
TELSTRA CORPORATION LIMITED

Submission to the Commission's Discussion Paper reviewing the declaration for the Domestic Transmission Capacity Service

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[CIC begins] = information not to be released without a confidentiality undertaking

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Contents

1. INTRODUCTION	6
2. SERVICE DESCRIPTION	7
3. COMPETITION ASSESSMENT	8
3.1 Updating the T+2 test shows competition has increased substantially	8
3.2 Applying the T+1 test may be justified	8
3.3 The introduction of NBN services is driving increased competition	9
3.4 Investment in transmission has increased	10
3.5 The availability of substitutes to fibre has grown	11
3.6 Barriers to entry have declined substantially	12
3.7 Capital to regional criteria	15
3.8 Inter-exchange route criteria	15
4. FACILITIES ACCESS	16
APPENDIX 1: RESPONSES TO QUESTIONS FROM THE COMMISSION DISCUSSION PAPER DATED 11 JULY 2013	19
APPENDIX 2: MODIFYING THE SCOPE OF THE DTCS EXEMPTIONS IS IN ACCORDANCE WITH THE LTIE	26

EXECUTIVE SUMMARY

Telstra welcomes the opportunity to respond to the Australian Competition and Consumer Commission (the Commission) discussion paper *Review of the declaration of the Domestic Transmission Capacity Service*.

Since the Commission's last review of the domestic transmission capacity declaration in 2009, end-users' demand for data, entertainment and communications along with network applications and the digitisation of information, entertainment, videos and photos, continues to grow at extraordinary rates.¹ This growth in mobile, broadband, business and video applications is driving exponential increases in backhaul bandwidth and product performance. Setting an appropriate regulatory environment will continue to be important in order to help promote the continued growth of this market and the investment required to meet end-users' needs.

The dynamic market in which transmission services are supplied is characterised by:

- higher traffic volumes which are driving increasing economies of scale and scope, providing additional revenues and attracting additional infrastructure investment by existing players and new entrants;
- a greater variety of carriage service options and technologies available for the supply of transmission services; and
- increased levels of competition and the emergence and availability of new technology and functionality driving competitive prices.

Potential suppliers and Access Seekers in this market, when faced with buy or build decisions, have over the past decade been increasingly willing and able to build where the economics have been compelling. The consequent expansion of effective infrastructure-based competition has reduced the need for regulation of domestic transmission capacity services.

Overall competition in the supply of data transmission carriage services has been increasing for some time. A current assessment of competition shows that the number of Exchange Service Areas (ESAs) now served by three or more competitors (including Telstra) has increased by [CIC begins] [CIC ends] since 2009.

In addition to the ongoing growth in demand for data (which has in turn fuelled demand for transmission services), in recent years competition in the market for transmission services has been impacted by:

- The commencement of the NBN rollout, which has incentivised investment in competitive backhaul to the 121 NBN Points of Interconnect (POI) – 80% of which were determined by the Commission to be served by at least 3 providers of transmission services as at the time of the Commission's Final Report recommending the semi-distributed POI model.
- NBN Co itself is also introducing new competitive alternatives to traditional transmission tail services.
- A range of competitive alternatives to fibre-based transmission services have continued to emerge, providing intense competition for defined segments of the market -

¹ The Australian Bureau of Statistics (2012) *Internet Activity, Australia*, December, Cat. 8153.0 reported a growth rate in data downloaded in 2012 of 60 per cent.

particularly for lower speed transmission tail services. These alternatives to fibre based transmission include copper bonding and satellite (able to compete with tail end transmission services) and new microwave technologies competing in the market for backhaul transmission services.

As a result of the intensifying levels of competition from both existing providers and new entrants, new investment and substitution, prices have declined and there is a strong case for rolling back DTCS regulation further – reflecting the significantly expanded competitive footprint since exemptions were last determined in 2009.

In Telstra's view, the clear evidence of increased competitive entry and more intensive competition in the market for transmission services since 2009 means an increased number of routes and ESAs are now subject to effective competition, with the following implications:

- Using the updated information available to it since DTCS exemptions were last determined in 2009, the Commission should exempt all routes and ESAs that now satisfy the Commission's longstanding threshold test (of three or more providers). Further, Telstra considers the three provider threshold is likely to be an overly conservative indicator of effective competition. Market evidence suggests that in many cases the initial entry of a competitive provider on a route previously served only by Telstra results in price-based competition. In Telstra's view, the Commission should generally consider the circumstances of those routes and ESAs where there are two or more providers in order to determine whether these routes and ESAs are also subject to effective competition.
- Specifically, the Commission should consider moving to exempt all transmission backhaul in those ESAs in which NBN Co has established a POI, to the extent not already exempt. As noted above, 80% of the POIs already satisfy the Commission's three provider test. With respect to those POIs that may not currently satisfy the Commission's three provider test, Telstra considers that the contestability of supply to these POIs – given the expected increase in traffic volumes transmission networks serving these locations will carry – will be likely to make build and entry even more economically viable for operators. Given the heightened level of competition expected from the NBN POIs, Telstra considers that a 2 provider test should be applied, as the additional 20% of NBN POIs should also be considered to be effectively competitive in these circumstances.
- Whilst recognising that the NBN roll out is still at an early stage, Telstra considers that in the longer term the Commission should monitor effects of the roll out as tail-end services supplied over fibre by NBN and available as a regulated service to RSPs will, once deployed, increasingly provide a competitive substitute to traditional DTCS services, specifically fibre-based transmission tail circuits.

Telstra does not believe a broadening of the scope of the DTCS service description is necessary or appropriate at this time. The current service description, having been subject to review and changed as recently as 2010 to include carrier grade Ethernet services, is well embedded in the industry, with commercial pricing constructs having been built around it. In addition, the price regulation of DTCS (as currently defined) in declared markets also operates as an effective price anchor or reference point to the supply of other types of transmission services, including services of a lower quality to DTCS such as asymmetric and contended services.

Telstra agrees that competition is promoted in markets for the DTCS where access to the relevant facilities is enabled in a timely and cost effective manner. However, Telstra strongly believes that there is no need for any further regulation of facilities access because such

access is already regulated through a number of mechanisms, including the *Telecommunications Act 1997 (Cth)*, the Facilities Access Code and Telstra's Structural Separation Undertaking. The existing regulatory regimes are well understood and are working well. Further, where there is a dispute about terms of access to facilities, there are well understood dispute resolution procedures. Given the existing regulatory mechanisms and oversight that apply to facilities access, any additional regulation of such access is likely to be either inconsistent or duplicative and in either case, it is likely that the cost of the additional regulation would outweigh the benefits of that regulation, which would not be in the LTIE.

1. INTRODUCTION

Telstra welcomes the opportunity to respond to the Australian Competition and Consumer Commission (**the Commission**) discussion paper *Domestic Transmission Capacity Service: An ACCC Discussion Paper reviewing the declaration for the Domestic Transmission Capacity Service*.

