

AUSTAR United Communications Limited

**Responses To Additional Questions On Notice From The
Senate Select Committee On The National Broadband
Network**



3 April 2009

Question One

A recent survey of business CEOs found that a significant proportion of CEOs did not fully comprehend the positive benefits that broadband could have on their business.

- 1. How should the Government address this lack of awareness? For example, should the provision of awareness training be an integral component of the deployment of the NBN, to ensure that Australia reaps the benefits of the investment of significant public funding?**

We do not see that it is necessarily the role of the NBN provider to undertake such education and we do not consider it to be a critical component of a successful bid. Awareness of the benefits of the NBN is likely to be an integral aspect of the marketing initiatives of providers of retail services using the underlying network infrastructure. One would expect that awareness of the significant benefits of the NBN would evolve in a vibrant competitive retail market, once the network is rolled out and advanced or improved retail services become available.

It may be that the NBN operator if operated as a separate wholesale business will market the value and benefits of the NBN in order to generate the necessary usage at a retail service level to deliver the return on its investment however we do not believe that there needs to be specific obligations placed on the NBN operator to do so. The funding should more appropriately be invested in the infrastructure and network roll-out.

We do however recognize that there may be limitations in widespread education of the benefits of the NBN where the education is conducted solely through the commercial marketing of specific retail services. We do therefore see an over-arching role for Government in promoting the amazing benefits of advanced and ubiquitous broadband services, through working closely with industry associations on relevant awareness campaigns, through its own adoption of smart digital technologies, and through a holistic approach by Government in adapting future policy. At the heart of this is an approach by Government which includes acknowledgement of the online economy in all policy development, for example Government policy on, say, medicare rebates must recognize that completion of online activities is equivalent to completion of

activities in person. The Government's focus on the digital economy has gone some way in raising awareness of the benefits to society, from business improvements to social inclusion and health and education initiatives. A continued focus by Government on the value of the digital economy will assist, as will a focus on pursuing a robust but flexible regulatory framework for businesses operating in the digital economy. If the services capable of being delivered through the NBN are provided with appropriate regulatory settings then the number and quality of services will flourish bringing with it awareness of the flow-on benefits.

Question Two

Given the support for the NBN to be operated as a wholesale business only, is there any reason why it could not be owned by government?

1. What implications could government ownership of the NBN have for future investment?

The fundamental issue for a partially government funded asset such as the NBN is appropriate separation which delivers a clear distinction between the network, wholesale and retail units of the NBN operator. The key to this, and at its simplest, is that the owner of the network must not also be permitted to provide retail services as well. It does not follow, however, that the network operator needs to be a Government owned entity. In addition, the Government funding of the NBN can be appropriately protected through contractual obligations on the roll-out of the network.

The network operator can operate a viable commercial business at a wholesale level and generate a reasonable rate of return provided the right incentives are in place and appropriate regulatory controls are applied to ensure that discriminatory and anti-competitive behavior is minimized. Ownership by Government is not the answer to the dilemma of preventing anti-competitive behavior (the Government has appropriate regulatory tools available to it), nor is it necessary to ensure that the network is built out into underserved areas (this can be effectively managed by contract in exchange for funding).

Governments are appropriately constrained by responsibilities and duties that a commercial entity is not. These constraints may not deliver future investment where it would be economically viable to do so. The constraints and political implications of infrastructure ownership by Government run the risk of stifling innovation in the future development of the network.

The real risk of Government as owner of the network, as we see it, is that this path for future investment in the network is not clear. How would decisions on future funding be made and on what basis would further network investment be advanced. A clear investment path for Government would need to be articulated at the outset to give certainty to future development.

Government ownership could preclude the development of alternative competing network infrastructure. We believe the majority of the NBN is a natural monopoly however this is not to say that competing infrastructure may be developed at certain levels of the network or in certain geographic areas. A Government owned network with no profit motive could deter the emergence of network competition in areas where it would otherwise be viable.

2. Could the NBN operate as a government owned utility which is leased or franchised out to various access providers who would act as wholesale suppliers?

