

9 October 2015

Mr Grahame O'Leary and Mr Scott Harding  
Transmission and Facilities Access Section, Infrastructure Regulation Division  
Australian Competition and Consumer Commission

By Email: DTCS@acc.gov.au

Dear Mr O'Leary and Mr Harding

**ACCC DTCS FAD Inquiry: Draft Decision**

Basslink Telecoms Pty Ltd (**Basslink**) provides the following submission in response to the ACCC's Draft Decision of 4 September 2015 on the Final Access Determination for the Domestic Transmission Capacity Service (**Draft 2015 FAD**).

**Executive Summary**

The pricing for routes between the mainland and Tasmania in the Draft 2015 FAD is uneconomic. If that pricing were to apply, Basslink would not recover its costs of providing its domestic transmission capacity service (**DTCS**). [REDACTED]

As a niche infrastructure-based competitor, Basslink is disproportionately affected by the below cost pricing in the Draft 2015 FAD, given it has no other telecommunication infrastructure to subsidise adverse pricing outcomes. The pricing for mainland to Tasmania routes needs to be set, at least, at the same level as that in the current DTCS Final Access Determination (**2012 FAD**) in order for Basslink to recover its costs of providing the DTCS.

As explained in this submission, the ACCC's decision on pricing for mainland to Tasmania routes in the Draft 2015 FAD is arbitrary and without evidentiary basis. Further, in determining prices in the Draft 2015 FAD for routes between the mainland and Tasmania, the ACCC has not adequately taken into account the matters in section 152BCA(1) of the *Competition and Consumer Act 2010* (**CCA**), particularly subsections (a), (b), (d) and (g).

**About Basslink**

Basslink supplies the DTCS between Melbourne and Hobart. Basslink's DTCS consists of both a land component and a submarine component. Relevant characteristics of the network include the following:

- The submarine component is 300km long and represents approximately half of the distance which makes up the Basslink network.
- On the Victorian land component, which represents 160km of the 300km land component, Basslink uses third party providers to offer the DTCS.

The only other carrier that is reliant on an undersea cable to provide the DTCS is Telstra. However, unlike Telstra, Basslink does not own its network from end-to-end, having instead to rely on third party service providers. Also Basslink does not provide any other telecommunication services which help subsidise its DTCS between Tasmania and the mainland. Basslink's DTCS business is a completely stand-alone telecommunications business offering a single wholesale product. The use of third party providers in conjunction with the operation of an undersea cable means that Basslink's business model is unlike that of any other DTCS provider in Australia.

## Background

### 2012 FAD

The 2012 FAD, which was made on 21 June 2012 and expires on the day before the new final access determination is made,<sup>1</sup> determines regulated prices for transmission services between the mainland and Tasmania by classifying those services as regional services<sup>2</sup> and using an additive term to apply a 40 per cent uplift to the prices of those services for a nominal 300km undersea cable component.<sup>3</sup>

The ACCC considered that it was appropriate to classify services from mainland Australia to Tasmania and within Tasmania as regional services because services on those routes were more likely to have cost features akin to regional services, such as lower utilisation.<sup>4</sup> Further, the ACCC considered that it was appropriate to apply a 40 per cent uplift to the prices of services on those routes to reflect the higher cost of deployment, maintenance and repair of undersea cables.<sup>5</sup> The uplift is based on a comparison of prices for undersea cable routes with mainland inter-capital routes and only applies to the 300km undersea component of the service between the mainland and Tasmania.<sup>6</sup> The ACCC considered it appropriate to apply the uplift to a notional length of the undersea component of 300km for any service between the mainland and Tasmania to reflect the radial distance of the longest link currently available. This was

<sup>1</sup> ACCC, *Notice of extension of an access determination under subsection 152BCF(10)( 2012 DTCS FAD)*, 5 November 2014.

<sup>2</sup> ACCC, *Final Access Determination No. 1 of 2012 (DTCS)*, clause 1.5(g) of Schedule 1; ACCC, *Final Access Determination for the Domestic Transmission Capacity Service Explanatory Statement*, June 2012, p23.

