

CONSULTATION ON PROPOSED CHANGE TO THE PRICING OF AGVC/VLAN AND IMPLICATIONS FOR THE PRICES OF OTHER FIXED SERVICES – iiNET RESPONSE

Introduction

As part of its current inquiry into the final access determinations (**FADs**) for the fixed line services (**the Declared Services**)¹, the Australian Competition and Consumer Commission (**ACCC**) is seeking stakeholder comment on a proposal to adjust the AGVC/VLAN charge for the WDSL. This proposal is set out in a document that was provided by the ACCC to stakeholders on 14 August 2015 (**the WDSL Proposal Document**).

The ACCC's draft decision of June 2015 if implemented would result in a uniform reduction in prices of 9.6% for the Declared Services. The ACCC decided to adopt a uniform price change because it was seen as best supporting stability by minimising incentives for access seekers to change the way they provide services to end users. As a result, a uniform price change would avoid any adverse impacts on competition from changing price relativities.² However, a consequence of the uniform price change approach is that individual service prices and revenues recovered from those prices are not determined on the basis of costs allocated to each service within the ACCC's fixed line services model (**FLSM**).

The ACCC has formed the view that, in the case of the AGVC/VLAN component of the WDSL, the departure from strictly cost reflective prices gives rise to specific disadvantages that outweigh the advantages of the uniform price change. In particular, the combination of stronger than anticipated demand combined with the AGVC/VLAN price proposed under the uniform price change approach could result in over-recovery by Telstra and distort competition.³ Therefore, the ACCC has formed the view that setting the AGVC/VLAN charge for WDSL independently of the uniform price change for other prices for the Declared Services would better promote the long term interests of end users (**LTIE**) than applying the uniform price change to the AGVC/VLAN charge for WDSL. Specifically, the ACCC proposes that:

- the AGVC/VLAN charge be reduced to \$17.90 per Mbps per month; and
- the uniform price reduction for all other FAD prices for the Declared Services be reduced from 9.6% to 5.8%.

iiNet's response to the WDSL Proposal Document

iiNet welcomes the opportunity to respond to the WDSL Proposal Document. iiNet does not support the changes in the WDSL Proposal Document. iiNet notes that the justification for adopting the uniform price change approach has been expressed by the ACCC as follows:⁴

¹ These are: the Local Call Service (**LCS**), Line Sharing Service (**LSS**), the Fixed Originating Access Service (**FOAS**), the Fixed Terminating Access Service (**FTAS**), the Unconditioned Local Loop Service (**ULLS**) and the Wholesale Line Rental Service (**WLR**) and the Wholesale ADSL service (**WDSL**).

² ACCC, Public inquiry into final access determinations for fixed line services – primary price terms Draft Decision March 2015, at pp.167-168.

³ Ibid.

⁴ ACCC, Public inquiry into final access determinations for fixed line services – primary price terms Draft Decision March 2015, at p.168.

The ACCC considers that applying a uniform price change to all declared services and maintaining price relativities will minimise any undesirable consequences of setting prices for individual services using the current approach. The ACCC considers that the uniform price change will provide stability to the industry in the transition to the NBN. This will minimise incentives for access seekers to change the way they provide services to end users and allow for continued efficient use of infrastructure already in use, which will in turn promote efficient use of declared services. It will also avoid any adverse impacts on competition from changing price relativities.

iiNet agrees that adopting a uniform price change approach is justified and will better promote the LTIE than basing pricing for a Declared Service on the costs allocated to that Declared Service in the FLSM.

In iiNet's view, the analysis that supports the adoption of a uniform price change approach as set out above cannot be reconciled with the approach that the ACCC proposes in the WDSL Proposal Document. To proceed in the way that the ACCC proposes in the WDSL Proposal Document effectively means that the WDSL is not being treated consistently with the ULLS and LSS. This will likely affect the current balance that exists between infrastructure based competition based on ULLS and LSS and resale competition based on WDSL in a manner that will lead to increased take up of WDSL at the expense of ULLS and LSS. In iiNet's view, stacking regulated pricing in favour of resale services at the expense of network access services will lead to an under utilisation of network access services and this will not promote the LTIE because as has previously been observed by the ACCC:⁵

resale services cannot provide a complete substitute for network access services because they do not allow an access seeker the greater level of control over the quality and functionality of its retail products that is enabled by the use of the ULLS and LSS. Consequently, resale services do not enable an access seeker to develop innovative product offerings, which would allow it to compete more effectively in the retail market.

In iiNet's view, the particular issue of Telstra gaining more revenue than expected through higher than expected usage of the AGVC/VLAN components of the WDSL should be dealt with within the uniform price change mechanism so that the prices of all Declared Services are reduced uniformly as a result of this increased usage. In this regard, iiNet believes that in order to prevent Telstra recovering windfall profits, it is imperative that, rather than changing the relativities of the AGVC/VLAN price as compared to other prices for Declared Services, the ACCC ensure that the demand forecasts used for the FLSM fully reflect the increase in usage that results from the recent introduction of streaming services into Australia.

iiNet notes that the ACCC is not proposing that the consultation on the WDSL Proposal Document should alter the timing for the release of the final decision on the Declared Services FADs. iiNet believes that this is appropriate. iiNet does not support any further delay in the finalisation of the Declared Services FAD and iiNet urges the ACCC to bring this long running inquiry to a close as soon as possible by implementing the June draft decision without any of the changes set out in the WDSL Proposal Document.

iiNet Limited
24 August 2015

⁵ ACCC, Public Inquiry into the fixed line services declarations Final Report April 2014, at p.12.