



# Response to the ACCC's Regional Mobile Infrastructure Inquiry Report on Preliminary Findings

16 May 2023

## 1. Introduction

- 1.1 Amplitel welcomes the ACCC's Regional Mobile Infrastructure Inquiry 'Report on Preliminary Findings'.
- 1.2 Amplitel agrees with many of the ACCC's preliminary findings, in particular the findings related to calls from stakeholders to streamline and reform rules to better facilitate infrastructure deployment, which include:
- (a) streamlining and reforming state and territory planning rules;
  - (b) reforms to access costs to Crown land; and
  - (c) reconsidering minimum lot sizes for towers.<sup>1</sup>
- 1.3 Amplitel also wishes to emphasise that:
- (a) Government landowners are in a unique position to reduce the cost of providing new telecommunications infrastructure in regional and remote regions by reducing rents on government lands. Governmental agencies that increase rents on Crown lands in sparsely populated areas make the commercial case for extending networks into these areas even more difficult. This will result in poor access to towers and associated passive and active infrastructure provided by telecommunications and other infrastructure providers in regional, rural, remote and peri-urban areas.
  - (b) Some Government landowners have rent seeking approaches to telecommunications sites, leveraging additional fees (co-user fees) on sites with increased utilisation without any corresponding benefits. This approach increases costs to the carrier and reduces the feasibility of co-location. This practice amounts to double dipping and is out of step with commercial practice and inconsistent with Commonwealth legislation which encourages co-location.
  - (c) In addition to co-user fees, some Government landlords require separate and direct leases with carriers on a site. This approach has the same impact as co-user fees as it duplicates lease charges for the same space.
  - (d) We support the recommendation of the NSW Independent Pricing and Regulatory Tribunal that co-users should only pay rent to government land agencies for the additional land they occupy. While this recommendation has not yet been adopted by the NSW Government, we welcome this recommendation and consider it should be implemented across all government-owned lands.
- 1.4 Amplitel's comments about specific preliminary findings and supporting content are set out below. Amplitel's focus is on tower infrastructure and does not make any comments about temporary mobile roaming.

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<sup>1</sup> ACCC, Regional Mobile Infrastructure Inquiry Report on preliminary findings, 18 April 2023, p 53 (preliminary finding 12)

## Amplitel's Comments on Specific Preliminary Findings

### Preliminary Finding 7

New tower design and construction costs generally consider accommodating at least two tenants in urban areas. In remoter areas, it is less likely that a new tower will be built with capacity to support more than one tenant. The costs of new towers are impacted by the demand for co-locations. In rural and remote areas, there appears to be a higher cost of co-location after the initial build for second or third mobile operators due to the need to upgrade or strengthen towers to support additional equipment.

- 1.5 The vast majority of Amplitel's new tower builds are built to support more than one tenant.
- 1.6 On page 16 of the ACCC's Report, the ACCC states in the context of a new build supporting multiple tenants "*this is less likely to be the case in remoter areas due to the lower potential for multiple tenancies*". This mischaracterises Amplitel's submission, in drawing an inference that in remote areas where there is a higher risk of low utilisation, Amplitel is less likely to build a tower to accommodate multiple tenants. The ACCC has incorrectly applied a statement from Amplitel's submission about land parcel size to a new tower build.
- 1.7 On page 16 of the ACCC's Report, the ACCC also states that "*it appears most existing towers in remoter areas are at capacity*" and has referred to nbn co's Public Submission to Regional Mobile Infrastructure Inquiry in footnote 33. Structural capacity for a tower will depend on many factors including the type of equipment to be installed on the tower and the characteristics and location of the tower. To assess if a structure is at capacity requires an engineering assessment – this will assess the unique circumstances of each case.
- 1.8 A tower may also be designed to accommodate multiple tenants when it is built but over time, the capacity of the tower may change. This could be because of a combination of factors including the age of the tower (degradation of loading) and code changes.

### Preliminary Finding 15

The fees for access to towers are impacted by the divestment transactions in that a return on investment for the cost of purchasing the tower assets is a factor that mobile network infrastructure providers consider in establishing access costs.

- 1.9 Amplitel does not agree that securing a return on investment for the cost of purchasing tower assets is a factor that it considers in establishing access costs. As set out on page 13 of Amplitel's previous submission, there are range of initial and ongoing (or periodic costs) of providing a telecommunications tower which include:
- (a) site selection, acquisition, engineering design and planning approvals;
  - (b) tower and site construction, and maintenance;
  - (c) access tracks, and access track maintenance;
  - (d) power connection costs and power resiliency;
  - (e) site tenure and other access costs;
  - (f) costs associated with new co-locations or increased equipment volumes post initial construction;
  - (g) end of life costs (tower decommissioning and site remediation costs); and
  - (h) the cost of securing and providing returns to debt and equity funders (financing costs).
- 1.10 Commercial contracts determine which of these costs are borne by the mobile network infrastructure provider and which by the customer. These costs are the primary factors that impact on the fees for access to towers, not achieving a return on investment for the cost of purchasing the tower assets as part of the recent industry re-structure. [c-i-c]  
[c-i-c]

### Preliminary Finding 16

It is too early to tell whether current commercial arrangements are effectively facilitating access to towers. There is some uncertainty around how the industry will operate post divestment.

