

Potential impact on the Greenfields fibre provider market

Introduction

- 3.1 Where relevant, the issues raised in the context of the proposed new sections of the Telecommunications Legislation Amendment (Fibre Deployment) Bill 2011 (the Bill) have been included in Chapter 2. This chapter outlines the remaining competition issues which relate to the policy which are complementary to and underpin the proposed Bill.
- 3.2 A number of contributors to the inquiry were concerned about the impact on competition in the Greenfields fibre provider market the Bill may have in combination with the Government's *Fibre in new Developments* policy. The issues contributors raised follows.

NBN Co as fibre provider of last resort

- 3.3 As previously outlined, in addition to requiring developers to install passive fibre-ready infrastructure in new developments, the policy intent underpinning the Bill is to:
- Enable NBN Co Ltd (NBN Co) to be the fibre provider of last resort in new developments, including broad acre estates, urban infill and urban renewal projects within its long term fibre footprint. This will give developers the option to use NBN Co and other fibre providers to install fibre infrastructure for new developments.

- Enable Telstra to have a transitional role for providing services for infill developments of less than 100 premises that do not yet have fibre. Developers will also have the option to use other telecommunications providers. Telstra will be the retail provider of last resort.
- 3.4 The Greenfield Fibre Operators of Australia (GFOA)¹ raised concerns that the Bill in combination with the relevant policy enables NBN Co to be the 'first choice provider' in Greenfield developments, rather than the fibre provider of last resort. The GFOA stated that this will serve to diminish competition in the Greenfields fibre provider market.²
- 3.5 In respect to the potential to diminish competition for Greenfields fibre provision, the GFOA raised the following issues:
- 'It appears to be the intent of Government and NBN Co, that it plans and needs to be the monopoly provider of [Fibre to the Premises] FTTP in Greenfields developments;
 - NBN Co is in fact promoting itself as the "Provider of first choice", not "last resort";
 - The Australian Government is ignoring its own Competitive Neutrality Policy for Government Owned Businesses³, like NBN Co. The policy dictates that no competitive advantages should be given to Government Owned Business over private sector competitors by virtue of their public sector ownership, nor by using their fiscal or legislative powers;
 - The Fibre Deployment Bill should not aid to prevent or inhibit private sector competition, impose unknown costs or time burdens on the development industry or impose NBN Co network design standards and specifications on the telco industry (such as GFOA);
 - The Government should fund deployment of FTTP that meet industry standards and specifications for performance and if operated by "Open Access" "Wholesale only" carriers not just NBN Co providing the fibre, pits and pipes are preferably vested in the [Universal Service Obligations] USO Co or Local Authority or other public institution not to be sold off at some time in the future.'⁴
-

1 The Greenfield Fibre Operators of Australia (GFOA) 'is an alliance of the leading fibre-to-the-premises carriers who are network operators in Greenfields across Australia.' The GFOA has six members: OPENetworks, Service Elements, TransACT, Comverge, Broadcast Engineering Services (Australia) and Pivit. GFOA, *Submission 1*, p. 1.

2 The GFOA, *Submission 1*, pp 1 and 2.

3 Other GFOA members that provided submissions to the inquiry also made similar comments about competitive neutrality.

4 GFOA, *Submission 1*, p. 1.

- 3.6 The GFOA cautioned that Competitive Neutrality Policy and the competition reforms of the past twenty years are at risk if 'the Bill is not amended to provide for protections and encourage competition in deployment and operation of fibre networks in Greenfields.'⁵
- 3.7 These views were reiterated by OPENetworks, Comverge Networks and TransACT separately to the GFOA.⁶
- 3.8 To remedy the concerns outlined by the GFOA, it advocated:
- Fostering competition 'in network pricing and services and innovation by allowing and encouraging existing and future carrier operators in Greenfields
 - 'Fix industry (not NBN Co) standards and specification for FTTP networks by mandating [Communications] Alliance standards and specifications as ratified by the [Australian Communications and Media Authority] ACMA.
 - Adhere to the relevant aspects of Australian Government Policy for Competitive Neutrality.
 - Direct NBN Co to focus on Brownfields and, in Greenfields, to be the provider of last resort and only where commercial carrier/ operators are unable or unwilling to deploy FTTP networks that:
 - ⇒ Meet industry standards and specifications developed by Comms Alliance and ratified by ACMA and which meet or exceed the performance targets of the NBN (at least 100mbps) at operational prices that are less than NBN Co's published prices for comparable products;
 - ⇒ Are operated by licensed carriers on an "open access" wholesale only basis";
 - ⇒ Are funded by either Government, the USO Fund or NBN Co to the same extent of \$1500 per lot in the new development;
 - ⇒ Where ownership of the pits, pipes and fibre is transferred to USO Co or Local Councils (in preference to NBN Co) to allow for future access subject to a license to those carriers to use the network pit, pipes and fibre only for the provision of services to [Retail Service Providers] RSPs at prices capped by [the Australian Competition and Consumer Commission] ACCC regulation and to Public Utilities or

