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Telstra Shareholder Submission V3

**National Broadband Network:
Regulatory Reform for 21st Century
Broadband**

Discussion Paper - April 2009

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1. DOCUMENT PURPOSE

This document is a Telstra shareholder's view and response to the NBN Regulatory Reform - 21st Century Broadband discussion paper, April 2009.

The discussion paper, on the surface, lacks general input from a large stakeholder, one million Telstra Shareholders. I cannot see any quotes embedded in this document from a single shareholder.

The Communications Minister, Mr Conroy, in his forward response within the discussion paper, indicates that via a public consultation process, received 82 submissions from various stakeholders but does not mention Telstra shareholders. I am of the belief that this stakeholder group was not included in the public process, maybe the direct audience was filtered for the specific purpose?

Therefore, I, like most of my peers would like to include our views and inputs.

2. FORWARD

I would like to take a step back and mention some Telstra / Australian Federal Government history.

About 10 years ago the then Australian Federal Government embarked on a sell off of this very iconic and established company, Telstra, to the Australian public. The Government reduced its stake over three trenches' with the last being about 2 years ago.

During this long period of time the Australian Federal Government **had many an opportunity** to undertake many of the suggested actions detailed in the discussion paper. The Government decided not to embark on any of these avenues but wait until it had received the funds from Mum and Dad investors and had no ownership or risk associated with these potential changes.

The Australian Federal Government is **NOW** seeking to penalise those same investors who bought Telstra shares of the Government, **IN GOOD FAITH**, and basically wear the full risk of any such actions.

I have never seen such a one sided and politically motivated company destroying document, such as this discussion paper, in all my life.

The tone of this discussion paper is very much anti Telstra and the views put forward by self interested minority stakeholders are bordering on derogatory.

It is with a great sigh as a Telstra shareholder, Australian citizen and voter that I am compelled to submit my views to try and round off a very unbalanced piece of work such as this discussion paper.

I feel that the Australian Federal Government has moved the goal posts and duped all those that purchased this asset from its original owner, the Government.

Telstra is the one company who is governed by the most legislation and procedures in the country. Along with all the general governance (i.e. Trade Practices Act and Companies Code) Telstra has its own Act (Telstra Corporation Act 1991) which is a legacy from Commonwealth ownership days.

These pieces of legislation should be repealed to bring Telstra in line with all other PRIVATE companies in Australia.

There are also other restrictions on Telstra such as no more than 5% individual ownership and less than 10-20% foreign ownership. If these new changes or provisions are adopted then changes should also be made to these draconian percentages of ownership, especially when the new NBN Company is set up.

2.1. Scope

The scope of this document is to address specific questions and chapters in the NBN: Regulatory Reform for 21st Century Broadband from an unacknowledged but extremely interested stakeholder, the Telstra shareholder.

3. CHAPTER 2 ANALYSIS & FEEDBACK

This chapter sets the scene for a new company whose sole purpose is to build a new broadband network. The Federal Government is to take majority ownership and then sell its stake over subsequent years once built. It seems very much like a baby Telstra. This could have all been done when the Federal Government owned Telstra, or at least when it still controlled via its 50.1% ownership. If those who bought Telstra shares knew about this new company I seriously doubt they would have bought a single share. I believe these same shareholders would be reluctant, including myself, to buy a single share of the new broadband company given the Government's track record of selling an asset and then setting up a new entity to compete. It will be interesting if any of this is mentioned in a future 'PROSPECTUS'. This new broadband company seems to be given the protections and monopolistic opportunity that you are trying to erode in Telstra via this discussion paper. The current Federal Government seems hell bent on punishing Telstra shareholders who collectively correlate to about one million voters.

SEPERATION

Chapter 2 goes on to mention the separation of Telstra into wholesale and retail. Once again this should have been done when the Government owned Telstra. How can the Australian Federal Government expect Telstra shareholders, who bought off the Government in good faith, to wear the costs of this separation process? It is the Mums and Dads of Australia who are risking their money and investment in this costly and capital reduction exercise.

