

BusinessSpectator

Interview

KGB TV: Graeme Samuel

Comment

Published 9:05 AM, 13 Oct 2010

KGBTV

The Australian Competition and Consumer Commission chairman Graeme Samuel tells Business Spectator's Alan Kohler, Robert Gottliebsen and Stephen Bartholomeusz:

- He'd consider taking another public service role when his second term expires next year*
- The ACCC will be involved in a wide range of issues relating to the national broadband network*
- One difference between Telstra and the national broadband network is the latter will not be a vertically integrated monopoly*
- He's unsure whether the Rio Tinto/BHP Billiton iron ore joint venture will proceed, but a tie-up would have some interesting consequences in terms of market prices*
- The Queensland Competition Authority is making the right noises in terms of regulation of access to rail tracks*

AK: Well Graeme, can it be taken for granted that the ACCC will approve the NBN monopoly?

GS: Oh, there's nothing to be taken for granted, Alan. It has to go through an appropriate process. And when you talk about a monopoly, I take that as a loose description of the whole of the arrangements relating to the NBN (national broadband network).

AK: Well, it's a monopoly. It will be a monopoly. There'll be one fibre network. It'll be owned by the government, but it will be therefore a monopoly, won't it?

GS: Yeah, but it won't be a virtually integrated monopoly which are the sorts of issues we've had to deal with over the past 10 or 20 years with Telstra.

But there's a range of issues where the ACCC will be involved. It will be focusing on, for example, the agreement as is finalised between NBN Co and Telstra. It'll be focusing as well on the special access undertaking the NBN Co will launch with us, which will be a very important document because it will deal with access to the fibre network or the ... whatever is the appropriate level or layer of access that's ultimately agreed upon, so that it will focus on that, and ensuring that access is provided on terms that encourage competition and that will potentially run for a significant period of time.

SB: Graeme, you referred to that Telstra/NBN Co deal. Is there any prospect of the ACCC having issues with that?

GS: Oh, I don't want to prejudge that at the moment, Stephen. It's not appropriate to. There are a number of aspects of the deal that obviously in these minds of both NBN Co and Telstra may raise competition concerns. It's why the deal is expressly subject to ACCC clearance and we'll go through that once the agreements have been finalised there. They're going through the process I think of being converted from an in principle, non-binding agreement - or heads of agreement - into a very detailed document. And once they're prepared and where they're submitted to us, then we'll have a look at those subject to any parliamentary, that is legislative directive that might be to the contrary.

SB: One obvious issue is that under that deal NBN Co would acquire or make redundant potentially competitive infrastructure. Is that an issue for the ACCC?

GS: Well, we're clearly...on the surface that would be an issue that we've had to examine and we'll look at that in the context of both the pure competition issues, fundamentally also looking at what might be in the long-term interests of the end users. There'll be a range of factors that we'll take into account, not the least of which, Stephen, as you'd be aware, is that there are issues of both competition and of potential public interest that we have to deal with under the Trade Practices Act, whether we're dealing with pure clearances or whether we're dealing with potential authorisation applications. They're all matters that we deal with, but I think it's a bit early at this stage to be expressive or certainly too early to be expressing a view, but also a bit early to actually be focusing on those areas that we might or might not have to look at. It will depend on how the final agreements eventuate, whether there are other parties - I read in the newspapers that Optus may be negotiating its own arrangements with NBN Co - so there are all sorts of factors that we'll be dealing with in due course.

RG: Graeme, apart from the people in Telstra itself you probably know more about the Telstra intricacies than perhaps any other person in the country.

GS: I doubt that very much, Robert. A few people at my organisation know a lot more about it than I do.

RG: Okay. Well, the organisation does.

GS: Yes.

RG: Do you think just on the surface of it that the city arrangements between the NBN and Telstra and then allowing the NBN to go and market the broadband into the cities, do you think that's going to be economic?

GS: I'm not sure I understand your question, Robert. When you say the "city arrangements", what do you mean by that?

RG: I mean, that the arrangements that Telstra have made - or have tentatively made - with the NBN and the government so that the NBN will market its services and its network into the cities. Do you think that NBN service in the cities will be economic as distinct from what might be in the rural areas where it clearly won't be economic?

GS: Robert, I think this raises a very interesting issue that is coming up in comments in discussions that are occurring with the business communities around Australia at the moment on the NBN. I attend a number of boardroom lunches and yes, we've discussed with various business leaders. What we have is I think a very interesting confusion that might be occurring in the business/public debate.

