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Submission to the Joint
Standing Committee on the
NBN

**Inquiry into the business
case for the NBN and
the experiences of small
businesses**

Public Version

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EXECUTIVE SUMMARY

1. Optus welcomes the opportunity to provide input into the Joint Standing Committee on the National Broadband Network (NBN) inquiry into the business case for the National Broadband Network (NBN) and the experiences of small businesses.
2. Optus wishes to provide input for consideration in relation to the fourth term of reference dealing with the delivery of the business segment strategy, including to enterprise and government customers, and small to medium businesses.
3. NBN Co has a valuable role to play in driving competition in the enterprise market, as it can help to address the dominance of Telstra which continues to own and operate the sole ubiquitous enterprise fixed network. NBN Co's investment in business broadband network can promote competition and investment in the enterprise communications market by providing connectivity which would otherwise only be accessible through the Telstra network. We have already seen the benefits of this with a number of key corporate accounts switching to a range of challenger RSPs in recent months.
4. However, the success of this approach depends largely on the manner in which NBN Co approaches its involvement in the enterprise market. These potential benefits could be at risk if NBN Co's enterprise investment does not also support and nurture private sector investment from non-incumbent challenger fibre networks.
5. There has been recent debate regarding the way in which NBN Co has approached and sold services to enterprise end-users. This has centred on concerns about NBN Co over-building existing enterprise fibre lead-ins; directly negotiating and contacting end-user enterprise firms prior to RSPs; placing conditions on the provision of upgrades, such as minimum number of premises; and offering different RSPs different contract terms.
6. Over recent months several RSPs have complained publicly and privately about these actions. This has resulted in NBN Co having been issued a formal warning by the ACCC in relation to discrimination between RSPs for the supply of upgraded NBN infrastructure to business customers.
7. To ensure we can maximise the benefits of the NBN in the enterprise market Optus sees merit in the Government providing clearer guidance to NBN Co on how it should approach its investment in this market. Specifically, to provide guidance to NBN Co that it should support competition in the downstream enterprise communications market by not over-building competitive infrastructure and focusing on areas that are not adequately served by competing fixed enterprise networks. Such advice would bring the approach of NBN Co back to its original purpose in the enterprise market – to support competition and allow all service providers to compete for national accounts.
8. This approach has the ability to drive stronger competition and differentiation in the enterprise market as it will both protect the investments of competitive infrastructure providers and encourage them to compete more aggressively. This is also likely to be in the best interests of NBN Co since it will have a more viable wholesale enterprise market.
9. Optus notes that a similar approach was taken to protect wholesale-based competition in the NBN environment with the decision to adopt a semi-disaggregated model for interconnection with the NBN as opposed to a consolidated model for interconnection.

NBN CO HAS AN IMPORTANT ROLE TO PLAY IN THE ENTERPRISE MARKET

10. The NBN was created to provide competition in the Australian fixed line market through the structural separation of infrastructure and service layers and creating a level playing field to and promote greater retail-based competition.
11. The primary focus of the NBN was the residential market and copper PSTN, where Telstra was the vertically integrated provider of the PSTN to all residential premises throughout the country. It was subject to limited network competition, primarily through the roll-out of alternative HFC networks. Further, infrastructure based competition was largely centred in urban areas through DSLAM investment by providers like Optus.
12. There is a similar picture in the enterprise market, where Telstra was, and remains, the dominant network provider providing extensive fibre connections to enterprise locations. Telstra Enterprise is responsible for revenue of \$8.2 billion, around 30% of Telstra's overall revenue. This compares to \$1.4 billion of revenue for Optus Business, \$758 million for TPG Enterprise, and \$710 million of revenue for Vocus' enterprise services. Telstra has an enterprise revenue market share of around 74%.
13. Telstra's advantage in the enterprise market is due to its ownership of the legacy monopoly ubiquitous fixed line network. As a result, Telstra has the most extensive reach of fibre tail-ends into corporate buildings. Optus, and other challenger brands, rely heavily on access to Telstra's wholesale business services to compete against Telstra in the enterprise market – many of which are not effectively regulated.
14. Telstra recently stated that its fibre network extends to over 250,000 km and has 60,000 connected buildings. This compares to Optus with an estimated 48,000 km of fibre and 18,000 connected buildings;¹ TPG has over 27,000 km of metropolitan and inter-capital fibre, with an estimated 1,500 connected buildings; and Vocus has more than 5,500 lit buildings, 15,020 km of inter-capital fibre and 9,500 km of metropolitan and regional fibre in major centres.²
15. Telstra has more than three times the number of connected fibred buildings than the next largest provider; and more than 12 times the third largest. Moreover, given the overlap of competitive fibre builds in key CBD and business areas, Telstra's network represents an effective monopoly outside the major business centres.
16. It should not be surprising that Telstra has a commanding lead in the enterprise market. While there is infrastructure competition in CBD and main corporate centres, typically covering only thousands of business premises; business RSPs, such as Optus, are unable to offer services to national enterprises without purchasing wholesale services from Telstra. Many of these services are not effectively regulated and it is difficult to compete with Telstra Retail on accounts that require a large input of Telstra Wholesale services.

