

ATUG's Focus this week is on our submission to the NBN: Regulatory Reform for 21st Century Broadband Discussion Paper. Submissions are due by 5pm on 3 June 2009 to regreform@dbcde.gov.au

The Minister spoke to issues around the NBN in Senate Estimates last week. An extract of his remarks at pgs 49-52 is below:

Senator Conroy—With the permission of the committee I would like to make a short opening statement about the National Broadband Network....

In total the department has had more than 70 meetings with people interested in the National Broadband Network policy. We have established a new company. We are well advanced in recruiting a lead adviser for the implementation study. We have entered into negotiations with the Tasmanian government to build a broadband network in that state. We have released a discussion paper on regulatory reforms and received more than 60 submissions for the regional backbone program.....

.....In a broader context I draw the committee's attention to a recently published OECD report entitled *The role of communications infrastructure in investment in economic recovery*. I believe Senator Minchin may even have put out a press release about this very same report. Among the points made by the OECD are that the effects of telecommunications investment will have a long-lasting impact on the economy which will lay the foundations for future growth, while acknowledging that it may take years to develop. Government policy should focus on four interrelated goals: improving last mile connectivity; using government investment to increase competition, not entrench existing operators; stimulate innovation and growth; and increase social benefits by extending broadband into rural and remote areas. The latest OECD statistics, which rank Australia 16th in terms of broadband penetration and third most expensive out of countries in terms of price, confirm the urgent need for action on broadband in Australia. The deployment of a high-speed broadband network will stimulate the economy and provide jobs for many thousands of Australians. There are also major long-term economic and social benefits.

..... As a reminder for the committee, the essential features of the initiative are that the government has established a company that will build and operate the National Broadband Network. An implementation study will be conducted to advise government on detailed commercial and operational issues, including options to attract private sector investment in the company. The company will invest up to \$43 billion over eight years to build the network. The company will be a wholesale only operator. To preserve this, legislation will be introduced to ensure that customers of the network are able to exercise control over the company.

For the first time Australia will have separation between the infrastructure provider of a national telecommunications network and retail service providers, meaning better and fairer infrastructure access for service providers. The high-speed broadband network will use fibre-to-the-premise infrastructure to connect 90 per cent of homes and businesses. Next-

generation wireless and satellite technologies will be used to service the remaining 10 per cent.....

We acknowledge that there will be legitimate questions with a project of this magnitude. For example, I know many people want to understand, in detail, issues that go to the heart of the National Broadband Network rollout and operation—issues like the precise configuration of the network, the prices that will be offered, future take-up rates, and the design and specification of access services on the FTTP network. I understand and welcome the level of interest and debate that the National Broadband Network is attracting. I also recognise that consideration of these complex issues, amongst others, will be fundamental to the success of the network. That is why we are undertaking a detailed implementation study to establish the solutions and parameters for the project.....

The second major element of the government's announcement was the commitment to improve telecommunications regulation to make it work more effectively, particularly in the transition to the NBN environment. The government has released a regulatory reform discussion paper which canvasses options to improve competition and strengthen consumer safeguards in the period leading up to, and during the deployment of, the National Broadband Network. The government does not favour any specific reform option, but is committed to ensuring the regulatory framework is effective in promoting the long-term interests of end users, without imposing unnecessary burdens on business. Submissions to this process close on 3 June and the government will be making decisions on the nature of any changes following careful consideration of the submissions.....

Having made the announcement we have now made good progress in the implementation phase. The Regional Backbone Black Spots stakeholder consultation paper was issued on 23 April 2009. ...The department has now received submissions in response to the consultation paper and these have been posted on the department's website.

A process is now underway to consider the submissions and determine, based upon the feedback from industry, the priority backbone black spots that might be funded through this program.....

With respect to the National Broadband Network company and implementation study, the company has been established with an interim board made up of senior public servants with appropriate skills and experience to manage the company in its infancy.In terms of a permanent board management an executive search firm is being engaged to recommend names to the government for appointments in coming months.

Immediate steps were taken to engage advisers to conduct the implementation study. The implementation study will be multidisciplinary, including involvement from commercial, technical and legal advisers. It will examine detailed engineering, commercial and structural issues for the project. The study will determine the operating arrangements, detailed

network design and ways to attract private sector investment. The study will necessarily examine the precise costs of various project components, such as equipment, engineering work and rollout. It will also examine the opportunities for NBN Co to support services we expect today and those that will arise in the future, such as smart grids and eHealth. It will also look at ways to provide procurement opportunities for local businesses.

It will provide further opportunities for industry experts to share their views and expertise. Expressions of interest were lodged on 19 May and in coming days a request for tender for the lead adviser role will be issued to a select group of firms. We anticipate the lead adviser being in place by the end of June and the implementation study ready to report to government in early 2010.

Considerable activity has occurred with respect to the regulatory reform discussion paper, as well as the proposal to require the rollout of fibre-to-the-premises in greenfields. As I have mentioned, submissions on the regulatory reform discussion paper are due on 3 June. ...

