



**Australian
Competition &
Consumer
Commission**

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28 May 2012

By email

Dear Sir/Madam

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

The Australian Competition and Consumer Commission (the ACCC) has issued a draft 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.

Draft determination

A copy of the ACCC's draft determination is available on the ACCC's website, including a summary of its reasons. For the reasons set out in its draft determination, the ACCC proposes to grant authorisation for 20 years.

Next steps

Once the ACCC issues a draft determination, the Applicants or any interested party may request that the ACCC convene a 'pre-decision conference'. A pre-decision conference provides the opportunity for interested parties to make oral submissions in relation to the draft determination. Conferences are conducted informally and while legal or professional advisers are able to attend they are not entitled to participate in the discussion.

If you wish the ACCC to hold a pre-decision conference in relation to the draft determination, you must notify the ACCC in writing by **12 June 2012**.

Alternatively, you are invited to make a written submission in response to the ACCC's draft determination. Submissions should be lodged by **13 June 2012**.

The ACCC will consider any submissions it receives, including any oral submissions made should a pre-decision conference be called, and will then release a final determination in relation to these applications.

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 on 02 6243 1347 or Luke Griffin on 02 6243 1114.

Yours sincerely



Dr Richard Chadwick
General Manager
Adjudication Branch