

EXECUTIVE OFFICE



**Australian  
Competition &  
Consumer  
Commission**

GPO Box 3131  
Canberra ACT 2601

23 Marcus Clarke Street  
Canberra ACT 2601

tel: (02) 6243 1111  
fax: (02) 6243 1199

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

Our Ref: C2009/906  
Contact Officer: Lisa Anne Ayres  
Contact Phone: 02 6243 1189

22 April 2010

Mr Stephen Palethorpe  
Committee Secretary  
Senate Select Committee on the National Broadband Network  
PO Box 6100  
Parliament House  
Canberra ACT 2600

*By email: [broadband.sen@aph.gov.au](mailto:broadband.sen@aph.gov.au)*

Dear Mr Palethorpe

**RE: ACCC response to Questions on Notice**

Please find attached the Australian Competition and Consumer Commission's responses to the questions on notice from the ACCC's appearance at the Committee's 14 April 2010 public hearing.

I can be contacted on (02) 6243 1124 should you wish to discuss.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Brian Cassidy'.

Brian Cassidy  
Chief Executive Officer

# Senate Select Committee on the National Broadband Network

## ANSWERS TO QUESTIONS ON NOTICE

Australian Competition and Consumer Commission's appearance at  
14 April 2010 hearing

### Question 1 (Hansard Ref: NBN 68-69)

**Senator FISHER**—Does the ACCC have a view as to whether the open-access regime should apply not only to infrastructure owned and operated by NBN Co. as part of the NBN Co. infrastructure but also, for example, to other infrastructure that might be owned by NBN Co. but be leased by others? Should access provisions apply to that as well?

**Mr Cosgrave**—I might have to take that on notice, because I would want to look quite closely at what the legislation says. I have not particularly turned my mind to the extent of coverage of services by the NBN.

**Senator FISHER**—Thank you. Mr Pearson, did you have anything to volunteer at this stage?

**Mr Pearson**—I was going to say the same thing. I think it would depend a lot on the practical as well as on what the legislation says. I do not think we have really thought that through.

**Senator FISHER**—If you do and form a view, if you have any particular examples of how it might work I would appreciate those too.

### Answer:

The ACCC's view is that an access regime is likely to be required to promote competition where a facility has enduring bottleneck characteristics, and businesses require access to that facility in order to compete. Some telecommunications infrastructure displays the characteristics of an enduring bottleneck — infrastructure where, for a number of reasons, it is more efficient to have all consumers served by a single provider than to have multiple competing providers.

Under the current Part XIC of the *Trade Practices Act 1974* (TPA) the ACCC is able to declare access services provided on bottleneck infrastructure if the ACCC considers doing so will promote the long-term interest of end-users, thereby subjecting the supplier of the services (whether it be NBN Co or other suppliers) to the access regime contained in Part XIC of the TPA.

The telecommunications access regime in Part XIC of the TPA, with or without the incorporation of the amendments made under the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009 (CCS Bill) and the Exposure Draft of the Telecommunications Legislation Amendment (National Broadband Network Measures—Access Arrangements) Bill 2010 (the NBN Access Exposure Draft), is designed to allow for access to declared services supplied by any carrier or carriage service provider over bottleneck infrastructure regardless of whether the underlying infrastructure is leased or owned.

## Senate Select Committee on the National Broadband Network

### ANSWERS TO QUESTIONS ON NOTICE

Australian Competition and Consumer Commission's appearance at  
14 April 2010 hearing

#### Question 2 (Written)

To the extent it is not covered by the question from Senator Fisher:

As presently drafted the access regime applies only to operations of "a specified NBN corporation" which is defined<sup>1</sup> to include NBN Co, NBN Tasmania, or a wholly-owned subsidiary of NBN Co.

- a. Would the Access Bill, in combination with the Legislation Amendment (Competition and Consumer Safeguards) Bill 2009 (the CCS Bill) sufficiently cover all infrastructure forming the NBN regardless of whether it is owned by an NBN corporation?
- b. If not, what services will not be covered by an access regime?
- c. Given the practice of NBN Tasmania to lease assets from a utility company, would that infrastructure be covered by the access regime? What are the implications if it is not?
- d. Are further amendments / legislative reform necessary to ensure an adequate and effective service regime?

#### Answers:

- a. As noted in the response to Question 1, the access regime in Part XIC of the TPA incorporating the amendments proposed under the CCS Bill and the NBN Access Exposure Draft will provide for access to declared services supplied by any carrier or carriage service providers including declared services supplied by an NBN Corporation irrespective of whether the infrastructure, for which the service is supplied on, is owned or leased by NBN Co.
- b. As outlined in the response to Question 2(a), all declared services supplied will be covered by Part XIC of the TPA.
- c. Access to non carrier facilities such as ducts and poles, which could for example be owned by utility companies, is currently provided for under Schedule 3 of the *Telecommunications Act 1997*.
- d. This question is an issue of policy and hence is a matter for the Government.

---

<sup>1</sup> Telecommunications Legislation Amendment (National Broadband Network Measures – Access Arrangements) Bill 2010, Schedule 1, Item 26, inserts into s 152AC of the *Trade Practices Act 1974* the following: "**NBN corporation** has the same meaning as in the *National Broadband Network Companies Act 2010*". The NBN Co Bill (s 5), defines "NBN corporation" to mean "(a) NBN Co; or (b) NBN Tasmania; or (c) a company that is a wholly-owned subsidiary of NBN Co."