

13 September 2013

Grahame O'Leary
Director
ACCC

By email

CC: Priya Balachandran

Dear Mr O'Leary

RE: Discussion paper reviewing the declaration for the DTCS

The Nextgen Group (**Nextgen**) welcomes the opportunity to respond to the July 2013 Discussion Paper (**Discussion Paper**) released by the ACCC on reviewing the declaration for the Domestic Transmission Capacity Service (**DTCS**).

The Nextgen Group comprises three core businesses, namely Nextgen Networks, Metronode and Nextgen Cloud Services (formerly known as Infoplex).

Nextgen Networks is a leading and specialised supplier of wholesale fibre optic based transmission capacity to the carrier, service provider, corporate and government market segments. It operates an open access network, but does not sell services direct to consumer or residential customers.

Attached to this letter is a table setting out our responses to the majority of questions raised by the ACCC in the Discussion Paper.

Nextgen looks forward to ongoing participation in the ACCC's review of the declaration for the DTCS, and would welcome the opportunity to further discuss or clarify any of the matters raised in our submission.

Yours faithfully



Hugh Wilson
Manager, Regulatory and Public Policy
NEXTGEN GROUP

Nextgen response to various questions raised by the ACCC

ACCC Question	Nextgen response
State of competition in currently deregulated areas	
1. Are there any issues over access to different types of DTCS services in the deregulated areas? If there are any issues, please identify what those issues are, including where possible, details of those issues.	<ul style="list-style-type: none"> A risk to DTCS access in deregulated areas is the potential for access providers to employ bundling strategies, especially for services (including tail end services) which geographically straddle regulated and deregulated areas. By way of example an access seeker may be interested in securing capacity in five distinct areas, three of which are declared and two of which are undeclared — the access provider may frame their offer as “all or nothing”, denying the access seeker the opportunity to seek better commercial terms in the two undeclared areas. This type of behaviour can restrict competition in wholesale markets.
Identifying relevant markets for the DTCS	
2. The ACCC has previously identified that the relevant downstream markets for the DTCS include national long distance, international call, data and IP-related markets, mobile voice and mobile data. Are these the relevant downstream markets for which the DTCS continues to constitute an input?	<ul style="list-style-type: none"> Nextgen believes that downstream markets for the DTCS which the ACCC should also have regard to are mobiles, NBN POIs and local wholesale markets.
Clarifying aspects of the existing DTCS service description	
5. How should the DTCS service description define the geographic boundaries of each capital city and regional centre listed in the service description? What competition criteria should be applied to determine these boundaries?	<ul style="list-style-type: none"> In defining any boundaries, the ACCC should have regard to the location of both exchange serving areas (ESAs) and Fibre Serving Areas (FSAs), and be as consistent as possible with the recent DTCS FAD. Nextgen submits that a key driver of competitive dynamics on capital-regional routes is the presence of multiple providers who also have different areas of commercial focus (i.e. mobile network operators, fibre wholesalers, utility companies). Accordingly Nextgen believes that the competition criteria should take account of the different markets providers are competing in, and possibly the respective market shares of each provider.
7. Should the revised terminology used in the DTCS FAD to identify the geographic route categories be adopted into the DTCS service description? That is, should references to capital-regional route in the service description be replaced with regional route and references to inter-exchange transmission be replaced with metropolitan route?	<ul style="list-style-type: none"> Yes, on the basis of consistency between the FAD and DTCS service description.
9. Should the DTCS service description be updated to include a definition for protected DTCS services? If so, is it appropriate to adopt	<ul style="list-style-type: none"> Yes, on the basis of consistency between the FAD and DTCS service description.

the definition for protection provided in the DTCS FAD?

10. Is it appropriate to continue to define the declared DTCS (in the DTCS service description) as 'symmetric' and 'uncontended'?
 - Yes, because DTCS is essential component for the creation of downstream market offerings, as opposed to being a service for 'resale'. The counterfactual is to be 'asymmetric' and 'contended'. This type of DTCS would have major implications and limit access seekers ability to create services using DTCS as an input.
12. Should the current definitions for 'a point of interconnect', 'an access seeker network location' and 'a customer transmission point' in the DTCS service description be clarified or re-drafted to promote clarity? If so, how should those terms be defined?
 - Yes. Aspects of the current definitions are not entirely clear — for example, the meaning of a 'customer transmission point'. Is this an existing customer transmission point or a requested one? Who's, customer?
 - Nextgen submits that a 'customer transmission point' should be defined as a point at which an access provider currently delivers a service to its own customers, wholesale or retail.

Potential impact of the NBN on the structure of the DTCS market

14. What will be the likely impact of the NBN on the market structure for the DTCS over the next few years?
 - While the NBN is likely to have an impact on the market for DTCS, the nature of this is difficult to assess at the current point in time. We note, for example that key aspects of the NBN's rollout are still uncertain, the SAU has yet to be finalised and the NBN Co's application of uniform national wholesale access pricing for product that may substitute for DTCS remains unclear.
15. Will DTCS traffic be concentrated on any particular routes, such as routes between NBN POIs and capital cities?
 - Nextgen expects the market for inter-capital DTCS traffic to be highly contested, and characterised by intense price competition.

