



Australian
Competition &
Consumer
Commission

DOMESTIC TRANSMISSION CAPACITY SERVICE

Final Access Determination
variation inquiry 2014

Final report

December 2014

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Executive summary

The Australian Competition and Consumer Commission (ACCC) has decided to vary the domestic transmission capacity service final access determination made in 2012 (2012 DTCS FAD). The variation will take effect from 1 January 2015. The varied DTCS FAD will expire on the day before a new DTCS FAD is made.

In March 2014 the ACCC varied and extended the DTCS declaration until 31 March 2019. In that inquiry the ACCC re-regulated three regional routes (Maryborough, Bundaberg and Rockhampton) on the basis they did not meet the revised competition criteria and 'notionally' re-regulated seven exchange service areas (ESAs) (Kirwan, Gulliver, Withcott, Middle Ridge, Newtown, Drayton and Frenchville) as a result of definitional changes to some regional centres. The changes made to the scope of the 2014 DTCS declaration are due to take effect on 1 January 2015.¹

The ACCC is currently conducting an inquiry to determine regulated price and non-price terms and conditions for the DTCS FAD and has extended the operation of the 2012 DTCS FAD², which was due to expire on 31 December 2014, until the day before a new FAD is made (which is expected to be mid-2015). This ensured that from 1 January 2015 the routes and ESAs regulated in the 2014 DTCS declaration would be covered by a FAD until a new DTCS FAD is made.

However, even though the 2012 DTCS FAD has been extended, it does not apply to the three re-regulated routes and seven ESAs as they did not form part of the scope of the 2012 DTCS FAD when it was made. This means that there would be no regulated price and non-price terms for the re-regulated routes and ESAs until a new DTCS FAD is made unless the current DTCS FAD is varied.

The ACCC considers that varying the 2012 DTCS FAD is appropriate to ensure that these three regional routes and seven ESAs are subject to the FAD prior to the making of a new DTCS FAD in 2015.

The ACCC has now finalised the inquiry and decided to vary the 2012 DTCS FAD. In making this decision, the ACCC has considered the relevant factors set out in the *Competition and Consumer Act 2010* (CCA) and taken into account the submissions received during the variation inquiry which support the variation.

The ACCC considers that the variation will provide certainty and transparency to industry on prices for the regulated routes and ESAs as well as provide a 'fall-back' for access seekers in the event that commercial agreement on reasonable terms of access cannot be reached. The ACCC's reasons for its decision are set out in further detail in section 3 of this final report.

¹ ACCC, *An ACCC Final Report on the review of the declaration for the Domestic Transmission Capacity Service*, public version, March 2014 (2014 DTCS Declaration).

² ACCC, *Final Access Determination for the Domestic Transmission Capacity Service – Explanatory Statement*, June 2012 (2012 DTCS FAD).

1 Background

2014 DTCS declaration

On 28 March 2014 the ACCC varied and extended the [DTCS declaration until 31 March 2019](#). During the declaration inquiry the ACCC undertook a comprehensive assessment of the state of competition in DTCS markets and related downstream markets in order to determine the scope of regulation for the DTCS. The ACCC assessed the level of competition for DTCS services (including both deregulated and regulated routes) using a revised competition criteria.

As a result of the assessment the ACCC deregulated an additional 112 metropolitan ESAs and eight regional routes. The ACCC also re-regulated regional routes to Maryborough, Bundaberg and Rockhampton which did not meet the revised competition criteria and, 'notionally' re-regulated seven regional ESAs (being Kirwan, Gulliver, Withcott, Middle Ridge, Newtown, Drayton and Frenchville) based on definitional changes to the regional centres of Townsville, Toowoomba and Rockhampton and application of the revised competition criteria.³ These are referred to in this final report as the re-regulated routes and ESAs. The DTCS declaration allowed a transitional period of nine months before the changes to the scope of regulation take effect (from 1 January 2015).

