



Submission to the Senate Select Committee on the NBN

**Examining the Case for Structural Separation of the NBN: A
Critique of Telstra Arguments and Summary of the Reasons
for Reform**

September 2008

Introduction

The CCC welcomes the opportunity to contribute to the Senate Select Committee inquiry into the national broadband network.

The CCC represents the interests of non-dominant telecommunications carriers in Australia. It has been an active participant in policy discussions in Australia since it was formed as a loose alliance in 2001, and especially since it was incorporated in 2004.

The CCC would welcome the opportunity to present further material or to appear before the committee at its public hearings if the committee believes the CCC can make a useful contribution to its deliberations.

The Structural Reform Debate in the NBN Context

The submissions to the Government's review of regulation of telecommunications reflect a near universal acceptance that the structural separation of the NBN should be a pre-requisite for the successful bid.

This proposition is clearly anathema to Telstra. Telstra has in the past few months invested great energy and resources in attempting to discredit the arguments for structural separation. As might be expected, based on Telstra's past conduct, it has not confined itself to a truthful examination of the facts as it has engaged in this activity.

In keeping with the practice of Telstra in recent years, it has responded to the arguments for structural separation of the NBN with statements that:

- Misrepresent the arguments being put forward in favour of structural reform;
- Are based on assertions that are unsupported by evidence;
- Ignore protests from those whose positions and statements are being misrepresented, and;
- Are often little more than irrelevant personal attacks

Telstra's conduct is based on the strategy that a false statement repeated often and strongly enough will sometimes be accepted as fact by those who have no other knowledge of the facts.

Well motivated participants in the communications industry and broadband debate have in the past sometimes accepted the basic premise on which Telstra has made its arguments as being truthful, on the basis that it would be grossly improper for anyone in possession of the facts to be untruthful.

However, history has shown that this is a perilous assumption.

For example, Telstra has repeatedly argued that it is forced to let competitors use its network at "marginal cost" and that this is why the ACCC is a "rogue regulator". This is

completely untrue. The regulated prices for access to Telstra's monopoly infrastructure are based on a different formula that includes business overheads and a profit margin.

Another example was the assertion by Telstra for many years that ADSL could only be delivered to households with four kilometres of an exchange. This was questioned by competitors for many years, but only in 2007 did Telstra change its story and admit it could deliver ADSL up to 7 kilometres in regional areas. It did this only after the Government announced that it would make available funding for alternative technologies delivered by other companies.

The first part of this submission is therefore a summary of and rebuttal to some of the claims that Telstra has recently made that it purports to present as evidence that structural reform would be a mistaken course for policy makers.

The second part of the submission goes on to list some of the reasons that structural reform of the Australian telecommunications sector should be pursued.

Debunking Telstra's Arguments Against Structural Separation

Telstra claim 1: "Only integration can allow market signals to be communicated/coordinated for investment and to manage investment risk"

This is the claim by Telstra that only a vertically integrated network owner/wholesaler/retailer/content owner will invest in a new broadband network because such an investment is "risky". According to this argument, only an integrated incumbent has the necessary understanding of market trends and demand to be able to manage such a risk.

The first and most fundamental problem with this argument is that it is irrelevant in Australia.

A reader of the various submissions in which Telstra has put forward as it has to sought make this argument could be forgiven for coming away somewhat confused about what Telstra is trying to say. This is because Telstra has appropriated an argument from Europe (where Government's have taken a "hands off" attitude to FTTX investment decision making up to this point) to the Australian context, where both the major parties entered the 2007 election with explicit policy that they would require that a FTTX network be commenced in the next term of Government.

Put simply, the argument presented by incumbents in Europe has been that the decision as to whether or not to build an FTTX network is the hurdle at which investment is presently stalled. In Australia, Government policy has made this decision, and left it to the proponents to price the risk.

