

17 January 2020

Department of Communications and the Arts

By email: new.developments@communications.gov.au

Dear Sir/Madam

Review of the 2015 Telecommunications in New Estates (TIND) Policy

This letter is in response to the Department of Communications and the Arts' request for comments on the review of the 2015 Telecommunications in New Estates (TIND) Policy. OptiComm thanks the Department for the opportunity to provide comments.

NBN charges

To ensure that there is infrastructure based competition between network operators it is vital that NBN Co continues to apply charges:

- To developers for the deployment of in-estate infrastructure.
- To RSPs for an end-user contribution for the initial connection of a service at a premise in a new development.
- To developers for backhaul costs.

If NBN Co ceased applying these charges, it would be virtually impossible for other carriers to compete in the market for building network infrastructure into new developments. To maintain a reasonable degree of competitive neutrality, NBN Co must continue to apply the current charges and the amount of each charge must not be decreased.

Overbuild

NBN Co should continue to be subject to rules preventing it from overbuilding a competitor's network when the existing network is NBN comparable. NBN overbuild is a waste of taxpayers' money and provides very limited, if any, advantages to end-users. The only reason that NBN Co would overbuild a NBN comparable network is to damage a competitor. The TIND policy should ensure that NBN Co adheres to its original remit and to the policy behind the NBN, i.e. to ensure that all Australians have access to modern telecommunications services, rather than seek to exploit its vast financial backing and market power in efforts to damage its competitors by competing 'in the market' rather than 'for the market'. This policy should continue to strictly apply after completion of the NBN, as the primary responsibility of NBN Co to ensure national access to high speed broadband will not change and is not facilitated by engaging in facilities based competition in estates and MDUs that already have access to NBN comparable networks.

The obligation to seek Ministerial approval for a planned overbuild must remain in place. It is not appropriate for NBN Co to make an internal decision on whether it is complying with its competitive neutrality obligations, particularly as there is realistic potential that without a requirement for Ministerial approval an overbuild decision could be made at the sales-staff level within NBN Co by a person with an eye on sales KPIs and bonuses and little, if any, knowledge of the intricacies of the competitive neutrality rules that apply to Government entities such as NBN Co.

Without Ministerial scrutiny, there would be limited scope for an affected carrier to seek review of NBN Co's overbuild decisions and it is likely that the affected carrier's concerns would be ignored.

The Ministerial approval should be based on both a commercial case for the overbuild and evidence that the existing network is not providing premises with NBN consistent outcomes.

The prohibition against NBN overbuild should be amended to clearly articulate that it does not only apply to the fixed line NBN but also prohibits NBN Co using its fixed wireless network, satellite network or any other network such as a third party mobile network to provide a service to premises within the footprint of an NBN comparable network operated by another network operator. This has occurred in an estate serviced by an OptiComm FTTP network where a resident was provided a retail service by Telstra via NBN Co's fixed wireless network.

NBN Co is a strong competitor

NBN Co is an extremely strong competitor with significant power in the market for the supply of telecommunications networks in new estates. By OptiComm's calculation, since the introduction of TIND policy in Sept 2015, NBN Co has controlled over 80% of the builds in the greenfield market, and will achieve over 95% of the total high speed fixed broadband market once the NBN is completed. It is therefore vital that the rules are not relaxed in a manner that increases NBN Co's competitive strength at the expense of other network operators. Any NBN Co claim that the TIND policy restricts its ability to win contracts for the installation of networks into new estates should be taken with a grain of salt and scrutinised extremely closely before being given any weight. Removal or relaxation of any of the obligations currently placed on NBN Co has the potential to be extremely damaging to competition in broadband markets.

NBN Co should be required to apply its charging structure in a commercial manner. For example, it should not be permitted to utilise its funds to provide a credit facility for developers, such as deferring the due date for payment of developer charges until end-users move into premises or apartments. Such practices, which we believe occur, are a misuse of taxpayer funds, increase NBN Co's operating costs and are effectively a means for NBN Co to cross-subsidise revenue from its brownfield network to improve its ability to compete in greenfield areas. NBN Co's competitors do not have the same Government financial backing as NBN Co and are not able to provide similar advantageous financial treatment to developers.

