



**Australian
Competition &
Consumer
Commission**

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25 January 2012

Dear Sir/Madam

**NBN Co Limited applications for authorisation - withdrawal of applications
A91271-A91273 and lodgement of applications A91290-A91292**

The Australian Competition and Consumer Commission (the ACCC) has received applications for authorisation from NBN Co Limited (NBN Co). Applications for authorisation A91290-A91292 were lodged with the ACCC on 23 January 2012.

I note that applications A91271-A91273 were withdrawn and applications A91290-A91292 lodged following NBN Co amending its applications to take account of changes to the anti-disparagement provision of the HFC Agreement entered into with SingTel Optus Pty Ltd and other Optus entities (Optus).

Specifically, the amended anti-disparagement provision provides that for a period of 15 years after the execution date of the Agreement, Optus may not conduct a marketing campaign in respect of wireless data services targeted at retail customers whose premises are within the HFC serving area which is expressly critical of or makes any express adverse statement about the performance or functionality of the NBN where such criticism or statement is, in all the circumstances, misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the Australian Consumer Law or involves the making of a false or misleading representation in contravention of section 29 of the Australian Consumer Law (key changes underlined).

I note that applications A91290-A91292 are otherwise substantially similar to applications A91271-A91273.

Unchanged 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 hybrid fibre coaxial cable (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.
- Optus has also agreed not to directly market to obtain subscribers that will only use the HFC network for voice services.

Submissions

The ACCC received a number of submissions in its assessment of the now withdrawn applications (A91271-A91273), which are substantially similar to the current applications (A91290-A91292) in many respects. The ACCC will take those submissions into account in assessing the current applications (A91290-A91292). Accordingly, if you made a submission under that process, there is no need for you to resubmit it under this new process.

However, should you wish to do so the ACCC invites you to comment, particularly in relation to the changes that have been made to the anti-disparagement provision. If you intend to provide a submission, please do so by **9 February 2012**.

Attached is a summary of the authorisation process including how to make a submission to the ACCC.

A full copy of the applications for authorisation is available on the ACCC's website <www.accc.gov.au/AuthorisationsRegister>. Alternatively, to obtain a hard copy of the applications and submission or to provide comments orally, you can contact Tess Macrae on 03 9290 1835.

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

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 Susan Philp (02 6243 1347) or Luke Griffin (02 6243 1114).

Yours sincerely



David Jones
Acting General Manager
Adjudication Branch

A91290-A91292 – NBN Co Limited

Interested parties consulted

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| 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 |
| Mr Colin Boyle |
| Mr Ken Curry |
| Network Technology Australia |
| Nextgen Networks Pty Limited |
| OPENetworks |
| PIPE Networks Limited |
| Platform Networks Pty Ltd |
| Primus Telecommunications Pty Ltd |
| Professor Jerry Hausman |
| Professor Joshua Gans |
| Spin Telecom |
| Telstra Corporation Limited |
| TPG Telecom Group |
| TransACT Capital Communications P/L |
| Vodafone Hutchison Australia |