<sup>3</sup> ACCC, *Final Access Determination No. 1 of 2012 (DTCS)*, clause 1.5(h) of Schedule 1; ACCC, *Final Access Determination for the Domestic Transmission Capacity Service Explanatory Statement*, June 2012, p23.

<sup>4</sup> ACCC, *Final Access Determination for the Domestic Transmission Capacity Service Explanatory Statement*, June 2012, p23.

<sup>5</sup> ACCC, *Draft Final Access Determination for the Domestic Transmission Capacity Service (DTCS) Explanatory Statement*, December 2011, p34; ACCC, *Final Access Determination for the Domestic Transmission Capacity Service Explanatory Statement*, June 2012, p23.

<sup>6</sup> ACCC, *Final Access Determination for the Domestic Transmission Capacity Service Explanatory Statement*, June 2012, p23.

intended to ensure that regulated prices captured the cost of the longest service provided between the mainland and Tasmania.<sup>7</sup>

#### *2015 FAD Discussion Paper*

In connection with the 2015 FAD, the ACCC issued a discussion paper entitled *Domestic Transmission Capacity Service, Final Access Determination Discussion Paper - Primary Prices, July 2014 (ACCC's Discussion Paper)*. In response to the ACCC's discussion paper, Basslink submitted that:<sup>8</sup>

- the 2015 FAD should maintain an uplift on pricing for transmission services between the mainland and Tasmania to reflect the higher costs associated with those services;
- without knowing the pricing for transmission services between the mainland and Tasmania that would apply in the 2015 FAD, it was difficult for Basslink to be definitive on the percentage uplift which should apply, however, assuming the ACCC adopted a similar approach to pricing in the 2015 FAD as applies in the 2012 FAD, 40 per cent was the minimum uplift which should be applied to pricing for transmission services between the mainland and Tasmania.

Basslink observed that if the ACCC proposed to adopt, in the 2015 FAD, a different approach for pricing of transmission services between the mainland and Tasmania from that in the 2012 FAD, Basslink would seek to make a further submission on the appropriate uplift factor which should apply to that pricing.

#### **Draft 2015 FAD**

In the Draft 2015 FAD, the ACCC determines DTCS pricing using a domestic benchmarking approach which uses prices of transmission services in competitive routes and areas to 'derive annual prices for the DTCS that would likely apply in uncompetitive, declared areas or routes as if they were competitive'.<sup>9</sup> The ACCC engaged Economic Insights to develop a regression model to estimate competitive benchmark-based prices on regulated routes using commercial data supplied by transmission providers. The ACCC's draft decision is to adopt Economic Insights' 'equation 4.1' model for the purpose of setting prices for regulated routes (**Draft 2015 Model**).<sup>10</sup> The ACCC observes in the Draft 2015 FAD that the Draft 2015 Model generally predicts lower prices than the model used for the 2012 FAD (**2012 Model**) and the difference between the prices predicated by the 2012 Model and those predicated by the Draft 2015 Model increases for higher distances and higher capacities.<sup>11</sup>

<sup>7</sup> ACCC, *Draft Final Access Determination for the Domestic Transmission Capacity Service (DTCS) Explanatory Statement*, December 2011, p34; ACCC, *Final Access Determination for the Domestic Transmission Capacity Service Explanatory Statement*, June 2012, p24.

<sup>8</sup> Letter from Basslink to ACCC regarding 'ACCC DTCS FAD Inquiry 2014: Discussion Paper - Primary Prices', 19 September 2014.

<sup>9</sup> ACCC, *Public Inquiry to make a Final Access Determination for the Domestic Transmission Capacity Service*, Draft Decision, 4 September 2015, pp3-4.

<sup>10</sup> ACCC, *Public Inquiry to make a Final Access Determination for the Domestic Transmission Capacity Service*, Draft Decision, 4 September 2015, p30.

<sup>11</sup> ACCC, *Public Inquiry to make a Final Access Determination for the Domestic Transmission Capacity Service*, Draft Decision, 4 September 2015, p31.

