TELSTRA CORPORATION LIMITED

Fixed Line Services FAD inquiry
Response to request for further information

11 August 2015

Public version

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Executive Summary

Telstra provides this submission to the Australian Competition and Consumer Commission (**ACCC**) in response to the ACCC's request for further information in relation to the application of the new final access determinations (**FADs**) to the wholesale line rental service (**WLR**) and the local call service (**LCS**) in CBD areas.

To assist the ACCC in the context of its consideration of the additional and updated market data relating to CBD areas (set out in Appendix 2), Telstra has restated the key points it has made in earlier submissions setting out its views on why resale services such as WLR and LCS should not be regulated in the highly competitive CBD areas.

Market evidence (including the updated data included in this submission) shows there is already extensive competitive copper and fibre infrastructure in CBD areas with a large and growing range of substitute products available to serve retail customers' voice and special communication needs. End users are increasingly using substitute products to meet voice and special communications needs in CBD areas (including VOIP and mobile services), thereby removing the reliance on WLR and LCS by access seekers.

Facilities-based competition (including through alternative fibre networks and ULLS) has a number of advantages over regulated resale access as it results in greater price competition, service innovation and competition over a broader range of product attributes. Ensuring that CBD ESAs are not subject to unnecessary resale regulation (by setting aside the application of the SAOs in these areas) can ensure a continuation and promotion of facilities-based competition given the extensive rollout of infrastructure and the existence of effective competition. Resale exemptions in CBD areas will promote ongoing infrastructure based competition and investment in CBD areas and will facilitate further product innovation, better services, and differentiated choices for consumers.

End users in CBD areas enjoy the benefits of extensive competition which manifests in multiple choices as regards competitive service providers, network technologies, and product and service differentiation. The relatively high proportion of business premises in CBD ESAs has encouraged network operators to invest extensively in deploying their own infrastructure in order to compete for these high value business customers in the provision of voice and data services. This competitive infrastructure in turn benefits all end users through greater choice.

Accordingly, Telstra believes exemptions for WLR and LCS in CBDs from the application of the price and non-price terms of the FAD would best promote the Long Term Interests of End Users.

1. Introduction

Telstra welcomes the ACCC's continued review of the market for telecommunications services in CBD areas and has updated the data requested by the ACCC in its letter of 4 June 2015. The updated data is set out in Appendix 2. In addition, this submission contains information for the ACCC to consider in assessing whether the price and non-price terms in the WLR and LCS FADs should be applied to WLR and the LCS in CBD areas.

This submission is structured as follows:

- **Section 2** restates Telstra's views on the framework for considering whether the Part XIC SIOs should not apply to the supply of WLR and LCS in CBD areas either unconditionally or subject to limitations.
- **Section 3** discusses competition in retail voice and special services in CBD areas.
- **Section 4** examines the extent of wholesale services that can be used to provide retail voice and special services in CBD areas.
- **Section 5** discusses the relevance of any difference in regulated and CBD-based market prices for WLR and LCS to assessing competition in CBD areas.
- **Appendix 1** addresses some access seekers' responses to the ACCC's request for information on 3 June 2015.
- **Appendix 2** sets out Telstra's response to the ACCC's data request in its letter of 4 June 2015.

2. Framework for considering whether FAD terms should apply to WLR and LCS in CBD areas

Telstra submits that, as part of making the replacement FADs for LCS and WLR, the ACCC should provide that the Part XIC SAOs are not applicable in areas where substantial competitive infrastructure exists, in particular CBD areas.

The ACCC is required to take a number of matters into account when making a FAD as required by s152BCA of the CCA. A key criterion which the ACCC must take into account in making an access determination is whether the determination will promote the LTIE. Section 152AB provides that in determining whether something promotes the LTIE, regard must be had to whether it is likely to promote any-to-any connectivity, competition and encourage the economically efficient use of, and investment, in the infrastructure by which carriage services and services provided by means of carriage services are supplied, are capable of being supplied or are likely to become capable of being supplied: paragraph 152AB(2)(e).

The Full Court of the Federal Court has confirmed that each of these objectives is a mandatory relevant consideration in its own right.[1] In relation to investment, Rares J observed in *Telstra Corporation Limited v ACCC*[2] that competition cannot be promoted, and thus the LTIE may not be attained, if infrastructure investment is not economically feasible for an efficient service provider to make or support.

