

Submission to the ACCC

Re:- NBN/ Optus agreement and NBN / Telstra agreement..



## 1. Main Issue:

NBN is seeking authorization by the ACCC ( main points) for:-

1. The establishment of a Cartel which includes Optus & NBN
2. An arrangement with Optus for exclusionary provision by NBN of Broadband Layer 2( wholesale) services
3. Migration of Optus customers to the NBN.
4. Optus to be paid to migrate its customers ( voice, broadband & Content) to the NBN ( a bribe).
5. Optus to decommission its HFC cable network.
6. Optus to agree not to compete with the NBN with its HFC network.
7. Optus to agree not to compete with the NBN using its mobile wireless broadband
8. Optus agrees not to market its potentially competing mobile wireless Broadband services against the NBN
9. 20 year term for the Authorization
10. the NBN is seeking similar agreements with Telstra to decommission the Telstra HFC and copper networks & transfer customers to the NBN.

## 2. Facts

Published data for 2010 ( page 23 on the NBN submission) indicates there are 5,391,000 broadband subscribers in Australia.

NBN is installing an Australia wide Optical Fibre network with a 100Mb/s service capability to serve more than 90% of the of the Australian population at an estimated cost of \$45 billion.

This rollout is planned to be complete by 2021.

Optus and Telstra provide HFC based competing services broadband at up to 100MB/s.

Telstra provides HFC cable broadband services at up to 100Mb/s in & around the regions of Brisbane , Sydney, Melbourne, Adelaide & Perth.

This HFC network is low maintenance and represents a sunk capital cost.

This HFC network passes approximately 2.7 Million consumer premises and is connected to 400,000.

Telstra has approximately 1,993,000 non HFC serviced customers the large majority of which would be ADSL

Optus provides HFC cable broadband services at up to 100Mb/s in & around the regions of Brisbane , Sydney & Melbourne,

This HFC network is low maintenance and represents a sunk capital cost.

This HFC network passes approximately 2.2 Million consumer premises and is connected to 400,000.

Optus has approximately 486,000 non HFC serviced customers the large majority of which would be ADSL.

Telstra currently has exclusive telecommunications wiring service arrangements in most multi dwelling units which blocks Optus cabled services to consumers in these premises- A matter for future ACCC review.

Non Telstra/Optus retail broadband providers such as iiNet, TPG, and others service approximately 3,380,000 consumers the large majority of which would be ADSL via the Telstra copper "Last Mile".

The ACC has ruled that Wireless broadband services provided by Telstra & Optus are to be able to compete freely with the NBN.

Foxtel claim about 7 million viewers the large majority of whom would have service delivered over the HFC. Many have a high speed broadband data connection embedded in their set top boxes.

### **3. Situation**

Approximately 10 Million of the Australian population have access to a HFC 100Mb/s Telstra network and approximately 8 million ( a sub group of the 10 Million) have access to the competitive Optus & Telstra HFC networks.

Both Telstra & Optus provide product bundles which incorporate, voice line rental , mobile & fixed line calls Fast broadband & high data allowances.

Eg. Optus offers a HFC based service bundle of , voice line rental with extras, unlimited mobile & fixed line calls ,20 Mb/s & 500Gb /mth broadband all for \$109. mth.

The 20Mb/s broadband component is estimated at \$30/mth.

Telstra offers similar bundle deals in a highly competitive market.

### **4. HFC Past Present & Future**

It is useful to review the market for & technical broadband capabilities that was available in 1997,

Is available today in 2012, and

what might be available in 2027 with the HFC cable network .

1997,

Telstra had just begun to offer HFC broadband cable services at 1Mb/s.

Most consumers used dial up limited to 56Kb/s on a copper circuit and paid a local call for every connection + the subscription to the ISP there was no bundling.

2012

5,391,000 broadband subscribers in Australia.(2010)

900,00 have HFC broadband available up to 100Mb/s

4,491,000 non HFC subscribers , the majority would be using ADSL at a maximum speed of 3Mb/s and an average data use of 2GB/mth.

