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Melbourne

To :

Australian Competition & Consumer Commission

via email : superfastbroadbandinquiry@acc.gov.au

Submission on SBAS Final Access Determination Inquiry 2021

Thank you for the opportunity to submit comments on the ACCC's public inquiry into the SBAS Final Access Determination Inquiry 2021.

I have previously provided comments on the LBAS & SBAS Declarations Inquiry of 2020 in which I argued strongly for the SBAS declaration to be geographically descope to only apply where the National Broadband Network has not been rolled out. To my knowledge this is currently the case only in so-called greenfield deployment areas and fibre networks built by Telstra in South Brisbane which have been purchased by Uniti Group Limited.

The ACCC's decision to extend the declaration of the SBAS in areas where the NBN is present imposes a significant burden on existing and potential new operators to offer alternative superfast broadband services to NBN Co and hence reduces competition and cements NBN Co's monopoly and dominance in the market. As a result I have argued that the national declaration of SBAS is not in the Long Term Interests of End Users.

The perverse nature of this ongoing national declaration is highlighted by recent reporting that NBN Co is looking to 'secure up to a billion dollars in extra funding from the federal government' to improve broadband services in regional Australia. Options being considered include 'moving some homes on fixed wireless to the fixed line portion of the NBN to improve service quality'.¹

NBN Co has been investigating ways to limit congestion on its Fixed Wireless network² in order increasing bandwidth usage by consumers. These latest reports indicate significant new investment will be required.

Under the current SBAS declaration any fixed-line infrastructure competitor to the NBN Fixed Wireless service would need to comply with the Standard Access Obligations which are likely to significantly decrease the incentive to invest in such infrastructure, especially in regional areas. As a result any investment in higher quality broadband infrastructure that may be more efficient than NBN in regional areas by non-NBN operators is likely being foreclosed.

Although this is likely a corner case it serves to highlight that the national SBAS declaration is likely preventing efficient investment in superfast broadband infrastructure more generally. Potential non-NBN investments in higher speed technologies (eg. FTTP) in areas where NBN

¹ See 'NBN Co prepares pitch for move government funding' in Sydney Morning Herald on 8 November 2021 - <https://www.smh.com.au/politics/federal/nbn-co-prepares-pitch-for-more-government-funding-20211104-p5960d.html>

² See 'NBN Co proposed app bandwidth limits when its wireless network is busy' in itnews on 23 October 2020 - <https://www.itnews.com.au/news/nbn-co-proposes-app-bandwidth-limits-when-its-wireless-network-is-busy-555085>

has deployed FTTN and HFC technologies are also likely being foreclosed due to diminished investment incentives arising from the SBAS declaration.

As a result I believe that the ACCC must seriously consider the case for geographic based 'Competition-based exemptions' to the SBAS declaration as discussed in Section 5.2 of the ACCC's Discussion Paper.

Based on the reasoning provided in my previous SBAS submissions the ACCC should look to exempt all geographic areas where NBN Co provides a service equivalent to the SBAS. Due to the wholesale-only nature of NBN Co and the ongoing SAU based regulatory regime, retail competition in these areas is already well-served. The LTIE in these areas is best served by having maximum competitive pressure on NBN Co to deliver efficient prices and efficient investment in higher quality broadband technologies. The declaration of the SBAS in these areas primarily protects NBN Co from this competition rather than addressing the LTIE criteria.

However, if the ACCC believes this is a step too far in that it would likely mean only a small number of areas are effectively subject to the SBAS declaration (ie. greenfields and South Brisbane) then it could consider a hierarchy of priorities for exempting areas based primarily on the quality of existing NBN broadband infrastructure.

Dynamic Efficiency Hierarchy

Such a hierarchy would ensure that the dynamic component of the efficient investment test that makes up the LTIE criteria is weighted more highly in areas where existing NBN superfast broadband technologies are of lesser quality.

The hierarchy could be as follows :

1. Areas with no fixed line superfast broadband infrastructure (ie. NBN Fixed Wireless and Satellite)
2. Areas with NBN FTTN superfast broadband infrastructure
3. Areas with NBN HFC superfast broadband infrastructure

A hierarchy of exemption areas may be phased in over time as the requirements for broadband infrastructure continue to increase due to upstream market impacts.

Competition Hierarchy

An alternative, parallel, hierarchy would consider the extent of current and potential competition in the geographic area. This would mainly be driven by increasing premises density and increasing revenue potential of customers. The existing exemption for CBDs of major capital cities for certain types of businesses fits squarely in this hierarchy, which could be extend as follows:

1. Business, charity and public body end-users in CBDs in major capital cities
2. Residential apartment complexes in CBDs in major capital cities
3. Business, charity and public body end-users in major business parks/complexes and shopping centres

4. Residential apartment complexes in inner city areas of major capital cities
5. Business, charity and public body end-users in main business districts of major regional cities

A combination of the above two hierarchies can be used to ensure that competition is used to ensure the 'economically efficient use of, and investment in, infrastructure' as per the ACCC's LTIE criteria.

However, it should again be emphasised that the presence of the NBN as the provider of superfast broadband services to the vast majority of premises ensures that a high degree of retail competition is available to all consumers and that the continuing regulation of non-NBN superfast broadband operators serves to only protect NBN Co from competition and hence is not in the LTIE.

Yours sincerely

Gary McLaren