

28 August 2012

Kim Mesken
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Dear Ms Mesken,

Submission to ACCC's Facilities Access Code Discussion Paper

NBN Co welcomes the opportunity to provide a submission in response to the Australian Competition and Consumer Commission's July 2012 Discussion Paper examining the Facilities Access Code¹ ("Code").

Summary

The Code's purpose is to ensure, as far as possible, the co-location of telecommunications towers, tower sites and underground facilities used to hold lines (Eligible Facilities)². Co-location where possible remains a socially desirable aim to the extent that it enhances environmental amenity and/or promotes competition.

The Code seeks to achieve its purpose through mandatory requirements in respect of confidentiality, non-discriminatory access, queuing and dispute resolution, and by setting out other non-mandatory administrative and operational procedures and standards that can be used to allow timely access. In establishing the non-mandatory provisions, the Code provides a "safety-net" for carriers who are unable to independently negotiate timely access to other carriers' facilities.

NBN Co supports the overall approach of requiring compliance with the Code's non-mandatory provisions where agreement on administrative arrangements has not been reached between individual carriers. The ability to negotiate bespoke agreements different from the non-mandatory procedures in the Code remains essential, including to provide flexibility to reflect specific inter-carrier relationships.

While the rollout of the physical infrastructure of the National Broadband Network (NBN) (including Eligible Facilities) is well under way, it is not yet possible for NBN Co to provide detailed commentary or views on the extent to which practical experience from the rollout may inform potential suggestions for variations to the Code. NBN Co therefore believes that options to vary or update the Code should remain open in the near to medium term, so that the Code can continue to evolve by reference to, and support, practical rollout experience.

¹ A Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities (October 1999)

² *Telecommunications Bill 1996* Explanatory Memorandum Volume 3 page 8 and Code Explanatory Statement page 97

NBN Co is focussed on the future operation of the Code, including during the ongoing rollout of NBN infrastructure and this submission accordingly does not consider the historical operation of the Code except where relevant to a comment in relation to its potential future operation.

Are the purpose and provisions of the Code still relevant? [Q1-11]

NBN Co believes that the Code remains relevant for industry in respect of co-location, and acknowledges the benefit of having a clear and widely understood approach of this nature in place for carriers to refer to and adopt as required in connection with access to each other's towers, tower sites and eligible underground facilities.

NBN Co is not currently aware of any major issues in respect of the application of the Code to the rollout, but recommends that the option to consider variations to the Code remain open, so that if issues do arise in the application of any aspects of the Code as NBN infrastructure is rolled out, consideration can still be given to appropriate variations.

NBN Co agrees that the Code would benefit from a review to remove obsolete references, including those arising from the transfer of functions from the ACMA to the ACCC.

Third party access code [Q12-14]

The need to develop a code under s372NA of the Telecommunications Act 1997 (Telco Act) would seem to be depend primarily on the extent to which non-carrier fixed line facilities are installed after the commencement of s372L; the extent to which access is likely to be sought to such facilities, and the extent to which the relevant parties are likely to be unable to agree appropriate terms and conditions between themselves absent a code.

NBN Co suggests that the ACCC continue to closely monitor these developments (including in consultation with NBN Co) and that, if any code is to be developed in connection with the third party access regime, it should be consistent with the Code wherever possible, so as to maximise industry understanding and acceptance and to minimise costs and complexity in its application.

Telstra's Structural Separation Undertaking [Q15-16]

Clauses 12.4 and 12.5 of Telstra's SSU set out the agreed reservation, queuing and governance arrangements in respect of Telstra external cables (and associated ducts and pits) that connect twisted pairs between an MDF in an exchange building and a Telstra customer's equipment in, or near, that building (External Interconnect Facilities).

As noted in the Discussion Paper, these SSU access arrangements apply only in respect of interconnection with Telstra's active declared services, not interconnection with the NBN. NBN Co therefore does not express a view as to whether the Code should be changed in this regard.

However, NBN Co suggests that the question of whether access to any External Interconnect Facilities may create bottlenecks in providing NBN services should continue to be closely monitored as the rollout progresses.

NBN Co facilities [Q17-18]

The Code seeks to facilitate co-location of telecommunications towers, tower sites and eligible underground facilities. NBN Co anticipates that the existing Code will be useful as one of the tools available to assist access to these facilities both by NBN Co in respect of the Eligible Facilities of other carriers, and by other carriers in respect of NBN Co's Eligible Facilities. NBN Co notes that the Code is not relevant to any other aspect of access to the NBN.

No major issues that might be dealt with in the Code appear to have yet arisen for NBN Co in respect of entry rights to towers, sites or eligible underground facilities. NBN Co suggests that the question of whether the Code should include provisions dealing with these aspects should continue to be closely monitored as further NBN rollout experience is obtained.

Declaration of access to facilities [Q19-20]

NBN Co believes that the regulatory regime (which includes the Code), as amended in the recent past to create NBN Co and to facilitate the rollout of the NBN, can be effective in providing efficient access to Eligible Facilities. In this context NBN Co strongly believes that it is currently unnecessary for the ACCC to consider declaring access to any NBN Co facilities.

NBN Co believes that access to NBN Co facilities is most appropriately regulated in accordance with the existing regime, including under Schedule 1 and/or inclusion of arrangements in NBN Co's Special Access Undertaking and Standard Form of Access Agreement, without declaration under Part XIC of the CCA.

Yours sincerely,



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