

14 January 2010

Mr Joshua Davies
Communications Group
Australian Competition and Consumer Commission

Email: Joshua.davies@accc.gov.au

Dear Mr Davies,

NBN Points of Interconnection

Primus Telecom welcomes the opportunity to comment on the ACCC's proposed 120 points of Interconnection (POIs) for the National Broadband Network (NBN). Primus considers the ACCC's proposed principles for identifying an appropriate location for POIs is flawed, and Primus urges the ACCC to reconsider these principles. Primus does not believe the principles published by the ACCC sufficiently determine whether or not a POI location meets the LTIE.

As has been widely acknowledged, the incumbent-biased structure of the telecommunications industry in Australia has held back the development of a workably competitive market. The industry remains dominated by Telstra, and consumers have suffered as a consequence. With the construction of the NBN, the Government has an opportunity to create a level playing field for the industry. However the NBN will only deliver on its potential if key decisions remain consistent with competition objectives. The ACCC's advice on the POI'S departs from orthodox competition policy, and it is concerning the ACCC is so readily departing from well practiced competition ideals.

Based on our experience in the industry, Primus submits that a competitive market will not emerge on a transmission route in the absence of three or four autonomous service providers, and at least one of those service providers should be independent, that is, does not also operate a retail business. That "independence" criterion remains important, as even under the NBN, fully integrated operators continue to have overriding incentives to discriminate against those access seekers that are reliant on acquiring wholesale transmission services to challenge the industry leaders.

To deliver a competitive outcome in any transmission link it is critical that a sufficient number of service providers have the autonomy to make independent and unfettered decisions around the supply of transmission services. The ACCC has suggested a sufficient condition for a POI location to deliver on the LTIE would be the existence of two competitors. The ACCC proposes that such a market structure, when combined with the existence of long term contractual arrangements, could be evidence that the route may be effectively competitive. Primus disagrees.

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In our experience a competitive transmission market will neither exist or emerge in the absence of three to four wholly autonomous and competing service providers. The ACCC is clearly mindful that service providers must enter into contracts as a matter of business survival. However the fact that some of these contracts may be long term is not an indicia of a competitive market. Indeed, Primus currently enters into long term capacity contracts on routes where only 2 providers exist. By their nature these contracts limit the use of capacity, and in reality often continue only at the discretion of the company providing the transmission service. Furthermore, irrespective of whether any retail companies may have taken long term contracts, that does not change the fundamental issue with those transmission links. Only two companies determine underlying supply and the terms of supply, and those two companies have strong incentives to maximise their revenue, and take decisions mindful of the duopoly market structure.

Primus notes that in other sectors the ACCC has been very clear that a duopoly structure does not deliver a competitive outcome. For example, it is extremely doubtful the ACCC would endorse something akin to the proposed POI competition principles in relation to the banking, petroleum or supermarket sectors. The consequent likelihood of coordinated decision making (whether express or implicit) would lead to higher costs for consumers. It is clear that such a market structure would not deliver a workably competitive outcome for those other industries, and it's not clear why the ACCCC would choose to treat telecommunications transmission services any differently.

Primus submits the ACCC should restate the "competition test" such that the minimum conditions for competition existing on any transmission route will be the existence of at least three to four competitors, with one of those being independent (ie. not operating in the retail market). In the view of Primus, any less than three, and preferably four, competitors, would not deliver a competitive outcome.

John Horan



Primus Telecom