Particularly relevant to the consideration of whether the FAD will promote the LTIE is the question of whether it is necessary for the FAD terms and conditions[3] to equally apply to the provision of declared services in all geographic areas, given that there are differences in the levels of competition and investment in geographic areas for the declared fixed services. In this regard, section 152BC(3) states that an access determination may provide that any or all of the SAOs are not applicable to an access provider, either unconditionally or subject to specified conditions and limitations.

In Telstra's view, the statutory criteria that the ACCC must follow in making a FAD are clear. In making an access determination, the ACCC must — take into account the matters outlined in section 152BCA including the LTIE. The ACCC is not at liberty to rely on prior decisions and conclusions it made in relation to other processes such as those in relation to a prior FAD or declaration determination. As has previously been submitted in this process, given the difficulties identified with the analysis undertaken by the ACCC to date in respect of the CBD exemptions, Telstra submits that any reasonable approach to applying the LTIE in the context of the current FAD process requires the ACCC to re-examine the issue. Telstra submits that the ACCC should undertake a complete and conventional market analysis of CBD areas to determine under section 152BC(h) whether the SAOs should apply to Telstra in these areas, taking into account the updated market evidence set out in this and prior Telstra submissions on this matter.

From a first principles perspective, ex-ante access regulation is only likely to be in the LTIE where there is an enduring bottleneck. A facility or service is only a bottleneck if it is a necessary natural monopoly input into the production process of a firm to compete in a downstream market. Strictly, an input will only be a bottleneck service exists if it passes two economic tests:[4]

- the relevant inputs (WLR and LCS) are used to manufacture a specific good or service (e.g. voice services) and there must be no alternative input or process which enables a competitor to produce an equivalent final good or service at a comparable cost; and

[1] *Telstra Corporation Limited v Australian Competition Tribunal* [2009] FCAFC 23. See in particular at [260-270] per the Court.
[2] [2008] FCA 1758, referring to the equivalent provisions in the Trade Practices Act 1974 (Cth).
[3] References in this submission to the FADs, and terms and conditions in the FADs, encompass both the price and the non-price terms and conditions in the FADs for the fixed line services.
[4] See King. S., (1997), "National competition policy", *Economic Record*, 73, 270-284, p.273.

- there is no alternative, substitutable final good or service that can be manufactured and sold at a comparable price without using the relevant inputs (WLR and LCS).

This submission illustrates that neither of these economic tests is met:

- The first of the economic tests fails because:
    a. there are alternative wholesale inputs to WLR and LCS (including ULLS, fibre and wireless services) which enable competitors to produce retail voice services which are equivalent to WLR- and LCS-dependent voice services; and

    b. there are alternative wholesale inputs to WLR and LCS (i.e. wireless and IP based services) which enable competitors to produce the downstream inputs required to enable end users to provide OTT services such as EFTPOS – such that the first limb of the bottleneck test also fails.

- The second of the economic tests fails because:
    a. VoIP is an effective substitute for WLR- and LCS-dependent voice services; and

    b. mobile based EFTPOS is an effective substitute for PSTN based EFTPOS.

For the reasons set out in this submission and earlier submissions, Telstra is of the view that neither WLR nor LCS are bottleneck services in CBD areas and, therefore , the ACCC should provide that the SAOs are not applicable in CBD areas unconditionally.

If the ACCC does not believe an unconditional exemption is appropriate for whatever reason, it should also consider, in determining whether an access determination will promote the LTIE, possible conditions and limitations under section 152(3)(h). In the Full Federal Court in *Telstra v Australian Competition Tribunal*, Jacobson, Lander and Foster JJ made a number of observations on the now repealed section 152AT(5) of the then *Trade Practices Act*.[5] That section provided that an order by the ACCC in respect of an exemption application "may be unconditional or subject to such conditions or limitations as are specified in the order" which is comparable to section 152BC(3)(h) of the CCA. In *Telstra v Australian Competition Tribunal*, their Honours stated that: "*We think the question of conditions or limitations must be approached at the same time as the ACCC … is considering whether it is satisfied that an order exempting will promote the LTIE*." It follows that – when considering section 152BC(3)(h) – the ACCC must not only consider whether it is in the LTIE to determine that the SAOs are not applicable unconditionally but must also consider (in the event that it decides that this is not in the LTIE) whether it is in the LTIE to determine that the SAOs are not applicable subject to specified conditions or limitations.