This submission is structured as follows:

- Chapter 2 addresses the scope and relevance of the service description.
- Chapter 3 considers the contemporary competitive landscape and its significance for the scope of declaration.
- Chapter 4 discusses the current facilities access regime.
- Appendix 1 contains Telstra's responses to the questions in the Commission's discussion paper.
- Appendix 2 contains an analysis of the long-term interests of end-users (LTIE).

2. SERVICE DESCRIPTION

Telstra considers the current service description is well targeted and remains in the long term interests of end users:

- it is embedded and well understood by the industry;
- commercial pricing constructs employed are reflective of and have been built around it;
- it was changed as recently as 2010 and a further variation of the service description following a full and comprehensive consultation was made to reflect in particular the emergence of carrier grade Ethernet based alternatives to traditional SDH transmission. In Telstra's view, nothing has changed since the 2010 review which would suggest that the current scope of the service description is no longer appropriate.
- Furthermore, any further changes would create unnecessary uncertainty at a time of industry transition to next generation networks and would potentially generate new costs and risks, such as unintentionally capturing nascent or emerging services and have adverse effects on investment and commercial dynamics.

The words "point to point", "uncontended" and "symmetric" in the service description remain important as these words provide necessary clarity as to what is intended to be regulated under the DTCS.

Use of these words keeps the following, non-exhaustive list of services outside the scope of the DTCS declaration: [CIC begins] [CIC ends].

Use of these words (along with other existing terms in the current service description) includes in the declaration the following services: SDH and PDH transmission, and carrier grade Ethernet.

Omitting the terms "uncontended" and "symmetric" would result in regulation of services that serve quite different markets, are used for different purposes and which are sold under very different contractual arrangements.

Further, it is not necessary to define protection as both protected and unprotected services are captured by the current scope of the DTCS service description and also the current FAD.

With the above in mind, Telstra does not believe that broadening of the scope of the service description is necessary or appropriate. In addition, the price regulation of DTCS (as currently defined) in declared markets operates as an effective price anchor to the supply of all types of transmission services, including services of a lower quality such as asymmetric and contended services.

3. COMPETITION ASSESSMENT

3.1 Updating the T+2 test shows competition has increased substantially

Competition has increased substantially since 2009 when the list of exempt ESAs was last updated. Since that time there has been considerable new fibre investment and entry of competitors so that a significant number of additional routes now meet the Commission's three provider test which has been applied in earlier declaration inquiries (also referred to as a Telstra + 2 alternative providers or T+2 test).

At the time of the most recent FAD in June 2012, the Commission did not expand upon the 111 ESAs which were determined to be exempt, as such the competitive landscape has not been updated since the last DTCS re-declaration inquiry in 2009. Telstra's most recent data indicates that competition has flourished since that time. Telstra believes that there are now [CIC begins] [CIC ends] – that satisfy the T+2 test and should be subject to exemption.

The Commission is able to confirm this increased level of competition through the data it receives under the Infrastructure Record-Keeping Rule (RKR).

3.2 Applying the T+1 test may be justified

Telstra considers the three provider threshold is likely to be an overly conservative indicator of effective competition. Market evidence suggests that in many cases the initial entry of a competitive provider on a route previously served only by Telstra results in price-based competition. In Telstra's view, the Commission should consider the circumstances of those routes and ESAs where there are two or more providers (T+1 test) to determine whether these routes and ESAs are also subject to effective competition. As the Commission noted during its deliberations on the location of NBN's POIs:

As an initial starting point, the ACCC's view is that NBN Co's POIs should be located where:

- (a) it is technically and operationally feasible for NBN Co to allow interconnection (this will usually be at the fibre exchange for each FSA);*
- (b) there are **at least two competitors** with optical fibres within a nominated distance from that location which (i) connect that site to an optical fibre network which is connected to a capital city; and (ii) deliver wholesale transmission services which are suitable for use by service providers who wish to connect to the NBN at that location; and*
- (c) there is other evidence that the particular route is, or is likely to become, effectively competitive.²*

In this context, consideration should also be given to the New Zealand Commerce Commission's (NZCC) approach to assessing competition more generally. In its 2008 determination on transmission backhaul, the NZCC came to the view that deregulating a transmission route where the incumbent is facing competition from one wholesale-only

² ACCC (2010) *Advice to Government: National Broadband Network Points of Interconnect*, November, <http://transition.Commission.gov.au/content/item.phtml?itemId=963436&nodeId=128cca6c23842d65726b861f88d6a490&fn=COMMISSION%20Advice%20on%20NBN%20POIs%20Nov2010%20PUBLIC.pdf>, p. 4.

provider does not appear to have adversely impacted upon competition.³ The NZCC continued applying the T+1 test in 2012, leading to further exemptions.⁴

3.3 The introduction of NBN services is driving increased competition

The entry of NBN Co is fundamentally changing the competitive dynamics of the transmission market. First, the rollout of the NBN will drive further investment in fibre backhaul to POIs (many of which are already served by three or more competing providers). In recommending the semi-distributed POI model, the Commission noted almost 80 per cent of the proposed POIs had 3 or more providers of transmission at the time of the Commission's Final Report.⁵ Further, where there were fewer than 3 competing transmission providers at the time of the Commission's Final Report, given the expected increase in traffic volumes transmission networks will carry, it is likely to make build and entry even more economically viable for operators. Accordingly, the Commission should consider moving to exempt all transmission backhaul in those ESAs to the extent not already exempt.

As the Commission noted in 2010:

The ACCC's view is that the semi-distributed approach would best promote the efficient use of and investment in infrastructure. Under this approach, transmission assets on competitive routes would continue to be capable of being utilised for all traffic and existing competition would be maintained, which would provide incentives for efficient use of and investment in infrastructure. Furthermore, as traffic volumes increase, this approach is likely to promote investment in infrastructure upgrades (i.e. to increase capacity) on existing routes. Although competition on these routes would also be retained under a fully distributed approach, the semi-distributed approach would likely lead to better efficiency outcomes on monopoly transmission routes. This is because NBN Co would either take over monopoly routes or compete with Telstra on these routes, thereby potentially minimising the impact that Telstra's vertical integration could have on the efficient use of NBN Co's fibre access network through reducing competition in the relevant downstream retail and wholesale markets...

The Commission believes the semi-distributed approach should be implemented by locating the POIs where competitive transmissions services are available from that location, or where the prospects of such competitive entry is high. Service providers that supported the semi-distributed approach were generally unanimous that POIs should be located where there is 'competitive backhaul'.⁶

Second, the rollout of the NBN and its 121 POIs (almost 80% of which demonstrate a high level of competition) will create strong incentives presently for carriers to build to these POIs

³ New Zealand Commerce Commission (2008) *Standard Terms Determination for the designated service Telecom's unbundled copper local loop network backhaul (telephone exchange to interconnect point)* Decision 626, 27 June, p. 45.