WILL THE FEDERAL GOVERNMENT COMPENSATE TELSTRA SHAREHOLDERS FOR THE COST OF SEPERATION?

This was not specifically mentioned in any of the three Telstra sale prospectuses!!!

ACCC OVERSIGHT

The ACCC is only a regulatory watchdog and to think they should be making decisions on behalf of a private company is ludicrous. Employees of the ACCC are bureaucrats and not business people capable of running a company or directing a company. They are confined to their roles and mandates under the Trade Practices Act and should remain there. I have never heard a more inept decision to give these bureaucrats this type of power. Where is the democracy and free enterprise in this great land called Australia when we have Government bureaucrats taking control? Is this a capitalist country or are we moving to some socialist / communist regime?

GREENFIELDS ESTATES

There are numerous fibre providers in Greenfield sites to prove that competition is thriving and the need for heavy handiness against Telstra is unwarranted. Fibre is just one technology for providing broadband. It is not, the be all and end all, as it will be superseded by the next technology. Broadband will be delivered by a number of existing and new technologies over the next 10 years.

4. CHAPTER 3 ANALYSIS & FEEDBACK

Strengthening Part XIC access arrangements will only further stymie competition. It is ludicrous to suggest that toughening the laws for one player and one industry is a panacea for all the concerns and gripes by the number two Telco, OPTUS. They do not even use their HFC cable network for broadband but prefer to use Telstra's copper network thanks to the ACCC quadrant pricing regime on ULL. Even the ACCC leader, Mr Samuels suggests OPTUS should wholesale off Telstra rather than use their own network. We must be the laughing stock of the modern world when your top

bureaucrat suggests this action. Is Mr Samuels leading the ACCC is taking a position on the SingTel board? No wonder there is any real competition to the copper wire network when the scene is set with this type of uncompetitive direction. I would not ever consider building any infrastructure when I could get a free ride and cheap rent. Maybe Mr Samuel could let me rent his house off him for say 50% discount to the market; I could then sub-let for say 50% profit. Therefore the renter is a winner by 25%, I am a winner and the only loser is the owner. A simplistic but realistic example of how the copper network is wholesaled in this country. The models used are direct form Europe where the comparisons on geography like comparing 'apples and oranges'.

Any changes to the Trade Practices Act should also be levied on all other industries and not just unique to Telstra and the Telecommunications sector. The Trade Practice Act is a vehicle for private enterprise fair play and not for setting the direction of a capitalist nation!!!

WILL THIS POTENTIAL TRADE PRACTICE ACT CHANGE ALSO BE ENFORCED ON THE NEW NBN COMPANY? I would not like to see a strict enforcement on Telstra during the interim then followed by a softening approach on the new company.

Further, other industry examples of disputes, namely, gas, Sydney Airport and sewerage are mentioned in this paper. There would be lucky to be 5-6 access seekers in these industries compared to 100+ (ISP's) equivalents in the telecommunications industry. There would be a very onerous administration to get all these requestors equipment into a telecommunications exchange with lack of space, power restraints and the like. These costs are more than likely borne by Telstra and its shareholders. It is not easy to accommodate so many providers.

The Trade Practices Act in its present form seems to be working adequately in the Wireless (Mobiles) arena. There are at least four Infrastructure providers, now three thanks to the ACCC to allow Hutchinson and 3 to combine. This decision is very bewildering given the total opposite approach in the fixed / copper network. Remember that is the way the Government sold this off, in tact.

FUNCTIONAL SEPERATION

I fully dispute comments in the discussion paper by the European Regulators Group on British Telecom's share price not being affected by separation.

These comments cannot be qualified. I do agree the market conditions did have an impact but I also believe that separation had an unequivocal impact on BT's share price. If Telstra is forced down the same path I fear that Telstra shareholders will be hit and hit hard by a falling share price totally correlated to any form of separation, functional or not. This will inflict further pain on Telstra shareholders already reeling from fire on all angles, and worse, from the Australian Federal Government and its heavy handed regulator.

QUESTIONS

- (1) What are the appropriate structural arrangements for Telstra during the transition to the National Broadband Network?