The argument being put by European incumbent telecommunications companies is that an FTTX network involves some uncertainty about how much people will pay for various services that might be delivered over it. Therefore, incumbents, which have the lion's share of communications revenue from existing networks, claim they are unwilling to commit to this investment without having this uncertainty mitigated.

Integrated incumbents, not surprisingly, argue that they should be allowed to mitigate this risk by having more pricing freedom and less access regulation. In other words, they are holding out investing to see what regulatory concessions they can force, just as Telstra has been doing in Australia since 2005.

However, in Australia, the Government has acted as the catalyst to investment decision making by deciding that a network will be built. The only risk decision now to be made by proponents responding to the NBN bidding process is what rate of return and regulatory framework is appropriate.

The competitive bidding process proposed by both the present and former Government was designed expressly to illicit the best offers from proponents on that front. That is, to encourage them to reach for the lowest risk premium, rather than to try to lock in the highest they can achieve.

The second problem with the investment co-ordination argument is that it does not bear scrutiny when examined in relation to real world market activity.

The argument by integrated incumbents such as Telstra suggests that co-ordination with upstream backbone network investment and downstream retail activity is required to catalyse the investment in the fiberling of the local loop. The implication is that if the local loop company were separately owned this co-ordination would be difficult.

This is not borne out by the experience in global, high tech, capital intensive industries where there is long term, high risk investment that requires the co-ordination of numerous market participants, such as the airline industry. Nor is it the experience in the communications industry specifically.

Does Boeing have to acquire the world's airlines and airports in order to begin development of a new airliner? These are investment of similar costs and time frames to the NBN, with far more demand uncertainty and many conditions that cannot be controlled or precisely estimated into the future. Conversely, do airports have to own airlines and aircraft manufacturers to invest in new passenger terminals or runway facilities?

These investment decisions require co-ordinated investment by separate companies both upstream and downstream in the market in order to make them work. For example, investment in airports in the billions of dollars must accommodate the needs to new aircraft designs and vice versa.

Yet Boeing is able to analyse and navigate through information about passenger loads of its retail transport customers, multi-jurisdictional rules and regulations, routes analysis and costs projections gleaned from separate companies in the industry. It can then use contracting arrangements to manage the risks sufficiently to allow it to proceed with investments.

Again, the aviation industry is in many ways a far riskier and more uncertain industry than basic communications networks, yet the market devices to identify and manage risk are established and effective.

This co-ordination is not only standard practice in all parts of the transport industries, it is common to industries with an infrastructure element, such as power and gas. It even occurs in Australia in telecommunications among the non-Telstra participants.

Powertel/AAPT, NextGen Networks, Ergon Energy, Optus, Pipe Networks and others have built transmission or backhaul to some locations where they have to interconnect with downstream network infrastructure. These investments are co-ordinated with the investment in access-level technologies by iiNet, Macquarie Telecom, Primus, Internode, Netspace and many others in providing retail ADSL2+ broadband. In fact, these companies all provided ADSL2+ before Telstra, suggesting they either had better market intelligence or a greater appetite for investment and risk, or both.

These market signals have been communicated and led to investment in telecommunications even without the co-operation of the largest retailer and network owner. (Telstra has always refused to acquire services from any other network owner no matter how far below Telstra's own wholesale price it was offered.)

This suggests that communication of investment signals could only improve if the NBN was separated from Telstra's retail, wholesale and network activities.

If the NBN access network were separately owned, its owner would have every reason to have open communication and network planning dialogue with upstream network providers and downstream retailers to maximise the traffic and make future investment efficient.

On the other hand, a completely internalised investment decision-making process carries with it different risks. For example, as discussed above, Telstra did not invest in providing ADSL broadband in many regional areas for many years because it said the length of copper access lines made it unviable. Telstra said that ADSL was "limited" to 3 ½ to 4kms. However, a few years later when competitors were being encouraged to provide an alternative service with Government support, Telstra said that this distance limitation had been "misrepresented" and that ADSL could be provided over lines up to 7km long.

