

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

Submission in response to
ACCC Draft Report

**Facilities Access Code
Review**

Public Version

December 2019

OPTUS SUBMISSION

1. Optus welcomes the opportunity to provide comment on the Australian Competition and Consumer Commission (ACCC) Draft Report on the Facilities Access Code Review.
2. In particular, we welcome the ACCC's recognition that the Code is still fit-for-purpose and operating well. However we question the need to amend the Code to address concerns relating to the pre-build consultation process; and the queuing policy.
3. Specifically, we do not agree with the need to impose mandatory provisions.
 - (a) First, the mix of existing consultation processes continue to operate as intended. Mandating access to information on planned future builds by postcode on request, as well as the requirement to issue notification alerts, may impact on an access provider's incentive to develop or formalise any future build plans outside the current process timeframes.
 - (b) Second, the current queuing processes are well-established and strike a good balance between ensuring discipline on reserving carriers/MNOs and delivering flexibility in network planning. Mandating a queuing policy that effects the removal of applications that have not progressed after a two-year period is not warranted. This has the potential to disincentivise the establishment of a new site, let alone, potential co-location site.
4. Optus therefore does not support the proposed amendments.

Changes to the Facilities Access Code are not required

5. The Facilities Access Code provides the minimum standards of practice for administrative and operational procedures that allow access to eligible facilities in a timely manner. However, it is important to note that the Code only applies to carriers.
6. It follows that amending the Code to broaden the requirement for access providers to provide information and conduct pre-build consultations on mandatory terms is not warranted. The two proposed amendments are overly onerous and would add to the regulatory burden on the access provider. There is little evidence that current practices are not fit for purpose.
7. First, it expands the information requirement to include 'any plans to establish new Eligible Facilities' within the same 15 business day timeframe of known Eligible Facilities in a particular Postcode Area. Second, it introduces a new notification process that forms part of the Master Access Agreement that access seekers can enter into with the access providers. It is unclear what additional benefit this provides over the operation of existing industry arrangements.
8. In fact, this contradicts the ACCC's own views that:

*The ACCC acknowledges stakeholders' concerns that making Clause 4.5 mandatory for all proposed new sites **could slow down mobile rollouts, affect investment decisions and impose administrative burdens on industry.** The ACCC considers that it would be best for the Co-location Consultation Process to **remain as a voluntary process** for carriers to seek partners to support building*

*new sites and facilities that they may not be able to justify building on their own.*¹
[emphasis added]

9. Arguably, the need to provide information is two-way. Where an access seeker (regardless of whether it is a carrier, or non-MCF member) requests information on planned future builds in an area, they should be required to provide its associated build plans to the access provider on a reciprocal basis. Access seekers only need to respond where they may be interested in co-locating at a site.
10. Optus also does not support the introduction of a 'use it or lose' provision in the Code. Carriers build sites for both their current and future capacity needs. To circumvent this objective, by foreclosing a carrier's ability to reserve capacity for its future network plans after 24 months is not in the legitimate business interests of the access provider.
11. Finally, in terms of the other issues raised, we support the ACCC's view that no changes to the Code are required for:
 - (a) Access to NBN fixed wireless towers and eligible underground facilities;
 - (b) Access to towers and tower sites for distributed antenna systems and the rollout of 5G technologies; and
 - (c) Streamlining process for some types of facilities access requests, requests, such as for smaller and relatively simple installations.

¹ ACCC, 2019, Facilities Access Code Review, Draft Report, November, p.17