



REVIEW OF POLICIES AND PROCEDURES RELATING TO THE IDENTIFICATION OF LISTED NBN POINTS OF INTERCONNECT

An ACCC *Consultation Paper* to review the policies and procedures relating to the identification of listed Points of Interconnect to the National Broadband Network as required under section 151DC of the CCA.

February 2013



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1 Introduction

On 5 November 2012 the Australian Competition and Consumer Commission (ACCC) published the list of points of interconnection (POIs) to the National Broadband Network (NBN) under section 151DB of the *Competition and Consumer Act 2010* (CCA) (the List in Force).

Section 151DC of the CCA requires the ACCC to cause to conduct a review of the policies and procedures relating to the identification of listed points of interconnection (Listed POIs) to the NBN before 30 June 2013.¹ As part of this review, the ACCC must carry out a public consultation.²

1.1 Purpose of the consultation paper

The purpose of this paper is to seek feedback from stakeholders in regards to the policies and procedures relating to the identification of Listed POIs and to survey the current level of interconnection to the Listed POIs. The ACCC is also seeking to assess the impacts of the approach taken by the ACCC and NBN Co to identify the location of POIs.

Section 3 of this paper describes the policies and procedures followed for the identification of the Listed POIs to the NBN. The ACCC invites comments on these policies and procedures.

Section 4 relates to the requirement for the review to consider the ACCC's requests to NBN Co to agree to the variation of the List in Force, although notes that there have not been any requests to vary the List in Force since it was published in November 2012.

Section 5 seeks information from industry stakeholders on the extent to which facilities are interconnected at the POIs.

Section 6 seeks information from industry stakeholders that will assist the ACCC to assess whether the policies and procedures to identify the location of POIs meet the long term interests of the end user.

1.2 Timetable for the inquiry

The ACCC requests written submissions to this consultation paper from interested parties before 5.00 pm on **22 March 2013**. After consideration of submissions to the review the ACCC will prepare a report of the review as required under section 151DC (4) and will provide the report to the Minister (subsection 151DC(5)).

¹ Section 151DC (1) of the *Competition and Consumer Act 2010* (CCA)

² Section 151DC (3) of the *Competition and Consumer Act 2010* (CCA)

1.3 Making submissions

The ACCC encourages industry participants, other stakeholders and the public more generally to make submissions to the ACCC to assist it in identifying issues relating to the procedures carried out as part of the NBN POI identification process.

To promote an open, informed and consultative process, all submissions will be considered as public submissions and will be posted on the ACCC's website. If interested parties wish to submit commercial-in-confidence material as part of their submission to the ACCC, parties should submit both a public and commercial-in-confidence version of their submission. The public version of the submission should clearly identify the commercial-in-confidence material by replacing the confidential material with an appropriate symbol or 'c-i-c'.

Please forward submissions by email to the following contact officers:

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2 The legislative framework

Section 151DA authorises, for the purposes of the CCA, certain conduct by NBN Co that is reasonably necessary for it to achieve uniform national wholesale pricing of eligible services supplied by NBN Co. This conduct relates, among other things, to refusal to interconnect at points other than at Listed POIs.

Section 151DB requires the ACCC to prepare a written list setting out POIs to the NBN and to publish this list on its website. A POI specified in the List in Force is a Listed POI for the purposes of section 151DA. Until the Minister makes a declaration that the NBN should be treated as built and fully operational, the ACCC must not vary the List in Force except with NBN Co's agreement to do so.³

Section 151DC of the CCA requires the ACCC to conduct a review of the policies and procedures relating to the identification of the Listed POIs to the NBN by 30 June 2013. This review must also consider:

³ Section 151DB (2A) of the *Competition and Consumer Act 2010* (CCA)

- the Commission's requests to NBN Co to agree to the variation of the List in Force
- the responses of NBN Co to such requests, and
- the extent to which facilities are interconnected at the Listed POIs.⁴

The ACCC may consider other matters in addition to those that section 151DC specifically requires it to consider.

The ACCC must prepare a report of the review and give the report to the Minister for Broadband, Communications and the Digital Economy (the Minister).⁵ The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 days of that House receiving the report.⁶

3 Policies and procedures related to the identification of Listed POIs

NBN Co and Points of Interconnection

The NBN was introduced by the Government to deliver high speed broadband services to all Australians. The Government plans to achieve this goal by establishing NBN Co to build a broadband access network using a combination of optical fibre, wireless and satellite technologies.

