

Tabled by Senator
Birmingham
16/6/11

Good evening Senators.

1. I would like to thank the Committee for agreeing to postpone the hearing date for NBN Co and arranging for me to attend today in lieu of the 26 May hearings date. I do my very best to personally attend all the Hearings of not only this Committee but the Joint Committee of the NBN and others. However, I had a long planned family trip that was organised prior to the Estimates date being set. But rather than send other executives (who are also very busy) I felt it was my duty to attend these Hearings as I have done in the past and will continue to do so.
2. Can I begin by saying we at NBN Co recognise this project represents an enormous opportunity to transform Australia's telecommunications industry. This is not just through the sheer size and scale of the infrastructure project – but also through the industry restructure it represents – and the social, economic and productivity benefits it will enable for decades to come. It is a privilege to be part of it.
3. The Australian public, through the Government, has placed its trust in us to deliver the project, with all its challenges and with all its opportunities. It is a responsibility of which I and my colleagues are very conscious.
4. That is why anything that is said that potentially affects that trust is a real concern to us and we take it very seriously.
5. That's why before answering your questions, I would like to address again the speculation and comment about my time at Alcatel-Lucent and the incidents of bribery and corruption which have recently been settled by Alcatel-Lucent and the US authorities.
6. In doing so, can I say that I accept completely that these are areas of legitimate interest and inquiry. I'd like, though, to put these matters into some context
7. It occurs to me that the debate about the NBN has passed a number of phases in recent times. There was a debate about whether such a project was necessary at all, despite the many studies around the world which showed the economic and social benefits of investing in broadband networks.

8. Then there was the technology debate. Was fibre the right choice? A variety of myths emerged about wireless and other technologies that might be around the corner, despite the fact that these technologies are constrained by physics to be inferior to fibre for many high bandwidth applications. I won't even go into the recent breathless claims about laser beam transmission trumping fibre!
9. And more recently there's the debate about fibre to the node versus fibre to the premise. Does FTTN work? Of course it does, but it will not efficiently provide the nation with the step change in capacity and capability that all the evidence suggests is needed.
10. At NBN Co we have entered these debates because we want to provide factual information to inform the discussion and because we are passionate about the project we've been tasked to deliver.
11. We contribute to the debate reluctantly on occasion because we know what a political football the project has become. Nevertheless, we feel we have a responsibility to inform the discussion and we accept our accountability to the community as a Government enterprise.
12. However, we are not politicians. And can I say we have no desire to be! That's why it is disappointing to find that as we successfully deal one by one with the technical questions and the myths spread about the project; it feels like some who do not support national broadband prefer to play the man.
13. For example, it is disappointing to discover that an anonymously authored document has been passed around the press gallery and elsewhere regarding the Alcatel-Lucent matter. It can only be described as a personal attack on me and my colleague Jean-Pascal Beaufret. If it were a legitimate contribution to the discussion, whoever wrote it would surely have put their name to it.
14. However, I understand that people expect a full explanation of the Alcatel-Lucent matter. I beg the indulgence of the Committee in this as it will take some time. But I know that given the number of questions that have been raised, you will agree it is important I set the record straight.

15. Can I start by readily admitting I underestimated the level of media interest in these issues. When it was raised in the news over the Christmas break, I responded on the basis of my recollection and what turned out to be incorrect information I received verbally. I should have done a comprehensive document review. As a result, I made some factual errors in my responses and for those mistakes I apologise sincerely and take full responsibility.
16. It is well known that my previous job was at Alcatel, now Alcatel-Lucent. I had a number of senior roles until I left in 2007. I was Executive Vice President of Alcatel and President of Alcatel Americas from March 2001 to the end of December 2002. From January 2003 to early 2005, I was Senior Executive Vice President of Alcatel and President of Alcatel North America (excluding Latin and South America) and President of the Fixed Communications Group. From around April 2005, I was President and Chief Operating Officer and then, after the merger with Lucent, I was President, Science, Technology and Strategy until I left in August 2007. From 1 December, 2006, Alcatel became Alcatel-Lucent after the two companies merged. Jean-Pascal joined Alcatel as Deputy Chief Financial Officer in late 1999 and became Chief Financial Officer in 2002, a position he held until about November 2007 when he left the company a year after the merger. He joined NBN Co in September 2009 and I joined as the first employee two months before, in July 2009. At Alcatel, we were both members of the executive committee – Jean-Pascal from 2002 to 2007 (it was renamed the Management Committee after the merger) and I from 2001 to 2007. Alcatel was and is a global company operating in 130 countries. The first years of the last decade saw very difficult times for companies in telecommunications. The senior management of the company was working to survive the tech wreck. The USA, which I was managing, took the brunt of the impact. From a workforce of 112,000 in 2001, the effects of the tech wreck saw the headcount at Alcatel reduced by the end of 2005 to 58,000. The company workforce was halved in four years. I paint this picture, not as an excuse, but as the environment in which we were working during those years.
17. About 11 years ago, there began a chapter in Alcatel's history which culminated on June 1 this year with the confirmation the company would pay US\$137 million in fines and penalties to the US justice system for bribery in four countries including Costa Rica and Honduras and irregularities in a number of other countries. The fines and penalties were the result of agreements reached with the Securities Exchange Commission (SEC) and the Department of Justice (DoJ) after a detailed investigation spanning about five years from October 2004.

