



4th December 2015

Via email: nicole.ross@accc.gov.au

Dear Ms. Ross,

RE: Draft Decision on Superfast Broadband Access Service Declaration

I provide Spirit Telecom's comments in relation to the Draft Decision and specifically in relation to the consideration for an exemption of subscale service providers. Spirit supports the proposed service description subject to enabling, through appropriate exemptions, small scale providers that deliver competition benefits to the residential market for superfast broadband services. In that case the declaration would promote competition by small, innovative players without disrupting the level playing field and provide greater regulatory certainty.

As the Commission is aware, and to avoid commercial-in-confidence limitations, I will not go into detail about Spirit's operations. It is a small-scale carriage service provider servicing customers in high and medium density locations in the metropolitan areas of Melbourne and Sydney, and to a lesser extent Australia wide.

Unlike NBNCo and TPG, Spirit does not provide services via fibre networks that it owns or controls, nor by reselling a specific wholesale offering from another carriage service provider. It engages wholesale operators to carry traffic from buildings to Spirit equipment located in third party data centres, using wholesaler fibre networks that were existing pre-2011. Generally, Ethernet cabling that existed in buildings prior to 2011 and which is capable of providing superfast broadband services is enhanced by Spirit's utilisation.

This model is not vertically integrated nor a natural monopoly. It does not pose an access bottleneck, so competitors do not require access to any of Spirit's infrastructure in order to compete in those buildings. Spirit's configuration does not deliver sub-additive benefits. Third party carriers provide substantial non-Spirit capacity into its buildings and other providers utilise technologies such as VDSL2 on internal networks. Spirit's services do not interfere with or degrade or exclude competitors' services in the building. It is not unusual that Spirit's services coexist with NBNCo services and it is not necessary for competitors to use Spirit's infrastructure. NBNCo is increasingly rolling out to the buildings where Spirit's services exist and TPG's network footprint overlays much of the Spirit service footprint, as do many wholesale fibre providers.

Nonetheless, as an example of small innovative providers promoting competition, Spirit's services have been in demand largely due to prompt availability and provisioning and high quality offerings at competitive prices. Spirit offers superfast broadband from 25 megabytes per second up to 200 megabytes per second. Supported with strong customer service, its services have competitive appeal to end users. Other providers must compete with similar quality services in various dimensions in order to appeal to Spirit's customers. It is apparent, (Australian Financial Review 3 December 2015) that the challenge to match or provide better than Spirit's services is being taken up. If innovative providers had not been offering such competitive services, the standard might plateau to a narrow range of be what NBNCo can deliver, by a limited range of highly consolidated resellers, exploiting market dominance through economies of scale and scope.

Yet smaller innovative providers will not significantly affect NBNCo's level playing field or business plan, due to their minute scale. Such providers' utilisation of a novel combination

of technologies, to provide innovative high quality service to end users, without prejudicing the ability of other providers to compete on their merits, should not be penalised or discouraged by policy. Innovating challenger service providers that do not disturb the level playing field environment is in the long term interests of the end users.

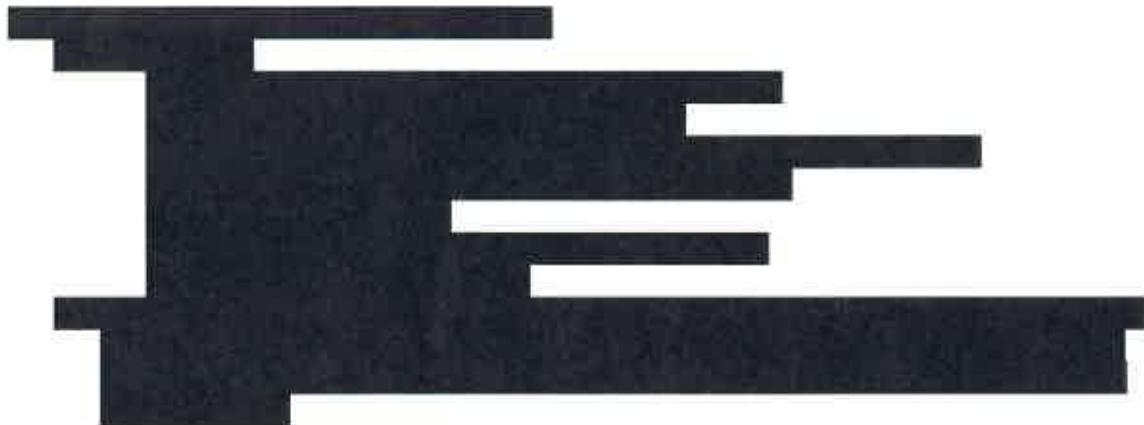
It is recognised that there will be a tipping point beyond which subscale operators may potentially disturb the level playing field. If limited to a cap of 100,000 services per operator, they will remain relatively minute and the playing field remains level. On the other hand, the interests of the end users are enhanced by the competitive pressure that such subscale operators will bring, because the alternative would comprise service providers of such scale as is evident in other consolidated industries.

