

24 August 2012

Ms Kimberley Mesken  
Project Officer  
Communications Group  
Australian Competition & Consumer Commission  
SYDNEY NSW 2011

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*cc:* priyatharsheni.balachandran@acc.gov.au

Dear Ms Mesken

### **Optus Submission to the Facilities Access Code 1999 Review**

Thank you for the opportunity to respond to the ACCC Discussion Paper to examine “*A Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities (October 1999)*” — the Facilities Access Code.

Optus submits that the Facilities Access Code has played an important role in enabling the negotiate-arbitrate model for access to mobile towers and duct infrastructure to operate in an efficient and effective manner. The Access Code has in the past acted as a regulatory backstop that has been, on occasion, successfully used in commercial negotiations to facilitate agreement.

In our experience, the Facilities Access Code has played an important role in influencing non-price terms of access and limiting the ability of access providers to utilise non-price terms (such as queuing rules) to discriminate against access seekers.

Consistent with the regulatory best practice principle that regulation be targeted and proportionate, Optus submits that the Facilities Access Code should be retained without amendment and continue to apply to the relevant infrastructure under Part 5 of Schedule 1 of the *Telecommunications Act*.

First, Optus wishes to discuss the Facilities Access Code in the context of access to mobile tower infrastructure.

In Optus’ experience, while the application of the Code does not apply to many towers<sup>1</sup>, the provision of co-location through commercial negotiations has worked well. Many of the sites on which Optus co-locates are owned by Crown Castle — a non-carrier and not subject to the Facilities

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<sup>1</sup> Towers owned by third parties non-carriers are not obliged to provide access.

Access Code — and we have successfully negotiated commercial access. In addition, Optus also co-locates on other carriers' sites. In our experience, the existence of the Code has assisted in the finalisation of commercial discussions on the terms and conditions of access.

**CiC**

Second, in the context of access to underground facilities (ducts), Optus has relied upon, and continues to rely upon, the Code to facilitate successful commercial negotiations with both carrier and non-carrier suppliers of ducts.

**CiC**

Optus strongly believes that the Facilities Access Code is an important reference document for carriers and non-carriers of all size to utilise when negotiating access to relevant telecommunications infrastructure. It should be retained in its current structure and content.

Should you have any questions regarding the information contained in this letter, please contact me on (02) 8082 6454.

Regards,

A handwritten signature in black ink, appearing to read 'L. van Hooft', followed by a period.

Luke van Hooft  
Manager, Economic Regulation