

**Submission by MNF Group Limited (MNF) in response to the ACCC's Consultation Paper
Dark Fibre and NBN Wholesale Aggregation – Proposed Record Keeping Rules**

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Executive Summary

MNF has previously expressed the view that a dark fibre service to connect to NBN POIs should be a declared service. MNF maintains this view. MNF considers that a dark fibre service between NBN POIs and key CBD and metropolitan POP locations should be declared. This declaration should also extend to services connecting key CBD and metropolitan POP locations with each other. MNF believes that such a service declaration would be in the long term interests of end users because access to dark fibre services:

- is a key enabler of competition;
- allows RSPs to efficiently configure core and backhaul networks;
- provides RSPs with the ability to develop innovative and differentiated solutions for downstream markets;
- promotes the efficient use of existing infrastructure.

MNF's experience is that the availability of dark fibre services is reducing as a result of the consolidation and aggregation of ownership of fibre assets into the hands of large vertically integrated operators. These vertically integrated operators have consistently declined to make dark fibre services available to RSPs or have made them available reluctantly and on a limited basis.

MNF is broadly supportive of the proposed record keeping rules (**RKRs**) (although some fine tuning of the proposed form of RKRs may be required). However, given the current parlous state of the market for dark fibre services, MNF would also support the ACCC proceeding directly to undertaking a declaration inquiry in relation to dark fibre services.

In relation to the proposed RKR on NBN Wholesale Aggregation, MNF considers that this RKR should be directed towards carriers which have their own direct fibre connections to all, or a substantial proportion of, the NBN POIs. MNF notes that neither it nor its subsidiaries fall into that category.

Significance of dark fibre

As the Commission has noted in the Consultation paper, dark fibre services have a number of characteristics which provide significant advantages to RSPs over alternative services. With access to dark fibre, RSPs can build-out core and backhaul network using equipment of their own choosing to light and connect fibre links. The costs of acquiring access to the fibre are fixed and certain, with the RSP able to upgrade capacity relatively simply without a proportionate increase in cost meaning that dark fibre has dramatic scalability advantages over alternative transmission services. In combination with typically relatively longer terms for the provision of dark fibre

services, this provides enhanced certainty for CSPs to invest in developing their networks and creating innovative and differentiated services.

CSPs have a much greater degree of control over service assurance and other characteristics when services are provided over dark fibre. This in turn creates the ability to provide differentiated services into downstream markets. It allows RSPs to innovate and tailor their services to meet the needs of their customers rather than simply repackaging and reselling a bundle of products acquired from a carrier.

There are obviously significant limitations to a dark fibre service. Dark fibre services are useful to provide a service only over a limited distance (typically up to about 40km). In addition, the RSP must be confident that it will have sufficient traffic over the route to justify the investment not only in acquiring the dark fibre service but also in acquiring and installing the necessary equipment to light and connect the fibre.

MNF has previously noted, when DSL services were expanding as a means of providing broadband services over the fixed network (facilitated by the declaration of ULL), many CSPs installed DSLAMs in Telstra exchanges and, in many cases were able to obtain dark fibre backhaul. This combination of inputs gave the CSPs flexibility of supply and the ability to control their services as their customer base increased. MNF considers that regulated supply of dark fibre services to NBN POIs would similarly enable RSPs to have greater control and flexibility in supply of services to downstream customers, significantly enhancing competition.

State of Competition

MNF understands that there is ample currently installed fibre on the key routes of interest to RSPs to enable carriers to provide RSPs with access to dark fibre services. However, vertically integrated operators are typically reluctant to provide dark fibre services or simply refuse to do so.

While it is theoretically possible for RSPs to install their own fibre on key routes in order to gain access to equivalent services, the cost of installing such infrastructure clearly operates as a very significant barrier to entry. In addition, where adequate infrastructure is already installed, such an outcome would be contrary to the objective of encouraging the economically efficient use of infrastructure.

MNF's experience in the market is that carriers who have previously been willing to supply dark fibre services to MNF are no longer willing to do so. Not only are existing providers unwilling to provide new dark fibre services, they are also, in some cases, unwilling even to renew existing dark fibre services for key network elements.

Both Telstra and Optus have noted in their submissions to this Consultation Paper that they do not provide such services. MNF has observed that the availability of dark fibre services in the market has significantly reduced as ownership of fibre has increasingly been concentrated in the hands of a few vertically integrated carriers. Accordingly, it is nonsensical to talk of the dark fibre market as an 'emerging' or 'nascent' market as other responders to the Consultation Paper have done. It is clear, in fact, that the market is contracting, and is likely to continue to do so in the

absence of regulatory intervention. While some submitters have claimed that there is no bottleneck affecting dark fibre services, the increasing concentration of fibre holdings in the hands of vertically integrated operators has created just such a bottleneck.

