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Australian Competition and Consumer Commission  
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## OPENetworks Submission RE Competition in evolving communications markets Survey

OPENetworks is pleased to provide its view of competition in the evolving communications markets.

### Questions RE Fixed Line Voice and Broadband Services

1. Is there competition in the supply of retail fixed-line voice and broadband services supplied over both Telstra's legacy access network and next generation networks, including the NBN? If so, how would you describe the state of competition, what form is it taking (price and non-price differentiation) and how is it likely to evolve? What are the key factors shaping the competitive state? Please provide details and examples.

There is extensive price and non-price competition over the Telstra/NBN Co networks between Retail Service Providers (**RSPs**), but because there is no encouragement and much discouragement for Telstra or Optus to compete on non-NBN Co fixed line networks, there is little competition on those networks at RSP level.

A reluctance of Telstra and Optus to interconnect with those non NBN Co fixed line superfast broadband networks, because of the impediment of cost and lack of government leadership and incentives to encourage interconnection, when interconnection is possible, desirable and easily achievable if aggregated by NBN Co, is not an irrelevant consideration.

The ACCC approved the NBN Definitive Agreements between NBN Co and Telstra and NBN Co and Optus that contain provisions mandating that Telstra and Optus must use NBN Co fixed lines whenever there is a fixed line wholesale alternative network to that of NBN Co, such as provided by OPENetworks, Opticomm, LBN Co, Red Train Networks or Real World Networks. This anti-competitive measure allowed by the ACCC, is a significant impediment to interconnection and competition evolving on those alternative fixed line networks. Indeed there is no generally active encouragement by government for Telstra or Optus (or Vodafone) to interconnect to the non-NBN Co fixed line broadband networks, despite the ACCC loudly condemning the lack of choice on many non NBN Co fixed line superfast broadband networks.

Aggregation of the main RSPs, as well as other smaller RSPs, onto the non- NBN Co fixed line networks could be achieved via a common interconnection portal **provided by NBN Co** to any **open access AND wholesale only networks**. This would not only level the playing field and provide a boost for competition in the fixed line market, but actively encourage wholesale carriers to offer genuine **open access and wholesale only networks** that can meaningfully compete with TPG, Spirit Telecom, as well as the vertical operators and emerging plethora of fixed line and last mile wireless retail operators that monopolise apartments and gated communities.

Unfortunately this idea to foster competition by both introducing the main RSPs to the alternative wholesale fixed line networks and assisting carriers/operators to see the light of offering wholesale only and open access networks and being licenced carriers rather than

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operators, is to date a point of obvious disinterest for the ACCC and NBN Co, who will do nothing to assist competing fixed line carriers.

2. What impediments are there to RSPs winning new customers during the transition to supply of fixed-line services over next generation networks, including the NBN? Please provide details and examples including with reference to those possible impediments noted above.

No comment

3. Are Telstra's SSU and Migration Plan impacting competition for fixed-line services and if so how?

See the answer to question 1 as to what can be added to the SSU to encourage Telstra to interconnect with non-NBN Co fixed line networks.

4. Does IP voice interconnection create any barriers to the competitive supply of retail fixed-line voice services? If so, please provide details.

No comment

5. How is IP voice interconnection likely to evolve and what, if any, competition issues may arise during the transition to next generation networks? Please provide details and examples, including with reference to the issues noted above.

No comment

6. Are there any cost advantages associated with IP voice interconnection relative to the legacy PSTN network? Does this have any implications for the pricing of IP voice interconnection? Please provide details.

No comment

#### Questions RE Products and Pricing

7. Do NBN Co product offerings, and the NBN Co product development processes, provide RSPs with the flexibility to innovate and respond to changing customer demands, including residential and business consumers? Please explain how this is impacted by changing consumer preferences and provide examples.

No Comment

8. What refinements to NBN pricing could improve RSPs ability to compete on the NBN and to develop products to meet business and consumer needs? Please provide details and ensure your response takes account of the requirements of the SAU, the economies of scale associated with the network and the legitimate commercial interests of NBN Co to recover its costs.

No comment

9. Does NBN Co's current dimension-based discount for CVC improve the opportunity for competition in the provision of fixed-line voice and broadband services? Please provide details. What would be the impact of a dimension-based discount which reflected RSP use, rather than industry specific use? More specifically, will the size and timing of any discounts impact competition?

No comment

10. What are the cost and price implications for NBN Co of meeting increasing demands for traffic volumes on the NBN and what might this mean for competition? Please provide details.

No comment

11. How is the market for wholesale aggregation services evolving and is it facilitating competitive outcomes in the supply of retail fixed-line voice and broadband services? If possible, please provide examples. Are there any impediments to this market evolving or alternative models which would promote competition further?

Aggregation is not evolving on the non-NBN Co fixed line market because of government discouragement and disinterest in changing the situation and despite loud concerns that there is little choice in RSPs or competition on the non-NBN Co networks.

Firstly, Telstra or Optus have been directly prohibited from competing on non-NBN Co fixed line networks, even without the natural reluctance of Telstra and Optus to spend the money necessary to interconnect with those network. The impediment of cost and lack of government leadership and incentives to encourage interconnection, when interconnection is possible, desirable and easily achievable (if aggregated by NBN Co), is the most significant issue for ACCC.

