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Fadi Metanios
Assistant Director
Communications Group
Australian Competition and Consumer Commission

fadi.metanios@acc.gov.au
grahame.oleary@acc.gov.au

Dear Mr Metanios,

Review of Domestic Transmission Capacity Service Declaration

1. Introduction

Macquarie Telecom Pty Limited ("**Macquarie**") welcomes the opportunity to make this submission to the Australian Competition and Consumer Commission ("**ACCC**"). This submission is in response to the ACCC's discussion paper concerning the above.¹

Macquarie welcomes the ACCC's proposed variation to the existing domestic transmission capacity service ("**DTCS**") declaration. Macquarie understands that the purpose of the proposed variation is to clarify that the scope of the DTCS service description covers Ethernet interface protocols in addition to PDH and SDH interface protocols.

Ethernet interfaces have rapidly become the telecom industry's "interface of preference" for providing cost effective and scalable interfaces. Macquarie, like many other carriers, is replacing many of the SDH lines used in its core network to Ethernet. Moreover, Ethernet has become the default standard for telecoms equipment vendors.

Macquarie currently obtains DTCS from Telstra which use Ethernet interface protocols. However, the supply of such services is not without restrictions. It is Macquarie's experience that Telstra is a reluctant supplier of DTCS using Ethernet interface protocols particularly where end customers are located in non CBD areas. In such situations, Telstra tends to offer carrier grade services only which are uneconomic for retail operators like Macquarie. This is despite Telstra's ability to provide ubiquitous equivalent retail services to end users.

Given Telstra's reluctance to supply DTCS using Ethernet interface protocols, Macquarie welcomes the ACCC's proposed variation. This is because the proposed variation should ensure that Telstra will supply DTCS using Ethernet interface protocols which will in turn open up opportunities for Macquarie to offer competitive services to end users. Moreover, the proposed variation is consistent with Ethernet being the core service of the emerging broadband network environment.

Apart from this introduction, this submission responds to each of the questions raised in the Discussion Paper. In addition, Macquarie wishes to raise concerns about the pricing of

¹ ACCC, Domestic Transmission Capacity Service, An ACCC Discussion Paper reviewing the declaration for the domestic transmission capacity service, November 2009 ("**Discussion Paper**")

DTCS.

2. Responses to Discussion Paper Questions

This section provides Macquarie's response to each question raised in the Discussion Paper. For ease of reference, the questions are reproduced in *italics* followed by Macquarie's response.

Are Ethernet interface protocols included in the current DTCS service description?

It is Macquarie's view that Ethernet interface protocols are not included in the current DTCS service description. This is because of the narrow definition of "designated rate". That is, "designated rate" is defined as specific data rates of which none match those of the Ethernet interface protocols.

It may be arguable that the reference to "140/155 Megabits per second (or higher order)" in the definition of "designated rate" includes Ethernet interface protocols. That is, Gigabit Ethernet (1,000 Mb/s) and 10 Gigabit Ethernet (10,000 Mb/s) could be considered to fall within this reference as they are of a higher order than 140/155 Megabits per second. However, by the same measure Ethernet (10 Mb/s) and Fast Ethernet (100 Mb/s) would not fall within this reference. Therefore at best, the Ethernet interface protocols are only partly included in the current DTCS service description.

Should Ethernet interface protocols be implied in the current DTCS service description?

No. As per Macquarie's response to the previous question, the Ethernet interface protocols at best are only partly included in the current DTCS service description. Macquarie does not believe that it can be implied that the Ethernet interface protocols fall within the current DTCS service description. This is because "designated rate" is defined as specific data rates of which none match those of the Ethernet interface protocols.

Should the DTCS service description be varied to specifically refer to PDH, SDH and Ethernet interface protocols?

