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## **TELSTRA CORPORATION LIMITED**

### **Response to Review of the Telecommunications (provision of Pre-Selection) Determination 2015**

**27 March 2020**

**CONFIDENTIAL**

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## Summary

Since pre-selection regulation was introduced, significant changes to the market environment, alongside changes to the regulatory framework, mean there is no longer any reason to maintain a regulated requirement for carriers to allow end users to pre-select calling services from another carrier. However, the pre-selection determination (PD) plays a fundamental role in the provision of wholesale voice services. Accordingly, at this point in time it is more appropriate that the PD be amended to remove the retail pre-selection requirement. Specifically, we propose a variation that would allow Telstra to remove from market barely-used Voice Part products, eliminating the unnecessary cost of providing those services and improving the relevance of this regulatory instrument.

### End users no longer benefit from a requirement to support retail pre-selection

Pre-selection regulation was made to encourage competition for the types of calls that carriers other than Telstra were able to provide (long distance, fixed-to-mobile and international), at a time when there was no other competitive constraint on Telstra's pricing of those call types. Without a pre-selection requirement, Telstra could leverage its unique ability to connect end users to its monopoly PSTN network to lock them into a voice service bundle including the pre-selectable call types. Since then the following critical developments have occurred:

- The ACCC has declared fixed line services including services that require Telstra to offer to other carriers the ability to provide voice connection and local calling using Telstra's network.<sup>1</sup>
- Most voice calling has migrated to mobile and fixed IP networks, particularly on the NBN. The Preselection Determination does not apply to mobile or IP networks.
- Many voice plans now include unlimited domestic calls of all types, such that there is minimal competitive pressure on voice plan pricing.

The declared services deliver the ability for carriers other than Telstra to offer the full bundle of voice services to end users, including connection to the PSTN network, although the scope of this is rapidly diminishing with the transition to the NBN and will soon be limited to those areas outside the NBN footprint. Declaration of these services therefore broadened competition to the full bundle of services, not just the pre-selectable services. Since these services were first declared in 1997<sup>2</sup>, pre-selection has been of limited and declining utility, as end users can choose the best proposition for all their voice service needs. The PSTN voice service has also been declining, initially due to the introduction of ULLS-based PSTN bypass and now, as noted above, the transition to the NBN.

The PD applies only to Telstra's PSTN network. From the designated day, most of the premises in the NBN Fixed Line Footprint (FLF) will have migrated off the PSTN network onto the NBN or alternative networks (including mobile networks, and in the form of Over the Top voice services delivered over other fixed and mobile data networks). Because the PD therefore applies to a small percentage of the population, it is not equitable to maintain the obligation for these customers.

Due to the implementation of IP core networks, the relative costs of providing the various call types are now trivial. Most voice plans now include unlimited calls for most domestic call types, and international calls are easily available at competitive prices either within the full bundle of voice services, or by using calling cards. In these market circumstances, the requirement to offer retail pre-selection is largely meaningless.

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<sup>1</sup> Wholesale Line Rental (WLR), Local Carriage Service (LCS), Fixed Originating Access Service (FOAS) and Fixed Terminating Access Service (FTAS).

<sup>2</sup> Note, however, that there was alternate regulation in place prior to the formal declaration under the telecommunications access regime.

As a consequence of these fundamental market and regulatory changes, there is no longer any reason to maintain a regulated requirement for carriers to allow end users to pre-select calling services from another carrier.

Removing the retail pre-selection requirement would allow Telstra to retire its Voice Part plans, which are voice plans that provide connection and local calls only to allow end users to build their own voice bundle by pre-selecting another carrier for the pre-selectable services. Due to the market changes described above these plans are barely used, but there are fixed costs to maintain them which cannot be avoided while the PD remains in place unchanged.

Telstra has in total 10,277 customers using one of our Voice Part products. Out of this total, at least 6,375 are due to migrate to the NBN in the next year, at which point preselection will no longer be available to them, leaving at most 3,902 customers who might remain on Telstra's network. Business customers account for 3,192 of these remaining services, leaving 710 individual residential customers on products that allow for preselection.

### **The Pre-selection Determination plays a critical role in the wholesale voice service ecosystem**

Pre-selection should be removed as a concept from telecommunications regulation as a matter of principle. However, removing the PD would also require changes to the declared fixed access services and the Telecommunications Act 1997 (Cth). As the fixed access services were re-declared for five years in 2019, we do not think it is feasible to remove the PD completely at this time.

The declared services allow a carrier other than Telstra to provide a full bundle of voice services to an end user using Telstra's PSTN network. This wholesale ecosystem for voice bundles relies on the PD to ensure that carriers acquiring the declared access services from Telstra can connect the pre-selectable service call types from the end user's service. If the PD were revoked, the voice fixed access service descriptions would need to be varied to incorporate a like requirement. However, the benefits of such a variation would need to be considered against the costs, complexity and time involved in doing so.

