PUBLIC REGISTER VERSION

Confidential information response to the Australian Competition and Consumer Commission

in relation to the Application for Revocation and Substitution of Authorisation for arrangements between NBN Co Limited and SingTel Optus Pty Ltd and other Optus entities (A91479 – A91481)

Tranche 1 (2 April 2014)

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1. Please provide the number of subscribers serviced by Optus using its HFC network (Optus HFC subscribers) for each month from July 2011 to March 2015. For each of these months please provide the number of Optus HFC subscribers who purchased a:

- ***voice only service***
- ***broadband only service***
- ***pay-TV only service***
- ***voice and Broadband service (no Pay-TV service))***
- ***pay-TV and Voice service (no Broadband service)***
- ***pay-TV and Broadband service (no Voice service)***
- ***pay-TV, Voice and Broadband service***
- ***other (please specify)***

See attached confidential spreadsheet with information titled Monthly HFC SIOs.

2. Please provide for each month from July 2013 to March 2015 the:

a. ***number of new Optus HFC subscribers (additions to the number of subscribers) and***

b. ***number of Optus HFC subscribers who ceased to subscribe to services provided by Optus using its HFC network.***

See attached confidential spreadsheet with information titled Monthly HFC SIOs. This data has been provided for HFC broadband subscribers only.

3. For Optus broadband customers serviced by the HFC network for each month from July 2013 to March 2015 please specify:

a. **the number of subscribers by speed plan and**

b. ***Optus' average revenue per user from broadband services.***

See attached confidential spreadsheet with information titled Monthly HFC SIOs

4. For Optus broadband customers serviced by the NBN network for each month from July 2013 to March 2015 please specify:

a. ***the number of subscribers by speed plan***

b. ***Optus' average revenue per user from broadband services and***

c. ***Optus average payment per user to NBN Co.***

See attached confidential spreadsheet with information titled Monthly HFC SIOs. [RESTRICTION OF PUBLICATION OF PART CLAIMED].

8. Please quantify and substantiate the costs of upgrading the Optus HFC to DOCSIS 3.1.

Optus has no plan to upgrade its HFC network to the new DOCSIS 3.1 technology and has not business cased the activities which would be involved in such an upgrade and the costs and benefits of doing so. To quantify costs reliably would require detailed engineering studies and discussions with potential vendors. We have not undertaken this activity and have no plans to do so. Accordingly, Optus cannot quantify or

substantiate the costs of upgrading the Optus HFC to DOCSIS 3.1 as has been requested. Optus further notes that:

- DOCSIS 3.1 is a very new standard and Optus is not aware of any early adoption / commercial deployment by any carrier in the world with the same limited scale as the Optus' HFC network to which it can refer the ACCC for guidance by analogy of likely costs; and
- as indicated in our meeting of 19 March, Optus understands that while some speed / capacity improvements may be achieved without more through a DOCSIS 3.1 upgrade, Optus understands that to derive any significant improvement in capability out of a DOCSIS 3.1 upgrade would also require extensive upgrade to the external network plant (as is envisaged by NBN Co) and swap out of equipment, both CPE and throughout the network.

10. [RESTRICTION OF PUBLICATION OF PART CLAIMED]

[RESTRICTION OF PUBLICATION OF PART CLAIMED]

11. Please provide a detailed breakdown of all operating expenditure (including the cost of sales) Optus incurred in providing services using its HFC network for FY12, FY13 and FY14 and FY15 (to date).

Please see analysis above.

[RESTRICTION OF PUBLICATION OF PART CLAIMED]

12. Please provide a detailed breakdown of all capital expenditure Optus incurred on its HFC network for FY12, FY13, FY14 and FY15 (to date).

[RESTRICTION OF PUBLICATION OF PART CLAIMED]

16. In section 4 of its 12 February 2015 submission, Optus contends that absent authorisation of the revised arrangements, the original HFC Subscriber Agreement will continue to operate. Please step the ACCC though how the relevant events will be triggered (as defined in the 2012 Subscriber Agreement) in the current MTM NBN environment, which then ultimately allows migration to occur and results in Optus decommissioning its HFC network.

If the Revised HFC Agreement is not authorised, Optus expects that the MTM NBN will continue to be built by NBN Co (consistent with the Government's expectations), although NBN Co may well use a different mix of access technologies and build the NBN in different areas at different times than would be the case with authorisation. Exactly what technology mix NBN Co would use in those circumstances is not known, and Optus believes NBN Co is unlikely to have considered this scenario in any detail as part of its network planning at this stage given its focus on implementing an MTM NBN and its approach to the proposed Revised HFC Agreement.

In a future without an authorised Revised HFC Agreement, in which the roll out of the NBN will continue, the counterfactual against which the public benefits of the relevant provisions of the Revised HFC Agreement should be considered is one in which the current authorised HFC Agreement remains on foot. It has been in operation since its execution on 23 June 2011. The proposed amendments are conditional on the authorisation and coming into force of the Revised HFC Agreement.

