



**Australian Government**

**Department of Communications and the Arts**

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Dear Mr McNamara

**Regulation Impact Statement (RIS) – Amendments to Division 16 of Part XIB of the Competition and Consumer Act 2010 (ID: 19508) – Final Assessment, Second Pass**

Thank you for your letter of 17 November 2015 regarding the first pass, final assessment version of the RIS proposing amendments to Division 16 of Part XIB of the Competition and Consumer Act 2010 (the CCA).

I now wish submit the Final Assessment, Second Pass RIS for approval, to enable the associated legislation to be introduced in the last two sitting weeks of this year.

For the reasons set out below, I am satisfied that the RTS now addresses the concerns raised in your letter.

The link between the authorisations in Division 16 and uniform national wholesale pricing (UNWP) has been clarified and brought forward in the RIS. This is evident on page 1 of the RIS and is also noted again at the end of the ‘Case for Action’ section on page 11.

The broad policy issues are summarised at the end of the ‘Case for Action’ section on page 11.

The impact analysis explicitly sets out the long-term implications of the options in greater detail on pages 14-15, 17, 20 and 21.

Commercial-in-confidence markings have been reassessed and in many cases, moved or deleted to enable a greater amount of detail to be made public.

The conclusion acknowledges the potential risks of option 3, noting that it precludes non-NBN Co carriers from interconnecting their transmission services deeper in the NBN network where it may be advantageous for them to do so during the build period, with possible implications for long term infrastructure-based competition. The conclusion also notes that none of the major industry participants objected to the preferred option. It also notes that this possibility is outweighed by the benefits of the preferred option.

In relation to long term implications, we have taken this to refer to the period after the NBN is built and operational (i.e. post 2020). The RIS makes it clear that the long term implications of the options are dependent on whether or not carriers are likely to seek access at a lower level in NBN Co's network during the build period. Industry feedback suggests this is unlikely, but it is possible – and the RIS is very much concerned with this possibility and the risks it raises.

If other carriers seek greater access and are able to obtain it (e.g. under Option 1 or 2), it could foster greater infrastructure-based competition in the long term, by allowing those carriers to leverage NBN assets. Conversely it could delay the NBN's rollout in the short term, reducing the wider benefits of access to faster broadband sooner, and increase NBN Co's costs. These would all impact NBN Co's long term commercial performance.

Alternatively, if there are carriers who would like to seek access but are unable to obtain it (i.e. under Option 3 or 4), it could set back long term infrastructure competition based on those carriers leveraging NBN Co's assets. However it would increase the benefits of access to faster broadband, by making the NBN available sooner, and not add to NBN Co's costs. As such it would likely improve NBN Co's long term competitive and commercial position. Under all options, however, other carriers are free to invest, in, and compete with NBN Co. by building their own networks. The key distinction between the options is the extent to which carriers can leverage NBN assets, and when. Under option 3, they would be able to seek greater access to the NBN once it is built giving them the opportunity to leverage it in providing services. Under option 4, they would not be able to seek that access. In all instances, however, access would depend on ACCC decisions (i.e. it is possible but not certain).

Option 3 is our preferred option and we consider its benefits exceed the costs, both in the short term and over the long term. Option 3 allows NBN Co to build its network faster and efficiently in line with its established plans, without the distraction of potential or actual requests for greater access than planned. It does not require NBN Co to incur costs to meet access requests that may or may not eventuate. Because the NBN will be delivered sooner, the community will accrue the benefits of better broadband sooner. However, Option 3 will allow access seekers to obtain greater access in future, in line with standard access principles. The provision of access would be regulated by the ACCC as would the cost of that access.

As we would like to introduce the associated legislation in the remaining two sittings weeks of this year, we would be grateful if you could consider this matter urgently.

If you have any remaining questions to be addressed, please do not hesitate to contact Mr Philip Mason, Assistant Secretary, Market Structure Branch, on 02 6271 1579.

Yours sincerely



Ian Robinson  
Deputy Secretary  
Infrastructure Group

18 November 2015