Communications Law Centre, UTS

Submission to the Assessment of
Telstra's Structural Separation Undertaking and draft Migration Plan

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27th September 2011

Question 2. Do you consider that Telstra's ongoing ownership and control of passive infrastructure required by other access seekers to interconnect with the NBN is likely to impede the realisation of any of the expected benefits to competition from the structural reform? Please provide evidence that supports your reasoning.

The NBN will set in motion a change from full facilities based competition to upstream facilities based competition (such as core networks and transmission links). Access seekers will realise their competitive advantage beginning from POIs, where they interconnect with the NBN and other transmission links.

According to the NBN Co (2011, p. 4), 111 Points of Interconnect (of 121 POIs in total) will be located in Telstra's exchange facilities.

ACCC (2011, p. 40) stated:
" ... access seekers to the NBN will require:

● Access to space within Telstra exchanges in order to interconnect with the NBN. Access seekers will be able to obtain access to this space from NBN Co or from Telstra.

● Access to ducts or external interconnection cables in order to interconnect transmission facilities at Telstra exchanges. Access seekers will be required to seek either regulated or commercial access to this facility directly from Telstra."

Therefore, in many cases, Telstra will retain its natural monopoly at the physical infrastructure layer within the majority of POIs.

The Australian Government (2009, p. 13) stated: "… as of March 2009, the ACCC was considering 51 access disputes, all involving Telstra. Of these, 42 related to the supply of broadband inputs." In the view of the Communications Law Centre, access seekers have experienced discrimination from Telstra (both price and non-price), when they propose to install DSLAMs at Telstra's exchanges. The same issue will arise with regard to access to some POIs facilities, especially ducts and external interconnection cables. A rate card with reference prices, which is introduced in the SSU, will not include Telstra exchange building access services.

ACCC (2010, p. 4) set the Competition Criteria for location of Points of Interconnect (POIs), including:

"(b) there are at least two competitors with optical fibres within a nominated distance from that location which connect a site to an optical fibre network which is connected to a capital city;"

Telstra's transmission network covers the whole country; hence it will be a competitor at almost all POIs. Indeed, there are some features of a natural monopoly here too, because certain access seekers (like content service providers) will require network coverage in a greater number of geographic areas.

The above demonstrates the potential for Telstra to retain significant control over key points of access. iiNet's Chief Regulatory Officer Steve Dalby summarised the position of many Australian carriage service providers: "... Telstra must never again be allowed to operate the national telecommunications infrastructure" (cited in Hutchinson 2011b). This issue is not adequately addressed in the current SSU.

Question 16. Will the SSU coming into effect improve broadband services, in particular outside of metropolitan areas?

Regional, rural and remote areas can be located either within or outside the NBN fibre footprint.

Within the NBN fibre footprint, the SSU will significantly improve accessibility and quality of broadband services. Presently, ISPs must carefully plan the roll out of their access networks to regional, rural and remote areas (primarily via DSLAMs implementation at Telstra's exchanges). Serving regional, rural and remote areas is challenging due to sizeable capital expenditures, as well as a low number of potential customers each of whom must be connected by copper to a Telstra exchange. The NBN fibre footprint will help ISPs connect more customers in larger geographic areas.

Outside the NBN fibre footprint, the SSU will result in some improvement of accessibility and quality of broadband services.

Telstra will continue to provide its copper and HFC services in areas outside the NBN fibre footprint, therefore Telstra will directly compete with services delivered via the NBN. The NBN's fixed wireless networks are based on the TD-LTE technology. Hutchinson (2011a) cited NBN Co Chief Technology Officer Gary McLaren: "Without user contention, each base station would be capable of serving 12 Mbps speeds to 15 houses, although McLaren said the network was being built with user contention in mind and minimum bandwidth of 500 Kbps per user." In such cases, the NBN's actual data rate may sometimes be lower than data rate via current ADSL1 (average 1500 Kbps) as a result of network congestion.

Reference List.

Australian Competition and Consumer Commission 2010, *Advice to Government. National Broadband Network Points of Interconnect. Public Version*, ACCC, November 2010.

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Hutchinson J. 2011a, *NBN Co prepares for wireless tower backlash*, ITNews, 4 August 2011, http://www.itnews.com.au/News/265751,nbn-co-prepares-for-wireless-tower-backlash.aspx

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