Developer obligations

OptiComm's experience is that though large developers understand their obligation to ensure that lots are fibre-ready prior to sale, small developers commonly have little understanding of the requirements set out in Part 20A of the Telecommunications Act. There is also an unhelpful lack of clarity in the Act's definition of 'fibre-ready' that results in practical difficulties for carriers installing networks. For example, in MDU developments, we have seen instances where the developer has made no provision for lateral cable runs, seemingly because they considered that telecommunications services could be provided via wireless networks or internal WiFi networks, or simply sought to reduce construction costs by doing as little as possible. We consider that all new developments should comply with the minimum requirements for telecommunications pit and pipe

installation set out in the Communications Alliance Guideline G645:2017 Fibre-Ready Pit and Pipe Specification for Real Estate Development Projects Industry Guideline. This would reduce network installation time frames and costs and provide a better outcome for property owners and consumers.

Network standards

OptiComm has seen evidence of FTTN and FTTB being deployed in new estates, including new estates with over 100 lots. This has been by a variety of network operators, including NBN Co. We consider that the TIND policy should require FTTP networks to be installed in all new developments of more than 50 lots. Though it may be outside the scope of the TIND policy and better placed in a Communications Alliance Code as discussed below, we consider that the obligation to meet this minimum standard should apply to all carriers installing networks into new developments and not just to NBN Co. This would provide a better outcome for consumers by reducing the opportunity for cowboy operators to take advantage of a developer's lack of technical knowledge and desire to reduce costs, to the detriment of residents.

Minimum requirements should be set for network and service standards in new estates. These standards should be set in a Communications Alliance Code to enable a broad range of industry input.

IPOLR/SIP obligations

All local governments should be required to implement a policy where the carrier installing network into a new estate provides a statutory declaration that it will meet all relevant regulatory obligations and accept the IPOLR/SIP obligations.

The Department, Communications Alliance, LGA and UDIA should collaborate to develop a kit for local governments to check the compliance obligations of carriers installing networks into new estates. This should include a FAQ sheet on developer obligations, draft policy for implementation by local governments and sample compliance declaration form that developers should require to be provided by carriers at each stage of a development.

All new estates should be recorded on TIND maps and carriers should acknowledge that this makes them the IPLOR/SIP for the nominated area. This should include NBN Co which has not updated its maps since 2015.

If NBN Co decides that a development is outside its fixed line footprint, it should be open to alternative carriers to install a FTTP network in the development and for that carrier to receive funding from the Regional Broadband Scheme Charge, which will allow a better result for residents.

Vertical integration

Proposed amendments to Part 8 of the Telecommunications Act are likely to introduce a new level of competition in the market for building networks in new estates, by allowing carriers that have an ACCC accepted functional separation undertaking to sell retail broadband services to residential

customers on their own networks. OptiComm considers that this is reasonable as it will promote competition but believes that care must be taken to ensure reasonable outcomes for consumers. For example, to ensure retail competition and high services standards, we consider that there should be minimum requirements relating to the number of unrelated RSPs that a network operator must have in new developments in addition to their own vertically integrated RSP. We consider that the absolute minimum number of unrelated independent RSPs should be at least five, though more would be preferable.

Business to business interface

NBN Co has refused to adhere to its obligation to share its B2B interface with other Industry operators such as OptiComm. Whilst this request has been made, it has been rejected outright and this limits OptiComm's ability to compete with NBN Co as some of the largest carriers are very reluctant to operate multiple B2B interfaces.

Considering the B2B specification was originally sourced from the Telecommunications Management Forum, but since modified, NBN Co has an obligation to share its development work when it is used for commercial purposes (part of the license agreement). We ask that steps are taken to enforce NBN Co's obligation to provide at least the current specification of the B2B interface to its competitors.

Backhaul

NBN Co, to date, has not adhered to its obligation to provide backhaul to its competitors. OptiComm has asked for the provision of backhaul on multiple occasions, but was refused on the ground that NBN Co did not offer such a service at that time. We note that NBN Co is able to provide wholesale backhaul to mobile operators (e.g. Vodafone in 2017). We ask that steps are taken to assist NBN Co to fulfil its obligation to provide backhaul services to all eligible and licensed carriers on a non-discriminatory basis.

OptiComm believes that NBN Co is not adhering to its obligation to charge developers a backhaul contribution. NBN Co's adherence to this obligation should be audited. Non-compliance may be evidence of NBN Co failing to adhere to its competitive neutrality obligations.

Customer Focus

Consumers need protection from underperforming network operators

- Recommendation 1: Developers to provide an A4 information sheet using simple terms to all residents informing them of who the operator is, the choice of retailers, connection costs, technology and guarantee speeds.
- Recommendation 2: ACMA/CA should develop a common home preparation guide/code/standard which is required to be followed by all builders. this should be referred to in future releases of the Building Codes of Australia

- Recommendation 3: Educate builders through the Master Builders Association of their compliance requirements for preparing homes. Enforcement action if there is non-compliance (e.g. conduit issues etc)