial arrangements with Access Seekers where it charges a higher WLR and a lower equivalent LCS price compared to the Commission's approach.
- 90 Although some Access Seekers have argued that this kind of bundling and/or pricing may itself result from Telstra wielding its market power, this is implausible. As explained in the Sundakov Report, this bundling and pricing also exists in regulated areas where Access Seekers have the fall back option of regulated prices and they always have the ability to complain to the Commission if unhappy with the pricing structures proposed.⁴⁰
- 91 In this regard, Access Seekers had an initial 12 month notice period that the 380 ESAs were eligible to be exempted and 6 months notice of the exempted ESAs during which they could negotiate appropriate WLR commercial arrangements.
- 92 Fourth, as to the allegation that Telstra could at any time increase WLR prices, Telstra is largely precluded from imposing arbitrary price increases due to Part XIB of the CCA and the retail price controls.
- 93 Lastly, to the extent that Access Seekers have argued that the Exemption Determinations would allow Telstra to force whole-of-business deals at blended prices across exempt and non-exempt ESAs,⁴¹ Telstra submits that this is unsubstantiated and incorrect as Telstra has provided the IAD pricing in non-exempt areas unless an inconsistent commercial agreement was in place.

³⁶ Sundakov Report, p 11.

³⁷ Sundakov Report, p 11.

³⁸ Sundakov Report, p 11.

³⁹ Sundakov Report, p 8.

⁴⁰ Sundakov Report, p 9.

⁴¹ AAPT Submission at [27].

4.4. PRESENCE OF ACCESS SEEKER DSLAMS

- 94 The Herbert Geer Submission appears to assume - for the purposes of a hypothetical example - that its Access Seekers' DSLAMs are not PSTN voice-grade compatible.⁴² DSLAMs could be used to supply voice by installing a POTS card or by using carrier-grade VoIP of the kind supplied by, for example, iiNet.
- 95 Accordingly, Telstra rejects the Access Seekers' assertion that their DSLAMs are not able to supply voice services and that that is a relevant consideration. In particular, Telstra considers that the examples posited in the Herbert Geer Submission should be afforded little - if any - weight. That is because, first, they are hypothetical in nature and make a number of assumptions (which are not substantiated by evidence).
- 96 Second, in relation to Example 1, if an effective LSS to ULLS transfer process is in effect (and such a process will be in effect by 15 September 2011), the Access Seekers could supply bundled voice and data services to their customers over the ULLS. As such, Example 1 is a fallacy.
- 97 Third, in relation to Example 2, the Herbert Geer Submission fails to acknowledge that Access Seekers can provide stand-alone voice competition over ULLS using carrier-grade VoIP, which is growing in popularity and market share (as demonstrated above).

4.5. IMPACT OF EXEMPTIONS ON DSLAM INVESTMENT

- 98 A number of Access Seekers have claimed that DSLAM investment has not been stimulated by the Exemption Determinations. Telstra submits that this is both irrelevant and incorrect.
- 99 First, the LTIE are served by *efficient* investment in infrastructure. Therefore, to the extent that the Access Seekers are referring to a lack of further investment in exempt ESAs, Telstra relies on the Sundakov Report at page 14 which states that:
- "Regulatory forbearance is itself a product of prior investment. It is only triggered when DSLAM penetration reaches high levels, and there is considerable overhang of capacity".*⁴³
- 100 It would be illogical to suggest that the Exemption Determinations should incent DSLAM investment in ESAs already at or near saturation level.⁴⁴
- 101 Instead, it is to be expected that new DSLAM investment is mostly occurring (and therefore competition increasing) in non-exempt areas.⁴⁵
- 102 Notwithstanding, there has been recent and significant investment with 23 DSLAM deployments in the three months to March 2011 and 160 in the 12 months to March 2011 in exempt ESAs. In addition, Ericsson, one of the largest suppliers of DSL hardware in Australia stated recently:
- "... - as has been the case for several years now - in 2010 we actually sold more DSLAMs than in the previous year...Indeed, last year we sold more DSL lines than the growth in the total number of Australian DSL subscribers."*⁴⁶

4.6. IMPACT OF NBN ON ULLS-BASED INVESTMENT

- 103 A number of Access Seekers have argued that the NBN and associated decommissioning of Telstra's copper network undermines future investment in DSLAMs and related infrastructure. Telstra submits that ULLS-based investment continues to occur, will

⁴² Herbert Geer Submission, pp 22-24.