In light of our view that there are real risks in future network investment if the network was owned by Government, we have not considered in any detail the leasing or franchising of the Government owned network to various wholesale suppliers.

It is not clear whether the model anticipates wholesaling by a single provider in different geographic areas or whether it envisages wholesaling by competing providers in the same areas. The former approach still carries with it issues relating to wholesale and retail separation.

We note that the leasing or franchising of the network to different wholesale suppliers would diminish the economies of scale that a single wholesale supplier could leverage in the systems and technologies required to wholesale the network.

In theory, however, we see no fundamental barriers to such a model.

Question Three

The recent submission by C-Cor states that the expansion and/or upgrading of the existing HFC network would provide a much faster and more economical upgrade of broadband capabilities in urban and regional areas, leaving more funding to provide other technologies to under-served areas.

1. What are your views on this suggestion?

The HFC networks are some 15 years old. AUSTAR owns an HFC network in Darwin which is not currently enabled for telecommunications services. AUSTAR has used the network to provide subscription television services. We are in the process of de-commissioning this network because we do not have a sufficient business case to support an upgrade of the network and provide telephony / broadband services. All our subscription television services have been migrated to the satellite.

The difficulties we have historically faced and still face with providing alternative telecommunications services via the cable network relate primarily to the cost of backhaul services from Darwin. The cost is prohibitive and does not justify the investment required. This issue together with our now suspended program to roll out a wireless based broadband network to a large number of regional areas (commercially and via the previous Government's Broadband Connect Infrastructure Program) support our view that there is a strong case for the inclusion of backhaul networks in the NBN. The availability of appropriate domestic transmission capacity is, we believe, a fundamental component to the successful roll out of access networks in regional areas.

We understand that there would be significant costs in upgrading the HFC networks in metropolitan areas. We strongly believe the focus of the NBN (or at least the Government funded elements) should be on regional areas and, as previously explained, include backhaul capacity. A focus on the metropolitan HFC networks is not helpful in this regard. A better

outcome could be achieved by a focus on cost effective backhaul enabling competitive access networks whether they be fibre, wireless or DSL.

We still strongly believe that it is not for Government to pick or determine the technology winner.

Question Four

What role should the ACCC and ACMA have in an NBN environment? Would there be any advantage in a merging of regulatory bodies to reflect the increasing convergence of NGN technologies?

The ACCC will have a fundamental and critical role in the monitoring and enforcement of the regulatory framework for the operation of the NBN. Any separation or equivalence obligations placed on the NBN operator must be overseen by a robust and independent entity. We believe that the ACCC is the appropriate entity to oversee these obligations. The ACCC must be equipped with effective enforcement powers to ensure compliance and deter flagrant breaches.

The ACMA from is already a 'converged' entity following the merger of the ACA and the ABA, and we believe that the integration of the functions of the previous regulators has allowed a more holistic approach to communications issues. The ACMA will continue to play a crucial role in managing telecoms specific regulation applicable to the NBN operator and providers of telecommunications services over the NBN.

The ACCC plays an independent role as a general competition and consumer protection regulator. The ACMA plays a role in overseeing specific industries, namely the heavily regulated sectors of broadcasting and telecommunications. The question is whether the technical expertise of the ACMA is fundamental to the ACCC's role as overseeing competition and consumer protection in the telecommunications sector. In the UK for example, OFCOM is both the telecommunications specific regulator and the competition regulator for the telecommunications industry. It could be argued that this is a more effective position for a thorough understanding and knowledge of competition issues in telecoms networks, eg. the NBN. That said, OFCOM needs to liaise with the head competition authority in the UK, and

arguably suffers from not being wholly merged in that sense. We believe that with appropriate communication flows and co-operation strategies in place between the ACCC and ACMA, there is no need to consider merging the authorities. In our view, the current ACCC and ACMA work very cooperatively together and the separation of expertise can in many cases allow for appropriate focus.

What is more fundamental in the debate over the structure of the oversight role and what is critical to its success is ensuring that the regulator (be it the ACCC and ACMA or a converged entity) is capable of acting independently of political consideration; is effectively separate from the executive arm of government; and adopts a market-based approach to regulation.

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