As outlined above, access to dark fibre services on key routes gives RSPs a significantly enhanced ability to compete effectively with vertically integrated carriers. MNF believes it is precisely this enhanced ability to compete effectively which is driving the reluctance of vertically integrated carriers to provide these services. MNF believes that, if there were more carriers in the market who were wholly or primarily focussed on the provision of services on a wholesale basis, the market for dark fibre services would be dramatically different and existing vertically integrated carriers would also be forced to respond by offering dark fibre services.

Characteristics of the Market

The Commission has rightly noted in the Consultation Paper that numerous overseas jurisdictions have moved to regulate open access to dark fibre services or are considering doing so. In its submission, Telstra has sought to differentiate the Australian market from these jurisdictions. In particular, it makes reference to market conditions in Sweden (one of the regulated jurisdictions) being significantly different to Australia with “many local municipality networks”. In fact, with the mandated NBN structure of 121 POIs, the Australian market now has the character of a large number of isolated local networks, with RSPs requiring access to many or all of those local networks in order to provide a comprehensive service. As the Commission is aware, since the regulatory construct of the 121 POIs was mandated, there has been a substantial reduction in the number of wholesale infrastructure players in the market. Accordingly, this characteristic of the Australian market is a powerful reason why the availability of a regulated dark fibre service is essential in order to promote the long term interests of end-users and facilitate a dynamic and competitive telecommunications market.

Specific Questions

MNF's brief answers to the specific questions set out in the Consultation Paper are set out below.

Question 1

Do you consider that there have been developments in the market for dark fibre since the ACCC market study in 2017-18 that have changed the competitive dynamics of the market?

As noted above, MNF considers that the number of suppliers or potential suppliers of dark fibre has reduced in this period and that in some cases existing suppliers of dark fibre are reluctant to provide new services or even renew existing services.

Question 2

Do you consider that there is a need for an RKR for dark fibre?

MNF considers that there is a need either for an RKR or for the Commission to move directly to commence a declaration inquiry for dark fibre services.

Question 3

Do you consider that the NNI Link product from NBN Co or other developments since the ACCC market study in 2017-2018 have changed the competitive dynamics of the market for wholesale aggregation services?

MNF has not observed any significant change to the competitive dynamics of the market for wholesale aggregation services as a result of the introduction of the NNI Link product by NBN Co. MNF notes that the NNI Link product is primarily useful for RSPs who have only a small number of subscribers at a given NBN POI. This product is an adjunct to, and certainly not an alternative or replacement for dark fibre services.

Question 4

Do you consider that there is a need for an RKR for NBN wholesale aggregation services?

MNF considers that the most pressing need is for a regulated dark fibre service. To the extent that a RKR for NBN wholesale aggregation services is introduced it should be focussed on carriers which have their own fibre connections to most or all of the NBN POIs.

Question 5

Are there any other service providers that should be considered for inclusion in the scope of the proposed RKR's (see Section 6.1)? Alternatively, should any listed above not be included?

Symbio Wholesale is a subsidiary of MNF and MNF is primarily an acquirer of wholesale aggregation services rather than an infrastructure owner. Accordingly, Symbio should not be included in this list.

Question 6

Is a submission due date of two months following the reporting period sufficient to collate and submit all necessary data items requested as part of the proposed RKR's? If not, please explain why?

A submission due date of two months following the reporting period is sufficient.

Question 7

Do you support the proposed quarterly reporting frequency until 30 June 2021 with the RKR being reviewed leading up to this date (following the completion of the NBN rollout)?

MNF considers that this proposed frequency is adequate but considers that the Commission should initiate a declaration inquiry in relation to the dark fibre service without delay.

Question 8

Do you consider the information proposed to be collected for dark fibre services would provide an appropriate insight into the market?

The RKR needs to be structured so that it captures the available or potential availability of fibre that could be used to provide a wholesale dark fibre service between NBN POIs and other key locations.

Question 9

Do you consider the information proposed to be collected for NBN wholesale aggregation services would provide an appropriate insight into the market?

As noted above, MNF considers that this RKR should be focussed on carriers with their own fibre to most or a significant number of NBN POIs.

Question 10

Are the definitions and concepts outlined within the proposed RKR documents (Attachments A and B) easy to understand, accurate and relevant? If not, what changes would you suggest?

As certain other submitters have noted, the relevant routes probably need to be specified more clearly. (ie between NBN POIs and key POP locations).

Question 11

For wholesale providers – are the proposed data requirements, as outlined in Attachments A and B, feasible and reasonable? If no, what changes would you suggest?

N/A

Question 12

What additional costs do service providers expect to incur in complying with the data requirements outlined in Attachments A and B?

N/A

Question 13

Do you think there are any refinements that could be made to further reduce compliance costs, whilst also ensuring that the requirements are fit for purpose and meet the objectives outlined in sections 2.2 and 3.2?

N/A