In addition, the ACCC makes a number of draft pricing decisions relating to the DTCS which were not considered by Economic Insights during the development of the regression analysis. These decisions include a decision to maintain a 40 per cent uplift on the Draft 2015 Model's regional route output for the undersea component of the link between the mainland and Tasmania.<sup>12</sup> The ACCC considers that retaining an uplift for the undersea component on Bass Strait transmission routes is appropriate. The ACCC recognises that the costs of the undersea component on these routes would be higher than routes of similar distance and capacity in regional areas, due to the specialised nature of submarine cables, the associated transmission equipment and higher maintenance costs.<sup>13</sup>

Consistent with the 2012 FAD, the Draft 2015 FAD determines prices for routes between the mainland and Tasmania using an additive term to apply a 40 per cent uplift to the prices of regional services for a nominal 300km undersea cable component as shown in the following 'equation 5.1':<sup>14</sup>

$$\text{total route price}_{A-B} = \text{regional price}_{A-B} + \text{uplift}$$

where

$\text{regional price}_{A-B}$  = price of a regional service of radial distance (A, B)

$\text{uplift}$  =  $\text{price}_{300} \times 40\%$

### **Basslink's Response to the 2015 Draft FAD**

In response to the 2015 Draft FAD, Basslink submits that the pricing for routes between the mainland and Tasmania is uneconomic. The cost of providing the DTCS outweighs the potential revenue Basslink would derive if the 2015 Draft FAD prices were to apply. The divergence between potential revenue and costs becomes even greater when the possibility of a submarine cable repair is taken into account. [REDACTED]

#### *ACCC's pricing decision arbitrary and without evidentiary basis*

The ACCC's decision on pricing for mainland to Tasmania routes in the Draft 2015 FAD is arbitrary and without evidentiary basis. The ACCC recognises in its decision that the way to promote the LTIE is to set pricing having regard to efficient costs.<sup>15</sup> However, the ACCC then concludes that because it cannot obtain information on costs and prices for undersea transmission links in other countries in order to determine

<sup>12</sup> ACCC, *Public Inquiry to make a Final Access Determination for the Domestic Transmission Capacity Service*, Draft Decision, 4 September 2015, pages 34-36.

<sup>13</sup> ACCC, *Public Inquiry to make a Final Access Determination for the Domestic Transmission Capacity Service*, Draft Decision, 4 September 2015, page 35.

<sup>14</sup> ACCC, *Public Inquiry to make a Final Access Determination for the Domestic Transmission Capacity Service*, Draft Decision, 4 September 2015, page 36.

<sup>15</sup> ACCC, *Public Inquiry to make a Final Access Determination for the Domestic Transmission Capacity Service*, Draft Decision, 4 September 2015, p36.

the costs of a benchmark efficient provider of undersea transmission services, it will simply retain the 40 per cent uplift.

The ACCC's 40 per cent uplift was determined by comparing prices on mainland to Tasmania routes with those on deregulated mainland routes.<sup>16</sup> The ACCC's approach fails to take into account the differences between mainland to Tasmania routes and competitive routes used to determine the 40 per cent uplift. Those differences result in a higher cost structure for mainland to Tasmania routes, to which the ACCC has failed to give proper consideration.

First, there is a cost differential between deploying and maintaining submarine cables and terrestrial cables. This results from:

- the additional cost in manufacturing cables capable of withstanding the different environmental factors in a marine location; and
- the high costs associated with marine deployment and maintenance of the cable, particularly the significant costs associated with hiring cable laying and cable maintenance ships.

Secondly Basslink's Melbourne to Hobart transmission route is a 'thin' demand route which has different cost structures to mainland routes. In addition to the cost differential of deploying and maintaining submarine cables, the following factors distinguish the Melbourne to Hobart transmission route from other Australian routes:

- Tasmanian transmission routes are very 'thin' in demand and capacity terms. The addressable market size accessible to Basslink to meet business case objectives is extremely limited, due to a wholesale focus and the nature of the infrastructure it owns. Tasmanian transmission routes are 'thin' in capacity terms due to:
  - the fledgling IT industry in Tasmania;
  - the relative absence of Top 500 corporate head offices;
  - the absence of nationally significant data centre operators;
  - Tasmania has a small population with a higher than average unemployment and retiree base;
  - Tasmania has a dispersed population;
  - there is limited DSLAM penetration;
  - there is limited on-island backhaul competition (particularly Launceston).