⁴³ Sundakov Report, p 14.

⁴⁴ Sundakov Report, p 14.

⁴⁵ See, for example, Annexure 2 to the Herbert Geer Submission, email from Steve Dalby to the Commission dated 25 May 2011.

⁴⁶ See Sundakov Report, p 14, for Telstra's figures on DSLAM deployment; and 'Key telco vendors see no slowdown in DSL deployment spend', *Communications Day* Issue 4012 (30 June 2011) for Ericsson and Alcatel-Lucent statements.



continue to occur where it is efficient, and that this continued investment is crucial to the state of competition in the future NBN world.

104 First, contrary to their submissions, the conduct of Access Seekers and their public statements in recent months confirm that a positive business case continues to exist for DSLAM deployment despite the planned NBN build. Statements as recent as last month by Mr Simon Hackett, Managing Director of Internode, confirm that ADSL 2+ DSLAMs have a break-even period which is well exceeded by NBN build estimates.⁴⁷ Various other Access Seekers have also indicated that they intend to continue investing in DSLAMs (as there continues to be a business case for it) and that they do not view this as incompatible with the pending NBN.⁴⁸

105 Recent market trend data shared with Communications Day by Ericsson and Alcatel-Lucent, key suppliers of DSL hardware, also contradict Access Seekers' claims. Ericsson Australia's broadband strategy manager Colin Goodwin has stated:

"Each year we expect our DSL sales figures to stall in anticipation of the NBN build, but - as has been the case for several years now - in 2010 we actually sold more DSLAMs than in the previous year".⁴⁹

106 Second, ULLS based Access Seekers in the exempt ESAs continue to increase in number.

Figure 12: [c-i-c commences] [c-i-c] [c-i-c ends]

107 The above chart shows that within the 215 ESAs that have met the exemption threshold, the number of ESAs with fewer than [c-i-c commences] [c-i-c] [c-i-c ends] ULLS-based Access Seekers is continuing to decline, with more than [c-i-c commences] [c-i-c] [c-i-c ends] of these ESAs now having [c-i-c commences] [c-i-c] [c-i-c ends] or more ULLS-based Access Seekers present. The average number of ULLS-based competitors has increased to just under [c-i-c commences] [c-i-c] [c-i-c ends] – considerably higher than the minimum threshold of three identified by the Tribunal. Since the Exemption Determinations were granted in September 2009, there have been an additional [c-i-c commences] [c-i-c] [c-i-c ends] occurrences of entry by a ULLS-based competitor into one of the 215 ESAs that have met the exemption threshold.

108 To the extent that DSLAM investment has slowed, in light of the above, Telstra submits that this is explicable as the 181 exempt ESAs approach saturation with the average number of ULLS-based competitors being [c-i-c commences] [c-i-c] [c-i-c ends]. As Mr Sundakov states, the on-going ULLS take-up is the more important part of the competitive market dynamic.⁵⁰ To this end, data indicates that ULLS numbers grew at around [c-i-c commences] [c-i-c] [c-i-c ends] in the 12 months to March 2011 in exemption ESAs, a similar rate as for all ESAs taken together.

109 Further, once investment in a DSLAM is made, the cost of connecting an extra customer is limited to the connection costs. Accordingly, Access Seekers will have an incentive to increase their customer base in the exempt areas. As set out above, this is already occurring, with ULLS competitors growing their market share.

⁴⁷ See Sundakov Report, p 16, for NBN time frames. See also *Communications Day Issue 4012* (30 June 2011) noting that "some carriers now seeing ROI in under two years on DSLAM outlay".

⁴⁸ Sundakov Report, p 17; see for example iiNet Investor Presentation, *NBN and iiNet*, slide 18, dated 2 February 2011 indicating that the breakeven point of DSLAMs is at the 20th month of operation: <http://investor.iinet.net.au/IRM/Company/ShowPage.aspx/PDFs/1415-11894948/iiNetinstrongpositionforNBNrollout>; Business Spectator Interview with Internode finds, Simon Hackett dated 20 May 2011: "and they [ADSL 2+ DSLAMs] turn out to have, in the places we've built them along with obviously other people in the industry, a break-even period of between about one and a half and four years...you can expect to see us continue to do those things while the NBN is built for a fair while as well, because the NBN is going to take a lot longer to build than these things take to get their capital back": <http://www.businessspectator.com.au/bs.nsf/Article/NBNinternodeSimon-Hackettbroadband-Telstra-ADSL2-pd20110518-GXVWQ?opendocument&src=rss>.