Yes. Macquarie strongly believes that the DTCS service description should be varied to specifically refer to PDH, SDH and Ethernet interface protocols. This view is based on several reasons which include:

- PDH, SDH and Ethernet interface protocols comprise the commonly used interface protocols which meet current technical capabilities and fulfills end user requirements;
- it is a fundamental principle that regulation should be technology neutral, as such, any view that the Ethernet interface protocols should be excluded from the DTCS service description would be contrary to this principle;
- Ethernet has emerged as the preferred interface protocol of the developing broadband network environment;² and

² It is noted that Communications Alliance proposes Ethernet to define wholesale services in its NBN reference model. Refer to Communications Alliance Ltd, "National Broadband Network Wholesale Service Definition Framework – Ethernet, Draft For Comment", November 2009

- specific references to PDH, SDH and Ethernet will remove any doubt or ambiguity about whether Ethernet is included in the DTCS service description.

Is it appropriate to refer to the interface protocols developed by the International Telecommunications Union, Telecommunication Standardization Sector (ITU-T) and the Institute of Electrical and Electronic Engineers (IEEE)?

Yes. The ITU-T and the IEEE are the leading international standard setting bodies whose work is widely recognised and adopted by the telecoms industry.

Is the proposed variation in an acceptable form?

Yes. The proposed variation broadens the definition of “designated rate” by removing the reference to specific data rates and by explicitly making reference to the use of Ethernet, PDH and SDH interface protocols.

Macquarie does, however, note that there are some grammatical errors in the proposed variation. In particular:

- “International Telecommunications Union” should read “International Telecommunication Union”, i.e., no “s”; and
- “Institute of Electrical and Electronic Engineers” should read “Institute of Electrical and Electronics Engineers”, i.e., add “s” to “Electronic”.

What effect, if any, would the proposed variation of the DTCS service description have on the market definition for transmission services?

Macquarie notes that the ACCC in its 2009 DTCS Final Report³ identified relevant downstream markets for the DTCS as the range of retail services which can be supplied using transmission services including national long distance, international call, data and IP related and mobile voice and data markets. Accordingly, the ACCC takes the view that the services delivered to end users define the downstream markets.

Macquarie considers that the proposed variation will have no impact of the scope of the markets already identified by the ACCC. This is because while the use of the Ethernet interface protocols in addition to other existing protocols may change the style of delivering services to end users it will not change the services delivered to end users *per se*. Moreover, no new services will be created nor will any existing services be withdrawn as a result of the proposed variation.

³ ACCC, Domestic Transmission Capacity Service, An ACCC Final Report on reviewing the declaration of the domestic transmission capacity service, March 2009, (“**2009 DTCS Final Report**”)

What effect, if any, would the proposed variation have on the geographic dimensions of the relevant markets?

Macquarie notes that the ACCC in its 2009 DTCS Final Report identified four relevant geographic markets:

- inter-capital transmission;
- capital-regional routes;
- inter-regional routes; and
- local exchange and tail-end transmission in regional, metropolitan and CBD areas.

Macquarie considers that the proposed variation will have no impact on the geographic dimensions of the relevant markets which have previously been identified by the ACCC. This is because the use of the Ethernet interface protocols in addition to other existing protocols will apply equally across the four identified markets. Moreover, no new geographic markets will be created nor will any existing geographic markets be closed as a result of the proposed variation.

What effect, if any, would the proposed variation have on the technology used to provide transmission services?

Macquarie notes that the ACCC in its 2009 DTCC Final Report concluded that optical fibre remained the dominant technology for the provision of all transmission services. Macquarie considers that the proposed variation will have no impact on the use of optical fibre for the provision of transmission services. This is because the use of the Ethernet interface protocols will equally apply to optical fibre as the existing interface protocols apply to optical fibre. Moreover, no new technology will be required in order to use the Ethernet interface protocols.

What effect, if any, would the proposed variation have on the current market structure for transmission services?