⁴ New Zealand Commerce Commission (2013), *NZCC 29/2012 Review of STDs for designated backhaul services*, 26 July, <http://www.comcom.govt.nz/regulated-industries/telecommunications/standard-terms-determinations/competition-review-of-uba-backhaul-and-ucll-backhaul-markets/>

⁵ ACCC (2010) *Advice to Government: National Broadband Network Points of Interconnect*, November, <http://transition.Commission.gov.au/content/item.phtml?itemId=963436&nodeId=128cca6c23842d65726b861f88d6a490&fn=COMMISSION%20Advice%20on%20NBN%20POIs%20Nov2010%20PUBLIC.pdf>, p. 25.

⁶ ACCC (2010) *Advice to Government: National Broadband Network Points of Interconnect*, November, <http://transition.Commission.gov.au/content/item.phtml?itemId=963436&nodeId=128cca6c23842d65726b861f88d6a490&fn=COMMISSION%20Advice%20on%20NBN%20POIs%20Nov2010%20PUBLIC.pdf>, pp. 54-55.

and the carriers will likely have the ability and incentives to extend services to the regions served by the NBN POI.

Third, whilst recognising that the NBN roll out is still at an early stage, Telstra considers that in the longer term the Commission should monitor the effects of the roll out and consider exempting tail-end transmission services to premises able to be served by the NBN. Tail-end services supplied over fibre by NBN and available as a regulated service to RSPs will, once deployed, increasingly provide a competitive alternative to traditional DTCS tail-end services.

3.4 Investment in transmission has increased

Yet another factor driving increased competition has been that investment by existing players and new entrants has also grown. Over the past decade, potential providers and access seekers, when faced with buy or build decisions, have been quite prepared to build where the economic case has been compelling. For example, in January 2013 Pipe Networks/TPG reported to have more than doubled its length of installed cable since 2009 to 3,800 kilometres, and a utilisation rate of 26 per cent.⁷ For the financial year 2013, Pipe Networks/TPG reports to have invested \$66.9million and connected a total of more than 1,500 buildings and over 100 data centres.⁸

Similarly, Vocus has reported a 178 per cent increase in its fibre network since December 2011 and a utilisation rate of 5.6 per cent.⁹ Amcom too reports additional fibre network investment of \$11.3 million in financial year 2013.¹⁰

In Victoria, VicTrack has rolled out a number of fibre transmission networks¹¹, including:

- In 2011-12, the 1,221.5 kilometre 10Mbps wide area network connecting all metropolitan Melbourne train stations with a scalable service to 1Gbps; and
- 196 kilometres between Geelong and Warnambool by mid-2013 as part of the Victorian Fibre Strategy.

The Commission is able to confirm this increased level of investment through the data it receives under the Infrastructure Record-Keeping Rule (RKR).

Clearly, private investment in fibre transmission is strong. Also strong is public investment in regional transmission backhaul. On 4 December 2009, the Commonwealth Government announced that Nextgen Networks had been selected to deliver its investment of \$250 million in the Regional Backbone Blackspots Program. The program was designed to deliver almost 6,000 kilometres of new optic fibre backhaul capacity of at least 10 Gbps to approximately 395,000 regional end users through at least 100 regional points of interconnect and with capacity for additional POIs every 10 kilometres, including the six priority locations of Geraldton, Darwin, Emerald, Longreach, Broken Hill, Victor Harbour, and South West Gippsland.¹² The program also introduced competition on a number of routes. As shown in

⁷ TPG (2013) *Half Yearly Results Presentation*, <http://www.asx.com.au/asxpdf/20130319/pdf/42drj46s0lvzbf.pdf>, (accessed 1 August 2013)

⁸ *Ibid.*

⁹ Vocus (2013) *Half Yearly Results Presentation*, 28 February, <http://www.asx.com.au/asxpdf/20130228/pdf/42dbnqhd23864z.pdf> (accessed 1 August 2013)

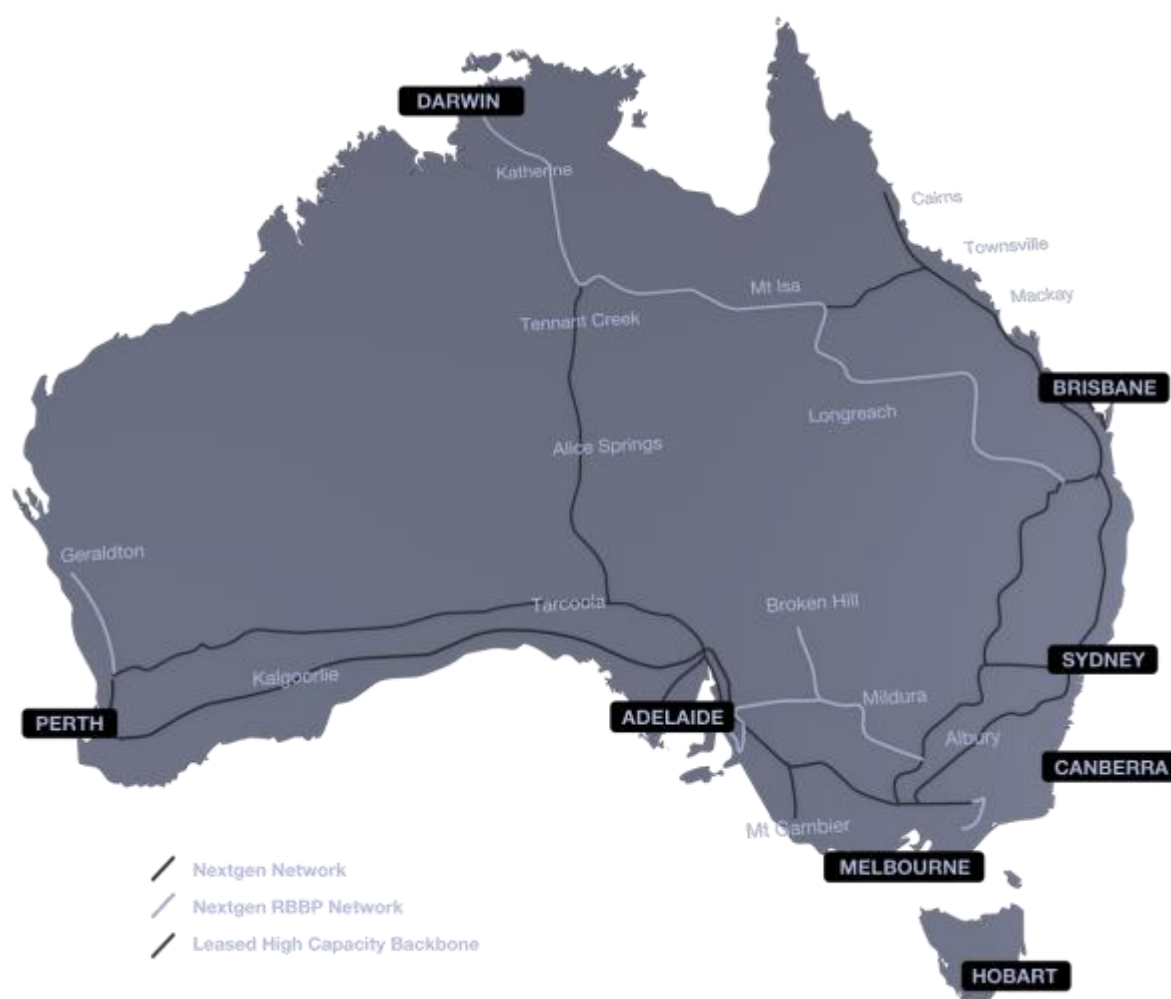
¹⁰ Amcom (2013) *Half Yearly Results*, <http://www.asx.com.au/asxpdf/20130429/pdf/42fjkn2g1pqkh.pdf> (accessed 1 August 2013)

¹¹ VicTrack "Improving Access to Telecommunications", <https://www.victrack.com.au/statewide-projects/category/improving-access-to-telecommunications> (accessed 1 August 2013).