It would appear that this was a case where external market signals in the form of competitive entry changed the “facts” within Telstra that had prevented investment from being initiated up to that point.

Telstra Claim 2: “Separation has failed in the UK”

Telstra’s repeatedly claims that the UK experience of functional separation is a completely cynical misrepresentation of the assessment of all the participants in the UK market, and flies in the face of the empirical evidence. Telstra continues to make these representations despite being repeatedly corrected.

Telstra has sought to give this dishonest impression of the experience in the UK by selective use of partial comments from participants in the UK or by misrepresenting the objective of the separation policy in the UK was something.

Since functional separation was introduced in the UK, the use of the unbundled local loop to allow alternative suppliers of broadband to deliver services to customers has dramatically increased and broadband use and availability has boomed. This was the primary objective of the policy.

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BT resisted structural reform for many years until finally accepting that it was inevitable that reform would be undertaken to stimulate flagging competition. BT CEO Ian Livingston said in July this year that the UK now has “the most diverse, competitive and vibrant communications market in the world”.

Mr Livingston said: “Six years ago broadband take-up was probably on a par with Albania. Today [the UK] has better take up than Spain, Germany, France and Italy.”

Furthermore, Mr Livingston said: “We’ve got some of the lowest prices in the world.”

Telstra Claim 3: “Further structural reforms are not needed because there is no problem”

Telstra’s selective quoting extends even to the reports it has commissioned itself. It has done this because careful reading of the reports demonstrates that they suffer from fundamental flaws.

For example, Telstra has been claiming that a former commissioner of Ofcom, Kip Meek, has said that separation of the type implemented in the UK is unnecessary in Australia. It does not note this important qualification at the beginning of his report:

This report has been written on the basis of a week long trip to Australia, an interview programme with Telstra executives and an extensive review of the

documentation associated with regulatory issues and approaches in Australia and the UK (the most important documents I reviewed are listed in Appendix A). While the evidence I have seen has suggested very strongly that the issues of non-price discrimination do not have the salience they had in the UK in 2004, *I have not discussed the issue with (for example) Telstra's wholesale customers* and my report has to be read in this context. (Italics added)

In other words, Mr Meek is conceding that his analysis of the Australian telecommunications competitive situation is based on information provided by Telstra with no input from competitors!

The fundamental premise on which Mr Meek bases his opinion is that the situation in Australia is “not as severe” as that that existed in the UK is that there is not a problem of non-price discrimination in Australia.

Given that Mr Meek's opinion was formed based on information supplied by Telstra, and that this included Telstra's own operational separation compliance report, it appears he has fallen into the same trap as Prof Martin Cave, another Telstra-commissioned expert who has provided an opinion that structural separation is not required in Australia because there is “current success in controlling non-price discrimination” through the accounting separation rules.

Sadly for them, both Mr Meek and Prof Cave base their opinions on demonstrably false assumptions. In fact, both accounting separation and operational separation rules have failed to adequately address non-price discrimination.

The ACCC repeated reported publicly and directly to the Parliament that the accounting separation rules were too high level to provide a useful indication of the existence of non-price discrimination. In fact, in its very first press release on the release of the first accounting separation report in 2003, the ACCC said:

“While the information in the three reports does not tend to reveal any specific concerns with the way Telstra is providing services to access seekers to enable them to compete in retail markets, it should be noted the reports are highly aggregated in terms of customer and service categories. This means that specific or individual cases may arise which could give the ACCC grounds for concern. Such cases would continue to be looked at on their merits.”

By 2006, the failure of the accounting separation rules was acknowledged to the extent that the government introduced operational separation rules to replace them. However, because there was no effective arm's length relationship created between the internal Telstra activities, this, too has failed.

The ACCC provided the following assessment to a Senate Budget Estimates hearing this year.

Senator LUNDY—In the ACCC’s view is the current operational separation regime that applies to Telstra an effective mechanism for promoting equivalency between Telstra and its competitors?