2015 DTCS FAD inquiry

Following the completion of the DTCS declaration inquiry in 2014, the ACCC commenced the substantive DTCS FAD inquiry on 23 May 2014 to make price and non-price terms and conditions for the DTCS. The ACCC intends for the 2015 DTCS FAD to replace the 2012 DTCS FAD. Due to the extensive consultation on a range of FAD issues, the ACCC was unable to complete the DTCS FAD inquiry within six months after commencement of the inquiry as required by the CCA.⁴ Consequently, on the 27 October 2014 the ACCC extended the FAD inquiry period until 23 May 2015. The notice of extension can be found on the [ACCC website](#).

Extension of the 2012 DTCS FAD

On the 7 November 2014 the ACCC extended the 2012 DTCS FAD which was due to expire on 31 December 2014. This ensured that the routes and ESAs regulated in the 2014 DTCS declaration would be covered by a FAD from 1 January 2015 until a new DTCS FAD is made. The notice of extension can be found on the ACCC's [public register](#).

DTCS FAD variation inquiry 2014

The 2012 DTCS FAD does not apply to the three regional routes and seven ESAs re-regulated in the 2014 DTCS declaration as they did not form part of the scope of the 2012 DTCS FAD when it was made. This means that in the absence of varying the DTCS FAD, from 1 January 2015 the regulated price and non-price terms and conditions would not be available to access seekers seeking access to the re-regulated routes and ESAs until a new DTCS FAD is made. The ACCC expects to make the new DTCS FAD in mid-2015.

³ See 2012 DTCS FAD pp.19-21.

⁴ Sub-sections 152BCK(2) and (3) of the *Competition and Consumer Act 2010* (CCA).

The ACCC commenced a public inquiry under Part 25 of the *Telecommunications Act 1997* on 7 November 2014 into varying the 2012 DTCS FAD to ensure coverage for the re-regulated routes and ESAs during this interim period.

On 7 November 2014 the ACCC published a [discussion paper](#) for the DTCS FAD variation inquiry⁵ outlining the ACCC's proposed variation to the 2012 DTCS FAD. Submissions closed on 8 December 2014.

The ACCC received submissions from Nextgen Group Holdings Pty Ltd (Nextgen) and AAPT Ltd (on behalf of AAPT Ltd, TPG Telecom Limited and Pipe Networks Pty Limited) in response to the inquiry. Both submissions support the variation to the 2012 DTCS FAD. The ACCC did not receive any other submissions.

2 ACCC final decision

The ACCC has decided to vary the 2012 DTCS FAD so that the price and non-price terms and conditions in the 2012 DTCS FAD apply to the re-regulated routes and ESAs from 1 January 2015. The reasons for the ACCC's decision are set out in section 3. The varied 2012 DTCS FAD will expire on the day before a new DTCS FAD is made. A copy of the variation instrument can be found at **Appendix A**.

The ACCC has decided not to issue a draft determination for consultation because the variation has been supported by submitters.

The ACCC has decided that the price and non-price terms specified in the 2012 DTCS FAD will apply to services provided via the re-regulated routes and ESAs.

3 The ACCC's assessment for varying the 2012 DTCS FAD against the legislative framework

This section sets out the relevant legislative framework for varying a FAD and explains the ACCC's assessment against the relevant legislative requirements.

3.1 The legislative framework

A FAD provides a base set of terms and conditions that access seekers can rely on if they are unable to come to an agreement with an access provider on the terms and conditions of access to a declared service. If parties come to an agreement on terms and conditions of access, the access determination has no effect to the extent to which it is inconsistent with the access agreement between the parties.⁶

In making a FAD the ACCC must take the matters set out in subsection 152BCA(1) of the CCA into account. These matters include:

⁵ ACCC, *Domestic Transmission Capacity Service – 2012 Final Access Determination variation inquiry*, Discussion paper, November 2014 (DTCS FAD variation discussion paper).

⁶ Section 152BCC of the CCA.

