

# DOMESTIC TRANSMISSION CAPACITY SERVICE

SCOPE OF THE  
SERVICE DEFINITION

Submission to the  
Australian Competition  
and Consumer Commission

January 2010

# 1 Executive summary

Vodafone Hutchison Australia Pty Limited (**VHA**) supports the proposed variation to the service definition for the declared Domestic Transmission Capacity Service (**DTCS**). The proposed amendments will clarify the scope of services subject to the DTCS declaration.

We note the Australian Competition and Consumer Commission (the *Commission*) determined in March 2009 that declaration of the DTCS continued to be in the long term interests of end users (the *LTIE*). The only exceptions related to the supply of DTCS in geographic areas where there was sufficient competition for the supply of the service. The Commission considered competition to be sufficient where there were at least three service providers of the DTCS using optical fibre. As a result, declaration of the DTCS was extended in all other routes until 31 March 2014.

The DTCS is an essential wholesale input for the provision of mobile voice and data services. It is particularly relevant for delivering mobile services to regional and rural locations. While several transmission technologies exist, optical fibre remains the preferred solution for high capacity transmission requirements. Access to the DTCS will be of increasing importance given the anticipated increase in demand for, among other things, mobile broadband services. The interface protocols specified by the Commission are the most commonly used for delivery of the DTCS by optical fibre and, with the establishment of the National Broadband Network Company (**NBNCo**), we expect Ethernet interface protocols to emerge as the preferred interface technology well into the future.

Where access to the service has been declared, there is no basis for distinguishing between infrastructure on the basis of the interface protocol deployed. The service description is intended to be technologically neutral<sup>1</sup> and access to the service has been mandated because of insufficient competition on a particular route or in a particular geographic area between providers of the DTCS using optical fibre.

We understand that the object of the proposed amendments is to clarify the scope of services subject to the DTCS declaration, and in particular, to remove any doubt that all commonly used interface protocols are covered by the service description. To the extent Ethernet interface protocols are not covered by the current service description, we consider that the variation promotes the LTIE. The reasons for this are the same as those given by the Commission in its *Final report reviewing the declaration of the domestic transmission capacity service* (March 2009) when it determined that the DTCS should be declared. To the extent Ethernet interface protocols are covered by the current service description, we consider that the variation promotes the LTIE as it removes any doubt regarding the scope of the declaration.

The Commission must ensure that any new interface protocol that might emerge does not render the DTCS definition in the declaration obsolete or significantly reduce its scope. Any new interface protocols should be covered by the service description. To that end, the Commission should not place itself in a position where, if the proposed variation is made, it can only include other interface protocols by conducting a further public inquiry under s152AO of the *Trade Practices Act 1974* to vary the service description again. This is time consuming and inefficient and not in the LTIE. We submit that the Commission should adopt one of the following approaches. First, it should determine that including additional interface protocols is a variation of a minor nature for the purpose of s152AO(3) of the *Trade Practices Act 1974*. To that end, the service description should expressly state that notwithstanding the reference to particular interface protocols, the service description is intended to be technology neutral. Alternatively, the definition of

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<sup>1</sup> ACCC 2008, *Final decision in relation to Telstra's domestic transmission capacity service exemption application*, November, p. 29.

the expression 'designated rate' could be drafted non-exhaustively to include SDH, PDH, Ethernet or any other protocol which provides similar functionality.

We support the Commission's approach to withdrawing regulatory intervention from well-functioning markets. The Commission should, nevertheless, remain vigilant to the evolving scope of access seeker's DTCS requirements and the supply dynamics for high capacity transmission services.

## 2 Introduction

VHA welcomes the discussion paper from the Australian Competition and Consumer Commission (the **Commission**) to review the declaration for the DTCS. We note the Commission recently extended the expiry for the declaration of the DTCS to 31 March 2014, having determined the declaration continues to be in the long-term interest of end-users. The extension followed the Commission's consideration of the geographic scope of the DTCS declaration as part of its final decision on Telstra's DTCS exemption applications in November 2008.