Mr Samuel—I can give a short answer to that or a slightly longer one. The short answer is probably no. *We continue to receive complaints of conduct that suggest that the objective of equivalence, which was the objective of the regime, is not being achieved.* There have been some instances of conduct since the regime’s inception which, while it is not clear they breach the operational separation plan, do not promote the objective of equivalence which was the fundamental objective of the plan in the first place. In relation to the other objective of transparency, there is some additional reporting that the regime provides. However, this has been of limited benefit and is at a highly aggregated level. I guess, in summary, we would have to say that the regime is fundamentally unduly complex. There is a lot of discretion left to Telstra. There are limited self-regulatory mechanisms and unduly convoluted processes to implement any corrective action if a problem is identified. (Italics added)

Further evidence that the problem of price and non-price discrimination is growing is provided by the number of disputes and legal actions that are presently underway. At the beginning of July, there were 34 access disputes being arbitrated by the ACCC, many of which had non-price as well as price elements, and another 18 that the ACCC had concluded that Telstra was challenging through the courts.

This is the highest level of disputation since full competition was introduced in 1997. Again, this illustrates exactly what the ACCC has said about both the accounting separation and operational separation arrangements. They are so high level that they do not provide an insight into the activity taking place between Telstra and its wholesale customers. Those specific instances of price and non-price discrimination find their way to the Commission in ever increasing numbers through the means of bilateral disputes between Telstra and its wholesale customers.

Curiously, in a paper written some time before he provided his paper for Telstra that he believed there was not a problem of non-price discrimination in Australia, Prof Cave wrote that the Australian operational separation arrangements would not end non-price discrimination, as they were intended to do. He wrote:

“This approach seems singularly ill-equipped to achieve any kind of equivalence in the services offered ... to internal and external customers, as it exaggerates the differences in institutional arrangements between them”.

Therefore, it is clear that the basic premise on which the opinions of both Mr Meek and Prof Cave are founded are simply unsupported by the facts. They argue that there is no need for structural reform in Australia because there is not a serious competition problem.

The facts speak otherwise.

Telstra claim 4 “It will damage share prices”

There has been a running theme from Telstra executives that the Government cannot introduce structural reform because it will harm the Telstra’s share price.

There are two reasons why this argument is not only self-serving and irrelevant, but also highly questionable.

Firstly, the CCC submits that the interests of Telstra shareholders can not be allowed to take precedence over the interests of the broader nation in formulating policy. As the NZ Communications Minister David Cunliffe said when he was introducing structural reform of Telecom New Zealand, his job was to act for the benefit of all New Zealanders and the good of the economy, not to protect TCNZ shareholders from the impact of that company losing market power.

It is not a right of Telstra shareholders to benefit from that company receiving monopoly rents or exercising market power. In fact, the policy and regulatory arrangements have always been predicated on the idea that Telstra should not have that power, and policy makers have reserved the right to act to enforce greater competition if necessary.

Secondly, the relative experience of the BT and the vertically integrated Deutsche Telekom share prices after BT introduced structural reform suggests that structural reform is not necessarily harmful to shareholders. BT’s relative performance actually improved against DT.

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By way of contrast it is interesting to look at the performance of Telstra against the broader sharemarket in the first three years under the management team led by Mr Trujillo. Telstra underperformed the market over a period when the management was seeking greater integration and relentlessly fighting for less regulation and more policy intervention to support Telstra.

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Given other events in the period – such as the vote by shareholders in 2007 to oppose the executive remuneration packages and the decision of the board to ignore this vote – there is reason to believe that there may be reasons other than the actions of the regulator and Government for this share performance, such as a lack of investor support for the management.

If that was correct, any impacts on the share price of Telstra from structural reform of the industry would have to be seen in the context of the actions of management.

In the UK, the BT management were seen as willing and co-operative participants in the process of developing a model of functional separation. In New Zealand, TCNZ was seen

to be resistant, at least in the early stages. The BT share prices went up, the TCNZ share price went down.

