



**Australian
Competition &
Consumer
Commission**

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Sent via email

Dear Sir / Madam

NBN Co application for re-authorisation (A91479-A91481) of revised arrangements concerning Optus' HFC network – draft determination

The Australian Competition and Consumer Commission (the ACCC) has issued a draft determination in respect of the application for authorisation lodged by NBN Co on 12 February 2015.

The revised arrangements for which NBN Co seeks re-authorisation involve customers being progressively migrated to the NBN as NBN Co integrates the relevant parts of Optus' HFC network into the NBN. It also involves an obligation on Optus to use the NBN for 15 years, Optus sharing spectrum on its HFC network so that NBN Co can offer services prior to taking ownership of that network, and NBN Co performing certain other preparatory upgrade works on Optus' HFC network.

A copy of the ACCC's draft determination and summary of its reasons is attached.

For the reasons set out in its draft determination, the ACCC proposes to grant authorisation to NBN Co for 35 years.

Next steps

Once the ACCC issues a draft determination, the applicant or any interested party may make a written submission and/or request that the ACCC convene a 'pre-decision conference'.

If you wish to make a submission in response to the ACCC's draft determination, please lodge your submission by **7 August 2015**.

Submissions should be emailed to adjudication@acc.gov.au with the subject "A91479-A91481 – NBN Co – submission".

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 **6 August 2015**.

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. Please see the ACCC's publication [Guidelines for excluding information from the public register.](#)

Further information about the authorisation process, including how to make a submission to the ACCC, is provided in the publication [Authorisation process - the basics.](#)

Proposed acquisition of Optus' HFC assets

The broader commercial arrangements between NBN Co and Optus involve a proposal for NBN Co to acquire certain Optus HFC assets. NBN Co does not seek authorisation for any aspects of the revised arrangements which effect the acquisition of those assets.

The proposed acquisition of assets is currently being considered under section 50 of the *Competition and Consumer Act 2010* by the ACCC in conjunction with the re-authorisation application. The ACCC intends to announce its decision on the informal merger review on the same date as the ACCC's final determination on the application for re-authorisation.

Further information about the informal merger review process is available from the [Mergers register.](#)

Timetable

No statutory deadline applies to the ACCC's consideration of applications for revocation and substitution. The ACCC has updated its indicative timetable for its consideration of this matter, set out below for your information.

Indicative date	Stage in assessment process
12 February 2015	Lodgement of application and supporting submission.
17 February 2015	Public consultation process begins.
23 July 2015	Draft determination.
August/September 2015	Public consultation on draft determination including any conference if called.
August/September 2015	Final determination.

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 Jaime Martin on 03 9290 1477 (or at jaime.martin@acc.gov.au) or David Hatfield on (02) 6243 1266 (or at david.hatfield@acc.gov.au).

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Richard Chadwick', with a long horizontal stroke extending to the right.

Dr Richard Chadwick
General Manager
Adjudication Branch

NBN Co – application for reauthorisation A91479-A91481

List of interested parties – draft determination

Australian Communications Consumer Action Network

Communications Alliance Ltd

Competitive Carriers Coalition

Telstra Corporation Limited

Australian Government Department of Communications

The Treasury

Business Council of Australia

Consumer Action Law Centre