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<sup>16</sup> ACCC, *Public Inquiry to make a Final Access Determination for the Domestic Transmission Capacity Service*, Draft Decision, 4 September 2015, p35.

- Basslink 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 for the DTCS in the FAD. [REDACTED]
- Basslink does not own all of the end-to-end components that make up the Melbourne to Hobart transmission route. Basslink only owns and operates the undersea component across Bass Strait comprising roughly one-third of the entire Melbourne to Hobart route. Basslink has to rely on third party service providers for the other segments of the route.
- 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 other mainland routes. The assets cannot be repositioned to take advantage of emerging dynamic demand. It is not valid to compare alternative routes that are wholly terrestrial or even of the same length.

Save for determining on an arbitrary uplift factor of 40 per cent, the ACCC has failed to take these considerations particular to mainland to Tasmania routes into account in determining pricing for those routes in its Draft 2015 FAD. As a result, the ACCC has failed to capture the efficient costs of provision of the DTCS on those routes.

There is no basis for the ACCC's dismissal of the use of actual cost information and, in doing so, the ACCC has failed to take into account a relevant consideration. While the ACCC rejected the use of actual cost information as it was concerned it may not result in an accurate estimate of efficient costs,<sup>18</sup> the ACCC's arbitrary method for determining the pricing on mainland to Tasmania routes has a far worse consequence of undercompensating service providers on those routes for their costs and thus, in the case, of Basslink forcing it to revisit its business case for continued supply.

Basslink submits that use of Basslink's actual cost information will result in an accurate estimate of efficient costs, particularly since:

- the costs of third party service providers comprise a very significant portion of Basslink's costs; and
- in supplying its DTCS, Basslink is subject to the competitive constraint of Telstra.

As noted above, since Basslink does not own its network from end-to-end Basslink has to rely on third party service providers to provide the DTCS. The ACCC must accept that if Basslink has entered into arms length contractual arrangements with third party service providers, those costs are efficient. The competitive rivalry between Basslink and Telstra is demonstrated by the downward fall of transmission prices since Basslink's entry into the market. Even though the Melbourne to Hobart transmission route remains subject to regulation and therefore Basslink is not operating in a workably competitive market, the pressure on

<sup>17</sup> Subsection 152BCA(1)(b) of the CCA.

<sup>18</sup> ACCC, *Public Inquiry to make a Final Access Determination for the Domestic Transmission Capacity Service*, Draft Decision, 4 September 2015, p36.



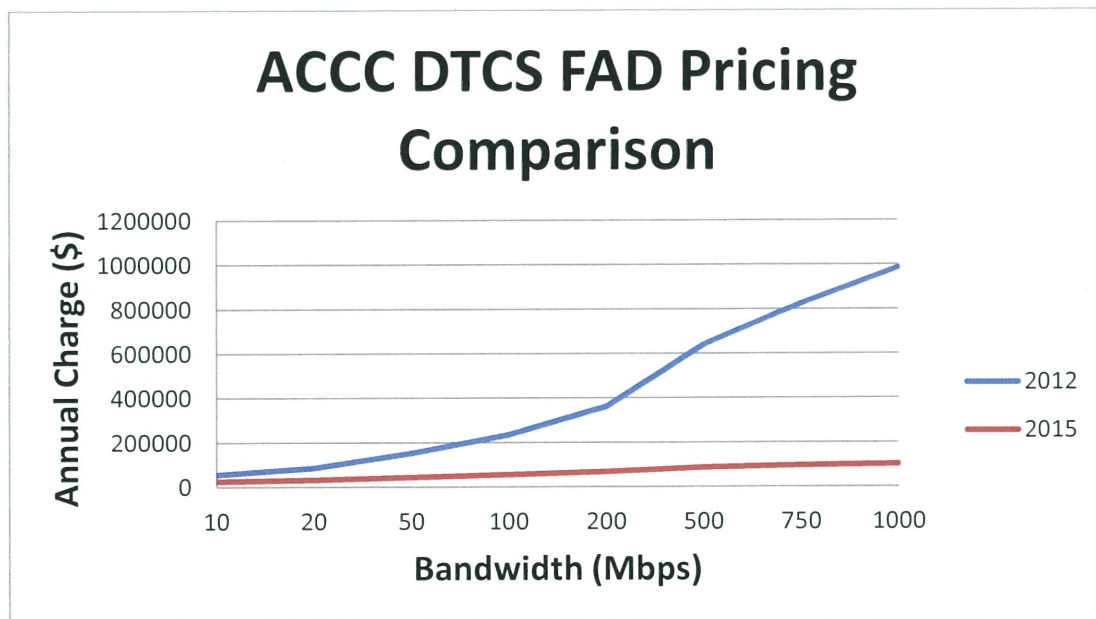
Basslink' pricing and costs as a result of competition with Telstra serves to mitigate any divergence between actual costs and efficient costs.