In Australia, if Telstra was to agree to be a co-investor in a structurally separated new access network build, it is reasonable to suggest its share price would perform better than if it insisted on putting forward a bid that was incapable of satisfying the bid requirements.

Reasons to Separate: Some Arguments in Favor of Separating the NBN

In contrast to Telstra's arguments against separation of the NBN, the arguments in favour of separation are powerful and supported by empirical evidence independently published. Among the most important are:

- Australians Pay Too Much for Communications Services
- Australians Will Inflated Prices in Future Under Telstra's Preferred Model
- Australia is in a Regulatory Quagmire
- We Know What the Problem Is and How to Fix It
- There Will Be One Network, So Get the Regulatory and Governance Arrangements Must be Right
- Australia Can Leapfrog to an Enduring Solution

Reasons to Separate 1: Australians pay too much

The first reason to separate is both the most simple and the most compelling. Simply, Australians pay ridiculously high prices telecommunications services. In the discussion about broadband in the past three years, it has been too often overlooked that the prices Australians pay for basic services are disgracefully uncompetitive.

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The prices demonstrated in the above OECD tables are the most compelling evidence that the experiment with non-structural competition regulation in Australian telecommunications has been a costly failure. These tables compare prices for a basket of basket fixed line services across OECD countries for small and medium sized and small office/home office businesses. This is the part of the market least protected by consumer regulation and least exposed to competition.

As can be seen, Australia is outperformed by every country in the OECD with the exception of the Czech Republic and Poland.

More recently, a survey commissioned by Optus underlined the point that Australian broadband prices show all the signs of massive Telstra market power. The study, by Spectrum Value Partners, examined the price of broadband plans of the incumbent operators only in 18 countries across five categories of usage from low to ultra high.

Telstra was the most expensive in the world in three of five categories of usage, and second most expensive in a fourth. In the final category – low usage – Telstra was 11th most expensive.

With the economy slowing, inflation and interest rising and cost of living pressures increasingly impinging on lifestyles, this becomes a national problem that can not be ignored. Communications prices find their way into the costs of all industries and fuel inflation.

Reasons to Separate 2: We will continue to pay too much

There is also every reason to believe that if the NBN was built on Telstra's terms, Australians would continue to pay way grossly inflated prices for retail services.

Two pieces of evidence for this are the broadband premium we pay today, and the second being Telstra's own words about its expectations.

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The above graph produced by the OECD examines those countries that have data download caps, and compares the levels of the caps on their broadband retail residential packages – that is, limits on how much data consumers can download (and in Australia, upload) for their basic monthly payment. Then it maps the price consumers pay for additional data when they move above their monthly data caps.

It shows that Australians are hit from both barrels. Telstra has the second lowest data caps in the world, and its price penalty for data above the cap leaps more than five times above that of the next most expensive country.

These are signs of an incumbent with market power who is not afraid to use it.

Secondly, consider Telstra's own words about its expectations of what it will charge consumers using an NBN it controls.

Telstra has said it wants to build a premium network charging premium prices.¹ It says this means it will be expecting "north of 18%" as a rate of return.

¹ "The new Telstra will be a premium provider charging premium prices and we make no apology for that." Phil Burgess. <http://www.australianit.news.com.au/story/0,24897,22864615-15306,00.html>

The CCC commissioned the Centre for Independent Economics to examine two things that follow from this statement. Firstly, it compared an 18% rate of return against a benchmark constructed from the returns on similar assets in the market today. The CIE found that the Telstra proposed rate of return was considerably higher than the benchmark.

The CIE then used the Orani general equilibrium model of the Australian economy to estimate what would be the impacts for the Australian economy of the Telstra rate of return.

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The above slide shows how much extra revenue, in simple dollar terms, Telstra would have to recover from customers to achieve its rate of return. The asset values are taken from Telstra's past claims of what a network would cost. In recent months, in it has repeatedly increased what it claims the network would cost, but provided no evidence to support its estimates. The CIE therefore decided simply to take three of Telstra's estimates as the basis of the modeling – the cost of a metro-only build, the cost Telstra maintained from 2005 to August 2007 and the cost it began discussing in mid 2008.

