

Chapter 7

Conclusions and Recommendations

Strategic Review and cost per premises review

7.1 The committee found in April 2014 that NBN Co's Strategic Review was 'unreliable in the case of all examined scenarios'. Completed in just five weeks, with no external independent oversight, the committee found that it contained 'financial manipulations and other irregularities'. Over the past 12 months, these concerns have been largely borne out, with key NBN Co management distancing themselves from the report.

7.2 The cost per premises review (CPP Review) released by NBN Co in February 2015 demonstrates that the brownfields fibre to the premises (FTTP) costs contained in the Strategic Review for the 'revised outlook' were inflated by a significant margin. The committee has also found that the costs for the multi-technology mix (MTM) in the Strategic Review are based on a series of unverified assumptions, while Scenario 2 (the so-called 'radically redesigned' FTTP scenario) includes architecture and cost savings already implemented by NBN Co and reflected in previous management's September 2013 corporate plan. The committee notes that the Strategic Review underpinned shareholder ministers' decision to direct NBN Co to implement the MTM in April 2014.

7.3 The prevailing assumption at the time the Strategic Review was published was that the Revised Agreements with Telstra would be complete by June 2014. It is now clear that these agreements will not become unconditional until mid-2015 at the earliest. Despite this, 18 months into the current Government's term, NBN Co has not divulged updated forecasts on how much the MTM will cost or how long it will take to build.

7.4 The release by NBN Co of detailed costs for FTTP and fixed wireless—when the majority of the rollout under this Government will be made up of hybrid fibre coaxial (HFC) and fibre to the node/basement (FTTN/B), for which NBN Co has released no numbers—has the appearance of a political exercise. Further, most of the cost increases for FTTP evident in the CPP review may be attributed to higher rates negotiated by current NBN Co management since September 2013, delivery partner claims settled since the same date, and different accounting practices (such as capitalising operational expenditure for Telstra duct leases and internal labour). Moreover, \$4.5 billion in FTTP architecture savings signed off by previous management—attested to by NBN Co personnel as implemented, and borne out by the Melton 10 trial—are not evident in these numbers.

Recommendation 1

7.5 The committee recommends that NBN Co release an unredacted version of the Strategic Review to enable proper public scrutiny of the assumptions underpinning Scenarios 1 to 5. The committee considers that there are no commercial implications to releasing analysis and forecasts relating to abandoned scenarios.

NBN Co's 2014-17 corporate plan

7.6 The 2014-17 corporate plan NBN Co submitted to government included forecasts for financial year (FY)2015, FY2016 and FY2017, as is appropriate for corporate plans submitted by government business enterprises (GBEs).

7.7 However, the public 'glossy' version of the 2014-17 corporate plan contains forecasts to June 2015 only. It also contains no details of NBN Co's financial model out to 2040 (as per previous corporate plans). Further, forecasts contained in the 2014-17 corporate plan appear to have been manipulated for political purposes. For example, NBN Co's greenfields targets were 'lowballed' to such an extent that it met its 30 June 2015 activations forecast in January 2015, and at its current rate will meet its 'premises passed' target in mid-March 2015.

7.8 The committee notes in this respect that the independent external review process of NBN Co's corporate plan has been cancelled by this government. NBN Co's corporate plan is now being 'reviewed' by shareholder ministers' own departments and personnel who advised on the original assumptions in the Strategic Review.

Recommendation 2

7.9 The committee recommends that the government release the full version of NBN Co's 2014-17 corporate plan, as was the practice under the former government, to enable the proper public scrutiny of the project.

Recommendation 3

7.10 The committee recommends that the government release the full version of NBN Co's 2015-18 corporate plan, when finalised, to enable the proper public scrutiny of the project.

Recommendation 4

7.11 The committee recommends that the government reinstitute the external independent review process of NBN Co's corporate plan to restore the proper probity to the project.

Governance

7.12 NBN Co refuses to divulge the value of the contracts it has entered into on behalf of the taxpayer on the basis that it would harm its commercial prospects, despite the fact that the value of these contracts was released by previous management without harm. Yet NBN Co is content to release detailed information on the cost per premises of FTTP and fixed wireless in the CPP review—down to the last line item—

despite the fact that NBN Co, under the current policy, will continue to roll out FTTP in greenfields and fixed wireless to 2020 and beyond.

7.13 In some cases, NBN Co has become so secretive that it is refusing to divulge even the names of the companies with which NBN Co has signed contracts. It has also become clear that NBN Co has incurred substantial new costs that are not being divulged by the board or management of NBN Co. This includes substantial IT costs expected from the MTM. This level of secrecy is unacceptable to a GBE accountable to the parliament and the Australian people.

