

## Introduction

Basslink Telecoms Pty Ltd (**Basslink Telecoms**) is pleased to provide this submission in response to the *ACCC Discussion paper for a public enquiry into a final access determination for the DTCS*, issued in June 2011 (**DTCS discussion paper**).

As a rule, the comments contained herein are made in the context of the services that Basslink Telecoms currently provides, or will provide to Tasmania, and as per future NBN Point of Interconnect requirements.

The affected routes are:

- Inter-capital route, Melbourne to Hobart; and
- Capital–Regional route, Melbourne to Launceston (Basslink Telecoms' future route)

(collectively referred to as the **Tasmanian routes**).

## Overview

In making its submission Basslink Telecoms requests that the ACCC exempt Basslink Telecoms from the Standard Access Obligations (**SAOs**) in respect of the Melbourne to Hobart transmission route as part of the DTCS Final Access Determination (**FAD**). As detailed in this submission, Basslink Telecoms considers that there is effective competition in the Melbourne to Hobart transmission market and the dependent markets, and accordingly, exemption of Basslink Telecoms from the SAOs in respect of the Melbourne to Hobart transmission route will promote the long-term interests of end-users (**LTIE**). Alternatively the ACCC may consider it more appropriate to vary the DTCS declaration to exempt the Melbourne to Hobart transmission route.

In the alternative, Basslink Telecoms requests that the ACCC introduce a set of variables to its regression model to reflect the real costs of the infrastructure which are specific to the Melbourne to Hobart transmission route. As part of the DTCS discussion paper, the ACCC has, itself, expressly acknowledged that the route has attributes that are not exhibited by other routes.

Basslink Telecoms supports infrastructure based competition and the ACCC's objectives, but submits that these must be achieved with full consideration of both cost structures and investment return, so as to ensure dynamic efficiency is achieved. The specification of pricing in the DTCS FAD below Basslink Telecoms' expected costs could lead to Basslink Telecoms' market exit, returning the route(s) to a monopoly.

Basslink Telecoms is one of only a few niche infrastructure-based competitors and would be disproportionately affected by any below cost pricing in the DTCS FAD, given that it has no other telecommunication infrastructure to subsidise adverse pricing outcomes.

Basslink Telecoms also submits that further consideration of section 152BCA(1) of the *Competition and Consumer Act 2010* (**CCA**) is necessary for the purposes of the Melbourne to Hobart transmission route – particularly subsections (a),(b),(d) and (g).

Basslink Telecoms' submission develop these points and also provides in Appendix 1 to this submission specific responses to each of the questions put forward by the ACCC in its DTCS discussion paper.

### **About Basslink Telecoms**

Basslink Telecoms is the only alternative infrastructure owner/operator of transmission capacity to Tasmania to that of the national incumbent.

In 2008 the decision was made to create Basslink Telecoms and activate the fibre optic capability in the Basslink HVDC Interconnector. Since July 2009, Basslink Telecoms' undersea fibre cable has been operational and has delivered the following outcomes to Tasmania:

- Breaking the Melbourne to Hobart Inter-capital transmission monopoly
- Delivering an independent transmission capability
- Operating a geographically diverse transmission path to that of any other cables
- Effectively disaster-proofing Tasmania on a carrier, infrastructure and electronics level
- Contributing to significant price decreases for retail and backhaul services in Tasmania
- Providing a platform for the re-entry of a number of ISPs into Tasmania, selling DSL and NBN services to both residential and business customers.
- Being at the forefront of Tasmania's and consequently Australia's NBN activity

Basslink Telecoms primarily sells wholesale bandwidth, which ultimately benefits end users on the basis of the following:

- Increased consumer choice via ISPs / RSPs
- Retail price decreases
- Additional bandwidth quotas
- Faster service activation
- Newer technology rollouts such as ADSL2+

Basslink Telecoms has delivered carrier-grade Service Level Availability since it commenced operation and is able to deliver Services Activation and Upgrades in negligible time. Commercially, Basslink Telecoms has also assisted in bringing flexible contracting terms for backhaul to Tasmania. Significant backhaul price decreases have also been accompanied by the elimination of the "fine print" exception to national sales campaigns by Carriers and ISPs.

### **Exemption of the Melbourne – Hobart Inter-capital route**

Basslink Telecoms requests that the ACCC exercises its power under section 152BC(3)(h) of the CCA and exempt Basslink Telecoms from the SAOs in respect of the supply of the DTCS on the Melbourne to Hobart transmission route by way of the FAD, or alternatively by varying the DTCS declaration to exempt the route.

