

**Submission to Draft Decision on Domestic Transmission Carriage Service FAD**

**October 2015**

The Competitive Carriers Coalition welcomes the opportunity to comment on the draft DTCS pricing determination. The history of regulation of the DTCS, especially the difficulties in settling pricing that reflects costs and allows competitive access, has been a focus of concern for CCC members for many years. The CCC welcomes the Commission’s attempts to achieve more realistic regulated prices through benchmarking.

The CCC believes the benchmarking exercise had been complicated by both recent developments in competitive markets and increasing differences in the characteristics of the longer haul, higher capacity transmission services between cities and between regional areas and cities and the shorter distance, lower capacity access services, both of which are addressed in the draft decision.

The CCC is concerned the draft pricing on metropolitan, lower capacity routes does not reflect market reality. In many areas that have been removed from regulated access prices for competitive transmission related access services have fallen sharply and continue to do so. A range of alternative services from alternative providers have emerged in recent years in competitive metropolitan locations, but the impact of these services is not reflected in the Commission’s draft pricing.

The CCC submits this suggests the sample data used in the pricing model is inadequate and needs to be expanded to capture substitute services that have emerged in recent years. The absence of this data from the sample could leave the model relying only on data that related to the least informed buyers or buyers that have the least bargaining power, which would skew the sample away from those genuinely competitive parts of the market.

The absence of this data means the output from the model for these metropolitan, shorter run routes is unreliable. In some cases, the CCC understands the result is large price rises. This is clearly counter-intuitive and in itself requires deeper examination by the Commission of the market from which the competitive benchmark data is derived.

Several factors could be causing this data to be unrepresentative. These include:

* Industry consolidation has seen the largest retail providers vertically integrate with previously independent wholesalers, causing transparency into their up stream price inputs to be lost.
* Alternative access services, including dark fibre, are more readily offered by entrant competitors than had been the case. This has meant the declared services or their equivalents represent a much smaller part of the market. However, they remain important where competitors are not active because Telstra does not offer dark fibre.
* Telstra itself has created alternative tail access services outside the declared product set definition which are increasingly used by wholesale customers because they are offered on better terms.

The effect of this is that the benchmark services used to populate the pricing model do not represent market reality. The DTCS service does not represent the competitive market price for higher capacity access services. Competitive markets have moved away from those particular services.

The CCC is deeply concerned that the Commission’s process has reached this point without a “reality check”. It is counter intuitive in the extreme that the prices for services in metropolitan areas should rise where there has demonstrably been substantial new entry in the markets used to benchmark these services.

Questions about the quality of the data set pertaining to tail access services have been raised in submissions from access seekers. The CCC believes it should be clear to the ACCC itself that there was something wrong with the methodology when the output of the model was price rises of the magnitude of 40 percent for some lower capacity services.

The output from the model suggesting such dramatic price rises for some services, in the face of big falls in competitive markets and on long distance routes, should have alerted the Commission to a risk of a failure of the model in these markets and caused it to pause.

Having proceeded to this point, however, the CCC recommends that the best course from this point is for the Commission to proceed to a final FAD in relation to longer distance backhaul services, essentially those intercapital and regional routes covered by the declaration that clearly have not experienced the substitution of alternative services and the subsequent falls in prices. However, the Commission should delay its decision in relation to tail access transmission services and expand its data set to more accurately reflect market conditions.

Access to this bottleneck infrastructure at fair prices in regulated areas is a critical input to competitive service providers. The risk to competition of proceeding with a clearly flawed data set for tail access services is too great to justify continuing to a final FAD on these services without a re-examination of the flaws causing the obvious pricing discrepancies. Entrant and non-vertically integrated competitors would be deeply disadvantaged against vertically integrated competitors, driving greater consolidation and foreclosing competitive entry.

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