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## TELSTRA CORPORATION LIMITED

### Superfast Broadband Access Service and Local Bitstream Access Service Final Access Determination joint inquiry

#### Telstra’s response to the ACCC’s draft decision report

##### Public version

17 February 2017

[CIC begins] = information not to be released without a confidentiality undertaking

[CIC begins] = information not to be released even with a confidentiality undertaking



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## EXECUTIVE SUMMARY

This submission is in response to the ACCC’s Superfast Broadband Access Service (SBAS) and Local Bitstream Access Service (LBAS) Final Access Determination (FAD) joint inquiry draft decision report (Draft Decision).

Telstra generally supports the regulatory framework that the ACCC has proposed for the SBAS and LBAS – a benchmarking approach that sets only base product tier prices, the adoption of standard non-price terms and conditions (NPTCs) and necessary differential treatment for Telstra’s Fibre Access Broadband (FAB) service to recognise the distinct product specification.

Telstra also supports the ACCC’s approach to promote the long term interests of end-users (LTIE) by ensuring that price benchmarks for SBAS services are cost reflective. However, the Draft Decision price benchmark for the FAB service does not achieve this objective as it fails to account for additional costs Telstra will incur in implementing these prices, which will need to be recovered from wholesale end-users. Instead, carrying over the regulated wholesale ADSL (WADSL) price as the benchmark for the FAB service – per the Interim Access Determination (IAD) – provides a simple, fair, cost-based solution that avoids unintended implementation burden and thus promotes the LTIE.



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## **01 The Draft Decision generally represents an appropriate regulatory framework for the SBAS and LBAS**

### **1.1. It is appropriate that the FAD only regulate prices for the base product tier**

Specifying a regulated price for only the base product tier provides appropriate regulatory constraint while minimising the regulatory cost burden and maintaining flexibility for access providers to offer alternative (high speed) products in response to customer demand. Telstra agrees that a base tier price will act as an effective anchor price. As a result, Telstra considers the ACCC’s preliminary decision to only set pricing regulation for the SBAS and LBAS services to the base product tier (in the case of Telstra’s FAB service, the 30/1 Mbps service) to be appropriate.

### **1.2. It is appropriate that Telstra not be prevented from adding an industry levy (if any) to the relevant FAB charges**

Should an industry levy be introduced as a funding mechanism for the NBN’s non-commercial regional fixed wireless and satellite broadband services (and Telstra is required to pay that levy on its SBAS services in South Brisbane and Velocity estates), Telstra considers it is appropriate that there is provision in the FAD for an amount up to the levy amount to be added to FAB charges as included in the Draft Decision.

### **1.3. It is appropriate that Telstra is not obliged to provide a ‘naked’ FAB service**

For reasons set out in Telstra’s submission to the SBAS and LBAS FAD Discussion Paper<sup>1</sup>, it is not possible for Telstra to supply a FAB service where no active voice service is present in South Brisbane and Velocity estates without incurring significant costs to modify current systems and processes. For these reasons, Telstra does not consider that it would be in the LTIE for the ACCC to require it to provide a ‘naked’ FAB service. Telstra therefore agrees with the ACCC’s preliminary decision to not require Telstra to provide such a service.

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<sup>1</sup> Telstra Corporation Ltd, Superfast broadband access service and local bitstream access service final access determination joint inquiry – Telstra’s response to the ACCC’s discussion paper, 21 October 2016, p8 – 9



## 02 Implementing the Draft Decision FAB prices would lead to an unintended outcome not in the LTIE

### 2.1. Telstra's network architecture cannot accommodate an AGVC price differential between the WADSL and FAB products

From its inception the FAB product has been designed such that an access seeker's FAB and WADSL end-user traffic within a State are carried on the same AGVC. This approach of aggregating FAB and WADSL traffic provides a simpler and more cost-effective solution for access seekers compared to FAB traffic being delivered on a separate AGVC. The cost to access seekers to acquire a separate AGVC for FAB traffic in each State would often be prohibitive given the small proportion of services in their overall FAB and WADSL mix.

Presently all FAB access seekers also acquire WADSL services from Telstra. Telstra aggregates WADSL and FAB end user traffic, by access seeker and by State, on the same AGVC and Telstra charges the access seeker according to the dimension of that AGVC. This charging concept has worked since the inception of FAB because Telstra charged a single price for an AGVC carrying a mix of traffic types and it continued to work when the FAB service was benchmarked to the WADSL regulated price under the IAD.

As currently configured, the FAB network and its support systems are not equipped to deal with different aggregation charges across those services because the network provides Telstra with no visibility as to what proportion of the AGVC traffic is for WADSL services as distinct from FAB services.