Answer: As per comments made above. Telstra should not be changed in the interim and when the new company comes into being then this new company should be forced to work under the new regime. It would be UNAUSTRALIAN to expect Telstra to be punished during the honeymoon period. I believe Telstra, now with a change of management etc, could assist and benefit the Australian community at large if a more conciliatory approach was adopted by the Government, ACCC and Telstra.

- (2) Could measures be put in place to make the existing operational separation regime work more effectively? If so, what are they?

Answer:

Yes, given the change in Telstra management a voluntary code for Telstra would suffice.

- (3) If functional separation is adopted, what would be the key elements of such a framework? What would be the appropriate boundaries for separation?

Answer:

As a Telstra shareholder I don't believe in functional separation at all given the Government never contemplated this before Telstra was sold. It seems a punishment on those who bought the shares off the Government in good faith with honourable and morale intentions. It seems those advocating this have their own self interests at heart and not the benefits of the nation. Telstra's competitors, namely OPTUS and company seem hell bent separating Telstra for their own benefit.

It also seems ironic that the ACCC is taking the view of functional separation when they themselves have done nothing in other industries to limit market anti-competitiveness, i.e. Bunning's Warehouses in the hardware market, Woolworths / Coles in the supermarket chain, etc.

These are examples of the ACCC giving the green light over time to nearly create monopolies or duopolies in many other industries. There are countless examples of the ACCC giving the all clear to mergers and acquisitions that clearly the **COMMON MAN** would deem market dominance taking place.

If functional separation was to take place then it would have to be fair and equitable to all stakeholders including Telstra shareholders but I cannot see a way of this occurring except in my summation at this end of this document.

It seems that without Telstra's capital spend on telecommunications infrastructure that the industry would have basically stood still. There has been no real investment in this area by any other company over the last 10 years. Therefore it is ironic that the Federal Government is now contemplating spending \$43B plus to overcome many years of underspend or nil spend in this industry, except for Telstra's ongoing involvement.

If the proponents of functional separation believe this trend will reverse, lack of investment, then those making the decision must be living on another planet.

5. CHAPTER 4 ANALYSIS & FEEDBACK

The USO for many Telstra shareholders is a very sore point. To provide basic telecommunication services to many households has changed over the years with the strengthening and spread of new technologies.

A basic phone service does not have to be confined to the copper network. Mobiles and satellite have come a long way since these obsolete provisions were established.

Telstra provides a basic phone service on a copper network to some customers where economic recovery is impossible. This does not seem to be the case in other industries such as gas, electricity or water.

Example: If I lived in a remote location 200km from a Telstra exchange and wanted a service, the cost would be about \$300 to run the line out and dig trenches etc. Now, if I wanted electricity off the grid to the same house it would cost me about \$20 000+. The maths does not add up!!!

Telstra, no doubt is under compensated for providing this antiquated USO obligation. The Government's provisions are once again many years behind reality.

A classic example is providing a payphone where there is no or limited return. Mobile phones have affectively made the payphone a dinosaur in the modern age, yet the obligations still prevail?

If USO is to prevail then the new NBN Company should take this on for no reimbursement as it will be a Government owned entity. The Government should provide the community service by using taxpayer's money and it will never be profitable and we cannot expect a private company to take on this responsibility, as it is not a charity, only if it volunteers.

I do not agree to some of the comments in this chapter, example, "*it is clear that Telstra accrues substantial intangible benefits from being the Primary USO provider*". I believe this comment has no substance and is a throw away line. There is no qualification to back up this type of comment. My belief is that it a cost Telstra far more than what it receives. It is expected that this comment was from Competitive Carriers' Coalition whose interest is in Telstra being mandated with this under

funded responsibility. If OPTUS and company think that Telstra receives substantial funding to providing a service to country and remote areas, why are they not out there competing? These comments re funding are just 'red herrings' to make sure Telstra keeps providing this service at below cost.

It is also worth noting that the ACCC ULL access prices, 4 quadrant prices, with Metro being the cheapest and remote being the dearest, do not provide any incentive for Telstra competitors to provide services outside the metropolitan geography. If this was a flat price across the country I am sure we would see more competition outside this cherry picked inner city and suburban areas.