Basslink Telecoms notes that in setting prices for the DTCS IAD, the ACCC relied on an independent report by Frontier Economics which states that it is preferable to use a light handed regulatory approach where there has been some competitive entry into a transmission market.<sup>1</sup> The Frontier Report noted that light handed approaches to the regulation of access prices might take a number of forms, including a requirement to make tariffs known to the ACCC for monitoring purposes.<sup>2</sup>

In making any decision to declare the Melbourne to Hobart transmission route, the ACCC must apply the LTIE test.<sup>3</sup> In determining whether declaration would promote the LTIE, the ACCC must consider and only consider the extent to which declaration is likely to result in the achievement of the following objectives:<sup>4</sup>

- promoting competition in markets for carriage services and services supplied by means of carriage services;

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<sup>1</sup> Frontier Economics, *Economics of transmission capacity services: A report prepared for the Australian Competition and Consumer Commission*, June 2009 (**Frontier Report**), p 69

<sup>2</sup> *Ibid*, p 45

<sup>3</sup> CCA, Section 152AL(3)(d)

<sup>4</sup> CCA, Section 152AB

- encouraging the economically efficient use of, and economically efficient investment in, the infrastructure by which carriage services and services provided by means of carriage services are supplied; and
- for carriage services involving communication between end-users, the objective of achieving any-to-any connectivity.

Thus in making any decision to exclude the Melbourne to Hobart transmission route, the ACCC must apply the LTIE test.

#### 1. *Promoting competition*

Basslink Telecoms notes that the most recent substantial review of the DTCS declaration occurred in March 2009, three months prior to the commercial launch of Basslink Telecoms in 2009. In the last 2.5 years, the emergence of Basslink Telecoms has significantly changed the state of telecommunications competition in Tasmania.

The ACCC has previously stated that, where there is effective competition or contestability in a transmission market, granting an exemption from DTCS exemption in that market would not be detrimental to the objective of the promotion of competition. On the contrary, the ACCC notes that competition may be promoted where regulation is removed in such instances.<sup>5</sup>

The following factors help to illustrate how effective competition has developed following the entry of Basslink Telecom.

- a) the number of market participants

[C-I-C]

The ACCC has previously considered that evidence of resale competition on an inter-capital route is suggestive that a transmission route should be excluded from declaration.<sup>6</sup>

In considering whether the existence of two infrastructure owners and a reseller on a transmission route is enough to exert downward pressure on prices and provide the necessary degree of competition, the ACCC need not look further than the downstream ISP markets that have re-entered and invested into the market in Tasmania since the emergence of Basslink Telecom.

The Melbourne to Hobart transmission route is a naturally smaller market than other Inter-capital routes and comparisons in terms of numbers of resellers and suppliers is unsuitable. It is conceivable that this route has as many market participants as it may ever have.

Basslink Telecoms urges the ACCC to also consider the exemption of the Melbourne to Hobart transmission route in the context of a recent New Zealand Commerce Commission finding on similar style routes.<sup>7</sup> Amongst other things, the Commerce Commission considered whether two or three backhaul providers on a particular route were likely to be sufficient to ensure effective competition on that route. The Commerce Commission found that the level of competition on a route was likely to depend on a number of factors, with particular consideration given to the following:<sup>8</sup>

- the likely degree of independent rivalry between competitors;
- the degree of vertical integration; and
- the ability of customers to exert countervailing power to constrain the incumbent.

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<sup>5</sup> ACCC, *Telstra's domestic transmission capacity service exemption applications – Final Decision*, November 2008, p 7; ACCC, DTCS 2004 Final Report, p 43

<sup>6</sup> ACCC, *Transmission Capacity Service - Review of the declaration for the domestic transmission capacity service – Final Report*, April 2004 (**ACCC, DTCS 2004 Final Report**), p 24

<sup>7</sup> New Zealand Commerce Commission, *Standard Terms Determination for the designated service Telecom's unbundled copper local loop network backhaul (telephone exchange to interconnect point) – Decision 626*, June 2008.

<sup>8</sup> *Ibid*, p 39

The most obvious indication of independent rivalry on the Melbourne to Hobart transmission route is the fall in transmission prices following the introduction of Basslink Telecom and Aurora Energy into the market. Further, there has been no mitigation of the independent rivalry between Basslink Telecoms and Telstra as a result of any strategic co-ordination.

In relation to the second point, the Commerce Commission noted that where the incumbent and another vertically integrated provider are present, competition may be less intense than where the incumbent faces a wholesale competitor only.<sup>9</sup> It is important to note that Basslink Telecoms serves predominantly the wholesale market and does not have any degree of vertical integration in effect.

The fall in transmission prices along with the emergence of several new ISPs into the Tasmanian market also supports the premise that transmission service customers have been able to exert countervailing power to constrain Telstra.

b) price and pricing movements

A key element of effective competition is the rate of reduction in prices and evidence of the responsiveness of one competitor to the pricing behaviour of another. Competitive markets are usually characterised by declining prices over time as competitors attempt to gain an advantage over their rivals.