#### *Comparison of 2012 FAD and Draft 2015 FAD prices*

A comparison of pricing on mainland to Tasmania routes in the 2012 FAD and Draft 2015 FAD reveals enormous divergences in prices, with prices in all cases being lower on those routes in the Draft 2015 FAD.

While the uplift factor in the Draft 2015 FAD is the same as that provided for in the 2012 FAD (i.e. 40 per cent), the regional price component of the charge for routes between the mainland and Tasmania determined by the Draft 2015 Model is different to that determined by the 2012 Model. The ACCC notes in the Draft 2015 FAD that average regulated pricing for the Draft 2015 FAD is 23.8 per cent lower on regional routes than that determined by the ACCC in 2012.<sup>19</sup> The price discrepancy between the 2012 FAD and Draft 2015 FAD varies depending on the geographic route, capacity and distance of a particular service.

The following graph shows the divergence in pricing between the 2012 FAD and Draft 2015 FAD on a 600km route between Tasmania and the mainland. The graph has been prepared using the ACCC's 2012 and Draft 2015 FAD Pricing Calculators.



For example, a comparison of the price under the ACCC's 2012 FAD Pricing Calculator to the Draft 2015 FAD Pricing Calculator of a 600km, 1Gbps service between Tasmania and the mainland reveals that the Draft 2015 FAD price is approximately 90% cheaper than the 2012 FAD.<sup>20</sup> Such a divergence in price is extraordinary and of itself suggests an error in the ACCC's methodology for determining the Draft 2015 FAD

<sup>19</sup> ACCC, *Public Inquiry to make a Final Access Determination for the Domestic Transmission Capacity Service*, Draft Decision, 4 September 2015, p3.

<sup>20</sup> Using the 2012 FAD Pricing Calculator the annual charge for a 600km 1Gbps service between Tasmania and the mainland is \$896,821 (ex-GST). Using the Draft 2015 FAD Pricing Calculator the annual charge for a 600km 1 Gbps service between Tasmania and the mainland is \$102,300.40 (incl-GST). Note the ACCC's 2012 FAD Pricing Calculator is stated to be exclusive of GST whereas the ACCC's Draft 2015 FAD Pricing Calculator is stated to be inclusive of GST. Removing GST from the figure obtained using the Draft 2015 FAD Pricing Calculator results in a figure of \$92,070.36.

price. It also demonstrates that the ACCC's decision in the Draft 2015 FAD on prices for routes between the mainland and Tasmania is plainly unreasonable.

*Draft 2015 FAD prices uneconomic*

On the basis of the Draft 2015 FAD prices it would be uneconomic for Basslink to continue to supply the DTCS. This is demonstrated by:

- comparing Basslink's current annual revenue to its projected revenue using the 2015 Draft FAD pricing; and
- comparing Basslink's annual operating expenditure to its projected revenue using the 2015 Draft FAD pricing.

