

21 March 2016

Ms Clare O'Reilly
General Manager Mobiles, Transmission and Consumer
Infrastructure Regulation Division
Australian Competition and Consumer Commission
GPO Box 3648
Sydney NSW 2001

By email: clare.o'reilly@accc.gov.au

Dear Clare

BASS STRAIT UPLIFT PROPOSAL

Thank you for the opportunity to provide comments on the proposed increase in the Bass Strait uplift from 40% to 140% to reflect the additional costs associated with providing services over submarine cabling. This increase is unjustified and excessive. Optus does support a doubling of the mark-up to 80%. This should ensure that the Basslink charges still reflect efficient market prices.

Optus recognises the reasoning put by the ACCC for this increase in the mark-up. This relies heavily on the need to enable Basslink to recover its costs. Basslink requests that the 2012 FAD rates remain "*in order for Basslink to recover its costs of operations.*" Optus assumes this is in reference to s 152BCA(1) of the *Competition and Consumer Act* (the Act); specifically sub-sections (b) and (d). It is useful to note that these sub-sections do not grant a right of full cost recovery to access providers. Costs can only be recovered where they are legitimate and not reflective of monopolistic power.

The ACCC is obliged to balance these considerations against the other matters in ss 152BCA and 152AB, including:

- The long-term interest of end-users;
- The promotion of competition;
- Economically efficiency use of, and investment in, infrastructure; and
- Interests of access seekers who wish to acquire DTCS.

Basslink could rely on claims relating to the direct costs of providing the service. The ACCC requested Telstra and Basslink to provide additional costing information, but "*it is difficult to accurately estimate the actual costs incurred.*" Optus puts that the party complaining that regulated charges are not sufficient to recover the direct costs of providing the service has a positive obligation to demonstrate what the actual direct costs are. It is not clear that Basslink has provided sufficient evidence on its direct costs. Given this, it is not clear how it can claim there is under-recovery.

If Basslink cannot, or will not, provide such information the ACCC should give less weight to its evidence.

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Basslink has a degree of market power in the provision of DTCS to Tasmania. This is due to the need to acquire physically diverse transmission links – meaning access seekers need to acquire one service from Telstra and one from Basslink. This market power enables Basslink to price above the competitive level.

Basslink also claims that competition from Telstra “*serves to mitigate any divergence between actual costs and efficient costs.*” Optus queries this claim given the wide difference between Telstra and Basslink quotes. Basslink charges are far in excess of Telstra’s and as such Optus would only acquire services from Basslink due to its market power over diversity.

[CiC]

Optus has concerns over the constant use of the term ‘cross subsidise’ in Basslink’s submission. There is no evidence of any cross subsidy present in any DTCS service provided in the market; and Basslink has provided no evidence in its submission. Cross subsidisation has not been an issue to-date in this Inquiry. Further, it is not correct that the proposed DTCS pricing leads to below cost pricing; especially where Basslink has been unable to provide evidence of its actual costs. Optus has provided evidence showing that the proposed FAD prices are still above market pricing on competitive routes.

It is also not clear that Basslink’s statements are accurate that it is a standalone telecoms company only providing submarine cable services without other services that “*could help subsidise its DTCS between Tasmania and the mainland*”.¹ Basslink Telecoms is within a group of companies owned by Keppel Infrastructure Trust, with assets covering gas, electricity, telecoms and desalination, and a revenue of S\$500 million for FY15.²

Optus has analysed recent market prices present for services over Bass Strait. This analysis shows that a mark-up of 80% is reasonable and is consistent with the decline in prices for all other DTCS types. This is shown below.

[CiC]

Optus is happy to discuss further issues raised in this letter, or more broadly in relation to Bass Strait pricing.

Yours Sincerely

Luke van Hooft
Manager Economic Regulation

¹ Basslink, p.9.

² <http://www.keppinfratruster.com/file/KIT%20Full%20Year%20Unaudited%20Financial%20Statements.pdf>