Response to the Second Draft FLS FAD

July 2015

The CCC welcomes the opportunity to further contribute to the ACCC's draft FLS FAD process, and in particular to respond to the recent submission from the Department of Communications.

The CCC believes the ACCC's draft decision to reduce access charges by 9.6 percent is, on balance:

- in the long term interest of end users;
- reasonably reflects the direct cost to Telstra of providing access; and
- appropriately deals with the issue of NBN-related costs.

The CCC submits that the Department's submission misunderstands elements of the draft decision and proposes the Commission take into account irrelevant considerations in relation to price stability.

With regard to the latter, the proposition that the Commission should be influenced by the cost of providing future services over the NBN in determining the cost of wholesale services provided by Telstra over the existing copper network would result in the Commission being unable to make any adjustments to existing prices, no matter what the change in circumstances.

In a nutshell, in arguing for price stability, the Department is proposing the Commission allow over recovery of costs on the copper to prevent NBN access charges being greater than Telstra access charges to avoid a disincentive for the early transition of services to the new network. This would have the effect of creating a windfall gain for Telstra, directly from competitors. It is unclear how this consideration could be consistent with the Commission's legislative mandate.

For example, the adjustment to WACC to reflect changes in interest rates since 2011 has a material impact on prices. Similarly, inaccuracies in forecasting in the past price period resulted in over recovery by Telstra, according to analysis undertaken by Frontier Economics on the CCC's behalf.

The treatment of the disposal of assets to NBN and the proposals that the compensation from NBN to Telstra is unrelated to this also does not bear logic. Telstra has argued that the compensation from NBN for services migrated off its network is compensation for loss of revenue, not for the costs still borne by Telstra. However, that foregone revenue would have been what was used to cover the on going costs. If the lost revenue is being compensated, it follows that the costs are being compensated for.

Is the Department suggesting the Commission should ignore these fundamental matters in order to prevent the access prices of copper based services falling below the prices for NBN based services? Further, what if the fundamental inputs to the Commission's considerations had moved such that it determined access prices to the copper should rise? The logic of the Department's argument for price stability would be that these effects should then be taken into account and copper prices should increase. This is clearly not a defensible approach.

Finally, the CCC is concerned that the Department's intervention at this late stage of the process is inappropriate and has the potential to undermine confidence in the policy setting surrounding the NBN, the independence of the Commission's pricing process and the balance between the interests of consumers and competition and that of monopoly asset owners.

The CCC therefore submits that the Commission should disregard the Department's submission as it is inconsistent with an approach that the Commission can legitimately take.

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