

The logo for Optus, consisting of the word "OPTUS" in a bold, teal, sans-serif font.

Submission in response to  
ACCC Consultation Paper

**Audit of  
Telecommunications  
Infrastructure Assets –  
Record Keeping Rules**

Public Version

November 2021

## EXECUTIVE SUMMARY

---

1. Optus welcomes the opportunity to provide a submission in response to the ACCC's proposed amendments to the *Audit of Telecommunications Infrastructure Assets – Record Keeping Rules* (the draft Rules).
2. It is not clear to Optus that the proposed changes are justified nor result in a demonstrable net benefit for ACCC's regulatory functions. While Optus acknowledges that the new information sought by the ACCC may be a 'nice to have', without further explanation as to the ACCC's need for this information, we do not consider it is 'must have'.
3. Fundamentally, these Rules should be crafted in a manner that limits the administrative compliance burden placed on operators to the greatest extent practicable. Optus does not consider that the draft Rules reflect sufficient consideration of the administrative burden on operators, and/or provide sufficiently clear explanation as to the need for the information from the perspective of ACCC's regulatory functions.
4. Optus submits that the ACCC should endeavour to ensure that the scope of information sought under the Rules is sufficiently clear and that the legislative basis for collecting information is also identified (by way of accompanying explanatory document or otherwise). Optus submits that the ACCC should refrain from adding a material cost burden on industry until it can identify a clear problem that will be addressed by the additional record keeping requirements and ideally link the information sought to the operation of those parts of the *Competition and Consumer Act 2010* (CCA) or other relevant legislation set out under section 151BU(4) of the CCA.
5. In this context, Optus wishes to highlight that there is insufficient rationale for the proposal to capture "end-user equipment" information for customer access networks other than those operated by NBN. Optus considers that "end-user equipment" information, particularly as drafted, raises clear privacy concerns, and further, is disproportionately granular for the purposes of the ACCC's market assessment and competition analysis functions. Similarly, Optus considers that the rationale for collecting information on satellite service providers remains insufficiently clear, particularly given that key satellite service providers appear not to be captured by the draft Rules.
6. Optus has set out its response to each of the questions in the consultation below and would welcome the opportunity to discuss its feedback with the ACCC further if required.

## UPDATE TO THE LIST OF RECORD KEEPERS

---

**Is it appropriate to include Aussie Broadband, DGtek, FibreconX, Leading Edge and Springfield City Group in the list of record-keepers set out in Part 1 to Schedule 1 to the Rules?**

7. All of these providers either currently supply services and/or own or intend to deploy fibre infrastructure in metro areas around Australia. Optus does not have any objections to including them in the list of record keepers.

**Are there other providers that should be included in the list of record-keepers? Are there any record-keepers that should be removed from the list at Schedule 1?**

8. Optus submits that if the ACCC is seeking to assess the state of competition in the growing satellite market then it should seek to include all satellite operators that supply services in Australia in the list of record-keepers.

**Should satellite service providers be included in the list of record-keepers? If so, which providers should be included?**

9. As the leading satellite service provider in the country, Optus submits that the disclosure of information about our radio satellite CAN will have a disproportionate administrative impact on Optus relative to other operators. While Optus agrees with the ACCC that there is growing competition in the satellite market, it submits that this fact should, in principle mean that the need for any regulatory intervention to promote competition is limited.
10. Ultimately, if the ACCC is minded to include satellite service providers, then it should provide clear justification as to the need for collecting such information, and as noted above, should include all market operators, such as new entrant Starlink, in the list.

## REPORTING ON END-USER EQUIPMENT

---

**Should relevant record-keepers be required to provide information on the location of the end-user's end of the CAN? Are the proposed amendments to the RKR appropriate to achieve this?**

11. This proposed amendment appears to be very broad and if implemented could significantly expand the scope of data to be reported. The ACCC has stated that the amendment is targeted at NBN Co "*but also to other providers with a similar type of fixed-line and wireless infrastructure, where the customer is in a fixed location*". It adds that knowing the location of the end-user would allow the ACCC to determine the level of competition between access technologies and ultimately the types of services available to consumers.
12. As a threshold point, Optus considers that, as drafted, the phrase "end-user equipment" could conceivably capture customer equipment and devices (for example, satellite dishes or mobile devices where used at a fixed location) that extend beyond the "customer side of the network" and therefore beyond the scope of what Optus generally understands to be the focus of the infrastructure RKR.

