



Australian
Competition &
Consumer
Commission

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23 September 2011

Georgina Foster
Partner
Baker & McKenzie
Level 27, AMP Centre
50 Bridge Street
Sydney NSW 2000

By email: georgina.foster@bakernet.com

Dear Ms Foster

**NBN Co Limited - applications for authorisation A91271-A91273
- request for further information**

I refer to the above mentioned applications for authorisation lodged with the Australian Competition and Consumer Commission (the ACCC) on 29 August 2011.

The purpose of this letter is to seek further information from Optus concerning the Optus HFC network to assist the ACCC in its assessment of the NBN Co authorisation applications.

I note that some of the information sought by the ACCC may contain details that are commercially sensitive and confidential to Optus. Accordingly, I have enclosed a copy of the ACCC's publication *Guidelines for excluding information from the public register for authorisation, merger clearance and notification processes* for your information.

So that the ACCC's consideration of the applications can proceed in a timely manner it is asked that Optus provide its response by **10 October 2011**.

Investment and financial information relating to Optus' HFC network

1. Please provide an overview of the capital expenditure that has been made in Optus' HFC network since its construction, including itemising expenditure relating to specific upgrades. In particular, please provide details of the costs associated with the DOCSIS 3.0 upgrade.
2. What is the current depreciated value and remaining asset life of the Optus HFC network?

3. Provide detailed financial accounts of Optus' HFC network for each of the last two financial years. This should include (but not be limited to) detailed profit and loss statements and balance sheets.

Existing performance/characteristics of Optus' HFC network

4. What is the average data rate provided by the Optus HFC network to end users?
5. What maximum average and peak data rate could be provided to end users, assuming use of the DOCSIS 3.0 capabilities of the Optus HFC network?
6. Please provide information relating to the historical performance of the Optus HFC network, including details of the network availability.

Optus' existing and historical commercial fixed-line strategy

7. What is the current profile of subscribers to the Optus HFC network? Please provide a breakdown of those subscribers as follows:
 - a. number of voice only subscribers and total number of overall voice subscribers;
 - b. number of broadband only subscribers and total number of overall broadband subscribers – please provide breakdowns by the type of broadband service acquired (i.e. premium speed and non-premium speed services);
 - c. number of pay TV only subscribers and total number of overall pay TV subscribers;
 - d. total number of subscribers who purchase both voice and broadband services;
 - e. total number of subscribers who purchase both voice and pay TV services;
 - f. total number of subscribers who purchase both broadband and pay TV services; and
 - g. total number of subscribers who purchase voice, broadband and pay TV services.
8. The ACCC understands that Optus will from time to time utilise the Telstra copper network to provide services to end users within the footprint of Optus' HFC network, rather than using the Optus HFC network. Please explain what factors Optus (in order of importance to Optus) will take into account when determining whether to service a premises using Optus' HFC network or Telstra's copper network.
9. How many of Optus' customers (in terms of number of premises) are connected to Telstra's copper network within the footprint of Optus' HFC network? What percentage of those premises would be able to be served by Optus' HFC network?
10. What is the approximate cost to Optus to connect a new lead-in to a premise that is deemed serviceable?

Optus' commercial fixed-line strategy with the HFC agreement

11. Optus' submission dated 26 August 2011 notes that one of the public benefits of the HFC Agreement is that it will be able to "proceed with its fixed line strategy". Please provide further information regarding that strategy and how the HFC Agreement and, separately, how each provision for which authorisation is sought facilitates Optus being able to proceed with that strategy.

12. Please describe how Optus being able to proceed with its fixed-line strategy with the HFC Agreement will result in a public benefit.
13. Optus asserts that a single access platform with a unified set of systems and processes is an advantage for Optus arising from the close down of the HFC network. Please provide further information on this assertion, including:
 - a. what systems Optus would cease to use as a result of the decommissioning of its HFC network; and
 - b. what costs would be avoided as a result of that decommissioning.
14. How does Optus intend to ensure that its customers migrate to the NBN and remain on the NBN for the minimum 2 year period?
15. What demand does Optus expect for its services over the NBN? For example, does Optus expect that most of its HFC customers will migrate to the NBN with an Optus service? Please provide a breakdown of expected migrating subscribers by ARPU. What type of services (i.e. speed etc) does Optus expect most customers to select?
16. How much of the Optus plant and cabling, in terms of both length and proportion, does Optus expect to be able to decommission following its customers' migration to the NBN?

Optus' commercial fixed-line strategy without the HFC Agreement

If the HFC Agreement did not proceed and Optus decided to maintain its network and compete head-to-head with NBN-based services:

17. Optus' submission notes that ongoing capital expenditure and operating expenditure for the HFC network without the HFC Agreement would be around [CIC] [end CIC] per annum. What are the assumptions behind these values? Would these values be likely to change over time? If so, how?
18. What investment/upgrade path for Optus' HFC network would be available to Optus, and what would be the approximate cost and outcome (in terms of technical quality) of such upgrades? (for example, what would be the cost and likely technical improvements of node-splitting or an upgrade to a radio frequency over glass?)
19. Are there particular barriers such as rights of way or conduit size that would restrict Optus' ability to complete an upgrade of its HFC network to node split? If so, can these barriers be overcome at, for example, a higher cost (and at what cost)? What percentage of premises would face such a barrier?
20. What kind of wholesale services could be provided by the Optus HFC network? How much would it cost, in terms of network upgrades and other related capital expenditure, to enable the provision of these wholesale services over the Optus HFC network?
21. In light of the "level playing field" provisions introduced by the *National Broadband Network Measures Access Arrangements Act 2010* (Cth), what options would be available to Optus to upgrade or expand Optus' HFC network or build an alternate network that is not "super fast"? For example, would it be technically feasible for Optus to expand its existing networks within a 1km radius of the existing network?

22. In determining whether to service a retail customer using its HFC network or the NBN, what factors would influence Optus' decision (in order of importance to Optus)?
23. Would Optus expect that the number of serviceable addresses for the Optus HFC network would increase if the NBN was the only alternate network service available? (i.e. would the costs or practical difficulties that make some premises currently "unserviceable" be balanced differently?)
24. What would be Optus' likely strategy in relation to retail prices of its HFC-based services? Given Optus' current understanding of NBN Co's product offerings, what is Optus' view as to the likely costs associated with providing a similar NBN-based product? What would be the costs to Optus in relation to the self-supply of HFC-based services?
25. Are there any services that are technically able to be provided over Optus' HFC network (irrespective of whether Optus currently supplies those services), that will be unable to be supported by NBN Co's product offerings? If so, please identify these services and provide the reasons for your view.
26. Are there any services that are technically able to be provided over the NBN that are unable to be provided over Optus' HFC network, even if it were to be upgraded? If so, please identify these services and provide the reasons for your view.

Likely effect of "anti-disparagement provisions" on Optus

27. What type/s of marketing activity in relation to its wireless services do the "anti-disparagement provisions" prevent Optus from performing?
28. Are the "anti-disparagement provisions" likely to affect Optus' strategy in relation to the marketing and supply of its wireless services to retail customers? If so, please provide the reasons for this view.
29. Does Optus see its wireless services as being able to compete effectively with NBN-based services, particularly where those services are voice or lower speed broadband services? Please provide reasons for your response.

A redacted version of this letter will be placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact me (02 6243 1132), Luke Griffin (02 6243 1114) or Tess Macrae (03 9290 1835).

Yours sincerely



Dr Richard Chadwick
General Manager
Adjudication Branch