18. No-one should be in any doubt about the thoroughness of the SEC/DoJ investigative process and their determination – and their record – to hold not just corporations, but also, where warranted, individuals responsible for corrupt conduct. Their approach was summarised last year by one of the assistant attorneys general of the Department of Justice, and I quote:

The Department has made the prosecution of individuals a critical part of its FCPA enforcement strategy. We understand well that this is an important and effective deterrent. Paying large criminal penalties cannot be viewed, and is not, simply "the cost of doing business." Corporate prosecutions and resolutions do not and cannot provide a safe haven for corporate officials, and every agreement resolving a corporate FCPA investigation explicitly states that it provides no protection against prosecution for individuals.

Since 2009, the Department has charged more than 50 individuals with Foreign Corrupt Practices Act violations.

19. One thing on which all of those involved in the public commentary in Australia are in total agreement, is that nobody has alleged that I (and that is extended to Mr Beaufret) ...nobody has alleged that I was personally involved in or knew about the payment of any bribes. Mr Turnbull and the media reporters who have been closely following this issue are always at pains to point this out, for which I thank them. Just to repeat that point, nobody has ever alleged that I was personally involved or knew about the payment of any bribes. I wasn't and didn't.

20. It is also a matter of public record that I was not named in any findings by the SEC or the DoJ and that the matter has been concluded to the satisfaction of the US justice system.

21. It is publicly known now that about 330 interviews were conducted and 2 million documents formed part of the investigations. It was very thorough. It is the SEC and DoJ practice to work together on investigations and also to enlist the company they are investigating to do its own investigation in close co-operation with them and sharing all the detailed findings. The company investigations at Alcatel were conducted by two leading firms, the first, Proskauer Rose from 2004 to 2006, then another firm called Willkie Farr & Gallagher from 2006 to the close of the investigation. The investigations at both firms were led by former DoJ lawyers. Individuals of interest to the investigation were interviewed by the law firms and/or by the authorities. Neither Mr Beaufret nor myself were interviewed by either of the law firms, nor by the SEC or DoJ. How

can I be so sure? Well, I have checked with Willkie Farr & Gallagher, the law firm which investigated the matter in close co-ordination with the SEC/DoJ.

22. Over the course of the investigation, corrupt conduct was found in a number of countries in which Alcatel operated. As I have also said, incidents of corruption were uncovered in Latin America, for which I had ultimate oversight from March 2001 to the end of December 2002, including Costa Rica and Honduras. Publicity about the corrupt conduct in Costa Rica, itself the subject of a 12 month trial in which I was not involved, was the incident that in 2004 triggered the five year effort to uncover what was happening in a number of other countries.
23. I have been criticised for not disclosing the Alcatel matters during my recruitment process to NBN Co. With the benefit of hindsight, I should have done so. I left Alcatel in 2007, not having been interviewed by the authorities nor the legal teams which investigated the matter, but having been part of the senior management team which put in place a series of concrete steps, including the appointment of a Chief Compliance Officer, to improve and address the ethical framework and compliance culture of the company.
24. At the time of my recruitment to NBN Co, in June and July of 2009, two years after I left Alcatel-Lucent, the corruption issues had been well aired in the international media. I expected, as they had been the subject of investigation and action by the company and the authorities since 2004, that by mid 2009 they had effectively been settled. That was not correct. Alcatel announced that negotiations to resolve the case were progressing in July 2009 but the in principle settlement was not reached until December 2009. The final settlement was not formally approved until June 1 this year. In hindsight, I can see I should have specifically mentioned this matter, even though, as I said earlier, nobody has alleged that I was personally involved or knew about the illegal conduct.
25. As I have already acknowledged, I should not have made the mistake about my responsibility for Costa Rica at the relevant time. For context, Costa Rica was one of many countries I oversaw as Head of Alcatel Americas. Between about 2000 and 2003, I had four job titles and the company underwent two structural and geographical restructures. To complicate things, Latin America moved its reporting line to Alcatel Americas and then moved back to Spain. So at one time as Head of Americas I was responsible for Costa Rica, and at another I wasn't. That

might help explain, but not excuse, why I got it wrong. I have apologised for this error and I do so again tonight— I relied on the recollection of a former colleague and should not have done so.