Business leaders - almost in the same paragraph as saying that what we need is a business case and that needs to be a cost-benefit analysis - and I think we need to understand that they are two separate issues. The business case is something that has been prepared by NBN Co and (chief) Mike Quigley is the appropriate person to comment on that matter. That will look at the cost of ... the capex. It'll look at the anticipated revenues. It'll look at the cost of capital, the cost of debt and all those things and determine whether or not the NBN Co can make a profit out of this exercise and whether or not it will be able to ultimately service its capital and repay the capital over a period of time. And we're seeing some early commentary on that in the implementation study that McKinsey has prepared.

A cost-benefit analysis is an entirely different thing. A cost-benefit analysis looks at the cost, but then also looks at the benefits and the benefits could be both financial - that's the business case issue - but it also can be social benefits attached to this whole project.

Now, the social benefits are - sorry to go on about this in the long-winded fashion - but the social benefits are really twofold. They are the social benefits flowing from the fact that in Australia in almost every piece of infrastructure we recognise that there's a difference between the highly or more densely populated areas - the cities as you've described them - and the less densely populated areas which we call rural regional Australia. And as a social policy we have since Federation, if not before, determined that rural and regional Australia deserves to have a social investment made in it, recognising that there are people who live in rural and regional Australia who provide a significant contribution to our economy, particularly in the area of primary industry

and otherwise make social choices, but they vary.

AK: Graeme, do you think that the extent of that investment in rural and regional Australia should be made transparent?

GS: Well, that's a matter that we'll have to see in the context of the business case that NBN Co will produce ...

AK: No, I'm asking you...

GS: ... and it may well ultimately be demonstrated to be transparent, particularly where the private sector is introduced into NBN Co at a point in time into the future. There's another element of the social-cost-benefit analysis also that is going to be quite complex, and that is that this is an infrastructure investment that has, if you like, a lifetime of about 50 to 60 years on any reasonable analysis by any technical expert, about 50 to 60 years.

I don't think there is anyone in the country or in the world that will be able to tell you the benefits flowing from a high-speed broadband network five or 10 years out, let alone 20 or 30 or 40 or 50 years out.

And therefore when people talk about social cost-benefit analyses or cost-benefit analyses, I think that their failure to understand that what we're talking about here is a visionary project much like the Snowy Mountains Scheme, which I will venture to suggest to you was never the subject of a cost-benefit analysis as been described, but was the subject of a range of different elements, not the least of which was a vision as to how it might benefit communities in general into the future.

I'll never forget the fact that about five years ago in 2005 I gave a National Press Club speech and I started to talk about IPTV and the development of the media - and Alan, you'll remember because I know you were very keen on this area - and the fact that we would move online in the media and potentially print media would be moving more and more online over a period of time. And I remember a few of my colleagues saying to me, 'Graeme you are so far ahead of yourself. This is 10 or 20 years off.' Now forgive me, but *Business Spectator*, I think, appeared on the scene about two to three years after that speech was given, and we now have IPTV appearing through a whole range of different options: Telstra's T Box, FetchTV ... the Tivo that we've got with...

AK: But Graeme, just back to the cost-benefit analysis thing: are you saying, therefore, that you think there ought to be a public transparent cost-benefit analysis that brings into account all the things you're talking about or that it doesn't matter?

GS: I'm saying I don't think it's possible to actually do it. I was listening to the Prime Minister today at a speech at the Australia Israel Chamber of Commerce and she described superbly some of the potential benefits that could flow from e-health. She talked of a woman that she met in Tasmania who was confined to her home through serious ill-health, but in fact her vital signs are transmitted every minute on the broadband network, are transmitted through to the local doctor or hospital as the case may be and she said so therefore in terms of the cost, this was not the case of providing her with a permanent bed at a hospital, but rather providing her with the facility of home to have these things transmitted.

Now, you know, I just mention this as an anecdotal example, but when we hear all the various opportunities that can occur, and I look back five years or I look back seven or eight or nine or 10 years at our uses of 9.6 kilobit PC cards and then suddenly we're offered by Telstra 56 kilobit PC cards and we thought all our Christmases had come at once. None of us would accept that sort of process today.