Macquarie considers that the proposed variation will not influence the current market structure for transmission services. This is because while the use of the Ethernet interface protocols in addition to other existing protocols will affect the style of delivering services to end users it will not materially alter the height of entry barriers *per se* as they apply to transmission markets. The outcome of the proposed variation on market players such as Macquarie will be to open up a variation to the style of service delivery. There is no change to the optical fibre delivery platform nor any material change in the cost structure of end user service delivery as a result of the proposed variation.⁴ As such, Macquarie does not expect that the proposed variation will change the existing incentives for potential entrants to the market for transmission services.

⁴ While the use of Ethernet will be cost effective, Macquarie does not believe that costs would be reduced to the extent that operators would as a result of the proposed variation enter the market for transmission services.



What effect, if any, would the proposed variation have on competition in downstream markets or barriers to entry in transmission markets?

As per the response to the previous question, Macquarie considers that the proposed variation will not impact barriers to entry in transmission markets. However, Macquarie believes that the proposed variation would have a positive (and likely minor) effect on competition in downstream markets. This arises because currently, Telstra is a reluctant wholesale supplier of DTCS using Ethernet interface protocols which constrains the ability of retail operators like Macquarie to provide competitive end user services in downstream markets. Macquarie believes that the proposed variation should ensure that Telstra will supply DTCS using Ethernet interface protocols which will in turn open up opportunities for retail operators like Macquarie to offer competitive services to end users.

What effect, if any, would the proposed variation have on any-to-any connectivity in relation to carriage services that involve communication between end-users?

Macquarie considers that the proposed variation will not impinge on any-to-any connectivity in relation to carriage services that involve communication between end-users. This is because while the use of the Ethernet interface protocols in addition to other existing protocols may change the style of delivering services to end users it will not alter in any way the ability of any end user to connect with any other end user.

To what extent, if any, would the proposed variation discourage or encourage efficient use, and efficient investment in, infrastructure?

Macquarie considers that the proposed variation will encourage efficient use, and efficient investment in, infrastructure. This is because Ethernet has emerged as the preferred interface protocol of the emerging broadband network environment. The proposed variation ensures that the Ethernet interface protocols are integral to DTCS and, as such, are consistent with the emerging broadband network environment. This supports investor confidence in any investment which is any way dependent on DTCS. That is, other things being equal, an investment in a service or infrastructure which includes Ethernet is preferable to an investment which excludes Ethernet.

3. DTCS Pricing

As noted above, Macquarie welcomes the ACCC's proposed variation to the DTCS declaration. However, the declaration - whether varied or not - does not address DTCS pricing. The pricing of DTCS is fundamentally important to access seekers like Macquarie who because of Telstra's overwhelming market power are not able to negotiate price with Telstra. That is, access seekers have no option other than to accept Telstra's asking price.

Macquarie notes that in March 2009, the ACCC indicated that it was addressing DTCS pricing. Specifically, the ACCC states:

"The Commission is in the process of considering the most appropriate pricing principles for this service as required under section 152AQA of the Act."⁵

⁵ 2009 DTCC Final Report p.37

In November 2009, the ACCC reiterated its statutory obligation to determine pricing principles for the DTCS:

“The ACCC notes that it is proposing to also consult on the conceptual framework for the pricing of the Domestic Transmission Capacity Service (DTCS) at a later date.”⁶

Macquarie appreciates that the ACCC has much on its agenda. However, there remains in Macquarie’s view a strong need for the ACCC to provide guidance to the industry on the pricing of DTCS. Accordingly, Macquarie implores the ACCC to deliver on its statutory obligation and its assurances to industry with regard to determining pricing principles and a conceptual framework for the pricing of DTCS.

4. Closing

Macquarie appreciates the opportunity to make this submission and would welcome an opportunity to discuss it with the ACCC. In the meantime, please feel free to contact me should you have any queries in relation to this letter.

Yours sincerely



Chris Zull
Senior Manager - Regulatory & Government

T 03 9206 6848
E czull@macquarietelecom.com

⁶ ACCC, Review of 1997 Guide to Telecommunications Access Pricing Principles for Fixed Line Services, Discussion Paper, December 2009, p.7