

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio (ACCC)

Budget Estimates, 22 June 2009

Question: bet 182

Topic: FTTN Rollout

Hansard Page: Written

Senator Eggleston asked:

- 1. Did the ACCC seek any advice from ACMA (who have considerable technical competence in network engineering) on the costs and viability or merits of an FTTH rollout compared to FTTN?**

No.

- 2. Does the ACCC have any understandings of the comparative costs of an FTTH rollout compared to an FTTN rollout for Australia?**

Yes. Prior to the Government's initial NBN Request for Proposal process commencing, the ACCC had commissioned independent consultancy reports from Analysys and Ovum in 2006 and 2007 respectively which examined the comparative costs of FTTN and FTTH rollouts within Bands 1 and 2.¹ The purpose of these reports was for the ACCC to inform itself at a high level of the approximate costs associated with next generation technologies in the context of its ongoing role in telecommunications regulation.

The ACCC has received cost estimates for FTTN networks through a number of processes including FANOC's Special Access Undertaking for a FTTN network in 2007 and in private discussions with Telstra in 2006 around its then proposed FTTN roll-out.

The ACCC also keeps abreast of costing estimates related to fibre rollouts made available by industry and other stakeholders as well as costing information arising from other jurisdictions internationally.

- 3. Would it not be reasonable to assume that given the far higher costs of an FTTH rollout in Australia that consumers may be faced with far higher charges for broadband over FTTH than they would on either existing ADSL technology or even the now abandoned FTTN network? If not, on what basis does the ACCC believe that FTTH can offer lower or even comparable prices for broadband compared to existing technologies?**

¹ Telstra divides Australia into four different pricing bands (1 to 4). Band 1 covers the most densely populated CBD areas, Band 2 metropolitan and major regional exchanges, Band 3 regional exchanges while Band 4 covers exchanges in sparsely populated rural and regional areas of Australia.

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There are a number of variables — in addition to the total build cost of the particular network that is deployed — that affect the price end users will ultimately be offered for broadband services at a particular point in time. For example, the cost of capital, the length of time over which costs are recovered, the depreciation profile, the proportion of funding which is subsidy, what proportion of costs are recovered from which end-users (e.g. business services versus entry level consumer products) etc are all issues which may impact on end user prices.

The ACCC notes that some of these variables will be examined as a part of the Government's NBN Implementation Study. As a number of these variables are still to be resolved, the ACCC is unable to comment further on NBN prices. The ACCC notes that while FTTH involves a more substantial fibre rollout, there are also costs incurred in an FTTN deployment that are avoided with an FTTH deployment, including:

- § the capital costs of deploying nodes, and the operational expenditure associated with nodes
- § any unrecovered capital expenditure associated with the nodes that arises if an FTTH upgrade is subsequently undertaken
- § the costs of powering the nodes
- § potential unrecovered capital expenditure associated with stranding existing DSLAM investments.

4. Has the ACCC done its own preliminary business case/analysis of FTTH to determine what its impacts might be on the prices consumers will pay for broadband?

No.

5. Does the ACCC have any understandings of what costs consumers would face for access to an FTTH network?

See response to Question 3.

6. In the absence of any understandings about the costs of FTTH, how can the ACCC believe that it would be in consumers' interests to build a national FTTH network?

The Government's NBN FTTH announcement of 7 April 2009 has a number of significant beneficial consequences for Australian consumers including that this announcement breaks the stalemate in the upgrade of Australia's broadband infrastructure, in addition to FTTH technology it proposes wireless technologies for less densely populated areas, and it involves a structural separation of the network ownership from downstream competitors which will promote competition and variation.

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7. **The Chair of the ACCC told a recent ATUG regional conference that it was a mistake by the Howard government in not structurally separating Telstra before its privatisation stating that: "The NBN project raises the opportunity to undo the mistakes made by previous governments that decided to leave Telstra in control of both the copper network and its retail operations....The ACCC considers these decisions to have been fundamental errors that have had very serious implications for the development of competition in the telecommunications industry." Given the Prime Minister's call in April of last year for "evidence based" policy formation could the ACCC say on what international evidence does it believe this was fundamental error by the former government?**

The ACCC Chair's comments were not limited to the previous government. The comments were made in relation to previous 'governments'.

The ACCC considers there are a wide variety of factors that contribute to the competitive state of different telecommunications markets and the deployment of broadband in different countries. As a result, the ACCC's views are informed by, but not based on, international evidence. In relation to international experience, the ACCC notes that Singapore's NBN network company will be structurally separated and New Zealand has adopted a model that functionally separates the physical network layer of the access and backhaul networks from the rest of the business.