We further note that the *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009* currently before the Australian Senate would, if passed in its current form, require the Commission to begin a public inquiry on whether it should make an access determination for services that are already declared under s152AL of the *Trade Practices Act 1974* (TPA). Our understanding is that the proposed amendment would apply to the DTCS.

### About VHA

VHA was formed following the merger between Vodafone Australia Limited and Hutchison 3G Australia Pty Limited on 9 June 2009. We are the third largest telecommunications company in Australia with over 6 million customers, and market our products and services under both the Vodafone and '3' brands. VHA is a 50-50 joint venture between Vodafone Group plc and Hutchison Telecommunications (Australia) Pty Limited (**HTAL**). HTAL is listed on the Australian Stock Exchange with Hutchison Whampoa Limited its ultimate majority shareholder.

### Mobile services and the DTCS

Strong growth in demand for mobile data services has put increasing pressure on Mobile Network Operators (**MNO**) to improve network capacity. Over the past year customers using mobile broadband devices in Australia have grown by 128 per cent.<sup>2</sup> The ACMA reports that mobile wireless broadband accounts for 23 per cent of all internet subscribers and that it was the fastest growing broadband technology in 2008-09.<sup>3</sup> We expect the trend to continue, with demand for mobile data services from both mobile broadband devices and access to the Internet through mobile telephony devices expected to grow rapidly over the next five years.

The upgrade by MNOs to Long Term Evolution (**LTE**), a 4G technology, is likely to begin during the term of the existing declaration. LTE will require higher capacity transmission services than those currently used for mobile services. Access to the DTCS will ensure that competitive services can be delivered to consumers in places where it might otherwise be uneconomic to do so.

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<sup>2</sup> VHA estimate based on internal data and Telstra and Optus annual reports for 2009.

<sup>3</sup> Australian Communications and Media Authority (**ACMA**) and Australian Competition and Consumer Commission 2010, *Communications infrastructure and service availability in Australia 2009*, p36.

We note and welcome the Government's Regional Backbone Blackspots Program (RBBP). The \$250 million program will bring competitive fibre transmission services to regional Australia. The six priority locations chosen by the Government reflect some of the least competitive areas for DTCS. We are confident that the program will improve the range of services available, encourage downstream investment and promote greater retail competition for fixed and mobile services in these areas.

## Regulatory principles

Most aspects of the telecommunications access regime – Part XIB and Part XIC of the *Trade Practices Act 1974* – focus on economic issues. In our view, economic regulation is only likely to be justified in cases where there is a clearly identified and durable market failure.

The specific regulatory concern with respect to the DTCS supplied by optical fibre is that, in many parts of Australia, the infrastructure required to provide the service is a natural monopoly, which means that it is uneconomic to duplicate and the existing vertically-integrated infrastructure owner could extend its market power into (competitive) downstream markets. The primary barriers to entry associated with the DTCS are the incumbent's sunk cost of investment and the excess capacity on some routes.<sup>4</sup> We do not believe that sufficient incentives exist for new entry in most of the markets where the DTCS is currently declared. Other technologies, such as microwave, are generally cheaper to roll-out than optical fibre and do not exhibit the natural monopoly characteristics of optical fibre. However, given the technical characteristics of each technology, providers of transmission services using satellite, digital microwave or submarine cable do not sufficiently constrain providers of the DTCS using optical fibre (see further below). We therefore continue to support declaration of the DTCS supplied by optical fibre in such markets, as it is in the LTIE.

We acknowledge there is functional competition in some DTCS markets. We consider that regulatory intervention in well-functioning markets should be minimised and we are supportive of the Commission's recent removal of regulation through the class exemption it issued for several DTCS markets and its subsequent decision to incorporate exemptions in the service description.<sup>5</sup> In general, we regard that (at least) three suppliers of the DTCS using optical fibre are necessary to generate a well-functioning, competitive market.<sup>6</sup> That said, where a market only has a few competitors the Commission ought to have regard to the market share of each competitor, using measures such as the Herfindahl-Hirschman Index, and structural features (such as barriers to entry) to assess the depth and sustainability of competition.

