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Communications regulation in a changing environment

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2 Stages of Access Regulation

- Transition to NBN
 - Regulatory asset base with set and forget
 - Telstra structural reform
 - The need for certainty
 - A changing build versus buy scenario
- Post NBN
 - The structure of NBNco
 - Access services and prices
 - Legacy network regulation
 - Greenfields developments



Regulatory asset base with set and forget

- 8 year NBN transition period
- In the meantime, CAN an entrenched, rather than contestable, monopoly?
- Is TSLRIC with MEA approach still valid?
- Possible “set and forget” RAB approaches:
 - Depreciated historic cost
 - DORC
 - NPV of current implied revenues



Telstra structural reform

- ACCC always favoured some form of structural reform
 - A number of particular approaches
- Current question: appropriate approach in context of NBN development
- Options include:
 - Horizontal separation
 - Vertical separation
 - Full structural versus some form of functional separation



The need for certainty

- Transition to NBN will determine opening structure and competition with NBN
- Nature of competition post NBN likely to be different to current environment
- ACCC needs to provide as much clarity and certainty in transition to NBN as possible
 - Eg five year declaration of fixed services
 - Pricing principles for fixed services
- But question about new CAN valuation approach inevitably injects some uncertainty



A changing build versus buy scenario

- To date, accommodative of competitive infrastructure, including via ULL/LSS
- ACCC approach to WLR/LCS/PSTN OA exemptions
- But NBN likely to focus on access to bitstream service
- More akin to wholesale ADSL?
- Implications for efficient infrastructure competition going forward?
- Implications for access versus competition (build versus buy) in relevant services?



The structure of NBNco

- Government policy that NBNco will be a wholesale only service provider
 - But these issues not always simple
 - Especially if there is any vending-in of assets from downstream service provider
- Investment versus operational interests
- Upstream equity limitations (influence and control)
- Downstream equity limitations (interests)
- Limitations on long term contracting or co-operative structures (eg joint ventures)



Access services and prices

- Open access model, rather than 3rd party access
- ACCC considers that core NBNco service is likely to constitute a Layer 2 bitstream service
- Likely to involve backhaul, core network and access services
- Other possible services:
 - Layer 1 dark fibre service?
 - Layer 3 service – compromise separation?
- Pricing likely to be determined on a conventional building block approach using actual build costs
- How much flexibility should NBNco have in determining price/service mix?



Legacy network regulation

- Service providers will need continual access to customers – no time gaps
- Consider phase out regulation of legacy services as NBN becomes available
- Some regulation of legacy services still likely to be required
 - Termination services
 - Any others?



Greenfields developments

- Government policy to mandate FTTP in greenfields developments
- Raises some transitional questions
 - Existing FTTP developments?
 - Current FTTP proposals?
- And some ongoing questions
 - Structure of existing networks post NBN
 - Ownership of existing networks
 - Regulation of existing networks



Other regulatory challenges going forward

- Access to content increasingly important
- Global misleading conduct investigations
- Tying arrangements for ADSL2+ services
- Fixed/mobile pass-through
- Tier 1 internet peering arrangements
- International roaming
- Keeping ACCC/Telstra relationship on an even keel



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