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## ACCC Combined Declaration Inquiry 2023

### Telstra Group Limited

## Response to ACCC Draft report- Domestic Transmission Capacity Service and Fixed Line Services

Response to ACCC Draft report – domestic MTAS subject to separate submission

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## 1 Executive summary

This submission is in response to the Australian Competition and Consumer Commission (ACCC) Draft report into the declaration of the domestic transmission capacity services and fixed line services only. Telstra will provide a separate submission in relation to the domestic Mobile Terminating Access Service (MTAS).

Consistent with our response to the Discussion Paper, we support the continued declaration of transmission services and resale fixed line services with some amendments.

We welcome the ACCC's recognition that NBN has driven fundamental changes to the market for transmission services. As such, we support the proposed service description changes as appropriate alongside a five-year declaration period. However, we are of the view that the ACCC's updated competition criteria could be further enhanced by adopting competition criteria that apply nationwide with no exceptions. Similarly, we consider that the presence of NBN on a route should be considered a regulated 'fallback' such that declaration is not needed.

In relation to Fixed Line Services, we support the ACCC's preliminary view to remove declaration of network services (ULL and LSS). While we agree with the ongoing declaration of the resale fixed services (WLR, LCS, W-ADSL), FOAS and FTAS, and retaining the existing service descriptions for each service, we consider a three-year declaration period will better promote the LTIE for these services. The changing market landscape and the upcoming commercialisation of consumer and business grade LEO satellite offerings, together with expansion of 5G services and solutions which offer higher speeds and capacity relative to the traditional legacy services, is likely to result in an accelerated substitution from the legacy-based copper services within the next three years. As such, we consider that this warrants an ACCC review into the need for continued declaration at an earlier time.

## 2 Introduction

Telstra welcomes the opportunity to respond to the ACCC Draft report into the declaration of the domestic transmission capacity services, fixed line services and domestic mobile terminating access service.

This submission responds to the Draft report and sets out Telstra's views pertaining to Domestic Transmission Capacity Service (DTCS) and Fixed Line Services, including ULL, LSS, WLR, W-ADSL, LCS, FOAS and FTAS only. A separate submission will present our views in relation to MTAS.

## 3 Domestic Transmission Capacity Service

This section provides Telstra's view on the declaration for the DTCS.

### 3.1 Overview of Telstra's position

The Draft report sets out the ACCC's preliminary view to extend the declaration of the DTCS in some geographic areas. Alongside this, the ACCC has proposed changes to the scope of the DTCS and service description. Telstra's views are set out below.



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### **3.1.1 Proposed service description changes are appropriate.**

As set out in previous submissions, Telstra considers the existing service description for the DTCS continues to be appropriate and serves as a suitable foundation. Commercial pricing and product structures for alternative transmission services, including additional service features, have been devised based on the existing service description. It acts as a benchmark for access providers to cater to specific customer needs by pricing more intricate transmission products or offering lower quality contended and asymmetric services.

That said, Telstra agrees with the changes to the service description proposed by the ACCC in the Draft report. Specifically, removing the “uncontended” reference and explicitly referring to the DTCS as an Ethernet-based service on the basis that it is now the predominant network interface. Additionally, updating speed references to reflect the lowest rate DTCS to be supplied ‘at 10 Megabits per second or above’ and removing tail-end regulation within the boundaries of major capital cities, will simplify processes going forward.

Telstra also supports the draft decision to not include managed products as part of the DTCS. The range of additional features that could be integrated into a regulated transmission service is too extensive for inclusion in a fixed service description. It is more fitting to uphold alternative transmission services available for commercial agreements on a case-by-case basis. Within the existing regulatory framework, the market has efficiently determined competitive prices for these commercial structures. Telstra's Managed Lease Line (MLL) service serves as an illustration of a transmission product tailored to address customer-specific requirements, featuring a flexible commercial pricing structure and additional value-added features.

### **3.1.2 Updated competition criteria could be further enhanced.**

As recognised by the ACCC, Telstra is the sole operator of transmission networks in some regional and remote areas where alternatives like NBN or other infrastructure options are not accessible. In such scenarios, declaration remains justified. In other areas Telstra welcomes the proposed changes to the DTCS competition assessment criteria such that ESAs with two (rather than the current three) providers of transmission services will be viewed as sufficiently competitive to be deregulated.

Telstra does, however, believe the updated competition criteria should apply nationwide with no exceptions despite the ACCC proposing to continue to regulate the exchange service areas with the five NBN POIs that currently have ‘only’ two providers of transmission capacity services. The nature of the transmission market in Australia means that a two-provider outcome is often the result of high investment costs in some areas, which means that additional providers are not economically feasible. Despite this, Telstra’s experience is that the presence of another (second) provider imposes a significant competitive constraint that is reflected in price outcomes. As such, we do not believe there is a need for exceptions to the proposed competition criteria.

Further, as set out in Telstra’s previous submission Telstra’s observation is that the presence of NBN has become a crucial ‘backstop’ in commercial negotiations. NBN Co has established itself as a significant competitor in the market, capable of offering price and non-price terms that often cannot be matched by Telstra. As such, we maintain our position that the presence of NBN on a route should be considered a regulated ‘fallback’, rendering declaration unnecessary. This proposition entails



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introducing an additional primary competition criterion, determining the existence of NBN-based alternative products.

### **3.1.3 A five-year declaration period is appropriate.**

Telstra agrees with the ACCC that a five-year declaration period remains suitable on the basis that it ensures regulatory certainty and stability in regional networks. This time also allows for a more comprehensive assessment of the return on investment for capital expenditures.