### 2.2. Significant implementation costs are to be recovered from access seekers in order to implement the FAB prices in the Draft Decision

The price benchmark proposed for the FAB service in the Draft Decision – the modelled annual service specific costs of the WADSL service using the Fixed Line Services Model (FLSM) – introduces a different aggregation charge for FAB services compared with WADSL. In order to implement the Draft Decision prices, Telstra would have to invest in upgrading infrastructure, systems and processes to be able to either (i) measure and apportion product utilisation on any single AGVC (between WADSL and FAB services); or (ii) to build separate AGVCs for each access seeker for only FAB end-user traffic.

With respect to the first option, it is unclear at present whether it is possible to implement a means of measuring FAB and WADSL traffic separately in order to be able to apportion AGVC capacity by product utilisation. Investigative work is necessary to clarify whether this is an achievable solution as significant systems changes would be required, in contrast to a simple reporting mechanism. Should it be feasible and based on previous projects, Telstra estimates the cost to make the necessary network, system and process changes to be in the range of [CIC begins] [CIC ends]. The time-frame for implementation would be from [CIC begins] [CIC ends].

To implement the second option, Telstra would need to build new FAB-dedicated AGVCs in each State by access seeker and install a new Ethernet termination device at the access seekers' Point of Presence for each AGVC. In addition Telstra would need to upgrade provisioning systems and processes to allow access seekers to order FAB AGVCs, and to migrate FAB end-user traffic from existing WADSL AGVCs to FAB AGVCs (incurring an end-user service outage). To acquire these additional services would impose a considerable direct cost burden that would need to be recovered from access seekers. For the vast majority of access seekers FAB services represent only a very small percentage of their total FAB and WADSL mix. Consequently these access seekers would not benefit from being able to downgrade the WADSL AGVCs as a result of no longer carrying FAB traffic (as the FAB traffic percentage is generally small); however they would need to incur a set of new and additional costs due to the FAB AGVC and its associated termination device. For example, where an access seeker has at least one 100Mbps FAB service in a State, then a FAB AGVC of at least 100Mbps capacity is required even though it is likely only servicing a small number of customers.



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Additional to the incremental direct costs to access seekers to acquire new AGVCs, Telstra estimates the cost to Telstra to make the necessary changes to implement the second option to be in the range of [CIC begins] [CIC ends] (based on past similar projects). The time-frame for implementation would be from [CIC begins] [CIC ends]. These are high-level estimates only, and a full scale scoping exercise would be required in order to establish more accurate estimates of cost and development time.

Under either option, Telstra would also need to update relevant processes and documentation including standard product contract schedules, operations and provisioning manuals, product technical specifications and customer contract schedules. In addition, Telstra would need to establish new billing system pricing elements to be able to separately bill for FAB aggregated traffic, or separately bill for FAB AGVCs.

Implementing this capability on the FAB service would also require the delay and replacement of other projects that are currently underway in Telstra's product and IT development and deployment schedules, which may impact retail and wholesale customers and not be in the LTIE.

### **2.3. The period for cost recovery of the implementation of the Draft Decision prices is likely to be limited**

The period for possible cost recovery is likely to be limited to the time until the transition to the NBN occurs, which constrains Telstra's ability to recover costs. The likely transfer of Telstra's South Brisbane FAB network to NBN Co, as well as NBN Co's overbuild of Velocity estates in the short to medium term would soon render any investment in developing infrastructure, systems and process upgrades obsolete.

### **2.4. If the ACCC requires Telstra to implement the Draft Decision prices, Telstra should be able to recover reasonable costs**

If the ACCC requires Telstra to implement the Draft Decision prices, Telstra should be able to recover the reasonable costs of implementation. Telstra would be unable to recover these costs without charging significantly higher wholesale prices for the FAB service, which may ultimately flow through to consumers and produce an inefficient outcome not in the LTIE. The total number of wholesale FAB services in operation (SIOs) is very small ([CIC begins] [CIC ends]), which further constrains Telstra's ability to recover costs.



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## 03 The current regulated prices for Telstra’s WADSL service are the most appropriate benchmark for the FAB service

### 3.1. A benchmarking approach and differential treatment for the Telstra FAB service is appropriate

As addressed in detail in Telstra’s submission to the SBAS and LBAS FAD Discussion Paper<sup>2</sup>, in the absence of a cost-based building block model (BBM), Telstra considers it would be most appropriate and cost effective to use a benchmarking approach to set regulated prices for the FAB service. In addition, it is appropriate that a separate price benchmark be maintained for the Telstra FAB service as distinct from other SBAS services, because of the underlying differences between these services.

### 3.2. The regulated WADSL prices are an appropriate benchmark because they reflect the cost to provide the underlying service

In the SBAS Declaration Final Decision, the ACCC accepted that the commercial supply of the FAB service is on a similar basis to the WADSL service and the wholesale line rental (WLR) service<sup>3</sup>. Further, in the accompanying Explanatory Note to the IAD, the ACCC considered that the current regulated prices for the WADSL were the best available regulated benchmark for the price terms and conditions of the FAB service<sup>4</sup>.