⁴⁹ 'Key telco vendors see no slowdown in DSL deployment spend', *Communications Day Issue 4012* (30 June 2011).

⁵⁰ Sundakov Report, p 14.

- 110 Evidently, there is no risk that ULLS-based constraints on Telstra's provision of resale services will disappear.
- 111 In addition, the Exemption Determinations are crucial to fostering competition in the lead up to the NBN.
- 112 As set out in the Sundakov Report, Telstra's competitors have a strong incentive to increase their market share in the lead up to the NBN so they can "enter the new era of downstream competition on a firm footing".⁵¹ As demonstrated above, this is already occurring in the market.
- 113 This is especially pertinent as the NBN will provide no value-added services on top of the PSTN-grade voice port and bitstream access service.⁵² A recent Communications Day newsletter indicates that leading DSL hardware supplier Alcatel-Lucent is:
- "even anticipating that carriers might invest in DSL equipment in the short-term in future NBN deployment areas, securing customers now with a view to eventually transitioning them to the new network".*⁵³
- 114 The retention of the Exemption Determinations stimulates investment in the transition process to a future of competition essentially in VoIP services. Access Seekers such as iiNet have recently themselves acknowledged the importance of developing:
- "a new suite of innovative consumer products from our iiNet Labs, to ensure our long term growth [in the context of NBN]".*⁵⁴
- 115 Similarly, Ericsson Australia's broadband strategy manager Colin Goodwin has indicated that:
- "Research revealed [last year's record DSL line sales] was due to many of our ISP customers aggressively moving subscribers off wholesale DSL services and onto their own DSLAMs. By doing so they are able to offer differentiated products, together with more advanced and profitable retail services. Today this includes IPTV services alongside internet access and telephony".*⁵⁵
- 116 Public comments from several DSLAM-based Access Seekers' management are also dismissive of the deployment of the NBN having a negative impact on DSLAM investment decisions,⁵⁶ with Internode's Simon Hackett in particular refuting claims that Internode has slowed down DSLAM deployment due to the NBN and stating on the Whirlpool Forums in August 2010 that:
- "NBN or no NBN, we're building more DSLAMs, because whatever the future looks like in, say, 5 years time, ADSL 2+ DSLAM's are the primary broadband vector between now and then".*⁵⁷
- 117 Telstra submits that the ongoing exemptions and consequential encouragement of investment in ULLS-based products are essential to continue to incent this kind of innovation and market share growth.
- 118 Lastly, Telstra notes that arguments regarding any "chilling" effect of the pending NBN build on ULLS-based investment have been raised and dismissed in the previous proceedings before the Australian Competition Tribunal.⁵⁸

⁵¹ Sundakov Report, p 17.

⁵² Sundakov Report, p 17.

⁵³ Communications Day Issue 4012 (30 June 2011).

⁵⁴ See p 1 of iiNet company announcement: <http://investor.iinet.net.au/IRM/Company/ShowPage.aspx/PDFs/1415-11894948/iiNetinstrongpositionforNBNrollout>.

⁵⁵ Communications Day Issue 4012 (30 June 2011).

⁵⁶ Michael Malone, CEO of iiNet statement following the announcement of the proposed NBN in April 2009: <http://m.zdnet.com.au/dslam-roll-outs-continue-despite-nbn-339296039.htm>; Simon Hackett, Managing Director of Internode on Agile and Internode's continued investment in DSLAMs: <http://www.businessspectator.com.au/bs.nsf/Article/NBNinternodeSimon-Hackettbroadband-Telstra-ADSL2-pd20110518-GXVWQ?opendocument&src=rss>.

⁵⁷ <http://forums.whirlpool.net.au/archive/1517619>.

⁵⁸ See for example the arguments of AAPT in the AAPT proceedings transcript day 2, page 76 [20]-[40], 81 [15] - [35] and the subsequent decision to grant the exemptions in any case: AAPT 1 [80] - [84].