Mobile data network offer up to 3Mb/s data speeds & 2 Gb/.mth data allowance) are bundled at an equivalent \$10 /mth with and may be the service of choice as backhaul is installed and congestion minimized in the mobile data network.

Internet usage is accelerating driven by smart phones, tablet & notebook computing

2027

Mobile broadband networks are endowed with more spectrum & reinforced data infrastructure allowing higher data speeds,

HFC networks are widely distributed overseas & hence have sufficient critical mass and support from some of the worlds top communications companies so as to ensure the development of higher data rates over the next 15 years,

Wikipedia ( <http://en.wikipedia.org/wiki/DOCSIS> ) notes that DOCSIS 3.0 is the current HFC worldwide data transfer standard supported by Harris, BigBand Networks, Broadcom, Cisco, Conexant, Correlant, Harmonic, Intel, Motorola, Netgear, Technicolor, Terayon, and Texas Instruments amongst other communications technology leaders.

In the USA "Shaws Cable" has announced a 250Mb/s HFC based download service speed and in the UK Virgin Media will begin trialing in April 2012 a 1.5Gb/s download / 150Mb/s upload service.

It is clear that HFC networks have a bright & much enhanced performance future that is already being implemented & trailed in 2012.

Since there has already been a 100 fold increase in HFC data rates in the 15 years from 1997 to 2012 and currently trials are being undertaken at a 15 fold increase on current 100Mb/s HFC services a further 100 fold increase in HFC data speeds to 10Gb/s by 2027 is entirely within the bounds of probability.

### **A Hypothetical Example**

**2 existing Highway companies have built 6 lane super freeways.**

**The Telroad Co. connects Perth, Adelaide, Melbourne, Sydney and Brisbane. It's a fantastic highway system capable of 100Km/hr and the technology is available now so it can be upgraded inexpensively in the future to 1500Km/hr**

**The Opsroad Co. connects Melbourne, Sydney and Brisbane. It's a fantastic highway system capable of 100Km/hr and the technology is**

available now so it can be inexpensively upgraded in the future to 1500Km/hr.

It's a little more modern than the Telroad Co. highway so it can be upgraded more cheaply.

They are high quality construction so have little debt and require little maintenance

The 2 roads run in parallel and compete for traffic & customers by offering discounts & deals and use these deals to leverage other business for each company.

A new Company Nbroad Co. is going to build a 6 lane system that parallels the existing roads by 2021 and in 2021 promises to offer a 100km/hr speed limit.

It will be vastly more expensive and cost at least \$45Billion which is funded by loans.

Nbroad wants to have all the current and future highway traffic of Telroad and Opsroad .

Nbroad wants to eliminate them as potential low cost & higher performance competitors otherwise it will be uneconomic and technologically uncompetitive and be unable to attract customers.

To do this it will buy the Telroad & Opsroad highways and destroy them as the Nbroad road is built in the same locations so that travellers will have no option but to travel on the sole Nbroad highway ( monopoly) available.

Additionally Nbroad is building a 6 lane 100Km/hr super highway to almost all the country towns across Australia whether that is warranted or economically justified or where less expensive roads would have sufficed.

To help pay for these uneconomic roads elsewhere and having a monopoly on the old Telroad & Opsroad routes ( which are the most profitable and most used in the country) it will charge a premium price on these routes ( otherwise known as a Cross Subsidy) so that overall it is profitable.

**Unfortunately travellers on the new Nbread as its rolled out by 2021 will be limited to a 100Km/hr speed limit where as the Telroad & Opsroad roads's would have most likely been inexpensively uprated to 1500Km/hr.**

## **Responses to NBN Co Submission of 20 Jan 2012**

### **Response to Section 6 Authorisation Statutory Requirements.**

**Cl.106** Optus service to multi dwelling units.

Telstra currently has exclusive telecommunications wiring service arrangements in most multi dwelling units which blocks Optus cabled services to consumers in these premises-

This is a matter for future ACCC review and readily mitigated.

