Australian Competition & Consumer Commission	**CEDA Discussion Forum** ***Regulatory changes in an NBN environment*** **Ed Willett** **Commissioner** **2 December 2009, Hobart**

Slide 1 [Event details]

Today I will be discussing regulatory changes in an NBN environment and what this means for Tasmania.

The ACCC's views on the proposed regulatory reforms to the telecommunications industry are necessarily informed by the current state of competition in telecommunications markets. Therefore, I'm going to start by making a few comments on this issue.

Slide 2 State of competition

In the ACCC's 2007-08 annual report on telecommunications markets, we noted that competition, particularly in relation to fixed line services, continues to emerge unevenly.[1] There is a continuing contrast between urban and regional areas – not surprisingly, urban areas have seen the greater development of competition compared to regional areas due to a larger population base. However, competition has developed more extensively in the mobile sector across Australia.

Overall, as the ACCC has previously stated, competition has not emerged to the extent anticipated when the last major regulatory reform of the industry was undertaken in 1997.

Slide 3 Broadband in Tasmania

The same can be said for the telecommunications services in Tasmania. Fixed line broadband services have been slow to take off in Tasmania relative to parts of the mainland. The Tasmanian Government noted in its submission to the NBN expert panel last

[1] ACCC, Telecommunications Competitive Safeguards 2007-2008, April 2009, p. 3.

year, that Tasmania has had the lowest broadband penetration rate of any Australian state or territory.[2] At the end of 2008, 39 per cent of Tasmanian households had a broadband connection. In comparison, most other states were around 51 to 55 per cent, with the ACT the highest of any, at 68 per cent.[3]

Anecdotal evidence suggests that competition in the supply of fixed line broadband services may have been hindered due to the lack of competitively priced backhaul services linking Tasmania and the mainland. For example, in May 2008 Internode stopped selling some of its broadband plans due, it said, the high cost of backhaul.[4] Backhaul is an essential link in the supply chain of telecommunications services – this is true across all of Australia.

Basslink is now providing an alternative backhaul service between Tasmania and the mainland for the carriage of internet traffic. Encouragingly, since Basslink has come online, service providers have started providing new broadband services to Tasmanians.[5]

This is good news, but clearly there is a long way to go before telecommunications markets in Tasmania and, indeed, throughout Australia, can be characterised as vigorously competitive.

Slide 4 Competition is important

So, why is competition so important in the telecommunications sector?

Competitive markets are the most effective means of ensuring that high quality services are delivered to consumers at affordable and sustainable prices by the most efficient providers.

Competition leads to investment and innovation in products and services. Competition in broadband services has driven the introduction of new products, such as naked DSL, and plans with different speeds and download caps better targeting consumers' needs. There are also broader economy-wide benefits for other

---

[2] Letter from Evan R Rolley, Secretary, Department of Premier and Cabinet to Ms Patricia Scott, Chair National Broadband Network Panel of Experts, 28 March 2008.
[3] Australian Bureau of Statistics, 8146.0 - Household Use of Information Technology, Australia, 2007-08, released December 2008.
[4] Internode media release "Fast Tassie plans on hold pending better backhaul" 2 May 2008.
[5] Internode media release "NakedExtreme ADSL2+ now in Tasmania" 12 August 2009.

industries that use telecommunications services as an essential input to their own products or services.

Slide 5

The patchy development of competition in the telecommunications industry so far is likely due to the underlying structural issues in the industry, particularly in relation to fixed line markets. This is something the ACCC has publicly commented on numerous times.

As far as fixed line services are concerned, the industry remains highly integrated. The availability of fixed line voice or broadband services has been largely dependant on access to the Telstra's copper network.

However, the industry is now on the brink of a period of significant reform and opportunity. The roll-out of the NBN, the proposed reforms to the structure of Telstra and the regulatory reforms all support the prospect of more effective competition in the future.

Slide 6 The National Broadband Network (NBN)

The construction of the NBN represents a significant shift in the telecommunications landscape. The Australian Government has said the NBN will be a wholesale only, open access network and will not provide retail services directly to consumers. The structural framework envisaged for the NBN environment is likely to go a long way towards addressing the competition issues stemming from the industry structure of today.