We're constantly looking forward. Moore's law would tell you that would tell you that there will be a continual multiplication of both demand and of services provided in terms of this technological revolution, and I don't think any of us have got the ability, anyone in the world has got the ability to actually look forward to get that far to be able to properly assess the social cost-benefit analysis that would apply to a project such as this.

RG: Graeme, just taking you on from there, more and more Australian companies are competing with overseas service providers or overseas manufacturers. Do you think that as this process

continues the competition regulator is going to become less and less relevant because the competition isn't internal, it's international?

GS: But that's always been the case, Robert, for as long as I've been involved in competition policy which goes back I guess in serious public service terms to 1995. We have always focused on the international or the global nature of competition. So, for example, airports become a relevant factor in terms of pricing of our primary production commodities. We look at international practice rather than purely local practice, and I see that some comments have been just in the past twelve hours or so suggesting that the results of the Murray Darling Basin Authority's review of water availability in the Murray Darling Basin won't have as great an impact on food prices as international commodity prices; that is food commodity prices, might have. We are doing this all the time.

We know this in the context of the BHP/Rio joint venture – whether it's a joint venture I'm not sure at the moment from what I read in the papers – but, you know, we're constantly looking at the international scene. One of the things we have to be careful about, though, in this context is that whenever we talk about import competition, there is always a potential countervailing influence.

Now, for example, in import competition we also have anti-dumping rules and protocols which potentially constrain import competition, and yet we have it put to us by parties that are seeking to move into Australia that, 'we're subject to rigorous import competition - don't take too much notice please ACCC of the fact that we're also one of the leading proponents of anti-dumping (laughs) objections.' So, they're the sorts of facts we have to take into account.

SB: Graeme, you referred to the BHP and Rio production joint venture, which may not go ahead. You were prepared originally to approve the bid by BHP for Rio, but you have issues of concern with the production joint venture. What changed between the two decisions?

GS: Oh, GFC (global financial crisis) and some factors that revealed themselves in the course of the GFC. We put this in our statement of issues, Stephen, but some factors that revealed themselves during the course of the GFC and in particular the ability of Australian producers to withhold production with the corollary impact on price and those concerns we raised in the statement of issues.

Bluescope Steel also raised its concerns about the prices for supply of iron ore. We saw a move away from longer-term pricing arrangements to shorter-term spot pricing.

There are a whole range of factors that sort of flowed on from the GFC that made us just raise some cautionary signs which are in the statement of issues. We've done all of our investigations in relation to the BHP/Rio joint venture, but the parties have asked us not to reach a final decision on the matter. We've said this publically at their request. We've not made our final decision. They wanted to review issues with overseas regulators.

SB: Graeme, this kind of sits with Bob's original question: you've got globally traded commodities where the prices have been set increasingly by the market and by the marginal producer. Why would that be a concern for a domestic competition regulator?

GS: Well, I think as I tried to indicate that if we're dealing with global commodities and global prices, then it may well be that it has less concerns in terms of the competition impacts of the merger or whatever the case might be, but we also need to keep in mind that in the context of BHP Rio joint venture, we're dealing with a market that essentially is in significant supply terms divided up between BHP, Rio and of course Vale of Brazil, and that therefore raises some concerns if two of them are able to join together as a production joint venture and then potentially withhold supply. That can have some interesting consequences in terms of market prices.

AK: Graeme, QR National's prospectus is in the market this week. The business has been floated by the Queensland government. The tracks business part of it is going to be regulated by a Queensland regulator. Do you think that should be the ACCC?

GS: Well, it's not for us, Alan, to say one way or another. That's a matter of the law and the law said that in this context the regulation should be conducted by the Queensland Competition

Authority. The only reason that we ever come to the Australian Competition and Consumer Commission would be if the rail track ... were declared under Part IIIA of the Trade Practices Act. Asciano [rail and ports operator] has made an application to the NCC [National Competition Council]; for that the NCC has issued draft recommendation that said it should not be declared and then we'll have to see how the whole thing plays out.

I have to say to you though that the Queensland Competition Authority is certainly making the right noises at the moment in terms of regulation of access to the rail track and I guess ... There is always a concern when you've got a state authority that may or may not be - and I don't want to make a comment to suggest that Queensland Competition Authority is subject to any direction from the minister - but when they're a bit closer to a government you always have a concern that there may be some influence. But in this case I certainly have to say to you that the QCA is showing every sign of being rigorously independent and we'll have to see how it all eventuates.