Based on the access agreements lodged by Basslink Telecoms pursuant to sections 152BEA and 152BEB of the CCA, the ACCC can confirm our claim that prices for transmission services on the Melbourne to Hobart route have maintained a downward trend.

c) the effect of competition on downstream markets

The ACCC has previously noted that improved competition in a transmission market is likely to provide benefits to end-users as a result of improvements in downstream markets. Such benefits would include lower prices, better quality and a better range of services over time.<sup>10</sup>

Competition in the downstream ISP market since Basslink Telecoms' advent is clearly apparent given the re-entry into Tasmania of a number of ISPs such as Internode, iiNet, Primus and Exetel. As an example of the growth in the ISP market, a prominent end-user such as the Tasmanian Government now has access to 3 suppliers on its panel that all have access to Inter-Capital bandwidth, in contrast to its former situation where its only option was to receive services from Telstra.

Additionally, mobile operators are at varying stages of undertaking network rollouts in Tasmania. Such activity is underpinned by cheaper transmission backhaul.

Furthermore, research and education sites in Tasmania have experienced significant increases in bandwidth via AARNET and made available because of developments in the transmission market.

Empirical evidence would suggest that equivalent pricing outcomes can be achieved in a Bertrand state to that of perfect competition. It can be shown that both Basslink Telecoms and its direct competitor at the infrastructure level Telstra have attained a state of Bertrand competition

In the alternative, should the ACCC maintain regulation of the Melbourne to Hobart transmission route, the resulting FAD would prompt Basslink to review its telecoms strategy. Unsustainable access charges could even result in supply constraints or market exit. This could have a severely detrimental impact on the state of competition in the Tasmanian transmission market, the future growth of NBN in Tasmania and ultimately the LTIE.

2. *Efficient use of infrastructure and efficient investment in infrastructure*

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<sup>9</sup> Ibid, p 41

<sup>10</sup> ACCC, DTCS 2004 Final Report, p 44

The objective of the efficient use of and investment in infrastructure is closely interrelated with that of the promotion of competition. Thus, in circumstances where there is effective competition in the provision of a service, continued declaration is likely to distort the efficient use of, and investment in, infrastructure, for example, by having a 'chilling effect' on investment.

The ACCC has itself stated that where a service remains regulated despite the existence of effective competition, continued regulation can reduce and distort efficient investment in the market.<sup>11</sup> The continued regulation of Basslink Telecoms' supply of the DCTS will reduce its incentive to improve, introduce next generation services or undertake significant capacity increases and invest in the future supply of other wholesale services.

Of direct relevance to the current situation is Basslink Telecoms' consideration of whether to invest in a Melbourne to Launceston Regional route, on which Telstra is currently the only infrastructure provider. Continued regulation of Basslink Telecoms' Melbourne to Hobart route is likely to have an impact on any decision to make this further investment.

Distortions would also in all likelihood be evident in the supply of related downstream services as a consequence of continued regulation.

It is noted that previous exemptions of inter-capital routes in 2004 precipitated large scale investment upgrades by competitors on these routes. The announcement by Primus in September 2007 that it would upgrade its DSLAM exchanges with transmission using WDM, focussing initially on Brisbane, Sydney, Melbourne, Adelaide and Perth and then progressively rolling-out to other centres, provides an illustration of this.<sup>12</sup>

Additionally, deregulation would assist owners of infrastructure to invest on the basis of future demand for transmission services, which are likely to increase with any further NBN rollout in Tasmania.

In relation to the efficient use of infrastructure, deregulation of the Melbourne to Hobart transmission route would not alter the technical feasibility of securing access to the DTCS by access seekers. The ACCC has previously states that technical feasibility only appears relevant when an inquiry concerns the threshold decision of whether to declare a particular service.<sup>13</sup>

Consideration should also be given to the legitimate interests of access providers and include a commercial return on investment. In particular, regard needs to be given to the ability to maintain existing commercial contracts and use of the network for future requirements. Regulated pricing, in particular (and especially the differentiation between Ethernet and SDH pricing), will not provide Basslink with a reasonable return on its investment and would force it to review existing and ongoing contractual requirements.

### 3. Any to Any connectivity

The ACCC is required to consider whether deregulation of the Melbourne to Hobart transmission route is likely to affect any-to-any connectivity.<sup>14</sup> However, the ACCC has previously noted that it does not believe that a variation to remove certain transmission routes from the DTCS declaration will have an impact on the achievement of any-to-any connectivity between end-users.<sup>15</sup>

Given the matters raised above regarding each of the LTIE objectives, Basslink Telecoms contends that an opportunity exists for a change. Varying the FAD at a later stage in order to effect an exemption is inefficient and is likely to create further uncertainty in the meantime.