An appropriate price benchmark should be reflective of the reasonable cost of running the actual network. Given the shared network architecture between the WADSL service and the FAB service, a large share of costs for delivery of the FAB service are captured in the FLSM. However, the FLSM was not intended to cover FAB services and not all costs associated with delivering this service are captured in the model. While the FAB product is closely aligned to the WADSL in terms of the product construct, it is not identical and in this context applying service-specific costs as a benchmark introduces a risk of cost under-recovery. Applying the regulated WADSL price benchmark for the FAB service minimises this risk and, in Telstra’s view, will provide for the recovery of costs that are not included in the FLSM, thereby promoting an outcome in Telstra’s legitimate business interests.

A further rationale for benchmarking the FAB service to the WADSL regulated price is that it allows for the FAB price to change in response to changes in the WADSL price (for example, at the expiry of the current WADSL FAD on 30 June 2019, to the extent Telstra is still supplying the FAB service at that date). This approach aligns with the benchmark applied to the non-Telstra SBAS services which is designed to change with NBN prices over time. In this way, certainty can be provided with respect to the equivalence of aggregation charges across WADSL and FAB services for the duration of the SBAS declaration. As set out in section 2.2 above and section 3.1 below, this is critical to avoid significant implementation costs that would not promote the LTIE. Complicating the methodology and process for setting wholesale prices for the FAB service would only delay implementation and add to the costs borne by the ACCC, access seekers and Telstra.

Although the FAB service pre-dates the specification of the NBN and was therefore not designed to be an equivalent service, when averaged over port and aggregation charges, the regulated WADSL price benchmark is close to nbn access prices. This benchmark approach also promotes price stability, as it replicates the regulated prices currently in place for the FAB service under the IAD.

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<sup>2</sup> Telstra Corporation Ltd, Superfast broadband access service and local bitstream access service final access determination joint inquiry – Telstra’s response to the ACCC’s discussion paper, 21 October 2016, p4

<sup>3</sup> ACCC, Superfast broadband access service declaration inquiry – final decision, July 2016, p. 36

<sup>4</sup> ACCC, Interim access determination for the superfast broadband access service – explanatory note, July 2016, p5



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### **3.3. Applying the modelled annual service specific costs of the WADSL (per FLSM) as a benchmark for the FAB services would not promote the LTIE**

As detailed in section 2.1 of this submission, Telstra's network architecture is such that WADSL and FAB traffic are aggregated on the same AGVC, which is possible only if the AGVC charge for both the WADSL service and the FAB service are the same. As set out in section 2.2, Telstra would incur considerable costs to implement an AGVC charge for the FAB service that is different to the regulated AGVC charge for the WADSL service, which would need to be recovered via significantly higher wholesale prices. It is for this reason that the proposed price benchmark for the FAB service described in the Draft Decision would not promote the LTIE.

Though it is not preferred for the reasons set out above, should the ACCC choose to implement a price benchmark for the FAB service which reflects modelled annual service specific costs of the WADSL using the FLSM, this could be achieved in a manner that pegs the FAB AGVC price component to the equivalent regulated WADSL AGVC price component and adjusts the port price to recover the balance of the modelled revenue requirement. This approach would avoid the implementation cost burden as it resolves the AGVC price differential between FAB and WADSL products, however it would result in a distortion of the prevailing relativity between AGVC and port charges.





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## **04 NPTCs and procedural aspects of the Draft Decision are appropriate**

### **4.1. It is appropriate NPTCs from the IAD be maintained and apply uniformly**

There is no need to vary the NPTCs as have been adopted in the IAD which are well known to industry participants; as such Telstra considers the ACCC’s adoption of these terms for the FAD to be appropriate. To ensure consistency between various service providers and networks, and to mitigate the network interoperability issues, NPTCs should apply to SBAS and LBAS as uniformly as possible.

Further, for reasons set out in Telstra’s response to the SBAS and LBAS FAD Discussion Paper<sup>5</sup> and supported by the ACCC in the Draft Decision, Telstra agrees with not including service specifications with respect to the use of data and voice ports on a network termination device at the end-user premises.

### **4.2. It is appropriate that the FAD expire in line with the end of the SBAS declaration**

Telstra considers that at this point in time it is reasonable to determine that the FAD should expire in line with the declaration of SBAS on 28 July 2021, and as such agree with the Draft Decision consistent with this position.

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<sup>5</sup> Telstra Corporation Ltd, Superfast broadband access service and local bitstream access service final access determination joint inquiry – Telstra’s response to the ACCC’s discussion paper, 21 October 2016, p19