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SUBMISSION OF SPIRIT TELECOM

SBAS declaration - Final Access Determination

On 9 January 2017 the Australian Competition and Consumer Commission released its draft decision for the declared superfast broadband access service (SBAS) and the local bit stream access service (LBAS). The draft decision proposes to exempt those SBAS providers supplying less than 12,000 end users (down from 20,000 in the SBAS interim access determination).

Spirit wishes to address the level of small-scale provider (SSP) exemption for retail service providers (RSPs) from the SBAS Declaration requirement to provide, establish and resource wholesale access, services and compliance arrangements. The Commission sought information from SSPs about estimated additional costs in supplying the SBAS and/or LBAS and consulted UXC for further guidance. This resulted in the Commission reducing the exemption level of 20,000 services adopted in the Interim Access Declaration (IAD) to 12,000 services based on various estimates of the cost and profitability of small-scale providers when compelled to establish wholesale access services in their business. However, the burden of wholesale access being imposed upon small providers is not merely cost and/or revenue. It is most substantially the sustained, disruptive impact that conducting a wholesale SBAS business division shall have on the efficient operations of a small-scale retail service provider business. More realistic levels of exemption than 12,000 are necessary to prevent overburdening less resourced provider through non-cost impacts in the absence of demand and thereby presenting risk to the benefits they provide in the long-term interest of end (LTIE) users through their competitive presence.

Such SSP presence is in the long-term interests of residential end users. SSPs inject innovative service and product challenges, in order to compete, without the same economies of scale as the much larger players.

Therefore, we submit that it is most important that the exemption level should remain at not less than 20,000 services, rather than initially be reduced to 12,000 in the hope that lower limits are not found to be unviable, or otherwise impacting adversely upon the presence of SSPs in the superfast broadband market.

It is important to point out the magnitude of difference in size of the competitive players, subject to this regulation. Spirit is a recently ASX listed company with a market cap of circa \$30Million. By comparison, the major players competing in the SBAS market – Telstra, TPG, Vocus, Optus and NBN – are each multi-Billion dollar companies, with significant size and scale that could not possibly be deterred by a SSP, such as Spirit, occupying less than 100,000 SBAS services.

Hence, setting a provider exemption size at 20,000 rather than 12,000 services has no bearing on other participants. Yet it could be critical in providing those few such SSPs with resilience to manage all the requirements - formal, contingent and unforeseen - during the period of the declaration. There cannot have been any calibration of those impacts to rely upon in reducing the exemption scale from 20,000 to just 12,000 services.

Spirit has been under continual scrutiny and investigation, albeit one of the smallest competitors in the market. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] Spirit is now facing additional regulatory burden and potential stymied growth path, in a market it clearly cannot dominate.

END-USER BENEFIT IN SMALL-SCALE PROVIDER PARTICIPATION

In Spirit's experience, there are no countervailing anti-competitive effects from the provision of small providers. Competition from other RSPs is prevalent, particularly from NBN resellers, and there is no technical bottleneck, exclusivity or vertical integration advantage to Spirit.

On the other hand, an oligopoly is developing contrary to the LTIE with 3 major providers dominating the addressable market with 98% of NBN customers. It has recently been declared that Telstra's market share is growing, within the superfast broadband segment, further illustrating the obvious dominance of the larger players and even suggesting that regulation should be more towards the top end of the market than SSPs.

It is most important for residential consumers that the advantages from a competitive presence, in an otherwise oligopolistic market, are not lost through the effect of burdensome regulatory requirements suppressing vibrant competitors. These few participants face substantial risk of insufficient scale to absorb those effects. On the other hand, small providers do not present any risk of significance to the proliferation of the national broadband network. They set only alternative standards.

There is a clear and possibly substantial risk to the ongoing benefits from small-scale providers, to the end user. This is due to the disproportionate burden of regulation being formed, in the absence of any negative effect upon competition and end-user interest. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

IMPACT UPON MANAGEMENT AND CORE BUSINESS

The Commission has apparently accepted that the prospect of revenue return of any kind to SSPs from access seekers is minor, possibly non-existent and of no significance. Prior to and throughout the Commission's consideration it has remained the case that there is no interest in access to Spirit's discrete and diverse networks. It is apparently not an efficient use of resources for other providers to seek access in such diverse manner. An absence, or virtual absence of revenue is likely, compared to the investment required to meet the regulatory burden. Hence the estimations of cost and any potential profit are volatile.

As they do not have economies of scale, SSPs develop business with relatively leaner resources, than the market dominators and, management focus and energy is premium for their survival. Potential wholesale access service, imposed upon executives of such small organisations, will undoubtedly present substantial risks to their viable participation in the market.