¹² Department of Broadband, Communications and the Digital Economy, *Australian Government National Broadband Network Regional Backbone Blackspots Program*, http://www.dbcde.gov.au/_data/assets/pdf_file/0017/123605/DBCDE-NBN-Blackspots-Program-Fact-Facts.pdf (accessed 22 July 2013).

Figure 1, for example, the program duplicates Telstra's fibre investments on the Darwin to Adelaide route by connecting Darwin to Tennant Creek via Katherine and then proceeding to Adelaide via Alice Springs and Tarcoola.

Figure 1: Regional Backbone Blackspots Program



Source: <http://www.nextgengroup.net.au/services/network/transmission/rbbp/>

3.5 The availability of substitutes to fibre has grown

Another factor that has contributed to growing competition has been the substantial growth in the availability of close substitutes to optic fibre, including digital microwave, copper bonding, and satellite services. There has also been substantial growth in the supply of transmission services that fall outside of the DTCS service description, such as asymmetric and contended services, that still provide for competition to traditional DTCS in many circumstances.

Microwave

Microwave technology has evolved over recent years and now represents a genuinely close substitute to optic fibre transmission in CBD, metro and some regional areas. Indeed,

microwave offers the distinct advantage over fibre of freedom from topographical constraint, albeit with some unique environmental limiting factors that can impact performance. For example, BigAir provides a fixed wireless ethernet network solution and is now subject to the Infrastructure RKR.¹³ BigAir claims to offer symmetrical transmission speeds of up to 1 Gbps and guarantee 99.99% network availability in Sydney, Melbourne, Brisbane, Perth, Gold Coast, Newcastle and Adelaide.

Copper bonding

The technology known as copper bonding is also a close substitute for optic fibre transmission services. For example, AAPT's Mid-Band Ethernet service uses up to eight copper pairs bonded together to provide symmetric services of up to 80Mbps via ULLS.¹⁴ AAPT claims that a benefit of copper bonding is that should one or more copper pairs fail the remaining pairs continue to provide connectivity. AAPT also notes that its service is available in 224 ESAs, and it plans to expand to more than 267 ESAs by mid-2013.

Satellite

Satellite is also used for the delivery of the DTCS. Technological developments since 2009 have increased the bandwidth capacity and decreased the cost of this technology making it a stronger competitor for optical fibre transmission in certain circumstances.¹⁵

3.6 Barriers to entry have declined substantially

Barriers to entry to DTCS markets have eased over recent years as shown by the increased level of investment and the number of competitors that have entered the market. In 2010, for example, FirstPath's optic fibre network became operational and claims to offer speeds of up to 10Gbps.¹⁶

Building a new spur line is one example of a new entry decision and therefore a potential proxy for gauging barriers to entry¹⁷. Since the last declaration inquiry in 2009 there has been substantial expansion in the network of spur lines installed. For example, a comparison of snapshots of Pipe Networks/TPG's installed lines in Sydney (Figures 2 and 3) and Melbourne (Figures 3 and 4) demonstrates significant growth in that time, indicative of diminishing barriers to entry.

¹³ Big Air, "We use the air to improve your network", <http://www.bigair.com.au> (accessed 29 July 2013).

¹⁴ AAPT, "AAPT Mid-Band Ethernet", <https://aapt.com.au/mid-band-ethernet> (accessed 29 July 2013).

¹⁵

(<https://www.optus.com.au/business/Products+%26+services/Satellite/Satellite+voice+and+data/SatOffice>)

¹⁶

FirstPath (2013) <http://www.firstpath.com.au/index.php/contact-us/about-us> (accessed 5 August 2013).

¹⁷ ACCC (2008) *Telstra's domestic transmission capacity service exemption applications: Final decision*, November: p. 51.

Figure 2: Pipe Networks/TPG Sydney fibre footprint as at December 2009



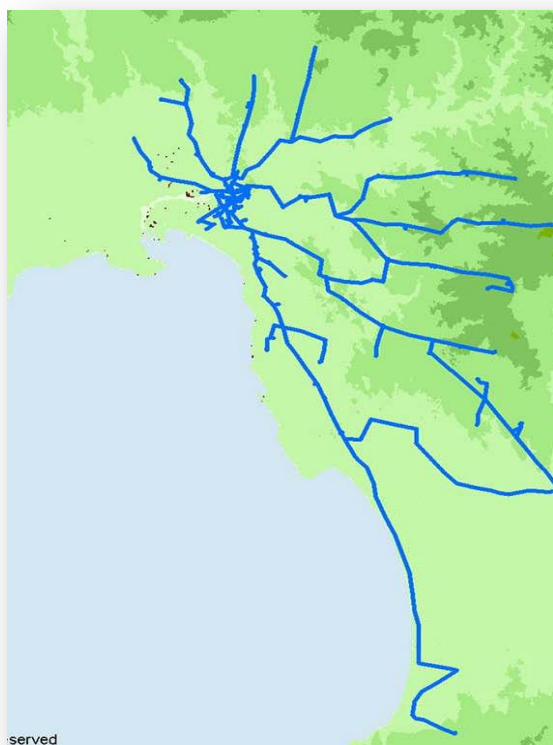
Source: Pipe Networks 2012 Annual General Meeting Presentation
<http://www.tpg.com.au/about/pdfs/TPM2012AGMPresentation.pdf>

Figure 3: Pipe Networks/TPG Sydney fibre footprint as at 2012



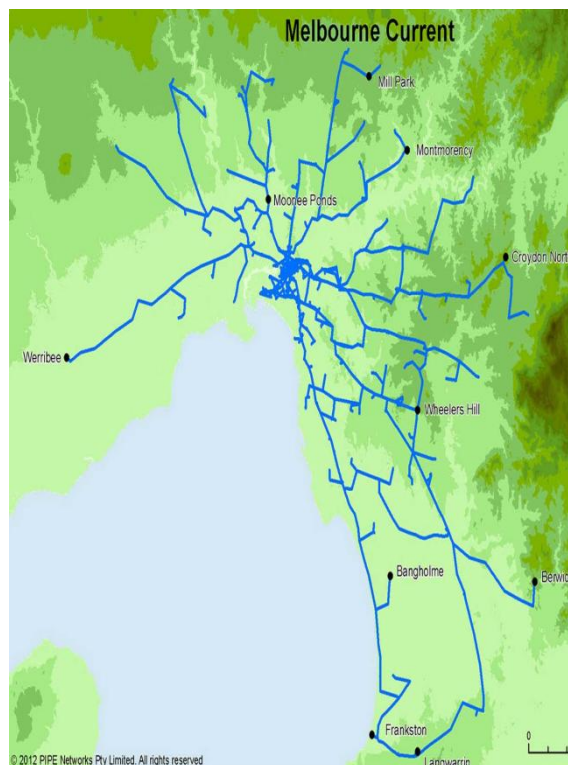
Source: Pipe Networks 2012 Annual General Meeting Presentation
<http://www.tpg.com.au/about/pdfs/TPM2012AGMPresentation.pdf>

