

BUSINESS FIBRE NETWORKS SUBMISSIONS TO DEPARTMENT OF INFRASTRUCTURE, TRANSPORT, REGIONAL DEVELOPMENT AND COMMUNICATION - PROPOSED TIND POLICY AMENDMENTS

1. Background

1.1. We act for Business Fibre Networks Pty Ltd (BFN) and refer to:

- A. the Department of Infrastructure, Transport, Regional Development and Communications' (Department) consultation on a proposed update of the Telecommunications in New Developments Policy (Proposed TIND Policy);
- B. the Department's review of Telecommunications in New Developments (TIND) policy (TIND Review);
- C. NBN Co Limited's (nbn) submissions to the TIND Review dated January 2020 (nbn Submissions); and
- D. the Telecommunications Industry Ombudsman (TIO) submissions to the TIND Review dated January 2020 (TIO Submissions).

1.2. BFN is a licenced telecommunications carrier licenced deploying and operating telecommunications networks in new developments throughout Australia.

1.3. The nbn and the TIO have both made submissions about "alternate providers" during the TIND Review. BFN is concerned that the Department has given consideration to those submissions despite them being inaccurate and misleading.

1.4. BFN is further concerned that the Minister may erroneously rely on those submissions in making a decision to amend the TIND Policy. We discuss the reasons for these concerns below.

Liability limited by a scheme approved under Professional Standards Legislation

2. nbn Submissions

2.1. The nbn Submissions assert that "alternate providers" (who have not been defined):

- (a) do not provide the same level of quality of service to residents at new developments as the nbn; ¹
- (b) over charge for connection fees in new developments •2

- (c) have higher wholesale charges than nbn³ and
 - (d) discriminate between retail service providers.⁴
- 2.2. While represented as fact, these broad assertions were based solely on nbn's "view" and are unsupported by any material evidence.
 - 2.3. The result of nbn taking this approach is that its submissions are likely to mislead and deceive key industry stakeholders, including the Minister, about the reality of telecommunications in greenfield developments.
 - 2.4. The misleading and deceptive statements of the nbn stands to strengthen its market share over telecommunications infrastructure in Australia which will ultimately diminish competition within the greenfield developments.
 - 2.5. We respectfully suggest that the nbn Submissions be disregarded by the Department in this respect, and instead, a deep analysis be conducted of the market place relying upon primary source evidentiary data, as opposed to commercially driven opinion.
 - 2.6. If the Department takes this approach in advising the Minister, there will be less risk in the Minister making an erroneous decision that could otherwise cause significant loss to BFN or other telecommunications carriers.

3. TIO Submissions

- 3.1. In addition to the nbn Submissions, the TIO has also elected to participate in the TIND Review.
- 3.2. In doing so, its submissions have unfairly and falsely characterised the businesses practices of "alternative providers" as being unable to provide the required telecommunications services to consumers in new developments.

¹ see sections 25.4 and 2.9 of the nbn Submissions.

² see section 25.5 of the nbn Submissions.

³ see section 2.8 of the nbn Submissions.

⁴ see section 2.7 of the nbn Submissions.

- 3.3. The "Case Studies" in the TIO Submissions do not provide any evidence to support its accusations nor do those submissions identify who the "alternative provider" they refer to are.

4. It is therefore difficult to accept the position of the TIO that there is a need for change on the basis the "Case Studies" as they may have been an isolated incident (or not even in relation to a participant in the greenfield development).

3.5, The TIO has not provided qualitative statistics in comparison of the quality of services provided by alternative carriers. BFN is of the view that if those qualitative statistics were provided then the Department would not be minded to amend the TIND Policy.

3.6. Furthermore, the TIO Submissions are silent on the number, types and reason for complaints about nbn's performance in the greenfield developments.

3.7. We suspect that if a comparison of an appropriate data set were to be presented to the Department for consideration* then the result would be that the "alternate providers" would be outperforming the nbn in the greenfield developments.

3.8. The TIO's annual report 2018-2019 provides detailed statistics in respect to nbn services and other networks (such as the "alternative providers"):

Network	Complaints about a connection or changing provider	% of all connection and changing provider complaints
Services delivered over the NBN	11,635	56.4%
Services delivered over other networks ³	6,303	30.6%
Services delivered over mobile networks ⁴	2,681	13.0%

	Complaints about service quality	% of all complaints about service quality
Services delivered over the NBN	23,362	48.2%
Services delivered over other networks ³	19,582	40.4%
Services delivered over mobile networks ⁴	5,496	11.3%

3.9. As demonstrated above, there is a significant difference in the number of complaints on nbn's networks compared to "alternative providers" (which includes wireless networks).

