



Australian
Competition &
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Commission

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NEWS RELEASE

ACCC PROPOSES TO AUTHORISE NBN CO / OPTUS HFC SUBSCRIBER AGREEMENT

The Australian Competition and Consumer Commission has issued a draft determination proposing to grant authorisation for an agreement between NBN Co and SingTel Optus for the migration of Optus' HFC subscribers to the NBN and the decommissioning of parts of Optus' HFC network.

Broadly, under the Competition and Consumer Act 2010, the ACCC may authorise arrangements where it is satisfied that public benefits outweigh any public detriment likely to result from the arrangements.

"The ACCC acknowledges that this draft determination represents a finely balanced decision, drawing on public information and submissions and a large amount of confidential information provided by NBN Co and Optus," ACCC Chairman Rod Sims said.

"A wide range of arguments were put to the ACCC by Optus and NBN Co, but in essence our decision was based on weighing carefully two clear public benefits arising from the HFC Agreement against a potentially large but less clear detriment," Mr Sims said.

The main public benefits of the agreement are, in the ACCC's view, clear and quantifiable. The HFC Agreement will:

- avoid the cost of operating the Optus HFC network to provide a service the NBN is also able to provide; and
- deliver a lower cost HFC subscriber migration to the NBN.

Balanced against this, the HFC Agreement removes a potentially significant fixed line competitor to the NBN in Brisbane, Sydney and Melbourne. Competitive pressure from the Optus HFC network may have resulted in positive outcomes notably prompting NBN Co to improve its performance.

"The ACCC has examined these issues carefully and in great detail and a number of unique factors have reduced the detriments below that which would normally be expected," Mr Sims said.

These factors included:

- for a range of reasons unrelated to the HFC Agreement the footprint of the Optus HFC network is unlikely to be extended beyond the current 1.4 million homes, limiting the potential for its subscriber base to grow beyond its current level of around 400,000 broadband subscribers.
- the ACCC accepts that Optus is unlikely to undertake the large investment required to allow Optus to offer significantly faster products on the HFC network than those currently available. The Optus HFC network will, therefore, only provide a close substitute to the NBN for customers seeking broadband services that will be at the lower end of the range of services that the NBN will support.
- over time, HFC customers demanding higher speed services are likely to be migrated by Optus to the NBN. There are a range of views on how quickly Optus' current HFC customers will want such higher speeds. While the ACCC did not form a view on the

future need for high speed broadband, it did accept that the Optus HFC network would be uneconomic to operate once a critical mass of customers were lost.

“The ACCC also considers that some of the usually expected gains from competition in the performance of the NBN are, on closer examination, reduced,” Mr Sims said.

“For example, the regulatory approach which will ultimately apply to the NBN is intended to provide strong incentives for NBN Co to promote utilisation of the NBN and to be responsive to customer needs concerning speeds and other aspects of service quality.”

Given the above points, after practical assessment, the ACCC proposes to grant authorisation. Under the Competition and Consumer Act 2010, the ACCC is required to prepare a draft determination in relation to an application for authorisation before it makes a final determination. The purpose of this draft determination is to test the ACCC’s views with the applicant and interested parties.

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