5 GFOA, *Submission 1*, p. 6.

6 GFOA, *Submission 1*; OPENetworks, *Submission 4*, Comverge Networks, *Submission 6*, TransACT, *Submission 12*.

Local Councils and Authorities for the benefit of the public or the communities under development.

- Release more back haul black spot contracts to fix the major impediment to providing advanced broadband in non-metro areas of Australia.⁷

3.9 Telstra commented that the GFOA's concerns do not relate to the Bill, but to Government policy and have either been addressed through consultation or should be considered separately to the Bill. Telstra stated:

the GFOA ... does not appear to raise concerns with the content of the Fibre Deployment Bill itself (namely the optical fibre requirement, the fibre ready facilities requirement, the fibre ready installation requirement and the facilities access regime to fixed line facilities owned by non-carriers). Rather it goes to aspects of Government policy which, while being important, have either been addressed through consultation or should be considered separately to the Bill in question. We do not believe these concerns should not cloud the Joint Committee's understanding and support for the passage of the Bill itself which, in Telstra's view, will provide much needed certainty to the developer and infrastructure community on the provision of fibre and fibre ready facilities in new developments.⁸

3.10 The Government responded to the concerns raised in respect to the impact on competition and stated:

The GFOA argues that there will be less competition if NBN Co dominates the new developments market. As noted, the government's policy does not preclude competition to provide infrastructure in new developments, or even to provide competing infrastructure in such developments. The practical reality, however, as evidenced by current practice, is that there will generally be a single fixed line network operator in a development. This will be the case regardless of whether the development is serviced by NBN Co or another provider. Recognising this, a key objective of the NBN policy is to create the circumstances for robust retail level competition, whether on the NBN platform (which is subject to specific regulation) or on

7 GFOA, *Submission 1*, pp 6 and 7.

8 GFOA, *Submission 3.2*, p. 5.

another platform (which would be subject to the level playing field rules).⁹

- 3.11 The GFOA has indicated that two of its members have lodged complaints with the Australian Government Competitive Neutrality Complaints Office (AGCNCO) situated within the Productivity Commission. The AGCNCO is yet to report on the matters raised.¹⁰

RF Signal installation

- 3.12 OptiComm highlighted the importance of maintaining competition in the Greenfields fibre provider market and commented that fibre providers offer immediate options not currently available for 'free' through NBN Co. These include:

... the delivery of Free-to-Air and Pay TV over the single fibre to the premises negating the need for unsightly antennas within an estate, the provision of community CCTV and the delivery of new and exciting applications like IPTV¹¹, Smartgrid and eHealth.¹²

- 3.13 In respect to the RF (Radio Frequency) issue, the Urban Development Institute of Australia (UDIA) commented that NBN Co policy provides that it will not 'install an RF signal in any fibre networks that they or their agents install.' This is in contrast to developer practice to have a 'clean roof' policy, 'piping free-to-air and pay-tv into homes through an RF signal as part of their fibre rollout.'¹³ The UDIA stated the impact of NBN Co's policy is that developers or the new homebuyer will be required to pay for these items in addition to the fibre ready infrastructure. The UDIA commented:

NBN Co's policy not to install RF signals means that now developers are faced with the dilemma of either going back to a policy where they need to install aerials on rooftops (at the cost of about \$1,000 per dwelling), or use a private fibre provider who can put an RF signal through the fibre they install rather than using

9 The Department of Broadband, Communications and the Digital Economy (DBCDE), *Submission 8*, p. 5.

10 DBCDE, *Submission 8*, p. 3.

11 Internet Protocol Television is television delivered through a broadband internet connection instead of a television cable or wireless.