- 1.11 Amplitel believes that it is already clear that current commercial arrangements are effectively facilitating access to towers.
- 1.12 As the ACCC notes in its Report, following the divestiture of tower assets "*it does appear that the trend is positive in that access to towers appears easier for some towers*".<sup>2</sup>

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<sup>2</sup> ACCC, Regional Mobile Infrastructure Inquiry Report on preliminary findings, 18 April 2023, p 45.

- 1.13 While the full picture may not be clear, there are sufficient indicators that demonstrate that current commercial arrangements are in fact effectively facilitating access to towers.
- 1.14 Amplitel disagrees with the ACCC's summary on page 6 that incentives for co-location appear to lessen with remoteness. Amplitel has a commercial incentive to maximise co-location regardless of the location.

#### **Preliminary Finding 17**

The regulatory regime relating to carrier's access to towers, tower sites and facilities does not apply to non-carriers that are not part of a carrier group. For the regulatory regime to apply equally to mobile network infrastructure providers with similar operations will require legislative changes to the Telco Act.

The divestment of towers by the mobile network operators has exacerbated an uneven application of the regulatory regime between entities that are carriers and entities which are not carriers, but provide infrastructure services to carriers.

- 1.15 As set out in Amplitel's previous submission, Amplitel's view is that no enhancement to the existing regulatory access regime is required. The current access arrangements could potentially be reduced. Amplitel has clear commercial incentives to provide access to its infrastructure to customers.

- 1.16 The ACCC also states:

*Our understanding is that mobile infrastructure providers consider that they do not need a carrier licence. This is because they rely on contractual network operator [sic] to use the carrier's power and immunities under the Telco Act when needed.<sup>3</sup>*

- 1.17 Amplitel disagrees with the ACCC's reasoning. The reason Amplitel does not have a carrier licence is because Amplitel's infrastructure does not meet the requirements to have a carrier licence under Part 3 of the *Telecommunications Act 1997 (Cth)*. The carrier licence regime covers an owner of a network unit used to supply carriage services to the public (unless an exemption applies). Amplitel's infrastructure does not fit within the definition of network unit and Amplitel does not supply carriage services to the public. Amplitel provides access to towers, poles and similar structures – Amplitel's passive infrastructure is basic compared to the active infrastructure requiring a carrier licence.

#### **Preliminary Finding 24**

While there has been a decrease in vertical integration, most towers in regional and remote areas are owned by a Telstra related company, Amplitel. Access to existing towers in remoter areas will largely depend on the commercial terms of this entity.

- 1.18 Amplitel disagrees with the preliminary finding that "... most towers in regional and remote areas are owned by a Telstra related company, Amplitel. Access to existing towers in remoter areas will largely depend on the commercial terms of this entity". This preliminary finding implies that Telstra may impact on the commercial terms of Amplitel's

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<sup>3</sup> ACCC, Regional Mobile Infrastructure Inquiry Report on preliminary findings, 18 April 2023, p 28 - 29

tower access. This is not the case - Amplitel operates as a separate business entity from Telstra in receiving requests for tenancies in regional and remote areas.

- 1.19 Telstra is not involved in the decision making about tower access or the day-to-day operation of Amplitel's business. Amplitel manages the ordering and pricing for access to a tower. This also applies to decision-making about when to build a new tower or change an existing one. Telstra has no rights to reject an Amplitel customer's order.
- 1.20 The ACCC has said that *"Given Telstra has not fully divested its interest in Amplitel, we have heard ongoing concerns around whether the divestments overall have improved accessibility to towers. Due to the divestment, Amplitel may have the incentives to increase co-location. However this may not apply equally across Amplitel's portfolio of assets and remoter towers may be more difficult or more costly to access"*.
- 1.21 The concerns arising merely because Amplitel is majority owned by Telstra are unfounded. Amplitel is an independent company focused on delivering returns to shareholders from its infrastructure assets.
- 1.22 Amplitel's commercial incentives are to grow the returns on its assets through an increase in, and a widening of the diversity of, its customer base. The way that Amplitel can maximise value on existing assets is through a combination of more efficient pricing, higher co-locations and reducing barriers to access.

**Preliminary Finding 25**

Historically, the arrangements between the mobile network operators involved considerations broader than the costs of providing access to a tower. The mobile network infrastructure providers offer different terms of access which generally appear to be simpler and more aligned to mobile network operators' operating incentives.

**Preliminary Finding 26**

Mobile network infrastructure providers have an incentive to promote access to their tower assets, to increase the revenues they generate from the tower.

- 1.23 Amplitel agrees with the ACCC's Preliminary Findings 25 and 26.
- 1.24 Following the separation of its business operations from Telstra, Amplitel's business is centred on providing customers with access to its towers. Amplitel has a financial incentive to maximise utilisation of its infrastructure, including implementing a value maximising pricing strategy, and proactively identifying value accretive co-location options and reducing friction to the sale of new tenancies on existing towers.
- 1.25 As set out in Amplitel's previous submission, its strategic objectives include:
- (a) increasing the utilisation of its infrastructure by providing better access;
  - (b) providing competitive market offerings; and

(c) pursuing growth and driving asset efficiency.<sup>4</sup>

1.26 Amplitel's access process aims to make it easier for customers to get access to towers, which in turn also benefits Amplitel. Amplitel's business model and strategic objectives are furthered by promoting access to its tower assets and providing access to as many customers as it can.

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<sup>4</sup> Amplitel, Submission to Regional Mobile Infrastructure Inquiry, 2 September 2022, p 8.