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The above table illustrates what transferring that much wealth out of the hands of consumers would do to the national economy, according to the outputs of the Orani model under the three cost scenarios.

The CIE report notes that wherever an estimate or an assumption was made, they have taken the most conservative approach. This makes the model output even more concerning.

There are two reasons that Telstra could be seeking such a huge premium on its prices.

The first is simple: it will continue to have unparalleled market power and this means monopoly rents.

The second is that if it builds a network as an integrated company it will be expecting a rate of return that looks more like that of a retail business. But an owner of a vertically separated network would have a very different expectation of the rate of return on a long term investment.

Reasons to Separate 3: We are bogged down in regulatory warfare

The third reason to separate is that Australia must end the regulatory warfare that bedevils this industry. As at the beginning of July, there were 36 matters being arbitrated by the ACCC between access providers and access seekers, and another 18 that the ACCC concluded that were being challenged through the courts. Telstra was involved in almost all.

These are disputes about basic pricing and terms and conditions of access to core regulated services. In other countries, these types of issues are typically resolved by having regulators set the rules and prices but in Australia years are wasted trying to resolve these conditions and prices.

The reason is simple – because Telstra is vertically integrated and the dominant retailer in all markets, delay and regulatory uncertainty disadvantages competitors and advantages Telstra. This regulatory quagmire will continue for as long as Telstra has the incentive to act in this way.

Reasons to Separate 4: We know what the problem is

The ACCC identified the basic problem in 2003 that has created the regulatory quagmire in Australia. It said, simply, that Telstra has the incentive and the ability to discriminate in favor of its own retail businesses against competitors.

The only way to finally deal with this is to change its incentive.

The transition to an NBN represents an opportunity to construct ownership arrangements for the new network that resolve this problem.

Reasons to Separate 5: There will only be one of these networks, so it better be truly competitive

The fifth reason for structural reform is that there will only be one fixed wireline broadband network, so it must be truly and enduringly competitive.

Telstra has recently been trying to argue that the regulatory arrangements should seek to force more infrastructure-based competition. By this it means that competitors should build a duplicate network all the way to people's homes.

Telstra's regulatory spokesman Phil Burgess was reported in September as saying:

“Sol expects that there will be competition. We expect that if we build the NBN someone else will come along within 18 to 24 months and build another NBN network at least in the urbanised parts of the country”

It is economically fanciful to suggest that another investor would come to Australia and consider it viable to build a second national network.

Firstly, the Government has felt it necessary to offer \$4.7 billion of taxpayers' money just to get one national FTTN built, while the previous Government considered it necessary to invest about \$1 billion to support the building of a separate wireless broadband network in regional areas.

Secondly, the cable TV experience in Australia, where Telstra simply overbuilt the Optus cable to make that investment unviable, shows that Telstra will not allow anyone to challenge its integrated monopoly.

One of the advocates of Telstra's duplication proposition, Prof Martin Cave – before he was employed by Telstra – wrote an opinion in the 1990s that the only reason that Telstra would have duplicated the Optus network in the way it did was for anti-competitive reasons. Prof Cave at that time argued that it did not make sense for it to have built a second pay TV network on top of Optus's for any other reason.

And thirdly, analysis by the OECD of fibre network economics in the Netherlands concluded that even in that country, dividing the available market share between competing deep fibre networks would directly drive up prices and reduce demand.

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The OECD examined the costs of a FTTH rollout in the Netherlands, based on modeling by the Ministry of Economic Affairs and separate commercial sector analysis. It concluded: "that there is not a lot of scope in the market place for multiple networks to roll out a new all-fibre infrastructure."

The OECD said:

"If we assume a monopolist with a 100% market share (and no competition from hybrid-fibre networks), Table 2 shows the price per household in this model to be at EUR 57.66/month. When two networks roll out a network, without sharing costs, the average price for a subscription would have to be equal to the 50% marketshare subscription price of EUR 70.50/month.