This discussion paper is full of these unquantifiable and non substantiated quotations. Therefore I will refute and propose my own logic to this paper as it seems to keep the status quo.

QUESTIONS

- (1) Should universal service payphones be provided under a competitive process, such as under a competitive subsidy?

Answer:

If this was put under a competitive tender then I would expect that the agreed current dollar reimbursement to remain the same. Let us see if anyone would bid if the same compensation today were still in place? If it is changed before or during the bid process it would just back up the fact that Telstra is under funded for providing this costly obligation.

- (2) Are there alternative mechanisms that could be used for providing USO payphones?

Answer:

The utilisation of other technologies would provide a basic voice service such as mobile and satellite. I do not see why we need to a land-line?

The discussion paper uses examples where British Telecom in the United Kingdom (incumbent Telco) has to provide USO for free. We are NOT comparing the UK geography and population density to that of Australia are we? This would be preposterous!!!

The USO burden (the word burden already sets the connotation that it is not a luxury but an imposition) should be abolished and if it is mandatory it should be put out to competitive tender at the same prices as today and all Telecommunication providers (including ISP's) who wholesale the copper network should contribute to this dead weight.

- (3) USO payphones, location and whether ACMA should have the power to make Telstra provide locations and possible service.

Answer:

I do not believe we need payphones at all given the strength and coverage of other more suitable and futuristic technologies such as mobiles, laptops and satellite. The worlds leading technology companies are not spending money in research and development on payphones etc. We need to move with the times and set an example. Payphones are obsolete and as for USO payphones, please!!!

- (4) Does the Customer Service Guarantee need strengthening? If so, what changes should be made.

Answer:

There is no need to strengthen this process as I believe it is working effectively. It is the wholesale price regime in the ULL that is causing the problems. Cheap and ineffective retail services lead to a flawed process in relation to customer service and guarantee.

As for Telstra, I believe it is now in the rebuilding phase of its networks after the previous Federal Government raped the company of valuable cash (distributing special dividends in order to appeal to the market for its eventual sell off) and that this freed up capital should have been spent on improvements to Telstra's networks. It is a real shame that we now realise the extent of that under-

investment. Pity Telstra's competitors do not spend some real cash on similar type of telecommunications investments. Telstra is now in a much better position and customers will be thankful when this revolution is complete.

If a change is enforced it should be right across the whole industry and not just fixed line. I would go further to say that any change here should be universal across all industries in Australia. Why stop with telecommunications?

Calendar days should not be replaced by working days because of the cost of labour outside a Monday to Friday regime. This would be an illogical proposition without a heavy burden on Telstra.

(5) Does the Network Reliability Framework need strengthening? If so, what changes should be made.

Answer:

My answer to question (4) covers this topic.

RETAIL PRICE CONTROLS

I would also like to note here that in other countries such as the United States and the United Kingdom there is no such retail products as 'LOCAL CALLS' as we have here in Australia. Their so called local calls are all TIMED calls and charged accordingly. Why is there a discrepancy between voice and data products, i.e. data downloads are charged per kbps and contain a cap, where the speed is reduced significantly once the cap is reached. This is not the same for voice when we look at a local call. Once again the policy and legislation makers have not been keeping up with the changing landscape of technologies. The private competitive market has decided these products and services, not some bureaucrat.

QUESTIONS

(6) Should the Government continue to regulate Telstra's retail prices for voice telephony services in the transition to the National Broadband Network?

Answer:

This all come back to previous comment on the lack of competition from Telstra's competitors who do not spend money on infrastructure but continue to press the ACCC on cheaper and cheaper wholesale prices. I believe these wholesale prices have actually fallen year on year with NO adjustment for CPI? Given we are left with one network due to the above flawed logic then I would suggest some sensibility in setting wholesale prices to encourage competition outside the metropolitan areas. A flat, across the board, where price which is linked to CPI then let private retail competition take control, similar to the mobiles arena. Lack of government intervention is a good thing in almost anything!!!