Absent authorisation of the Revised HFC Agreement, Optus believes the parties would continue to work together to ensure to the extent possible:

(a) that HFC customers are migrated efficiently to the NBN as it is built into HFC network areas;

(b) that the HFC network is progressively decommissioned; and

(c) that Optus will abide by its commitments for fixed line preference and non-disparagement.

[RESTRICTION OF PUBLICATION OF PART CLAIMED]

The Commission has asked Optus to step though how the existing authorised arrangements "*will*" operate in an MTM NBN environment, if the Revised HFC Agreement is not authorised. Optus and NBN Co have spent several months working towards the Revised HFC Agreement which is consistent with the Government's policy. [RESTRICTION OF PUBLICATION OF PART CLAIMED] However, Optus makes the following observations concerning this hypothetical:

(a) Since the Government announced its MTM expectations a year ago, the parties have continued to operate in accordance with the authorised HFC Agreement. The existing agreement has not been terminated. [RESTRICTION OF PUBLICATION OF PART CLAIMED].

(b) The parties have each expressed to the Commission that, consistent with the obligation to co-operate, the most likely path forward absent authorisation of the Revised HFC Agreement is that the parties will work together to adapt the existing authorised agreement to the new policy environment to the extent possible (see Optus submission 12 February 2015, para 4.4 and NBN Co Submission dated 12 February 2015, paras 87 and 88).

(c) It can not be known now exactly what network technologies NBN Co would use to overbuild each Optus HFC Network area. The Government's expressed expectation is that NBN Co will determine which technologies it will use, integrating HFC networks where it can and making decisions on an area by area basis. NBN Co could choose to overbuild the Optus HFC Network with a mix of upgraded Telstra HFC technology, FTTP, FTTB, or FTTN. Optus believes that regardless of those network choices the parties would in any case work together so that the existing authorised agreement would operate (albeit that in those circumstances not all of the extra benefits associated with the proposed Revised HFC Agreement could be realised).

(d) Optus submits it is reasonable to assume that NBN Co would upgrade and use Telstra HFC network where it can to overbuild the Optus HFC network. The ACCC is well aware of the significant extent to which Telstra 'followed' the Optus' HFC network into suburbs and down streets through its initial rollout. It is not surprising that there is significant overlap between the Optus and Telstra HFC networks. Optus estimates that the footprint of the existing Telstra HFC network currently overlaps [RESTRICTION OF PUBLICATION OF PART CLAIMED] of the serviceable premises passed by the Optus HFC Network in Sydney, Melbourne and Brisbane. On that basis, even assuming no extension of the

Telstra HFC Network by NBN Co, Optus is likely to face NBN overbuild of around [RESTRICTION OF PUBLICATION OF PART CLAIMED] of its network by an in-filled Telstra HFC network, significantly upgraded in terms of speed and capacity by extensive external plant works and software upgrade for head ends and CPE to DOCSIS 3.1 standard.

(e) For serviceable premises in the remainder of the area currently served by the Optus HFC network, it is not known by Optus what network technology NBN Co is likely to use for overbuilding. In this regard, Optus notes that:

(i) there is nothing in the new MTM policy environment which is inconsistent with a partial continued FTTP / FTTB rollout. That might occur for at least some proportion of premises in areas overlapping the Optus HFC in Sydney, Melbourne and Brisbane. There would be a real prospect that NBN Co could adopt some FTTP / FTTB build, particularly in the network areas in Sydney, Melbourne and Brisbane not already covered by the Telstra HFC network.

(ii) FTTN may be deployed for some premises in the Optus HFC Network area not already passed by the Telstra HFC network, for which FTTP / FTTB technology is not implemented by NBN Co.

(f) [RESTRICTION OF PUBLICATION OF PART CLAIMED]

(g) [RESTRICTION OF PUBLICATION OF PART CLAIMED]

The ACCC should exercise caution speculating about details of the legal and commercial relationship that will exist between Optus and NBN Co in the event that authorisation for the Revised HFC Agreement is refused. [RESTRICTION OF PUBLICATION OF PART CLAIMED] However, Optus submits there is no reasonable basis on which to conclude that the existing authorised agreement will not largely and in substance have effect as intended by the parties absent authorisation of the revised arrangements in circumstances where both parties have expressed their intention to honour that agreement (in the event that it continues to operate), where the precise nature of NBN Co overbuild cannot be known, and [RESTRICTION OF PUBLICATION OF PART CLAIMED].

18. Please substantiate any migration costs under the proposed arrangements that Optus will save compared to the scenario in which the original HFC Subscriber Agreement continues.

As set out in paragraphs 5.18 and 5.19 of Optus' submission dated 12 February 2015, Optus does not anticipate that the proposed revised arrangements will generate significant incremental costs savings for Optus, when compared to the scenario in which the original HFC subscriber Agreement continues.

Optus anticipates that the revised agreement will facilitate a more efficient migration of customers to the NBN, because in many instances there will be no requirement for disconnection/connection activity. These cost efficiencies will be realised by NBN Co., rather than Optus. Optus notes and supports these additional cost benefits identified by NBN Co.

