



**BROADCAST AUSTRALIA**

a bai communications company

Australian Competition and Consumer Commission

By Email to: [mobileroaminginquiry@accc.gov.au](mailto:mobileroaminginquiry@accc.gov.au)

16 June 2017

To whom it may concern,

Re: Submission to the ACCC for the Domestic Mobile Roaming Declaration Inquiry.

Broadcast Australia (BA) has a nationwide network of broadcast transmission towers and associated infrastructure. We provide managed television and radio transmission services for the ABC and SBS across the country, with coverage to 99% of the population. We also provide co-location services to a wide range of customers, including telecommunications carriers and service providers, for those customers to locate their equipment on BA towers and access associated facilities. BA is not a carrier under the Telecommunications Act.

We note with concern the ACCC's statement in its draft decision (at page 81) that "towers not owned by carriers could potentially be incorporated into the facilities access regime and this would provide more transparency and consistency regarding the use of such facilities".

This appears to align with Telstra's statement in its submission (at page 71 of main submission 1) that states a potential area for improvement may include "Extending an industry-based arrangement for tower sharing to tower owners which are not mobile carriers, and therefore not subject to the Facilities Access Code, such as Axicom and Broadcasting (sic) Australia."

BA opposes the proposition that independent infrastructure owners should be subject to the Facilities Access Code for two key reasons;

1. There is no market failure which would need to be addressed through increased regulation, and
2. The inclusion of non-telco parties in the Facilities Access Code would lead to sub-optimal market outcomes.

We summarise our rationale for this position below.

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## 1. Lack of market failure in status quo arrangements

- a. There are **no existing commercial impediments** to customers co-locating their equipment on facilities at BA sites. Indeed, it is absolutely in BA's interests to maximise the number of customers utilising its sites. We have active sharing relationships with:
- Optus
  - Telstra (a mutual sharing relationship with reciprocal commercial terms)
  - Vodafone
  - And up to 100 other customers, including NSW Telco Authority, NBN Co, Southern Cross Austereo, Vertel, emergency services organisations etc.

BA has more than 300 co-location licences in place with the mobile carriers and approximately 250 licences in place with NBN and other users, which demonstrates the success of the current open access model. We are in active discussions with existing and new market entrants such as TPG.

- b. The co-location **market is operating efficiently**, evidenced by:
- i. The large number of telco services now operating in Australia on non-telco owned towers. There is **competition** for co-location in metropolitan, regional and remote areas. This competition takes the form of multiple suppliers (eg. Telstra, BA, Axicom, TV and radio broadcasters) and multiple **alternative options** eg. Power network structures, council facilities, rooftops, greenfield sites using low impact provisions.
  - ii. There are new market entrants joining the co-location market.
  - iii. BA's customers have never triggered dispute resolution processes in existing contracts, and BA has a low level of customer churn.



- c. The **process for access is operating efficiently**. Independent co-location providers have dedicated sales and operations teams in place to facilitate access to infrastructure and established access processes which are well understood by the mobile carriers.
- i. BA's current processes are fully transparent and applied in a consistent manner. In the interests of all customers, the process for enabling access involves ensuring the structural integrity of BA's facilities is not compromised and that there is no interference to other customers' services.
  - ii. BA uses established rate cards for pricing of colocation services at its sites, depending on customer equipment types and preferred contract terms.
  - iii. Subject to compliance with BA's site access protocol to ensure occupational health and safety of visitors to sites and compliance with other measures to ensure there is no interference with other users of the sites, customers are encouraged to access BA sites to install and maintain their equipment.

## 2. **Unintended consequences leading to sub-optimal market outcomes**

- a. Introducing the requirement to follow the code **would unfairly penalise** independent co-location providers. BA has a range of commercial agreements in place with telecommunications carriers and service providers. Some of those agreements are long standing and are periodically renewed. Some agreements, including BA's Facilities Agreement with Telstra, are reciprocal (i.e. they govern access by the carrier to BA facilities and by BA to the carrier's facilities for the purposes of television and radio transmission) which are not subject to the access regime.

Whilst Telstra has argued for broadening of regulatory application to tower owners, we note that, in the ACCC consultation on the facilities access code from 2013, the following statement is made: *"Telstra submits that it is no longer appropriate to mandate core principles of access and that the Code should not be binding where parties have an agreement in force which deals with matters prescribed by the Code... a determination made by an arbitrator has no effect to the extent to which it is inconsistent with an agreement in force"*.



BA is concerned that, if the Telecommunications Act (or subsidiary regulation) is amended to allow mandated access by telecommunications carriers to non-carrier facilities, there is a significant risk that BA will be at a material disadvantage in negotiating future access to the sites of telecommunications carriers for its broadcast transmission business (i.e. the access required to approx. 100 mobile carrier sites for provision of ABC and SBS broadcast services).

BA and other independent co-location providers are not carriers, and **would not have the same rights** as the telecommunications companies. Introducing a “one-sided” regulatory arrangement would **distort the current market dynamic**.

- a. Independent co-location providers would become subject to a number of requirements within the Facilities Access Code which provide **practical impediments** and introduce a **regulatory burden**.
  - i. As noted above, it is in the interests of co-location providers to make access to facilities simple and efficient. These businesses and customers generally benefit from improved timeframes for processing co-location applications, and as such, regulation of this would add an unnecessary cost with no benefit.
  - ii. The development and management of a queuing policy would be difficult to implement. BA does manage broadcast projects on its own sites (largely maintenance and replacement projects), but these projects have little or no impact on the telecommunications equipment being installed by carriers. Managing these projects in a queue with, for example, a telco LTE installation does not make sense. It also raises the question of how this applies to smaller wireless and broadcaster customers who may be deploying equipment on a faster deployment cycle than a telco, for example. Must they wait until Telco X is finished so that Telco X maintains its place in the queue? BA has existing contractual commitments to broadcast and other customers which could be adversely impacted by this policy.
  - iii. The application of the non-discriminatory access provisions also presents practical difficulties. How would this apply when comparing the facilities used for broadcast, telecoms and other new technologies? BA has existing contractual commitments to broadcast and other customers which could be adversely impacted by this policy.



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BA submits that the current efficient and equitable arrangements between carriers and non-carriers for site access should remain in place and that additional legislative or regulatory requirements are not imposed on independent facilities providers.

In BA's view, the greatest efficiency in regional infrastructure sharing can occur where there is a collaborative planning process between government, mobile carriers and an independent, neutral host which develops infrastructure, and provides access to all carriers and other facilities users.

Yours sincerely,

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Broadcast Australia