The ACCC rigorously examines the state of competition in the Australian telecommunications industry in the performance of its regulatory functions and monitoring and reporting obligations.

In its *Telecommunications competitive safeguards for 2007-2008* report, the ACCC noted that the extent of competition in the telecommunications sector is hindered by the industry's underlying structural features with very high levels of concentration and high barriers to entry for competition. The ACCC noted that Telstra still retains enduring and substantial market power restricting the extent to which end users of telecommunications services can fully reap the benefits of the dynamic process of competition and innovation.²

8. **Would the ACCC agree if it were a "mistake" committed by the former government then it was also a mistake made by the governments of the United Kingdom, Spain, Germany, France, Sweden, the Netherlands and indeed every country that privatised its incumbent operator including world leaders in broadband deployment, Japan and Korea?**

The ACCC Chair's comments at the ATUG regional conference were limited to the Australian telecommunications industry.

² ACCC, *Telecommunications Competitive Safeguards for 2007-2008*, April 2009, p. 3.

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The ACCC considers there are a wide variety of factors that contribute to the competitive state of different telecommunications markets and the deployment of broadband in different countries. For example, some of these countries, such as the United Kingdom, France and the Netherlands, have experienced strong intermodal competition between copper and cable networks, which has spurred the deployment of broadband. In those markets where effective intermodal competition is a feature, there may be less of a need for separation of the incumbent copper network owner in order to promote equivalence, depending on the particular circumstances in each market.

The ACCC notes that broadband deployment in Japan and Korea has been strongly supported by a range of government programmes and subsidies.

9. Does the ACCC believe that a structurally separated i.e. wholesale only FTTH will offer benefits to the consumer compared to a rollout by a vertically integrated carrier?

The ACCC considers that a structurally separated FTTH network company, that provides wholesale services only, is the only framework that will ensure equivalence in access, resulting in greater benefits to consumers compared to a rollout by a vertically integrated carrier. The ACCC's views are set out in its submission to the Government's *National Broadband Network: Regulatory Reform for 21st Century Broadband Discussion Paper* (beginning at section 2.1).

10. If the ACCC holds that belief, on what evidence has it formed its opinion? Can the ACCC give detail on the costs and economic performance of wholesale only FTTH networks in other markets or indeed the economic performance and viability of any large scale wholesale only telecommunications network in any other market?

The evidence supporting the ACCC's view that a wholesale only FTTH network will offer greater benefits to consumers compared to a vertically integrated carrier is set out in the ACCC's submission to the Government's *National Broadband Network: Regulatory Reform for 21st Century Broadband Discussion Paper* (see section 2.1 in particular).

11. Is there any model for wholesale only FTTH networks other than European and US municipal networks? Does the ACCC have any information on the performance of such networks – are they subsidized by rate/taxpayers – for example does the ACCC have any knowledge of the costs and performance of large municipal network such as Utopia in Utah?

The ACCC keeps abreast of developments in FTTH network roll-outs both internationally and within Australia. The ACCC has also followed FTTH roll-outs in countries such as Singapore, and locally in greenfields estates

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throughout Australia by providers such as Opticomm. The ACCC has no specific information on these networks beyond what is in the public domain.

The ACCC has no particular information in relation to the costs and performance of the Utopia network in Utah.

12. Would the ACCC agree that Japan and Korea are world leaders in FTTH deployment and is the ACCC aware that the rollout in these markets is being led by the incumbents which remain vertically integrated?

The ACCC understands that Japan and South Korea are classified by some analysts such as the FTTH Councils of Asia Pacific, Europe and North America as leaders in FTTH deployment. The ACCC is aware that the FTTH roll out in Japan and South Korea is led in each case by the vertically integrated incumbent. The ACCC is also aware that the structural arrangements in relation to NTT, the Japanese incumbent, are due for further review in 2010.

13. Does the ACCC believe that the functional separation of Telstra is an appropriate option to remedy some of what it perceives to be failures in the current regulatory regime? Could the ACCC state which OECD markets have enacted functional separation, and which markets have considered and rejected any form of separation including functional separation?

The ACCC can provide advice on the importance of the equivalent treatment of access seekers for competition and on the degree to which certain regulatory or structural approaches are likely to achieve equivalence. It is a question of policy and a matter for Government which, if any, approach is to be adopted.