Figure 3: Pipe Networks/TPG Melbourne fibre footprint as at December 2009



Source: Pipe Networks 2012 Annual General Meeting Presentation
<http://www.tpg.com.au/about/pdfs/TPM2012AGMPresentation.pdf>

Figure 4: Pipe Networks/TPG Melbourne fibre footprint as at 2012



Source: Pipe Networks 2012 Annual General Meeting Presentation
<http://www.tpg.com.au/about/pdfs/TPM2012AGMPresentation.pdf>

3.7 Capital to regional criteria

With respect to the competition criteria for capital-regional routes, Telstra believes that the existing requirement that transmission fibre should pass within 1 kilometre of the regional post office could be reconsidered, particularly in light of NBN deployment. First, installation of transmission fibre is economically viable over much longer distances, particularly when considering the benefits of providing backhaul to a capital city. Second, the existing competition criteria do not fully take into account the competitive effects of close substitute technologies which make spurs over longer distances economically feasible. Third, Telstra considers that where NBN POIs are located in regional centres, there is greater commercial incentive for a competitor to locate transmission to the POI and, consequently, it is likely to create contestability for supply of the service, and on that basis an even larger threshold requirement than one kilometre from the regional post office could be applied when considering competition at a regional centre with a POI.

3.8 Inter-exchange route criteria

More broadly, with respect to the inter-exchange network ("IEN") route criteria, in relation to ESAs within metropolitan areas, in Telstra's view the requirement that a competitor's point of interconnection be located at a Telstra exchange in order to be considered competitive may be too conservative. Competitors' IEN transmission may bypass some of Telstra's exchanges through the establishment of their own external POIs, and external POIs can be connected to Telstra's exchanges very easily. Consequently, an ESA may not contain a competitor's POI at a Telstra exchange yet be competitive. In particular, increasingly it will be proximity to the NBN POI, rather than the Telstra exchange, that is relevant, although most POIs are in Telstra exchanges.

Appendix 2 further summarises why modifying the scope of the DTCS exemptions is the long term interests of end users. (LTIE).

4. FACILITIES ACCESS

Telstra agrees with the Commission that competition is promoted in markets for the DTCS where access to the relevant facilities is enabled in a timely and cost effective manner. However, Telstra strongly believes that there is no need for any further regulation of facilities access services, either by way of a specific declaration of those services, or through setting terms and conditions for access via the FAD for the DTCS.

Facilities access is already regulated via a number of mechanisms, including:

- Specific regimes for facilities access are set out in Parts 3 and 5 of Schedule 1 of the *Telecommunications Act 1997 (Cth)*. Part 3 sets out the access regime for supplementary facilities, which would include access to exchange buildings (whether owned by Telstra or another carrier). Part 5 sets out the access regime for telecommunications transmission towers and underground facilities, which would include access to ducts.
- The Facilities Access Code – established by the Commission in 1999 and currently undergoing review – governs how access to certain telecommunications facilities owned by telecommunications carriers, including mobile towers and underground ducts, is provided to other carriers seeking to install their equipment on or in those facilities.
- Telstra's Structural Separation Undertaking places equivalence requirements on Telstra with respect to the reservations of exchange capacity and queue management at exchanges.
- Since 2008, Telstra has been required to comply with the 'Access to Telstra Exchange Facilities Record Keeping Rule'¹⁸, which was developed in response to complaints about delays associated with Telstra's queuing system. The purpose of the RKR was – and continues to be – to monitor queuing and capping at Telstra's exchanges and provide transparency and oversight about these processes.

Given the existing legislative requirements to provide access to facilities and the other regulatory instruments that provide oversight of the processes required to provide that access, Telstra considers that any further regulation of facilities access is unnecessary. Any such further regulation runs the risk of being either:

- inconsistent with the current legislation/regulatory instruments, hence leading to inefficiency in having to comply with different regulatory regimes; or
- duplicative, in which case there appears to be little benefit in imposing any additional regulation.

Under both scenarios, it is likely that the cost of the additional regulation would outweigh the benefits of that regulation, which would not be in the LTIE.

In any case, Telstra believes that the existing facilities access regimes work well – in the past decade there have been only [CIC begins] [CIC ends] duct access disputes, [CIC begins] [CIC ends]. As regards TEBA, in the past decade, there have been [CIC begins] [CIC ends] access disputes¹⁹, thirteen of which were resolved via dispute arbitration, with the remaining [CIC begins] [CIC ends]. This low level of disputation – and the corresponding high level of commercial agreement – is evidence of the fact that the existing facilities access regimes are

¹⁸ Accessible at <http://transition.accc.gov.au/content/index.phtml/itemId/827798>.

¹⁹ Thirteen of those disputes, involving seven customers, related to the internal interconnect cable.

working well and where there is a dispute about terms of access, there are well understood dispute resolution procedures.

Telstra acknowledges that in the past, Wholesale Customers did experience problems accessing some of Telstra's exchange buildings, however, that issue was resolved in practice in July 2008²⁰. The latest Access to Telstra Exchange Facilities RKR (for June 2013) shows that there continue to be no capped exchanges.²¹

Taking all of the above into account, Telstra believes that if the Commission were to declare facilities access or otherwise set the terms and conditions of facilities access, such action would not be in the LTIE because it would:

- i. neither promote competition nor encourage efficient investment in new infrastructure compared to the existing long standing regulatory framework for access to facilities which is well established, understood by industry and overall is working effectively;
- ii. generate uncertainty because any potential inquiry (which would need to occur as a pre-requisite to any formal declaration) is likely to discourage investments and competitive conduct by current and potential service providers who wish to access each other's facilities at a time when regulatory certainty is especially important given the planned transition to the NBN and a new industry structure; and
- iii. ignore the long term competitive dynamics that are being encouraged by the deployment of the NBN including in relation to the provision of competitive access to facilities (including from NBN Co).

With respect to access to the NBN POIs, Telstra is aware that other parties have raised concerns about the fact that a large proportion of the POIs are located in Telstra's exchanges and have suggested that they may experience difficulties in accessing those POIs.²² Telstra considers that these concerns are hypothetical at this point – Telstra is unaware of any complaints regarding access to any of the POIs located within its exchanges. That said, Telstra – and other service providers²³ – have had some difficulties in accessing some of the temporary POIs, which are *not* located in Telstra exchanges, although those issues have been resolved.