¹ Telstra, 2019, Investor Day

² Vocus, Annual Report 2019, p.4

NBN Co CAN PROMOTE ENTERPRISE COMPETITION AND INVESTMENT

17. The roll-out of NBN Co has the potential to reduce Telstra's role in the wholesale business supply chain and unlock true 'infrastructure based' competition – where business RSPs like Optus can utilise their CBD-focused fibre networks and the national fibre reach of the NBN to provide competitive services to all enterprises across the country.
18. This potential benefit to the enterprise market was recognised in the 2010 NBN Implementation Study, which noted that Telstra was the largest provider in the enterprise market, with limited competition for multi-site and non-CBD customers. As a result, the "NBN will offer more affordable services, grow the market, enable innovation retail services offerings and allow all service providers to compete for national accounts".³
19. More recently, the ACCC Chairman has recognised that NBN Co's entry into enterprise wholesale market has increased competition, particularly in areas where Telstra is the only other fixed-line infrastructure provide.⁴ Where the investment of NBN Co is targeted at these areas, there are likely to be measurable competition benefits.
20. We've already seen that customers who were locked away — because Optus had to buy wholesale access from the same retailer we were competing with — are now open to providers such as Optus. Optus has recently partnered with NBN Co to switch corporate customers away from Telstra. As an example, Optus utilised NBN fibre connections to provide Coles with a high-speed network to 2400+ Coles stores, supply chain and corporate sites using fibre technology. The ability to use NBN fibre lines across the full suite of national locations for Coles enabled Optus to move services away from Telstra, through the upgrade of the legacy Telstra connections from copper to full fibre. This Optus solution would not have been otherwise possible without the use of NBN lines.
21. But we have also experienced examples where NBN Co's interaction with enterprise customers has resulted in foreclosure of competitive enterprise investments from challenger networks. We have seen examples where the NBN Co industry engagement team appears to have actively discouraged the use of competitive infrastructure by enterprise end-users in favour of NBN fibre access, even where they were serviced by existing fibre networks and the mixed use of NBN plus other fibre networks may have resulted in lower costs and prices.
22. For example, following an agreement signed directly with NBN Co, we understand one enterprise customer mandated 100% NBN FTTP solution for all its national sites. However, Optus could have utilised its own fibre network for around a third of those sites with the remaining sites utilising NBN FTTP lines. The mixed network solution would have resulted in prices substantially cheaper to the end-user. However, due to the direct engagement between NBN Co and the end-user, the end-user had ruled out the possibility of using the mix network solution.

³ NBN Implementation Study, p.138

⁴ AFR, <https://www.afr.com/companies/telecommunications/accc-slaps-NBN-with-warning-over-serious-breach-20191009-p52yyt>