Basslink has calculated an estimated revenue decrease of [REDACTED] between its existing revenue on the basis of its current contracts for the supply of the DTCS and projected revenue on the basis of the Draft 2015 FAD prices. While Basslink's agreements with its customers for the supply of the DTCS have been commercially negotiated outside of the 2012 FAD, those prices have been influenced by the prices in the 2012 FAD since the 2012 FAD serves to create a benchmark or default set of terms and conditions for access seekers where agreement cannot be reached. A comparison of Basslink's operating expenditure for providing its end-to-end DTCS with its projected revenue under the 2015 FAD pricing reveals that the Draft 2015 FAD prices clearly do not compensate Basslink for its operating expenditure to maintain and supply the DTCS service.

Assuming that the quantity of the services which Basslink provides under the 2015 FAD is the same as it currently supplies, Basslink's total annual projected revenue applying the Draft 2015 FAD pricing is approximately [REDACTED]. Basslink's annual operating expenditure for providing its end-to-end DTCS to its customers is approximately [REDACTED]. The 2015 FAD will result in Basslink being out-of-pocket by more than [REDACTED] a year, unless the quantity of services that Basslink is able to provide will more than double after the 2015 FAD comes into effect. Given that Tasmania is neither expecting its business volume nor population to more than double between 2015 and 2019, we are hard pressed to see how this increase in quantity of services will materialise.

In making the 2015 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 mainland to Tasmania routes.<sup>21</sup> As such, it must ensure that cost structures appropriate to those routes are adequately reflected in its approach to determining prices that apply to those routes under the 2015 FAD.

As noted above, Basslink's previous submission on the ACCC's Discussion Paper that 40 per cent is the minimum uplift which should be applied to pricing for transmission services between the mainland and Tasmania was made on the assumption that the ACCC adopts a similar approach to pricing for transmission services between the mainland and Tasmania in the 2015 FAD. Since the ACCC has determined to apply a

<sup>21</sup> Subsections 152BCA(1)(d) and 152BCA(1)(g) of the CCA.



different approach by adopting a different pricing model (i.e. the Draft 2015 Model), the equation for determining prices for routes between the mainland and Tasmania needs to be altered to ensure Basslink is able to recover its costs and earn a normal commercial return on its investment.

At a minimum, the 2015 FAD pricing for services across Bass Strait needs to be maintained at the same level as the 2012 FAD in order for Basslink to recover its costs of operations. Basslink reiterates that the costs of land-based regional services provision are not comparable to the costs of services provision across Bass Strait over a submarine link. This submarine mode of service delivery is not by choice but by necessity and the costs are necessarily higher due to the technical requirements necessary for the safe and reliable operation of a submarine cable service. The relative scarcity of submarine links robs Basslink of the ability to achieve savings through economies of scale of operations enjoyed by land based service providers. Maintenance costs for submarine links are also higher than those for land based cables as a consequence of there being very few submarine links in Australia and thus few suppliers of specialised services for submarine links. Further, as explained above, Basslink also faces a higher cost structure than service providers face on other mainland routes, for example because Tasmanian transmission routes are very 'thin' in demand and capacity terms. The ACCC must take these considerations into account and determine the uplift factor accordingly so that it results in prices on routes between mainland and Tasmania that better reflect the costs of supplying transmission services on those routes.

As noted in the introduction to this submission, the only other carrier that is reliant on an undersea cable to provide the DTCS is Telstra. In their respective submissions in response to the ACCC's price terms in the draft 2012 FAD both Basslink and Telstra asserted that a 40 per cent uplift on pricing for transmission services between the mainland and Tasmania was insufficient to enable them to earn a normal commercial return on their investment. Telstra asserted that the 40 per cent uplift was aligned with the cost of deploying a non-geographically diverse submarine cable, such as that supplied by Basslink, however, it did not capture the higher costs associated with supplying undersea cable services using a geographically diverse submarine cable path.<sup>22</sup>

Basslink observes that while it uses a non-geographically diverse submarine cable, it is exposed to different costs in providing the DTCS than Telstra. Unlike Telstra, Basslink does not own its network from end-to-end. Rather, as noted above, Basslink has to rely on third party service providers. Given that Telstra owns its network outright, the added expense associated with engaging third party providers is not an expense that is relevant to Telstra. Unlike Basslink, Telstra does not have to account for the commercial return of third party providers.