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<sup>11</sup> ACCC, *Transmission Capacity Service - Review of the declaration for the domestic transmission capacity service – Final Report*, March 2009 (DTCS 2009 Final Report), p 31

<sup>12</sup> <http://www.iprimus.com.au/PrimusWeb/AboutUs/News/PrimusAustraliaBoostsFibreOpticNetworkCapacityTenFold.htm>

<sup>13</sup> DTCS 2009 Final Report, p 44

<sup>14</sup> CCA, Section 152(AB)

<sup>15</sup> ACCC, DTCS 2004 Final Report, p 47

In the event that the ACCC finds consensus with Basslink Telecoms request to deregulate the Melbourne to Hobart transmission route, and yet wishes to ensure that effective competition is continues, a light handed approach to regulation could be adopted, as discussed. The ACCC has previously adopted such a light handed approach to regulating transmission services over inter-capital transmission routes. As part of its report in November 1998 on whether to amend declarations for transmission services, the ACCC instituted a monitoring program aimed at assessing market conduct and ensuring that the benefits expected from new entry and the maturing of the market did in fact materialise.

The ACCC considered it more appropriate to apply this light handed regulatory approach to those inter-capital transmission routes where it considered that competitive entry had already occurred.<sup>16</sup> In 2004, the ACCC concluded that there had been sufficient competition on all the relevant inter capital routes such that they should remain outside the scope of declaration, and the associated monitoring program was discontinued.<sup>17</sup>

In the event that the ACCC decides not to exempt the Melbourne to Hobart transmission route from regulation either by varying the DTCS declaration to exempt the route or by exempting Basslink Telecoms from the SAO's in respect of supply of the DTCS on that route as part of its FAD, Basslink Telecoms urges the ACCC to develop a set of variables or a sub-model to take account of the unique characteristics of the Tasmanian routes and price accordingly.<sup>18</sup>

### **Pricing the Melbourne to Hobart DTCS in the FAD**

In November 2010, the ACCC issued a Position Paper announcing a proposed domestic benchmarking approach to DTCS pricing. As part of this paper, the ACCC expressly recognised that the Melbourne to Hobart route is likely to have cost structures that are not exhibited by other routes.<sup>19</sup>

Basslink Telecoms' Melbourne to Hobart transmission route differs from all other Inter-capital routes in that it is a "thin" demand route(s) that consists of sub-sea components and has costs and structures that distinguish it from other mainland routes. These differentiating factors are noted in our answer to Question 4 of the ACCC's DTCS discussion paper. As such, any FAD employing a benchmark of prices from mainland transmission routes and generalised variables will result in pricing that for the Melbourne to Hobart route that does not represent Basslink Telecoms cost of supply.

Basslink Telecoms submits that the following specific considerations should be taken into account by the ACCC in the event that it decides to apply its regression model to the Melbourne to Hobart transmission route:

1. Tasmanian routes utilise a sub-sea cable with cost-structures that are greatly different to terrestrial routes – including additional capex and opex requirements.
2. Basslink Telecoms does not have the ability to provide total spend discounts, subsidies or rebates across other product sets, such as mobile or voice, that can subsidise any below cost pricing in the FAD. Further to the matters that the ACCC must take into account in making the FAD, Basslink Telecoms must be able to operate as a commercial enterprise and still generate an acceptable return to shareholders while meeting its original business case objectives.<sup>20</sup>
3. Tasmanian transmission routes are very "thin" in capacity terms. The addressable market size accessible to Basslink Telecoms to meet business case objectives is extremely limited, due to a wholesale focus and the nature of the infrastructure it owns.
4. Basslink Telecoms does not own all of the end-to-end components that make up the Melbourne to Hobart transmission route.

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<sup>16</sup> ACCC, *A final report on whether to declare certain ISDN services, and whether to amend declarations for the digital data access service and transmission capacity under Part XIC of the Trade Practices Act 1974*, November 1998, p 71

<sup>17</sup> ACCC, DTCS 2004 Final Report, p 4

<sup>18</sup> Subsection 152BC(5) of the CCA 2010

<sup>19</sup> ACCC, *Position Paper on pricing the domestic transmission capacity service*, November 2010, p 7

<sup>20</sup> Subsection 152BCA(1)(b) of CCA 2010

- a) Basslink Telecoms only owns and operates the sub-sea component across Bass Strait, comprising roughly one-third of the entire Melbourne to Hobart route.
  - b) In Victoria, Basslink Telecoms utilises the network of two infrastructure providers that are potentially bound by Capital – Regional pricing determinations which are more than the sum total of charges per Mbit/s that Basslink Telecoms can charge on the Inter-Capital route.
5. There are no significant break-out points on the Melbourne to Hobart transmission route which would present an opportunity for additional revenue, such as there are on any other mainland routes. The assets cannot be repositioned to take advantage of emerging dynamic demand. It is particularly important that only Melbourne to Hobart pricing is collected for the purposes of benchmarking, given the unique attributes of the sub-sea component. It is not valid to compare alternative routes that are wholly terrestrial or even of the same length.