Finally, Telstra notes that in its view the Commission does not have the power to declare access to facilities that are subject to Part 3 or Part 5 of Schedule 1 to the Telco Act under Part XIC of the *Competition and Consumer Act 2010* (Cth) (**CCA**).

Parliament has established a specific regime to regulate access to facilities, which is set out in Parts 3 and 5 of Schedule 1 of the *Telecommunications Act 1997* (Cth). In Telstra's view, it could not have been Parliament's intent to have two different access regimes (the *Telecommunications Act* regime and the regime in Part XIC of the CCA) applying to access to the same facilities. Accordingly, Telstra considers that it is beyond the scope of the Commission's powers to declare access to facilities under Part XIC of the CCA and that the appropriate legislative regime for regulating facilities access is set out in Schedule 1 of the

²⁰ See Telstra media release, "Telstra condemns unnecessary ACCC court action", 19 March 2009. Further, see *Australian Competition and Consumer Commission v Telstra Corporation Limited* [2010] FCA 790 (28 July 2010)

²¹ See

<http://transition.accc.gov.au/content/item.phtml?itemId=1123390&nodeId=9e20677792adebbd02406b2786c2283d&f=n=Telstra%20Exchange%20Access%20RKR%20summary%20-%202013-06.pdf>

²² See Submission by AAPT Limited (22 March 2013) to Australian Competition and Consumer Commission *Review of policies and procedures relating to the identification of listed NBN points of interconnect*, March 2013; and Nextgen networks, *ACCC Review of NBN POI Arrangements – Public Version*, March 2013.

²³ AAPT, March 2013, p2.

Telecommunications Act. In support of this view, Telstra notes that the separate operation and distinct application of parallel regulatory regimes has been endorsed by the recent changes to the *Telecommunications Act* and the CCA. More particularly, despite making considerable changes to both Acts, Parliament has not sought to combine the two regimes.

Telstra further notes that the Commission also appears to have endorsed the separate operation and distinct application of parallel regulatory regimes for access to facilities and access to services in the Commission's FAD for the Domestic Transmission Capacity Service dated June 2012. In that determination, the Commission decided not to include non-price terms relating to facilities access even though it had proposed such terms in its draft determination. The Explanatory Statement to that FAD explains that this decision was made on the basis that there would already be arrangements for facilities access in place between the access seeker and the access provider. Importantly, the Commission also notes as part of its reasons for this decision that "*facilities access remains subject to regulation under the Telecommunications Act and the ACCC Facilities Access Code.*"²⁴

²⁴ See page 48 of the Explanatory Statement.

APPENDIX 1: RESPONSES TO QUESTIONS FROM THE COMMISSION DISCUSSION PAPER DATED 11 JULY 2013

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.**

Telstra is not aware of any issues in acquiring access to different types of DTCS services in deregulated areas. Telstra continues to compete and supply services in deregulated areas, and faces strong competitive pressure from alternative transmission product offerings.

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?**

Data carriage transmission services are an essential input to the delivery of a number of downstream markets. These include national long distance, international call, mobile voice and data, and data and IP-related markets. Telstra considers that, for the purposes of declaration, it is not necessary to define the relevant markets with absolute precision because the necessity of transmission as an input to the supply of a range of downstream services is well established.

However, Telstra does not agree with the Commission's characterisation of the relevant downstream markets as "...the relevant retail services (that can be supplied using transmission services) which are delivered over optical fibre..."²⁵. This characterisation appears to unintentionally exclude those relevant services delivered over close substitutes such as copper bonding, microwave radio and satellite delivery which Telstra considers should be taken into account as part of the overall competitive environment (see section 3.3 for further discussion.)

3. **Are there any additional markets in which the DTCS is an input?**

Refer reply to question 2 above.

4. **Are there any substitutes for the DTCS in any of the current geographic markets that have developed since the 2009 Declaration Decision?**

There are, at least in some market segments, numerous close substitutes for some fibre-based DTCS including microwave, copper bonding and satellite services that have become more widely available and less costly since the 2009 Declaration Decision. (See section 3.3 for more detail.)

In terms of emerging substitutes to DTCS more generally since 2009, whilst some new Ethernet-based technologies continue to develop (ie: other than Ethernet over SDH) such development is nascent and none should be considered to be a close substitute at this time to DTCS.

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?**

²⁵ ACCC (2013) *Domestic Transmission Capacity Service: An ACCC Discussion Paper reviewing the declaration for the Domestic Transmission Capacity Service*, July: pp. 14-15.

Telstra believes that a practical approach to defining capital cities is to align their boundaries with the now well understood FAD geographic boundaries. This will ensure consistency between pricing and exemptions and remove any ambiguity.

6. **During commercial negotiations, how do parties typically interpret the geographic boundaries of each capital city and regional centre listed in the DTCS service description?**

For capital cities, Telstra refers to the 2010 DTCS FAD and Commission guidelines such as the *DTCS Route Category Workbook (June 2012)* and, for regional centres, to historical data relating to the call charge areas.

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*?**

Telstra agrees that the terminology for classifying geographic route categories in the DTCS service description should be made consistent with the DTCS FAD. As noted, a practical approach to defining geographic boundaries is to align boundaries in the exemption process with the now well understood and accepted FAD pricing boundaries. This will ensure consistency between pricing and exemptions and remove any ambiguity.

8. **Is it appropriate to reclassify the Sydney-Campbelltown route in the DTCS service description as a deregulated metropolitan route?**

Telstra has no objections to this reclassification in general. Telstra notes that the Campbelltown ESA is located within the Sydney capital city boundary and is currently exempted from declaration as a capital to regional route.

9. **Should the DTCS service description be updated to include a definition for protected DTCS services? If so, is it appropriate to adopt the definition for protection provided in the DTCS FAD?**

No, as Telstra believes that protection is a commercial issue and is constantly evolving. In any event, the FAD pricing has taken into account explicitly the highest level of protection in the inter-exchange network so, in practice, there is no need to define protection. Furthermore, it is not necessary to define protection as both protected and unprotected services are captured by the current scope of the DTCS service description and also the current FAD.

10. **Is it appropriate to continue to define the declared DTCS (in the DTCS service description) as 'symmetric' and 'uncontended'?**

Telstra considers the current service description is appropriate and remains in the long term interests of end users for the reasons set out in section 2.

11. **Can service availability for the DTCS be described using another measure?**

As per the response to Question 10, Telstra believes that the service description appropriately describes the DTCS and is well understood by the industry.

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?**

Telstra does not believe that the definitions of these terms require revision as they currently best capture the appropriate wholesale input used by service providers to deliver end to end services. Importantly, these definitions set out clearly what is declared and what is outside the scope of the declaration and any changes to these definitions could risk extending the reach of the declaration to unintentionally capture a broader range of services (eg: resale services).

13. Should references to the term 'exempt' in the DTCS service description be replaced? What other term should be used?

No, Telstra considers that 'exempt' is a widely understood and utilised term for routes not subject to declaration and should be retained.