NBN Co is a wholly owned Commonwealth entity that has been prescribed as a government business enterprise. It has been created to design, build and operate the NBN. NBN Co will only offer wholesale products with the goal to achieve uniform national wholesale pricing throughout Australia. Retail Service Providers (RSPs) will acquire wholesale access services from NBN Co and will connect their networks with the NBN at POIs to provide end users with voice and data services.

An NBN POI is the inter-network location where end-user traffic is handed over from the NBN to the retail service provider. The service provider is required to obtain the transmission capacity necessary to carry this traffic to their Point of Presence (POP), usually located in a capital city. The number and location of POIs define the boundaries of NBN Co's network and determine the extent to which backhaul is required by each RSP to carry traffic from the POIs they intend to interconnect with in order to reach their POP.

The Government's Request for Advice 2010

In October 2010 the Government requested that the ACCC and NBN Co undertake a process, including public consultation, to seek agreement on the number and location of initial POIs for the NBN that would best meet the long-term interests of end-users (LTIE). The Government requested that the advice address short and long-term competition impacts of the agreed POI position on the backhaul and retail markets,

⁴ Section 151DC (2) of the *Competition and Consumer Act 2010* (CCA)

⁵ Section 151DC (4) and (5) of the *Competition and Consumer Act 2010* (CCA)

⁶ Section 151DC (6) of the *Competition and Consumer Act 2010* (CCA)

the current and prospective state of competition in the backhaul market including the extent of any asset stranding, implications for potential future Layer 1 unbundling, and stakeholder responses to the consultation process.

ACCC Advice to Government Report 2010

After considering submissions from stakeholders, the ACCC provided its Advice to Government in November 2010.⁷ The advice recommended that a semi-distributed approach to the initial POI locations be adopted to promote competition and reduce the extent of asset stranding.

Competition Criteria

The Advice to Government also set out competition criteria that would need to be satisfied for a POI location to be in the LTIE. The competition criteria as set out in the ACCC's Advice to Government are that:

- a) it is technically and operationally feasible to allow interconnection (usually at an Ethernet aggregation switch);
- b) there are at least two competitors with optical fibres within a nominated distance from that location which:
 - (i) connect that site to an optical fibre network which is connected to a capital city; and
 - (ii) deliver wholesale transmission services which are suitable for use by service providers who wish to connect to the NBN at that location; and
- c) there is other evidence that the particular route is, or is likely to become, effectively competitive.⁸

The Competition Criteria were published on the ACCC website in December 2010 along with the Advice to Government report.⁹

Government Statement of Expectations 2010

The Government issued its Statement of Expectations for NBN Co in implementing the NBN policy initiative in December 2010. The Statement of Expectations outlined the Government's NBN vision and objectives, including its expectations for the structure of the NBN.

The Government adopted the ACCC's advice regarding the semi-distributed approach to POIs and informed NBN Co through the Statement of Expectations that:

The Government has determined that a semi-distributed POI structure which extends the NBN Co network to meet with, but not overbuild competitive backhaul routes is the preferred outcome... The Government expects that NBN Co will act to ensure that POIs are located in accordance with the 'competition criteria' formulated by the ACCC. It expects NBN Co to provision its physical

⁷ See: <http://www.accc.gov.au/content/item.phtml?itemId=963436&nodeId=128cca6c23842d65726b861f88d6a490&fn=ACCC%20Advice%20on%20NBN%20POIs%20Nov2010%20PUBLIC.pdf>

⁸ ACCC, *ACCC Advice to Government: National Broadband Network Points of Interconnect*, Public version, November 2010, p.4.

⁹ See: <http://www.accc.gov.au/content/index.phtml/itemId/952292>

infrastructure, including POIs and fibre exchanges, to accommodate reasonable expectations for retail competitors' equipment, in anticipation of multiple retail competitors. While NBN Co is expected to consult closely with the ACCC in relation to the POIs, the specific location of the POIs will be a matter for NBN Co.¹⁰

The ACCC considered that the Government's Statement of Expectations set the policy context for the identification of the location of POIs.

