

The logo for Optus, consisting of the word "OPTUS" in a bold, teal, sans-serif font.

Submission in response to  
ACCC Discussion Paper

**Facilities Access Code**

Public Version

October 2018

## INTRODUCTION

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1. Optus welcomes the opportunity to comment on the ACCC's review of the Facilities Access Code (*A Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities*).
2. Optus supports the continual use of industry-led co-regulatory approaches to co-location and co-building arrangements. We find that the largest benefit from such arrangements arise where there is industry buy-in of the process; and where both parties are willing to engage. It is not clear to Optus that existing industry processes can be improved upon through regulatory change.
3. We observe that there have been ongoing discussions over the last few years concerning co-location and co-building arrangements. These issues were raised during the ACCC's Mobile Roaming Declaration Inquiry and further discussed in the 2018 Regional Mobile Issues Forum. In particular, AMTA has also facilitated further progress through the Mobile Carriers' Forum (MCF) in establishing a framework for sharing pre-build site information.
4. Optus considers this new framework established by industry members goes some way to addressing concerns about sharing pre-build site information on a more regular basis and in an agreed format.
5. In light of these recent developments, Optus does not consider there are likely to be net benefits from further changes to the co-location and co-build consultation processes in the existing Facilities Access Code. More specifically, Optus is concerned that increasing regulatory requirements may potentially delay infrastructure rollout.
6. Optus also considers that the potential emerging issues identified in the discussion paper appear to be outside the scope of the Facilities Access Code. We would welcome the opportunity for further discussion with policymakers on other issues relevant to 5G deployment.

## FACILITIES ACCESS CODE SHOULD REMAIN UNCHANGED

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7. Number of issues were raised in the discussion paper regarding the co-location consultation processes, co-building processes and whether changes are required to these in the Facilities Access Code. The ACCC is seeking comment on:
  - (a) Co-location consultation processes;
  - (b) Whether pre-build discussions should be mandated; and
  - (c) Whether any further clarification is required for co-location processes (such as whether 'reasonable attempts' to inform other carriers should be defined).<sup>1</sup>
8. These are discussed further below.

### Recent changes have improved consultation processes

9. Certain issues related to facilities access were raised during the 2016 Mobile Roaming Declaration Inquiry. Since the Mobile Roaming Declaration Inquiry, the Mobile Carriers Forum (MCF) has continued work focussed on specific issues, including deployment, compliance and site design management.
10. The four Mobile Network Operators (MNOs), Telstra, Optus, VHA and TPG, have worked within the MCF to establish processes for requesting co-location on existing infrastructure and for sharing pre-build site information.
11. The MCF has agreed a high-level process that will enable MCF members to proactively share deployment plans for regional and remote areas on a regular basis, in an agreed format and timeframe, so that other MCF carriers could consider whether co-building is an option. The MCF framework enables and facilitates a high level of industry collaboration. Carriers are currently agreeing improvements to pre-building information sharing on greenfield mobile network facilities.
12. Optus considers these processes find the right balance between the sensitivities involved with co-building and opportunities to share costs. Co-building involves different considerations to co-location on existing infrastructure. These key differences mean co-building has not been as widely used as co-location practices (which are well established and, in Optus' experience, have worked well).
13. Co-building requires sharing potentially commercially sensitive information early in the deployment phase and requires both parties to agree on a location that meets both parties' technical configuration and network design needs. Such agreement can be more difficult and time consuming to achieve without a formal contract / arrangement in place between the parties (such as, the formal Alliance Agreement that has operated between Optus and VHA). If a location is not suitable for other parties, it may not be an appropriate co-build opportunity.
14. Processes need to retain some degree of flexibility to enable carriers to quickly deploy future infrastructure, particularly in the current competitive market where MNOs are preparing and planning to deploy 5G infrastructure as early as 2019.
15. Mandating MNO consultation on all deployment plans could create unnecessary costs, likely delay infrastructure deployment and could remove incentives for continued investment in rural and remote infrastructure. Optus would be concerned

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<sup>1</sup> ACCC, Facilities Access Code – An ACCC Discussion Paper reviewing “A Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities”, August 2018, pp. 17-22.

another carrier could potentially seek to game regulated consultation processes to delay or frustrate a carrier's rollout – which would ultimately be to the detriment of consumers.

