

28 June 2012

Mr Luke Griffin
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

Dear Mr Griffin

NBN Co: Applications for Authorisation of Provisions of the HFC Subscriber Agreement between NBN Co and Optus

NBN Co welcomes the ACCC's draft determination proposing to grant authorisation to NBN Co to give effect to particular provisions contained in the Optus HFC Agreement. NBN Co also welcomes the ACCC's proposal to grant authorisation for 20 years.

Public benefits

NBN Co agrees that the Optus HFC Agreement is likely to result in the following benefits to the public:

- Avoiding wasteful duplication of network operating costs: the Optus HFC Agreement will avoid the cost of operating the Optus HFC network to provide a service that the NBN is able to provide at a lower incremental cost. These cost savings are likely to be material.
- Costs savings from a co-ordinated migration: the Optus HFC Agreement will result in lower one-off costs arising from the planned migration of customers from the Optus HFC network to the NBN.
- Environmental benefits: including lower carbon emissions from reduced energy consumption.

NBN Co further agrees that these public benefits are clear and quantifiable.

NBN Co also remains of the view that the Optus HFC Agreement delivers further public benefits, as set out in NBN Co's previous submissions. In particular, NBN Co believes that the improvement to its business case or internal rate of return arising from the Optus HFC Agreement should be given weight in considering the public benefits flowing from the Agreement.

NBN Co further submits that the improvement to its business case or IRR arising from the Optus HFC Agreement is a public benefit because there is a causal nexus between that benefit and the delivery of the NBN project (which is a benefit to the community as a whole). The improvement of NBN Co's business case as a result of the Optus HFC Agreement means NBN Co is better placed to achieve the Government's policy objectives. In particular the Optus HFC Agreement facilitates the increased take-up of the NBN by high value customers which enables NBN Co to offer lower prices, rollout the NBN in a more efficient manner, and otherwise achieve the government's objectives more quickly and/or more fully.

NBN Co submits that as a government business enterprise pursuing a government policy in order to maximise the benefits to the economy rather than in order to maximise its own profit, anything that improves the ability of NBN Co to achieve this end should be given weight in any consideration of the public benefits flowing from the Agreement.

Public detriment

NBN Co has submitted from the outset that there are unlikely to be any detriments to the public resulting from the Optus HFC Agreement¹ and that any perceived detriments to the public as a result of the Optus HFC Agreement, if they do arise, are likely to be small². NBN Co remains of this view and agrees with the ACCC that, to the extent that any detriments might arise, they will become less significant over time.

NBN Co agrees with the ACCC that the following factors will lessen the impact on competition and consumers arising from the removal of the Optus HFC network:

- the limited footprint of the Optus HFC network: as noted in NBN Co's submission³ and the draft determination⁴, the Optus HFC network only passes 1.4 million serviceable homes in three capital cities with a customer base of approximately 500,000.
- no expansion or upgrade to the HFC network: NBN Co understands that Optus has no plans to expand the HFC network outside its current footprint⁵. NBN Co also understands that Optus is unlikely to undertake significant investment in its HFC network⁶.
- demand for services that the HFC network is not capable of supplying: over time, consumers are likely to demand services that the HFC network will not be able to

¹ See section 8.1 of NBN Co's submission to the ACCC dated 20 January 2012

² See sections 8.3 - 8.6 of NBN Co's submission to the ACCC dated 20 January 2012 and section 4 of NBN Co's supplementary submission to the ACCC dated 23 February 2012

³ See paragraph 80 of NBN Co's submission to the ACCC dated 20 January 2012

⁴ See paragraphs 2.12 and 2.13 of ACCC draft determination

⁵ See paragraphs 52 and 109 of NBN Co's submission to the ACCC dated 20 January 2012 and paragraphs 3.43, 3.55 and 3.57 of ACCC draft determination

⁶ See paragraphs 52 and 109 of NBN Co's submission to the ACCC dated 20 January 2012 and paragraphs 3.43, 3.55 and 3.57 of ACCC draft determination

supply⁷. Optus will use the NBN to provide higher speed broadband services to its customers⁸.

- uneconomic to operate the HFC network: the Optus HFC network will be uneconomic to operate once a critical mass of customers has been lost⁹.
- natural monopoly characteristics of the NBN: NBN Co agrees with the ACCC that a number of elements of fibre to the home networks exhibit strong natural monopoly characteristics¹⁰.

Regulatory framework

NBN Co considers that the regulatory framework within which it operates, and will continue to operate during the term of authorisation, will mitigate the effects of removing the HFC network as a potential competitive constraint. This was set out in sections 5.6 and 8.4 of NBN Co's submission to the ACCC dated 20 January 2012 and section 4.4 of NBN Co's supplementary submission dated 23 February 2012, as well as in sections 2.2.3 and 2.2.4 of the Frontier Economics Report dated February 2012. NBN Co agrees with the ACCC that the regulatory arrangements are likely to impose a significant constraint on NBN Co's pricing over time¹¹.

Attached to this letter is a confidential submission addressing some specific matters raised in the draft determination.

Please do not hesitate to contact me if you have any questions.

Yours sincerely,



Caroline Lovell

Principal Regulatory Affairs and Industry Engagement

⁷ See sections 2.1, 2.2, 2.3 and 4.1 of NBN Co's supplementary submission to the ACCC dated 23 February 2012

⁸ See paragraphs 3.57 - 3.60 of ACCC draft determination and paragraph 110 of NBN Co's submission dated 20 January 2012

⁹ See paragraphs 63 - 66 of Frontier Economics Report dated December 2011

¹⁰ See paragraphs 3.5, 3.61, 3.141 and 3.212 of ACCC draft determination

¹¹ See paragraphs 3.175 - 3.178 of ACCC draft determination