Basslink Telecoms submits that in preparing the FAD, the ACCC is required to take into account the direct cost of providing access to the declared service and the economically efficient operation of the Melbourne to Hobart transmission route.<sup>21</sup> Whilst the ACCC considers that “prices of competitive services provide a useful basis for prices and price structures that should apply in non-competitive circumstances”, it must ensure that the cost structures appropriate to Basslink Telecoms' sub-sea cable are adequately reflected in this approach.

Accordingly Basslink Telecoms has included a confidential Appendix 2 which details the costs of the Melbourne to Hobart transmission route to assist the ACCC in its review. Further pricing information can also be made available to the ACCC upon request for the purposes of establishing an appropriate regression model applicable to the Melbourne to Hobart transmission route.

In the alternative, Basslink Telecoms submits that the Melbourne to Hobart transmission route should be classified as a Capital-regional route for the purposes of any FAD. Given its population, or that Tasmania has yet to assert itself in the national economy as significant commercial centre for corporate operations, it is inaccurate to compare Melbourne to Hobart traffic volumes / demand to any other exempt Inter-Capital route. This matter is addressed in greater detail in our answer to Question 8 of the ACCC's DTCS discussion paper.

## **Conclusion**

In formulating the DTCS FAD, the ACCC is being presented with its first opportunity to consider the state of competition on the Melbourne to Hobart transmission route since Basslink Telecoms first entered the market in 2009. The FAD process allows the ACCC to exempt Basslink Telecoms from the SAOs in respect of the Melbourne to Hobart transmission route on the basis of section 152BC(3)(h) of the CCA. Alternatively the ACCC may consider it more convenient to vary the DTCS declaration to exempt the route.

Deferring the decision to exempt the route in one form or another to a later time, such as 2014 when the current DTCS declaration is due to expire, would potentially have a detrimental effect on competition. In the first instance, continued declaration is likely to result in decreased incentives for Basslink Telecoms to undertake further infrastructure investments, such as investing in a transmission link between Melbourne and Launceston. Further, both infrastructure providers and end-users would be subjected to significant uncertainty for over two years despite the fact that the Melbourne to Hobart transmission route is currently a competitive route.

With the introduction of Basslink Telecoms as an infrastructure provider operating solely in the wholesale market, followed by the emergence of Aurora Energy as a reseller of transmission services, the transmission services market on the Melbourne to Hobart route is experiencing genuine competition. This is primarily apparent by the reduction of transmission prices that has occurred. It is further evidenced by the effect on downstream ISP markets with the introduction of several new players. Subsequently, a DTCS FAD that sets price terms for the supply of services on an already competitive route would not be in the LTIE.

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<sup>21</sup> Subsections 152BCA(1)(d) and 152BCA(1)(g)

Should the ACCC decide to price the Melbourne to Hobart transmission route in spite of this, via the DTCS FAD, Basslink Telecoms urges the ACCC to give further consideration to the unique set of circumstances that relate to the route. The ACCC must take into account the direct cost of providing access to the declared service and the economically efficient operation of the Melbourne to Hobart transmission route. To that end, the ACCC should consult closely with Basslink Telecoms to achieve an optimal outcome.

Given that Basslink is first and foremost a HVDC asset, any outcome that weighs heavily on the telecoms business will prompt the Basslink Telecoms Board to review its Tasmanian telecoms strategy. If Basslink Telecoms' investment is marginalised, a market exit or supply constraint could eventuate. Ultimately this may be detrimental to Tasmanian interests and future NBN growth in Tasmania.



## APPENDIX 1: Responses to questions raised in the ACCC's DTCS discussion paper

### Regression issues

1. Which variables should the regression analysis focus on? Which variables should the regression analysis place less emphasis on and which should it disregard?

Regression analysis should only consider a number of like-for-like pricing samples, with a statistically significant number on any given route to ensure validity. Basslink Telecoms reiterates that it is not valid to compare variables from alternative routes that are wholly terrestrial even if they are of the same length as the Melbourne to Hobart route, given its unique characteristics.

Further, any relevant Melbourne to Hobart transmission access agreements that were entered into prior to Basslink Telecoms entering the market (mid-2009) should not be considered for the Melbourne to Hobart transmission route.

2. To what extent should the regression analysis focus on contract length and level of protection?

Basslink Telecoms contends that a contract length of 24 months is a reasonable contract length to consider as a bench-mark.

Protection is particularly problematic for SDH services and need to be considered in the context of:

- Is the customer getting a completely diverse route, with a network ring being formed?
- Is the service provided from two separate nodes/ESAs/POPs or the same?
- Is there automatic failover onto the alternate path or is it manually implemented?
- Does the premium for SDH buy alternative pit, duct and building entry?
- Is the customer afforded complete electronic diversity?
- Is the SDH product simply an SDH frame and interface, but on a single path?

SDH protection and style of delivery wildly varies across different FAD components such as Inter-Capital routes versus Metropolitan tails.