## **4 Fixed Line Services**

This section provides Telstra's view on the declarations for the Fixed Line Services.

### **4.1 Overview of Telstra's position**

- Telstra welcomes the ACCC's preliminary view that the declarations for Network Access services (ULLS and LSS) be allowed to expire.
- LEO satellites and the expansion of 5G will change the way in which voice and broadband services are offered in the near term. It is important that the regulatory settings relating to legacy copper-based services do not serve as a handbrake on innovation and expansion.
- While Telstra supports the redeclaration of resale fixed voice and interconnection and WADSL, Telstra considers a shorter regulatory period of 3 years for these services is in the LTIE.

#### **4.1.1 The proposed removal of ULLS and LSS is an appropriate outcome.**

Telstra welcomes the ACCC's preliminary view to propose removing declaration of the Network Access services (ULLS and LSS).

#### **4.1.2 The superiority of technologies such as LEO satellites will rapidly change the fixed services market landscape warranting a shorter declaration period of three years for resale voice, interconnection, and WADSL.**

In relation to resale fixed services, the ACCC have stated that a declaration period of five years will allow "... an appropriate period for the impact of emerging technologies and possible reforms to be revealed, and their impact assessed."<sup>1</sup>

Low Earth Orbit satellites (LEOs) will deliver a once in a generation step-change in both the speed and capacity of voice and broadband services (particularly to regional and remote Australians), with the capability to deliver voice services that are of the same quality or superior to that of the traditional copper-based voice and data.

Given the significant investments already being made and the uplift in capability expected to be delivered within the next 12-18 months, a longer declaration period of five years is unnecessary. As the ACCC itself notes, Telstra has recently announced that it has signed an agreement to become the first provider in the world to offer voice-only and voice plus broadband powered by Starlink to rural and remote Telstra

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<sup>1</sup> ACCC, Draft report, pg. 25.



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consumer customers in Australia, by March 2024,<sup>2</sup> noting the suitability of the technology for serving regional customers amongst other providers.

We expect rapid substitution given the technology advancements LEOs can offer over traditional voice and data resale services, particularly in regional areas of Australia. Importantly, the 2018 RTIRC review found, *“there is no fundamental difference in data needs between regional and metropolitan consumers. In our view, some Australians using the Sky Muster service are being held back economically and socially by the constraints of the satellite network, particularly as demand for data and the use of digital technology increases.”*<sup>3</sup> The RTIRC (2021) review also found *“... many contributors to the Review suggested that LEO satellite services have the potential to significantly transform the regional telecommunications landscape.”*<sup>4</sup> Therefore, given the likely rapid uptake in LEO-delivered fixed services, we consider it prudent for the ACCC to reassess developments in this market again within three years.

#### **4.1.3 Innovation of new emerging services will be hampered by a protracted regulatory period for legacy services.**

Relatedly, we remain concerned that retaining declaration for a longer time than necessary risks harming and delaying investment in new technologies and solutions, which is not in the LTIE. Specifically, a longer than necessary regulatory period is not in the LITE as it may lead to distortions in service and investment decisions and delay the availability of additional choices for end-users (which, as noted above, are particularly important for those customers in regional and rural areas). Given the potential of the substitute technology, this is an outcome that must be avoided. Only once markets are sufficiently mature will firms be incentivised to innovate and unnecessary legacy regulation could delay these benefits, particularly in regional and remote Australia where alternative technologies will form an important part of the connectivity solution.

In redeclaring the resale services, the ACCC has found that it will promote competition in both the retail fixed voice and broadband markets,<sup>5</sup> including through the introduction of new market entrants. While theoretically possible, we do not consider this a likely outcome. We also disagree with the ACCC’s view that *“...if all wholesale ADSL have not migrated within this time, there will be uncertainty in the market which would create limitations about the declaration decisions.”*<sup>6</sup> Given that resale services are falling annually, with a decline of [c-i-c] [c-i-c] over the last year<sup>7</sup>, it is not essential that all WADSL services be fully migrated off the legacy network to wind back declaration. The ACCC’s preliminary view appears to adopt a very conservative view that all services must be migrated off before deregulation can occur. We do not consider the ACCC’s approach is consistent with the LTIE, particularly as the ACCC itself acknowledges that *“... over time, it is likely that alternative services will become substitutes for the service.”*<sup>8</sup> In Telstra’s view, given the expected change in the landscape with the expansion of 5G and proliferation of LEO satellite services, the ACCC should take the opportunity to assess the level of substitution in three years’ time.

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<sup>2</sup> Telstra, 03 July 2023, [Telstra announces agreement with Starlink](#)

<sup>3</sup> RTIRC, 2018, pg. 25

<sup>4</sup> RTIRC, 2021, pg. 61

<sup>5</sup> ACCC, Draft report, pg. 24, pg. 28

<sup>6</sup> ACCC, Draft report, pg. 28

<sup>7</sup> Jan 2023- Jan 2024

<sup>8</sup> ACCC, Draft report, pg. 4



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**4.1.4 There are ongoing costs to regulation which should be removed at the earliest opportunity.**

The ACCC in their Draft report note *“We also consider that the declaration period of all the services we plan to re-declare should be the same, as this will likely reduce the regulatory costs associated with the declaration.”*<sup>9</sup> In adopting this view, the ACCC fails to consider the cost of ongoing regulation (particularly in situations where there is no longer an enduring bottleneck). Given the likely changing landscape and the ongoing maintenance in funding a network that is approaching end of life, we consider that adopting this view fails to consider all the costs of regulation appropriately.

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<sup>9</sup> ACCC, Draft report, pg. 28