Cl.108 Optus has vigorously competed with Telstra in bundled products based on the HFC. My personal experience has been that Optus provides superior customer service to the notoriously poor Telstra customer service and significantly better value.

The upshot is that Optus HFC (with a later entry to market, a smaller footprint and little multi dwelling customers) has 500,000 customers vs Telstra's 400,000 .

It is only in the last 12 mths that Telstra has offered comparable value bundled products so as to stem the continuous erosion of the Telstra HFC customer base.

Cl. 109 Optus has recently upgraded its HFC download capability to 100Mb/s and offers this as a bargain \$15 /mth upgrade to its higher end 20Mb/s bundled services.

Cl. 110 The Optus HFC is a low cost low maintenance network that services a top tier retail market.

It can be readily updated to much higher data rates.

As an independent competitor to the NBN retail providers ( including Telstra) who will be constrained to 100Mb/s when the NBN service is finally delivered in 2021 Optus has many business options through increased performance and leverage to hold & acquire new customers especially as Telstra is constrained by the limited NBN 100Mb/s capability.

The fact that Optus has chosen a low profile marketing and price competition with its much larger and better resourced Telstra competitor is a prudent business strategy.

Cl. 111 I disagree as a competitive and ongoing Optus HFC network targeted at bundled high value communications products and offering much faster data speeds and data allowances that the NBN would act as an effective market limit on the NBN & its resellers.

Cl.114 all the benefits accrue to the NBN if the Optus HFC is decommissioned but not necessarily to the Australian customers of broadband within the HFC footprint.

CI116 Best argument yet that Optus HFC customers will receive lower prices if the Optus HFC network is retained & especially if the Telstra anti competitive cabling restraint in multi dwellings is removed.

CI.117 Cherry picking – a new and unknown commercial term for a network that has predated the NBN by 15 years.

Threats & intimidation to delay NBN rollout where there is competition- This is the latent behaviour of a Bully Monopolist where NBN reveals the behaviour that might be expected of a monopoly provider in areas where detailed oversight & regulation is weak or impractical.

CI.118 The NBN having established that retaining the Optus HFC would result in lower costs for consumers within the Optus HFC footprint now asserts that it will have to charge customers more elsewhere where it has a monopoly . This should be a matter of great concern to the ACCC as it already demonstrates the Monopolist Mindset that is already in place at the NBN.

CI.119. a NBN already acknowledged that the Optus HFC service is likely to be cheaper than the NBN supply.

The NBN says it will delay rollout where the Optus HFC is deployed ( monopolist behaviour) .

Reality is NBN will have an uncompetitive product to Optus HFC and so an NBN rollout would be uneconomic.

The result of the Optus HFC continued operation will be real market competition at the retail level.

Optus already supplies attractive price & services Fusion bundles that NBN resale providers would be unable to match.

It is very arguable that the NBN offerings will be inferior to that available currently from Optus and that in the next 9 years to 2021 there is a clear technological upgrade path available to the HFC .

Since the Telstra HFC network is unlikely to be decommissioned where the NBN is not rolled out the probability of there being abandoned adsl customers unable to access a HFC broadband is remote.

It's a hollow and monopolist argument by the NBN.

CI.119. b. Optus would have a high profit sunk cost network able to leverage all its communications products including mobile as high value bundles and have a distinct market advantage against NBN resellers.

CI.119. c A factualness and specious proposition argument devoid of fact and akin to "motherhood"

CI.119. d Irrelevant as Optus HFC customers will receive lower prices and better technology & services.

Cl.119. e Such a situation would increase the Optus HFC penetration resulting in lower costs for Optus and an incentive to enhance the performance of the HFC network.

Cl.120 I interpret this clause as NBN issues of self interest unrelated to customer service.

500,000 Optus HFC customers is a meaningful market presence & hardly “Cherry picking” whatever that term really means in a commercial & customer service context.