### **The Pre-selection Determination can be changed to remove the retail pre-selection requirement**

In our view s349(1)(b) of the Telecommunications Act permits the inclusion of an additional rule in the PD as set out in the proposed drafting below. This would allow the pre-selection obligation to be met by requiring an end user who wishes to acquire the pre-selectable services from another carrier to acquire the full bundle of voice services from that carrier. Telstra could then retire its Voice Part plans without limiting end user choice, and without changes to the Telecommunications Act.

#### **New section 7(3)**

*A carrier meets the requirements of section 7(1) if its controlled networks and controlled facilities permit an end-user to pre-select a carriage service provider for pre-selectable services for calls made using a standard telephone service on condition that the end user also acquires network access and local calls from that carriage service provider.*

**Note:** *The effect of subsection 7(3) is:*

- *to allow the carrier providing the controlled networks and controlled facilities to require that an end user acquire local calls and network access from the same carriage service provider that the end user wants to acquire the pre-selectable services from. To facilitate this, the carriage service provider would also acquire network access and local calls from the carrier for resale to the end user;*
- *to allow the carrier to meet the pre-selection obligation by supplying network access and local calls on a wholesale basis to the carriage service provider who will also supply the pre-selectable calls.*

### New section 8(3)

*A carriage service provider meets the requirement of section 8(1) if its controlled networks and controlled facilities permit an end-user to pre-select a carriage service provider for pre-selectable services for calls made using a standard telephone service on condition that the end user also acquires network access and local calls from that carriage service provider.*

Note: The effect of subsection 8(3) is:

- *to allow the carriage service provider providing the controlled networks and controlled facilities (CSP1) to require that an end user acquire local calls and network access from the same carriage service provider (CSP 2) that the end user wants to acquire the pre-selectable calls from. To facilitate this, CSP2 would also acquire network access and local calls from CSP1 for resale to the end user;*
- *not to require CSP1 to supply access and local calls on a retail basis to the end user, and to allow CSP1 to meet the pre-selection obligation by supplying network access and local calls on a wholesale basis to CSP2 who will also supply the pre-selectable calls.*

### Answers to questions in the consultation paper

#### 1. Is the pre-selection Determination still fit for purpose?

No, the PD is not still fit for purpose because it requires Telstra to maintain Voice Part plans which provide no utility to end users in addition to their ability to acquire a full bundle of voice services from other carriers through the wholesale voice services ecosystem underpinned by the declared fixed line services.

#### 2. What is the current and likely future demand for pre-selection from end-users?

There is already minimal demand for pre-selection from end users, as set out above. We believe remaining end users have not made recent conscious choices to take Voice Part plans in order to pre-select the pre-selectable services from another carrier; rather, most remaining end users contracted for Voice Part plans many years ago and have never bothered to reassess their voice service needs. This is reflected in the number of end users electing to take Voice Part plans in the past 12 months (157) versus those disconnecting or moving away from such plans (approximately 2,400).

#### 3. Is the pre-selection Determination still required to support the competitive delivery of long distance, international and fixed to mobile calls? (please provide succinct details)

No, because the declared fixed line services which allow end users to select the full bundle of voice services from a carrier other than Telstra perform the same function in a more efficient and hence much more highly utilised way. End users can source their voice connection and calling bundle from any carrier, ensuring that there is compete

#### 4. Should the ACMA vary, revoke, or leave the Determination in place at this time and why?

The ACMA should vary the PD to allow the pre-selection obligation to be met by requiring an end user who wishes to acquire the pre-selectable services from another carrier to acquire the full bundle of voice services from that carrier, for the reasons set out elsewhere in this submission.

##### 4.a What would happen if the ACMA revoked the Determination?

If the PD were revoked, there would need to be corresponding changes to the Telecommunications Act 1997 and the declared fixed line services. Telstra does not seek to revoke the Determination, merely amend the retail pre-selection obligation.

##### 4.b Would pre-selection continue to be provided by carriers and carriage service providers to end-users?



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Pre-selection would continue to be provided as part of a full bundle of voice services. Any end user who found the long distance, calls to mobile and internal calling prices of another carrier attractive could acquire a full bundle of voice services from that carrier including also connection and local calls.

*4.c What would be the likely impact of revocation be on end-users (positive, negative or neutral) and/or to any other arrangements?*

See answer to 4.a above.

*4.d If revoked, should it occur now or a future time? (e.g. after transition to the NBN)*

The PD should not be revoked at this time. The variation to the PD proposed in this submission should take effect from the designated day.

*4.e What are the costs of complying with the Determination?*

The costs of complying with the Determination are the costs of maintaining and supporting Voice Part products that could otherwise be retired. These costs are significant, but we have not been able to quantify them in the time available. With a bit more time we would be happy to provide an estimate if a quantification of costs is material to the review.

*4.f Are there likely to be additional costs or savings if the Determination is revoked?*

As explained above, Telstra does not seek revocation of the PD at this point. However, a variation that allows Telstra to remove from market its barely-used Voice Part products would eliminate the cost of providing those services and remove an outdated requirement from the regulations.

*5. Are there any other factors the ACMA should consider when reviewing the Determination?*

We are not aware of any other factors that the ACMA should take into account.