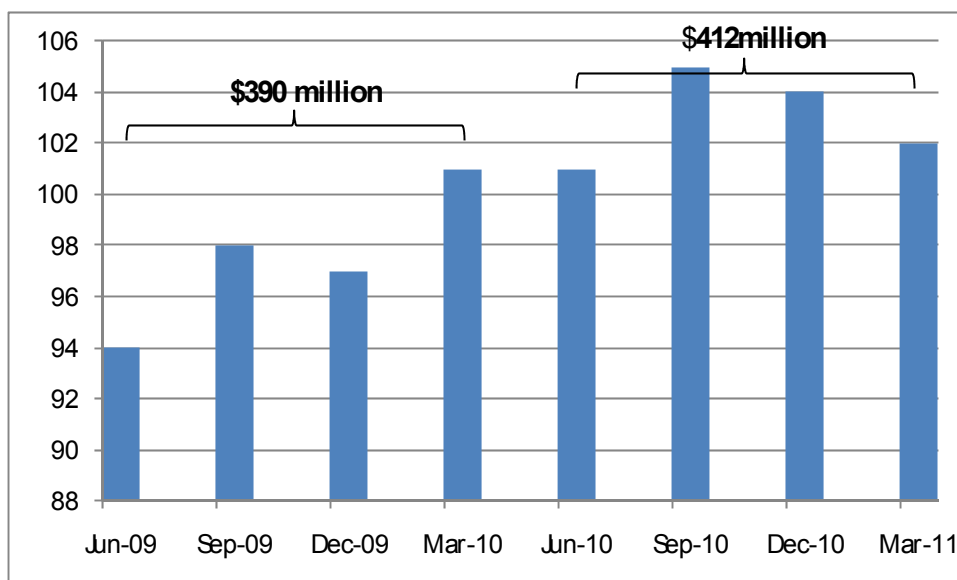
5. EXEMPTIONS AND CORPORATE AND GOVERNMENT CUSTOMERS

- 119 In submitting that the FADs should not incorporate the Exemption Determinations, Optus submits that:
- "Telstra's freedom to act without constraint is greater in respect of business customers compared to residential customers"⁵⁹ and that "the incorporation of the exemptions in the FADs will damage competition, particularly in the corporate space".⁶⁰*
- 120 Telstra submits that the corporate and government customers sector is highly competitive for the reasons set out below.
- 121 First, to suggest that the ability to service corporate and government customers somehow depends on the price charged for WLR is misconceived.
- 122 Corporate and government contracts are typically high value and are negotiated on the basis that a single agreement covers either the complete range of telecommunications services required by the customer, or a tranche of services required by the customer across a number of the customer's premises. Moreover, many of these sites are in CBD areas and are serviced via direct fibre connections.
- 123 In this context, Telstra submits that whole-of-business supply by an Access Seeker to a particular corporate or government customer is not threatened by the customer having a number of premises which must be serviced via resale WLR. This is because:
- (a) fixed voice services constitute a small proportion of the services supplied to corporate and government customers;
 - (b) the number of premises which must be serviced via resale WLR will comprise only a small proportion of the customer's total number of premises (the overwhelming majority of which will be serviced via fibre connections);
 - (c) an even smaller proportion of the customer's premises requiring service through WLR will fall within exempt ESAs; and
 - (d) Telstra intends to continue to supply LCS, WLR and PSTN OA services over its PSTN network to wholesale customers in exempt areas in the future, and any arguments that the exemptions may result in anti-competitive conduct in exempt areas are without basis, as the general provisions of the CCA prohibiting anti-competitive conduct are sufficient to preclude any such risks.
- 124 These factors mean that an Access Seeker's ability to compete for a particular corporate or government customer (in terms of both price and service offerings) will not be compromised by the need to supply resale WLR to a small proportion of the customer's premises, in circumstances where that account will be of a high dollar value and will cover a broad range of service requirements.
- 125 Second, the recent performance of Optus' corporate and government business division starkly contrasts claims that the Exemption Determinations have affected, or are likely to affect, their business. In the 12 months to March 2011, Optus grew revenue on fixed line voice services for business customers by 5.6% compared to the 12 months to March 2010 (see Figure 13 below). By comparison, Telstra Enterprise and Government's fixed voice line revenue fell [c-i-c commences] [c-i-c] [c-i-c ends] over the same period.

⁵⁹ Optus Submission, at [4.34].

⁶⁰ Optus Submission, at [4.35].