The ACCC is of the view that the structural separation of Telstra is the only framework that will ensure equivalence in access. Functional separation, when successfully implemented, may go some way to addressing concerns regarding equivalence, and is superior to the current operational separation regime. However, vertical integration of any form into downstream markets, even when subject to regulatory measures, will not ensure equivalence.

The ACCC is aware that the UK, New Zealand, Italy, Sweden and Poland are among OECD countries that have either already implemented or are in the early stages of enacting functional separation.

The ACCC is aware that the Netherlands, Denmark, Spain, Portugal and Germany are among the OECD countries that have rejected any form of separation including functional separation.

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14. In light of the PM's call for evidence based policy does a sample of two markets from the 30 member OEC D offer a compelling case for the introduction of functional separation in Australia?

The ACCC can provide advice on the importance of the equivalent treatment of access seekers for competition and on the degree to which certain regulatory or structural approaches are likely to achieve equivalence. It is a question of policy and a matter for Government which, if any, approach is to be adopted..

As noted in response to Question 13, there are currently five OECD countries that have either already implemented or are in the early stages of enacting functional separation.

15. Does the ACCC have any understandings or has it engaged in any discussions with Telstra about the costs of functional separation? Telstra has been engaged in a very large scale re-engineering of its technology/IT systems over the last four years – is the ACCC aware of whether or not that re-engineering of various operational support systems would support functional separation? If the new systems can't support functional separation what will the cost of replacing/replicating these systems be - does the ACCC have any estimate?

The ACCC has attended discussions between the Department of Broadband, Communications and the Digital Economy and Telstra which have included the issue of the costs of functional separation. The ACCC is aware that in the event that Telstra was subject to functional separation, changes may be required to its business and/or operational support systems. The ACCC has obtained copies of Telstra's initial estimates of the costs of building new operational support and business systems in the event that its existing systems cannot support functional separation.

16. If the ACCC believes functional separation is appropriate, at what part of the physical network would it place the boundary for separation i.e. local network up to the exchange Main Distribution Frame or some other demarcation point? Would it recommend replicating the split seen in British Telecom with the creation of the local access division Openreach?

The ACCC is of the view that structural separation of Telstra is the only framework that will ensure equivalence in access. Functional separation, when successfully implemented, may go some way to addressing concerns regarding equivalence, and is superior to the current operational separation regime. However, vertical integration of any form into downstream markets, even when subject to regulatory measures, will not ensure equivalence.

The ACCC can provide advice on the importance of the equivalent treatment of access seekers for competition and on the degree to which certain

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regulatory or structural approaches are likely to achieve equivalence. It is a question of policy and a matter for Government which, if any, approach is to be adopted.

The ACCC has not reached any conclusion about where the appropriate boundary for separation should be.

- 17. If the ACCC believes functional separation is appropriate how would it future proof the separation of the local copper network i.e. the bottleneck facilities from the impacts of new technology? Is the ACCC aware that the boundary initially set within BT is now under pressure and may be revised to accommodate BT's planned fibre deployment so that Openreach is also responsible for the electronics that deliver service as well as the cable?**

The ACCC is of the view that structural separation of Telstra is the only framework that will ensure equivalence in access. Functional separation, when successfully implemented, may go some way to addressing concerns regarding equivalence, and is superior to the current operational separation regime. However, vertical integration of any form into downstream markets, even when subject to regulatory measures, will not ensure equivalence.

The ACCC can provide advice on the importance of the equivalent treatment of access seekers for competition and on the degree to which certain regulatory or structural approaches are likely to achieve equivalence. It is a question of policy and a matter for Government which, if any, approach is to be adopted.

The ACCC understands that the assets under Openreach's control are under continual review by Ofcom.

- 18. Would a rigid demarcation of the local access network under functional separation bar Telstra from engaging in any possible form of fibre deployment in its own access network – could such separation have what Ofcom feared would be a “chilling effect” on investment in the network?**

The ACCC is of the view that there is no reason why functional separation would bar Telstra from engaging in any form of fibre deployment.

- 19. Would the ACCC encourage Telstra to engage in its own fibre rollout possibly through FTTN or does the ACCC believe there should be a moratorium on any investment that might compete with the NBN?**

It is not the ACCC's role to express a preference for, or promote, one network proposal or technology over another. It is for the parties making the investment to choose the technologies in which they invest.

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- 20. The intent of functional separation is to heighten Telstra's accessibility and responsiveness as a network wholesaler. Can the ACCC reconcile that goal in policy with the need for the government to make its FTTH network the wholesaler of choice for ISP's – is there some tension in this policy?**

This question relates to issues of policy and hence is a matter for the Government.