Further, as noted above, unlike Telstra Basslink does not provide any other telecommunication services which could help subsidise its DTCS between Tasmania and the mainland. Basslink's DTCS business is a completely stand-alone telecommunications business offering a single wholesale product. In contrast, Telstra offers numerous telecommunication services that can subsidise the operation of its undersea cable, if necessary.

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<sup>22</sup> Telstra, *Response to the Commission's price terms in the draft final access determination for the Domestic Transmission Capacity Service*, 9 March 2012, p21.

### **Necessary considerations when making a final access determination**

Section 152BCA(1) of the CCA requires the ACCC to take into account a range of matters when making the 2015 FAD. Several of these matters are addressed below, noting the significance for Basslink and affected end-users of ensuring an appropriate uplift factor and that prices on routes between the mainland and Tasmania are sufficient to enable Basslink to recover its costs and earn a normal commercial return on its investment.

#### *Whether the determination will promote the LTIE*

Section 152BCA(1)(a) of the CCA requires the ACCC to take into account whether the 2015 FAD will promote the LTIE. This consideration is consistent with the objective of Part XIC of the CCA (section 152AB of the CCA). Contrary to the ACCC's conclusion, the lower prices in the Draft 2015 FAD will not promote the LTIE with respect to the DTCS market between Tasmania and the mainland.<sup>23</sup>

The Australian Competition Tribunal has made the following comments regarding the promotion of the LTIE:<sup>24</sup>

In considering how these elements may combine, it may be the case, for example, that very low prices are in the short-term interests of end-users. Over the long-term, however, sustainably low prices (which may be higher than the "very low prices" referred to above) are more likely to enhance their interests, as the long-term interests of end-users are likely to suffer in an environment characterised by short-lived operators who fall over soon after the customer signs with them, as distinct from one in which reliable service-providers offer competitive, but sustainable, services. Moves that enhance the quality and diversity of service may be subject to a similar analysis.

The use of the "long-term" may also assist in resolving the apparent tension between the criteria in s 152AB(2)(c) and (e). For example, action that promotes competition in the short-term may deter investment and hence, over the longer-term, competition may lessen (resulting in reduction to efficiency and innovation). Moreover, an action may promote competition at the retail level (resulting in more channels offered by more operators), but may deter facilities-based competition, with fewer service providers being prepared to establish delivery mechanisms of their own than would otherwise be the case. Assessed over the long-term, however, there is less likely to be any conflict between the promotion of competition and efficiency. Nonetheless, to the extent that there are mixed effects, we will have regard to the overall or net effect.

While the Draft 2015 FAD provides for lower prices than the 2012 FAD, those prices will not enable Basslink to offer a sustainable service. Further, those prices discourage Basslink from undertaking efficient investment. As such, the lower prices in the Draft 2015 FAD will not promote the LTIE.

Section 152AB(2)(c) of the CCA provides that in determining whether a particular thing promotes the LTIE regard must be had to the objective of promoting competition in markets for carriage services and for services supplied by means of carriage services. It is likely that a failure to recover its costs and achieve a

<sup>23</sup> ACCC, *Public Inquiry to make a Final Access Determination for the Domestic Transmission Capacity Service*, Draft Decision, 4 September 2015, pp13-15.

<sup>24</sup> *Re Seven Network Limited (No 4)* (2004) ACompT 11 at [121] at [122].

normal commercial return would ultimately force Basslink to cease providing the DTCS. In turn, this would result in Telstra achieving monopoly provider status between Tasmania and the mainland. Rather than promoting competition, the application of the Draft 2015 FAD prices would remove whatever competition currently exists in the DTCS market between Tasmania and the mainland.

Furthermore, the absence of genuine competition in the DTCS space would be likely to increase prices in relevant downstream markets which include data services, mobile services, and general telecommunication services delivered over transmission networks.

