



Australian Government

Department of Broadband,
Communications and the Digital Economy

National Broadband Network: Legislative Framework Response

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Digital Economy Industry Working Group (DEIWG)

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Response Submission

Purpose

The purpose of this submission is to respond to the Department of Broadband, Communications and Digital Economy (“the Department”), in relation to the Stakeholder Consultation Paper published in July 2009 entitled “Views on the Legislative Framework for the National Broadband Network Company.”

Introduction

The respondents of this paper welcome the opportunity to respond to the Government’s consultation paper on the legislative framework of the National Broadband Network.

This represents an unprecedented opportunity to contribute to the development of equitable policy that will assure DEIWG’s constituents (FTTP providers, carriers, local government authorities, property developers, and retailers) the utmost opportunity to reap the potential benefits of a National Broadband Network in an open access, and commercially balanced, environment.

About the respondent, DEIWG

The DEIWG is an independent and informal collective of various industry groups, corporations and companies with a special interest in the Australian digital economy. The DEIWG Community consists of approximately 150 companies and 200 representative members whose purpose it is to bring issues associated with the Digital Economy to the fore and generate interest and awareness for the Digital Economy. The DEIWG has been facilitated by Paul Budde.

The DEIWG Community has representatives from Health, Education, Telecommunications, Property Development and Media that collectively form a hub of expertise for building productivity and a strong, modern economy.

Previous DEIWG submissions

The Digital Economy Working Group has previously submitted a number of papers to the Department and Expert Panel on the topic of the NBN namely:

- An Industry Vision for the National Broadband Network Plan – 6th March 2008
- An Industry Vision for the National Broadband Network Plan Supplementary Report – 30th March 2008
- A Regulatory Submission for the National Broadband Network – 25th June 2008 (Submitted by eASIG – forerunner to DEIWG)
- A Response to the Digital Economy Future Directions Paper – 11th February 2009
- A Response to the National Broadband Network Regulatory Reform Paper – 3rd June 2009
- Greenfields FttP Consultation Paper - 12th June 2009

A number of the responses in these papers relate to the topic of legislative framework and are still relevant to the current discussion.

DEIWG's Preface to the Response: Governance and Management of the NBN company

The magnitude of this project should not be underestimated. Given the challenges that will have to be faced, there is a need to draw upon the knowledge of those with fibre network expertise developed through rollouts internationally.

There will be technical, financial and regulatory challenges, but these pale in comparison to the personnel challenge faced if a team is not assembled that can manage the project, with the capacity and the vision to operate in a trans-sector mode (across telecoms, energy, healthcare, education, media).

Parochial attitudes must be left aside to ensure that only the most experienced and well-informed players are involved, both from Australia and abroad.

This team needs to establish a governance model for the National Broadband Corporation (NBC), and to appoint the key positions. It is critical that the organisation provides credibility and confidence, as that will be essential for the success of the project.

This is also essential to attract the right investors. It is also important to also make sure that private (services) and public (infrastructure) interests are properly aligned; this has never been done in the Australian Telecommunications industry on such a scale so the magnitude of that task alone can not be underestimated. Nevertheless, while finance is a most critical issue, the government should equally concentrate on the governance, business and management issues.

In this trans-sector project there is also an obligation to look, not just at connectivity, but also at sustainability. Smart connected and sustainable communities and include smart grids, smart infrastructure, smart buildings, e-health and tele-education must be built. It is critical to develop a smart National Broadband Network company that positions those trans-sector elements at the core of the project rather than adding them as an after thought. Significant social and economic benefits may be missed if a trans-sector approach is not taken by the company.

In addition, a commercial reality that should not be neglected, is that the NBN is a huge potential dynamo for the generation of funds for investment, turnover for services provided, and growth for the digital economy. This should be exploited to make the National Broadband Network company robust and strong while, at the same time, having the ability to deliver wholesale services for considerably less than the present cost projections. This will only be possible, if every advantage is sought out to drive the commercial opportunities with best practices, recognition of the value of aggressive uptake of new technology and the encouragement of new possibilities and directions of industry. This is more than an opportunity too good to miss; it is the cornerstone of a new way of doing business - often talked about, but now a potential reality.

DEIWG's response to the questionnaire;-

1) What is the optimal access regime for the National Broadband Network, including, for example;

a) What are the legislative obligations that should be required to ensure the National Broadband Network Company operates on a wholesale-only, open access basis?

The Government should legislate to maintain structural separation between the retail and wholesale functions in relation to the NBN.

The Government should legislate to prevent companies that retail media and telecommunications services from owning a controlling influence in the National Broadband Network Company. A cap should be set at say, 20%, similar to the Corporations Act "20% (voting control) rule".

Where network facilities and services are traded for ownership in the NBN Company, the Government should regulate such that those network facilities and services are delivered under an open access regime.

Further, a company that trades a component of its network facilities and services, for a share of ownership of the NBN, must be required to deliver open access to all its other networks as a condition of its NBN ownership.

The Government should not fall into the trap of legislating technology. The government should legislate the outcomes, not the technology.