13. This in turn raises the concern that the information being sought by the ACCC is disproportionately granular for the purposes of the ACCC's competition assessments. Optus submits that identifying the telecommunications services available at a particular end-user premises is unnecessary to determining the state of competition in the markets for those services and may lead to market definitions that are too narrow for the purposes of effective regulation. Any assessment of competition needs to look at potential competition, and in the context of communications markets, the options consumers have. A competition assessment should not turn on the service that is currently being used at a location. Optus considers that the information already provided on the extent of its infrastructure is sufficient for these purposes and without further clarification as to why the ACCC's requires "end-user equipment" information, Optus submits that the ACCC reconsider the need for this proposal.
14. If the proposal is to be accepted, the phrase "without limitation" should be removed and replaced with useful examples to help clarify the scope. Optus considers that the current drafting of "end-users equipment" is unacceptably broad for the purposes of delineating the boundary of the CAN for all networks that are the subject of the RKR. For example, Optus seeks clarification on whether the scope of "end-user" would extend to Optus business customers and if so, what information about its business "end-users equipment" Optus would be expected to supply.
15. Notwithstanding the above, Optus considers that there is prima facie privacy concern that arises from the collection of information about the location and address of end-users. Optus would appreciate further clarification from the ACCC that it is not seeking individual consumer data and that any information relating to end-user equipment that could be used to potentially identify customers will be handled with the strictest level of information security.

## FURTHER INFORMATION ON MOBILE INFRASTRUCTURE

---

### **Do you have any comments on the requirement for relevant record keepers to provide a single coverage map for each mobile technology in operation?**

16. The ACCC says that this amendment is necessary because the current process of combining coverage maps has proven to be technically difficulty due to the size and complexity of the maps provided. It also suggests that MNOs public facing maps already depict coverage on the basis of technology (though less detailed) so providing this information should not be overly burdensome to provide.
17. Optus' public facing coverage maps already distinguish between network technologies and type of mobile coverage. Given that the RKR information already includes coverage maps on the basis of frequency bands (under current rule 5(2)(b)), then in Optus view, the proposal to require the submission of "aggregate coverage of all frequency bands" requires further justification from the ACCC.
18. Furthermore, Optus considers that the degree to which more detailed maps may accurately reflect the extent of network coverage at a fixed location ignores the impact of physical structures or other sources of interference at the specific location that may not always be readily identified without a specific site visit. Therefore, in Optus view and based on the explanation provided by the ACCC, any value-add of the proposal does not appear to justify the administrative burden of having to resubmit what is essentially already public information.

**Do you have any comments on the requirement for relevant record-keepers to report both outdoor and external-antenna mobile coverage? Are the definitions of outdoor coverage and external-antenna coverage in the draft Rules at Attachment A correct?**

19. Optus' public facing coverage maps already distinguish between "outdoors" and "outdoors with antenna" for each network type. Therefore, similar to our response above, Optus considers that it arguably already meets the proposed standard.
20. In regard to the proposed definitions of "outdoor coverage" and "external antenna coverage",<sup>1</sup> Optus considers that these definitions appear unduly broad, particularly the reference to "handheld device" as a qualifier to outdoor coverage.
21. Optus remains concerned that the impact of changes to ensure greater comparability between operators' coverage maps may mean potential changes to the manner in which we present our maps which, without further explanation from the ACCC, appears to be an unjustified cost.

**Should record-keepers be required to report on the assumptions they use to calculate coverage for mobile networks? If not, why not?**

22. Similar to our above response, Optus already provides this information on its coverage maps via the 'Important notes' tab on its public facing maps. The ACCC should explain what if any further information it requires for regulatory purposes under section 151BU of the CCA.

**Do you have any comments on the requirement for relevant record-keepers to report the type of cell operating at each mobile site? Is the cell-type classification proposed in the draft adequate?**

23. It is not clear to Optus that the level of granularity sought on cell-types is really required for the purposes that the ACCC has identified and whether in fact these purposes are directly related to a permitted purpose under section 151 BU of the CCA. Furthermore, Optus considers that the proposed definition of cell sites is vague and may cover an inappropriately wide range of mobile network infrastructure.
24. In any event, Optus does not consider that the burden would not be "limited" and further, just because MNOs may have this information does not mean that it should be provided to the ACCC. Detailed information on the cells used to deliver network coverage is ultimately highly sensitive and the reporting of this information requires a clear justification under the CCA.

---

<sup>1</sup> "outdoor coverage" is defined as "the reach of mobile coverage that can be accessed with a handheld device, without the need of an external antenna" and "external antenna coverage" is defined as "the reach of mobile coverage that includes areas where the connection to the mobile network requires an external antenna attached to the mobile device"

## AGGREGATION OF INFRASTRUCTURE REPORTS AT A NATIONAL LEVEL AND EXPLANATION OF MAPS

---

**Should record-keepers be required to provide one individual file representing the national geographic extent of their networks? Are the proposed amendments to the RKR appropriate to achieve this?**

25. Optus agrees that it is clearly necessary that the maps be useful and readable to the ACCC. However, given the fact that operators will all have different approaches to presenting the information, it remains unclear how this proposal will help address “divergence” in the manner in which service providers report.

**Are the proposed amendments to Rule 7 adequate to ensure a comprehensive interpretation of maps provided under the Rules?**

26. For the reasons outlined above, requiring operators to supply more detailed maps seems to be potentially counterproductive to the goal of achieving greater comparability. Optus notes that it would object to any requirement to produce maps that are consistent in presentation with other operators.

## NOTICE ON CHANGES IN METHODOLOGY

---

**Are the proposed amendments to rule 8 adequate to ensure that changes in methodology are not misinterpreted by the ACCC?**

27. Optus has no objection to this proposal.