



February 11 2016
Ms Christine McDonald
Committee Secretary
Senate Standing Committee on Environment and Communications
Parliament House
Canberra

Dear Ms McDonald

The CCC appreciates the opportunity to clarify its evidence to the Committee at public hearings into the Telecommunications Amendments (Access Regime and NBN Companies) Bill on February 5.

We write because we are concerned that some of our evidence was misunderstood by subsequent witnesses from the Department of Communication, and that this has led members of the committee to misunderstand the nature of innovative dynamics in the communications industry.

We seek therefore to clarify two closely related points where we feel the representations of the CCC and other participants in this process have been understood.

Firstly, in relation to specific evidence provided at the committee hearing on Friday February 5 in the form of an analogy about the role of NBN and innovation in communications, and secondly, a discussion between a witness and the committee that followed regarding the sources of innovation in these markets, whether innovation is occurring, and the appropriate role of both the Department of Communications and the NBN.

Footnoted below is an extract from Hansard that gives rise to our concerns.¹

In relation to the first point, we refer to an analogy I provided in the hearings and how it was interpreted by Mr Mason from the Department.

The evidence from Mr Mason is enlightening because it illustrates that the Department has evidently misunderstood the competitive industry's approach to innovation and its expectations of NBN in this regard.

The analogy attempted to explain the industry's understanding of the role of NBN by comparing the services it provides with the provision of plumbing infrastructure and clear water.

The analogy was an attempt to expand on observations Telstra made its evidence about NBN's role being properly confined to a provider of Layer 2 communications services.

Layer 1 communications services are basic network infrastructure such as pits, pipes, fibre and copper. Layer 2 services are basic data carriage services. Layer 3 services are valued added networking, applications, content, voice, video and other services.

It is at Layer 3 that retail competition and innovation are expected to occur and be stimulated under the NBN policy.

NBN, in the view of the CCC, has no business participating in the conversion of that “clear water” into value added products in competitive markets.

Further, if the competitive neutrality of access to NBN’s monopoly services is to be maintained, retailers should have no reason to engage NBN when developing their plans, trials and product development for retail markets.

NBN should not expect its RSP customers to engage with it when they are developing innovative Layer 3 products and services. In an effectively structurally separated industry, it would be expected that NBN, the upstream monopoly access provider, would not be involved in retail product development discussions.

Returning to the plumbing analogy, NBN should be provide no more than a “tap” into the network that competing retailers can use to convert clear water into value-added products.

There would be even less reason for RSPs to inform the Department of their product development trials and activities.

It is therefore not unexpected that Mr Mason can provide no example of what innovative activity is underway in the industry. It does not follow from that that innovation is absent. Indeed, it is apparent that there is an enormous amount of activity underway.

By way of example, it was reported today (February 11 2016) that Macquarie Telecom is piloting a new voice service with a Melbourne-based start-up cloud company, Dubber. This is an example of a Layer 3 service that requires nothing more than basic access services from NBN.ⁱⁱ

That said, the CCC is unaware of any approaches by the Department to inquire what product innovation and product development work is underway by Layer 3 communications providers. It would perhaps assist the Department’s understanding of the industry’s concerns if it were to seek to attain this deeper understanding.

The CCC submits “bright line” structure separation is an underpinning principle of the NBN policy, and that it is the basis upon which the policy has been historically supported by most of the industry. If NBN is to be given licence to engage with retailers to provide specific “flavours” to its service for the benefit of individual retailers, the consequences for competition and consumers over time are likely to be profoundly damaging.

The CCC would be pleased to provide further information to the committee on request.

Yours Sincerely

David Forman

Footnotes

February 5 Committee Hearing Hansard Extract

ⁱ Senator BACK: Can I go to your comments on pilots and trials. Did I hear you correctly when, in answering a question, you said that as the legislation is framed at the moment, if a service provider went to nbn co said, 'We want to trial a new, innovative technology,' that would have to be made public or made known to all other providers. Is that correct?

Mr Mason: That is my understanding of the law, yes. I would say that under the regime that is proposed there would be quite considerable information in the public domain as to what was happening as well. So the issue is not simply about secrecy. That in itself is an issue, as you would appreciate, but it is also about saying: 'We have this idea. We want to trial it to see if it works and be able to take advantage of that initiative.'