3. Competition for the supply of voice and special services in CBD areas

In its final declaration decision (**Declaration Decision**),[6] the ACCC acknowledged that there are wholesale alternatives to WLR and LCS and that a move to fibre-based alternatives is occurring. However, it remained concerned that these alternatives were not a full substitute for traditional voice services for a significant set of end users in CBD areas.[7] In particular, the ACCC found that a significant number of CBD end users purchase PSTN based voice only services and/or PSTN lines to support OTT services such as EFTPOS, and that non-PSTN based services are not an effective substitute for such customers. It therefore considered the effect of maintaining WLR and LCS exemptions on these particular end users.

[5] Full Federal Court (Jacobson, Lander and Foster JJ) in *Telstra v Australian Competition Tribunal [*2009] FCAFC 23
[6] ACCC, *Public inquiry in the fixed line services declarations – Final Report*, April 2014, p. 36
[7] ACCC, *Public inquiry into final access determinations for fixed line services – primary price terms – Draft Decision*, March 2015, p. 188.

Telstra believes that these issues should be re-examined in the context of now determining, in the new FADs, whether or not all of the SAOs should be applied to the provision of WLR and LCS in CBD areas. In particular, Telstra is of the view that the ACCC should reconsider:

- **Demand for copper based voice only services in CBD areas**: This was likely to have been overstated in the Declaration Decision, as the analysis was based only on the number of PSTN based voice services acquired without a PSTN based data service. This does not account for customers who may acquire a non-copper based data service (e.g. over fibre) or an IP based voice service. It is likely that actual demand in CBD areas for copper based voice only service is insignificant and is declining.

- **VoIP as an effective substitute for PSTN based voice services**: VoIP is increasingly being relied upon by residential and business customers in CBD areas. The barriers to providing VoIP to end users are low and the costs of providing and obtaining VoIP are not prohibitive.

- **Mobile based EFTPOS is an effective substitute for copper based EFTPOS:** mobile based EFTPOS is commonly and increasingly being used by business customers in CBD areas.

Each of these points is considered in turn.

3.1 Demand for copper based voice only services in CBD areas

In its Declaration Decision, the ACCC stated that: *"… the total number of 'voice-only' SIOs is a valid measure for the purposes of assessing whether the removal of the CBD exemptions will promote the LTIE. … the ACCC considers that a significant number of end-users currently purchase voice-only services in the CBD areas."* [8]

Telstra believes that the ACCC should re-examine the significance of demand for copper based voice only services in this FAD process in light of the fact that: demand for copper based voice services is likely to be significantly lower than estimated by the ACCC in 2014 when data services acquired over non-copper networks are accounted for; there are a number of substitutes to copper based voice services delivered over alternative access technologies in CBD areas; and, since the ACCC made its Declaration Decision, the volume of voice only SIOs has declined significantly whilst the number of bundles (i.e. both a PSTN and broadband service being acquired over the same copper line) being acquired in CBD areas has increased.

3.1.1 Demand calculation

In the Declaration Decision, the ACCC appears to rely on the number of PSTN based voice only services as a proportion of total PSTN based voice services as indicative of significant demand for this particular technology solution. This analysis was likely to have overstated demand for copper based voice only services in CBD areas because:

- It did not account for customers who may acquire a PSTN based voice service along with non-copper based data service delivered over fibre or wireless. Many CBD buildings are connected to one or more fibre networks over which data services are delivered.

- It did not account for customers who may acquire a non-copper based data service delivered over fibre or wireless, over which an IP based voice service can be provided. As discussed in section 3.2.1 below, IP based voice services are commonly marketed to and used by customers in CBD areas. **[c-i-c]**

Telstra considers that, for the purpose of the FAD process, a more appropriate metric to assess the starting point for demand for copper based voice *only* services might be the number of

[8] ACCC, *Public inquiry in the fixed line services declarations – Final Report*, April 2014, p. 43

premises that have only a single PSTN line. In 2014, Telstra estimated this to be approximately **[c-i-c]** premises across all 16 CBD ESAs, which is not significant. This, however, is still a conservative approach as it does not take into account the presence of internet services delivered to these addresses over alternative infrastructure.

