

# **National Broadband Network: Regulatory reform for 21st century broadband**

## **Discussion Paper Submission**

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## Submission Preface

Regulatory reform in the shape of establishing a comprehensive and detailed governing framework is a significant and imperative factor in ensuring the National Broadband Network is rolled out, smoothly and implemented to its maximum capacity.

A major project such as the National Broadband Network, and particularly to Tasmania as Premier Bartlett stated is the “single most important thing to happen to Tasmania since hydro electricity”. As you can appreciate, regulatory reform is particularly high on Tasmania’s and my agenda. It is particularly important to develop and consider a governing framework, together with establishment of a figurehead, responsible for ensuring a framework is devised to nurture innovation and investment into our communities as opposed to the current somewhat stifling and ad-hoc regulations.

I believe without a concise, educated and comprehensive framework, outlining governance procedures, regulations and service provider expectations, the NBN roll-out will be lacking. This regulatory reform framework will be the backbone of the NBN, and additionally will ensure its longevity in providing world first opportunities for all Australians across industry, region and location.

There is no point having the fastest broadband in the world available to over 30,000 small businesses in Tasmania without a need, a want, a requirement or even an understanding of what the service will provide our small business community. “There is no point in having a 5 lane highway between Roseberry and Tullah, when no-one’s driving on it”. Education is the key for this to become successful, and small businesses’ aware of the benefits the NBN will provide to the SME’s, and their wanting it and demanding it will only make this work.

## **Chapter 3 Questions**

### **Part XIC Reform Questions**

1. How can the processes and Procedures under part XIC be improved? What are the relative merits of the options outline or any alternative you favour?  
Whichever option is selected it is imperative that uniform understanding is achieved right through the hierarchical chain. I strongly suggest that a framework be devised with identified improvements to the part XIC, so that business, government and other stakeholders have a clear consensus on what constitutes part XIC.
2. Are there elements of the different options which could be combined?
  - Replacing the negotiate-arbitrate model with a regulatory process may allow for greater understanding of the procedure, effectiveness and ability to monitor, control and enforce the regulatory model.
  - Scrapping the current negotiate-arbitrate system may lead to greater misunderstanding.

### **Anti-competitive Questions**

1. Are part XIB procedures too complex? If so, how could they be streamlined?  
Without a succinct understanding of Part XIB it is unrealistic for companies to fully comprehend procedures; however this does not justify why companies should not find alternative means to ascertain a comprehensive knowledge of Part XIB procedures.  
  
Complexity of this procedures is in the parenthesis of what constitutes “anti competitive” behaviour or type of business affiliated in establishing that kind of monopoly. Perhaps these criteria can be more focussed and precise, so that potential capacity to understand is maximised. Additionally to streamline understanding (even if complex) perhaps a mandatory requirement is a signed agreement of these procedures.
2. Are consultation notices necessary?  
Perhaps the consultation notice can be incorporated into the “competition notice” and one notice is delivered, demanding action from the offending business.
3. Would the introduction of binding rules of conduct on carriers who are subject to a competition notice or as an alternative to competition notices improve the operation of Part XIB?  
  
This could perhaps assist in enforcement of anti-competitive behaviour. Additionally the ACCC need to be seen to be doing the right thing, so perhaps binding rules will be a more effective approach.
4. What are the relative merits of the options outlined?
  - a. Removing Requirement to undertake consultation before issuing a competition notice

- This may speed up the process to which a competition notice can be served and acted upon.
  - However this may not resolve issues with “not providing advice on how to rectify anti-competitive conduct” and being able to pursue further.
- b. Requiring the ACCC when issuing a competition notice to provide guidance to the recipient on how they can rectify the anti-competitive conduct
- Perhaps include a period of “good behaviour” which will place stricter rules and pressure on offenders.
  - This will perhaps require strict and stringent follow up measures.
- c. Giving the ACC the power to impose binding rules of conduct when issuing a competition notice
- This will allow the ACCC to be “seen to be doing the correct thing” there is a consequence to actions.
  - These “Binding Rules” will need to be considered carefully.
- d. Abolishing the competition notice regime and empowering the ACCC to issue binding rules of conduct where it considers a party is engaging in anti-competitive conduct.
- Creation of new rules may limit the ability for business to understand and comprehend. May cause confusion between the two measures.
  - This option will allow for much faster, less complex procedure in dealing with offenders.