With respect to the decision to require all greenfield estates to use fibre-to-the-premise technology from 1 July 2010, again the department has undertaken extensive consultations with more than 30 organisations, including local and state governments, planning authorities and representatives from the building and developer industries, and the telco industry. These initial discussions informed the consultation paper, which will be released shortly and will set out the government's proposed approach and seek views on a number of the technical implementation issues which need to be addressed as part of the initiative.

...Therefore, we will not be detailing the contents of either the panel's report to government, the proposals themselves or the ACCC's individual and comparative assessment of the proposals. I also ask that you respect the fact that we are in commercial negotiations with the Tasmanian government. Thank you for your patience.

Given the ACCC's NBN report to Government has not been released, ATUG was pleased that **ACCC Chairman Graeme Samuel addressed ATUG's recent Regional Conference in Canberra 21 May.**

Mr. Samuel's address is at <http://www.atug.com.au/documents/acccregconf09.pdf> . An extract is below:

The government's commitment to ensure the new NBN company is structurally separated guarantees a definitive break from an industry structure dominated by the vertical integration of the incumbent.

Structural separation will mean the NBN operator has a clear incentive to treat access seekers on an equivalent basis. Therefore, the government's announcement provides an opportunity to deal head-on with the difficulties arising from the vertical integration of the current incumbent.

As the government moves to implement its announcement, now is the time to get the ground rules right on structure to support robust competition in the sector in the coming decades.....

Finally, of critical importance to the competition regulator and, of course, to industry, will be the way in which the services that the NBN operator will be required to offer to the market will be defined.

In particular, it is important that the NBN company offers an access service that is sufficiently technologically neutral and flexible to support a wide range of existing and future applications and services.....

For example, it will be important that access seekers have access to a service in which speeds are not throttled in any way and upload and download speeds are as symmetric as possible.

The functionality of the service should be such that access seekers can use it to provide as wide a range of services as possible, in both wholesale and retail markets....

Having largely focussed on the regulatory challenges and opportunities posed by the announcement of the FTTP NBN, I would just like to say a few words about some of the reform proposals set out in the Australian government's regulatory reform discussion paper.....

A few statistics on the operation of the current regime would appear to demonstrate this. Since 1997, the ACCC has been notified of a total of 157 telecommunications access disputes. This is in stark contrast to the three access disputes that have been notified to the ACCC across all other sectors of the economy....

When successfully implemented, functional separation may go some way to addressing concerns regarding the promotion of equivalence in the treatment of access seekers. However, vertical integration of any form into downstream markets, even when subject to functional separation, will not necessarily ensure equivalence.

The discussion paper also sets out possible reforms of the telecommunications competition regime, including revising the way access terms and conditions are determined.

In particular, options include replacing the current negotiate-arbitrate model with powers for the ACCC to set access terms and conditions upfront without waiting for an arbitration or the submission of an access undertaking.

I note that a similar power to determine access terms and conditions upfront has already been granted to telecommunications regulators in Singapore and the UK.

These and other potential reforms could address some of the gaming that has occurred in recent years. It could also create greater regulatory certainty and reduce some of the burden on industry, particularly in relation to individual arbitration processes. The ACCC is giving further consideration to these options as part of the review.....

We have a unique opportunity to redefine the telecommunications industry but hard work will be required to get the settings right.

The core of ATUG's submission will reflect member discussions during 2007 and 2008 on the right regulatory settings for Australia's NBN:

- **Policy** objectives for the NBN regulatory framework must include being in the Long-term Interests of End Users and be complemented by an effectively competitive services market place.
- **Affordability** is the key to take-up. Regulation must support the cost effective building of the NBN as well as recognise that effective competition is the strongest tool for delivering affordable prices. An entry level "safety-net" package should also be developed.
- **End User Choice** – network design is central to competition and choice. Only designs that promote competition should be accepted. When infrastructure competition is not possible, services competition based on open access and service equivalence at a wholesale level must be ensured.
- **Wholesale Service Equivalence** in wholesale services together with effective services competition can only be assured by establishing:
 - clear separation between wholesale and retail units and
 - a new pro active, pro competition independent oversight body with the task of practical implementation of Open Access and Equivalence for Australia's NBN, using facilitation and mediation
- **Customer Experience** in the NBN environment must be carefully managed to ensure a successful transition and good end user outcomes. Service quality and security standards must be established at a level to reflect the key role of the NBN in the lives of all Australians.
- **Ubiquity** – all Australians must be connected to the NBN. Ubiquity is not only about network availability but also about affordability and accessibility. When all Australians are connected to the NBN, the real potential of this for productivity, growth and innovation will be open to end users in every sector of the economy and community, and in all regions of Australia.

ATUG's submission to the NBN: Regulatory Reform for 21st Century Broadband Discussion Paper will be available at www.atug.com.au on Thursday morning.