3.1.2 PSTN based voice is declining

Since the Declaration Decision In April 2014, the number of voice only services in CBD areas has been declining, whereas the number of bundled data and voice services has increase:

- Voice only SIOs have declined from **[c-i-c]** in June 2013 to **[c-i-c]** in June 2015. This represents a decline of approximately **[c-i-c]**over two years and is almost double the total PSTN decline in CBD areas over the same period.

- Over the same period, the number of bundled lines (i.e. copper pairs that support both an active voice and broadband service) has increased by **[c-i-c]**.

When considered in conjunction with the fact that voice services are being provided over alternative infrastructure and IP networks, the ACCC would be setting FAD terms for the purported benefit of a small and decreasing portion of the market if it did not make a decision under section 152BC(3) to not apply the SAOs to the provision of WLR and LCS in CBD areas.

3.2 Alternatives to PSTN based voice services

3.2.1 VoIP services

At the time of its Declaration Decision, the ACCC was of the view that POTS emulation (i.e. VoIP delivered over the voice-band of a copper pair) was the only appropriate substitute for a copper based voice service. Telstra considers that this should be reexamined in the FAD process. The industry has increasingly accepted other forms of VoIP as legitimate alternatives to PSTN based voice.

VoIP is a genuine alternative to legacy voice services

Service providers actively market VoIP to CBD customers. Numerous providers offer low cost IP voice services to residential and business customers. For example, GoTalk, MyNetFone and Faktortel offer managed VoIP solutions as a bundle or as a standalone OTT service, Telstra offers its TIPT service to business customers and Optus' Evolve suite of products lists more than ten different access service types over which business IP voice services can be provided.[9] In 2014, ACMA identified 216 service providers operating in the VoIP market (both business and residential). Major managed VoIP suppliers are listed in the table below:[10]

[9] Optus evolve specification, p. 5. http://www.optus.com.au/opfiles/Aboutoptus/Legal/SharedStaticFiles/SharedDocuments/EvolveServDesc.doc

[10] ACMA, The Evolution of VoIP in Australia, June 2015, page 6. http://www.acma.gov.au/theACMA/engage-blogs/engage-blogs/researchacma/The-Aussie-VoIP-evolution

Table 1: Major managed VoIP suppliers

	Retail NBN	Retail non-NBN	Business services	Hosted PBX	Wholesale	SIP trunking	Included in residential plan*	
							Unlimited local /National calls	Contract min. (months)
iiNet	✓	✓	✓	✓	✓	✓	✓	1
MyNetPhone	✓	✓	✓	✓	✓	✓	✓†	1
TPG	✓	✓	✓	✓	✓	✓	✓	6
Faktortel	✓	✓	✓	✓	✓	✓	✓	6
engin	✓	✓	✓	✓	✓	✓	✓	1
Dodo	✓	✓	–	–	–	✓	–	24
Telstra	✓	–	✓	✓	✓	✓	n/a	n/a
Optus	✓	–	✓	✓	✓	✓	n/a	n/a

**Cheapest residential plan available, non-NBN. †200 calls per month included in plan. Note: n/a=not applicable.*
Source: ACMA sourced from provider websites.

No reluctance to switch to a VoIP service

With the industry moving to the NBN, Telstra believes that customers are increasingly motivated to and are choosing to migrate their traditional PSTN voice services to VoIP, with strong competition for the provision of VoIP services. As regards concerns that the ACCC may have had about barriers to switching, Telstra believes that customers are not showing a reluctance to move to VoIP on the basis of switching costs (price), the need to enter into a contract or the quality of a VoIP service. In fact, VoIP has proven itself to be an attractive alternative to legacy voice services for customers.[11]

(a) Cost of switching (price of moving to VoIP)

The price of VoIP as an alternative to legacy voice services is steadily decreasing and VoIP is now an attractive market option for customers. The price of the underlying data service is constrained by the significant competition in CBD areas with an average of **[c-i-c]** DSLAM-based competitors in CBD ESAs and a competitive number of fibre providers currently operating in CBD areas (as set out in section 4). Pricing of VoIP services is therefore highly competitive in CBD areas as evidenced by the following examples:

- *Residential customers:* MyNetPhone offers naked ADSL2+ services starting from $39.95 per month including a basic VoIP plan which is targeted at residential customers. Customers can choose from a range of VoIP packages that cater to different calling requirements. Packages include varying amounts of local / national, mobile and international minutes). Where an end user already has a data service on alternative infrastructure (such as FTTB, HFC, ULLS etc), Faktortel supplies a basic VoIP service for $8.95 per month, which (if a customer signs up for a six month plan) includes a free LinkSys VoIP box which allows customers to use their old analogue

[11] ACCC, *Public inquiry into final access determinations for fixed line services – primary price terms – Draft Decision*, March 2015, p. 188

handsets. Alternatively, a new IP handset can be purchased starting from $89.95. This plan has nine cents untimed local and national calls.