Figure 13: Optus fixed voice revenue in the business and government segment⁶¹



126 This positive performance by Optus is based on its recent successes in winning and retaining key corporate and government contracts, as set out below in Figure 14:

Figure 14: Examples of recent major corporate and government contracts won by Optus

Customer	Deal	Outcome
Woolworths ⁶²	Woolworths Fixed line voice contract covering around 20,000 lines at 2,000 sites	Optus won contract for fixed voice services previously provided by Telstra
ANZ Banking Group ⁶³	\$500 million, 5 year whole of business contract, including the provision of 20,000 voice services across ANZ sites across Australia	Optus won whole of business contract, which was previously held by Telstra
Brisbane City Council ⁶⁴	Managed services contract worth \$70 million over 7 years. Contract includes all council fixed voice services at 200 sites around Brisbane	Optus won the contract for services previously provided by Telstra
Australian Taxation Office ⁶⁵	Managed Network Service Contract - including provision of fixed voice services. \$186.5 million, four-year contract.	Optus won the contract

127 Third, in the PSTN OA Tribunal proceedings, the Tribunal considered submissions in relation to corporate and government customers. The Tribunal granted the metropolitan

⁶¹ Source: Singtel Optus Quarterly Financial Reports, available at

<http://www.optus.com.au/aboutoptus/About+Optus/Media+Centre/Financial+Results>.

⁶² See: *Woolies dismantles \$300m Telstra deal*, 8 April 2010 available at: <http://www.theaustralian.com.au/australian-it/woolworths-dismantle-300m-telstra-deal/story-e6frgakx-1225851266372>.

⁶³ See: *Optus wins a new five-year \$500m In contract with ANZ*, 5 May 2009 available at:

<http://www.industrysearch.com.au/News/Optus-wins-a-new-five-year-500mIn-contract-with-ANZ-38359>.

⁶⁴ See: *Brisbane City Council moves to IP; awards network managed services contract to Optus*, 20 July 2009 available at:

<http://www.optus.com.au/aboutoptus/About+Optus/Media+Centre/Media+Releases/2009/Brisbane+City+Council+move+s+to+IP%3B+awards+network+managed+services+contract+to+Optus>.

⁶⁵ See: *Singapore Telecommunications (ASX: SGT) subsidiary Optus wins contract with ATO*, 17 June 2009 available at: http://www.finnewsnetwork.com.au/archives/finance_news_network11612.html.



exemptions without imposing any additional conditions to those of the LCS/WLR exemptions.⁶⁶ Further, in relation to the CBD exemptions, the Tribunal found that the exemptions would not harm competition in the corporate and government sector.⁶⁷ Telstra submits that the findings of the Tribunal are supported by the growth in Optus' fixed voice revenue in the business and government sector, as indicated in Figure 13. The Tribunal's findings are also supported by the increased take-up of VoIP technologies by corporate and government customers, as noted in Mr Sundakov's report.⁶⁸ Further, Optus has acknowledged that it is able to offer the majority of Telstra's "complex services" "using its 'Optus Evolve' IP-based VPN platform and the associated suite of products, which are delivered via Ethernet access infrastructure of the ULLS".⁶⁹

128 Finally, in relation to any argument that an entire business account may be lost due to the presence of a pair gains system affecting a particular premises of a corporate and government customer, Telstra refers to the Sundakov Report where it notes that:

"C&G customers will require the provision of broadband as well as VAS[value-added service]-supported voice services, meaning that barriers to Optus and others competing on a whole-of-business basis from pair gain access lines or long copper lines that cannot support ULLS would not be removed by the continued availability of WLR/LCS on a regulated basis".⁷⁰

129 Telstra submits that the arguments raised by Optus in relation to corporate and government customers have been considered and dismissed by both the Commission⁷¹ and the Tribunal⁷² in the context of the original exemption applications, and that nothing has changed since then to warrant the Commission adopting a different position on this issue. Consequently, Telstra submits that incorporating the Exemption Determinations will not have an adverse impact on competition in the corporate and government sector.

