

Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010

Second Reading Speech

Introduction

Australian telecommunications is at a crossroads. The government has an ambitious program that will drive future growth, productivity and innovation across all sectors of the economy.

The national broadband network will fundamentally transform the competitive dynamics of the communications sector in this country. NBN Co is a wholesale only telecommunications provider with open access arrangements. The new network represents a nationally significant and long overdue micro-economic reform.

The government is committed to addressing the mistakes of the past and establishing a telecommunications regulatory framework in the interests of all Australians.

The government is therefore reintroducing this bill which will reshape regulation in the telecommunications sector to deliver outcomes which are in the interests of consumers, business and the economy more broadly.

The measures in the bill will position the industry to make a smooth transition to the National Broadband Network, increase competition and improve consumer safeguards.

Consistent with the reforms announced last year, the purpose of the Bill remains to:

- restructure the telecommunications market to promote greater competition and consumer benefits;
- strengthen the telecommunications-specific access regime to provide more certain and quicker outcomes for telecommunications companies;
- streamline the anti-competitive conduct regime by removing procedural impediments that in the past have restricted the effective operation of the regime; and
- strengthen consumer safeguard measures.

Since this bill was introduced last year it has been the subject of a Senate Committee inquiry which involved detailed submissions from stakeholders.

Addressing Telstra's vertical & horizontal integration

Some of the issues addressed in the bill have been discussed for two decades and are finally delivered in this bill.

In June 2010, Telstra entered into a financial heads of agreement with NBN Co to participate in the roll out of the National Broadband Network.

The agreement is a key milestone to achieve Telstra's structural separation through the progressive migration of customer services from Telstra's copper and subscription television cable networks to the new wholesale-only network.

Structural reform is clearly in the national interest. The bill includes provisions to authorise — for the purposes of section 51 of the Competition and Consumer Act — conduct by Telstra and NBN Co relating to Telstra's structural separation undertaking.

However, the Australian Competition and Consumer Commission will make the final decision on acceptance of Telstra's undertaking to structurally separate.

The bill provides for Telstra's structural separation undertaking to include a migration plan.

There will be significant consultation on the migration plan which will deal with the processes and timing of migrating Telstra's customers from its copper network to the NBN.

The Bill now provides more legislative certainty for Telstra in the transition to a retail company.

The Bill sets out a clear process for Telstra to seek approval from its shareholders on a proposal to migrate its customer services to the NBN, with a high degree of certainty about the regulatory outcome.

Telstra will be allowed to acquire specified bands of spectrum, unless the Minister determines in a legislative instrument otherwise.

The bill clarifies the relationship between Telstra's separation undertaking and the telecommunications access regime.

Other changes to the original Part 1 of the bill include:

- giving priority to a genuine structural separation process over functional separation;
- clarifying that the ACCC cannot accept a structural separation undertaking unless it contains effective measures relating to the equivalent supply of regulated services to Telstra's wholesale customers during the period Telstra is structurally separating; and
- making Telstra's compliance with an in-force structural separation undertaking a condition of its carrier licence.

Access & Anti-competitive Conduct

The provisions under Part 2 of the bill, which relate to the telecommunications access regime, have also been reviewed in light of industry feedback.

The most notable change is that the transitional provisions will allow access seekers to have recourse to arbitral determinations which will prevail over access agreements until an access determination is made by the ACCC.

The bill clarifies that binding rules of conduct will only be used in circumstances where, for reasons of urgency, there is insufficient time to make or vary an access determination.

To give effect to the agreement reached between Telstra and NBN Co, Part 2 of the bill now contains changes to the facilities access regime.

The measures will ensure that Telstra can meet the requirements set out in its structural separation undertaking, migration plan, and other related agreements.

Consumer Safeguards

There have been changes to strengthen the consumer safeguards in the original bill. These broaden the ACMA's record keeping powers to allow it to obtain regular reports about carriers' and service providers' compliance with their obligations.

Other changes will enable the Minister to direct the ACMA to determine an industry standard to enable a more effective regulatory response where industry codes do not adequately deal with consumer issues.

The strengthening of the consumer safeguards contained in this bill will ensure that consumers are protected and service standards are maintained at a high level during the transition to the NBN.

Conclusion

In closing, the government has listened closely to the feedback it has received.

The Government recognises the strong public interest in the proposed reforms and has been mindful to balance strong measures with appropriate safeguards and incentives.

The measures in this bill are ambitious, but the Government is determined to implement this long overdue reform to drive growth and productivity, regional development, social equity and innovation.

This bill is an important step on the road to an improved telecommunications industry structure, with better competitive outcomes and stronger safeguards for consumers.