26. As I have also said, neither I nor our CFO Mr Beaufret, were interviewed by the US authorities or anyone else during that five year investigation. Nor were there any findings made about us. The two law firms, Proskauer Rose and Willkie Farr & Gallagher, have confirmed that we were not interviewed by them because there was no evidence to suggest that we may have been involved in, or were aware of, any wrongdoing. The SEC and DoJ also interviewed a number of individuals but did not interview us. I have already referred you to the DoJ's approach to prosecuting individuals.
27. Separate to the DoJ and SEC proceedings is a civil case seeking damages brought in the US by the Costa Rican electricity and telecommunications authority called Instituto Costarricense de Electricidad or ICE. ICE claims it was a victim of the bribes in that country and has been trying to establish a reason for the case to be heard in the USA where it can potentially get larger compensation than it can in Costa Rica, where the vast majority of ICE's potential witnesses are located. The ICE documents name US- based Alcatel executives as part of its bid to establish this connection. The ICE compensation claim was dismissed in January and its objection to the DoJ settlement dismissed on June 1. ICE is nonetheless persisting.
28. Several of ICE's executives are in jail for soliciting and accepting bribes. Eleven people were charged in Costa Rica over these incidents. However, ICE's civil case, in particular, has left a large file of documents, untested in court. Those inclined to keep these issues simmering are trawling through those documents for references to me and other US executives.
29. Before ICE's claim was dismissed, ICE filed a declaration given by a man called Edgar Valverde Acosta. Mr Acosta is a former Alcatel manager who has been jailed for 15 years for paying bribes. As you may have read in recent newspaper articles, Mr Acosta, from his cell in Costa Rica, names me in his declaration. Mr Acosta has form not only in bribery, but also embezzlement. The DoJ documents tell us he and his family received \$4.7 million in kickbacks. Senators, you will be surprised to learn that the corrupt Mr Acosta's untested declaration has been cited as a credible source by some who wish to damage me and in so doing, damage the national broadband project. Some journalists have also been persuaded to give Mr Acosta credence. Mr Acosta does not even claim I did anything wrong. But he does claim that I

approved certain memoranda requesting authorisation to engage consultants in Costa Rica during this period.

30. This claim is incorrect. As President of Alcatel Americas, I never approved any such memoranda. Again, this is a fact I have verified with the firm who conducted the investigation.
31. To sum up, the whole of Alcatel-Lucent has expressed its regret and has taken responsibility for the illegal conduct over those years. Naturally, I share that regret and responsibility. A heavy price has been paid, many lessons have been learned and many improvements have been made.
32. I hope these remarks have helped clear the air on this matter and my response to it. I stress I can understand why there is a level of interest in it, but I hope by these statements I have set the record straight.
33. I understand I cannot expect this issue to entirely disappear, as I expect there are motivations in some quarters to continue running with it. There may even be some who will try to recreate the five year investigation in full, here before this Committee and before other Committees. The legacy of tens of thousands of legal documents and the ongoing attempts by ICE to get compensation will no doubt provide more news hooks.
34. Senators, I have tried to deal with all of this comprehensively and in detail. All I can now ask is for fair minded people to acknowledge that in five years of thorough investigation the US authorities found no allegation or finding adverse to me or to NBN Co's CFO.
35. Unlike Alcatel-Lucent, NBN Co is not a global company which operates across many countries, some emerging countries and in many languages. But we have and continue to foster an ethical culture at NBN Co. We have many measures in place to create a system and a culture where integrity matters.
36. We are working on a project that matters to Australia, and we work each day to deliver and to continue to earn the trust of the community which is depending on us.

37. Can I turn to what we are delivering at NBN Co, as the commentators are correctly reporting that national broadband network is becoming a reality.

Company Growth

38. In March, following an extensive procurement process which started in Feb 2010, we announced a three year (over \$200m) agreement to appoint IBM as the prime systems integrator of our operational and business support systems (OSS/BSS).