However, the ACCC approved the NBN Definitive Agreements between NBN Co and Telstra and NBN Co and Optus that contain provisions mandating that Telstra and Optus must use NBN Co fixed lines whenever there is a fixed line wholesale alternative network to that of NBN Co, such as provided by OPENetworks, Opticomm, LBN Co, Red Train Networks or Real World Networks. This anti-competitive measure allowed by the ACCC, is a significant impediment to competition evolving on those alternative fixed line networks. Indeed there is no generally active encouragement by government for Telstra or Optus (or now Vodafone) to interconnect to the non-NBN Co fixed line broadband networks.

Aggregation of the main RSPs with all of other RSPs on the NBN Co fixed line networks could be achieved via a common interconnection portal provided by NBN Co to all other **open access wholesale only networks**. This would not only level the playing field and provide a boost for competition in the fixed line market, but actively encourage wholesale carriers to offer genuine **open access and wholesale only networks** that can meaningfully compete with TPG, Spirit Telecom and the emerging plethora of fixed line and last mile wireless retail operators that monopolise the apartments and gated community marketplace.

ACCC should foster competition by regulation and policy that:

- encourages the main RSPs to interconnect with the alternative wholesale fixed line networks via **aggregation by NBN Co** on fair and reasonable terms that do not prejudice or adversely affect consumers nor alternative non-NBN Co fixed line carriers want to interconnect with the aggregated RSPs;
- obliges developers of all **new developments to deploy at least fixed line superfast broadband networks** in all new developments;
- mandate that **only licence carriers** can operate superfast broadband networks in new developments; and
- require carriers of superfast broadband networks in new developments to be **wholesale only and open access** networks allowing access on non-discriminatory terms and prices.

12. Are there any barriers to entry for RSPs supplying fixed-line voice and broadband services on the NBN and other next generation networks? Or any other factors affecting the competitive supply of these services? Are there any particular issues which impact smaller RSPs?

See answer to question 11.

13. Are there any implications for competition, and outcomes for consumers, as a result of the presence and ongoing operation of regulated non-NBN next generation networks?

Consumers would benefit if the market in new and existing residential developments requires all operators to be carriers and those carriers must be wholesale only open access providers of superfast broadband and voice services.

14. How are network operators and RSPs responding to the growth in OTT activity? Are there any alternative business models developing between network operators, RSPs and OTT service providers, or their advertisers? If so, what is the nature of new business models and how do they address the impact of OTT on traditional business models?

No Comment

15. Are there any CPE arrangements that may act as a barrier to entry now or in the future?

There are issues about Customer Premises Equipment (CPE) arrangements that can erode competition in the fixed line market. However, arrangements concerning CPE as a barrier to competition is really a broad church of problems, sometimes involving CPE directly and other times indirectly.

Clearly there are limitations in the deployment of RSP specific ONUs, WiFi Access Points and other CPE equipment that can lock out alternative RSPs or place cost barriers to overcome before alternative RSPs can access the premises, but there are other less direct problems that may also involve proprietary customer premises equipment.

There are operators that are not carriers, who therefore are not subject to carrier conditions nor regulation on their activities (eg Spirit Telecom) that use in-building cables, backhaul from other carriers and wireless CPE to secure monopoly broadband services in buildings. They may offer commissions to building managers and other community gatekeepers to secure what is, in practice, monopoly retail broadband networks capturing residential communities and offering no effective choice of services as they say they do not have to be open access or provide wholesale services on non-discriminatory terms and prices to other RSPs.

There are no proclaimed Commonwealth Laws or Regulations that oblige developers of new residential developments to deploy optical fibre fixed line broadband networks and instead merely compels them to be "fibre ready". As a result there are many new residential developments without any fixed line broadband network to connect premises. Local Planning Laws are now leaving the matter of telecommunication up to the Federal Government and, as a result, residents in those development and communities are at the mercy of expensive and inefficient wireless and monopoly network operators, whilst living in faint hope that NBN Co or OPENetworks or some other genuinely wholesale only open access carrier will connect their premises.

Federal Government policy on the matter is to "*work with local government to change planning laws*". However, despite the responsibility of the Department of Communications to attend to this policy, there is no Federal government body taking the lead on the policy, nor is there any Federal work to sensibly deal with the problem or produce any changes to planning laws.

There are carriers (such as MyPort) that are now offering building managers in new residential, student, aged care, retirement, traveller and low cost accommodation, their own managed services to secure an effective monopoly over fixed and wireless services in those new developments in return for a share of the connection and service charges. In effect, even if there are NBN Co or OPENetworks fixed line broadband and voice services available in those buildings, the building managers, letting managers, property agents and other gatekeepers to the occupiers, will only offer their own managed services via their own CPE. The residents and occupiers generally do not know how or cannot arrange connection of alternative services and without expensive and limited mobile or public wifi coverage, they have little choice than to take the managed broadband and voice services from the building managers and other gatekeepers at whatever price is set.

**Other issues**

16. We welcome submissions on any other issues that may be impacting competition or consumers in relation to the supply of fixed-line voice and broadband services.

See the above answers to question 15.

Yours faithfully



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