- a) whether the determination will promote the long term interests of end-users (LTIE) of carriage services or services supplied by means of carriage services
- b) the legitimate business interests of a carrier or carriage service provider (CSP) 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
- c) the interests of all persons who have rights to use the declared service
- d) the direct costs of providing access to the declared service
- e) the value to a person of extensions, or enhancement of capability, whose cost is borne by someone else
- f) the operational and technical requirements necessary for the safe and reliable operation of a carriage service, a telecommunications network or a facility, and
- g) the economically efficient operation of a carriage service, a telecommunications network or a facility.

The ACCC may also take into account any other matters that it thinks are relevant.⁷ Compliance with a FAD is both a carrier licence condition and a service provider rule,⁸ the breach of which may lead to a pecuniary penalty of up to \$10 million for each contravention.⁹ Private enforcement of a FAD is available in the Federal Court.¹⁰

The ACCC has taken the matters set out in subsection 152BCA(1) of the CCA into account in deciding to vary the DTCS FAD. The ACCC notes that the DTCS FAD variation will apply the price and non-price terms set out in the 2012 DTCS FAD to the re-regulated routes.

Submitters supported the proposed variation of the DTCS FAD to include the re-regulated routes and ESAs.

3.2 ACCC assessment of 2012 DTCS FAD price terms against subsection 152CBA(1)

3.2.1 Subsection 152BCA(1)(a) - long-term interest of end-users

Subsection 152BCA(1)(a) of the CCA requires that the ACCC consider the long-term interests of end-users of carriage services or services supplied by means of carriage services in making an access determination (LTIE). Section 152AB(2) of the CCA requires that regard must be had to the following objectives in determining whether a thing promotes the LTIE:

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

⁷ Subsection 152BCA(3) of the CCA.

⁸ Sections 152BCO and 152BCP of the CCA.

⁹ Section 570 of the *Telecommunications Act 1997*.

¹⁰ Section 152BCQ of the CCA.

- 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, the infrastructure by which telecommunications services are supplied.

Promoting competition

The ACCC considers that the variation will promote competition in DTCS markets as it will remove obstacles for end-users gaining access to the DTCS on these particular regional routes and ESAs.

The ACCC has previously stated that the relevant markets for the DTCS includes wholesale transmission and the range of retail services (that uses transmission services) delivered over optical fibre. This includes the national long distance, international call, data and IP-related markets.¹¹ The ACCC considers that these markets continue to be the relevant markets for the supply of the DTCS.

The ACCC notes that the price of transmission services in regional areas is widely regarded as an obstacle to service providers being able to offer lower prices to retail and end-user customers, especially service providers in regional areas.

Since the release of the DTCS FAD in 2012, DTCS FAD prices have put downward pressure on market prices. This has helped remove some of the obstacles for access to wholesale transmission services and downstream retail communications services. The ACCC expects that re-regulation of routes that did not meet the ACCC's competition criteria will also benefit from the downward pressure of regulated prices.

The ACCC also expects that lower transmission prices in regional areas would eventually be passed on to end-users through lower retail prices and more competition as new retail service providers (RSPs) are encouraged to enter the market. It will also likely encourage competition in the range of retail services (that use transmission services) delivered over optical fibre. This includes wholesale data and IP-related markets.

Any-to-any connectivity

The ACCC considers any-to-any connectivity is promoted by the DTCS FAD variation. The ACCC is of the view that the price terms specified in the 2012 DTCS FAD are based on a model of prices that reflect the costs of supply and include a normal rate of return. Although those price terms are currently being reviewed, the ACCC is satisfied that the extension of the 2012 DTCS FAD price terms to the re-regulated routes will encourage competition and ensure end-users are able to communicate with other end-users in those regions.

Economically efficient use of and investment in infrastructure

In considering whether the DTCS FAD variation encourages the efficient use of, and investment in, infrastructure used to supply the DTCS, the ACCC has had regard to the requirements set out in subsections 152AB(6) and (7A) of the CCA. The ACCC considers this factor refers to the concept of economic efficiency, with its three components: productive, allocative and dynamic efficiency.

