

RESPONSE TO THE DEPARTMENT OF COMMUNICATIONS AND THE ARTS REQUEST FOR COMMENTS ON ITS REVIEW OF THE 2015 TELECOMMUNICATIONS IN NEW DEVELOPMENTS (TIND) POLICY

Introduction

Uniti Group Limited (Uniti) welcomes the opportunity to provide this submission to the Department of Communications and the Arts' Review of the 2015 Telecommunications in New Developments (TIND) policy - Request for Comments paper of 20 November 2019.

We agree in general with the need for the review as articulated by the Department. In addition to the current landscape in relation to operators, the review should take into account recent trends and developments in technology, and on-going and future consumer demands. The need for the infrastructure required to be provided to be able to cope with the ever increasing demand for capacity and the shift towards broadband services constituting an "essential service" available at an affordable cost to end users such that it is accessible to everyone also needs to be considered. This is critical to ensuring the policy remains "fit for purpose" for some time.

We also agree that the revised policy should be more focused and concise. The policy should be directed at ensuring that consumers' needs generally are protected and that ultimately consumers as a group will benefit as a result of the policy in place.

Areas of focus

We note where the Department has indicated it considers that the approach in the TIND policy remains largely appropriate and we agree with the areas of focus which have been identified.

We encourage the Department to continue to support increased competition in this market area, as evidenced by the increase in the number of operators now undertaking the supply of telecommunications infrastructure in new developments. This increase in competition benefits consumers through the provision of higher quality infrastructure (increased capacity and speeds) at a lower cost. Increases in competition driven by private sector investment benefits the public and the nation by relieving the burden of building and maintaining costly infrastructure on the public purse.

For private sector operators to continue to participate in this sector, the ability to compete in the market and secure reasonable returns on investment must exist. If private sector operators cannot practically and realistically compete with NBN Co, then there would be no incentive for private sector operators to take on the building and maintenance of this infrastructure. In addition, there would be little incentive for innovation and the continued improvement in technology and infrastructure to continue.

Therefore, the measures which have been in place under the existing policy to generate competition must continue and in fact, should be strengthened where measures have not been properly implemented or enforced. These include:

- Maintaining the requirement for NBN Co to charge developers and end-users in new developments;
- Maintaining the restrictions currently in place for NBN Co to overbuild NBN compliant alternative networks;
- Enforcing the provisions for alternative Carriers to have access to NBN Co backhaul and the Retail Service Provider (RSP) wholesale interface. We note in the discussion paper that it is suggested that these measures have not been taken up by industry. Regulatory oversight of NBN Co's response to requests for access and the terms on which such access is offered should be imposed as compared to the current situation, which is largely self-policing, and with which NBN Co is clearly not complying.

In the last two years, several private sector operators have emerged to develop a vibrant and competitive marketplace for greenfield broadband deployments for developers. These private sector operators have been able to develop a viable business and compete with NBN Co for greenfield development opportunities largely because of the existing measures identified in points (a) to (c) above. It is the private sector operators that are striving to innovate the services available through the early availability of reliable higher speeds and adjacent services such as MATV, energy management & Access Control/Security. The creation of "Smart Buildings" is enabling developers to embrace the full potential of fibre infrastructure and offer these services to new residents across Australia.

Notwithstanding this evolution, and as things stand today, NBN Co, by virtue of being a Government owned and funded organisation supported by a near monopoly "brownfields" business has a substantial competitive advantage and remains by far the dominant operator winning the majority of new development business. The current measures help to at least provide a level playing field in the deployment of FTTP in greenfield property developments and in some way address the barriers to entry for private sector operators. It is critical the level of competition available in this market to continues to build and strengthen, and for this to happen, the measures in place must be maintained and enforced.

Separately, we also ask the Department to consider why NBN Co should seek to compete with private sector operators who are already working with greenfield property developers to deploy high quality high speed FTTP broadband services. NBN Co as the Government appointed Statutory infrastructure provider of last resort will always be available to developers where there is no competition for a greenfield broadband development such as in remote regions of Australia. It does not seem logical for a taxpayer funded entity providing substandard returns on those taxpayer funds through the payment of a low cost of access to taxpayer capital, to compete with the private sector operators which are themselves competing for greenfield broadband deployments, trading profitably and providing returns to taxpayers through taxation of the business operations as opposed to consuming taxpayer funds. Surely taxpayer funds should be used to supply essential broadband demand where there is no competition for supply. Where there exists a competitive supply side, there is, in our view, no need for taxpayer funded intervention.

Summary

The revised policy must continue to encourage private sector investment in this area, through enhancing the competition between NBN Co and private operators in this area. Without this level of competition, NBN Co will end up as a monopoly provider, which will not serve to benefit consumers or end-users. The revised policy should include not only the measures which foster competition, but also direct the relevant regulators to ensure that those measures are monitored and enforced so that smaller operators are not inadvertently disadvantaged through NBN Co's refusal to comply with the measures set out in the policy.

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