Finally, we note that market definition has a significant impact on the assessment of market failure. Regulation must be adaptive to changing market dynamics. For example, the nature and scope of demand for the DTCS may significantly change following the proposed deployment of fibre by NBNCo and others, and the emergence of 4G wireless technologies such as Long Term Evolution (LTE). As such, minimum threshold requirements for transmission capacity are likely to increase. To that end, we are supportive of periodic reviews of the DTCS service definition.

## 3 Legislative background

The Commission defines the DTCS as a service that can be used for the carriage of certain communications from one transmission point to another transmission point via network interfaces at a designated rate on a permanent basis by means of guided and/or unguided electromagnetic energy. The

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<sup>4</sup> Where routes are reaching capacity the respective DTCS market may become contestable due to the additional infrastructure investment required, but contestability might be affected by a number of factors and should be considered on a route-by-route basis.

<sup>5</sup> ACCC2009, *Final Report on reviewing the declaration of the domestic transmission capacity service*, March.

<sup>6</sup> We note that economic (that is, allocative) efficiency can be achieved with fewer firms if barriers to entry are sufficiently low.

service definition was originally set by the Commission in April 2004. Since that time the Commission has issued a number of class exemptions, and extended the declaration until 31 March 2014.

The Commission identifies four types of DTCS, including: inter-capital transmission, 'other' transmission (including capital-regional routes), inter-exchange transmission and tail-end transmission. The competitive dynamics for each type of transmission capacity service are different. For example, in 2004, the Commission decided that inter-capital transmission routes were competitive, and therefore excluded from declaration transmission between Sydney, Melbourne, Brisbane, Adelaide, Perth and Canberra. By comparison, the Commission did not regard the market for tail-end transmission as competitive due to the barriers to entry created by the incumbent's sunk costs.

The provision of transmission capacity can be achieved via a number of technologies including:

- > terrestrial optical fibre cables;
- > satellite;
- > digital microwave; and
- > submarine cable.

The various technologies are not necessarily substitutes. The suitability of particular technologies is highly dependent on the capacity required, topology and the length of the transmission link. For example, microwave technology is useful for short distance, low capacity situations where 'line of sight' is available. In general, we regard optical fibre as the preferred transmission medium due to its cost-effectiveness for capacity-intensive service requirements. Given the characteristics of the different technologies, providers of transmission services using satellite, digital microwave or submarine cable do not sufficiently constrain providers of transmission services using optical fibre.

In its Final Decision on Telstra's DTCS exemption applications in November 2008 (the *Exemption Decision*), the Commission indicated that, as a matter of principle, where there is empirical evidence of providers other than Telstra building alternative transmission networks, the existence of actual or potential competitors in the relevant geographic and product market is likely to mean that the particular transmission market is no longer a bottleneck. More specifically, the Commission considered that evidence of two DTCS providers using optical fibre, in addition to Telstra, was sufficient to establish the existence of effective competition or contestability. Using this principle, the Commission went on to determine the routes in respect of which there was sufficient competition and therefore continued regulation was not required.

In March 2009, the Commission issued its *Final Report on reviewing the declaration of the domestic transmission capacity service* (the *Declaration Decision*). The Commission determined that extending the declaration of the DTCS until 31 March 2014 on routes or in the geographic areas where there was insufficient competition was in the LTIE for the following reasons. First, retaining declaration on those routes or in those areas was important to ensure that access seekers continued to access the DTCS on reasonable terms so as to compete effectively in downstream markets. Whether there was sufficient competition in the supply of the DTCS on particular routes or in particular areas was to be determined in accordance with the principles set out in the Exemption Decision, namely the availability of two DTCS providers using optical fibre, in addition to Telstra. Second, declaration ensured that access seekers and other parties were able to build a customer base should they decide to undertake their own efficient infrastructure investment to supply transmission services to themselves. On this basis, declaration promoted efficient investment in alternative infrastructure and was therefore in the LTIE.