12 OptiComm, *Submission 10*, p. 2. This issue was also raised by Mr Anthony White, *Submission 2*.

13 OptiComm, *Submission 10*, p. 2. This issue was also raised by Mr Anthony White, *Submission 2*.

NBN Co. This is resulting in the situation whereby in some estates the developer (and therefore the new home buyer) is required to pay for everything in relation to the installation of fibre, not just the pit and pipe, which appears to be contrary to the intent of the Government's policy.¹⁴

Universal Service Obligations

3.14 There were suggestions that the funding available for Universal Service Obligations (USO) as provided to Telstra, could be made available as a subsidy to minimise the cost of fibre infrastructure in new developments,¹⁵ thereby negating any negative impact of high costs on competition amongst fibre developers.

3.15 In this respect OptiComm suggested that funds should be provided in the amount of about \$1500 per dwelling unit to create a 'level playing field' for fibre deployment in new developments. OptiComm stated:

Consideration of allocating funds, be it from the USO fund or via soft loans, to the private sector (provided they ensure they meet wholesale only, open access requirements and also deliver the same outcome as the NBN) so to level the "playing field" and provide Developers with a wider, richer choice of options. The funding should be in the order of \$1,500 per dwelling unit.¹⁶

3.16 Telstra stated that it does not receive funding under the USO for new developments, but rather receives return on the costs expended for assets over the long term use of those assets. Telstra stated:

Telstra as the [Universal Service Provider] USP for Australia receives funding for the shortfall that it incurs in providing standard telephone services. In Telstra's view, the amount of the funding is not sufficient to cover the shortfall incurred. This shortfall (between costs and revenues) occurs in high cost areas of Australia. High cost areas of Australia are predominantly in rural and regional parts of Australia where due to distance, density and terrain, the cost to supply services is greater than the amounts received from customers. Historically, Telstra would not have suffered such a shortfall in respect of most new developments as it

14 Urban Development Institute of Australia (UDIA), *Submission 9*, p. 4.

15 GFOA, *Submission 1*, p. 3.

16 OptiComm, *Submission 10*, p. 2.

would earn a positive return on the initial build costs over the long term life of those assets.¹⁷

- 3.17 Further Telstra explained that the Government has not chosen to reallocate USO funding, but has enabled NBN Co to be the provider of last resort in new developments and subsumed the cost of these developments in the overall build of the NBN. Telstra explained:

It is important to note that due to the higher cost of installing fibre rather than copper infrastructure and increasingly lower overall fixed line penetration in Australia, there is less certainty of earning a return over the longer term for the installation of fibre in new developments without some form of subsidy or other form of upfront capital contribution. Hence, the position articulated in the GFOA Document. However, the solution is not to reallocate USO funding which has generally been provided to Telstra for another set of high cost customers, not for the purpose of supplying new developments with fibre infrastructure. The Government's approach has been to provide for NBN Co to be the provider of last resort and to subsume the cost of these developments in the overall build of the NBN.¹⁸

- 3.18 The Department of Broadband, Communications and the Digital Economy (DBCDE) stated that it expected that NBN Co would adopt a similar approach to USO by recovering the cost of infrastructure over time through its general service charges. The DBCDE stated:

USO funding is directed at supporting telephony services in high-cost, typically rural and remote, areas. Moreover, the USO is directed at supporting telephony services to individual premises, not providing broadband infrastructure in developments. The department understands that Telstra has generally recovered the cost of infrastructure in new developments over time through its general charges. In this context, it is envisaged NBN Co will adopt a similar approach.¹⁹