Ultimately it is not possible for declaration under Part IIIA of the Trade Practices Act to occur if there is in place a proper access regime, a certified access regime that's been certified by the NCC as being an acceptable, rigorous regime. Now, I'm not sure that Queensland has got to that at this point in time, but we'll just have to wait and see how the thing sort of plays out.

SB: Graeme, can I ask you about something a little bit more personal? You've had a much-publicised falling out with your partners in the DFO business, David Goldberger and David Wieland, who are calling out now for an inquiry into potential conflicts of interest that you've, they say, faced as a shareholder in that business and chairman of the ACCC while looking into the NAB AXA deal. What's that all about?

GS: Oh look, I don't know and I won't comment about it anyway, Steve. It's not appropriate to comment about it.

I think that it's been terribly unfortunate the way this whole thing has turned out, not the least of which is that it highlights the very significant cost associated with people like myself coming from the private sector and going to the public sector. You become a public individual. Your life becomes very public, and leaving aside the financial costs of this particular episode, I think what it's demonstrated is that it can have its own costs. It can impose its burdens upon you personally, but it's not so much that that troubles me. It starts to impose its burdens on your children and your grandchildren and I think that's been... that's the most unfortunate part about this episode. It just simply says to people in the private sector, 'watch out if you want to go into the public sector - you may be exposing not only yourself, but your whole family to an exposure in terms of the media that I actually happen to think is inappropriate'.

SB: So, you think your experience is going to deter people who have got substantial financial interests from roles like the ACCC chair?

GS: Look, I don't know, Steve, but I'd have to say to you that comments that have been made to me since by many, many people in the business community have been to express not only genuine support for the current position, but to express some dismay at the way that this has turned out in terms of the media exposure. And not only of my own financial position - which actually has got nothing to do with the public, it's got nothing to do with my ACCC role - but the media exposure of that and in particular, and the thing that concerns me more than anything, is that the drawing in of my children into this exercise which simply is I think unacceptable, but that's the way the media operates in this country and, you know, you've got to live with that unfortunately so do my children.

I was talking to another very senior public figure the other day and we were just talking about the impact of these things. Now, let's face it, I've had 20 years' experience in the AFL and 10 years of National Competition Council and seven years in the ACCC. I get used to this sort of public examination and public exposure.

I don't think that we in public life ever truly appreciate the impact that this sort of public exposure can have on one's family and I think that's the pity of it all, that we tend to ignore that impact and that's probably the biggest cost that's associated with these issues. And it's one I regret because I do hope it does not deter people from taking on the sorts of roles that are so important in this country and important in the sense of having people who have a sense of understanding about the way business works, the way business has to interact with consumers, with regulators, and

has a – I guess as it was described the other day – has a gravitas, that they could actually deal with business in a way that can bring about the appropriate outcomes.

RG: Graeme, if you had your time again, would you have taken on the ACCC role and secondly that second term particularly?

GS: Oh, there's no question in my mind. Yes, of course I would. It has been certainly the most satisfying part of my professional career and, you know, with all the stress that's associated with a couple of matters that have occurred over the past two and three years, it doesn't matter.

It's been a very satisfying role working with 850 of the most outstanding intellects that I've been able to find in the public service and indeed in many areas of the private sector. The guys in the ACCC, I have to say to you, are just extraordinary in terms of their intellectual power, their rigour and their overall commitment beyond anything you could comprehend to what we do here.

And if you can go home each day and say to - as I do - and say you might have done something that was relevant today to bettering the welfare of Australian consumers, then that's of much greater satisfaction than all the financial rewards you might get elsewhere and in particular it offsets some of the stresses and tensions that can otherwise occur in this role.

AK: But do you reflect now that maybe it was a mistake to hang onto that DFO investment even in a blind trust?

GS: Well, I won't comment upon that. That's not a matter that, again, that should be a matter of public commentary, so I won't comment on that.

SB: Graeme, your term ends next year, the second term. Does the DFO experience bury any prospect that you'll have a third term?

GS: Oh, (laughs) I don't think I'll be ... Look, people are constantly asking me what am I going to do when my term expires and I say, ask me in July next year. I really have enjoyed as I say the public service role that I've had and if there was something in public service that was available after that, I think I'd look upon it very favourably indeed, but well, let's just wait and see in July next year, Stephen.

AK: Thanks very much, Graeme.

GS: Thanks, guys.


SB: Thank you, Graeme.

RG: Thanks, Graeme.

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