

Questions

In light of the discussion above, the panel is seeking stakeholders' initial views on the following structural questions:

1. What broader structural model or models for the industry should the panel consider? Why? Should the panel be considering significantly different industry scenarios to those outlined above? If so, what are those scenarios and why should they be considered?

Monopolistic behaviors must be identified, minimized and, where possible, regulations set to self-motivate against such behavior. For example, annual operating costs related to managing and maintaining the network form a significant portion of a tariff. Monopolies have a tendency to try to 'gold plate' and build 'empires'. One common carrier provision which has worked overseas is to include in the regulated tariff a provision for operating costs computed on a rolling historical 5 year operating cost average adjusted for inflation (need to build history first). NBN Co would be motivated under such a provision to improve efficiency/productivity and optimize operating costs year on year because they would profit from operating cost reductions due to the tariff being based on a higher 5 year average and this would continue as long as they could continue improving productivity.

2. Should the panel consider and adopt working assumptions other than the ones outlined on page 5 above? How should the assumptions be prioritised and trade-offs assessed?
3. Should NBN Co continue to be subject to wholesale-only (structural separation) and open access requirements? If so, to what extent and under what circumstances, if any, should those obligations apply to other market participants?

Yes, NBN Co should not be permitted to expand to retail markets and compete with other market participants. If NBN Co elects not to provide a fixed network service in an area but rather depend on another provider to provide fixed network services, then that other provider should be similarly restricted.

4. Should all market participants, including NBN Co, be subject to the same regulations to the greatest possible degree or are specific regulations that do not apply across the board necessary and justifiable in some areas? To the extent to which there should be specific regulations, what is the purpose, nature and scope of the differences?
5. To what extent should competitive neutrality between NBN Co and other market participants be ensured and if so, how?
6. Where providers other than NBN Co supply fixed network services, should there be provisions that ensure consumers secure particular outcomes, for instance by comparison to those generally available from NBN Co?

Where NBN Co provides fixed network services in an area, other providers should be permitted to compete with NBN Co by providing, for example, a poorer wholesale service than NBN at a reduced cost or a superior service at the same or higher cost than NBN Co and

these other providers should be able to follow their own business model in such a competitive environment. If NBN Co elects not to provide a fixed network service in an area but rather depend on another provider to provide fixed network services, then that other provider should provide wholesale services equivalent to NBN Co as a minimum so as not to disadvantage that area.

7. Where an infrastructure provider other than NBN Co delivers outcomes comparable to those delivered by the NBN, what obligations or restrictions should apply on NBN Co? For example, should NBN Co be preventing from overbuilding that network?

NBN Co should not compete in areas serviced by other fixed network wholesalers where that service is comparable to that which is/would be provided by NBN Co at a price consistent with that which is/would be charged by NBN Co. for access.

8. Were NBN Co to be restricted in supplying services in areas serviced to a specified standard by other network operators, what undertakings, if any, should those operators be required to give about their ongoing performance? Noting links with question 3 in relation to wholesale-only and open access requirements, would it be sufficient to rely on Part XIC processes to secure access to services on these networks, or on Part XIC processes that were further refined?

9. What are the essential characteristics that service provided over a network other than NBN Co's should have to meet for those services to be seen as operating on an NBN-comparable basis? For example, should it include the following elements:

- i) ability to support certain minimum broadband speeds;
- ii) provision of wholesale services on an open access basis (possibly involving structural separation or some equivalent method of ensuring non-discrimination) and support for retail level competition;
- iii) an obligation on at least one provider to service all customers within a service area;
- iv) acceptable performance characteristics – for example in terms of latency, jitter, loss and network availability;
- v) price structures and levels that provide affordable access;
- vi) credible, transparent and predictable upgrade paths to higher speeds;
- vii) the ability to support voice services and the various legacy services; and
- viii) clear and reasonable timeframes for connection and service restoration.

Yes to all of the above with emphasis on acceptable performance characteristics [(i) & (iv)] within equivalent price structure

10. To what extent should the provision of non-commercial services by NBN Co be funded through cross-subsidies, and if so, what safeguards, if any, should apply to those cross-subsidies?

Alternate technologies such as satellite, using above ground poles, etc. should be considered where cross-subsidization is required using conventional installations. Consideration should be given to tendering or inviting competitive proposals where cross-subsidization is required.

11. Were it not feasible or sustainable in a competitive market for NBN Co to earn sufficient revenue to enable it to cross-subsidise uneconomic customers, how should services to those customers be provided and funded?

Alternate technologies such as satellite, using above ground poles, etc. should be considered to meet a minimum national/universal performance standards. Where this remains uneconomic, then a transparent cross-subsidization fee approved by the regulator should be added to wholesale tariffs across the networks of NBN Co and others providing wholesale fixed network services.

12. What approach should be taken in new developments? Do they raise particular structural regulatory issues?
13. Should responsibility for the economic regulation of telecommunications remain with the ACCC?

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