### ***Separation arrangements for Telstra Questions***

1. What are the appropriate structural arrangements for Telstra during the transition to the National Broadband Network
  - Due to the lengthy time period it would probably take to implement a stricter equivalence regime such as the functional separation concept, the most appropriate structural arrangement for Telstra is to modify the current operational separation regime. This would work best if measures were added to slowly integrate Telstra into more of a functional separation regime.
  - This would be preferable as in Tasmania for example, Telstra would almost have a 100% monopoly situation with no other competition existing. A solution needs to be sought now.
2. Could measures be put in place to make the existing operational separation regime work more effectively? If so, what are they?
  - Stricter control measures on equivalence procedures
  - More governance and reporting procedures
  - ACCC could possibly oversee Telstra more stringently.

3. If functional separation is adopted, what would be the key elements of such a framework? What would be the appropriate boundaries for separation?
  - Separation of business units as subsidiary companies, which should operate independently from “head office”. This will allow for greater competition, within certain market spaces, particularly if ACCC introduce stricter competition reforms.

#### **Horizontal Separation reform Questions**

1. What restrictions, if any, should be imposed on future Telstra investment in the Australian media and communications sector?
  - At the present time, Telstra have the power to dictate the type of services that Australian consumers can access, as well as the investment and time equivalent to which these services become available to their absolute benefit.
  - In this Day and age “content is king” and Telstra in the current market situation have power to restrict and limit which services they choose to make available to the public.
  - Limiting the investment opportunities Telstra can partake in, such as purchasing shares or outright sale of media, media delivery platform businesses (such as television, newspapers) is a good limiting measure.
2. Should Telstra be required to divest its hybrid fibre coaxial network?
  - This could certainly be a good option for encouraging competition in Australia. Questions arise from this – who buys them out? Will it be government or private sector companies? What rules will be placed on them to prohibit re-investment in the future (through shares and/or buy-out of smaller competitors?)
  - Without this happening, Telstra will remain in the power position as they can/will determine the rules of engagement of other companies utilising their cables.

#### **Facilities Access Regime Questions**

1. Would making the facilities access regime consistent with Part XIC improve its operation?
  - Making the facilities access regime consistent with Part XIC would improve its operation. Currently the regime is cumbersome and time consuming, and is probably a disincentive for competing tele-com providers entering the Australian market.
2. Should the facilities access regime be integrated within Part XIC? If not, why not?
  - This certainly would restrict the lengthy process of establishing a market for entering businesses.

#### **Spectrum Allocation Questions**

1. Given the changes to the telecommunications industry resulting from the roll-out of the national broadband network, are competition restriction necessary to limit access to valuable spectrum?

- In the Tasmanian market, much of the community are considered to reside in remote or rural areas, which currently have little to no access to broadband and other information technology. For Tasmania the reserve and limiting of spectrum to be able to provide wireless services to these areas is highly important. Competition restriction is necessary.
2. How can the government encourage competition between different technology platforms?
    - No comments.

## Chapter 4

### Universal Access / communications service standards Questions

1. Would the communications service Standard approach proposed in the Glasson Report provide an effective and useful framework for safeguarding consumer outcomes into the future, including the National Broadband Network environment?
  - Yes.
2. What standards should be required of (under a Glasson-style communications service standard):

As internet based content has evolved over time, it is now a necessity for everyday living (and not a nicety).

- Voice services
  - Broadband – Data is currently not addressed in the universal service obligation, as this content is progressively becoming more important to the on-going operation of businesses, particularly in remote and rural areas, data particularly needs to be included in the standards. Particularly in rural areas, reach and quality (speed) of data should adhere to a minimum standard. With the roll-out of the NBN this will become an issue in affectively reaching 100% of Australians.
  - Mobile services – reach to remote and rural areas, at a competitive price and in a timely manner.
  - Payphone services – perhaps could be determined in consultation with town/city councils.
3. How can reliability, connection and repair time standards for these services be established and enforced?
    - Initially a comprehensive standards framework will need to be devised , and be governed by a body or perhaps even a minister to ensure the ongoing enforcement of these standards. This framework should be worked into the overall NBN roll-out strategy.
  4. In the context of the government’s announcement to establish an open access, wholesale-only national broadband network, should anyone be required to provide universal access to broadband services? If so, who? Should the role be contestable?

