

Ensuring that \$4.7B of taxpayers' money is well spent

A submission to the NBN Panel of Experts as part of its public consultation process.

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The fundamental issue

The fundamental issue underlying the funding of the National Broadband Network (NBN) and the call for submissions is that the post-1997 regulatory regime has not satisfactorily created a balance between motivating investment in national broadband infrastructure and sustaining a healthy competitive environment.

On the one hand, the incumbent carrier regularly extracts more than 90% of the industry's entire annual profit from telecommunications services and yet, on the other hand, it has insufficient motivation to invest in new broadband infrastructure that is world-class in terms of user bandwidth and pricing. As a result, for reasons of both lack of infrastructure investment and effective competition, broadband is simply not available in Australia at user speeds and prices that are comparable with those available within the comparable demographic areas of many other developed countries, either in the cities or the regions.

Ensuring fair competition without prejudicing incentives to invest

The simplest and most effective technique for providing a fair playing field for retail competition is to ensure structural separation between the wholesale role of new broadband infrastructure and the retail businesses that will access that infrastructure and deliver retail services to end users. It is then easy for a regulator to ensure that all retail service providers using that infrastructure access it on fair and equal terms.

When \$4.7 billion of public money is to be spent in stimulating the roll-out of new broadband infrastructure, it would be entirely counter to the public interest to fund the establishment of a vertically integrated telecommunications business that would create an effective monopoly in very high speed broadband services for a further twenty years or more. In the absence of price control, the outcome would be inflated prices for high speed communication services, to the detriment of the Australian economy. Even with price control, the ability of retail competitors to access the underlying infrastructure of a vertically integrated fibre network business could be made technically and commercially intractable by the owner of the infrastructure.

Recommendation 1: that the new National Broadband Network (NBN), part-funded by the Government, be restricted to being operated as a stand-alone wholesale infrastructure service business, providing wholesale services on equal terms to all retail service providers – including any retail businesses linked beneficially to the operator of the NBN.

Providing an incentive to invest

Once the role of the NBN is restricted to that of a stand-alone wholesale business, the question of providing incentives for investment becomes simplified. For example, there is little need to consider the use of a ‘regulatory holiday’ for providing retail services via the new broadband infrastructure investment, as used in some parts of the USA, since the wholesale infrastructure owner will be commercially motivated to sell its services via all available retail service providers.

Instead, the issue of investment incentive will focus on the allowed wholesale profit margin, and its vulnerability to being undercut by appeals to the ACCC to set a new access price under the access regime provisions of Section XIB of the Trade Practices Act (TPA), once a new broadband access service is declared relevant to the NBN. It will be important for the Government to resolve this issue in advance of making its \$4.7 billion investment in the new network, to provide a reasonable level of investment certainty for the non-government investors in the NBN.

A cut-through mechanism would be to exempt the new wholesale network business from the Section XIB access pricing provisions of the TPA for a roll-out period (e.g. two years), in return for having the wholesale pricing limited via a carrier licensing agreement. The wholesale pricing would then become one of the key factors in the selection criteria set by the Government in choosing a successful bidder; it would be nominated by each network consortium, based on their knowledge of the cost structure for their proposed network design. The motivation to win the Government’s \$4.7 billion subsidy will provide an incentive for keeping the wholesale price offering low.

Recommendation 2: that as a pre-condition for the bidding process, the Government exempt the winning NBN bidder from the Section XIB access pricing provisions of the TPA a nominal roll-out period, e.g. two years; but that the provision of an acceptably low, maximum wholesale access price, to be enforced by penalty clauses within the new carrier licence conditions, be made a key selection criteria in the bidding process.

Recommendation 2A: that in the interests of fairness in infrastructure competition, the same exemption as described in Recommendation 2 be offered to the owners of any other stand-alone national broadband infrastructure wholesale business, provided that they are prepared to accept comparable carrier licensing conditions on limiting their wholesale broadband access price.

The interconnection regime

The third essential plank to ensure a successful outcome for end users of the new infrastructure, will be the setting of a suitable wholesale interconnection agreement with the existing broadband network infrastructure carriers, especially Telstra, covering both the cost and the *technical specification* for terminating and originating access to Australian customers. The issue of the wholesale access price for retailers has already been discussed under Recommendation 2 above; but the issue of the technical specification for the interconnect arrangements is equally important, since technical barriers can be created that will implicitly raise the costs (and service implementation delays) for the new network wholesaler as well as for its retail clients.

Recommendation 3: that the technical specification for the interconnection arrangements between the new wholesale NBN and the existing infrastructure carriers be implemented under the supervision of the ACCC with the collaboration of the relevant carriers, but making use of independent technical expertise to develop the specification, so as to create a fair and equitable operational regime with minimum costs and delays that would be passed on to end users. □