

**Optus Reply Submission to**  
**Australian Competition and Consumer Commission**  
**on the**  
**Draft report for the declaration of the Domestic Transmission**  
**Capacity Service**

**Public Version**

**March 2009**

## **1. Introduction**

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- 1.1 In November 2008, the Australian Competition and Consumer Commission (ACCC) announced that it would conduct a review of the declaration for the domestic transmission capacity service (DTCS) and released a discussion paper in which it sought the views of interested parties on a number of issues. Optus responded to the ACCC's issues paper in December 2008 and provided submissions and evidence on the issues identified in the paper.
- 1.2 In February 2009 the ACCC released a draft report on 'reviewing the declaration for the domestic transmission capacity service' in which it proposed to vary the current declaration of the DTCS to exclude the routes and exchange service areas (ESAs) due to be exempted in accordance with the ACCC's Final Exemption Decision of November 2008.
- 1.3 Optus welcomes the opportunity to respond to the ACCC's draft report. The DTCS is a crucial input to competition in the telecommunications industry. Its declaration has created significant competitive benefits for consumers of downstream services.
- 1.4 Optus considers that the proposed decision set out in the draft report is both measured and reasonable. Optus does not take the same view as the ACCC on all issues, and we stand by the views expressed in our December response to the issues paper. Nevertheless, we appreciate that the ACCC has undertaken a thorough review of the state of competition in the relevant markets and reached a considered position on the course of action it believes will promote the long term interests of end users.
- 1.5 In the remainder of this paper Optus will present further data relevant to the assessment of submissions put forward by Telstra regarding the number of fibre network owners. Optus will conclude that Telstra's submissions are misleading since a high proportion of the fibre owners listed by Telstra do not provide DTCS-equivalent services.

## 2. Telstra's submissions regarding fibre network owners

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### Telstra's submission

- 2.1 In its submission in response to the ACCC's issues paper Telstra made the following claim:

*"There are now at least 17 fibre network owners who utilise their assets to offer a DTCS equivalent service (both full service and niche providers) that compete with Telstra: Optus, NextGen, Nexium, Qld Rail, Transgrid, VicTrack, Digital River, SPI Ausnet, Pipe Networks, Primus, PowerTel, Country Energy, UEComm, AAPT, Ipera, Amcom, Ergon and Silk Telecom."*<sup>1</sup>

### Optus analysis

- 2.2 Optus has conducted a high-level analysis of the extent to which the listed firms can provide a high-grade transmission service that is equivalent to the DTCS. The results are set out below.

### Service Description for the listed firms

[Commercial in Confidence]

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<sup>1</sup> Telstra (2008), *DTCS Review*, Public Version, pages 7 and 8.

## Conclusion

- 2.3 The key issues when considering the potential substitutes are the precise location of their fibre routes and the relevant characteristics of the pipe (e.g. capacity). Optus considers that although some infrastructure providers (e.g. rail and electricity firms) may operate fibre connections, significant service limitations generally exist with these connections (e.g. capacity is often not available), and crucially the fibre routes often do not pass areas of commercial interest and are often a long distance away from major population centres. In order to illustrate this point, maps of the networks of some of the relevant entities are attached to this submission as Attachment A.
- 2.4 As Optus has previously submitted, transmission is a ‘point-to-point’ service.<sup>2</sup> The precise location of routes – that is the specific points connected – are very important. Many of the ‘providers’ that were listed by Telstra do not serve points (or even regions) that are near customers or are useful from a network engineering perspective (e.g. to provide route diversity).
- 2.5 Optus submits that its high-level analysis demonstrates that a high proportion of the fibre owners which Telstra has listed do not provide a DTCS equivalent service.
- 2.6 Further, Optus submits that Telstra’s submission is inconsistent with the Tribunal’s guidance that “empirical evidence” is required before conclusions can be made about the level of competition in a market.<sup>3</sup> In contrast to this direction Telstra has simply stated the company names of potential providers of transmission. Such statements do not shed any light on the effect of such entry. As stated by the Tribunal in the WLR case:
- “The problem is while that the feasibility of entry may be demonstrated by actual entry, the fact of entry of one firm, or even by more than one firm, of itself does not establish that the incumbent is either presently or is likely to be subject to the constraints of the competitive process in the future, by either the entrant or new entrants.”*<sup>4</sup>
- 2.7 Optus submits that the ACCC should place no weight on Telstra’s submission.

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<sup>2</sup> Optus (2008), *Optus submission to the ACCC on the DTCS declaration review*, Public Version, page 15.

<sup>3</sup> Re Telstra Corporation Ltd [2008] ACompT 2 (22 December 2008), para 56

<sup>4</sup> Re Telstra Corporation Ltd [2008] ACompT 2 (22 December 2008), para 61.