Network Planning Rules 2010

In consultation with the ACCC, NBN Co developed a set of network planning rules in December 2010.¹¹ The network planning rules were based on the ACCC's competition criteria and were used by NBN Co to identify optimal POI locations.

The ACCC assisted NBN Co in applying the competition criteria and network planning rules. For example, NBN Co consulted with the ACCC as to the likely number of competitors at each location. The ACCC also advised NBN Co that a 'soft cap' of approximately 80,000 premises could be applied for metro aggregation regions and approximately 100,000 premises for outer metro or regional areas to determine whether a particular route is, or is likely to become, effectively competitive. The ACCC considered that these guidelines would help to ensure a sufficient market size at each POI to attract contestability in the routes serving that area.

With the ACCC's guidance, NBN Co applied the competition criteria and network planning rules to identify an initial preliminary list of 120 POIs.

In July 2011, the ACCC also developed Internal Guidelines and Procedures: POIs to the NBN. This document contained guidelines and procedures for staff in relation to the preparation of the list of POIs and for the identification of locations of POIs from time to time.¹²

Telecommunications Legislation Amendment (National Broadband Network Measures – Access Arrangements) Bill 2011

In April 2011 the *Telecommunications Legislation Amendment (National Broadband Network Measures – Access Arrangements) Bill 2011* introduced legislative amendments to the CCA to, among other things, ensure that points of interconnection to the NBN were identified in a list (subsequently the List in Force under s151DB). Section 151DB requires the ACCC to prepare a written list of POIs (subsection 151DB(1)) and publish a list in force on its website (subsection 151DB(3)). Under subsection 151DB(2), a POI specified in a 'list in force' is a Listed POI for the purposes Division 16 of the CCA, including the authorised conduct provisions under

¹⁰ Statement of Expectations, 17 December 2010, p.7.

See:http://www.dbcde.gov.au/_data/assets/pdf_file/0003/132069/Statement_of_Expectations.pdf

¹¹ See:

<http://www.accc.gov.au/content/item.phtml?itemId=963440&nodeId=64dbfce5537a9f435f389288eaa9e80b&fn=POI%20planning%20rules.pdf>

¹² ACCC Internal Guidelines and Procedures: Points of Interconnection to the NBN, see: <http://www.accc.gov.au/content/index.phtml/itemId/952292>

section 151DA(2). The POI list reflected the government policies as outlined in the legislation and the Government's Statement of Expectations.

Public Confirmation Process 2010-2011

Concurrently, with the passage of the legislation noted above, the ACCC commenced a public consultation process on 20 December 2010 by publishing the network planning rules and the preliminary list of 120 POIs on its website.¹³ The confirmation process was intended to obtain feedback from stakeholders about the proposed location of POIs and ensure those locations met the competition criteria.

The ACCC received submissions from eight stakeholders and published them on the ACCC website. The ACCC and NBN Co assessed the suggested changes to the list of POIs against the competition criteria and planning rules. As a result of this review, NBN Co proposed the relocation of five POIs, the addition of two new POIs and the consolidation of one POI.

The February 2011 List

In February 2011 the ACCC published a revised list of 121 POIs (the February 2011 list) along with an explanation of the changes. The ACCC also noted that NBN Co would be constructing its own facilities in some Telstra exchange service areas because sharing Telstra exchange buildings would not be technically feasible. The ACCC requested that NBN Co advise the ACCC as soon as possible when the alternative POI sites had been identified and how the competition criteria and network planning rules were met in respect of each alternative POI.

The May 2011 List

In May 2011 the ACCC published a further revised list of POIs to the NBN (the May 2011 list), which included changes that arose due to technical necessity. The ACCC identified the POIs that had changed from the February 2011 list and published an explanation of the changes on its website. The new sites included in the revised list satisfied the competition criteria.

Since NBN Co was still consulting with Telstra as to the suitability of some Telstra exchanges as sites for NBN Co POIs, the ACCC refrained from publishing the final List in Force until such time as those negotiations had been finalised.

Public Consultation on the final form of the list 2012

The discussions between NBN Co and Telstra regarding the locations of the POIs concluded in mid-2012. The final locations included only minor changes from the May 2011 List.