3.10. We consider that the TIO has the data set to provide unbiased and accurate information to the Department but instead it has provided a data set which does not represent the actual performance of all carriers within the greenfield developments.

3.11. If a proper analysis of the TIO's data was undertaken by a third party assessor, then a clear and precise understanding of the current climate of telecommunications in new developments may be found.

3.1.2. This assessment would allow the Department to have all of the necessary information to further consider any policy decisions it may make (if any) and make appropriate recommendations to the Minister as to the appropriate decision to ensure that the relevant stakeholders do not unnecessarily suffer loss by that decision.

4. nbn New Development Charges

4.1. With the implementation of the Regional Broadband Scheme Levy (RBS Levy) to offset nbn's expenses in providing telecommunications services to less profitable locations, BFN does not consider it appropriate for the TIND Policy to be amended to allow nbn to increase its expenditure to compete in the greenfield market when its competitors (or "alternative providers") are required to pay the RBS Levy.

4.2. Furthermore BFN is concerned that during a recession, the Department has proposed to amend the TIND Policy to allow nbn charge what it considers to be appropriate for new development new development charges (through the implementation of pricing caps).

4.3. The result of this change will be the increased expenditure by nbn in the greenfield developments despite private industry being ready and willing to fund the deployment of telecommunications infrastructure in the same.

4.4. As such, BFN strongly suggests that the Department maintains its original position in the TIND Policy regarding fixed charges by nbn in greenfield developments.

5. Ministerial Consent

5.1. BFN is of the considered view that ministerial consent must be obtained by nbn before it overbuilds a compliant open access, wholesale only and non-discriminatory telecommunications carrier.

5.2. By removing that ministerial consent from TIND Policy in respect to overbuilding, the nbn will begin a monumental waste of public funding (including by borrowing additional funds) in the overbuilding of compliant networks which provide the same level of service that the nbn would otherwise be providing.

5.3. On numerous occasions, BFN has been made aware that the nbn has attempted to overbuild compliant networks despite the TIND Policy prohibiting it to do so.

5.4. BFN is concerned that if this change is made to the TIND Policy then nbn will eliminate competitors from the market place by targeting smaller network operators.

6. Proposed TIND Policy

- 6.1 . BFN is strongly opposed to the changes to the TIND Policy and insist that the changes are not needed at this time.
- 6.2. The Minister's own consultation paper during the TIND Review was of the opinion . that the policy was achieving its purpose and there was no need for amendment.
- 6.3. It was only after the submissions from nbn and the TIO that the Department has . proposed that the TIND Policy is amended to reflect those concerns. BFN is therefore of the view that it would be erroneous to amend the TIND Policy in circumstances where the basis for such is founded on representations that are false, misleading and deceptive.
- 6.4. The abovementioned representations are clearly designed to increase the commercial advantage of nbn. It follows that any such amendment would come at the detriment of Australian consumers and significantly compromise the integrity of the competition in the market.
- 6.5. If the Department is minded to take any steps, then we strongly recommend that it adopts a conservative approach by instructing a third party to conduct a detailed review of telecommunications in new developments; including a review of the records held by nbn, the TIO and the "alternative providers" to ascertain the deficiencies within this industry (if any) and provide an unbiased report to the Department.
- 6.6. We consider that the ACCC to be the appropriate party to undertake such an examination as they have the inherent powers to obtain the required information. .
- 6.7. Finally, careful consideration should be given by the Department before it decides to . amend the TIND Policy as "alternate providers" may suffer significant loss under the Proposed TIND Policy as it provides nbn unwarranted and unneeded commercial freedoms which will undoubtedly lessen competition in the marketplace.
- 6.8. The consequence of this decision will not only impact "alterative providers" but will also impact retail service providers, installation contractors and consumers. As such, we implore the Department to take a conservative and cautious approach to any . amendment to the TIND Policy.

Thank you for the opportunity to provide the BFN view to the Department in respect of the Proposed TIND Policy.