- 21. Given that the prime rationale for functional separation in the UK was to enable unbundling of the copper loop, could the ACCC advise how many loops and what percentage of BT's lines were unbundled before the creation of Openreach in 2005 and how many lines and what percentage of BT's lines are now unbundled?**

The ACCC is aware that at the time BT's undertakings took effect in September 2005 there were 28.700 million bundled lines compared with 122,000 unbundled lines.³ In the March 2009 quarter there were 26.312 million bundled lines compared with 5.750 million unbundled lines.⁴

- 22. Given the financial problems now faced by Tiscali which is probably the UK's third largest broadband supplier and dependent on BT's unbundled loops does the ACCC believe functional separation has created a sustainable market for broadband in the UK?**

As outlined in response to Question 8, any country will have a number of policy and regulatory positions that impact upon their broadband market. It is not appropriate for the ACCC to be definitive in expressing a view on the role of the UK's functional separation model in creating a sustainable broadband market.

- 23. Could the ACCC say how many of Telstra's lines are now unbundled and particularly the percentage of lines unbundled within Bands 1 and 2 of the ULL market which is probably the geographic region most directly comparable with the UK market?**

As at 31 March 2009, 9% of lines in bands 1 and 2 are ULLS lines while 7% of lines in bands 1 and 2 are LSS lines. In total, 1.160 million or 16% of lines are unbundled (that is, ULLS and LSS) within Bands 1 and 2.⁵

³ BT, *BT Performance Indicators: Q4 2008/9*, 2009

< <http://www.btplc.com/Sharesandperformance/Quarterlyresults/Financialpresentations/Q409KPIs.pdf>
> pp.11-12

⁴ BT, *BT Performance Indicators: Q4 2008/9*, 2009

< <http://www.btplc.com/Sharesandperformance/Quarterlyresults/Financialpresentations/Q409KPIs.pdf>
> pp.11-12

⁵ ACCC, *Snapshot of Telstra's Customer Access Network as at 31 March 2009*

<http://www.accc.gov.au/content/item.phtml?itemId=853523&nodeId=b9fa43ddaf523b7e9e9aa1b11f1d>

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24. Is there any need to engage in functional separation given that unbundling appears to be progressing quite well? Wouldn't refinement of the operational separation regime be more cost effective and appropriate?

The ACCC does not consider the current operational separation regime is an appropriate structural arrangement for Telstra during the transition to the NBN. As the ACCC noted in its submission to the Government's *National Broadband Network: Regulatory Reform for 21st Century Broadband Discussion Paper* (section 2.1), there are a number of examples where the current operational separation regime has been shown to be ineffective.

The ACCC Chair noted at Senate Estimates in June 2008 that

We continue to receive complaints of conduct that suggest that the objective of equivalence, which was the objective of the regime, is not being achieved. There have been some instances of conduct since the regime's inception which, while it is not clear they breach the operational separation plan, do not promote the objective of equivalence which was the fundamental objective of the plan in the first place.⁶

The ACCC can provide advice on the importance of the equivalent treatment of access seekers for competition and on the degree to which certain regulatory or structural approaches are likely to achieve equivalence. It is a question of policy and a matter for Government which, if any, approach is to be adopted.

25. Given that the current Band 2 ULL price is around \$15 per month and ISP's can offer up to 25 Mbits with ADSL 2 to a significant part of the market what price point does the ACCC believe would be appropriate on the NBN to make it attractive for ISPs to migrate to the new network?

See response to Question 3.

26. Given that markets such as Canada, the USA, France, Germany, Sweden all seem to be outperforming Australia in broadband performance and bearing in mind the PM's call for evidence based policy can the ACCC outline what significant failings there are in the Australian regulatory regime compared to these other markets and how these regulatory shortcomings compared to better performing markets may have held Australia back?

An examination of the operation of the current regulatory regime was put forward in the ACCC's submission to the Government's *National Broadband*

[fda2&fn=Snapshot%20of%20Telstra's%20customer%20access%20network%20-%20March%202009.pdf](#)

⁶ ACCC, *Senate Estimates Standing Committee on Economics*, 5 June 2008.

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Network: Regulatory Reform for 21st Century Broadband Discussion Paper
(see section 2.2 in particular).

