

## **INDEPENDENT COST-BENEFIT ANALYSIS & REVIEW OF REGULATION**

### **NBN MARKET AND REGULATORY REPORT**

#### ***SUMMARY OF PRINCIPAL CONCLUSIONS (Pages 10 to 12)***

1. Upgrading Australia's broadband network can deliver substantial economic benefits. The most efficient way to achieve universal high-speed broadband is through a 'multi technology' approach, which delivers net economic and social benefits \$16 billion greater than fibre to the premises and can be upgraded in response to demand. Extending high-speed broadband to regional and remote areas is inherently expensive.
2. Ensuring high-speed broadband services are provided efficiently is crucial when taxpayers' money is involved. The current model where NBN Co controls multiple technologies is risky and costly for taxpayers and consumers, inhibits the development of competition, and is difficult to regulate.
3. Disaggregating NBN Co into competing business units using roughly equally matched technologies would provide the most effective platform for competition and innovation, forcing down costs and reducing the need for intrusive and inefficient regulation.
4. Creating an environment that supports competition and promotes the long-term interests of end-users should take precedence over the impact this has on NBN Co's finances.
5. Statutory obstacles to market entry and other barriers to competition should be eliminated or at least reduced, while still ensuring regulation can deal promptly and effectively with any anti-competitive behaviour.
6. A national broadband objective, efficient subsidy arrangements and a legislated 'infrastructure provider of last resort' obligation should be established to provide clarity and certainty for consumers, industry participants and taxpayers over the objectives of, and obligations on, high-speed broadband service provision.
7. Regulatory arrangements should be more accountable, through the reintroduction of merits review for all regulatory decisions of lasting impact. Responsibility for the economic regulation of all major infrastructure should be transferred from the Australian Competition and Consumer Commission to a networks regulator.

#### ***SUMMARY OF RECOMMENDATIONS (Pages 25 to 30)***

##### **Future market structure**

1. Infrastructure competition should be the guiding policy for wholesale broadband services.
2. Infrastructure competition should be created through disaggregating NBN Co, which could be done through:
  - a. disaggregating and divesting NBN Co's transit, satellite and fixed wireless divisions;
  - b. having non-NBN Co ownership and management of the HFC network;
  - c. putting internal separation mechanisms within NBN Co in place if full disaggregation is not to occur immediately; and
  - d. maintaining ADSL services in the HFC area pending upgrade to FTTN or FTTP.

##### **Parts 7 and 8 of the Telecommunications Act**

3. Part 7 of the Telecommunications Act (and associated provisions) should be repealed and reliance placed on Part XIC of the Competition and Consumer Act. (Part 7 requires the supply of a non-discriminatory, price-regulated, open access Layer 2 bitstream service on new superfast networks.)
4. Part 8 should be amended so that:
  - a. the statutory 1 km exemption as well as ministerial exemption powers are removed (but infrastructure deployed under existing exemptions would not be affected); and
  - b. carriers can submit ‘superfast network undertakings’ to the ACCC that, if accepted, replace the provisions in Part 8.(Part 8 requires services on new superfast networks to be supplied on a wholesale-only basis.)

### **Broadband service provision**

5. NBN Co’s service delivery obligations should be legislated. Under this approach:
  - a. NBN Co would be the infrastructure provider of last resort Australia-wide;
  - b. NBN Co would have a step-in obligation if a third party infrastructure provider exited the market; and
  - c. NBN Co would have to submit a ‘Broadband Connection Service Undertaking’ to the ACCC setting out how it would fulfil its IPOLR obligations.
6. A fair and effective market for the supply of infrastructure and services in new developments should be created. To achieve this:
  - a. the cost of infrastructure deployments should be borne by developers and customers through connection charges; and
  - b. providers should be free to set what they charge for developers and connections, and NBN Co’s charges should be competitively neutral.
7. Transitional measures for the new developments policy should be put in place, including:
  - a. setting a date for introducing developer charging;
  - b. investigating whether NBN Co’s existing contracts can be reallocated;
  - c. publishing a roadmap and timetable for the new arrangements; and
  - d. communicating to property developers the rationale for the changes.
8. NBN Co’s prices should be capped so that they are affordable, but not necessarily uniform nationally; NBN Co should gradually move towards cost-based wholesale pricing with a subsidy to address affordability concerns.
9. Wholesale price caps should apply to the satellite and wireless networks post-divestment (if they are divested).
10. Division 16 of Part XIB of the Competition and Consumer Act should be repealed. (Division 16 authorises NBN Co conduct reasonably necessary to achieve uniform national wholesale pricing.)
11. Funding of uneconomic areas should be addressed in the following way:
  - a. non-commercial services should be funded through an explicit market-tested subsidy if the satellite and fixed wireless networks are divested;
  - b. an industry levy should be used to fund service delivery in uneconomic areas within the satellite and fixed wireless footprints; and
  - c. if NBN Co is not disaggregated, no specific funding mechanism within NBN Co should be put in place, but this is to be reviewed in five years’ time and if the same structure is still in place, NBN Co is report annually on its cross-subsidies using a Productivity Commission-designed methodology.

### **Regulation of NBN Co’s products, pricing and expenditure**

12. The ACCC should develop guidelines for its approach to issues relating to NBN Co’s new product development.
13. A national broadband standard should be developed, which is to be reviewed by the Productivity Commission at least every six to ten years.

14. If the Government decides to raise the national broadband standard following a review, it should work with NBN Co and industry on establishing the most cost-effective way of doing so, giving priority to commercial upgrades funded by user charges.
15. The ACCC should be allowed to determine that specific NBN Co services are not declared (e.g. pilots and trials, integration of new networks, services in contestable markets) where this is in the long term interests of end-users.
16. Where NBN Co remains integrated, competitive neutrality requirements should be established in legislation; where it is disaggregated, the Shareholder Ministers should provide clearer direction to it on how to act where market failure is not an issue. This includes:
  - a. instructing it to act in accordance with competitive neutrality principles;
  - b. instructing it as to its priorities and commercial objectives; and
  - c. ensuring that concerns about anti-competitive behaviour in NBN Co's overbuilding are dealt with through the Competition and Consumer Act.
17. Retail price controls should not be applied to Telstra on the NBN unless there is clear evidence that Telstra is not facing adequate competition and this is leading to actual consumer detriment.

#### **Privatisation and governance of NBN Co**

18. The Government should only revisit arrangements around privatising NBN Co once the network is further established.

#### **Administration of economic regulation of the telecommunications industry**

19. The telecommunications-specific functions of the ACCC, with the exception of Part XIB, should be transferred to a networks regulator.