



Submission by AAPT Limited (22 March 2013)

to

**Australian Competition and Consumer Commission
Consultation Paper,
*Review of policies and procedures relating to the identification
of listed NBN points of interconnect, dated February 2013***

PUBLIC VERSION



Introduction

1. AAPT Limited (**AAPT**) welcomes the opportunity to comment on the Australian Competition and Consumer Commission (**ACCC**) consultation paper titled: *Review of policies and procedures relating to the identification of listed NBN points of interconnect*, dated February 2013.

Executive summary

2. For the most part, AAPT is satisfied, and agrees in principle, with the policies and procedures relating to the identification of listed points of interconnection (**Listed POIs**) to the NBN and its application by the ACCC and NBN Co.
3. While AAPT is substantially satisfied with the 121 Listed POIs, there are a number of locations for which it is not clear to AAPT why they have been changed from previously selected locations. In AAPT's view, some of the previous locations would have more strongly satisfied the "competition criteria". Accordingly, AAPT would like more transparency around the application of the policies and procedures, in particular, the "competition criteria".
4. AAPT considers it would also be useful for information to be provided to access seekers about the competitive fibre transmission providers identified at each Listed POI to better facilitate access seekers' interconnection at the Listed POIs.
5. To assist the ACCC in assessing the impact of the approach taken by the ACCC and NBN Co to identify the Listed POIs, AAPT notes that it:
 - has been experiencing issues with interconnection to temporary POIs and has concerns about what appears to be delay tactics being employed by certain POI operators; and
 - continues to be concerned about access seekers not being treated with equivalence in relation to access to Telstra exchange building access



(TEBA) even though they are ‘Regulated Services’ under the Telstra Structural Separation Undertaking (SSU).

6. AAPT addresses each of the issues which the ACCC sought specific comment on below.
7. **Policies and procedures relating to the identification of the Listed POIs**

The ACCC invites stakeholders to comment on the policies and procedures relating to the identification of the Listed POIs. In particular, the ACCC seeks comments about the competition criteria and the planning rules and the application of these procedures in identifying the location of POIs.

8. As stated above, AAPT agrees in principle with the policies and procedures relating to the identification of Listed POIs to the NBN. However, AAPT would like more transparency around how the competition criteria are applied by the ACCC and NBN Co.
9. There are a number of locations forming part of the Listed POIs which AAPT does not consider as satisfying the “competition criteria” as strongly as previously selected or nearby locations. For example, AAPT does not understand why Nambour (on the Sunshine Coast hinterland) was chosen above Maroochydore (the largest centre on the Sunshine Coast). For similar reasons, AAPT does not agree with the following re-locations which now form part of the of Listed POIs:
 - a) Pinjarra (changed from Bunbury);
 - b) Lillydale (changed from Croydon);
 - c) Stirling (changed from Murray Bridge); and



- d) Berkely Vale (changed from Wyong).
10. In AAPT's view, the previous locations appear to better satisfy the documented policies and procedures relating to the identification of listed points of interconnection. Accordingly, it would be useful to AAPT to know the details and reasoning for why the above POI relocation changes were made.
11. Apart from of the above locations, AAPT is generally satisfied with the Listed POIs in force. AAPT is currently making investment decisions based on the Listed POIs and therefore seeks certainty that any subsequent changes will follow a stringent and transparent process. AAPT considers that while changes will be required where the competition criteria is no longer satisfied, appropriate regard and weight must be given to any investments already made and sunk by access seeker to limit (to the greatest extent possible) stranding or impairment of their fibre assets.
12. In addition, AAPT considers that in order to better facilitate interconnection at the Listed POIs, further information should be provided to retail service providers seeking interconnection at a Listed POI (**access seekers**). For instance, it would be useful to access seekers (such as AAPT) to know the:
- identity of the two competitive fibre transmission providers identified at a Listed POI for the purpose of satisfying the second limb of the competition criteria (**POI Transmission Providers**); and
 - nature of the services they are willing and able to provide.
13. In AAPT's view, it is not appropriate to include a utility company as a POI Transmission Provider in applying the competition criteria. They do not form part of the market. Even presuming that these entities are willing to provide telecommunications transmission services, which is generally outside their usual scope of services, it is unlikely they would have a functioning wholesale business in place.



Extent of AAPT connection as the list POIs

The ACCC seeks information on the extent to which facilities have been interconnected at the Listed POIs. In particular, the ACCC asks stakeholders to provide details of:

- (a) the Listed POIs where interconnection has occurred*
- (b) whether services are being provided from those Listed POIs and,*
- (c) if so, the type of service that is being provided.*

14. **[c-i-c start]**

[Redacted]

[Redacted]

15.

[Redacted]

[Redacted]

Access to temporary POIs

16. [Redacted text block]

17. [Redacted text block] [c-i-c end]

Telstra and non-equivalence

18. While AAPT acknowledges the structural framework contained in the SSU to ensure that Telstra does not favour itself over other access seekers in relation to



access to TEBA, AAPT continues to be concerned about access seekers not being treated with equivalence in relation to such access.

19. Given that Telstra will own and operate the passive infrastructure required for connection to the NBN (including TEBA) at the bulk of the Listed POI locations, there are a myriad of ways in which Telstra will be able to take advantage of its position to the detriment of access seekers. Part of the problem is that it would be difficult for access seekers to identify and prove these situations due to lack of information symmetry.

20. AAPT notes that the following examples as demonstration of potential non-equivalence in the context of access to TEBA:

- Telstra has often sited very high establishment fees to get into a Telstra exchange. **[c-i-c start]** [REDACTED]
[REDACTED]
[REDACTED] **[c-i-c end]** There is no transparency around how this fee is allocated or whether Telstra also absorbs part of that upgrade cost. If not, such costs would clearly be non-equivalent.

- In addition, AAPT has found that Telstra has sometimes applied charges on an ad hoc basis. **[c-i-c start]** [REDACTED]
[REDACTED] **[c-i-c end]** While Telstra has acknowledged this was mistake, all of this demonstrates the need for access seekers and the ACCC to remain vigilant for signs of behaviour by Telstra that could potentially be in breach of the SSU.



Assessment of the approach taken to identifying the Listed POIs

21. The ACCC has stated that it seeks information from industry stakeholders that will assist the ACCC to assess whether the policies and procedures to identify whether the location of POIs meet the long term interests of the end user. AAPT refers to its submission made above in this regard.

22. In addition, as AAPT has previously submitted, it considers that the policies and procedures to identify the location of POIs will promote the LTIE if the following principles are given appropriate consideration:
 - limit stranding or impairment of fibre assets;
 - establish NBN Co as a provider of last mile access as originally intended;
 - limit overbuild of competitive transmission markets;
 - encourage competition in both backhaul and retail markets; and
 - facilitate an efficient migration to the NBN.