¹¹ 2012 DTCS FAD, p. 65. 2014 DTCS Declaration, pp.24-28.

Economically efficient use of infrastructure

The ACCC considers that the DTCS FAD variation will encourage the economically efficient use of existing infrastructure by facilitating access in areas with limited competition, including the regional areas where the re-regulated routes and ESAs are located. The 2012 DTCS FAD price terms which will apply to the routes and ESAs are based on prices of services provided in a competitive environment.

The ACCC considers that DTCS FAD prices are a proxy for prices that recover costs, and provide a normal return on investment. The ACCC also considers that prices are a proxy for underlying costs, and thereby reflect an acceptable level of productive and allocative efficiency. Similarly, the prices of services in competitive areas are taken to represent competitive responses to technological improvements and changing access seeker requirements, such as growing demand for high data rates and Ethernet services, and therefore reflect an acceptable level of dynamic efficiency.

In addition, the FAD price terms for recurring charges take account of the complex interrelationships between the key factors which affect price on competitive routes – distance, data rate, protection, quality of service and route type. The ACCC considers that prices based on the most important cost drivers means that regulated prices are priced efficiently. This reduces the risk that regulated prices over or under recover the efficient costs of providing the declared service.

Finally the DTCS FAD variation will provide appropriate certainty to the market. Regulatory certainty may encourage parties to commercially negotiate longer term contracts and promote more economically efficient use of infrastructure.

Economically efficient investment in infrastructure

The ACCC considers that the DTCS FAD variation is unlikely to have a direct impact on stakeholder infrastructure investment decisions given the limited scope of the variations.

3.2.2 Subsection 152BCA(1)(b) - the legitimate business interests of a carrier or CSP 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

Although the DTCS variation is limited in scope to a small number of routes and ESAs, the ACCC considers that it will provide for the legitimate business interests of the access providers. This is because regulated pricing is based on competitive market prices which reflect access providers' interests in earning a normal commercial return while allowing for the costs of investment to be recovered.

The ACCC notes that DTCS FAD prices are set at a level that corresponds to the highest quality of service (based on an access provider's network coverage, service level of protection, availability and reliability). The quality of service factor is intended to ensure that the costs of providing higher service qualities can be recovered by the FAD prices.

The DTCS FAD price terms also take account of the costs of providing geographic path protection, which is a superior and more costly form of protection. Capturing the effects of protection on pricing ensures service providers are compensated for investing in geographically diverse infrastructure.

The ACCC considers that by setting price terms based on the prices of competitive services and by taking account of the costs of providing the highest quality of services and geographic path protection, the FAD price terms take account of the legitimate business interests of access providers.

3.2.3 Subsection 152BCA(1)(c) – the interests of persons with a right to use the service

The ACCC notes that the access seekers who will be impacted by the DTCS FAD variation are limited to those purchasing the DTCS on the re-regulated routes and ESAs. The ACCC considers that the interests of these access seekers will however be promoted by the 2012 DTCS FAD price terms.

ACCC considers that the DTCS FAD price terms benefit access seekers to the extent they are able to create downward pressure on commercially negotiated prices. Downward pressure is applied because regulated pricing (which is based on the prices of DTCS services in competitive areas) is closer to efficient costs that include a normal rate of return and lower than the prices of DTCS services in uncompetitive areas, particularly in regional areas.

DTCS FAD prices are also set for services on a particular geographic route and with a particular data rate, distance, level of protection at the highest quality of service. This means the FAD price terms can be used to determine prices that are tailored to the needs of access seekers' individual circumstances which can then be used to inform commercial negotiations and investment decisions.

3.2.4 Subsection 152BCA(1)(d) – direct costs of providing access to the declared service

The direct costs of providing access to a declared service encompass those costs that are necessarily incurred (or caused) by the provision of 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, but not compensation for loss of any 'monopoly profits' that occur as a result of increased competition.