6. STATUTORY CRITERIA

130 Telstra maintains that incorporation of the Exemption Determinations in the FADs satisfies the statutory criteria. That is because, in addition to the matters set out in the Telstra Primary Submission, Telstra has demonstrated that, in the exempt ESAs:

- (a) there is effective competition in both the retail and wholesale markets, which is in the LTIE. This is evidenced by the facts that:
 - (i) Telstra's retail market share is declining faster in the exempt ESAs in comparison with all ESAs (see Figure 1);
 - (ii) whilst WLR services are decreasing, ULLS services are increasing, which (in combination with (i) above) demonstrates that Access Seekers are increasing their market share, are servicing that increasing market share via ULLS (see Figure 2), and that ULLS is substitutable for WLR;
 - (iii) insofar as WLR-LSS bundled services are not declining, that is likely because Access Seekers are waiting for the LSS to ULLS transfer process to be implemented before transferring their customers from LSS to ULLS;
 - (iv) there are wholesale voice only competitors (see Figure 10). In addition, every opportunity exists for competitors to supply WLR services. In any event, the Access Seekers' argument that a lack of WLR competitors is

⁶⁶ AAPT 1, at [57] - [58] and [61].

⁶⁷ AAPT 1, at [72].

⁶⁸ Sundakov Report, p 20.

⁶⁹ Optus Submission, at [4.29].

⁷⁰ Sundakov Report, p 15.

⁷¹ See: Commission, *Telstra's local carriage service and wholesale line rental exemption applications - Final Decision and Class Exemption*, 8 August 2008, at pp 47 and 105 - 106; Commission, *Telstra's PSTN Originating Access exemption applications - CBD and Metropolitan areas - Final Decision and Class Determination*, October 2008, at pp 62 and 127 - 128.

⁷² See paragraph 127 above.

demonstrative of a lack of competition does not hold, because it ignores the substantial self-supply of WLR by DSLAM-based providers; and

- (v) both WLR pricing (by Telstra) and ULLS pricing (by the Commission) has remained relatively constant (see Figure 11).
- (b) there is efficient use of and investment in DSLAM infrastructure. That is evidenced by, for example, recent comments from two of Australia's largest suppliers in DSLAM infrastructure that investment in DSLAM infrastructure has in fact increased rather than decreased in the last 12 months. That is despite the planned NBN build; and
- (c) incorporating the Exemption Determinations into the FADs is also in the Access Provider's legitimate business interests due to the savings associated with deregulation (because the administrative and compliance burdens of regulation will be removed).

7. OTHER ISSUES

7.1. PAIR GAINS SYSTEMS

- 131 Optus submits that if the Exemption Determinations are to be incorporated into the FADs, the Commission should exclude their application from any lines affected by the presence of a pair gains system.⁷³ Optus submits that the Commission should not accept that compliance with such a condition would be complex, costly and impracticable.⁷⁴
- 132 In the WLR/LCS proceedings, the Tribunal found that compliance with a pair gains condition would be "disproportionately expensive".⁷⁵ Telstra also refers to its submissions in response to the Discussion Paper that such a condition would be extremely costly and impracticable to attempt to implement, and that any benefits would be disproportionate to the cost.⁷⁶ Further, Telstra relies upon the statement of [c-i-c commences] [c-i-c] [c-i-c ends] dated 30 June 2011 in which he estimates that compliance with a pair gains condition would cost at least [c-i-c commences] [c-i-c] [c-i-c ends].⁷⁷
- 133 Accordingly, the Commission should not limit the Exemption Determinations to those lines not affected by pair gains systems, as the costs of compliance with such a condition would be disproportionate to any benefits sought.
- 134 Telstra would also highlight that the New Zealand Commerce Commission's "*current view is that cabinetised lines and non-cabinetised lines are in the same relevant product market, as Telecom could be constrained not only by direct wholesale supply but also by competition at retail level over cabinetised and non-cabinetised lines.*"⁷⁸ Cabinetised lines are akin to pair gain lines in that the line is fed by fibre from the exchange to a cabinet, and from there by copper to the customer premises (thus precluding ULLS based supply). Consistent with its approach on market definition, the Commerce Commission proposes that there be no distinction drawn between cabinetised and non-cabinetised lines in specifying the conditions on which Telecom NZ may be exempted from the Standard Terms Determination for Unbundled Bitstream Access in particular ESAs.⁷⁹
- 135 Finally, Telstra notes that the percentage of SIOs affected by pair gains systems in the 380 Exemption ESAs was approximately seven per cent as at the end of March 2011, which

⁷³ Optus Submission, at [4.44].

⁷⁴ Optus Submission, at [4.45] -[4.46].

⁷⁵ Application by Chime Communications Pty Ltd (No 3) [2009] ACompT 4, at [24].

⁷⁶ Telstra Primary Submission, at [31].

⁷⁷ Statement of [c-i-c commences] [c-i-c] [c-i-c ends] dated 30 June 2011.