THESE BENEFITS MAY BE AT RISK IF NBN DOES NOT SUPPORT ENTERPRISE COMPETITION

23. It is the second type of direct engagement with enterprise end-users which is of concern. Direct engagement with end-users that is designed to influence and monopolise the type of product solution available to the end-user can limit the competitive benefit of the NBN roll out. Market experience to date has shown that the manner in which NBN Co engages with enterprise end-user is having an impact on the manner in which RSPs and NBN Co work together to promote or limit competition.
24. There is a risk that any competition benefit from the roll out of NBN will be short lived if the NBN enterprise investment does not also support private sector investment from non-incumbent networks. NBN's natural wholesale customer base are companies such as Optus, TPG, Vocus who have their own CBD-based fibre assets and who will need to rely on NBN infrastructure to reach the full market. The benefits that flow from the NBN investment and structural separation of Telstra will be maximised when the non-incumbent business providers are encouraged and supported.
25. These private investments need to be encouraged or some of these challenger networks may not survive longer-term. These fibre investments rely solely upon enterprise services to make the necessary returns to justify investment due to the legislative restrictions on the provision of residential services meaning residential revenue is no longer available.
26. This would have damaging impact on competition in the downstream enterprise and government market, as well as having negative consequences for the commercial success of the NBN enterprise products. NBN Co needs a vibrant and successful cohort of challenger enterprise RSPs in order to grow its own enterprise revenue. The main challenger companies (Optus, TPG and Vocus) are likely to become the largest customers of NBN Co enterprise services. Supporting these challenger RSPs would deliver tangible long-term benefits for NBN Co.
27. However, as shown above, there is a mixed record with how NBN Co engages directly with enterprise end-users. The use of a direct engagement model is unlikely to result in NBN Co maximising the benefit of its entry into the enterprise market. The benefits of NBN Co's entry – to NBN Co, RSPs, and enterprise end-users – are maximised where RSPs are able to determine the appropriate mix of on-net and off-net fibre links.
28. Too often we are seeing NBN Co perform the role of RSPs in negotiating and discussing the broadband needs of end-users. We further observe that NBN Co contacting end-users directly may increase in the future, with a proposal for its next Wholesale Broadband Agreement to allow NBN Co to use the confidential information of RSPs for the "purposes of marketing and promoting the NBN Co Network and NBN Co Products to End Users."⁵ We see little evidence that NBN Co is backing away from direct engagement with retail end-users.
29. Industry is largely reliant on internal processes and procedures of NBN Co to ensure it engages with enterprise end-users in an appropriate manner. Recent intervention of the ACCC into the market suggests that at times, NBN Co may crossed a line in the way it interacts with RSPs and end-users. The ACCC has issued a formal breach notice to NBN Co due to breaches of its non-discrimination obligations in relation to enterprise products, and the manner in which is deals with enterprise RSPs and end-users. However, this notice does not cover the full range of behaviour that concerns RSPs.

⁵ NBN Co, WBA Consultation Paper: Customer experience proposals for WBA4, November 2019

30. Further, RSPs have little visibility on how NBN Co works with enterprise end-users to determine the network requirements for end-users; nor is there sufficient visibility over the approach to network investment for enterprise services. The 2010 Implementation Study recommended that NBN Co “undertake consultation with *enterprise service providers* to determine the appropriate specification to serve the enterprise market.”⁶ We observe that direct contact with enterprise end-users was not recommended.
31. Currently, there is little guidance provided to NBN Co on how it should approach the enterprise market and how it should engage with enterprise end-users. The Statement of Expectations provides wide discretion on how NBN Co is to connect all premises (which is assumed to include enterprise premises).
32. Optus recommends that Government provide greater clarity on the role NBN Co can play in the enterprise market and in its engagement with enterprise end-users in the retail market.

PROMOTING COMPETITION WHILE MAINTAINING INFRASTRUCTURE COMPETITION

33. The key policy consideration is how to promote competition in the downstream enterprise market while maintaining competitive infrastructure investment. There is scope for NBN Co to play a material role in the promotion of competition, but there is also risk that NBN Co could foreclose future investment and strand billions of dollar worth of competitive fibre infrastructure.
34. This requires a nuanced approach to the role of NBN Co in the wholesale enterprise market.
35. There are already precedents for such an approach:
 - (a) The 2010 NBN Implementation Study, which recommended that NBN Co support national competition by focusing on under-served location and to not overbuild existing adequately served enterprise locations; and
 - (b) The disaggregated POI model adopted in 2010 which maintained competitive transmission networks, while balancing the push to drive further competition. Optus is suggesting that a similar approach can be adopted to provide guidance to NBN Co on how to invest in the enterprise market while also promoting competition.
36. Importantly, both of these approaches relied upon the ACCC identifying areas that were adequately served by competing infrastructure providers or which met a predetermined competition criteria.