Promotion of the LTIE also requires that regard be had to the economically efficient investment in the infrastructure by which telecommunication services are provided (section 152AB(2)(e)). Accordingly, it is important that the prices in the 2015 FAD encourage economically efficient investment and enable an efficient service provider to obtain a normal commercial return on its investment. If the 2015 FAD reflects the pricing in the Draft 2015 FAD, this would discourage Basslink from undertaking further investment. The need to increase capacity is both an inevitable and necessary factor for any telecommunications business given the continuing growth in the scope of telecommunication services. For instance, the most immediate capacity requirement will arise with the introduction of the NBN. As a result, it is imperative that Basslink be able to increase its capacity without suffering a decrease in its rate of return.

#### *Basslink's legitimate business interests*

Under subsection 152BCA(1)(b) of the CCA, in making the 2015 FAD the ACCC is required to take into account the legitimate business interests of a carrier or carriage service provider who supplies, or is capable of supplying, the declared service, and the carrier's or provider's investment in facilities used to supply the declared service.

The ACCC incorrectly concludes that the application of the 40 per cent uplift to the pricing for regional routes adequately takes into account the costs of providing high quality transmission services.<sup>25</sup> Contrary to the ACCC's conclusion, if the final 2015 FAD reflects the pricing in the Draft 2015 FAD, this would prevent Basslink from earning a normal commercial return on its investment, having regard to the relevant risks of the investment, and therefore be contrary to Basslink's legitimate business interests.

#### *Direct costs of providing access to a declared service*

Subsection 152BCA(1)(d) of the CCA requires the ACCC, in making the 2015 FAD, to take into account the direct costs of providing access to a declared service, encompassing those costs that are necessarily incurred in providing access. In this context the phrase 'direct costs' is interpreted to mean that an access price should cover the direct incremental costs incurred in providing access, including contribution for indirect costs. This would include both Basslink's costs in relation to third party service providers as well as the cost of repairing and maintaining the undersea cable.

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<sup>25</sup> ACCC, *Public Inquiry to make a Final Access Determination for the Domestic Transmission Capacity Service*, Draft Decision, 4 September 2015, p15 and p36.

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The Draft 2015 FAD fails to adequately take into account either of these costs. As such, contrary to the ACCC's conclusion, the way that prices are set for routes between the mainland and Tasmania in the Draft 2015 FAD does not enable the recovery of the direct costs of the supply of the DTCS on those routes.<sup>26</sup>

*Economically efficient operation of a carriage service, a telecommunications network or a facility*

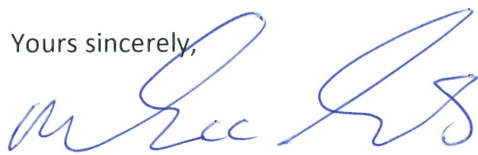
Subsection 152BCA(1)(g) of the CCA requires the ACCC, in making the 2015 FAD, to take into account the economically efficient operation of a carriage service, a telecommunications network or facility. Contrary to the ACCC's conclusion,<sup>27</sup> the way that prices are set for routes between the mainland and Tasmania in the Draft 2015 FAD does not account for the levels of investment required to ensure the DTCS operates at an economically efficient level. Rather, as noted above those prices fail to compensate Basslink for its costs in providing the DTCS and, accordingly, prevent Basslink from earning a normal commercial return on its investment.

**Conclusion**

In determining prices in the 2015 FAD for routes between the mainland and Tasmania, the ACCC should ensure that it takes into account the matters in section 152BCA(1) of the CCA and set prices such Basslink is able to recover its costs of providing the DTCS and earn a normal commercial return on its investment. In this regard, we believe that the 2015 DTCS FAD pricing needs to be set, at least, at the same level as the 2012 FAD in order for Basslink to recover its costs of providing the DTCS.

If you have any questions regarding the above submission, please do not hesitate to contact me.

Yours sincerely,



**Malcolm Eccles**

Chief Executive Officer

Basslink Telecoms Pty Ltd

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<sup>26</sup> ACCC, *Public Inquiry to make a Final Access Determination for the Domestic Transmission Capacity Service*, Draft Decision, 4 September 2015, p15 and p36.

<sup>27</sup> ACCC, *Public Inquiry to make a Final Access Determination for the Domestic Transmission Capacity Service*, Draft Decision, 4 September 2015, p15.