Basslink Telecoms is able to deliver SDH services, but they continue to be delivered via a folded loop, as Basslink Telecoms has only one submarine cable structure. Most customers seek Ethernet based services, which are viewed as 'inferior' in resiliency to SDH, and this leads Basslink to conclude that virtually all customers are willing to accept increased "perceived" risk for the associated price variation.

As a result, Basslink Telecoms contends that FAD pricing must be contemplated for Ethernet as a single path, non-diverse, "vanilla" product. Carriers must be able to price up additional costs of protection by passing those through to customers. The cost of providing entire network diversity to the customer premises may exponentially increase cost.

Furthermore, Ethernet which is delivered over a SDH backbone should be afforded the recognition that it has a level of resiliency beyond that of vanilla Ethernet.

3. What are the discounts which are currently being made available as part of commercial negotiations and should these be taken into account in the regression?

Basslink Telecoms is keen to ensure that the ACCC gives consideration to the fact that pricing submitted in access agreements (or not as the case may be) may not necessarily reflect "true" rates. In particular, discounts, offers, cross subsidies or other benefits may exist in other agreements to large corporations/Carriers, where the Carrier is able to offer a 'Whole of Business' deal or is vertically integrated such that real prices can be "hidden". Basslink Telecoms suggests that offerings for all national Inter-capital routes may be one such area where these issues occur.

4. Should a regression analysis consider the level of demand (reflected by some measure such as a combination of population density and services in operation) as a variable in the analysis? How should demand be calculated?

Yes, the Tasmanian routes in particular require this consideration. A number of variables need to be introduced in order to take account of the following matters:

- Tasmanian routes are very “thin” in demand terms due to:
  - Fledgling IT industry in Tasmania
  - NBN Stage 2 only just being initiated and operational in mid-2012
  - Relative absence of Top 500 corporate head offices
  - Absence of nationally significant data centre operators
  - Small population with a higher than average unemployment and retiree base
  - Dispersed population
  - Limited DSLAM penetration
  - Limited on-island backhaul competition (particularly Launceston).
- Tasmanian route demand and traffic flow will be disproportionately affected by NBN activity in the state.

Irrespective, the ACCC should be less concerned with future demand than with the actual cost and margin structures required to keep the investments sustainable.

#### Distance issues

5. Should specified regional route pricing extend to include surrounding CCAs? If so, how and on what basis? If not, how should pricing based on CCAs be incorporated in prices in the FAD?

No, as this would likely distort the market. The actual cost of providing additional infrastructure into additional CCAs needs to be reflected in pricing.

6. Should the boundaries of capital cities be determined on an ESA basis? If so, which ESA's mark the outer boundaries of Sydney, Melbourne, Brisbane, Adelaide, Perth, Canberra, Darwin and Hobart?

The ESA basis is an anachronism based on Telstra exchange location. It has no bearing on the metropolitan limits of a capital city of any relevance, but rather the physical limits of copper extending from an exchange. All decisions on metropolitan pricing should be based on the Local Government Area (LGA) boundaries, not a Telstra ESA.

The ACCC has a unique opportunity to address this issue to be fairer to end-users in outer suburbs where they are considered to be in cities for purposes of rates, other utility services and (particularly) pricing, yet their telecoms services are deemed outer metropolitan or regional. The advent of the NBN, particularly where end-users will receive a fibre service is a unique opportunity to fix this anomaly.

A fix would further help prevent urban sprawl as potential home purchasers would be able to consider whether they would be able to acquire a metropolitan priced NBN/ESA service or a regionally priced service, depending on which LGA they purchase in.

7. What other method should be used to determine the boundaries of capital cities for the purposes of the DTCS?

LGA boundaries.

8. Should routes from exempt capital cities to Darwin and Hobart be considered Inter-capital routes for the purposes of the DTCS FAD?

Whilst some carriers or service providers may have tendered information showing evidence of treatment of the Melbourne to Hobart transmission route, it should be noted that Basslink Telecoms

has never supplied documentation to this effect. Whilst geographically a Melbourne to Hobart route is Inter-capital, the telecoms and market attributes are anything but that.

Invariably any Consultants report or model is likely to have overstated the actual bandwidth and originating demand from Tasmania, particularly with regard to forecast NBN originated traffic and overstated requirements by Carriers and ISPs alike in the last 3 years. The only Party that can validate the addressable market size in Hobart to justify its inclusion as an Inter-Capital route is Basslink Telecoms.

Additionally, a significant proportion of the entire traffic originating from Tasmania is carried by Telstra on its own network (this is of course a significant chunk of bandwidth that is not market challengeable by Basslink).

Data from the Australian Bureau of Statistics set out below, suggests that both the Melbourne to Hobart and Melbourne to Launceston routes should be treated as Capital - Regional routes, given that the next Inter-Capital City (Adelaide) is 5.8 times larger than Greater Hobart and there are cities on Capital-Regional routes also with larger populations than greater Hobart, for instance, Newcastle and Wollongong.