The ACCC considers that the DTCS FAD variation takes account of the direct costs of providing access to the DTCS on the re-regulated routes and ESAs via the DTCS FAD pricing for regional services. The ACCC notes that prices in competitive markets allow more generally for access providers to recoup the direct costs incurred in providing services, even though direct costs may be allocated across a number of services provided by the access provider.

3.2.5 Subsection 152BCA(1)(e) – the value of extensions and enhancements

The ACCC considers that significant capability enhancements are not required for the provision of DTCS services. Therefore this criterion is not considered to be relevant in the context of the DTCS FAD variation.

3.2.6 Subsection 152BCA(1)(f) – safety and reliability requirements

The ACCC is of the view that the DTCS FAD variation, in extending the scope of the 2012 DTCS FAD to the re-regulated routes and ESAS, will not compromise the safe and reliable operations of the service. In terms of the regulated price, the ACCC notes that they are

based on market prices that are expected to already take into account the costs of ensuring appropriate safety and reliability standards are met.

The ACCC also notes that the DTCS FAD takes into account differences in protection on certain routes. By capturing the effects of protection on pricing, the service provider is adequately compensated for investing in network enhancements to ensure protection is available and is provided with the incentives for efficient investment in protection. This enhanced protection is expected to contribute to the reliable operation of the network.

3.2.7 Subsection 152BCA(1)(g) – economically efficient operation of a carriage service, a telecommunications network or a facility

The ACCC notes that, in light of the limited scope of the DTCS FAD variation, the carriage services, networks and facilities used for the supply of the DTCS on the re-regulated routes and ESAs may be limited. Productive, allocative and dynamic efficiencies are also already considered in section 3.2.1.

3.3 ACCC assessment of 2012 DTCS FAD non-price terms against subsection 152CBA(1)

The DTCS FAD variation ensures that the 2012 DTCS FAD non-price terms set out in Schedules 2 to 8 of the FAD apply to the re-regulated routes and ESAs. The non-price terms and conditions cover:

- Billing and notifications
- Creditworthiness and security
- General dispute resolution procedures
- Confidentiality provisions
- Suspension and termination
- Liability and indemnity, and
- Network upgrade and modernisation.

3.3.1 Subsection 152BCA(1)(a) - long-term interest of end-users

The ACCC considers that the non-price terms which will apply to the re-regulated routes and ESAs promote the LTIE for the reasons set out below. The ACCC however notes that the non-price terms, apart from those relating to network upgrade and modernisation, do not directly concern the connectivity of telecommunications networks. No submitters raised issues in relation to the non-price terms and conditions.

Billing and notifications

The billing and notification provisions promote the LTIE in DTCS markets by preventing unnecessary disruptions to business activities as a result of errors or ongoing disputes. Timeframes for invoices and payment also provide certainty to access providers and reduce capital risks.

Creditworthiness and security

The creditworthiness and security terms promote the LTIE by removing unnecessary barriers for access seekers, while providing protection against capital risks for the access provider. The ACCC does not regard the terms and conditions as unnecessary or excessive to the extent that they would deter entry or hinder an access seeker's ability to compete in telecommunications markets.

Dispute resolution procedures

The general dispute resolution procedures¹² indirectly promote the LTIE. These procedures can reduce the time and expense of dispute resolution for all parties.

Confidentiality

The inclusion of confidentiality provisions is in the LTIE because it protects the confidential information of both access providers and access seekers and prevents this information from being used inappropriately.

Suspension and termination

The suspension and termination provisions promote the LTIE by ensuring that a service will not be indiscriminately suspended or terminated for trivial matters.

Liability

The liability and indemnity provisions promote the LTIE by managing the allocation of capital risk between parties. This assists parties in their commercial negotiations regarding the management of liabilities and losses and, encourages parties to make efficient investment decisions.