We do not choose to comment on whether Ethernet internet protocols fall within the scope of the existing service definition in the DTCS declaration, other than to note that the Commission has repeatedly stated that the service definition is intended to be technologically neutral. The Commission's role is to define (and arbitrate) on the scope of declarations. It should, therefore, ensure its service definitions provide sufficient detail so as to avoid ambiguity in the definition's interpretation. To that end, we welcome the Commission's review of the DTCS definition and its intention to remove any ambiguity in service description.

## 4 Proposed variation to DTCS

VHA supports the Commission's proposed variation to the service definition for the DTCS both with respect to its proposed amendment of the definition of the designated rate and its inclusion of explicit interface protocols.

We regard the proposed designated rate, 2.048 Megabits per second (**Mbps**), provides an appropriate and relevant minimum capacity, and we note its consistency with the previous minimum designated rate. To that end, we do not consider that the proposed variation to the designated rate would cause any significant material change other than to clarify the scope of the existing declaration. [c-i-c].

We are supportive of the Commission's proposal to clarify the interface protocols for its definition of the DTCS in the declaration and does not object to the Commission varying the existing declaration to specifically refer to Plesiochronous Digital Hierarchy (**PDH**), Synchronous Digital Hierarchy (**SDH**) and Ethernet interface protocols.

We regard technology neutrality as an important principle for declared services. This is particularly the case in relation to the DTCS where the justification for declaration on particular routes or in particular geographic areas is the lack of competition in the supply of the DTCS using optical fibre. Compliance with the standard access obligations should not be dependent upon the interface protocols used in the provision of the service. The interface protocol technologies specified in the proposed variation – PDH, SDH and Ethernet – are the most widely used interface protocol technologies for transmission capacity services. We do not anticipate that the predominant DTCS technologies will change in the foreseeable future and, as such, we do consider that the proposed variation would undermine the principle of technology neutrality.

However, the Commission must be vigilant to ensure that any new interface protocols that might emerge do not render the DTCS definition in the declaration obsolete (or significantly reduce its scope). Any new interface protocols should be covered by the service description. The Commission should not place itself in a position where, if the proposed variation is made, it can then only include other interface protocols by conducting a further public inquiry under s152AO of the *Trade Practices Act 1974* to vary the service description again. This is time consuming and inefficient and not in the LTIE. We submit that the Commission should determine that including additional interface protocols is a variation of a minor nature for the purpose of s152AO(3) of the *Trade Practices Act 1974*. To that end, the service description should expressly state that notwithstanding the reference to particular interface protocols, the service description is intended to be technology neutral. Alternatively, the definition of the expression 'designated rate' could be drafted non-exhaustively to include SDH, PDH, Ethernet or any other protocol which provides similar functionality.

We support the Commission's move to reference technology standards set by the International Telecommunications Union (**ITU**) or the Institute of Electrical and Electronics Engineers (**IEEE**). A reference to international standards would provide clarity to access providers and access seekers on the scope of the declared service. While the Commission should not specify particular standards in the service definition for the DTCS, we recommend that the Commission indicate the particular ITU or IEEE standards that are relevant to provision of the declared DTCS in its final report.

## 5 Transmission services

There are four aspects to the market for transmission services: capacity, geography, technology and competition.