⁷⁸ NZ Commerce Commission, *Revised Draft Review of the Standard Terms Determination for the designated service Telecom's unbundled bitstream access*, 8 June 2011, p.5.

⁷⁹ NZ Commerce Commission, *Revised Draft Review of the Standard Terms Determination for the designated service Telecom's unbundled bitstream access*, 8 June 2011, p.10.



remains consistent with the Tribunal's findings in the LCS/WLR proceedings.⁸⁰ The percentage of SIOs affected by pair gains systems in the 215 ESAs that have met the exemption threshold was [c-i-c commences] [c-i-c] [c-i-c ends] as at the end of March 2011.

7.2. THE EXEMPTIONS AND "NETWORK UPGRADES"

- 136 Optus submits that if the Exemption Determinations are incorporated into the FADs, they should be subject to a condition that an ESA will cease to be exempt from the date that Telstra announces a "network upgrade" which will result in Telstra ceasing to be an Access Provider of ULLS in that ESA at a certain future date.⁸¹ Optus submits that where this occurs, an alternative regulated access method is required immediately.⁸²
- 137 Telstra intends to continue to supply LCS, WLR and PSTN OA services over its network to wholesale customers in exempt areas in the future. Thus, the only potential issue is the price at which that alternative access is provided. In this regard, Telstra notes that it prices WLR in all exempt areas at the same price. In exempt areas where there is no "network upgrade" occurring, for the reasons set out above, competitive forces exist which operate to ensure that WLR pricing is competitive. Further, competitive activity occurs over a much wider footprint than simply those ESAs which meet the exemption criteria. As a result, there will be no issues with alternative supply arrangements in any exempt ESAs which are subject to "network upgrades".

7.3. DUPLICATION OF INFRASTRUCTURE

- 138 Optus submits that the duplication of DSLAM infrastructure will causes losses in productive efficiency in the lead up to the NBN.⁸³ Optus also calls into question the efficiency of any further duplication of DSLAM infrastructure in exempt ESAs.⁸⁴ Similarly, Macquarie submits that ULLS infrastructure investment will be inefficient and will take potential resources away from alternative investments.⁸⁵
- 139 Telstra submits that the incorporation of the Exemption Determinations into the FADs will not have the effect of encouraging inefficient investment. As noted by Mr Sundakov,
"...it is not sufficient to argue that DSLAM investment is no longer in the public interest with the NBN arriving: where it has already taken place, it is sunk cost. Where it is yet to take place, it will proceed if it is privately profitable".⁸⁶
- 140 Further, Mr Sundakov states:
"Similarly, I fail to see how regulatory forbearance could be said to encourage excess investment in DSLAMs. First, as should be obvious, most investment occurs before the forbearance is triggered. It seems extremely far-fetched to argue that access seekers would be encouraged to over-invest by the prospect of triggering an exemption. Second, since Telstra has no incentive to encourage migration of customers from WLR to ULLS, it is implausible to suggest that after the exemption is triggered, it would behave in a way which would encourage such migration (requiring further inefficient investment)".⁸⁷
- 141 As the above demonstrates, the conditions of the Exemption Determinations are such that investment in DSLAM infrastructure will only occur where such investment is efficient. It therefore follows that incorporating the effect of the Exemption Determinations into the FADs will not result in inefficient investment decisions.

⁸⁰ Chime 2 at [124].

⁸¹ Optus Submission, at [4.75].

⁸² Optus Submission, at [4.75].

⁸³ Optus Submission, at [4.64] - [4.65].

⁸⁴ Optus Submission, at [4.64] - [4.65].

⁸⁵ Maddocks Submission, at p 11.

⁸⁶ Sundakov Report, p 5.

⁸⁷ Sundakov Report, p 14.

