

nbn submission to ACCC – Review of Domestic Transmission Capacity Service Declaration – Discussion Paper

13 April 2018





nbn submission to ACCC – Review of DTCS Declaration – Discussion Paper

13 April 2018

Copyright

This document is subject to copyright and must not be used except as permitted below or under the Copyright Act 1968 (Cth). You must not reproduce or publish this document in whole or in part for commercial gain without the prior written consent of nbn co (**nbn**). You may reproduce and publish this document in whole or in part for educational or non-commercial purposes as approved by **nbn** in writing.

© 2018 nbn co limited. All rights reserved. Not for general distribution.

Disclaimer

This document is provided for information purposes only. The recipient must not use this document other than with the consent of **nbn** and must make its own inquiries as to the currency, accuracy and completeness of this document and the information contained in it. The contents of this document should not be relied upon as representing **nbn**'s final position on the subject matter of this document, except where stated otherwise. Any requirements of **nbn** or views expressed by **nbn** in this document may change as a consequence of **nbn** finalising formal technical specifications, or legislative and regulatory developments.

Environment

nbn asks that you consider the environment before printing this document.



1. Introduction

1. **nbn** is pleased to respond to the ACCC's Discussion Paper (**the Discussion Paper**) reviewing the declaration for the Domestic Transmission Capacity Service (**DTCS**).
2. Although **nbn** currently provides some services that may have comparable service features to the declared DTCS, the current DTCS declaration, the current declaration inquiry and the Category A Standard Access Obligations (SAOs) do not apply to the supply of eligible services by **nbn**. Instead, all eligible services provided by **nbn** are declared under specific provisions relating to NBN Corporations in Part XIC of the *Competition and Consumer Act 2010* (CCA). Part XIC provides for alternative mechanisms under which eligible services can be declared in regard to an NBN Corporation, with the result that **nbn** will be subject to the Category B SAOs set out in section 152AXB of the CCA.
3. The DTCS declaration is nonetheless important for **nbn** in terms of its effects on the following:
 - (a) The cost of managed transmission services acquired by **nbn** – while **nbn**'s demand for managed transmission services is decreasing as the **nbn**TM network rollout progresses towards completion, **nbn** does currently (and will continue to for some time) purchase managed transmission services, many of which are in regional areas and are covered by the current DTCS declaration. We therefore want to ensure that routes where competition is not sufficient continue to be covered by the DTCS declaration (and subject to the pricing in the DTCS Final Access Determination (DTCS FAD)).
 - (b) The cost of Access Seekers' backhaul from **nbn**'s 121 (permanent) POIs – only a small number of Access Seekers own their own fibre backhaul networks from all of **nbn**'s POIs, so all other Access Seekers need to buy backhaul services directly (as wholesale transmission) or indirectly (as part of a wholesale aggregation service) – 46 of the **nbn** POI routes are covered by the current DTCS declaration. It is important that the ACCC carefully assess competition on **nbn** POI routes.
 - (c) Take-up and usage of **nbn** services that have comparable service features to the declared DTCS – to the extent that **nbn**'s services are effective substitutes for declared DTCS services, they should be taken into account in the ACCC's assessment of competition in transmission markets. Importantly, to the extent that **nbn** services are considered to be effective substitutes to DTCS services, this should be reflected in decisions regarding the regulation (or otherwise) of both DTCS services and **nbn** services.
4. **nbn** has only answered those questions in regard to which we have a particular interest and/or are well-placed to answer. Accordingly, this submission is non-exhaustive in nature and **nbn** may lodge further submissions in the course of this inquiry, including on matters not addressed in this initial submission.



5. Our comments are set out below and relate to the following aspects of the Discussion Paper:
- (a) Competition criteria (section 2);
 - (b) Dark fibre (section 3);
 - (c) Length of the DTCS declaration (section 4); and
 - (d) **nbn** services as potential substitutes (section 5).

2. Competition criteria

6. **nbn** supports the ACCC's long-standing approach of excluding from the scope of the DTCS declaration those transmission routes that are effectively competitive. **nbn** also supports the continued use of the competition criteria used by the ACCC in the 2014 inquiry to assess the state of competition in transmission markets, including in respect of **nbn** POI backhaul routes.
7. However, **nbn** considers that where a fibre provider is located in close proximity to the Telstra exchange (as opposed to at the Telstra exchange), the ACCC should consider whether the costs involved in connecting to the Telstra exchange may create a barrier to entry to supplying transmission service when considered together with the other criteria already assessed. This is because the level of actual competition at the Telstra exchange will depend on the likelihood of that fibre provider connecting to the exchange and providing transmission services.

3. Dark Fibre

8. Although, as noted by the ACCC, dark fibre services are not a direct substitute for transmission services (e.g. because they require additional connecting equipment, management systems, etc.), in some circumstances dark fibre services provide an attractive alternative to managed transmission services, because they provide access seekers with greater flexibility to respond to changing demand conditions and to differentiate downstream service offerings. As data usage increases, dark fibre is becoming an increasingly attractive alternative to purchasing managed transmission services.
9. In this context, **nbn** supports the ACCC's proposed action in the Communications Sector Market Study Final Report¹ to further consult with industry on a record keeping rule to monitor the supply of dark fibre services to determine whether regulatory intervention is required.

¹ ACCC, 'Communications Sector Market Study: Final Report', April 2018, pp. 117-18.



4. Length of the DTCS declaration

10. **nbn** considers DTCS should be re-declared for a period of five years to provide certainty for all parties. As noted by the ACCC², the telecommunications industry is likely to undergo significant commercial and regulatory changes over the next few years as the **nbn**TM network rollout is completed. In this environment, it is likely that there will be an ongoing need for the DTCS declaration, although further development of the transmission market may provide the basis for progressively deregulating specific routes over time.
11. The ACCC could address any such deregulation by either varying the declaration or providing in the DTCS FAD that the Category A SAOs are not applicable to a carrier or carriage service provider (either unconditionally or subject to conditions or limitations).

5. nbn services as potential substitutes

12. As noted in the Discussion Paper, some of **nbn**'s services may be (or become) effective substitutes for DTCS services. For example, **nbn** is currently consulting with industry on the development of an **nbn**TM Enterprise Ethernet product (providing connectivity between an end user premises and an **nbn** POI).
13. To the extent that **nbn**'s services are effective substitutes for declared DTCS services, they should be taken into account in the ACCC's ongoing assessment of competition in transmission markets. This should also be reflected in decisions regarding the regulation (or otherwise) of **nbn** services. As noted by **nbn** in its submission to the ACCC's Communications Sector Market Study Draft Report³, all eligible services provided by **nbn** are regulated, while the same services supplied by other providers are, in many cases, not subject to regulation. This can place **nbn** at a significant commercial disadvantage in competing for customers, not only adversely impacting **nbn** but all RSPs that would use **nbn**'s wholesale services in order to serve downstream customers.

² ACCC, 'DTCS: An ACCC Discussion Paper reviewing the declaration for the DTCS', March 2018, p. 39.

³ **nbn**, 'Submission to ACCC in response to the Communications Sector Market Study Draft Report', November 2017, p. 10.