Presently, superfast broadband services will largely be provided by Telstra, Optus, TPG/AAPT/Pipe/iiNet group and Vocus/M2/Commander/Primus group. Their competition will naturally focus on economies of scale and economies of scope. Subscale enterprise challengers must focus on superior service offerings and customer service which, without the benefits of scale, must be developed through innovation. Recognising that superfast broadband will be achieved by a multiplicity of technologies, innovation in the industry should be encouraged in the long term interests of end users, lest the behemoths of the NBN environment settle into a narrow band of competition akin to other highly consolidated service industries, for example, banking and energy.

EFFECTS ON SMALL INNOVATIVE PROVIDERS

Regardless of whether functional or structural separation is required, if the declaration applies to small scale innovative providers, restructuring requirements may be onerous and discourage market participation, outside of the highly consolidated cohort. Such regulation is not in the interests of end users. It is also unnecessary as it is most unlikely that there will be considerable wholesale business. The giant service providers will use their own economy of scale infrastructure and other subscale providers, needing efficiency rather than complexity, will prefer their own innovative technology platforms. The absence of economies of scale and scope should not be compounded by disproportionate and inefficient cost and management burdens due to mandating unlikely and unnecessary wholesale services.

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They are also unnecessary impediments to competing because such minute providers have no tangible impact on the level playing field. If their networks do not display natural monopoly characteristics and frequently coexist with other competitors' provision of services



in buildings, then their presence inspires having more choice and quality of services, rather than commoditisation, for end users.

This position is consistent with the explanatory memorandum preceding the 2010 NBN legislative suite and also of subsequent policy. It also provides an antidote to the market competition risk that has developed since the overwhelming consolidation of providers, primarily four, which will cover all end users with a comparatively consistent range of services.

The 2014 Ministerial Instrument sought to bring to competitive regulation those carriers that could still disrupt the level playing field environment, necessary for the NBN plan. However, small scale innovators could not become effective disrupters of NBN if they are limited by a maximum of 100,000 customers. It is unlikely that Spirit will reach such a threshold during the five year declaration period and as the NBN is being installed in the market.

The presence of innovative providers, however, encourages continuous competitive effort, rather than a scenario akin to a foursome of giant banks determining the range of services.

Absence of scale, combined with burdens of regulation, will not encourage competition in the market by smaller participants. Yet, without such small player innovation, large scale operators will focus on competing through large scale branding exercises, rather than innovative technical solutions. This is evident in the deployment of mass market VDSL technologies, which, in our view, proven to be inferior to Spirit's switched Ethernet deployment.

In an environment of multiplicity and emerging new technologies, the use of a local area network is a diminishing standard for discriminating between permitted and not permitted service configurations. Technology is changing the manner and extent as to whether a physical local area network is utilised and segmented. As its actual use is restricted by regulation, the concept of local area network should not exclude competition from other emerging technologies using differing models and combinations. It is not likely to serve the long term interest of end users by limiting technology competition, through retaining the local area network standard.

Competition along with innovation, efficiency, quality and price dimensions are in the long term interests of end users. The risk of restraining alterations or new platforms, based on the concept of the local area network is showing all the signs of restraining competition to the scaled operators. Therefore, it is efficient for subscale operators to enable opportunity for innovative, enterprising new entrants. Otherwise they can only be disadvantaged by lack of economies of scale and wholesale terms, which even under existing legislation, may yet prove to be "gamed".

Yours sincerely,

Geoff Neate
Managing Director