



25 November 2020

**Mr. Darren Kearney**

Director  
Wireline Section  
Infrastructure Regulation Division  
Australian Competition and Consumer Commission

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Dear Mr Kearney,

**Telstra's supplementary submission to the LBAS and SBAS declaration inquiry**

Telstra is pleased to submit a supplementary submission to the local bitstream access service (**LBAS**) and superfast broadband access service (**SBAS**) declarations inquiry 2020. Specifically, this submission addresses suggestions made by NBN Co in relation to the scope of the SBAS declaration.

***The SBAS declaration should not be extended to 5G mobile technology.*** Telstra agrees that 5G mobile technology (**5G**) may be a technical alternative to NBN fixed broadband (**NBN**) for some end-users, where there is little or poor NBN coverage.

However, there are fundamental differences between 5G networks and the NBN:

- The market for 5G mobile services is already exhibiting strong competition between three network providers, in contrast to the NBN and other SBAS networks covered by the declaration, which are effectively monopoly services with limited (if any) competitive constraints on pricing.
- 5G geographic coverage is currently limited compared to NBN coverage, and 5G network expansion is still underway. Consequently, there is currently significantly less capacity on the 5G network compared to the NBN – the 5G network is not able to service the same number of end-users as NBN.

While 5G fixed wireless services are still emerging, they have the potential to introduce some level of competition against NBN's monopoly in fixed broadband markets. Introducing regulation of these nascent services would dampen the degree to which they can compete against NBN, and would act to perpetuate NBN's dominance.



At present 5G is likely only a substitute for very limited customer segments, such as those who are less price conscious or have light internet usage. If the ACCC were to take a view that there are full substitutes to existing superfast broadband networks (as suggested by NBN Co), Telstra would expect this to support the removal of the declaration (either in part or full) to reflect the competitive constraint imposed by those substitutes, such that there would be no ability to exercise market power. The purpose of regulating superfast broadband networks is not to protect NBN (and other access networks) from competition but rather to promote the long-term interests of end-users. Any proposal to expand the scope of the declaration would only serve to deter future investment and innovation.

***The SBAS declaration should not be extended to business customers.*** In the previous final decision of the SBAS and LBAS inquiry in May 2017, the ACCC concluded that the SBAS would not cover services where there “appears to be effective competition”, such as services “supplied exclusively to business customers, public bodies or charity customers”.<sup>1</sup> NBN Co has not provided any evidence to support a position for extending the declaration to business customers.

The objective of the declaration process (and regulation) is to address instances of market failure, or enduring bottlenecks, where the absence of a competitive constraint leads to outcomes that are not in the long-term interests of end-users. This is generally the case where there is no overlap between the NBN and competing fibre networks. Where there is overlap – or where there are other alternatives available, as is the case with business customers – regulation will only deter future entry and investment. NBN Co’s proposal to extend the declaration to business customers risks the ongoing provision of competitive services.

***Symmetrical regulation between NBN and non-NBN superfast broadband networks should be carefully considered.*** Should symmetrical regulation be the objective, NBN would need to face equivalent requirements for speeds and wholesale prices, as described in the LBAS and SBAS service descriptions. The SBAS declaration currently applies to a superfast carriage service with a downlink speed of 25Mbps or more (or in the case of Telstra’s FAB service, 30/1Mbps). Currently, NBN Co does not face equivalent regulation that effectively imposes constraints on its wholesale prices. Symmetrical regulation will need to ensure that NBN wholesale prices are constrained by regulatory requirements, and appropriately benchmarked. Telstra welcomes the opportunity to further discuss the points raised in this submission.

For further inquiries, please contact Justine Bond at [REDACTED] or [Justine.Bond@team.telstra.com](mailto:Justine.Bond@team.telstra.com).

Yours sincerely

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<sup>1</sup> ACCC May 2017, Superfast Broadband Access Service and Local Bitstream Access Service Final Access Determination joint Inquiry, page 14.