Senator BACK: At the moment they could not do that with any degree of confidentiality with the wholesaler?

Mr Mason: That is our concern, yes. But they need to make clear that the issue of confidentiality will not be fully addressed. It goes beyond confidentiality. It is the fact that nbn co as we understand it would not be able to offer the service for trial. So if I could pick up on Mr Foreman's analogy, if I may for a moment—I think he was talking about water and beer.

Senator BACK: He was; yes.

Mr Mason: So, for example, if someone came up with the idea that they want the water supplied by nbn co to provide a new fancy cocktail drink, they, arguably, would not be able to do that because that would be discriminatory—they would be getting special treatment.

Senator BACK: Even at the trial stage?

Mr Mason: Yes. The tweak to the product would need to be available to all of their competitors, even though they had put no effort into—

Senator BACK: Even though, as yet, there is no a product—because it is a concept. It is not a product yet.

Mr Mason: Yes.

Senator BACK: Nevertheless, a party, be it Macquarie or anyone, wanting to go to nbn—to use that gentleman's analogy about knocking up a cocktail—could not do it with any degree of confidentiality because it has to be in the public arena.

Mr Mason: Yes, but, sorry, I still need to say that the confidentiality issue will not be fully addressed.

Senator BACK: No. I understand that.

Mr Mason: There will be information about that.

Senator BACK: Nevertheless, with the proposed changes, there would be the capacity for somebody to come forward with some innovative new concept and be able to trial it—with the wholesaler?

Mr Mason: With nbn co as the wholesaler; yes.

Senator BACK: With nbn co as the wholesaler, without the rest of the market being part of that process or being aware of it.

Mr Mason: Yes. Well, they would be aware of it because there needs to be notification. That is actually one of the safeguards—in that—

Senator BACK: I do not understand how it changes then.

Mr Mason: It changes because nbn co would not actually be able now to provide, say, the tweaked vanilla product that the innovator wants to use.

Senator BACK: But will they be able to should this legislation be passed?

Mr Mason: Yes, there would still be information about the idea, but not as much information as may be the case. But the way in which we understand the regime works at the moment, if somebody comes forward with that idea, and say, 'We want this tweaked product from you, nbn co, so that we can trial our new idea,' nbn co has to make that available to everybody from that date.

Senator BACK: Now?

Mr Mason: Yes.

Senator BACK: But they would not have to make it available to everybody should the legislation be passed.

Mr Mason: That would be the objective. But after the trial period nbn co would need to make it available to everybody on a non-discriminatory basis.

Senator BACK: I am happy about that to trigger my next question. So in the event that the trial succeeded— this innovative idea succeeded—the benefit that the original promoter of it would have would be time in the sense that they developed it, they are ahead of the game, they are ahead of the market. Therefore, the consumer benefits because there is some new product in the market, and the original party who promoted it gets the advantage because they were there first.

Mr Mason: Yes, there would be that type of advantage, but, again, we have also been quite careful, we hope, in saying they are not being given a honeymoon period, as it were. Senator BACK: No, they are not being given a honeymoon period with the development of it or with rolling it out, but they are receiving some priority in terms of testing it.

Mr Mason: In our view, they would receive the benefit of trialling, testing, getting it more marketable and getting it more market-ready as a reward for their initiative, as it is.

Senator BACK: Which they cannot do now?

Mr Mason: Yes, as we understand it.

Senator BACK: The reason I am asking these questions is I have asked other witnesses if they have participated in pilots and trials, and they have said, no, they have not. It becomes apparent to me now why they have not, Mr Mason. It is simply because there are those other 85 contractors, clients, out there that you are speaking about, and they know very well that by taking an idea forward to nbn co they receive no benefit at all at the moment. It has become apparent to me, in the way that you have explained it. This seems to me to be one of the most significant advantages, both to service providers and then to consumers, because it is through those innovations that consumers are going to benefit.

ii Communications Day February 11 2016 “Dubber signs MoU with Macquarie Telecom for platform pilot, wholesale deal set to follow”