

17 March 2014

NBN Regulatory Review  
Department of Communications  
CANBERRA ACT 2601



Dear Sir or Madam

### **Cost-Benefit Analysis and Review of Regulatory Arrangements for the National Broadband Network (NBN)**

The Telecommunications Industry Ombudsman (TIO) welcomes the opportunity to provide comments on the Regulatory Issues Framing Paper ('the Framing Paper') released by the NBN Panel of Experts on 13 February 2014.

Given the role of the TIO as an independent telecommunications dispute resolution office, and our application of the law and good industry practice in resolving disputes, the regulatory arrangements underpinning the NBN are of strong interest to my office.

#### *Working assumptions*

The primary area where the TIO has comment is in relation to the working assumptions the Panel is proposing and we have confined our comments to these matters. Specifically, two of the working assumptions have relevance to views that the TIO has previously raised in its submission to the Department of Broadband, Communications and the Digital Economy (DBCDE)'s Review of the TIO scheme, relating to conditions of market entry. The relevant working assumptions in the Framing Paper are:

- 'there should be no restrictions on retail level competition, other than those needed to provide for end-to-end connectivity and to protect consumers (where such protection is reasonably necessary)', and
- '...regulation should be no more intrusive or burdensome than needed, and should be proportionate, transparent, predictable and accountable in its operation.'

#### *Conditions to market entry*

In its submission to the DBCDE Review of the TIO Scheme<sup>1</sup>, the TIO highlighted risks about the conditions to market entry in the telecommunications sector being set too low. The TIO noted that the absence of appropriate conditions to market entry can lead to a great deal of inconsistency

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<sup>1</sup> Submission to the Department's Discussion Paper on the TIO Scheme, [http://www.communications.gov.au/\\_data/assets/pdf\\_file/0019/133660/Telecommunications\\_Industry\\_Ombudsman.pdf](http://www.communications.gov.au/_data/assets/pdf_file/0019/133660/Telecommunications_Industry_Ombudsman.pdf)

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around levels of service, compliance and the substantial potential for consumer detriment. In that respect, the TIO noted two possible options that could address concerns around inconsistent levels of service and compliance:

- A regulatory requirement that market participants sign up and demonstrate commitment to relevant Industry Codes in order to be able to operate in the industry, and
- A legislative requirement that service providers are licensed to sell and distribute telecommunications products and services.

In its final May 2012 report, *Reform of the Telecommunications Industry Ombudsman*, DBCDE examined the regulatory settings in respect of industry compliance with the TIO scheme and considered matters including infringement notices, a licensing scheme and a registration scheme for carriage service providers (CSPs)<sup>2</sup>.

In its examination, the DBCDE commented that a licensing or registration regime would place an administrative burden on providers. It also noted the importance of having effective incentives for compliance and enforcement. The DBCDE also observed the large degree of discretion and lack of transparency in the regulatory framework for dealing with non-compliance by service providers.

#### *Enforceable and cost effective regulation*

Noting that the working assumptions of the Panel are directed toward regulation that is both proportionate and not overly burdensome, the Panel may also wish to have regard to DBCDE's examination of the regulatory framework in its Review of the TIO scheme.

DBCDE's examination reinforced the benefits of a regulatory framework that is both enforceable and cost-effective. There is an opportunity for the Panel to capture this principle as part of its working assumptions.

A key issue in the setting of an appropriate regulatory framework is the structure of the NBN itself. As a publicly-funded, government-owned telecommunications network which wholesales to a wide range of access seekers, it is critical that the providers on-selling services to consumers are operating within a regulatory framework that promotes consistency and compliance.

The Panel has identified as part of one of its working assumptions the importance of any regulatory restrictions in the supply of telecommunications services 'being no greater than needed to promote the long-term interests of end-users'. In this regard, the TIO is of the view that an appropriate regulatory framework will ensure that resellers of NBN services are required to meet standards which:

- are of a consistent and high technical performance quality, and
- provide a good experience in terms of the level of customer service that end users receive.

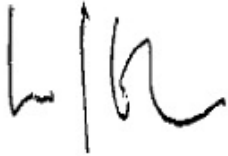
The TIO suggests that it would be a poor regulatory outcome if a new, technologically advanced and publicly-funded telecommunications network was hindered by inconsistency in the quality of associated services, such as customer service, being delivered to consumers.

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<sup>2</sup> pp 22-25 *Reform of the Telecommunications Industry Ombudsman*,  
[http://www.communications.gov.au/\\_data/assets/pdf\\_file/0003/147504/TIO-Review-Report-web-May.pdf](http://www.communications.gov.au/_data/assets/pdf_file/0003/147504/TIO-Review-Report-web-May.pdf)



Yours sincerely



Simon Cohen  
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