- *Small and Medium business:* iiNet's Business VoIP product enables small business customers to connect their existing handsets to an iiNet supplied modem to make low cost calls over iiNet supplied business data services. VoIP plans start from $9.95 (in addition to underlying data service prices) per month including unlimited, untimed local and national calls.

- *Enterprise customers*: Macquarie Telecom SIP trunking provides high quality voice services over a consolidated data network and removes the requirement for line rental. Pricing for enterprise deals is competitive and customised, and usually includes data, voice, mobile and other services.

(b) Need to enter into a contract for the supply of the underlying internet services

Obtaining a data connection (the underlying service for a VoIP service) is not a significant barrier to switching to IP based voice services – many CBD voice customers already have an underlying data service and the number of voice only services in CBD areas is decreasing. The need to enter into a contract is not a significant barrier to moving to VoIP with over 200 suppliers to choose from with a wide range of plans ranging from month by month or no contract through to 24 month contracts with many included calls.

(c) End-user perceptions as to the quality of alternative services

Perceptions of VoIP quality have changed. In fact, VoIP has unique technical attributes that allow for mobility, flexibility and multi-party communications which make it an attractive proposition for residential and business customers.

- Businesses have access to enhanced features which allow their employees to use VoIP to make and answer calls from their fixed line number on laptops, mobile phones and tablets and while hot-desking (which allows employees to move to different desks throughout the day and take their fixed phone number with them). VoIP also allows the connection of multiple parties in teleconference events including through dedicated video conferencing rooms, desk video phones, laptop and tablet video connections and fixed voice – all using the same number.

- Residential customers have access to features such as instant diversion and simultaneous ring which allow a second number (such as a mobile phone) to ring instead of, or simultaneously with, the primary number which means mobility and flexibility for such customers.

Recent ACMA research shows that 92% of residential paid VoIP users responded as neutral, satisfied or very satisfied with their service compared with 94% of PSTN users,[12] illustrating an equivalence of service quality.

3.2.2 Wireless services

Mobile services continue to offer an effective alternative for end users who only need a voice service. ACMA research found that in December 2014, 5.2 million adults in Australia used a mobile phone and did not have a fixed-line telephone service in the home.[13] This number has more than doubled since 2010 showing that consumers are increasingly moving away from fixed-line telephony services. CBD areas benefit from high levels of mobile coverage from all three major operators, and pricing in the mobile market is highly competitive.

[12] ACMA, *The Evolution of VoIP in Australia*, June 2015, p 6. http://www.acma.gov.au/theACMA/engage-blogs/engage-blogs/researchacma/The-Aussie-VoIP-evolution

[13] http://www.acma.gov.au/theACMA/engage-blogs/engage-blogs/Research-snapshots/Australians-get-mobile

3.3 Alternatives to PSTN based over the top (OTT) services

EFTPOS is a payment service which operates over a communications network. Traditionally EFTPOS has relied on PSTN lines in order to coordinate transactions with financial institutions, although this has changed dramatically over recent years with EFTPOS increasingly supported by mobile and IP rather than PSTN.

At the time of its Declaration Decision, the ACCC raised technical limitations of using VoIP to provide OTT services such as EFTPOS and concluded that VoIP is not an effective substitute for EFTPOS users.[14] Telstra does not believe the technical limitations which the ACCC was concerned about are a continuing issue.

EFTPOS providers such as smartpay, liveeftpos and getmeeftpos offer an equivalent solution to PSTN based EFTPOS using mobile networks. In fact, smartpay claims that mobile EFTPOS can actually work out cheaper than traditional countertop PSTN based services:

> *"Most countertop terminals require some form of connectivity to process a transaction, whether it is a telephone line or internet connection, or simply the power cable. However, unless your business requires internet to function or you have a spare phone line being lightly used (such as a fax), it will actually cost more in internet and line rental. This is because a mobile solution is only an extra $10 a month against the countertop solution whereas line rental and internet can run as much as $30-40 a month for coverage or each additional telephone line."*[15]

In addition, the big four banks are also now offering IP or mobile EFTPOS services or, in some cases, mobile payment solutions based on smartphones. This type of innovation is clearly in the interests of end users.