### Capacity

Mobile-related transmission capacity requirements are likely to rise significantly over the medium term. [c-i-c] we anticipate that demand for mobile data services will grow at a compound annual growth rate (CAGR) of [c-i-c] per cent over the next five years. Cisco estimate that high end mobile devices such as Blackberry or iPhone generate as much traffic as 30 standard handsets, while mobile broadband enabled laptops generate 450 times the traffic of a standard handset.<sup>7</sup>

We expect that MNOs, such as VHA, will have to make further investment in, or sourcing of, transmission capacity. The distinction between mobile voice and mobile data means that transmission may become increasingly distinguishable between low capacity and high capacity requirements. In the short to medium term, we do not anticipate that the proposed variation of the DTCS service description would have any impact on the capacity-related, market definition for transmission services. However, the Commission may, in future, have to consider the relevance of the designated rate with respect to the transmission capacity available on the market rather than merely the number of service providers.

### Geographic

The DTCS, more than most other declared services, has a distinctive and highly fragmented geographic element. The market dynamics for the service differ substantively across its geographic dimensions, which has forced the Commission to consider the declared DTCS on a route-by-route basis. We agree with this approach; while there is growing evidence of competition on some transmission links, there is a distinct lack of competition on transmission links to some of Australia's major regional centres.

The declared DTCS is particularly relevant to the delivery of VHA's services in rural and regional areas. Historically, the incumbent's transmission network has provided it with a competitive advantage in rural and regional areas [c-i-c]. However, access to the declared DTCS combined with our increased economies of scale means that we have more scope to bring competitive mobile voice and data services to rural and regional areas. For example, VHA recently expanded its 3G coverage on the Vodafone network to 94 per cent of the population, extending to areas such as Kununurra in WA, Port Douglas in Queensland and Devonport in Tasmania. The DTCS helps ensure, for instance, that the 3G user experience for regional customers is equivalent to that experienced by metropolitan customers. While VHA has made a significant investment in rural and regional areas, we still require access to the declared DTCS in order to compete with Telstra in the relevant downstream mobile services market in those rural and regional areas.

[c-i-c]

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<sup>7</sup> Cisco 2009, *Cisco Visual Networking Index: Global mobile data traffic forecast update*, White paper, 29 January.



## Technology

We support the principle of technology neutrality for declared services, including the DTCS, where different infrastructure technologies are capable of providing genuinely substitutable services.

We submit that optical fibre remains the preferred transmission medium for transmission capacity services. Alternative technologies such as copper, microwave or satellite cannot compete with optical fibre in terms of capacity. Given the anticipated increase in demand for transmission capacity services, we consider that alternative technologies will provide even less of a competitive constraint to fibre transmission on declared DTCS routes.

We have an extensive microwave transmission network, which we use for both access and aggregation network transmission. The network has proved useful for short distance or low capacity situations. However, we do not consider microwave technology as a fully effective substitute for optical fibre infrastructure. Indeed, the growth of mobile data services already means that microwave technology is no longer suitable for many aggregation transmission links and is becoming less suitable for some access network transmission links. In future, we expect that LTE networks will drive higher demand and usage of mobile data services further diminishing the suitability of microwave backhaul transmission on some routes.

We believe that the PDH, SDH and Ethernet interface protocols are appropriate and consistent with the future technology path for mobile and fixed services. We understand that Ethernet interface protocol is being deployed by providers of the DTCS using optical fibre and that the wholesale services offered by the National Broadband Network are likely to be offered using Ethernet interface protocols.

We support the Commission's objective in seeking to clarify the interface protocols, particularly in relation to the inclusion of Ethernet. However, the Commission must stay abreast of technology developments to ensure the declaration does not lose relevance.

## Competition

While competition has improved on many of the major transmission routes, for instance inter-capital links, there remains a lack of competition on many capital-regional, inter-regional and tail-end transmission links. The lack of competition for DTCS in many geographic markets has a significant impact on its cost as a wholesale input. [c-i-c].

