



# ACCC Submission

## Department of Communications consultation – carrier powers and immunities

July 2015

© Commonwealth of Australia 2015

This work is copyright. In addition to any use permitted under the Copyright Act 1968, all material contained within this work is provided under a Creative Commons Attribution 3.0 Australia licence, with the exception of:

- the Commonwealth Coat of Arms
- the ACCC logo
- any illustration, diagram, photograph or graphic over which the Australian Competition and Consumer Commission does not hold copyright, but which may be part of or contained within this publication.

The details of the relevant licence conditions are available on the Creative Commons website, as is the full legal code for the CC BY 3.0 AU licence. Requests and inquiries concerning reproduction and rights should be addressed to the Director, Corporate Communications, ACCC, GPO Box 3131, Canberra ACT 2601, or [publishing.unit@acc.gov.au](mailto:publishing.unit@acc.gov.au)

[www.accc.gov.au](http://www.accc.gov.au)

The ACCC welcomes the opportunity to provide comments to the Department of Communications on proposed changes to telecommunications powers and immunities to facilitate the rollout of next generation broadband services.

The Department advises that the proposed changes to the Low-Impact Facilities Determination 1997 (LIFD) provide for new facilities and change some existing defined terms to be technology-neutral in order to support Fibre to the Premises (FTTP), Fibre to the Node (FTTN) and Fibre to the Basement (FTTB) rollouts and, in conjunction with changes to the Telecommunications Regulations 2001, support upgrades to Hybrid Fibre Coaxial (HFC) networks.

The Department also indicates that, although these changes would benefit NBN Co in the multi-technology mix (MTM) rollout, they would also be available to comparable carriers.

However, the ACCC notes that carriers can only make use of the proposed new facilities if they are, or are to be:

*part of a national network used, or for use, for the high speed carriage of communications, on a wholesale-only and non-discriminatory basis.*

The ACCC notes that this restriction may effectively limit the applicability of these new provisions to NBN Co. There is a risk that such a restriction may give NBN Co an advantage over other providers who are seeking to roll out (non-national) networks to deliver superfast carriage services, by allowing NBN Co to install low impact facilities with larger size limits than these other non-national network providers. This differential treatment has the potential to increase the costs faced by competitors (relative to NBN Co) if it means they must acquire non-standard smaller equipment in order to comply with the low impact facilities powers and immunities applicable to them or if they must face delays in installing larger equipment because they must obtain the necessary permissions required when the low impact facilities powers and immunities do not apply.

The ACCC notes that this particular formulation of words to restrict the applicability of certain low impact facilities powers and immunities to national networks was first introduced in the LIFD amendments made at the end of 2011. These changes were intended to facilitate rollout in brownfield areas in an environment where there was only one party undertaking a national FTTP network rollout and it was anticipated that no other carriers would be implementing competing networks.

However, these particular changes to the LIFD are intended to facilitate the rollout of different technologies such as FTTB and HFC. Further, operators other than NBN Co (including TPG, amongst others) will likely be rolling out networks using these technologies. The NBN could therefore be best described as a national network comprised of several different types of access technology networks and, in a number of areas, NBN Co may face competition.

The ACCC notes that in its Telecommunications Regulatory and Structural Reform policy paper released in December last year, the Government set out principles which stated that:

- regulation should allow competition at both the retail and wholesale/infrastructure levels.
- to the greatest extent possible industry players should be treated consistently under the regulatory framework.
- new high-speed broadband access networks (which control 'last mile' connections to consumers) should be vertically separated.

The ACCC recognises and supports the Government's policy to achieve structural reform in the sector and the need to make arrangements that provide for this. However, in seeking to achieve that objective, we consider that arrangements for carrier powers and immunities could be made so that NBN Co does not have an advantage over potential rivals that could result in limitations on competition.

Given this, should the Government wish to develop the LIFD requirements in a competitively neutral manner, the ACCC recommends that the Minister consider removing the 'national network' requirement and modifying the 'wholesale-only' requirement to also allow functionally separated carriers to make use of these provisions (consistent with the Government's Telecommunications Regulatory and Structural Reform policy paper and the Superfast Services Carrier Licence Conditions).

The ACCC believes that extending the applicability of these new low impact facilities powers and immunities would be likely to promote the long-term interests of end-users, as it would help further promote competition between providers of broadband services, particularly FTTB services, on their relative merits.

The ACCC would be happy to provide further information in relation to this submission should the Department of Communications require it.