Adding more networks will decrease the average penetration rate and increase the average price per customer, if we assume all networks will make a profit. The increase in average price will also make it less likely people will subscribe and drive actual penetration rates down. Actual prices for a triple play offer over FTTH in the Netherlands currently range between EUR 45 and EUR 80."²

This assumes multiple networks staying in business at high prices and low penetration rates.

However, this would not happen because the second network would not achieve the penetration rates and returns needed to have a sustainable margin. Australia would certainly wind up with one network for most of the country.

² Developments in Fibre Technologies and Investment, OECD, 3 April 2008

So called intermodal competition has worked in other countries where it is based on competition between cable and telecommunications networks, not between multiple telecommunications networks. This type of competition never developed in Australia because of predatory investment by Telstra in overbuilding the first cable network investment made by Optus in the 1990s. The notion that two identical FTTX networks would make economic sense where two cable networks were a proven failure is absurd.

Reason 6: We have an opportunity to “leap frog” to an enduring solution or be bogged down in massive regulation

The sixth and finally reason to insist that the NBN is structurally separated is that the process that Australia is presently engaged in creates an opportunity only available in one other country in the world at this time.

There are many of views about the Government’s decision to mandate that a national broadband network be built. However, because we are engaged in a process that will result in a network being built, ownership arrangements and a regulatory system can be built alongside each other to ensure that they are fully in alignment. That is, the incentives on the owner can be consistent with the desire to promote retail competition, rather than try to mitigate the conduct that arises because the owners’ incentives are antagonistic to competition.

On the other hand, it can be said with certainty that allowing Telstra to build the NBN as a new asset integrated into its existing businesses will simply mean that the problems of market power will be entrenched and continued.

In fact, the problems will be worse than they are today. Because the deeper fibre network proposed by Telstra will not be susceptible to unbundling in the way that copper lines from customers’ home can be disconnected, Telstra’s market power will not be able to be challenged as it can be today.

It is therefore inevitable that either Telstra’s market power would increase, or that the regulatory regime would have to be significantly broadened in an attempt to force competition.

Not only should structural separation therefore be the path of least resistance in the context of an all-new network, it also avoids the unnecessary future regulatory compliance complications of trying to achieve an incentive change through functional separation.

There is almost universal agreement that Australia needs to implement arrangements that ensure that the network wholesaler has no incentive to discriminate between retailers. If that is achieved, the wholesaler should be indifferent to functional or structural separation.

So why, when functional separation requires a much deeper and more consistent engagement with the regulator to ensure compliance, not choose the simpler to administer structural separation? The opportunity of a new build represents a rare opportunity to start with a clean regulatory slate.

A similar process is presently underway in Singapore. The Government there has identified and grasped the policy opportunity, defining clear separation requirements both for wholesale/retail relationships, and for the ownership of the basic network infrastructure to ensure maximum future competitive tension.

Conclusion

There breadth of the support for a requirement that the NBN be structurally separated reflects that depth of the problems in telecommunications markets in Australia today and the importance that this unique opportunity to resolve them is not missed.

It is to be expected that Telstra would devote an unprecedented level of resources to trying to prevent this happening. Telstra has the wealth to do this because it has enjoyed monopoly rents for so many years. To that extent, the vigor of the Telstra anti-reform campaign is itself symptomatic of the problem.

However, the arguments that Telstra has presented against structural separation of the NBN are weak, inconsistent and illogical. Many years of experience and analysis of the problems in the Australian telecommunications market make it clear that the opportunity for structural reform must not be lost, and the CCC submits that the Senate Committee would be doing a service to the national if it recommended to the Government that this was the message that it should be delivering to those wishing to participate in the NBN bidding process.

The CCC is available to further provide its views to the committee, if requested.

Please contact:

David Forman
Executive Director
CCC Inc
02 62625821