16. Whether a 'reasonable attempt' (as required by 4.5(2) of the Facilities Access Code) has been made to inform other carriers may depend on factors including region, technology type, and details of the specific site of deployment. In each case a 'reasonable attempt' to make information available may vary on a case by case basis, meaning to define this in the Code may impose unnecessary and burdensome requirements on carriers that are not outweighed by an offsetting benefit.
17. Optus had previously been concerned there was a lack of established information sharing processes for co-build opportunities and noted that various elements of past co-build arrangements had worked well.<sup>2</sup> However, the discussions within the MCF and proposed framework for future co-build information sharing are addressing these concerns.
18. Optus considers that establishing a voluntary process that builds on existing discussions within the MCF will provide a workable solution for sharing deployment plans, taking into account the concerns, considerations and practical limitations associated with doing so. The process outlined by AMTA in Attachment A to its submission aims to achieve this and can be easily implemented.
19. For these reasons, Optus does not support any proposed changes to clause 4.5.1 or 4.5.2.
20. However, Optus continues to retain the view that where government funding may be used to facilitate the deployment of mobile infrastructure, additional obligations in relation to co-location should be present. For example, we note the Mobile Black Spot Programme has contained certain co-location requirements and we consider that these requirements have worked well in that context. We believe that where government funding is facilitating the rollout of infrastructure, arrangements should promote open competitive access to that infrastructure.

### **Emerging issues appear outside the scope of the Facilities Access Code**

21. Optus notes the ACCC identified in the discussion paper potential emerging issues, including:
  - (a) Whether there are any improvements that could be made to the Facilities Access Code to facilitate the deployment of distributed antennas systems (DASs); and
  - (b) Whether there are any changes to the Facilities Access Code required to facilitate the rollout of 5G technologies.
22. These are discussed briefly below.

#### *Deployment of Distributed Antenna Systems*

23. The ACCC notes that the broad definition of 'transmission tower' in the Telecommunications Act could include the structural infrastructure used to position and supply DAS equipment in confined spaces. Given the characteristics of locations used in the DAS deployment, the ACCC notes that sites will often be required to be shared to overcome physical constraints and to reduce the size and amount of

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<sup>2</sup> As referred to in ACCC, Facilities Access Code – An ACCC Discussion Paper reviewing "A Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities", August 2018, pp. 21-22.

equipment in confined spaces. The ACCC wishes to understand if the existing Code facilitates the co-location of DASs.<sup>3</sup>

24. Optus is unclear what the ACCC is contemplating where it refers to the co-location of DASs. A DAS itself is an antenna system located within a structure such as a building, tunnel or bridge to extend mobile coverage internally. The physical structure of the building or tunnel is unlikely to be owned by the mobile carrier.
25. Given the physical constraints of these types of spaces, once a DAS has been installed, it is not technically feasible to install another DAS and share this physical installation space. Any proposal to share space must be agreed prior to any installation activity. Otherwise, there are significant technical issues associated with installing a DAS after one has already been installed, and it is not possible to 'co-locate' in this way. These technical issues could be significant and ultimately affect the performance of the DAS. For example, issues could arise if co-located DASs operated at different frequencies. Further, effectively sharing an antenna reduces the power output of an antenna and performance of the DAS.
26. As a result of these technical issues, MNOs have a long-standing Memorandum of Understanding, administered through the MCF, that outline the processes to share DAS infrastructure. The MNOs have agreed that "where it is technically feasible to do so, they will share Eligible IBC [DAS] Facilities and undertake Technology Upgrades and Improvements to Shared IBC Facilities in accordance with the provisions of this MoU."
27. Optus is of the view that the long-standing MCF MoU has served the industry well, and continual reliance on this instrument should continue.

#### *Rollout of 5G technologies*

28. Optus notes the ACCC referred to the Communications Sector Market Study final report which recognised the important of ongoing investment in small cell infrastructure to support 5G networks. It noted concerns that regulation may discourage investment, given that networks are still at the early stage of development.<sup>4</sup>
29. Optus agrees that this is a relevant concern. Optus does not consider that small cell infrastructure deployment is within the scope of the Facilities Access Code and any changes to the Code in this regard could be more of an impediment to small cell infrastructure deployment rather than enabling quick deployment.
30. Optus would welcome the opportunity for further discussions with Government on measures that could enable prompt 5G deployment.

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<sup>3</sup> ACCC, Facilities Access Code – An ACCC Discussion Paper reviewing "A Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities", August 2018, p. 26.

<sup>4</sup> ACCC, Facilities Access Code – An ACCC Discussion Paper reviewing "A Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities", August 2018, p. 28.