14. What will be the likely impact of the NBN on the market structure for the DTCS over the next few years?

The entry of NBN Co is fundamentally changing the competitive dynamics of the transmission market as it is likely to drive much more intense competition. Some of the specific ways in which the NBN is likely to impact the DTCS market over the next few years include:

- The Commission selected the location of the 121 NBN POIs primarily on the basis of the levels of competition in the ESAs, and they should therefore pass any reasonable test of competition. Consequently, there is a strong case that exemptions should be issued for all routes where NBN POIs are located as they are effectively competitive.
- Whilst recognising that the NBN roll out is still at an early stage, Telstra considers that in the longer term the Commission should monitor the effects of the roll out as tail-end services supplied over fibre by NBN (available as a regulated service to RSPs) will, once deployed, increasingly provide a competitive substitute to traditional DTCS services, specifically fibre-based transmission tail circuits.

15. Will DTCS traffic be concentrated on any particular routes, such as routes between NBN POIs and capital cities?

Routes between NBN POIs and capital cities will carry the most traffic and they will be the most competitive. However, this not a material consideration as these are all competitive routes.

16. Are the current high data rate NBN Access Service services (such as the 100/40Mbps service) a comparable substitute for low data rate DTCS services, such as the 2Mbps DTCS?

Telstra believes that there is merit in assessing the level of competition and competitive tension that NBN asymmetric services may bring to the market in particular for low data rate DTCS services. Asymmetrical high bandwidth services can be close substitutes for symmetric services up to lower (upload) speeds.

Moreover, the assessment of competitive tension should not be limited to NBN based services, as other higher bandwidth services are being used as alternatives. For example, AAPT's Mid-Band Ethernet service provided via ULLS for the business market – a service which operates at up to 80 Mbps, and with similar levels of performance as an SDH tail-end service.²⁶ AAPT notes that its service is available in 224 ESAs, and it plans to expand to more than 267 ESAs by mid-2013.

²⁶ AAPT, "AAPT Mid-Band Ethernet", <https://aapt.com.au/mid-band-ethernet> (accessed 29 July 2013).

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?

The level of competition on transmission routes serving the 121 NBN POIs is high and – for this reason – the Commission recommended the adoption of these locations. There are currently a number of declared routes which could be deregulated because, as noted earlier, there are an additional [CIC begins] [CIC ends] which satisfy the T+2 test and should be subject to exemption. The Commission is able to confirm these routes with the information contained in the Infrastructure RKR.

As the 121 NBN POIs were determined based on the expected level of backhaul competition, the expected surge in demand for transmission to these locations will be driven by the aggregation of NBN access services through the trunking of traffic back to a capital city. The ACCC should use a lower competition threshold for backhaul from NBN POIs than the presence of at least two fibre providers. Backhaul suppliers providing services to NBN POIs are offering unbundled aggregation to a customer's point of presence which obviates the need for an RSP to locate equipment in the NBN POI.

18. What is an appropriate competition criteria for assessing DTCS competition at, or near, NBN POIs?

Telstra considers that the levels of competition at or near NBN POIs are high by definition as this was the key criteria upon which the Commission determined the 121 NBN POIs. Consequently, the appropriate competition criteria at, or near, NBN POIs should be the two provider (T+2) test as Telstra believes that in the circumstances of the NBN POI locations there is and will be effective competition for an NBN backhaul at all 121 NBN POIs.

19. Are there any regional DTCS routes which are competitive and could be removed from the scope of the DTCS declaration?

Telstra considers that there are additional regional DTCS routes which satisfy the competition criteria and could be removed from the scope of the DTCS declaration. For example, Telstra is given to believe that the Allora ESA near Warwick, Queensland satisfies the T+2 test and should be removed from the scope of the declaration. The ESA of Ararat in Victoria is another example. The Commission can confirm these routes, amongst others, through the data contained in the Infrastructure RKR.

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:

- **require a minimum of three fibre providers to be present?**
- **continue to use RPOs as the geographic location from which competitive fibre networks must be located in order to contest a regional DTCS route? If not, where should competition be assessed from?**
- **maintain the contestable distance to 1km? If not, what should be the contestable distance?**

Specifically in relation to NBN POI locations, it may be appropriate to consider whether NBN Co's entry and subsequent demand for competitive backhaul will change the dynamic of the transmission market in an area greater than a 1 kilometre radius of the NBN POI. The 121 NBN POIs create strong incentives for competitors to build to these points even if they are

currently more than 1 kilometre away. To the extent that an alternative provider is nearby, given the strong incentives it has to build to the POI, it is likely to create contestability for supply of the service, and on that basis a larger threshold than 1 kilometre for considering competition at a regional centre with a POI may be warranted.

As such, it may be appropriate to consider supplementing the existing 1 kilometre rule to separately recognise competitive fibre networks located near a regional NBN Co POI. Telstra considers the competitive impact of the NBN Co POI is likely to extend beyond the current 1 kilometre threshold.

21. If the capital-regional criteria should not be used to assess competition on declared regional routes, what should the competition criteria be?

The capital-regional competition criteria should be re-considered to take account of the competitive effects of the NBN POIs on regional routes, particularly the requirement that the route have two or more fibre providers (in addition to Telstra) rather than one or more providers (in addition to Telstra) as set out in section 3.2.

22. Are there any metropolitan DTCS routes which are competitive and could be removed from the scope of the DTCS declaration?

With respect to inter-exchange routes, Telstra considers that competition has increased and the Commission can utilise the data in the Infrastructure RKR in determining which metropolitan DTCS routes are competitive and could be removed from the scope of the declaration.

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

Telstra believes that the requirements for a minimum of three fibre providers and that competitors be located at a Telstra exchange may no longer be appropriate as it is the contestability of a route that matters rather than the presence of at least two competitors in addition to Telstra at a Telstra exchange.

With this in mind, Telstra supports the NZCC approach to assessing competition more generally (excluding the role of the NBN for simplicity). This approach utilises a T+ 1 (wholesale provider) test which means that there are at least two wholesale provision options in the market. Refer section 3.2.

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

No, in CBDs, tail-end transmission services are not enduring bottlenecks as alternative fibre providers, microwave and copper bonding using ULLS are all available as close substitutes. An analysis of the Infrastructure RKR should be utilised to confirm that tail-end services are not enduring bottlenecks. Moreover, the costs involved in competing are not significant. For example, Telstra's costs for connecting fibre between a CBD fibre access point and a building within 500 metres range between [CIC begins] [CIC ends].

25. What substitutes are available for the tail-end DTCS?

Close substitutes for tail-end, fibre-based DTCS available in the market include microwave and copper bonding. See the response to Question 4 for more detail.

26. What competition criteria should the Commission use when assessing levels of competition in tail-end markets?

Telstra considers that the same competition criteria should be applied to tail-end, fibre based services as applies in relation to capital or regional transmission. Refer sections 3.2 and 3.3.

27. Are high bandwidth NBN Access Services (such as the 100/40Mbps services) a comparable substitute for low bandwidth (such as 2Mbps) tail-end DTCS services?