17 Telstra, *Submission 3.2*, p. 5.

18 Telstra, *Submission 3.2*, p. 6.

19 DBCDE, *Submission 8*, p. 4.

Pricing of backhaul

- 3.19 The Government's *Fibre in New Developments* policy²⁰ in line with the 20 June 2010 policy announcement provides that NBN Co will be responsible 'for the installation of fibre infrastructure in the development including backhaul to a point of interconnect.'²¹
- 3.20 Opticomm stated that the high cost of providing backhaul is having a negative impact on competition in the Greenfield fibre provider market. OptiComm commented that there is inequity in the costs of backhaul borne by developers versus the ability of NBN Co to subsume these costs in the short term. In practice, NBN Co can provide backhaul at little or no cost to its long term operations as in some cases it may use existing infrastructure, while fibre providers must contract this in from a third party, which is most likely located at a further distance than that used by NBN Co. Opticomm explained:
- ...back haul is currently the most inequitable component facing [Fibre-to-the-Premises] FTTP operators and this legislation does not appear to address this. NBN is proposing to provide for 'free' the back haul to Greenfield estates, most likely in the future from nearby Telstra infrastructure, however alternative FTTP operators must currently seek a third party provider of back haul, who is most likely much further away than a Telstra facility and incur a much increased cost - this is not much different than the problem that the Governments Black spot program for non competitive trunk backhaul has addressed. We suggest that Greenfield back haul be treated along the same lines, perhaps funding the installation of back haul, or having NBN provide back haul to the boundary of a Greenfield estate and having operational costs a declared service to ensure cost neutrality or a soft loans scheme to finance the back haul build could be established to provide a more level playing field.²²
- 3.21 Using the pricing of backhaul as an incentive to stimulate competition in the Greenfields fibre provider market was suggested. In particular, OptiComm recommended that backhaul be made more accessible and affordable for fibre providers 'by requesting the ACCC to declare backhaul services at affordable rates.' In addition, OptiComm suggested
-

20 Announced on 9 December 2010.

21 DBCDE, Statement by the Minister for Broadband, Communications and the Digital Economy (Ministerial Statement), *Fibre in New Developments*, 9 December 2010, p. 2.

22 OptiComm, *Submission 10.1*, pp 1 and 2.

these rates could be determined by the Communications Alliance (CA) or similar industry body.²³

- 3.22 The DBCDE responded to these concerns and acknowledged that NBN Co (and before it Telstra) has an obligation to provide service to all areas and that NBN Co is better able to manage the costs associated with backhaul than smaller fibre providers. The DBCDE also acknowledged that as a result of the cost and sourcing of backhaul that this limited the provision of fibre by GFOA members to locations where backhaul is readily accessible. The DBCDE stated:

The GFOA identifies the cost and sourcing of backhaul and the provision of accommodation for remote electronic equipment as key costs for its members in providing fibre solutions in some circumstances. Our observation is that the cost of backhaul has tended to limit the provision of fibre by GFOA members to locations where backhaul is readily accessible. By contrast these are costs that a large national provider like NBN Co (and previously Telstra), with an obligation to service all areas, can more readily manage.

The GFOA's claim that the Regional Backbone Blackspots Program provides a model for the provision of backhaul to new developments is not correct. This Program has focussed on providing trunk backhaul on five strategic inter-regional backbone routes. It does not relate to the provision of relatively discrete backhaul infrastructure in cities and towns to the thousands of developments that take place annually.²⁴

Services for new developments of less than 100 premises

- 3.23 TransACT stated that the Minister's statement as it applies to developments of less than 100 premises enables Telstra to determine the type of infrastructure solution that it will deploy. TransACT puts the view that this will create a digital divide between developments of less than and more than 100 premises and is uncompetitive. TransACT stated:

This process has the potential to create a 'digital divide' between developments with less than 100 premises and those with more than 100 premises, both during and after the roll out of the NBN. It

23 OptiComm, *Submission 10*, p. 2.

24 DBCDE, *Submission 8*, p. 4.

also creates an anti-competitive and unlevel playing field for other infrastructure and service providers. It seems that Telstra could determine unilaterally that it will service a development with a fibre-to-the-node (FTTN) or fibre-to-the-building (FTTB) solution, or even a mobile voice and broadband solution, which would prevent other service providers from accessing those networks given they are not regulated. This would further entrench Telstra as the monopoly provider in these markets, while also giving it first mover advantage to acquire the end-users as Telstra Retail customers, pending migration to NBN Co's fibre network.²⁵