19. Please provide estimates of the annual operating and capital expenditure Optus will incur if it continues to operate the HFC network. For the purpose of

these estimates assume that Optus provides similar services as it does today using its HFC network. Please provide these estimates for the period until 2025. Please provide two sets of estimates assuming that Optus services :

- ***450,000 subscribers using its HFC network until at least 2025; and***
- ***350,000 subscribers using its HFC network until at least 2025.***

For each year, please provide a detailed breakdown of these expenditures. In providing these estimates please detail any assumptions you have made regarding the rate at which Optus HFC subscribers will increase their data usage.

Optus does not routinely maintain long-term forecasts for its fixed platforms that would enable it to generate the sort of data contemplated by the question. However, for the purpose of valuing the original arrangements with NBN Co such modelling was undertaken. That modelling looked at the likely costs of operating the Optus HFC network over an extended period and in competition to the NBN.

Detailed information from that modelling was presented to the ACCC in 2011/12.

Consistent with paragraph 5.10 of its submission dated 12 February 2015, Optus has relied on that original analysis to assist in answering the question above. The data is provided in appendix 1 at the end of this document showing an estimate of annual expenditure which will be incurred if Optus continues to operate the HFC network on a similar basis as today. Optus notes that it has made some slight adjustments to the revenue and cost data reflecting up to date information, based on Optus' experience over the last three years.

20. In paragraph 5.8 of its submission to the ACCC of 12 February 2015, Optus provides an estimate of the cost savings from NBN Co utilising key parts of the HFC network to "be in the order of a least hundreds of millions of dollars". Please provide full details (including supporting documents) of Optus' estimate.

NBN Co is best placed to provide further details and justification for the cost savings it will utilise from using the Optus HFC. Optus understands that NBN Co has provided confidential material to the ACCC to quantify these likely cost savings.

The revised agreement will provide NBN Co with access to some [RESTRICTION OF PUBLICATION OF PART CLAIMED] premises that already have a lead-in. As a minimum we anticipate that access to these lead-ins will save NBN Co some [RESTRICTION OF PUBLICATION OF PART CLAIMED], an estimate based on Optus' cost per premise to install a new lead in [RESTRICTION OF PUBLICATION OF PART CLAIMED] multiplied by the number of in place connections [RESTRICTION OF PUBLICATION OF PART CLAIMED]. This figure will not take into account the costs savings NBN Co will realise from accessing parts of the Optus HFC distribution and fibre network, which are likely to be considerable. Absent this deal, we anticipate that NBN Co would have to roll-out considerably more fibre and undertake more extensive network upgrades to meet its service obligations, including adding more capacity to the existing Telstra HFC network where it overlaps with the Optus HFC network than would otherwise be necessary.

21. In paragraph 5.4 of its submission to the ACCC of 12 February 2015, Optus claims that the ongoing costs of providing services on the HFC network will continue to be higher than the incremental costs of NBN Co providing the same services. Please substantiate this claim.

This claim follows as a matter of logic. Optus relies on analysis undertaken in the 2011/12 authorisation process and the conclusion of the ACCC that in respect of Optus' HFC customers:

"The HFC Agreement will lead to the provision of services to those customers at a lower overall cost using the NBN". [1]

This conclusion has even more force under the revised agreement because of the reduction in NBN Co's cost to serve from the transition to a Multi-Technology Mix.

22. Optus provides an estimate that it would incur costs of approximately [RESTRICTION OF PUBLICATION OF PART CLAIMED] ***over a 4-5 year period to decommission the Optus HFC network. Please provide a breakdown of these costs. Please explain why each of the costs will not be incurred under the proposed arrangements.***

This cost was originally estimated in connection with analysis of what was required under the original HFC agreement. It was based on input from an Optus engineering team about the resources likely to be required to undertake the work. Note that no tender process has been undertaken as would be required before such activities are embarked upon.

Decommissioning would be a labour intensive project since it involves sending teams out into the field to physically disconnect all the separate component parts of the relevant external plant (such as nodes, taps, amplifiers, coaxial cable, amplifiers and potentially parts of the catenary wire) in each HFC serving area. The material would then have to be sorted into non-recyclable and recyclable materials for disposal.

The cost is based on an estimate of the labour costs to undertake these sorts of activities. Optus has estimated that it would cost around [RESTRICTION OF PUBLICATION OF PART CLAIMED] to decommission each node: this gives a total cost of [RESTRICTION OF PUBLICATION OF PART CLAIMED] in the event that assets associated with all [RESTRICTION OF PUBLICATION OF PART CLAIMED] nodes were decommissioned as anticipated under the original agreement.

Whilst Optus has not re-visited that analysis, we anticipate that any updated analysis of decommissioning costs would take into account changes to Workplace Health and Safety requirements making required tasks more onerous and accordingly more expensive.

[1] ACCC Final Determination, 'Applications for authorisation lodged by NBN Co limited in respect of provisions of the HFC Subscriber Agreement entered into with SingTel Optus Pty Ltd and other Optus entities' (19 July 2012), page iii.

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[RESTRICTION OF PUBLICATION OF PART CLAIMED]