

**Category – Liaison to enter****TELECOMMUNICATIONS REGULATORY REFORMS AND THE NATIONAL BROADBAND NETWORK****REFORMS WILL BENEFIT AUSTRALIAN CONSUMERS AND BUSINESSES**

- The telecommunications reforms announced by the Government on 15 September 2009 will drive future growth, productivity and innovation across all sectors of the economy. The reforms will address Telstra's high level of integration to promote greater competition and consumer benefits.

**ADDRESSING TELSTRA'S DOMINANCE**

- Telstra is one of the most highly integrated telecommunications companies in the world. This integration has helped it maintain a dominant position in virtually all aspects of the market, despite more than 10 years of open competition.
- The legislation will seek to promote competition while allowing Telstra the flexibility to choose its future path.
  - The reforms allow Telstra to voluntarily submit an enforceable undertaking to the ACCC to structurally separate. If Telstra chooses not to structurally separate, legislation will require it to implement functional separation. Telstra will also be prevented from acquiring spectrum for advanced wireless broadband until: it structurally separates; divests its hybrid fibre coaxial cable network; and divests its interest in Foxtel.
- The Government retains an open mind on what the best model for structural separation is in the transition to the National Broadband Network.

**NATIONAL BROADBAND NETWORK TO PROMOTE COMPETITION**

- The National Broadband Network (NBN) is part of structural measures to improve competition in the telecommunications sector.
- The NBN Company will be an open-access, wholesale-only provider offering its customers equivalent prices and non price terms and conditions. Unlike the vertically integrated Telstra, the NBN Company will have no incentive to unfairly discriminate between access seekers.
  - This is a rational, pro-competition structure, and one the Government is keen to see replicated within the current market.
- The NBN Company will be operated at arms-length from Government. It will be subject to independent scrutiny by the ACCC like all other companies.
- The NBN implementation study is also considering limits on levels of ownership and arrangements to protect the Government's objective of a wholesale, open access network.

## **OPPOSITION POLICY**

- In media reports following the announcement of the reforms the Opposition has criticised the proposed functional/structural separation of Telstra for its effect on shareholder value and suggesting that it is a means to support the Government's National Broadband Network.

## **BACKGROUND FACTS**

- Legislation supporting the announced reforms was introduced into Parliament on 15 September 2009.

### *Media reporting*

- The former ACCC chairman is reported (17 September 2009, *The Australian* p.2 and *Sydney Morning Herald* p.8) to have raised concerns about [infrastructure-based] competition in the telecommunications sector with a monopoly Government-owned NBN. However, he was also reported as saying that separating Telstra's wholesale and retail businesses would 'do wonders' for consumers while noting difficulties with retail telecommunications companies getting access to Telstra's network.

### *Telstra's integration*

- Telstra owns the only ubiquitous fixed-line telephony network in Australia, as well as the largest cable network, half of the largest pay-TV provider and the largest mobile phone network.

### *Addressing Telstra's vertical integration*

- The legislation will allow Telstra to voluntarily submit an enforceable undertaking to the Australian Competition and Consumer Commission to structurally separate. The Minister can provide guidance to the ACCC on the matters it would take into account when considering whether to accept the structural separation undertaking.
- If Telstra chooses not to structurally separate, the legislation provides for the Government to impose a strong functional separation framework on Telstra. This Bill proposes implementing a functional separation regime by altering the *Telecommunications Act 1997* to require that:
  - Telstra conduct its network operations and wholesale functions at arm's length from the rest of Telstra;
  - Telstra provides equivalent price and non-price terms to its retail business and non-Telstra wholesale customers; and
  - this equivalence of treatment is made transparent to the regulator and competitors via strong internal governance structures.

### *Addressing Telstra's horizontal integration*

- The legislation will seek to promote competition across telecommunications platforms while allowing Telstra the flexibility to choose its future path.

- Telstra will be prevented from acquiring additional spectrum for advanced wireless broadband while it:
  - remains vertically integrated; and
  - owns a hybrid fibre coaxial cable network; and
  - maintains its interest in Foxtel.
- The legislation provides scope for the Minister to remove either or both of the second and third requirements in the event that Telstra submits to the ACCC an acceptable undertaking to structurally separate.

#### *Reforms to the Competition Regime*

- The legislation will streamline the arrangements in Part XIC of the *Trade Practices Act 1974* (TPA) which allow parties to access regulated services so that:
  - the ACCC will determine up-front terms and conditions for a three to five year period, following consultation with industry;
  - the ACCC can determine principles to apply for longer periods; and
  - the ACCC can make binding rules of conduct to immediately address problems with the supply of regulated wholesale services
- The legislation will also reform the arrangements in Part XIB of the TPA so that the ACCC can address breaches of competition law and conduct damaging to the market. The ACCC will no longer have to consult with a party before issuing a competition notice; a process previously prone to delay and obstruction.
- In addition, the reforms include clarification that the competition notice regime applies to content services – such as subscription television services – delivered by carriers and carriage service providers.

#### *Strengthening consumer safeguards*

- Universal Service Obligation (USO)
  - The USO requires Telstra, as the universal service provider, to enable all people in Australia to have reasonable access on an equitable basis to standard telephone services, including payphones. The legislation will strengthen the USO by enabling Minister to specify the standards, terms and conditions of services, connection and repair periods, and reliability requirements of the standard telephone service. Telstra will be required to meet new minimum performance benchmarks. Failure by Telstra to meet the requirements will expose Telstra to a civil penalty of up to \$10 million.
  - The legislation also includes more stringent rules on the removal of payphones and new provisions to allow people concerned about a payphone removal to apply to the Australian Communications and Media Authority (ACMA) to direct Telstra not to remove a payphone. Failure to comply with the new rules will expose Telstra to civil penalties or on-the-spot fines.

- Once the detailed operating arrangements for the National Broadband Network (NBN) have been settled, the Government will consider the broader range of issues associated with the delivery of universal access. Meanwhile the Government will maintain the USO levy at the same rate for this financial year.
- Customer Service Guarantee (CSG) — The CSG currently provides that telephone companies must financially compensate customers where certain minimum performance requirements are not met. The legislation provides new minimum performance benchmarks to require telephone companies to meet or exceed the CSG time periods for a certain proportion of cases. Failure to comply may result in civil penalties or on-the-spot fines.
- Priority Assistance (PA) — PA arrangements require the highest level of telephone service to residential consumers who have a diagnosed life-threatening medical condition. The legislation will require telephone companies to either offer PA services or inform the customer where they can purchase these services.
- Effective Enforcement of Consumer Safeguards — The legislation will provide the ACMA with increased powers to issue infringement notices (on-the-spot) fines instead of commencing procedures in court.

#### *Removal of Unnecessary Red Tape*

- The Government will exempt carriers with a revenue less than \$25 million per annum from paying an annual Carrier Licence charge and reporting to the ACMA, as costs of compliance is often considerably higher than their monetary contribution.
- The ACMA will reduce reporting requirements under the CSG, PA and the Network Reliability Framework, so long as performance benchmarks are being met.
- The legislation includes measures to repeal unnecessary accounting and operational separation requirements once functional separation is in place or Telstra has submitted an enforceable undertaking to structurally separate that is acceptable to the ACCC.
- The Government will remove the requirement on Telstra to provide technical assistance to enable customers to achieve 19.2 kilobits per second internet services, as the Australian Broadband Guarantee offers broadband speeds of 512 kilobits per second or higher to Australians who cannot access metro-comparable broadband services.