Telstra data shows that the use of fixed line services for EFTPOS machines is being subsumed by the use of mobile EFTPOS machines. Although Telstra does not have data on the number of lines used for EFTPOS, it considers that the number of transactions over the Argent network (a Telstra provided EFTPOS settlement platform) is a useful proxy to show this fact:

- In June 2009, **[c-i-c]** of EFTPOS transactions on Telstra's network were delivered using mobile services in comparison to PSTN/ISDN.
- In June 2014, **[c-i-c]** of EFTPOS transactions on Telstra's network were delivered using mobile services in comparison to PSTN/ISDN.
- In June 2015, **[c-i-c]** of EFTPOS transactions on Telstra's network were delivered using mobile services in comparison to PSTN/ISDN.

These figures show the use of mobile services as the platform for EFTPOS transactions has increased year on year, with more EFTPOS providers using mobile as the underlying carriage service as opposed to traditional PSTN based carriage.

It is inappropriate however, to look only at Telstra's Argent data as indicative of all EFTPOS transactions as this data only includes transactions made using PSTN, IDSN and mobile. Increasingly, EFTPOS providers utilise IP based connections such as ADSL, IP-VPNs or mobile data to carry transaction traffic, bypassing dedicated settlement networks altogether. Network operators are increasingly aware of this shift. For example, TPG's FTTB product "Wondercom" points to the use of EFTPOS over IP in its terms and conditions:

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[14] To this end, the ACCC recently wrote to access seekers seeking information about how access seekers sell EFTPOS solutions to customers. Telstra notes that EFTPOS solutions are not typically sold by telecommunications companies, but by banks and payment facilitation companies.

[15] http://www.smartpay.com.au/English/EFTPOS+Solutions/EFTPOS+Terminals/Mobile+EFTPOS.html

> *"Wondercom Home Phone does not support old dial up technology devices with built in modems such as EFTPOS, Back to Base Alarms and Foxtel Program purchase. These devices have been replaced by Internet Protocol (IP) enabled devices and many Wondercom customers are able to use EFTPOS, Back to Base alarms and Foxtel Program purchase through the internet provided that their devices are IP enabled".*[16]

It is evident from the above that retail customers have a range of effective substitutes to legacy voice when acquiring the input over which they will provide OTT services to their customers.

4. Alternatives to LCS and WLR at the wholesale level

As set out in section 3, end users are increasingly using substitute products to meet voice and special communications needs in CBD areas (including VoIP and mobile services), thereby removing the reliance on WLR and LCS by access seekers. Access seekers have a number of access choices when it comes to delivering voice services to end users in CBD areas which are substitutes for WLR and LCS. At the wholesale level:

- there are alternative wholesale inputs to WLR and LCS (including ULLS, fibre and wireless services) which enable competitors to supply retail voice services which are equivalent to WLR- and LCS-dependent voice services; and

- there are alternative wholesale inputs to WLR and LCS (i.e. wireless and IP based services) which enable competitors to produce the downstream inputs required to enable end users to provide EFTPOS.

In Telstra's view, it follows that WLR and LCS are not bottleneck services to the provision of downstream services.

The ACCC has previously accepted that ULLS and fibre based networks can be used by access seekers to supply "*technically equivalent services*" to traditional voice only services although it has had concerns that significant investment is needed to use these networks to supply these equivalent services.[17] Telstra is of the view that investment in ULLS and fibre has been strong to date and sets out below that such investment is continuing to occur.

4.1 Alternative infrastructure competition

As set out in Telstra's 13 October 2014 submission, there are multiple alternative infrastructure providers in the CBD areas including fibre and wireless provider.