NBN Implementation Study recommended no overbuilding of CBD and business park locations

37. The NBN Implementation Report recognised that there already exists a competitive market for FTTP connection “to large commercial buildings in major CBDs around Australia.”⁷ The Study further noted that premises connected in this manner were already receiving services that met or exceed the Government’s NBN performance expectations. These statements were made in 2010 and against NBN performance requirements of 100 Mbps.

⁶ NBN Implementation Study, p.203

⁷ NBN Implementation Study, p.65

38. The study notes that while these enterprise fibre networks are not available on wholesale open-access basis, in many cases there is sufficient infrastructure competition to ensure choice for end-users.
39. The Implementation Report recommended that where enterprise premises are “deemed by the ACCC to be adequately served” by competing fibre networks, NBN Co should not be required to provide additional services. The Report notes that such areas are likely to be limited to where there is a high concentration of enterprise customers, typically CBD and business park locations. Outside of these areas, the enterprise fibre market looks materially different, with insufficient competition and poorer quality networks.
40. While the Study recommended that CBD and business park locations should be excluded from NBN Co coverage obligations, it stated that NBN Co should be allowed to connect enterprise premises outside of these locations. The Study noted that the incremental cost of doing so would be low and that many enterprises in these locations are interspersed amongst residential premises.⁸

ACCC consideration of the NBN interconnection model

41. 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 interest of end-users, including short and long term impact on competition and impact on investment including the extent of asset stranding.
42. The ACCC was asked in 2010 for advice on the POI model that should be adopted by NBN Co. Three options were considered: a disaggregated model, with POIs at the local exchange, requiring up to 900 POIs nationally, with Telstra being the only backhaul provider for the majority of the locations; a semi-distributed model with POIs located on the edge of contestable transmission market, resulting in 121 POIs; and a consolidated model with 14 aggregated POIs.
43. The ACCC advised that the semi-distributed model was likely to best promote the LTIE, balancing the need to maintain competition, and maintain existing infrastructure investment. The ACCC determined that the extent of NBN Co’s infrastructure (the point at which other networks interconnected with the NBN) should preserve existing competition and maximise the potential for future competition.⁹
44. The ACCC did not support the consolidated model because, in its view, such a model would have had a detrimental impact on competition, as it would “remove existing competition in these markets and foreclose the potential for future entry.”¹⁰ Moreover, the ACCC identified that greater reliance on NBN infrastructure would have a negative effect on competition in retail markets “due to the lack of flexibility that this approach allows service providers in relation to the way in which they deliver their retail services.”¹¹ In other words, there would be uniformity of offers in the retail market, resulting in limited price competition and limited service-based competition, due to reliance on NBN infrastructure.
45. Importantly, the ACCC also addressed the impact on efficient investment in, and use of, infrastructure. It identified that the semi-distributed POI model would limit the extent of asset stranding, with only Telstra’s monopoly assets to be impacted.¹² The ACCC

⁸ NBN Implementation Study, Recommendation 2, p.65

⁹ ACCC, 2013, NBN points of interconnection, p.9

¹⁰ ACCC, 2010, ACCC Advice on NBN POIs, p.48

¹¹ Ibid., p.49

¹² Ibid., p.3

specifically advised against the consolidated approach that would result in the significant stranding of existing transmission assets (with the exception of Telstra's assets).¹³

46. The ACCC developed competition criteria to determine the location of the POIs to achieve competition. The criteria sought "to provide a balance between the boundary of the NBN access network and the maintenance of existing transmission infrastructure."
47. This approach allowed NBN Co to overbuild monopoly Telstra transmission lines but prevented NBN Co from overbuilding competitive non-Telstra transmission lines. The ACCC observed that this approach is consistent with competition policy which requires government intervention to focus on areas without effective competition.