- Universal access has been referred to as a “broken concept” these issues need to be addressed first.
5. Given the roll-out of the National Broadband Network and that the Australian Broadband Guarantee already provides a safety net, is it necessary to include broadband in a regulatory framework for universal access?
    - No, not necessarily, as with the complexity issues that have arisen from the anti-competition laws and the processes governing them, it would be un-wise to further complicate the regulatory framework. Perhaps the guarantee should be integrated into this framework, and perhaps modified to suit.
  6. Given that the satellite phone subsidy scheme already provides a safety net, is it necessary to include mobile services in a regulatory framework for universal access?
    - See above. However, It would be much more ideal to have only 1 framework which perhaps could encompass the safety net, rather than separate and somewhat ad-hoc policies – again a deterrent.
  7. What mechanisms should be in place to address and resolve access, reliability and other service issues faced by consumers and small businesses? What role should industry play?
    - Content provider incentives – to encourage provision and quality (speed) of broadband and Information technology services to small business, remote and rural business and community at comparable levels to CBD’s.
    - Education schemes for small business promoting these services, and the potential opportunities they can create for business.
    - Succinct and clear framework of support services and network
  8. What information should be gathered and reported on as part of dealing with regulatory enforcement and resolution of consumer problems?
    - No comment.

### **Funding Questions**

1. How should the universal access regime be funded? Should the burden fall on one carrier or should it be spread further?
  - There are arguments for and against this. If the burden of universal access was placed solely on one carrier, then less administration and confusion issues would arise. Respectively however, the current situation with Telstra being the sole provider is a burden to the tax payer. Optus suggest that the Universal service obligation should be covered solely by the carrier – this has been successfully implemented in the United Kingdom, where BT is the sole carrier, however is not compensated for it by any means.
2. How should any intangible benefits from being the universal service provide be taken into account?
  - Does it attribute to the domination of 1 carrier in Australia?
  - Branding and promotion in every unit (phone box) around Australia

- Immediate brand recognition
3. If industry funding is preferred for universal access, should small carriers be required to contribute? If not, what should be the threshold revenue for exempting such carriers?
    - Perhaps the contribution rate is variable to the determined value of the contribution or risk. Lenders mortgage insurance in the home loan sector could be a good model.

### **Payphones Questions**

1. Should universal service payphones be provided under a competitive process, such as under a competitive subsidy?
  - Yes. There is room in the market for competitors, particularly as Telstra who may not deem an area suitable for a payphone, another competitor might.
2. Are there alternative mechanisms that could be used for providing universal service payphones?
  - Perhaps if a competitor places a payphone, perhaps they become eligible for government subsidy in providing and contributing a universal service provision.

### **Location and Removal of Payphones Questions**

1. How should payphones be distributed around Australia?
  - Perhaps this could be determined in consultation with area, city and town councils.
2. What controls should be placed on the provision, including location, and removal of payphones? Should there be a stronger role for local councils?
  - As mentioned above, I believe this will be beneficial.
3. Should the ACMA be given powers to set a minimum number of universal service obligation payphones, and require Telstra to identify those payphones?
  - A standard needs to be developed, which could list a certain number of payphones that require implementation to constitute a minimum satisfaction of the universal service obligation.
4. Should the ACMA be allowed to set stronger rules regarding the provision, relocation and removal of payphones, especially in rural and remote areas
  - If deemed appropriate, a body such as the ACMA should be able to lobby private enterprise to provide what is deemed the minimum standard requirements to fulfil the universal service provision.

### **Customer Service Guarantee Questions**

1. Does the customer service guarantee need strengthening? If so, what changes should be made?
  - Repair timeframes: These should be calendar days, so a set deadline is presented and then work should be carried out. If deadlines aren't met, strict penalties should be enforced due to breach of customer service guarantee.
2. Should working days be replaced with calendar days in repair timeframes?
  - Yes, see above. This will provide for a more succinct deadline.

3. Should the service disruption criteria be tightened? If so, what mechanism should be put in place?
  - As the NBN states it will provide world class services to 100% of the Australian population, it is therefore fair to tighten service disruption criteria. A world class customer service and infrastructure will be needed to provide backbone for the physical roll-out of NBN.

### **Network Reliability Questions**

1. Does the Network reliability framework need strengthening? If so, what changes should be made?
  - Yes. Increasing the minimum portion or percentage of copper network that Telstra is required to keep regular maintenance on a year may increase consumer reliability, however as it will place a significantly higher burden on Telstra, it could also work in a negative manner and effectively create a standard that is unrealistic to fulfil.

