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Via email: adjudication@acc.gov.au

ACCAN thanks the ACCC for the opportunity to contribute to its consultation on the NBN Co Limited application for revocation of authorisations (A91290 – A91292) and substitution of new authorisations (A91479 – A91481) for the revised arrangements concerning Optus' HFC network.

ACCAN's broadband policy position¹, since 2010, has four elements;

- broadband for all,
- no consumer should be worse off during the transition and following the implementation of the NBN,
- robust consumer protections and consumer engagement, and
- sustaining a competitive and fair market.

Having considered the application in detail and in the context of ACCAN's broadband policy position, we would like to raise concerns about potential detriment to consumers through reduced competition. Sustaining a competitive market is one of ACCAN's key principals and as such we are concerned that this application could limit consumer choice and lessen competition as it removes one of the established potential competitors to NBN Co.

In considering a future without this application ACCAN can see a potential public benefit from completion between wholesale providers, and resulting retail provider competition. Firstly, competition at the wholesale level could provide consumers with choice in the HFC area and potentially lower prices for some entry level broadband services through competing retailers that price locally. Secondly, as Optus and some other telecommunication providers price nationally, it may also put pressure on the national prices, as it would provide a benchmark that could help inform the market and increase discipline on NBN Co.²

In considering the balance of public benefit and detriment in this scenario ACCAN questions if the NBN roll out would be significantly hampered by not having the Optus HFC. In NBN Co and Optus'

¹ <http://accan.org.au/our-work/policy/732-our-broadband-future-policy-position>

² Henry Ergas, 2012 submission to the ACCC's draft determination in respect of NBN Co.'s application for authorization of its HFC subscriber agreement with SingTel Optus and other Optus entities.

submission it is argued that the Optus HFC network is integral to the delivery of the MTM model, however, it is clear that there is a large overlap in the HFC networks. This gives rise to the question of how much is being saved through the use of the Optus HFC. ACCAN does not have access to this data, although the ACCC will have better information available as the regulator. NBN Co have provided details³ on the efficiency gain for them to use an MTM model over an FTTP model, but it is not clear the extent of the efficiency gains that the Optus HFC specifically provides. Without disclosure of the details we are unsure of the extent which the Optus HFC impacts on the NBN MTM model and how much of a public benefit arises from a future without scenario.

ACCAN notes that there has been a material change of circumstances since the authorization was originally granted. Specifically NBN Co is now using a mix of technologies to deliver its broadband obligations and the government is promoting competition at the infrastructural level. One of the primary reasons given by Optus in the Original Subscriber Application on why it would not expand and maintain its network was due to the legislation enacted at the time. Given the changed policy environment and that NBN Co is no longer using fibre to the home⁴ model it is possible that Optus HFC could provide a viable and continuing competitor to NBN Co.

ACCAN submits that under the current policy environment it is feasible that Optus HFC could compete with the NBN Co MTM. The revocation and application could therefore limit competition and possibly remove the potential for lower prices for some entry level broadband services for consumers. Therefore ACCAN questions if the public benefit would be better served through a competitive network to NBN Co.

Sincerely

Rachel Thomas

Rachel Thomas
Policy Officer

³ NBN Co submission Public Benefits; section 4.2 Minimising the costs of rolling out the NBN, section 4.3 A faster, more co-ordinated and cost-effective migration, section 4.4 Avoiding the ongoing costs of operating two networks and section 4.5 More efficient network upgrade path.

⁴ In the ACCC 2012 Determination it concluded that HFC would not be a competitor as a number of elements of fibre to the home networks exhibit strong natural monopoly characteristics.