Network upgrade and modernisation

The network upgrade and modernisation provisions will promote competition and ensure ongoing any-to-any connectivity by ensuring that reliable services are available to compete with other services. This schedule does not however deal directly with issues that would impact on the efficient use of the infrastructure or with incentives for investment in infrastructure.

3.3.2 Subsection 152BCA(1)(b) - the legitimate business interests of a carrier or CSP 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 considers that the DTCS FAD variation provides for the legitimate business interests of access providers via the non-price terms of the DTCS FAD for the reasons set out below.

Billing and notification and, security and creditworthiness

The access provider's legitimate business interests benefits from the certainty of clear and timely billing dispute resolution processes. The terms regarding creditworthiness and security also benefit the legitimate business interests of a carrier or CSP by facilitating the management of financial risk and protecting its commercial return on investments.

¹² These general provisions do not apply to billing disputes, which are covered in Schedule 2 of the DTCS FAD.

Dispute resolution procedures

The general dispute resolution procedures achieve a balance between the legitimate business interests of the access provider and the interests of the access seeker. It is in the mutual interest of both access providers and access seekers to have certainty about processes regarding dispute resolution and the ability to resolve non-billing disputes quickly.

Confidentiality terms

The confidentiality terms promote the efficient use of confidential information, minimise costs to parties in disclosing information and promote the legitimate business interests of the access provider.

Suspension and termination terms

The suspension and termination terms are a means by which an access provider can protect its legitimate business interests in achieving a normal return on its investment, having regard to relevant risks. The terms also allow access providers to suspend or cease services in reasonable circumstances, while ensuring that access seeker's business is not disrupted inappropriately.

Liability terms

The liability terms ensure that the legitimate business interests of access providers are protected from the commercial risk of ensuring that they are not held liable for the conduct of access seekers.

Network upgrade and modernisation terms

The network upgrade and modernisation terms and conditions recognise that it is a legitimate business interest of carriers and CSPs to make network changes that are necessary to supply new or additional services or to improve the quality of existing services. The terms and conditions also take account of the practical implications of the notification requirements resulting from the network upgrades, and the timing of those notifications.

3.3.3 Subsection 152BCA(1)(c) – the interests of persons with a right to use the service

The ACCC considers that the interests of access seekers purchasing the DTCS on the re-regulated routes and ESAs will be promoted by the DTCS FAD non-price terms for reasons set out below.

Billing and notification

The billing and notification terms create obligations regarding payment of invoices and billing dispute notification which promote the interests of access seekers purchasing the DTCS on the re-regulated routes and ESAs. For example, the billing and notification set time periods for the recovery of disputes payments to allow parties time to resolve issues. Schedule 2 also requires accurate and timely billing data in order to bill end-users.

Security and creditworthiness

The security and creditworthiness terms accommodate the interests of all persons who have the right to use the declared service. Under the terms and conditions, access is not conditional upon the completion of credit checks or the provision of security. Access providers are also not allowed to determine the amount and form of security or to determine

the terms and conditions on which that security is to be maintained by an access seeker as this may unnecessarily result in access providers determining restrictive terms of access. The terms and conditions also allow an access seeker to reduce its security where the access seeker can demonstrate an improvement in its creditworthiness or a material change in circumstances.

Dispute resolution procedures

The dispute resolution procedures benefit both the legitimate interests of the access provider and the interests of the access seekers who have the right to use the declared service.

Confidentiality

The confidentiality terms serve the interests of access seekers by helping to protect the confidential information from misuse by the access provider.

Suspension and termination

The suspension and termination provisions are important for access seekers because the clauses ensure that their businesses are not disrupted inappropriately. Where there is a breach of an access agreement by the access seeker, the access provider can only suspend or terminate a service after giving sufficient notice of its intention to do so and providing an opportunity for the breach to be remedied. Where the service is terminated, an access provider must also refund to an access seeker a fair and equitable proportion of those sums paid under the FAD for a period extending beyond the date on which the supply of the service has been terminated.