- These are complex 'mission critical' systems that run the network. They allow our customers (RSPs) to order new services, report faults or perform service qualification checks via our B2B interfaces/portals designed to allow transparency and flexible management of their own services. And they provide for our billing systems – a very crucial part of the process.

39. With the growth of the business also comes a natural hunger for more information about the rollout and “where is NBN going next and will I get fibre or wireless/satellite?” To assist in answering all these questions we announced in April the establishment of a public Call Centre based in Melbourne. The Centre will handle all inbound calls and queries about the NBN and will be one of the key ways in which we will offer information to the public in addition to our community consultation processes, forums, speaking opportunities, advertising, websites and media releases.

Network Rollout

40. Of course in parallel with the growth of the company's systems and processes, we are steadily progressing with the planning, testing and first stages of the rollout in order to test our products, systems and services in preparation for volume rollout.

41. On 18 May we officially launched first service on mainland Australia in Armidale.

42. As you are aware, construction in our Second Release sites has been set back slightly whilst we finalise the Telstra Deal as we would prefer to maximise, wherever possible, the use of existing underground infrastructure rather than install overhead cables. We have taken the view

that the deal with Telstra would provide a better outcome for communities and for taxpayers and so it is worth waiting for.

43. But there has been some important progress on a number of fronts as part of the rollout.
44. Following suspension of our major construction tender in April, we entered into discussions with a single construction company, Silcar Pty Ltd in an effort to secure better value for money for the taxpayer in the build of the network. This was, as you know, the result of our initial tender processes not delivering the expected price outcome we had forecast in the Corporate Plan.
45. Following eight weeks of intensive negotiations, we have now reached agreement with Silcar on commercial terms covering the award of a Two Year design and Construction Services contract (valued at about \$380 million) covering approximately 480,000 premises across NSW, Qld and the ACT. There is the potential for two one year extensions after this. I am pleased to say that the design and construction pricing is now in line with NBN Co's original assumptions underlying the Corporate Plan.
46. NBN Co is also now in further discussions with other construction companies around the offer of further work packages across Australia. There is a keen willingness from many construction companies to opt-in to a competitive process to be awarded this work. Finalisation of these other negotiations over coming months will enable NBN Co to speed up the rollout.
47. Passive network construction in the first five mainland locations is now complete and following the successful signing of more than 15 RSPs (of varying sizes) to deliver services on the mainland, we are moving initially to end-user trials in these locations with four RSPs (iiNet, Internode, iPrimus and Telstra). The first end-user trials commenced in Armidale last month with a handful of users and this will increase across these first release sites in coming months.
48. Whilst the first mainland sites are starting to get connected, we have announced construction in the next phase of the Tasmania rollout. The seven Tasmanian locations of Deloraine, George Town, Kingston Beach, Sorell, South Hobart, St Helens and Triabunna will have construction work undertaken over the next 6 months. This is an area covering approximately 11,150 homes and businesses within the fibre footprint. Make ready work is already underway and construction is being undertaken by Conneq Infrastructure Services. Several successful

Community Information Sessions have been held in each of Triabunna and Sorell involving over 300 people and more of these sessions will follow in the lead-up to construction commencing in these and other sites.

49. At the end of May approximately 600 premises were active in the three Stage One sites in Tasmania with over 740 services ordered. Of those services it is pleasing to note that nearly 40% of the services involve take-up of the 50/20 and 100/40 products and as a “trial” we believe these are positive outcomes.
50. We have also received some very useful learnings from these early sites, including our approach to community consultation and education, construction and safety issues, product quality and supply chain management. Actual billing of our ‘customers’ – the RSPs in Tasmania - is expected to commence from 1 August 2011.

Wireless and Satellite

51. Whilst rollout of the fibre network for 93% of the premises to be covered is progressing, there have also been some important milestones in rollout of our other two product sets – wireless and satellite.
52. Following the announcement of our spectrum acquisition earlier this year, NBN Co is now moving to provide much better broadband services to the remaining 7% of premises many of which fall within more remote areas of Australia. In May we announced the successful completion of contracts with Optus and IPStar to provide our Interim Satellite service from 1 July for rural and regional Australians. This service represents a transition from the existing Australian Broadband Guarantee (ABG) program to NBN Co’s long-term satellite solution which will be able to deliver a 12Mbps wholesale service from 2015. This improved interim solution is capable of peak download speeds of up to 6Mbps and will be an important step towards reducing the digital divide for rural and regional Australians.
- Two RSPs are onboard with a total of 200 end-users to trial the new Interim Satellite service and we have issued an invitation to wholesale customers to express an interest in becoming NBN Co customers for the new service. The first commercial service launch of this service is targeted for 1 July 2011.