The Federal Government needs to urge State Governments to legislate in the various Local Planning Acts that, for any new properties to be developed, provision of FttH infrastructure needs to be in place.

b) What is the appropriate process for identifying services to be offered?

A multi-tiered approach might also be appropriate, with different wholesale arrangements being established for different types of service. One single body could support all tiers of wholesale distribution and be required to encourage competitive pricing structures and practices.

This could be achieved initially through offerings in the market place, with care taken to include innovative discovery as the new technology uptake accelerates. Care should also be taken to enhance, incubate and encourage new practices including price concessions to assist in the cost of development of design, implementation and infrastructure interface requirements.

c) How should the prices, and non-price terms and conditions of those services be set, and for how long?

One wholesale pricing alternative may be to borrow from 'utility model' where prices are independently set by an external regulator. It is not appropriate for the NBN company to self-regulate; particularly after the Government sells down its interest.

Through an external regulator the Government would legislate benchmarks for NBN wholesale pricing to maintain, and improve on, parity with the best 25% of OECD countries in terms of performance and affordability.

An important non-price condition is that infrastructure providers are required to maintain adequate backbone network capacity and contention ratios to support high levels of customer service.

All terms and conditions should have contingencies for change of practice and market influences built in. Volume level agreements should be included, but not at the expense of new technology demands or remote markets requiring special consideration.

Neither should volume (bulk discount) arrangements, which are likely to be afforded to the larger carriers, be allowed to distort competition or engender price discrimination on an otherwise level playing field.

d) What is role of the Australian Competition and Consumer Commission?

Australia's competition watchdog should regulate wholesale access prices.

The ACCC's existing regulatory responsibilities in the sector - combined with its experience regulating the gas and electricity sectors - make it most suited to an oversight role.

The ACCC must ensure that the sort of vertical separation that is maintained between generation, transmission services and retailing in privatized electricity networks, is maintained for the NBN.

Telecommunications retailers, should be excluded from having a controlling interest in the NBN. Similarly, the NBN company must have no interest in a telecommunications provider. Such a separation of ownership must be overseen by the ACCC.

The ACCC must ensure that all users have fair and equitable access to the new technology and that larger wholesalers do not use unfair pricing practices to hold the market to ransom. The secret of acceptance and wide usage of this technology is no secret at all - let market forces drive the prices down through wide acceptance of the technology by all users at all levels - domestic and commercial.

2) What are the equivalence obligations for the company and the services it offers, and how this would operate in practice?

All retail parties requiring wholesale service should be offered an equivalent rate; that is a universal cost to all parties.

Given this fundamental premise, it is recognised that there may still be a need for a graduated wholesale price range to cover a range of wholesale services. For example, video transmission would necessitate a higher cost than 'smartgrid' meter signalling simply because it is a more bandwidth intensive service.

A further constraint on the 'one price for all' model is that the education, health and emergency services sectors may elicit a degree of subsidy simply because the services they offer on the NBN have intrinsic community benefits.

The NBN authority must also encourage the growth of fledgling wholesalers on a number of levels. The present main players in supply of telecommunication services should be given the incentive to compete and provide the best possible practices, priced competitively. By the same token, it must be fully realised by all players that the change in technology will also ring in new players, new market segments and companies who can identify and cater to these changes.

3) What should be the nature of ownership restrictions applied to private sector investors to protect the Government's equivalence objective for the wholesale-only network?

Broad legislative guidelines should be put in place to protect the government's objectives in this area. There will need to be counter-balancing guidelines, however, which will allow, even encourage access on the part of the private sector to all the commercial opportunities which emerge. It is important to protect the equivalence principle, but it is just as important that the red tape is kept to a minimum and that restrictions are common sense based and completely transparent.

However, it may still be that, the most straightforward approach would be to prohibit ownership of the network by retailers. As soon as any level of vertical ownership is allowed, the issue of establishing and monitoring safeguards against discrimination and cross-subsidisation, and providing a means of redressing such conduct, becomes crucial. The undertaking required to tighten ownership and control restrictions, where vertical ownership is allowed, becomes a complex and unwieldy.

4) What are the arrangements for the Government to sell its stake in the network?

The government should sell its stake only when it can offer a strong, viable commercial opportunity. It should also put in place the practices, which maintain downwards competition on pricing and the integrity of an integrated auditing process. The Government should sell its stake in stages to protect, and preserve, investor stock value. The Government sell-off process could feasibly extend to 3, or 4 years to meet that objective. In the course of that sell-off, the Government should withdraw from day to day management activities, and in so doing, assure that the NBN company management achieves the necessary autonomy.

5) Are there any other rights and obligations to be conferred on the company?

The company should be encouraged to try new operational models based on evolving best practices. It should also have a built in research and development arm focused not just on new technology, but in ways to implement it which can improve pricing and help control environmental factors: greenhouse gas emissions, recycling of waste and greater efficiency which results in lower energy consumption. It should also be required to build in best commercial practices so that it becomes more viable as a commercial proposition for the government to offer for sale.

In concluding, the DEIWG would like to take this opportunity to thank the Minister for the opportunity to put convey our views on these important issues.

This response has been collated from comments on the DEIWG wiki forum and has been collated and prepared by:-

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