3.24 TransACT suggested the Bill should be amended to:

... include provisions that ensure these developments are serviced by copper from the local telephone exchange wherever reasonably possible. This would ensure the ULLS²⁶ is available to other service providers during the transitional period, prior to the NBN Co fibre deployment.²⁷

3.25 In addition, TransACT stated that there could be a situation created where another provider could 'provide a solution other than a Telstra copper solution, it may be inhibited from doing so' and disadvantage the end user from receiving a better service. TransACT suggested that the Bill and Access Bill should be amended by including provisions that create additional exemptions.²⁸

3.26 The Australian Communications Consumer Action Network (ACCAN) raised concerns about the wireless services for developments with 100 or less premises.²⁹

3.27 In particular, ACCAN commented that it had been contacted by consumers who had been provided with interim 'wireless phones [by Telstra] in circumstances where copper infrastructure will take a long time to be provided.' Telstra has advised these consumers that they will have to wait for the NBN rollout to reach them before they can have fixed-line internet service. The ACCAN stated:

Given the nine-year timetable for the NBN rollout, ACCAN is concerned that this group of people may be waiting a significant

25 TransACT, *Submission 12*, p. 13.

26 The Unconditional Local Loop Service is the copper network that runs between an end user and a telephone exchange.

27 TransACT, *Submission 12*, p. 13.

28 TransACT, *Submission 12*, p. 13.

29 Australian Communications Consumer Action Network (ACCAN), *Submission 5*, p. 1.

period of time for fibre (potentially several years) and be significantly disadvantaged.³⁰

- 3.28 The ACCAN stated that Telstra informed it that the relevant policy has not been finalised and implemented and that Telstra already provides 'interim wireless phones in circumstances where copper infrastructure will take a long time to be provided.³¹
- 3.29 The ACCAN recommended the following to remedy the situation:
- 'We would urge the Government to clearly define in what circumstances Telstra is allowed to provide wireless instead of copper and what is a reasonable period of time for such an interim measure.
 - Premises should not be left without a fixed line internet service for an unreasonably long period.
 - It is reasonable to require of Telstra that each of the premises in this situation be provided with a wireless internet service free of charge or at a discounted price. Although this type of service does not compare well with most [Asymmetric Data Subscriber Line] ADSL services, it would go some way to compensating people who find themselves in this interim situation.'³²

Concluding comments

- 3.30 The committee understands and acknowledges the views of the Greenfield fibre providers and industry groups in the context of the rollout of the NBN.
- 3.31 The committee believes the Government should examine these issues with a view to ascertaining whether there is any negative impact on competition in the fibre provider market or service outcomes for the end user in the longer term.
- 3.32 The majority of comments and views highlighted in Chapter 3 are made in response to Government policy and are outside the scope of this inquiry. As the issues raised in regard to the potential negative impact on competition in the Greenfield fibre provider market are being investigated by the AGCNCO, the committee will await the AGCNCO report.

30 ACCAN, *Submission 5*, p. 1.

31 ACCAN, *Submission 5*, p. 1.

32 ACCAN, *Submission 5*, p. 1.

- 3.33 The committee received reports that for developments of 100 premises or less, there have been instances where Telstra has provided a wireless service as there is a long wait for copper infrastructure and the NBN is pending. This level of service is not ideal and should only be an interim solution for customers.
- 3.34 The Government's 15 June 2011 statement on *Refined arrangements for fibre in new developments* clarified that pending NBN rollout, Telstra 'is responsible as provider of last resort for developments of less than 100 lots or units approved after 1 January 2011.' In addition, the refined policy stated, pending NBN rollout, Telstra will generally provide copper infrastructure. Telstra can choose to provide fibre 'and in some limited circumstances ... due to a short timeframe between construction and fibre rollout' as an interim solution, may 'provide high-quality wireless services'.³³

Mr Robert Oakeshott MP
Chair
23 June 2011

33 S Conroy, (Minister for Broadband, Communications and the Digital Economy), *Refined arrangements for fibre in new developments*, media release, 15 June 2011.