

20 December 2019

Grahame O'Leary
Director
Communications Group
Australian Competition and Consumer Commission
grahame.oleary@accc.gov.au

Duncan McGlynn
Assistant Director
Communications Group
Australian Competition and Consumer Commission
duncan.mcglynn@accc.gov.au

Dear Messrs O'Leary and McGlynn,

Facilities Access Code Review Draft Report

Vodafone Hutchison Australia (VHA) welcomes the opportunity to make this submission to the ACCC in response to its draft report on the review of the Facilities Access Code (the Code).

In its draft decision, the ACCC rightly identifies two areas of concern with the Code that it proposes to address. Firstly, that industry consultations either are not occurring or are not occurring early enough to allow co-building or co-location requests to be factored into plans to build new sites. Secondly, that facility owners can frustrate and/or delay access through reserving capacity for their own future use for unreasonably long periods without genuine plans to use the reserved space.

The ACCC's proposed amendments to the mandatory queuing provision in the Code are welcome and should close the current loophole which allows a facility owner to impede access to sites. As outlined previously, we strongly support the ACCC's proposed 'use it or lose it' provision as a mandatory condition of the Code. If a carrier does not have a finalised proposal in its current program of works (which typically covers the next two years) then it shouldn't be able to reserve space on its own sites to the detriment of access-seekers.

We are disappointed and surprised however that the ACCC has decided not to mandate the Code's existing pre-build consultation process or publish its proposed guidance in the Code to address the lack of pre-build consultations between carriers.

The ACCC states in its draft decision that the Mobile Carriers Forum (MCF) draft updated consultation framework is "likely to go some way to addressing this issue" which is hardly a vote of confidence. While the MCF is the appropriate forum for sharing pre-build information, and we support the draft updated consultation framework provided by the AMTA in its submission to the

ACCC's discussion paper, this process does not occur in practice. As we outlined in our previous submissions, any pre-build discussions that do occur are ad hoc and do not provide appropriate notice and opportunity for interested parties to consider participating in a co-build.

We therefore reiterate our strong support for amending Clause 4.5 of the Code to require carriers to initiate a co-location consultation process for new facilities. We also reiterate our support for the ACCC's proposed publication of guidance in the amended Code. Together with the proposed MCF consultation framework this will be a significant improvement on the current situation where there is no formal process in place for carriers to share deployment plans.

These amendments are sensible and are likely to be effective in encouraging greater infrastructure sharing. This can reduce the costs of deployment and help address community concerns regarding the visual impact of equipment, which is particularly important as 5G is progressively deployed.

As outlined previously, we do not consider it necessary to require carriers to issue public notices as part of the consultation process. As the RFNSA database can be accessed by carriers who are not members of the MCF, we also do not think it is necessary to introduce amendments to the Code to provide an alternative option for these carriers to receive notifications of new sites. We support the AMTA's proposed changes to the RFNSA database to improve the visibility of pre-build information for non-MCF members and the public.

If you have any questions, please do not hesitate to contact Tim McPhail, Head of Public Policy, at tim.mcphail@vodafone.com.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Dan Lloyd', with a stylized flourish at the end.

Dan Lloyd
Chief Strategy Officer & Corporate Affairs Director