As regards fibre, the ACCC has a record keeping rule which enables it to obtain data on fibre providers. The latest published data (as at September 2013) shows that, as at that time, two CBD ESAs had six fibre providers, four CBD ESAs had seven fibre providers; five CBD ESAs had eight fibre providers; one CBD ESA had 10 fibre providers and four CBD ESAs had 11 fibre providers (all including Telstra).[18]

Since then, fibre investment has been continuing in CBD areas. For example, TPG is extending its existing fibre networks in Adelaide, Brisbane, Melbourne, Perth and Sydney to large apartment buildings to serve 500,000 premises with VDSL. The ACCC examined TPG's plans, at the time of which TPG should have provided the ACCC with a detailed overview of the size and scale of TPG's fibre based assets within the CBD ESAs.

TPG has made available a wholesale version of its FTTB product (including voice) and Vocus has recently started to market their Vocus Wholesale Voice network.[19] This product offers high quality

[16] https://www.wondercom.com.au/fttb
[17] ACCC, *Public inquiry into final access determinations for fixed line services – primary price terms – Draft Decision*, March 2015, p. 189.
[18] ACCC, *Infrastructure RKR*, Published October 2013 (Data as at September 2013).
[19] http://www.vocus.com.au/product/wholesale-voice

wholesale voice services delivered over Vocus' fibre network which includes coverage in CBD areas:

> *Direct connectivity to the Vocus Wholesale Voice network is available in Adelaide, Brisbane, Canberra, Melbourne, Perth and Sydney.* [20]

In addition to competitive fibre suppliers, Telstra supplies fibre-based DTCS tails to CBD premises. Starting at 2Mbps, these services can supply data and multiple voice channels using protocols ranging from SIP trunks through to ISDN emulation. This means that there are also regulated fibre alternatives (DTCS) in CBD areas. The Optus Evolve product suite is an example of this, as it contains the access option of EoMLLe (Ethernet over Managed Leased Line Ethernet).

As well as fibre-based networks, fixed wireless has become a viable alternative for the supply of voice services, as discussed in Telstra's submission of 13 October 2014.

4.2 DSLAM based competition

In addition to the significant prevalence of competitive fibre infrastructure within CBD areas, competitors have also invested (and as set out below, continue to invest) in ULLS based infrastructure competition. Namely, DSLAMs and related infrastructure that make use of the ULLS in order to access the PSTN access network (bypassing the need for access seekers to acquire WLR/LCS or other Telstra-supplied access services). There is overwhelming evidence of DSLAM-based supply within CBD areas and its impact on competition. Extensive information on DSLAM investment was provided in Telstra's 13 October 2014 submission.

The relatively high proportion of business premises in CBD ESAs has encouraged network operators to invest extensively in deploying their own infrastructure in order to compete for these high value business customers in the provision of voice and data services. This competitive infrastructure in turn benefits all end users through greater choice. Since June 2013, following the ACCC's Declaration Decision, investment in ULLS has continued to occur:

- The number of ULLS services in CBD areas has grown by **[c-i-c]**. This growth rate is consistent with that of services in Band 2 areas, and comparable to the national growth rate.

- Whilst total PSTN lines is declining year on year, ULLS now accounts for approximately **[c-i-c]** of total PSTN lines in CBDs, up from **[c-i-c]** in June 2013 (in contrast, WLR accounts for approximately **[c-i-c]** of total PSTN lines).

- As at June 2015, there were at least **[c-i-c]** ULLS/LSS access seekers in each CBD ESAs and almost 20% of ESAs had more than **[c-i-c]** ULLS/LSS access seekers with a DSLAM presence.

Since June 2013, strong infrastructure-based and ULLS-based competition has resulted in a decline in the use of Telstra's retail line rental and WLR in CBD areas. Demand for Telstra's retail line rental decreased by **[c-i-c]** in CBD areas consistent with the national rate of decline, and demand for WLR in CBD areas decreased by **[c-i-c]** whilst nationally WLR increased by **[c-i-c]**. In contrast, ULLS use over the same period increased by **[c-i-c]**. The decline in use of Telstra's retail line rental and WLR in CBD areas over this period is actually understated when PSTN numbers are juxtaposed against significant expansion of office space in CBD areas which illustrates significant by-passing of Telstra's network by fibre based and other competitive infrastructure providers.

DSLAM-based infrastructure is a key enabler of competitive alternatives to Telstra-supplied PSTN voice and Telstra-supplied DSL services at both the retail and wholesale level. DSLAM-based infrastructure can provide both voice and broadband services in competition with Telstra's own services. Aside from the technical capabilities of DSLAMs, their importance as a competitive

[20] ibid

constraint arises from the relatively low cost at which they can be deployed. The economics of DSLAM-based infrastructure are such that there are no material barriers to entry and expansion of competition in the CBD ESAs.