7.14 The Revised Agreements, announced by NBN Co and Telstra in December 2014, contain numerous concessions, including *inter alia*:

- the risk of cost increases in remediation has been transferred directly to the Commonwealth. The new remediation arrangements may also result in the transfer of an asbestos risk to the Commonwealth;
- the fitness guarantees for lead in conduits have been conceded, which may lead to extra costs to NBN Co in the future when the MTM needs to be upgraded;
- during the negotiations NBN Co sought no information from Telstra about the cost of maintaining the legacy copper network, despite ample evidence and testimony that these costs are expected to be high; and
- NBN Co has taken on an indefinite liability to maintain Telstra's HFC network, and at the same time agreed to restrictions on its sale. It is unclear whether these arrangements will result in an effective taxpayer subsidy of pay TV services.

7.15 The committee notes that, contrary to the approach used in 2009 and 2010, NBN Co was provided no overt leverage in these negotiations. It appears that the taxpayer has lost value as a result. The committee further notes that the NBN Co officer heading up the negotiations on behalf of the taxpayer still owns Telstra shares.

7.16 On 15 December 2014 Telstra divulged detailed information to the market on the Revised Agreements, including an analyst transcript and key background information. In contrast NBN Co, on behalf of the taxpayer, issued a two-page press release light on details and heavy with political spin.

7.17 The committee remains concerned about the probity issues evident in the appointment of key personnel to NBN Co, identified in the committee's first interim report. Moreover, NBN Co's 2013-14 annual report indicates that NBN Co approved a \$60,000 contract to CicoMilne Pty Ltd, a company 100 per cent owned by one of its own board members, Mr Justin Milne. The Department of Communications also awarded a \$14,000 contract to CicoMilne Pty Ltd. According to media reports, Mr Milne was approached by the Coalition for an NBN Co position as early as June 2013.

7.18 Under the applicable legislation and regulation, GBE personnel are obliged to be apolitical. GBE boards are also required to exercise high standards of fiduciary responsibility and transparency. It is the committee's view that, under the present minister, the board of NBN Co is failing in its responsibilities to the Australian taxpayer and should be held to account.

Recommendation 5

7.19 The committee recommends that the government investigate the governance and probity issues identified in this report and the first interim report. This should include consideration of NBN Co personnel shareholdings, the awarding of contracts to board members, the pervasive secrecy shrouding the project, and the potential liabilities that have been transferred to the Commonwealth as part of the Revised Agreements.

Cost-Benefit Analysis and Review of Regulation

7.20 The Cost-Benefit Analysis (CBA) conducted by the government is deeply flawed and overtly political. Compiled by hand-picked personnel made up of strident NBN critics and former Liberal Party staffers, the CBA is replete with absurd assumptions engineered to deliver predetermined outcomes (demand projections of 15Mbps by 2023) and dubious financial manipulations (operating expenditure for FTTP inflated by 180 per cent compared to 12 per cent for legacy technologies). Moreover, the CBA virtually ignored the public benefits that will flow from high-speed broadband, with 95 per cent of the study devoted to private willingness to pay and only 5 per cent to public benefits.

7.21 The Review of Regulation was conducted by the same personnel who conducted the CBA, with predictable results. Even key industry players have had enough of the incessant politicking and historical revisionism practiced by this government. For example, the Competitive Carriers Coalition noted upon the publication of the Review of Regulation that its recommendations should be 'binned', saying: 'most of the Vertigan recommendations represent nothing more than rehashed, discredited theoretical arguments promoted by opponents of regulatory reform and the NBN'.

Other reviews

7.22 Many of the remaining NBN reviews conducted by this government over the past 18 months exhibit the same shortcomings that characterise the Strategic Review and the Cost-Benefit Analysis. One former board member of NBN Co described the Governance Review as a 'witch hunt', with others noting that: 'we generally disagree with the findings in the [Report], and consider a number of them to be unsupported by the facts'. The Broadband Quality and Availability Report has also been widely lampooned for inaccuracy.

7.23 The 'Independent Audit of the NBN Policy Process' (the 'Scales Review') has been described by a former ACCC Commissioner as 'fundamentally flawed in its evidence base' and insulting and offensive in its dismissal of the evidence. Emeritus Professor Rod Tucker of the University of Melbourne also noted that the assertions contained in the review were 'incorrect, and this taints the credibility of the audit'.

7.24 It is the committee's view that the seven reviews conducted by this government into the NBN over the past 18 months—at a cost to the taxpayer of approximately \$12 million—have been conducted as part of what former ACCC Commissioner Graeme Samuels described as a 'political payback' process rather than a genuine effort to illuminate and reform the public policy framework behind the NBN.

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