



**Australian
Competition &
Consumer
Commission**

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5 September 2011

Dear Sir/Madam

**NBN Co Limited applications for authorisation A91271-A91273
- interested party consultation**

The Australian Competition and Consumer Commission (the ACCC) has received applications for authorisation from NBN Co Limited (NBN Co) for an agreement entered into with SingTel Optus Pty Ltd and other Optus entities (Optus).

The purpose of this letter is to invite your comment on the applications. Attached is a summary of the authorisation process including advice on how to make a submission to the ACCC.

On 23 June 2011, NBN Co and Optus announced that they had entered into an agreement for the migration of Optus' hybrid fibre-coaxial (HFC) customers to the national broadband network (the Optus HFC agreement).

Aspects of the agreement for which authorisation is being sought include:

- NBN Co will make progressive payments to Optus based on the actual number of customers that migrate from the Optus HFC network to the national broadband network.
- Optus will progressively decommission parts of the HFC network that do not provide ongoing support for mobile infrastructure and business customers.
- Optus has agreed to a fixed line network preference in favour of the national broadband network for residential and small business customers currently served by the Optus HFC network.
- Optus has agreed not to further extend the coverage of its HFC network or grant any right or interest or permit any person to use, operate or provide any service over or using the HFC network in an HFC serving area after deactivation.
- Optus has also agreed that, following deactivation, it will ensure that no person can use its HFC Network to provide services in Australia. The agreement also places limits on the disposal of the HFC network by Optus.
- The agreement also includes a provision that prevents Optus from conducting a marketing campaign in respect of wireless data services targeted at retail customers

within the HFC serving area which is disparaging of the performance or functionality of the national broadband network.

A full copy of the applications for authorisation and supporting submissions from NBN Co and Optus is available on the ACCC's website <www.accc.gov.au/AuthorisationsRegister>. Alternatively, you can contact Tess Macrae on 03 9290 1835 to obtain a hard copy of the applications and submissions.

Request for submissions

The ACCC invites you to make a submission on the likely public benefits and likely effect on competition resulting from the Optus HFC agreement. The ACCC also invites your submissions on the market definition, counterfactual and any other issue you consider relevant to the ACCC's assessment of the Optus HFC agreement.

If you intend to provide a submission in relation to NBN Co' applications for authorisation, please do so by **30 September 2011**.

Alternatively, if you would like to provide comments orally, please contact Tess Macrae on (03) 9290 1835 to organise a suitable time.

A six-month statutory time limit applies to the ACCC's consideration of authorisation applications. The six-month period is increased if a pre-decision conference is called. Before issuing its final decision the ACCC must issue a draft determination. The applicant and interested parties will be invited to respond to the draft determination by either providing written submissions within a specified timeframe or by requesting that the ACCC call a pre-decision conference.

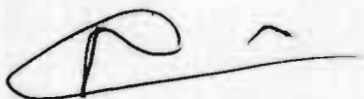
Submissions, including oral submissions, will be placed on the ACCC's public register subject to any request for exclusion (guidelines are attached).

Please advise if you do not wish to make a submission at this time, but would like to be informed of the progress of the applications at the draft and final determination stages. If you are able to, please provide a nominated contact email address for future correspondence.

You can also forward this letter to any other party who may wish to make a submission to the ACCC regarding the applications.

This letter has been placed on the ACCC's public register. If you have any queries please do not hesitate to contact Susan Philp (02 6243 1347) or Tess Macrae (03 9290 1835).

Yours sincerely



Dr Richard Chadwick
General Manager
Adjudication Branch

A91271-A91273 – NBN Co Limited

Interested parties consulted

AAPT Limited
Adam Internet Pty Ltd
Aussie Broadband
AUSTAR United Communications
Australia On Line Pty Ltd
Australian Communications Consumer Action Network
Communications Alliance Ltd
Competitive Carriers Coalition
Department of Broadband, Communications and the Digital Economy
Foxtel Management
iiNet Limited
Internet Industry Association
Internet Society of Australia
Internode Pty Ltd
M2telecom
Macquarie Telecom Pty Limited
Network Technology Australia
Nextgen Networks Pty Limited
OPENetworks
PIPE Networks Limited
Platform Networks Pty Ltd
Primus Telecommunications Pty Ltd
Spin Telecom
Telstra Corporation Limited
TPG Telecom Group
TransACT Capital Communications P/L
Vodafone Hutchison Australia