

Online TMT News

NBN Co signs new agreements with Optus and Telstra to facilitate multi technology mix NBN model

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NBN Co signs new agreements with Optus and Telstra to facilitate multi technology mix NBN model

NBN Co has entered into new commercial arrangements with Optus and Telstra to facilitate the multi technology mix NBN model. Under the new arrangements NBN Co will progressively take ownership of some parts of Telstra's copper and hybrid fibre coaxial (HFC) cable networks and some parts of Optus' HFC cable network. NBN Co will use and access those network assets together with assets which will continue to be owned by Telstra and Optus to roll out the NBN "in those parts of the country where it represents the fastest and most cost effective way to deliver fast broadband". The new agreements amend agreements reached in June 2011 between NBN Co and Telstra and Optus which were negotiated to facilitate a fibre to the premises NBN model, and anticipated the disconnection and decommissioning of copper and HFC networks. The agreements are subject to a number of conditions precedent, including ACCC approval and rulings by the Australian Taxation Office.

The agreement with Telstra is subject to ACCC approval of a revised Migration Plan for the disconnection of fixed line customers as the rollout of the NBN progresses. The government has released a consultation paper for public comment on draft regulatory instruments that would set the requirements that the ACCC must consider in reviewing Telstra's revised Migration Plan: Telecommunications (Migration Plan Principles) Determination 2014; and the Telecommunications (Migration Plan – Specified Matters) Instrument 2014. Comments may be made until 7 January 2015.

- Links to the consultation paper, draft regulatory instruments, and media releases of the Australian Government and NBN Co are available from the [Department of Communications' NBN page](#).

New measures announced to tackle online piracy

The Minister for Communications and the Attorney-General have announced new measures to deal with online piracy including the development of an industry code and website blocking.

The government wrote to industry leaders giving them until 8 April 2015 to develop an industry code addressing online copyright infringement. The letter states that the code should include a process for ISPs to notify consumers when a copyright breach has occurred, provide evidence to assist rights holders to take direct copyright infringement action against subscribers, and apportion costs of administration between ISPs and rights holders. The code would be registered by ACMA under Part 6 of the *Telecommunications Act*. If no agreement on a code can be reached by industry stakeholders in that timeframe, the government will prescribe a binding code. Compliance with the code will be relevant to whether or not an ISP has taken "reasonable steps" for the purpose of avoiding liability for authorising infringement.

The government also announced that it would amend the *Copyright Act* to enable rights holders to apply for a court order requiring ISPs to block access to a website operated outside of Australia which provides access to infringing content.

These announcements follow consultation by the government with industry and consumer groups subsequent to the release of its [Online Copyright Infringement Discussion Paper](#) in July.

- View the [joint media release and letter to industry](#)

Telstra fined for iPhone misrepresentation

Telstra has been fined \$102,000 by the Australian Competition and Consumer Commission (ACCC) in relation to a iPhone 6 advertisement, that appeared in *The Age* newspaper on 27 September 2014. The advertisement displayed that the cost of Telstra's iPhone 6 and phone plan bundle was \$70 per month. However, consumers were also required to pay an additional \$11 per month for the iPhone 6, which was only disclosed in fine print.

The ACCC considered that it had reasonable grounds to believe that Telstra had made a false or misleading representation about the price of goods or services, in contravention of section 29(1)(i) of the *Australian Consumer Law* and subsequently issued Telstra with an infringement notice and a \$102,000 penalty. The infringement notice to Telstra demonstrates that consumer protection in the telecommunications sector remains an ACCC enforcement priority.

- View the [ACCC press release](#)

Mandatory data retention legislation referred to committee

On 30 October 2014, the government introduced the *Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014*. The Bill seeks to implement a mandatory telecommunications data retention regime, requiring ISPs and telecommunications carriers in Australia to retain metadata for up to two years. The Bill was subsequently referred to the Parliamentary Joint Committee on Intelligence and Security with a view to conducting public hearings on the implications of the legislation, and it was also submitted to the Senate Standing Committee for the Scrutiny of Bills. The Joint committee is due to report on 27 February 2015.

- We have previously commented on the progress of this legislation [in our December IT, Communications and Media Update](#)

A new carrier licence condition declaration for owners of superfast fixed line broadband networks

The Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014 (Licence Condition) was recently announced by the Government and affects owners of superfast fixed line broadband networks and retail customers.

In essence the new Licence Condition means that from 1 July 2015:

- affected carriers need to have separate wholesale and retail companies with separate directors, management, staff and operational support systems; and

- the wholesale company will have to supply services to other service providers on the same terms (including price) that it supplies them to its own retail company.

The new Licence Conditions, which will be enforced by the ACCC, are designed to support fairer and more effective retail competition by ensuring competing service providers can access new residential broadband networks and provide alternative offerings.

- View the [Minister for Communications' press release](#)

Government releases Telecommunications Regulatory and Structural Reform policy paper

The Government has released its Telecommunications Regulatory and Structural Reform policy paper (Telecommunications Regulatory Reform Policy). The Telecommunications Regulatory Reform Policy sets out the Government's roadmap for telecommunications regulatory and structural reform, including a response to the recommendations of the independent cost-benefit analysis of broadband and review of regulation, led by Dr Michael Vertigan AC.

The Telecommunications Regulatory Reform Policy includes: legislating that NBN Co be the infrastructure provider of last resort; replacing NBN Co's policy of uniform national wholesale pricing with pricing flexibility and price capping; and a competitively neutral industry contribution mechanism to fund NBN Co's fixed wireless and satellite services long term, replacing NBN Co's internal cross subsidies.

- View the [Telecommunications Regulatory Reform Policy](#)

OAIC to remain operational until further notice

Despite the proposed closure of the Office of the Australian Information Commission (OAIC) on 31 December 2014, it will now remain operational until further notice.

The *Freedom of Information Amendment (New Arrangements) Bill 2014* which proposed the amendments, was not considered by the Senate prior to the end of the 2014 sitting period, leaving the body in a transitional state. Until further notice:

- Information Commissioner reviews, the administration of the *Privacy Act 1998* (Cth), as well as statutory elements of the *Freedom of Information Act 1982*, will continue to be handled by the OAIC; and
- Freedom of Information complaints will be referred to the Commonwealth Ombudsman.

We have previously commented on the [progress of this legislation](#).

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