

## **NBN Co Limited - Authorisations - A91290 - A91292**

NBN Co Limited (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.

On 28 May 2012 the ACCC issued a draft determination proposing to grant authorisation for 20 years.

The ACCC is now seeking submissions from the applicant and interested parties in relation to the draft determination.

### **RESPONSE:**

As a residential customer of Optus HFC I am concerned about the apparent anti-competitive proposal embodied in the HFC Subscriber Agreement between NBN Co Limited and SingTel Optus Pty Ltd.

The main "clear benefit" claimed in the application is that the agreement will "avoid the cost of operating the Optus network to provide a service the NBN is also able to provide". While the future is unknown it is clear that at present this is not the case. The NBN and HFC currently provide a similar service however the HFC is able to do so at a lower cost with high reliability over existing infrastructure.

The ACCC ruling on the narrowly defined matter of the migration of residential customers from the Optus HFC infrastructure to that of the NBN. While the issue should be focused on protecting existing customers of the HFC and the pricing related to the service the ACCC decision is corralled by the existing legislated requirement for a uniform national pricing structure for the NBN. Without competition the cost base and capital investment of the NBN would result in a pricing structure which would possibly give little or no return on investment if the existing HFC providers maintain their current pricing structures.

While the current NBN is technically superior to the HFC and as a result of Government legislation that advantage will only grow as existing, and potentially new, competitors are legislated (under the National Broadband Network Measures - Access Arrangements Act 2011) against expanding or extending coverage or upgrading their infrastructure to competing highspeed broadband services.

The core issue therefore is not the HFC Subscriber Agreement under review. Rather it is that the legislative framework has cleared the way for the NBN to be a monopoly network. It will have no effective competitive constraint other than at the retail level where only a small fraction of the pricing can be flexible as the dominant component of the cost will be set by the wholesale price.

It will be up to the ACCC to ensure that the single wholesale operator NBN prices are set to recover its efficient costs and not become a poorly managed and inefficient supplier which limits the ability of Australians to access the latest technology in a fast moving sector. The legislation currently in place protects the NBN from the need to upgrade the infrastructure, or replace it once better technology is available.

Fundamentally the lack of competition built into the legislation that is core issue with the NBN. The privilege of protectionism will provide no incentives for the NBN to develop and maintain efficiency, excellent levels of service and pricing. There will be no need to introduce new technology and upgrade the network as the customers and on selling retail companies will be a captive client base.

Australia has already experienced the downside resulting from protecting monopolist suppliers in the telecommunications and power supply areas. Only with new entrants, in many cases at the frontier of new technology, did consumers see increased levels of service and lower prices.

As noted in the Frontier Report, competition from existing HFC's is likely to be geographically limited and shortlived. Ultimately the NBN will, as a result of Government legislation preventing existing HFC service upgrades, be the clear technological leader in highspeed broadband services. Ultimately this enforced lack of competition will reduce the ability of the Australian economy to move quickly to benefit from the faster, cheaper services which will become available in the global market place.

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