- 27. In Senate estimates on 26 May, Senator Conroy said in relation to the possible release of the ACCC report which was submitted as part of the original National Broadband Network Request for Proposals process, that he didn't want to speak on behalf of Mr Samuel and he "may have some information he wishes to impart upon you at Senate estimates." There is strong public interest in the advice - will the ACCC release this report or at least key sections of it that may not be considered commercially sensitive?**

Attached to the ACCC's submission to the Government's *National Broadband Network: Regulatory Reform for 21st Century Broadband Discussion Paper* are a number of appendices which provide a general conceptual framework for analysing any telecommunications regulatory regime. This conceptual framework was also attached to the ACCC's Report to the NBN Expert Panel. The ACCC attached these appendices to its submission as they outline, from an in-principle perspective, the ACCC's views on what a reasonable set of FTTx regulatory arrangements could be and are therefore necessary background material to the ACCC's submission. It should be noted that these appendices do not contain any information which was confidential to the NBN Expert Panel process.

- 28. Since the announcement of the Government's latest NBN project, the ACCC Chair has been quite vocal in his praise for it and also in relation to how he believes Telstra should be structured going forward. As the industry regulator, does the ACCC think it has over-reached somewhat in its promotion of the Government's proposal and also in flagging clear possible policy directions for consideration?**

No.

The ACCC Chairman has noted that the Government's proposed NBN is significant in terms of its proposed coverage and its likely impact on the Australian telecommunications industry.

In addition to the ACCC's role as a regulator, it is also an advocate for competition and consumer interests. The promotion of competition, fair trading and consumer protection enhances the welfare of Australians and assists in achieving the objective of the *Trade Practices Act 1974* (section 2).

The ACCC is not a policy maker.

- 29. Is it appropriate that the ACCC be seen not only as a regulator but also as a would-be policy maker? – There would appear to be some conflict there would there not?**

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The ACCC is a regulator, and also an advocate for competition and consumer interests. The promotion of competition, fair trading and consumer protection enhances the welfare of Australians and assists in achieving the objective of the *Trade Practices Act 1974* (section 2).

The ACCC is not a policy maker.

30. In relation to regulating a possible new regime does the ACCC see the clear animosity between the ACCC and Telstra as an obstacle going forward?

No. The ACCC does not accept that there is clear animosity between itself and Telstra.

31. The issue of interconnect is problematic – for example while you may have in theory a single network, it may be the case that the NBN Company has to buy access to a range of fibre runs to provide end to end connectivity and in some cases may conceivably have to rent access to the fibre, perhaps with a whole range of existing fibre including Telstra and Optus. How does the ACCC envisage these issues of interconnectivity would be managed e.g. would access prices be universal across the network, or would different fees need to be negotiated with the various fibre owners?

It is too early to speculate what the best approach managing issues of interconnectivity including pricing. A number of factors would need to be determined before the ACCC could form a view on these issues including network design cost of capital, length of time over which costs are recovered, depreciation profile, the proportion of funding which is subsidy etc.

The ACCC notes that some of these variables will be examined as a part of the Government's NBN Implementation Study. As a number of these variables are still to be resolved, the ACCC is unable to comment on prices.

32. If a substantial amount of existing fibre capacity is not rolled into the NBN Co by agreement, managing interconnection could be very problematic, particularly if it is required for the NBN case to ultimately stack up; does the ACCC believe this is manageable or does it think it is feasible to roll out new fibre in competition to existing deployments?

It is too early to speculate on issues relating to the management of interconnection between new and existing network deployments. A number of factors would need to be determined before the ACCC could form a view on managing interconnection between new and existing network deployments including network design cost of capital, length of time over which costs are recovered, depreciation profile, the proportion of funding which is subsidy etc

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The ACCC notes that some of these variables will be examined as a part of the Government's NBN Implementation Study. As a number of these variables are still to be resolved, the ACCC is unable to comment on this issue.

33. Based on past experience, how long does the ACCC believe it would take to get a pricing and access regime in place that would allow inter-network connectivity? Months, a year, 18 months, longer?

The length of time it takes to implement a pricing and access regime will depend on a range of factors including the type and nature of the regime.

34. It would be impossible to set regulatory and access terms and conditions before we know the make up of the network, would it not?

Issues relating to the timing of the introduction of any regulatory change, the network design and structure are issues of policy. Hence the ordering of the steps to implement and operate an NBN are matters for the Government.

35. In relation to cost models put forward by both Telstra and the ACCC for regulated costs for the copper network, Telstra has proposed having the models undergo a rigorous, independent assessment and says it is willing to accept the decision that ensues – is this something the ACCC will entertain and wouldn't this provide a possible pathway for setting prices going forward on a fair and equitable basis?

Please see the ACCC's answer to QoN BET 127.