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Submission in response to ACCC draft report "Communications Sector Market Study October 2017 by MNF Group Limited (MNF)

1.Summary

This submission is provided in response to the ACCC Communications Sector Market Study Draft Report of October 2017. The draft report is comprehensive and addresses a considerable number of issues of concern to the industry. MNF's response to this report follows on from its input to the earlier ACCC Issues Paper.

The MNF submission does not address all the issues raised by the ACCC but responds to key areas of concern to MNF, namely:

- NBN Wholesale Aggregation Services
- NBN Pricing
- Internet Interconnection
- Dark Fibre Services

2.NBN Wholesale Aggregation Services

Proposed Action 7 states that the ACCC "will consult on the need to obtain information from industry via a record keeping rule to monitor the supply of wholesale aggregation services to determine whether regulatory intervention is required…."   and **Proposed Action 8** states that "In the absence of a genuinely competitive wholesale aggregation market NBN Co should consider the provision of transitional products or pricing measures, for no longer than the NBN build period that facilitate the entry of smaller or niche service providers to provide a further competitive dynamic"

MNF supports both of these proposed actions noting that urgent action will be required given the nbn network is already well into its rollout phase. MNF has already proposed to NBN Co that action of the type envisaged under Proposed Action 8 be implemented but to date there has been little headway. We agree that these could be transitional products until the rollout is complete.

3. Price and Speed of NBN Broadband Services

Proposed Recommendation 3 states that the ACCC "strongly encourages NBN Co and service providers to continue to engage constructively to address issues raised about NBN wholesale access pricing within the existing regulatory framework. This is essential if there are to be improved outcomes for NBN Co service providers and consumers. We have delayed our decision on varying NBN Co's SAU in order to give to NBN Co and service providers flexibility to continue their discussions in relation to pricing." and **Proposed Action 4** states the ACCC will carefully examine any outcome of NBN Co's pricing consultation including the need for consequential changes to NBN Co's SAU or other regulatory response to promote positive outcomes for consumers and the market generally"

MNF has been actively participating with NBN Co regarding changes in proposed pricing models and agrees with the ACCC's stance on delaying its decision on the NBN Co SAU to allow service providers and NBN Co to continue their discussions in relation to pricing. There have been some recent proposals from NBN Co on pricing models and MNF has been an active participant in discussion on these proposals. It is currently too early to tell whether the outcome will lead to a long term sustainable pricing construct that will encourage end users to rapidly to migrate to the nbn

4. Internet Interconnection

Proposed Action 12 relates to internet interconnection "We will assess and report on whether access to internet interconnection services is available on competitive terms to support effective competition in downstream markets, with a particular focus on the market for the supply of service to corporate customers"

We consider it is important to progress this recommendation as a matter of importance as there is no substitute service available to that offered by TTOV. The use of international transit is not acceptable to customers due to latency aspects and corporate customers in particular object to this as they have tools that can determine if the traffic is routed internationally to access local content. It should be noted also that TTOV host significant that is of interest to the consumer market, eg sporting content such as AFL an NRL matches

The draft finding that TTOV are collectively relatively unconstrained in determining their pricing is certainly correct. Although we have noted some decrease in domestic transit pricing over the last 12 months, we believe that the price is far above the cost of providing the service and certainly disadvantages smaller providers.

Proposed Recommendation 11 regarding the publication of peering policies by TTOV would not address the main problem for smaller players which is covered by Proposed Action12. It may, however, lead to increased competition if other CSP's have sufficient capability and volume to obtain peering

arrangements with TTOV. This, of course, assumes that the peering arrangements proposed by TTOV are reasonable and not just made overly difficult to deter new players, eg would it really be necessary to peer in every capital city when most traffic is centred on Sydney and Melbourne.

5. Dark Fibre Services

Proposed Action 10 relates to dark fibre services "We will consult on the need to obtain information from industry via a record keeping rule to monitor the supply of dark fibre services to determine whether any regulatory intervention is required"

We consider this Action is insufficient. As explained in our submission to the Market Study, it is primarily the supply of dark fibre services to NBN POI's that is our primary concern. We estimate that there are more than 70 of the 121 NBN POI's that would be amenable to access via dark fibre at reasonable prices. These are, of course, primarily in metro areas

In our view, there is only one significant supplier at present which means this supplier can dictate pricing and other terms. By contrast, we have recently sought dark fibre supply to data centres and other fibred buildings and can confirm dark fibre is available on competitive terms to such locations from up to three suppliers

Hence we believe that the ACCC should consider how it can open the market for dark fibre to NBN POI's, including the resale of this fibre to encourage smaller providers to directly connect to NBN POI's. Although there is competitive supply of managed backhaul services to many NBN POI's, we consider that dark fibre has a number of advantages, eg CSP can determine type of equipment attached to the dark fibre rather than relying on supplier provided equipment for a managed service and, further, is able to expand capacity as demand increases without resort back to the managed backhaul provider.