Assessing competition for the DTCS

17. What is the level of competition on transmission routes serving the 121 NBN POIs? Is DTCS traffic concentrated on particular routes to NBN POIs? Are there any routes which are currently declared which could be deregulated? Are there any deregulated routes which should be re-declared?
 - Nextgen submits that it is still too early to make any assessment on the level of competition at NBN POIs and notes that the majority of POIs are still under development, holiday periods offered to RSPs on CVC are still in place, temporary POIs remain in place and demand is highly fragmented due to incomplete rollouts in FSAs.
20. Is it appropriate to continue to use the capital-regional criteria for assessing competition on regional DTCS routes? If so, is it appropriate for the capital-regional criteria to:
 - a) require a minimum of three fibre providers to be present?
 - b) continue to use RPOs as the geographic location from which competitive fibre
 - Promoting efficient infrastructure competition remains the best means for promoting the LTIE
 - In order to encourage investment and foster competitive dynamics in transmission markets, Nextgen submits that there may be scope for the ACCC to revisit the capital-regional (declaration) criteria which require the presence of two or more fibre providers (in addition to Telstra) for an exemption to be provided
 - As noted above Nextgen believes that a key driver of competitive dynamics on capital-regional routes is the presence of multiple providers who also have different areas of commercial focus (i.e. mobile network operators, fibre wholesalers, utility companies). Accordingly Nextgen believes that the competition criteria should take account of the different markets providers are competing in, and possibly the respective market shares of each provider.
 - Nextgen is of the view that RPO's are not the best geographical point of reference for

networks must be located in order to contest a regional DTCS route? If not, where should competition be assessed from?

c) maintain the contestable distance to 1km? If not, what should be the contestable distance?

23. Is it appropriate to continue to use the inter-exchange criteria for assessing competition on metropolitan DTCS routes? If so, is it appropriate for the metropolitan criteria to require:

- a) a minimum of three fibre providers to be present
- b) that competitors be located at a Telstra exchange and/or
- c) that ESAs be connected in a contiguous cluster and adjoin a CBD ESA?

24. Should the ACCC maintain regulation of tail-end services in the 17 CBD ESAs?

assessing competition on regional DTCS routes, being almost irrelevant to decisions about the rollout of modern telecommunications infrastructure. Nextgen submits that the ACCC should have regard to ESAs, transitioning to NBN FSAs, and the approach employed in the FAD.

- Yes. Nextgen submits that the metropolitan criteria should also have regard to FSAs and how they work.

- Yes the ACCC should maintain regulation of tail-end services in the 17 CBD ESAs as these services have an integral role in facilitating the LTIE.
- Nextgen notes that the recent determination of POI locations for the NBN has, to a certain extent, reshaped the spatial requirements attached to the infrastructure (i.e. fibre) needed for the ongoing and expanded provision of transmission services, especially in CBD areas.
- Because most of the fibre which within CBD areas was largely developed for historical reasons, and newer investment has had to cater for the diverse locations of both corporate and government customers, this infrastructure can be characterised as being patchwork in nature.
- Due to issues of both scale and sequencing it is unlikely to be economically efficient for multiple transmission providers to develop the tail-end infrastructure required for meeting the needs of all end users within the market. Thus, the patchwork appearance of much CBD fibre is likely to be sustained for at least the short to medium term.
- In some CBD areas the potential for competitive tail end markets has been precluded by limited or non-existent opportunities for third party access due to the high cost of civil works and limited or full underground ducts. Such scenarios highlight the need for the ongoing regulation of tail end services in order to maintain end-to-end connectivity possibilities for all providers. .

Access to facilities for the DTCS

28. Are there barriers to entry for access to facilities relating to the DTCS? If so, what are they?

- Yes, in some instances. These barriers may have the form of building level issues, as per the example above. Nextgen notes that securing access to exchange facilities is not always as timely as it might be.

Technologies used to provide transmission services

31. Can network capacity be viewed as a potential barrier to entry on certain DTCS routes?

- Yes network capacity can be a barrier to entry, although it is not clear why such capacity issues arise in the first place — Nextgen believes that prudent investments should (a) have a long time horizon and (b) anticipate demand growth.

Length of the DTCS declaration

32. What should be the length of the regulatory period should the DTCS be re-declared?
- Nextgen believes that the length of the declaration will set the tone for investment in infrastructure competition in transmission markets — a shorter declaration period may enable greater regulator flexibility, particularly while uncertainty around implementation of the NBN is resolved, but the trade-off here will be weaker incentives for infrastructure investment.

Future issues

33. Should the DTCS service description continue to identify the geographic boundary of telecommunications networks using ESAs? If not, what alternative geographic unit should be used?
- Yes, although regard should also be had for FSAs.