### **Retail Price Control Questions**

1. Should the government continue to regulate Telstra's retail prices for voice telephony services in the transition to the national broadband network?
  - Yes. Telstra still maintain dominance in the Australian market, and as such control service provision, and without government regulations, also control price. Price regulation will become less important as more competitors enter the market – this is because prices will decrease, naturally with competition.
2. If price controls should be continued, which services should be included?
  - The whole range could be considered, however basic services such as fixed line rental, local call costs. Internet has become very commonplace and in light of the NBN roll-out, data prices could be controlled also.
  - Price controlling data in Tasmania is imperative, as currently prices can be approximately 30% greater than mainland costs for similar services.
3. What individual services or groups of services should be capped in price controls?
  - Data and connection speeds.
  - Fixed line rental and local – STD calls.
4. Should retail price controls be used in conjunction with the wholesale access regime (i.e. to regulate fixed-to-mobile prices?)
  - This could be a possibility.
5. In the longer term national broadband network environment, will retail price controls be required? If so, what form should they take? What services should they cover?
  - As mentioned in question 1, as the NBN takes effect, and with additional competition, prices will naturally fall, particularly for data, however in the interim these need to be looked at and regulated now particularly in Tasmania's case, where broadband costs up to 30% more than mainland prices.

## Community Safeguards – Priority Assistance Questions

1. Are priority assistance arrangements effective?
  - Yes, however there is always room for improvement. As such modifications such as making priority assistance and emergency assistance mandatory for service providers under the universal service obligations.
2. Does the voluntary industry code provide a sufficient safeguard for consumers?
3. Should the provision of priority assistance be mandatory on all fixed line voice providers during the transition to the national broadband network environment?
  - Yes. As more competing providers enter the market, the priority assistance should be upheld – and perhaps be more affective as a criteria under the universal service obligation.
4. Should the government extend the scope of the priority assistance criteria to include people with a disability?
  - Not necessarily. Assessment on individual cases should be carried out to determine if the service is warranted/needed in particularly circumstances.

## Emergency Call Service Question

1. Looking to the national broadband network environment:
  - a. Who should be required to provide the emergency call service? When can any transition begin?
    - A stand alone government entity in collaboration with Telstra and the NBN company. It is foreseeable in the future that emergency calls will be made via internet and VOIP, and therefore it is imperative that all stakeholders are involved in the emergency call operation.
    - This must be factored into the overall NBN regulatory framework, with concise instruction on what is expected of each party within the framework, allowing for each stakeholder to be accountable.
  - b. If responsibility were ultimately transferred to the national broadband network company, what obligations should apply to the company as a wholesaler and to retail service providers?
    - That each retail service provider is accountable for providing the emergency call service, in the most efficient possible manner.
  - c. What are the merits of the options identified? Are there operation advantages with the emergency call service person being separate from a telecommunications service provider?
    - Continuing with Telstra – Keeping with the current arrangement, will ensure privacy and sensitive information is kept safe, together with the current processes which emergency service call centres operates. As the age old saying suggests: “If it’s not broken, why fix it”. However if Telstra aren’t the NBN service provider, this perhaps could become disjointed, and perhaps a collaboration agreement should be looked into.
    - Requiring the NBN Company to become the new emergency call service provider, will allow for complete control over all facets of communications.

- Implementing a standalone government entity will reduce any conflict between service providers, however does not resolve the issue of the emergency call services becoming disjointed. Further investigation is required.
- d. If Telstra is not the emergency call person and integrated public number database manager, how and when should these responsibilities be transferred to the new provider?
- As this information is highly sensitive and carried in the strictest of confidence, this process will need to be considered from a number of levels. The new provider could perhaps be mandated by the government to take on executive staff directly responsible for emergency call services from Telstra into a subsidised employment role, or perhaps those people become government employees, overseeing the handover process.

### **Legacy Services and the NBN Question**

1. Will the national broadband network raise issues for legacy services on Telstra's network? Why? If, so how should they be dealt with?
  - This will be an issue with the NBN. Obviously a relationship needs to be established, as Telstra is always going to be a major player in the telecommunications market. Perhaps, these services will either be transferred over, or sold to the new NBN provider.

### **Opportunities for Red Tape Removal Questions**

1. Are there any broader implications from the proposals raised by Telstra, in its submission to the productivity commission?
  - Production of the white pages as a bi-annual obligation is feasible, when considering that more and more businesses and citizens are accessing this product online. However this doesn't account for the entire population, with a significant portion still relying on the physical white pages for phone contacts.
2. Should the proposals raised by Telstra in its submission to the productivity commission proceed?
  - There is no reason why they shouldn't be considered by the productivity commission.
3. Will directory assistance services, including printed directories be required in an increasingly online world and, if so, how would necessary services be best provided?
  - As mentioned above, Telstra's submission to provide these bi-annually, would be a plausible solution. Alternative methods are the online lookup and send to SMS service currently on the white pages and yellow pages websites.