### **Response to Section 7 Public Benefits.**

In summary I interpret these arguments as being about the benefits perceived by & to the NBN and these benefits are entirely devoid of benefits to the broadband consumer or the public in general.

Cl.122, it is NBN who is engaging in unnecessary duplication and the environmental vandalism of adding another set of cables under or above our streets past the 2.2 million premises already passed by the Optus HFC network,

Cl.123 accurately projecting the public benefits in the 9 years to the 2021 NBN rollout / completion or the 20 years life of the proposed NBN Optus agreement is near impossible in the face of fast moving technology advancements.

Most likely the fixed technology formulae such as proposed for the NBN lacks the ability for urgent uptake of new deployment technologies.

It has a high risk of stranding Australia in a technological wilderness of an outdated technology and a monopolistic wholesale cost plus vendor with no incentive to change or adapt for the consumers benefit.

Cl.125 & Cl126 the benefits that accrue to government policy though laudable are not correlate to public benefits or benefits to the consumer.

Cl.127 noted

Cl.128 noted

Cl.129 Whilst the establishment of the NBN as a monopoly Broadband supplier at the wholesale will undoubtedly benefit the NBN it is unsupported that this will actually be of benefit to the consumer.

It is clearly acknowledged by the NBN that retention of the Optus HFC network will be of significant cost benefit to consumers serviced by the Optus HFC network.

One might assume that similar benefits would accrue to consumers serviced by a retained Telstra HFC network as there would then be 3 broadband cable competitors Telstra & Optus would be vertically integrated and NBN wholesale.

It is a reasonable assumption that in a non cartel and competitive free market that NBN would have little opportunity for Monopolistic behaviour within the footprints of the 2 HFC networks.

The NBN submission clearly demonstrates that it will exhibit Monopolistic behaviours using, for example ,delayed rollout in Optus HFC serviced areas to pressure consumers and hence political processes if the Optus HFC is retained as a competitor.

Such threats are only possible where a monopoly exists and the monopolist is willing & confident to exercise that monopolistic power and the monopolistic behaviours are at a detail level that the ACCC might find difficult to regulate & monitor.

Cl.130 It is already established that the retention of the Optus HFC broadband network will result in lower prices for the 500,000 premises already connected to the Optus HFC and the potential 2.2 million within that footprint.

Additionally there is a large upside for higher performance low cost services on the HFC for that potential 2,2 million

This number would increase substantially if the possibility a determination that would free Optus to service the multi dwelling buildings currently tied exclusively to Telstra is considered.

Thus a significant actual & potential group of consumers in excess of 2.2 million would experience significant detriment under the scenario of a decommissioned Optus HFC.

The other NBN arguments relate to "Right scaling" the NBN ( ie the benefits accrue to the NBN and not the public) so it is able to be competitive network wide as well in the areas serviced by the Optus HFC network.

Cl.131 unable to comment as Frontier Economics report not available for review.

Cl.132 No comment

Cl,133 noted

Cl.134noted Objective

Cl135. Competition at retail and cost plus monopoly at wholesale with the decommissioning of 2 competing HFC networks .

The removal of these 2 sunk cost HFC networks + the high cost of entry to the market and the sought 20year authorization will ensure that the NBN has a 20 year + monopoly of wholesale broadband.

It acknowledged that effective competir

The proposed agreements between the NBN and Telstra and NBN and Optus will provide the NBN with an effective monopoly on the provision High speed Internet data services & shut down the 2 existing Hybrid fibre cable networks of Telstra & Optus  
These 2 HFC networks are realistic existing, sunk cost & real low cost 100Mb/s competitors to the impending NMN fibre network.

The agreements currently between NBN and Telstra/Optus additionally force the consumers to be migrated to the NBN's vastly & intrinsically more expensive service which will then have no effective or realistic fibre based competitors.  
This directly affects about 10 million of the urban east coast population who are within reach of the existing two HFC networks.

There will not be any viable competitor to this monopoly at data speeds above 5Mb/s as wireless Internet is already proven both in Australia & overseas to have serious capacity, congestion and data bandwidth limitations.