53. The Final Satellite Solution Project is progressing well and after an initial procurement process we are now moving into the Final Request for Tender stage with suppliers. We remain on-track to launch the first of these two new Ka Band satellites by early 2015.

54. We have also recently announced a contract with Ericsson for a 4G fixed wireless network to provide wholesale speeds of 12Mbps. Design of the fixed wireless network is already underway with locations of initial rollout sites to be announced in coming months. Full rollout will occur over the next four years with the first services available from mid-next year. NBN Co will continue to seek spectrum for this service in WA and the Northern Territory. The company continues to work with the ACMA and existing spectrum holders to finalise the securing of appropriate spectrum to support our satellite and wireless products.

55. As we move forward in the network rollout using these three technologies – fibre, wireless and satellite – it is important to remember that we are aiming to make our products as similar as possible. Ubiquity and standardisation are important across the country so that people can connect from the same point of interconnect using the same BSS processes and interfaces at the same prices and product constructs as far as possible across the three technologies.

Greenfields

56. As you know, from 1 January NBN Co has been required to install fibre infrastructure in new estates of greater than 100 lots. This is a significant task when you still do not have a network rolled out. So we started a tender process in December 2010 to establish a best solution to meet our obligations. This culminated in Fujitsu Aust Limited being appointed as our prime alliance partner to deliver the fibre into new developments.

National Operations and Testing Facility (NOTF)

57. Our National Operations and Testing Facility (NOTF) in Docklands in Melbourne is now fully occupied by 350 of our operational team and our test equipment is also now available to allow us to test the end to end functionality of the network – this was in use for the Armidale mainland switch-on. RSPs will be fully on-boarded by the end of the month.

Ongoing Consultation – communities, industry, ACCC

58. There is also emerging interest from individuals and communities outside the 'fibre footprint' to be connected. We are working on a set of guidelines around possible network extension and we will be trialling this as part of the rollout in the next seven Tasmania sites. This will result in an approach that will allow a possible extension of the fibre footprint where those outside pay the additional incremental cost.
59. Continued consultation and engagement with Industry - release of the *Multicast, Product, Technology & Pricing Overview* paper seeking feedback from RSPs; commencement of a second public consultation process on the company's *Wholesale Broadband Agreement*, including deep dive sessions with all access seekers that responded to version one of the Agreement.
60. There has been commentary around NBN pricing in the past couple of months. We continue to consult with Service Providers on our product and pricing construct as they develop their business cases and retail offers for the NBN.
61. The overall product and pricing construct continues to be well received, with the majority of Service Providers confident that they can build attractive & innovative offerings based on NBN products. We continue to spend time with Service Providers particularly around feedback relating to CVC pricing and how they can transition onto the NBN.
62. Key areas of discussion include:
- Usage Growth: How will the continued growth in year-on-year internet usage impact Service Provider business models.
 - Transition: what is the NBN rollout plan as it is a key input for Service Providers' investment decisions and marketing plans.
 - Growth Opportunities: What are the emerging internet business models & how to prepare for them (eg. the current North American explosion in over the top video, smart-metering, remote infrastructure management).

The recent announcement by Nextgen of its new NBN Connect product suite is one example of these emerging growth opportunities.

Conclusion

In conclusion, there remains much public commentary about the need for a National Broadband Network and the degree to which Australia will require such capacity.

I bring to the Committee's attention the recent CISCO Visual Networking Index (VNI) which estimates that:

- In Asia Pacific, IP traffic will grow 4-fold from 2010 to 2015, a compound annual growth rate of 35%.
- In 2015, the gigabyte equivalent of all movies ever made will cross Asia Pacific's IP networks every 15 minutes.
- In Asia Pacific, average IP traffic will reach 74 Tbps in 2015, the equivalent of 61,260,000 people streaming Internet HD video simultaneously, all day, every day.

To contextualise how that IP traffic will travel in 2015 in Asia Pacific:

- Fixed/Wired will be 44% and Fixed/Wi-Fi will be 49% and Mobile will be 8%

So with more than 90% of traffic on the fixed and wi-fi networks, NBN's networks will be well used!

- We stay focussed on resolving the many challenges faced in what is a very significant engineering task. But we believe we are making good progress.

Thank you - I would now welcome any questions on the operations of the company or our network planning and rollout activities.