RECOMMENDATIONS

48. We see many similarities between the analysis undertaken by the ACCC with regards the number of NBN POI locations and NBN Co's approach to enterprise investment. We agree, similar to the ACCC in its POI analysis, that competition benefits are likely to flow from over-building Telstra but maintaining the investment of non-Telstra enterprise networks.
49. Optus submits that the Joint Committee recommends that NBN Co's Statement of Expectations be amended to direct the priorities of NBN Co to enhance competition in the enterprise market. This would have two components:
 - (a) First, to direct that NBN Co direct its investment to areas that are currently under-served by non-incumbent competitive enterprise networks; and
 - (b) Second, to guide NBN Co on how it should interact with enterprise end-users.
50. Adopting this approach for the enterprise market would involve the ACCC:
 - (a) Adopting a competition criteria, following the approach for transmission assets, which would entail identifying the locations that have 3 or more existing fibre networks (within a defined distance);
 - (b) Utilising the Infrastructure RKR data held by the ACCC to identify the location of all fibre networks, and apply the competition criteria to identify areas that are served by challenger enterprise fibre networks;
 - (c) Identifying areas where the roll out of NBN enterprise services would overbuild challenger networks and have the potential effect of limiting competition.
51. Following this analysis, the ACCC would be in a position to advise the Minister on the areas that are adequately served by competitive enterprise networks and where NBN Co should not offer enterprise services (e.g. enterprise ethernet) or roll-out NBN enterprise networks (including fibre upgrades for businesses).
52. This advice could then be used by the Minister to adjust the Statement of Expectations to direct the priorities of NBN Co in the enterprise market.
53. The Statement of Expectations could also include guidance on how NBN Co should interact with enterprise end-users. Specifically, this advice could state that NBN Co staff are not to advertise or market directly to enterprise end-users, nor should NBN Co be permitted to enter into contracts direct with enterprise end-users. The focus of NBN Co

¹³ ACCC, 2010, ACCC Advice on NBN POIs, p.34

should be to work collaboratively with enterprise RSPs so as to fully enable the enterprise RSPs to contact and market NBN services to enterprise end-users.

Monitoring wholesale enterprise market

54. A potential concern of some enterprise RSPs is the remote potential that existing challenger enterprise fibre network owners may not offer suitably competitive offers to enable them to utilise a mixture of NBN and challenger networks to enter the market. However, such a concern depends on their being insufficient competitive pressure in the wholesale enterprise market for non-network owning RSPs not to obtain competitive terms.
55. The above analysis and use of a competition criteria should ensure that there is sufficient competitive pressure amongst the existing non-NBN enterprise network. However, reliance on ongoing competition in the wholesale market may warrant ongoing monitoring of the market by the ACCC.
56. This issue was also addressed in the ACCC's assessment of NBN POI locations. A key assumption underpinning the efficiency of the semi-distributed model is that there would remain competition in the wholesale transmission market from NBN POI locations back to centralised areas. This addresses the concerns of new entrants that do not have existing fixed line fibre networks. To ensure that this did occur, the ACCC has obtained information through Infrastructure RKR data and investigations through Access Determinations and Market Studies to ensure that competition remained in these markets.
57. The same analysis and approach could be used to ensure that there remains sufficient competition in the wholesale enterprise market to ensure that any enterprise RSP can utilise competitively priced non-NBN network access to offer enterprise services.

Mixed use buildings

58. A further issue which may require clarification is in relation to buildings comprising both enterprise and residential premises – where NBN Co would be under an obligation to connect and serve the residential premises within that MDU.
59. Under the approach outlined above, NBN Co would remain obliged to connect residential premises within mixed-use MDUs with the appropriate access technology. This may or may not be fibre based access technology. The above changes would not alter this decision to roll out to residential premises.
60. The above changes in the Statement of Expectations would, however, impact on the ability of NBN Co to directly engage with enterprise end-users. In this situation, it would ultimately be up to RSPs whether or not to use NBN connections. Given that challenger fibre networks focus mainly on dedicated enterprise buildings, for example, large office MDUs or shopping centres, it would be more likely that RSPs would elect to use NBN connections for these premises. The key outcome is that RSPs would choose which wholesale provider to use to connect these buildings – the ability of RSPs to choose will ensure competition remains strong and ensure efficient investment and pricing on both non-NBN and NBN fibre connections.

(ENDS)