[c-i-c]

The primary reasons for the lack of competition are the barriers to entry created by the incumbent's sunk investment in transmission infrastructure. Most of the infrastructure-related costs associated with the deployment of optical fibre transmission relate to the ducts and trenches required to lay the service. Once a decision has been made to deploy optical fibre infrastructure the incremental cost associated with deploying additional capacity is, by comparison, relatively minor. As such, the first-mover typically could have (significant) excess transmission capacity on its infrastructure. The excess capacity combined with the sunk nature of the investment provides the first-mover with a (potential) pricing deterrent for any other party seeking to deploy fibre on the same route and achieve a return on their investment. The strategic incentives for gaming (on price and/or access) become more pronounced if the transmission provider is vertically integrated.

Access seekers (or third parties) could, in theory, deploy their own optical fibre transmission infrastructure. Clearly, such investment has been justified on inter-capital links. However, given that many carriers have chosen not to deploy extensive inter-regional or tail-end transmission networks suggests the cost of doing so is potentially above the cost of accessing the incumbent's infrastructure.



Given the lack of competition between providers of the DTCS using optical fibre and the importance of the DTCS as a wholesale input to mobile as well as fixed line services, we regard the declaration of the DTCS a necessary condition for promoting the long-term interests of end-users.

## 6 ACCC criteria

Given the terms of subsection 33(3) of the *Acts Interpretation Act 1901 (AIA)*, the Commission's proposed variation to the DTCS declaration must promote the LTIE as set out in section 152AL(3)(d) of the TPA. In determining whether varying the service declaration will promote the LTIE, the Commission must have regard to three objectives identified in section 152AB of the TPA:

- > promoting competition in markets for listed services;
- > achieving any-to-any connectivity in relation to carriage services that involve communication between end-users; and
- > encouraging the economically efficient use of, and the economically efficient investment in, infrastructure by which telecommunications services are supplied and any other infrastructure by which telecommunications services are, or are likely to become, capable of being supplied.

We address how the proposed variation meets each of these objectives below.

### Promoting competition

#### Relevant markets

We submit that, as a wholesale input, any inefficiency in the market for DTCS will cascade to downstream retail markets for fixed and mobile services. To that end, the markets in which VHA's mobile voice and data services are supplied are relevant downstream markets. Whether the proposed variation is in the LTIE should be assessed by reference to these downstream markets.

While the proposed clarification to the DTCS definition implicitly narrows its scope, we do not expect it to have any effect on the market definition for transmission services. Moreover, we understand that it is not the Commission's intention to alter the market definition as a consequence of the proposed variation. If, as an unintended consequence, the proposed variation does have a significant impact on the market definition for the DTCS then the Commission should revisit the matter.

#### Geographic markets

We agree with the Commission's assessment in the Exemption Decision and the Declaration Decision that the relevant geographic markets for the DTCS can be classified as:

- > inter-capital transmission;
- > capital-regional transmission;
- > inter-regional transmission;
- > inter-exchange transmission; and

- > tail-end transmission.

Transmission competition must be considered on a “route-by-route” basis within these categories. In general, we regard the inter-capital transmission markets and several capital-regional transmission markets as competitive. Competition in inter-exchange transmission is also evident at a number of metropolitan and CBD exchanges. That said, a significant number of transmission routes lack competition. These routes only have one DTCS provider, typically Telstra, and who, in the absence of the declaration could exert significant market power, including leveraging such power into relevant downstream markets.

We do not anticipate the proposed variation will impact the geographic dimensions for the declared DTCS.

### **Technologies used to provide transmission services**

As described above, optical fibre remains the dominant technology for the provision of transmission services despite the alternative technologies available. The importance of optical fibre will increase in the future given the increasing demand for capacity.

The proposed variation will clarify the technology that can be used to provide the declared DTCS. The technologies indicated by the Commission are the technologies almost universally used to deliver the DTCS by optical fibre. Subject to the matters addressed below in the section entitled ‘Encouraging economic efficiency’, we consider that the proposed variation to the service description to include Ethernet interface protocols will not affect the use of optical fibre for the provision of transmission services.