Liability

The inclusion of liability and indemnity clauses is in the interests of all persons who have the right to use the service because it ensures that risks are appropriately apportioned between parties and allow parties to make repairs and compensate those who have suffered loss.

Network modernisation

The network modernisation terms strike an appropriate balance between the access provider's legitimate interests in upgrading its network and ensuring that access seekers are given sufficient time to incorporate knowledge of such upgrade into their planning and investment decisions.

3.3.4 Subsection 152BCA(1)(d) – direct costs of providing access to the declared service

The ACCC considers that most non-price terms and conditions in the 2012 DTCS FAD do not directly impact the direct costs of providing access to the DTCS, although terms relating to confidentiality, liability and network modernisation may contribute to the costs of providing access. The ACCC considers that those terms and conditions balance the interests of all parties and help to mitigate commercial risks between parties.

3.3.5 Subsection 152BCA(1)(e) – the value of extensions and enhancements

The ACCC considers that significant capability enhancements are not required for the provision of DTCS services. Therefore this factor is not considered to be relevant in the context of the DTCS FAD variation.

3.3.6 Subsection 152BCA(1)(f) – safety and reliability requirements

The ACCC considers that the DTC FAD variation takes account of the safety or reliability of carriage services and associated networks or facilities via a number of the non-price terms and conditions.

The network modernisation terms and conditions specifically relate to and thereby take into account the operational and technical requirements necessary for the safe and reliable operation of a carriage service.

The liability and indemnity clauses also address safety and reliability issues and help ensure that access provider networks are operated in a safe and reliable manner.

3.3.7 Subsection 152BCA(1)(g) – economically efficient operation of a carriage service, a telecommunications network or a facility

The ACCC considers that the DTC FAD variation takes account of the economically efficient operation of a carriage service, telecommunications network or facility via a number of the non-price terms and conditions.

Billing and notification

The billing and notification terms and conditions help to promote the economically efficient operation of a carriage service. Clear billing and dispute resolution procedures help to make operations more efficient by improving payment certainty and the timeliness of dispute resolution.

Confidentiality provisions

The confidentiality terms and conditions promote the economically efficient operation of a carriage service by outlining procedures for secure information sharing.

Suspension and termination

The suspension and termination clauses allow an access provider to suspend the supply of a service when the access seeker has failed to pay money owing or has otherwise breached its obligations under the DTCS FAD. It is not economically efficient for an access provider to be required to supply a carriage service where an access seeker is consistently defaulting on payment.

Liability and indemnity

The liability and indemnity terms and conditions help to manage risk between parties and therefore encourage the economically efficient operation of carriage services and telecommunications facilities.

Network upgrade and modernisation

The economically efficient operation of carriage services and associated networks will be encouraged by parties having greater information available to them when making investment decisions.

Appendix A -Variation instrument

Variation instrument

COMPETITION AND CONSUMER ACT 2010

Variation of Final Access Determination No. 1 of 2012 made under section 152BC by the Australian Competition and Consumer Commission

Application of DTCS FAD terms to declared routes and ESAs

1. Title

This Determination may be cited as:

Final Access (Variation) Determination No.5 of 2014 (DTCS)

2. Commencement

This Determination comes into effect on 1 January 2015.

3. Variation

Final Access Determination No. 1 of 2012 (DTCS) is hereby varied as set out below:

The table in Clause 1.1 is to be removed and replaced with:

Declared service	Expiry of declaration	Title of final access determination	Applicable schedules
Domestic Transmission Capacity Service (DTCS)	31 March 2019	Final Access Determination No. 1 of 2012 (DTCS)	1-9

Clause 1.2 is deleted and replaced with:

The terms and conditions set out in clause 4 apply to all of the domestic transmission capacity service that is covered by the declaration specified in the table in clause 1.1 as of 1 January 2015.

Date of decision: 17 December 2014