Rank	Statistical Division/District	State/Territory	June 2009 <sup>[2]</sup>	June 2010 <sup>[3]</sup>
1	Sydney	New South Wales	4,504,469	4,575,532
2	Melbourne	Victoria	3,995,537	4,077,036
3	Brisbane	Queensland	2,004,262	2,043,185
4	Perth	Western Australia	1,658,992	1,696,065
<b>5</b>	<b>Adelaide</b>	<b>South Australia</b>	<b>1,187,466</b>	<b>1,203,186</b>
6	Gold Coast-Tweed	Queensland/New South Wales	577,977	591,473
7	Newcastle	New South Wales	540,796	546,788
8	Canberra-Queanbeyan	Australian Capital Territory/New South Wales	403,118	410,419
*	Canberra	Australian Capital Territory	351,868	358,600
9	Wollongong	New South Wales	288,984	292,190
10	Sunshine Coast	Queensland	245,309	251,081
<b>11</b>	<b>Greater Hobart</b>	<b>Tasmania</b>	<b>212,019</b>	<b>214,705</b>
12	Geelong	Victoria	175,803	178,650
13	Townsville	Queensland	168,402	172,316
14	Cairns	Queensland	147,118	150,920
15	Toowoomba	Queensland	128,600	131,258
16	Darwin	Northern Territory	124,760	127,532
17	Launceston	Tasmania	105,445	106,153

Given that Tasmania has yet to assert itself in the national economy as an IT hub or significant commercial centre for corporate operations, it is inaccurate to compare Melbourne to Hobart traffic volumes / demand to any other exempt Inter-Capital route.

Basslink Telecoms contends that if the ACCC wants to treat Hobart as an Inter-capital city, then it should also be made exempt from the FAD just like any other mainland Capital City.

9. How should the ACCC treat routes with a major undersea component?

Basslink Telecoms suggests that engagement with itself should be undertaken to understand the route peculiarities and assist in the provision of data for any adjustments needed for the purpose of the regression model.

Certainly a number of variables should be introduced for the Tasmanian routes to reflect the unique components and cost structures involved.

Basslink Telecoms has supplied data in Confidential Appendix 2 to this submission to assist the ACCC in understanding the differences in the costs of a sub-sea cable component.

10. What should be the boundary for a CBD service? Can this be classified by a distance increment?

Roughly speaking a distance variable from the GPO or main CBD exchange should be reasonably accurate, OR town planning zones may be another consideration.

11. Is a 60km limit appropriate for metropolitan DTCS services?

No, as above, LGA metropolitan limits would be more accurate.

12. What should define a regional DTCS transmission route?

No opinion.

13. Which ESAs mark the boundaries of the exempt centres on regional routes?

No opinion.

14. What is an appropriate way to account for distance as a determinant of DTCS pricing?

On an investment basis.

15. Would separate metropolitan and regional distance bands be in the long-term interests of end-users?

Difficult to determine.

16. Should there be a separate band for transmission services delivered in CBD areas? If so, what CBD/metropolitan distance band would be in the long-term interests of end-users?

Notwithstanding economies of scale, it may be arguable that increased costs of delivery in the CBD would be offset by lower costs in other metropolitan areas, meaning that the cost of service delivery across the entire metropolitan area may smooth out to such an extent that current CBD/Metro/Outer Metro banding could at least be combined to remove one or two bands.

Having said this, full analysis based on investment required to deliver said services is warranted.

#### Capacity issues

17. Which capacities should the FAD price?

The FAD should only price what is currently priced in the DTCS Interim Access Determination, given that the ACCC recognises it has limited pricing on higher capacity services. It is reasonable to assume that the market will price in volume discounts for higher capacity services.

18. Should the FAD price different capacities for each geographic route type?

Difficult to determine.

19. Should the FAD price different capacities for services using Ethernet or SDH network interfaces?

Difficult to determine.

#### Protected and unprotected services

20. What levels of protection are available for services in the inter-exchange, inter-capital, regional and tail-end markets? When is protection provided in the form of geographically distinct redundant paths?

This question is simply too broad to consider, but Basslink Telecoms draws attention to its response in Question 2.

21. What is the overall difference (percentage wise) between pricing on protected and unprotected services?

It varies vastly depending on whether it is an Inter-capital service or a copper supplied SDH service originating from two different exchanges.

22. What level of protection should the DTCS FAD price?

The FAD should start at the baseline unprotected Ethernet and SDH. (see response to Q2). Carriers should be able to price in various additional attributes such as: route diversity, building entry diversity, interface diversity, and electronics diversity amongst other things.