### **Market structure**

We do not expect the proposed variation to have a significant impact on the market structure of the declared DTCS. We agree with the Commission that high sunk costs make it uneconomic to duplicate existing optical fibre infrastructure and represent a significant barrier to entry in many DTCS markets. We do not expect the barriers to entry to be reduced by the Commission’s proposed variation.

We consider that the proposed variation nonetheless promotes competition in the relevant downstream markets for the following reasons:

- > To the extent Ethernet interface protocols are not covered by the current service description, we consider that the variation promotes competition in the relevant downstream markets. The reasons for this are the same as those given by the Commission in its *Final report reviewing the declaration of the domestic transmission capacity service* (March 2009) when it determined that the DTCS should be declared. That is, it ensures that access seekers are able to access on reasonable terms and conditions the DTCS on the routes or in the geographic areas where there is insufficient infrastructure competition at the wholesale level, notwithstanding the interface protocol deployed by the incumbent’s network.
- > To the extent Ethernet interface protocols are covered by the current service description, we consider that the variation promotes the LTIE as it removes any doubt (and therefore scope for gaming) regarding the scope of the declaration. The clarification of the service definition provides additional business certainty for access providers with respect to their investment decisions and for access seekers with respect to the scope of the declared DTCS.

We anticipate that the Government's Regional Backbone Blackspots Program could alleviate the lack of infrastructure competition in some DTCS markets although the Government anticipates the construction of the links will take 18 months to complete. We also note the Communications Alliance recently released a draft paper that proposes to define the wholesale services available on the National Broadband Network.<sup>8</sup> The paper specifies two Ethernet services – the Ethernet Line Access Service (ELAS) and the Ethernet Line Backhaul Services (ELBS) – and both, if adopted by NBNCo, should be covered by the proposed variation to the DTCS declaration. Obviously, it is too early to assess how NBNCo's (potential) transmission services will impact various markets for the declared DTCS.

### Any-to-any connectivity

We do not anticipate that the proposed variation will have an impact on any-to-any-connectivity.

### Encouraging economic efficiency

The explicit specification of three interface protocols – PDH, SDH and Ethernet – by definition, narrows the scope of the technology neutral service definition. While the technologies indicated by the Commission are the technologies almost universally used to deliver the DTCS, there are several potential alternative interface protocols.

The technological specificity of the proposed variation to the service definition creates an incentive (albeit in our view, a moderate incentive) for an access provider to deliver transmission capacity services through a technology not covered by the declaration. At this stage we do not believe that viable alternatives exist to the interface protocols proposed by the Commission or that the newly created incentive would be sufficient for an access provider to change their technology choice. However, the Commission must be vigilant that newly emerging transmission technologies do not undermine the purpose of the DTCS declaration.

The risk of the service description distorting investment decisions is minimised if the Commission adopts the suggestions set out in this submission. First, that the service description expressly states that, notwithstanding the reference to particular interface protocols, the service description is intended to be technology neutral. Second, that the Commission determines that including additional interface protocols is a variation of a minor nature for the purpose of s152AO(3) of the *Trade Practices Act 1974*, thereby forgoing the need for a further public inquiry.

To the extent Ethernet interface protocols are not covered by the current service description, we consider that the variation promotes the efficient investment in infrastructure for the reasons given by the Commission in its *Final report reviewing the declaration of the domestic transmission capacity service* (March 2009) as to why the DTCS should be declared. That is, it ensures that access seekers and other parties are able to build a customer base should they decide to undertake their own efficient infrastructure investment to supply transmission services to themselves.

To the extent Ethernet interface protocols are covered by the current service description, we expect that the proposed variation will moderately encourage economically efficient use of, and investment in, transmission infrastructure (over and above declaration itself). As submitted above, the clarification of the service definition provides additional business certainty for access providers with respect to their investment decisions and for access seekers with respect to the scope of the declared DTCS. We strongly support the Commission's move to improve business certainty with respect to declared services.

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<sup>8</sup> Communications Alliance 2009, *National Broadband Network: Wholesale services definition framework – Ethernet*, Draft for Comment, November.