The above scenario would then give the new NBN Company the right footing to commence its operations. It should not be considered an option to punish Telstra in the interim but then open the floodgates when the NBN comes into existence. It should be the same process for the interim and final solution.

If mandatory price controls are enforced then this should be on all telecommunications services and not just fixed line or copper related products and services.

QUESTIONS

(7) Emergency call service obligations?

Answer:

This service should be shared by all companies in the telecommunications industry. There should be no obligation on any one provider. This service should be paid for by taxpayers via the Government.

(8) Directory Assistance provisions

Answer:

Once again this requirement for white pages etc is just another example of outdated and prehistoric policy. We live in an online world and this mandatory requirement should be abolished. This is just another media type instrument and I believe this media industry regulations were lightened not that long ago. Cross media laws were relaxed and this should include Telstra's right to compete in this industry.

6. CHAPTER 5 ANALYSIS & FEEDBACK

The bigger picture would suggest the regulatory framework is NOT inductive to providing competition by investing in new infrastructure within the fixed (copper/fibre/HFC) networks. Regulation is overburdening and does nothing more than provide the customer with cheap and poor quality products and services. Regulating further would only entrench this paradigm and leave the consumer with old technologies and products that are incompatible with this antiquated infrastructure. This is why this country now has to spend \$50B+ to port to a new level where people endorse and welcome new technologies. Contrary to Telstra's competitors' opinions who would love to keep the 'status quo' because it is in their best interests for the short term dollar and have limited lack of foresight.

Over-regulation STIFLES innovation and investment!!!

An opposite model can be displayed in the wireless or mobile infrastructure. Competition is flourishing and capital is being spent on networks by a number of players within the industry. This industry only has limited regulation and interference by the ACCC.

7. SUMMATION

This discussion paper is very very alarming to any Telstra shareholder. Surely a more sensible and pragmatic solution to benefit all stakeholders is not out of the question?

The new NBN Company should not be owned or run by any Government as it has an extremely bad record at managing a business in a competitive framework. Telstra shareholders already have a bad taste in their mouths the way the Australian Federal Government sold this once great asset to average Australians, only to change the goalposts, leaving the bitter and spiteful residue.

If Telstra was to transfer their networks into a new NBN company and continue to fund its progression out of profit, over an extended period then this new infrastructure would be built efficiently and effectively. There would be no need for taxpayer money or Government ownership. The wins would include;

- (i) A new NBN company fully separated from the Telstra as we know it today.
- (ii) Competitors would get their wholesale prices with no competition from the wholesaler in the retail market.
- (iii) The ACCC would free up valuable time and resources pursuing and monitoring Telstra.
- (iv) The Australian Federal Government would get their functional separation, retail and wholesale.

- (v) Telstra shareholders could try and recover aggregated losses via locked up wealth in both companies. The Australian Federal Government would need to set up the appropriate conditions.

If this is not the general outcome then I can only see another mini Telstra being formed and as time goes by other Australians getting burnt by the same practices and policies. GROUNDHOG DAY!!!

8. DEFINITIONS

The following words, acronyms and abbreviations are referred to in this document.

Term	Definition
BT	British Telecom
ISP	Internet Service Providers
UK	United Kingdom
USO	Universal Service Obligation

9. ATTACHMENTS

Document Name	Reference
National Broadband Network: Regulatory Reform for 21 st Century Broadband. Discussion Paper, April 2009.	http://www.dbcde.gov.au/__data/assets/pdf_file/0006/110013/NBN_Regulatory_Reform_for_the_21st_Century_Broadband_low_res_web.pdf

10. DOCUMENT CONTROL SHEET

The purpose of this section is to capture all changes made to the content of document.

Contact for Enquiries and Proposed Changes

If you have any questions regarding this document or would like to suggest an improvement, contact:

Name	
E-mail Address	
Phone	

Revision History

Version No	Version Date	Nature of Change	Author of Change
1	22 May 2009	Initial draft	David Fagan
2	28 May 2009	Update	David Fagan
3	2 June 2009	Final	David Fagan