7.4. LONG DISTANCE PRE-SELECTION SERVICES

- 142 Optus submits that incorporating the Exemption Determinations into the FADs will harm competition with respect to the provision of long distance pre-selection services.⁸⁸
- 143 As noted by Mr Sundakov, these concerns were expressed in the original PSTN OA exemption applications, where Dr Paterson concluded that:
- (a) unbundled supply would be likely to occur, even in the absence of regulation, where there exists competition from vertically integrated operators (ULLS based operators) if that manner of supply was an efficient means of meeting customers' needs; and
 - (b) competition would not be diminished if the PSTN OA exemption resulted in the provision of bundled services only, as:
 - (i) there is not a stand-alone market for long distance services;
 - (ii) the scope for competition is no greater for these services than for bundled services;
 - (iii) Telstra would not be able to foreclose long distance competition;
 - (iv) a move to universal bundling would not favour Telstra; and
 - (v) very few customers would be affected.⁸⁹
- 144 In the PSTN OA Tribunal proceedings, the Tribunal found that "*[s]trongly increasing end-user preference for bundled LD [long distance], IDD [international direct dialling] and FTM [fixed-to-mobile] services, with no indication that this trend will be reversed, suggests that PSTN OA cannot be assessed as having sufficient characteristics associated with a distinct market to justify it as constituting an analytically - or operationally - relevant market*".⁹⁰ The Tribunal also concluded that even if there were to be a withdrawal of PSTN OA after deregulation, "*the effect on end-users by the loss of stand-alone providers would be at worst marginal*".⁹¹
- 145 Mr Sundakov accepts the conclusions of Dr Paterson and he considers that they still apply in the present circumstances.⁹² Further, as noted by Mr Sundakov, PSTN OA volumes continue to decline, "*reflecting a fall in volumes for the bundle of OA-dependent pre-selection services from Telstra's basic access customers, who chose to use an alternative supplier for these services - domestic long distance, international and fixed-to-mobile calls*",⁹³ and such legacy services will have even less relevance in the NBN world.
- 146 Accordingly, Telstra submits that incorporating the Exemption Determinations into the FADs will not adversely affect competition for long distance pre-selection services.

7.5. THE EFFECT OF THE EXEMPTION DETERMINATIONS ON THE PROVISION OF DATA SERVICES

- 147 As Mr Sundakov notes, iiNet has implicitly suggested that the Exemption Determinations have the potential to impact adversely upon those operators who do not provide PSTN-based voice services.⁹⁴ As explained by Mr Sundakov, these operators utilise WLR to win customers who require both PSTN voice and data services, with the goal of eventually migrating these customers to VoIP.⁹⁵

⁸⁸ Optus Submission, at [4.36] - [4.40].

⁸⁹ Sundakov Report, p 24.

⁹⁰ AAPT 1 at [50].

⁹¹ AAPT 1 at [58].

⁹² Sundakov Report, p 25.

⁹³ Sundakov Report, p 25.

⁹⁴ See: Sundakov Report, p 25; Herbert Geer Submission, at Annexure 2 (email from Steve Dalby to ACCC, 25 May 2011).

⁹⁵ Sundakov Report, p 25.



- 148 Telstra submits that the Exemption Determinations will not adversely impact upon this segment of the market. Rather, the Exemption Determinations will encourage efficient investment and innovation in this particular segment. This is because the provision of WLR on a commercial basis will provide these operators with an incentive to develop and promote VoIP services where it is efficient to do so, as Mr Sundakov notes.⁹⁶ In addition, these incentives to develop and promote VoIP services will hold merit in the NBN-world.⁹⁷ In contrast to this, the regulated supply of WLR in these areas will be likely to reduce the incentive to develop VoIP services. This is because the national average pricing of regulated WLR would mean that pricing would be below the efficient cost-based service for the price in certain areas, reducing the incentive to develop VoIP services in those areas.⁹⁸
- 149 For these reasons, Telstra submits that the incorporation of the Exemption Determinations into the FADs will not adversely affect competition for the provision of data services.

⁹⁶ Sundakov Report, p 25.

⁹⁷ Sundakov Report, p 26.

⁹⁸ Sundakov Report, p 25.

SCHEDULE 1

*Report prepared by Mr Aleksandr Sundakov entitled "On-going Exemption from Access Regulation for WLR, LCS and PSTN-OA Services where Workable Infrastructure Competition Exists", dated 12 July 2011 (**Sundakov Report**). The Sundakov Report is entirely confidential.*



SCHEDULE 2

Comparison of offers available in exempt ESAs (September 2007 to June 2011). This comparison is entirely confidential.

SCHEDULE 3

Statement of [c-i-c commences] [c-i-c] [c-i-c ends] dated 12 July 2011. This statement is entirely confidential.



SCHEDULE 4

Statement of [c-i-c commences] [c-i-c] [c-i-c ends] dated 30 June 2011. This statement is entirely confidential.

SCHEDULE 5

Confidential information redacted from Telstra's submission. The information contained in this Schedule is confidential to Telstra Corporation Limited.