Australia is not alone in facing these issues. Other countries have also recognised the role industry structure plays in promoting competition and are choosing to address this with a variety of measures.

For example, the Singaporean Government has announced that it will demand full structural separation of the new national broadband network infrastructure from the operating company. Meanwhile, the United Kingdom and New Zealand have introduced functional separation regimes to address competition concerns created by a vertically integrated incumbent telecommunications provider.

A recent draft report on next generation connectivity from Harvard University noted there is extensive evidence to support the position that open access policies have been important in contributing to broadband penetration, capacity and affordability for first generation broadband.[6]

The challenge is now to transfer what has been learnt to date to the next generation environment. Clearly, the future structure of the industry will be critical in the development of competitive telecommunications markets in an NBN environment.

<u>Slide 7</u> Construction of the NBN

As we know, construction of the NBN began here in Tasmania in September and is a joint undertaking between state and federal governments and Aurora Energy. The towns of Smithton, Midway Point and Scottsdale are Stage 1 of the roll-out and services are expected to begin there mid-next year. A further seven towns in urban, regional or outer urban areas in Tasmania will make up Stage 2.

It is important during the transition to an NBN environment not to erode any of the competitive gains that have been made so far. Clearly, industry will require information on roll-out timeframes and the process for migrating traffic. We are pleased to see that Mike Quigley and NBNCo have already begun the process of open consultation and have expressed a keenness to work with industry and the ACCC regarding appropriate access arrangements.

<u>Slide 8</u> Regulation in an NBN environment

Access regulation will continue to be needed in an NBN environment. Much of the discussion to date has focused on access to a Layer 2 bitstream product. As the ACCC has noted before, defining the access service as close as possible to the basic physical infrastructure should maximise the ability of access seekers to control their own costs and supply chain, differentiate service offerings, innovate and improve service quality.

[6] The Berkman Center for Internet and Society at Harvard University, Next Generation Connectivity: A review of broadband Internet transitions and policy from around the world – draft, October 2009.

Turning now to the proposed amendments to the access regime that are currently before Parliament, it can be expected that these amendments will give the ACCC greater ability to implement regulatory arrangements that promote competition in the transitional period and beyond.

Slide 9 Current regulatory regime

I think it is fair to say the current regulatory regime has not been as effective as we might have hoped. This is demonstrated by the high number of access disputes that have been brought before the ACCC. Currently the ACCC is arbitrating 38 disputes. The range of issues in dispute is also growing, with disputes notified in relation to monthly rental charges, one off connection charges and an increasing number of non-price terms. The bilateral nature of these proceedings means that they necessarily take longer to resolve and impose greater costs across industry. There are flow-on consequences for competition where access terms remain uncertain.

In relation to access undertakings under Part XIC, the acceptance "strike rate" has not been high. Of the more than 30 undertakings submitted to the ACCC to date, only 5 of these have contained 'reasonable' terms that promote the long term interests of end users and, therefore, have been accepted.

Slide 10 Proposed reforms

The proposed reforms will allow for the upfront setting of terms and conditions of access, in relation to both price and non-price matters. Access determinations will operate across a range of currently regulated services but parties would still be free to negotiate outside the regulatory regime if it is beneficial to them to do so.

The ACCC considers that this more streamlined approach should allow for more timely access for parties wanting to provide services and should provide greater regulatory certainty around the terms and conditions of access.

Slide 11 **Looking forward**

The passage of the reform package and beginning the NBN roll-out will have a significant impact on regulation of the telecommunications industry. These developments offer up a number of issues for industry and the regulator to consider. The ACCC recognises there is a need to be responsive to these issues in the changing environment.

The regulatory arrangements that are in place while we transition to the NBN will be fundamental to enhancing competition in the telecommunications industry in the short to medium term. We will continue to work closely with all parties to maximise the prospects for competition.

In the longer term, the structure and design of the NBN and the regulatory regime that accompanies it, will be critical to developing effective competition in telecommunications markets.

Ultimately, these measures should lead to positive outcomes for consumers – a more open competitive telecommunications industry which will provide them with innovative and competitively priced services. We can expect a range of new services and applications to be developed as we see further technological convergence across the industry.

In the meantime, all eyes will be on Tasmania as the NBN roll-out continues over the coming months.