Facilities-based competition has a number of advantages over regulated resale access as it results in greater price competition, service innovation and competition over a broader range of product attributes. Ensuring that CBD ESAs are not subject to unnecessary resale regulation (by setting aside the application of the SAOs in these areas) will continue to promote the high levels of infrastructure based competition and investment which has occurred in CBD areas for more than a decade. This will also facilitate further product innovation, better services, and differentiated choices for consumers.

5. Pricing levels for WLR and LCS in the absence of regulation

In its Declaration Decision the ACCC was of the view that Telstra had market power in CBD areas largely due to the difference between the prevailing market price for WLR in CBD areas and the regulated price the ACCC had determined in the 2011 FAD.

However, as explained in Telstra's 13 October 2014 submission, the mere fact that its pricing of WLR in CBD areas did not match the output of the ACCC's building block cost model is not evidence of market power in need of regulated pricing. A building block model price may be the final outcome of a proper market enquiry (if market power is found to exist), but it should not be used as a shortcut to avoid undertaking a proper enquiry in the first place. As regards LCS, the commercial pricing in CBD areas was not in fact materially different from the regulated price outside CBD areas. There was also no evidence that, faced with the competitive constraints that apply in CBDs, Telstra would have any significant ability or incentive to raise LCS prices above previous commercial levels if WLR is regulated (as was previously suggested by the ACC).

In making its FAD – and determining whether the SAOs should apply to WLR and LCS in CBD areas – Telstra considers that it is necessary for the ACCC to conduct a current evidence-based market review in CBD areas to determine whether Telstra has market power in the supply of either WLR or LCS in CBD areas. Telstra is of the view that such an analysis will show that – given the state of competition in both the downstream and wholesale markets – neither service is a bottleneck, and, hence, there is no market failure which requires regulatory redress.

Appendix 1: Response to comments raised in access seekers replies to ACCC information request

Telstra has some concerns regarding the context of, and responses to, the questions the ACCC put to access seekers as part of this inquiry, particularly those that requested information about DTCS tails and mobile EFTPOS. Telstra notes that the ACCC received responses from Optus, iiNet, M2, Vodafone, and AAPT. Telstra has been unable to review the confidential submissions from Optus; however, it makes some general comments below.

1. Fibre based DTCS tails

Access seekers have a number of access choices when it comes to delivering voice services to end users in CBD areas which are substitutes for WLR. These choices revolve around the data access service an access seeker will use to deliver data to end users, and over this data access service, to deliver voice. DTCS was put forward as a substitute service in this context, not in the context of an explicit substitute input for the supply of voice *only* services. Telstra's considers that IP networks can easily be used to deliver voice services.

In Telstra's opinion, the ACCC received information of limited use in response to its questions around fibre based DTCS tails. This is because its questions limited access seekers to referring to instances where they use a DTCS tail to supply only voice, which would only pick up instances of ISDN emulation. A far more common scenario is where an access seeker acquires a DTCS tail to connect a business and over this tail supplies both voice and data. The Optus Evolve product suite is an example of this – an access option is EoMLLe (Ethernet over Managed Leased Line Ethernet).[21]

2. Mobile EFTPOS

EFTPOS is a payment service which operates over a communications network. Traditionally EFTPOS has relied on PSTN lines in order to coordinate transactions with financial institutions, although this has changed dramatically over recent years with EFTPOS increasingly supported by mobile and IP rather than PSTN. The supply of EFTPOS as a service is the domain of the financial institutions themselves. Telecommunications companies typically supply the underlying carriage service such as the PSTN line, the IP / internet service or the mobile network.

Access seekers' responses to the questions posed by the ACCC were therefore unable to provide any new insight into this issue – as it is the financial institutions that provide the service. The ACCC should instead direct questions about the underlying technical requirements of EFTPOS to the suppliers of these services – banks and other financial / payment institutions. Telstra would be happy to provide the ACCC with some sample questions to assist with this.

21 http://www.optus.com.au/opfiles/Aboutoptus/Legal/SharedStaticFiles/SharedDocuments/EvolveServDesc.doc

Appendix 2: Response to ACCC Data Request

[c-i-c]