23. Is there an appropriate premium for **unprotected** services? [Bolding and underlining emphasis added]

The only way of determining what is valid is to examine a statistically significant number of corporate end-user metro services (possibly on copper or fibre) to determine the premium on a 'cost+margin' basis.

Certainly in the case of Basslink Telecoms it believes that an SDH delivered service, delivering more protection warrants a premium. It also believes that Ethernet services delivered over SDH warrants a premium.

24. Should unprotected service pricing be included in any regression type analysis?

Given that unprotected pricing probably represents the majority of available pricing data for use in regression pricing analysis, this would suggest that it should.

#### Ethernet and SDH pricing

25. Should the FAD differentiate between Ethernet and SDH services?

Yes

26. Should the FAD contain separate pricing for Ethernet services?

Yes

27. How are the levels of protection available for Ethernet services and SDH services different?

Ethernet services are more likely to be unprotected unless carried over an Ethernet over SDH backbone. SDH services tend to be more inherently protected as they will more likely be delivered in a network loop configuration of some sort. The ultimate question is – how far out toward the customer is protection being delivered to? Refer to Question 2 for further insight.

#### Tail-end services

28. Should tail-end prices be differentiated according to the geographic route type for its location? For example, inter-exchange prices if the tail-end is in a capital city and a regional price if it is in a regional centre?

Yes. It is imperative that all Carriers are able to modularly price services and correspondingly derive decisions about whether to invest (ie. Build vs buy).

29. To what extent should tail-end prices be based on distance?

Basslink Telecoms suggests that distance-based pricing on metropolitan tails may produce too many anomalies to retain.

30. What distance increments are relevant for a tail-end route?

Difficult to determine.

#### Connection and non-recurring charges

31. Do the IAD prices for connection charges reflect industry practice?

Connection charges vary significantly. If a building is "lit" then the connection charge would be standard or waived on a 3 year term, but many instances abound where the carrier will seek a construction contribution for building entry charge or some variant. In assessing connection charges, consideration should only be given to benchmarking prices where the buildings are known to be "on-net".

32. What should be included in the connection charge for DTCS services?

Difficult to determine.

33. What should be excluded from the connection charge for DTCS services?

Difficult to determine.

34. Should connection charges be included in the overall cost of the service in the FAD?

No opinion.

#### Non-price terms and conditions

35. What are the common non-price terms and conditions applicable to DTCS services?

This objective may be particularly difficult given that it could be near to impossible to bring large industry operators to the table, as they will seek to protect their existing access agreement terms and conditions.

A quick analysis of a number of contracts that Basslink Telecoms has access to, suggests that this is a larger exercise than anticipated and that there are a number of areas that deserve consideration that have not been listed.

Additionally, the ACCC must be careful to ensure that an adequate attempt is made by parties to reach an Access Agreement of their own doing before resorting to the FAD Non-Price conditions. If access-seekers wish to automatically enter into the ACCC Non-Price conditions, Carriers may seek to offset perceived risk (through not being able to contract out of it) by passing it through in the form of added expense or hidden charges.

Basslink Telecoms submits that ACCC Non-price Terms must expressly be an avenue of last resort.

36. Do these vary between types of DTCS services? For example between inter-exchange and regional services?

Yes, but it is very hard to validate by any Carrier that does not purchase an entire range of services.

37. Do these vary between different types of DTCS network interfaces?

Difficult to determine.

38. Should the ACCC include terms and conditions relating to liability and risk allocation in the FAD? If so, should it apply to all access seekers equally, or should it be restricted to a particular class of access seekers?

Unless the Non-Price Terms are comprehensive (including a Risk and Liability regime that mirrors the respective Parties' risk), then confusion may reign. Increased risk/uncertainty warrants increased price structures to reflect the 'perceived' risk. More importantly, can that risk regime capture the varying technologies, structures and elements covered by any FAD?

39. Which non-price terms and conditions of access should be included / not included in the DTCS FAD?

If Access-seekers arrive at the point where the ACCC Non-Price Terms are to be used, it is preferable to use those terms wholesale rather than further attempting to bolt clauses in, or carve clauses out.

#### Commencement and expiry

40. What is an appropriate time period for the FAD?

To the end of the Declared Period.

41. Are there any circumstances that warrant a difference in the expiry dates of the FAD and the DTCS declaration?

Yes, if a route is showing promise as a maturing market and it is clear that competition is sustainable, then the expiry dates should reflect this.

A mechanism should exist for periodic review and submission (even at short notice), particularly given NBN activity may generate outcomes that affect the industry in an adverse manner (some of which we may not even have considered yet). The ability of the ACCC to rectify these issues quickly is paramount. Investment in infrastructure must be protected at all costs as this is the most proven method in generating competition. Long-term sustainable competition in infrastructure will always promote the LTIE to a greater extent than relying on pricing regulation.

**APPENDIX 2 – Cost components of an Inter-capital cable route Melbourne - Hobart**

**[C-I-C]**