Importantly, the effect of managing a wholesale division and resources, establishing wholesale services, participating in increasing modes of regulation (not just concerning SBAS) will subdivide and suppress management focus, in its endeavours to compete by providing best quality retail services to residential consumers. [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] For example, development, training operations in industry codes, procurement and reporting requirements, as well as business rules and contracting are likely to be considerable day-to-day concerns of management. Even repeated recruitment activities for suitable human resources, which may be scarce, present effects and impact, not taken into account in costing considered by the Commission.

[REDACTED]
[REDACTED]. UXC took into account costs of additional headcount; in a smaller operation application of management and focus energy, critical to its competitive viability, is required to enable an overall functioning operation. In other words, the effects upon an SSP of access and other regulation, not only divert investment capital inefficiently, but will impact the focus of executive management, as it shall be disproportionately engaged in managing wholesale activity effects, particularly on a functionally separated basis.

The effect upon small-scale providers is not singularly about the costs of establishing and providing a wholesale access product or service, but also in learning and developing that business and its particular issues. Wholesale customers, being of significantly greater scale and needs than SSPs' residential customers, present new and substantial risks to SSPs, particularly if there is strong growth by a wholesale customer or in the number of access seekers.

SSPs will be reliant upon the Commission to be strongly conversant with any such impacts. However, due to its deliberative processes, it is expected that the Commission will not be in a position to respond sufficiently to the SSP's needs to relieve any adverse risks and effects by adjusting exemption levels. The Commission is likely to consider, deliberate and consult over a period of time and will not be likely to respond in a timely fashion to manage the impact of adverse wholesale access effects upon the SSPs. [REDACTED]
[REDACTED]
[REDACTED]

IMPACT OF DERIVATIVE REGULATORY ACTION

Once a small-scale provider is bound to provide access, in accordance with Part XIC, it cannot reliably estimate or control the resources, management time and effects of access disputes and processes. While the dominant players are strongly resourced and experienced and able to bear expense burdens through enormous economies of scale, an SSP can be unexpectedly adversely impacted and diverted and shall be hamstrung and heavily dependent upon its need for expert input to guide its process.

OTHER EFFECTS

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. Alternatively, UXC had also commented that the cost of backhaul transmission for smaller providers is a significant impact on margin. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

To preserve the LTIE, the Commission should adjust exemption levels for small-scale providers and monitor to a safer, higher level. This would lessen the substantial likelihood of attempting to adjust retrospectively, for damage that may already be crystallised, through these risks and impacts. This potentially would jeopardise the continued presence of SSP's.

At a level of 20,000 services, the small-scale providers cannot adversely affect the national broadband network rollout, or otherwise present unanticipated effects upon such a huge, addressable market of over 7 million homes. Even at an exemption level of 100,000 services, these statements would remain accurate and the question ought to be, rather than whether the 20,000 level should be reduced, 'To what potential level should exemption be increased, particularly taking into account that the SBAS Declaration shall be in force for a period of 5 years?' There are no anti-competitive circumstances necessitating such low exemption levels.

[REDACTED]

[REDACTED]. Access seekers have maintained their lack of appetite for such inefficient outcomes throughout the SBAS declaration and deliberations.

SSPs demonstrate a willingness to supply consumers who are not provided with adequately superfast broadband services, even in urban environments. [REDACTED]

[REDACTED]

[REDACTED]. Any threshold should be elevated to a scale at which SSPs will not be at risk from adverse regulatory and wholesale drain upon their capability to sustain their LTIE role. Spirit believes that level is substantially higher than 20,000.

A small-scale provider with at least 20,000 services is considerably more likely to be capable of tolerating the risks from wholesale enterprise customers than a small provider with only 12,000 customers. The Commission should opt for the lower risk, higher exemption level in order to ensure that consumers continue to benefit from these small-scale providers, rather than adopt a greater risk from the outset to their viable presence. There is no risk to competition, efficient investment or the LTIE presented by the difference between an exemption level of 20,000 services compared to 12,000 services. As UXC pointed out ([REDACTED]), multiple providers can coexist in multi-dwelling buildings, where small providers are open to prevalent NBN resellers and other competitors, coexisting with similar technology and exploiting in-building copper.

[REDACTED]

In fact, a retail service provider with 20,000 services in an addressable market of over 7 million homes is barely even “small” and should not be subjected to the disproportionate cost, management and regulatory impacts as it competes with larger providers, supplying several million end-users. It does not serve any objective to impose risk and restraints upon retail service management and capability when no or negligible demand for access is anticipated.

GEOFF NEATE

Chief Executive Officer

Spirit Telecom

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