Consultation Paper August 2012

The ACCC published a consultation paper in August 2012 seeking stakeholders' comments on the final form of the List in Force, which had been identified by applying the competition criteria and network planning rules.¹⁴ The ACCC identified

¹³See: <http://www.accc.gov.au/content/index.phtml/itemId/952292>

¹⁴See: <http://www.accc.gov.au/content/index.phtml/itemId/952292>

where there had been minor changes to the location of some POIs since the May 2011 list had been published and noted that these revised POI locations met the ACCC's competition criteria and the network planning rules.

Publication of the List in Force November 2012

On 5 November 2012 the ACCC published the List in Force pursuant to section 151DB of the CCA.¹⁵ The list remained unchanged from the draft list published in the August 2012 consultation paper.

The published List in Force sets out the location of each POI in general terms but kept the precise address locations of each POI confidential for security reasons. The ACCC considered that the descriptors included in the public list of POIs are sufficient to allow stakeholders to determine the general location of each of the POIs. Stakeholders can obtain specific address locations from NBN Co under appropriate confidentiality arrangements.

Stakeholder Comments

The ACCC invites stakeholders to comment on the policies and procedures relating to the identification of the Listed POIs. In particular, the ACCC seeks comments about the competition criteria and the planning rules and the application of these procedures in identifying the location of POIs.

4 Variations to the List in Force

In accordance with subsection 151DB (1)(b) of the CCA, the ACCC may vary the List in Force. Until the Minister makes a declaration that the NBN should be treated as built and fully operational, the ACCC must not vary the List in Force except with the agreement of NBN Co. The section 151DC review must consider the ACCC's requests to NBN Co to agree to a variation of the List in Force and the responses of NBN Co to such requests.

The List in Force was published by the ACCC in November 2012. As at February 2013 there were only 25 POIs 'live'.¹⁶ The ACCC has not made any requests to vary the List in Force. As a result there have been no responses from NBN Co to such variation requests.

5 Extent of interconnection at Listed POIs

The ACCC is also required to consider the extent to which facilities are interconnected at the Listed POIs. A key factor in the process of identifying the location of listed POIs was an assessment of the level of contestability for

¹⁵ See: <http://www.accc.gov.au/content/index.phtml/itemId/952292>

¹⁶ http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/e0b04b6e-d4aa-48d7-8452-7c02a0d207cb/toc_pdf/Environment%20and%20Communications%20Legislation%20Committee_2013_02_12_1702.pdf;fileType=application%2Fpdf#search=%22committees/estimate/e0b04b6e-d4aa-48d7-8452-7c02a0d207cb/0000%22

transmission services at potential POI locations. Each assessment was based on the latest infrastructure data that was available at the time. The ACCC expects further investment of new fibre infrastructure following the publication of the List in Force and the POI commissioning schedule released by NBN Co in its rollout plan.

Stakeholder comments

The ACCC seeks information on the extent to which facilities have been interconnected at the Listed POIs. In particular, the ACCC asks stakeholders to provide details of:

- (a) the Listed POIs where interconnection has occurred*
- (b) whether services are being provided from those Listed POIs and,*
- (c) if so, the type of service that is being provided.*

6 Assessment of the approach taken to identify the location of POIs

The ACCC developed a set of ‘competition criteria’ which would require POIs to be located where:

- a) it is technically and operationally feasible to allow interconnection (usually at an Ethernet aggregation switch);
- b) there are at least two competitors with optical fibres within a nominated distance from that location which:
 - (i) connect that site to an optical fibre network which is connected to a capital city; and
 - (ii) deliver wholesale transmission services which are suitable for use by service providers who wish to connect to the NBN at that location; and
- c) there is other evidence that the particular route is, or is likely to become, effectively competitive.

The criteria were then included in a set of planning rules developed by NBN Co in consultation with the ACCC to identify POI locations. A copy of an extract from the POI Planning Rules is attached. The planning rules also include some additional inputs that would be considered when selecting POI locations.

In assessing each POI to determine where it should be located, the ACCC and NBN Co applied the competition criteria. Only POIs that met the criteria have been listed. Should a variation of the Listed POIs be requested, the competition criteria and planning rules will be applied.

Stakeholder comments

The ACCC seeks information from industry stakeholders on the overall impacts of the approach to identifying the Listed POIs. In particular, the ACCC asks stakeholders

for submissions on the processes and procedures used to identify the geographic location of POIs based on the application of the criteria noted above.