As per the response to Question 16, Telstra considers that asymmetrical high bandwidth services may be considered comparable substitutes for symmetric services up to the lower (upload) speed and may be capable of providing competitive constraint for the supply of lower speed DTCS tail services.

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

Telstra agrees that competition is promoted in markets for the DTCS where access to the relevant facilities is enabled in a timely and cost effective manner. However, Telstra strongly believes that there is no need for any further regulation of facilities access because such access is already regulated through a number of mechanisms, including the *Telecommunications Act 1997 (Cth)*, the Facilities Access Code and Telstra's Structural Separation Undertaking. The existing regulatory regimes are well understood and are working well. Further, where there is a dispute about terms of access to facilities, there are well understood dispute resolution procedures. Given the existing regulatory mechanisms and oversight that apply to facilities access, any additional regulation of such access is likely to be either inconsistent or duplicative and in either case, it is likely that the cost of the additional regulation would outweigh the benefits of that regulation, which would not be in the LTIE. For more detail see Chapter 4.

29. Have the alternative technologies to fibre-optic cable become more or less viable in the provision of DTCS since the 2009 Declaration Decision? Are they likely to increase or decrease in importance in the future?

The technologies which are close substitutes for optic fibre cable have become more viable since the 2009 Declaration Decision as their availability has increased and price has decreased. Their substitutability for optic fibre cable is also likely to increase as their availability continues to increase. See the response to the Question 4 for more detail.

30. What are the substitutes for the DTCS?

As discussed earlier, the close substitutes for fibre-based DTCS currently available in the market are microwave, copper bonding and satellite services. See the response to Question 4 for more detail.

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

Telstra agrees with the Commission's view expressed in the past that excess capacity does not pose a barrier to market entry.²⁷ There are likely to be two beneficial aspects that will help promote the LTIE. First, as it is anticipated that demand will continue to grow, excess capacity

²⁷ ACCC, (2008) *Telstra's domestic transmission capacity service exemption applications: Final Decision*, November: p. 74.

– where it exists – will be available and utilised to meet it. As with most capital investments, enhancements to transmission capacity are generally ‘lumpy’ in nature; that is, they tend to be large and indivisible. Consequently, over the course of an investment cycle, there may be periods when supply exceeds demand and other times when the reverse is true. The second beneficial aspect is that excess capacity is likely to exert a downward pressure on prices for transmission services.

32. What should be the length of the regulatory period should the DTCS be re-declared?

Telstra believes that a declaration period of 3-5 years for non-exempt services would be appropriate and would assist in promoting industry certainty and stability at this important time of industry transition to NBN and NGN-based networks.

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?

For practical purposes, the ESA remains the appropriate geographic unit of telecommunications networks. For instance, transmission routes are identified and categorised by the ESAs located at either end. Therefore, it is widely understood that under the proposed alignment of route categories, a ‘capital’ route is one with capital city ESAs at either end as defined by the geographic boundaries of capital cities in the DTCS FAD. However, a ‘regional’ route may have a capital city and regional ESAs at its ends or two regional ESAs.

One potential alternative to the use of ESAs is the use of the NBN’s geographic unit – the ‘Fibre Service Area Module’ (FSAM). The difficulty with adopting the FSAM as the geographic unit is that only 15 FSAMs have been fully or partly activated for service at this time and this represents less than half of all FSAMs. Consequently, it is likely that in practice the exchange-based network architecture will remain the dominant architecture for most of the next regulatory period, which at its longest would expire after 5 years on 31 March 2019.

34. Would the service description adequately capture the DTCS markets while the NBN is being rolled out?

Yes, the service description continues to be adequate to capture the DTCS market while the NBN is being rolled out, particularly over the course of the next regulatory period.

APPENDIX 2: MODIFYING THE SCOPE OF THE DTCS EXEMPTIONS IS IN ACCORDANCE WITH THE LTIE

According to the applicable legislative regime, DTCS should remain declared only if the Commission is satisfied that declaration will promote the LTIE. The form of any declaration (including the service description) should also reflect this purpose of the regime. In determining whether a particular thing promotes the LTIE, subsection 152AB (2) of the CCA requires the Commission to have regard to the extent to which the thing is likely to achieve the following objectives:

- 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 investment in, infrastructure by which listed services are, or are likely to become capable of being supplied.

Telstra's view that the scope of exemptions should be modified accords with these objectives, for the reasons summarised below.

Promotion of Competition

The Commission has stated that with regard to the DTCS:

In determining the extent to which competition is promoted in markets for declared services, the Commission must have regard to the extent to which obstacles to end-users gaining access to these services are removed. The Commission would typically also consider:

- *whether conditions leading to an improvement in competition would be likely to be established; and*
- *the extent of the competitive impact and the likelihood of that extent.*

Importantly, the promotion of competition will not necessarily always be achieved merely by an increase in (or prevention of a decrease in) the number of participants in a market...Rather, the level of competition is assessed by reference to the vigour of competition between firms, regardless of their number.²⁸

With respect to the promotion of competition, Telstra considers that the deregulation of eligible DTCS routes has promoted competition by attracting new entrants, new investments and a larger range of technological substitutes which are all competing intensely, resulting in lower prices for end-users.

Any-to-any connectivity

Telstra considers that the deregulation of DTCS routes does not pose a risk to the requirement for any-to-any connectivity, particularly as DTCS does not require user-to-user connections.

Efficient use of, and investment in, infrastructure

With regard to the criterion for efficient use of, and investment in, DTCS infrastructure, the Commission has stated that it must have regard to the following matters:

- *whether it is, or is likely to become, technically feasible for the services to be supplied and charged for (having regard to the technology that is in use, available or likely to become available; whether the costs that would be involved in supplying,*

²⁸ ACCC (2013) *Domestic Transmission Capacity Service: An ACCC Discussion Paper reviewing the declaration for the Domestic Transmission Capacity Service*, July: pp. 40-41.

and charging for, are reasonable or likely to become reasonable; and the effects or likely effects, that supplying and charging for, the services would have on the operation or performance of telecommunications networks);

- *the legitimate commercial interests of the supplier or suppliers of the services, including the ability of the supplier or suppliers to exploit economies of scale and scope; and*
- *the incentives for investment in the infrastructure by which the services are or will become capable of being supplied.*²⁹

With respect to each of these criteria, Telstra considers that:

- The deregulation of eligible DTCS routes has not had an adverse impact on the technical feasibility of supplying and charging for DTCS services but, on the contrary, as the emergence of competitive close substitutes such as copper bonding has shown, deregulation has helped incentivise alternative technical means of supplying and charging for transmission services;
- Competition has resulted in the deregulation of eligible DTCS routes and in that time competitors have been competing vigorously on the basis of economies of scale (as evidenced by the rapidly growing networks discussed above) as well as in economies of scope (evidenced by the growing range of technological substitutes available in the market). In the time since the exemptions were last set the number of routes evidencing these competitive conditions has increased further obviating the need for continued regulation; and
- The deregulation of eligible DTCS routes has seen sizeable new investments by many competitors being made in DTCS infrastructure (discussed above).

²⁹ ACCC (2013): p. 41.