### **Customer Service Guarantee Reporting Questions**

1. Should the ACMA's informal monitoring benchmarks for carrier performance against the customer service guarantee and priority assistance be made enforceable requirements subject to civil penalties?
  - A more streamlined approach could probably be taken without having to go through federal court litigation will reduce monetary and time costs associated with enforcing monitoring benchmarks. The infringement notice while quick and easy, probably only acts as a slap on the wrist of service providers. Perhaps if the level of penalties was increased, then this would aid the infringement notice effectiveness.
  - Perhaps if infringement notices were served as a points system, with after a certain number of points accrued, an additional monetary penalty to be issued
  
2. Should the level of penalties be increased?
  - As per the comment above, it would aid the effectiveness of the infringement notices if penalties were increased.

## Chapter 5

### Questions

1. How have the existing accounting and operational separation arrangements affected competition?
  - Perhaps to the point of stifling them out of the Australian market, this is particularly evident in the Tasmanian market, where competition and competitive services vs. cost is virtually non-existent. If these separation arrangements were modified, then perhaps a more competitive environment in the Australian market.
2. Will these arrangements continue to be needed before, during or after the roll-out of the NBN?
  - In Tasmania, the market currently is stagnant in the fact that Telstra has little to no competition, which has resulted in inflated prices and lower standard services if compared to mainland Australia. In saying this, it would be most beneficial for Tasmania to begin modification of competition processes before the roll-out of the NBN, as well as during and after. I believe it is important to create a clear process as to the way the market will operate as a standard framework, which should be implemented or at least communicated to the industry stakeholders prior to roll-out.
3. In what markets does Telstra hold a substantial degree of market power? Do the operational separation arrangements adequately deal with the risks created by market power?
  - This is a difficult question to answer, however it is clear that Telstra has a strong position on the Australian telecommunications and subsidiary markets. Perhaps the separation arrangements could be tightened or modified to allow for more competition throughout a period of time.
4. What technological developments (apart from the NBN) might reasonably be expected to have a significant impact on competition in telecommunications markets?
  - a. Cross media integration – voice/video as well as television and newspaper media.
  - b. Developments in information technology
  - c. Growing usage of broadband for communications.
5. How do the operational separation arrangements affect Telstra's commercial incentives for supplying wholesale eligible services?
  - The Australian government administers a regulatory framework which in affect discourages investment in infrastructure by forcing entrepreneurs to share their investments with their competitors, at a price chosen by the regulator. In saying this, it is understandable as to why Telstra has chosen not to build a new network, as it would result in some control handed over to the ACCC.

- Perhaps the solution is to reform access regulations through separation regime's to encourage investment and not stifle it and restrict economic growth. Whether this be a modification of a few particular separation regime's or development of a new holistic one with appropriate regulatory framework.
  - A similar situation to Telstra's occurred with Qantas, and what they did to the airline industry. Qantas separated their core business into "Jetstar" low cost airline, to suit the market. Jetstar could become the wholesale business, which could provide real competition in the airline industry; similarly Telstra could separate their business to suit the market as a solution provider and could provide adequate competition in the communications service sector.
6. What are the costs and benefits of the operational and accounting separation regimes?
- a. Historically the accounting separation regime has been tried and tested in regards to Telstra, and as such revoked in 2007. Both regimes have their costs and benefits; what we should be exploring is the correct mix suitable for our particular market, in advent of the impending NBN rollout.
7. How could the effectiveness of the current arrangements be improved? Would the options to enhance the current operational separation requirements described in Chapter 3 improve confidence in the current arrangements?
- a. I believe the options presented in chapter 3 are capable of improving confidence in the current regime, if they are effectively worked into a succinct framework and delivered to the market and in particular stakeholders correctly. Simply just imposing changes will not suffice, people require being educated on the changes and how it affects them. There is no point having the fastest broadband in the world available to over 30,000 small businesses in Tasmania without a need, a want, a requirement or even an understanding of what the service will provide our small business community. "There is no point in having a 5 lane highway between Roseberry and Tullah, when no-one's driving on it". Education is the key for this to become successful, and small businesses' aware of the benefits the NBN will provide to the SME's, and their wanting it and demanding it will only make this work.