



**Australian
Competition &
Consumer
Commission**

GPO Box 520
Melbourne Vic 3001

Level 35, The Tower
360 Elizabeth Street
Melbourne Vic 3000

tel: (03) 9290 1800
fax: (03) 9663 3699

www.accc.gov.au

Our Ref: 48041
Contact Officer: David Jones
Contact Phone: 02 6243 1393

19 July 2012

By email

Dear Sir/Madam

**NBN Co Limited applications for authorisation A91290–A91292
- determination**

The Australian Competition and Consumer Commission (the ACCC) has issued a determination in respect of the applications for authorisation lodged by NBN Co Limited (NBN Co) on 23 January 2012.

NBN Co has sought authorisation for particular provisions of an agreement between itself and SingTel Optus Pty Ltd and other Optus entities (Optus) to migrate Optus' hybrid fibre-coaxial cable (HFC) subscribers to the national broadband network.

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.
- The agreement also provides that for 15 years, Optus may not conduct a marketing campaign in respect of wireless data services targeted at retail customers within the HFC serving area which is expressly critical of or makes any express adverse statement about the performance or functionality of the national broadband network where such a statement is misleading or deceptive or involves the making of a false or misleading representation in contravention of the Australian Consumer Law.

A copy of the ACCC's determination is available on the ACCC's website, including a summary of its reasons. For the reasons set out in its determination, the ACCC has decided to grant authorisation for 20 years. The ACCC's assessment is set out in Chapter 3 of its determination.

Application for review

Pursuant to section 101 of the Competition and Consumer Act 2010, a person dissatisfied with this determination may apply to the Australian Competition Tribunal

for its review. An application for review must be made within 21 days of the date of this determination; that is, on or before 9 August 2012. If no application to review is lodged by this date, the ACCC's determination will come into force on 10 August 2012.

An application for review of the ACCC's determination should be lodged directly with the Australian Competition Tribunal. The Australian Competition Tribunal is a separate body from the ACCC and is located within the Federal Court of Australia.

For further information about the process involved in reviewing decisions in the Australian Competition Tribunal please refer to the tribunal's website located at <http://www.competitiontribunal.gov.au/>.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter please do not hesitate to contact David Jones on 02 6243 1393.

Yours sincerely



Dr Richard Chadwick
General Manager
Adjudication Branch