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## Australia - Analysis of the Governments NBN RFP

### 1. SYNOPSIS

In early 2007 the then Labor Opposition launched their National Broadband Plan. This was developed against the policies of the then Government. It was hoped that Labor, now in Government, would use its unique opportunity to fix the long-standing problems in the telecoms market, which had led to high consumer prices, lack of innovation and very little effective competition. Its Request For Proposals (RFP) document doesn't address any of these issues and will most probably lead to a continuation of the current unsatisfactory situation. Telstra is the only one who can successfully bid for a national solution under the RFP but they have already indicated that they will offer high-speed broadband at prices that BuddeComm indicates will be unaffordable to 80% of Australians.

### 2. HOW DID WE GET TO WHERE WE ARE NOW?

To answer that question we should look at what went so wrong in the first place to necessitate the spending of \$4.7 billion to fix a telecoms problem.

While the money has been set aside to fix broadband, the real problem is not broadband, or the lack of money. It is a flawed underlying telecoms regime. Some of the results of this faulty regime are:

- Over the last 20 years (since 1988) we have failed to establish proper competition in the Australian telecoms market. Telstra has 90% of all profits, Optus 5% and the other 700 companies share the remaining 5%. Why? Because we operate under a 'self-regulated' regime that allows the incumbent to dictate market and industry conditions.
- Over the last ten years Telstra has grown so powerful that nobody dares to take the company on. Both the previous and the present governments have avoided taking tough action.
- Under this scheme, Telstra has been allowed to delay competition and innovation:
  - Delayed effective voice competition by 12 years (1992-2004);
  - Delayed wholesale competition by 8 years (1999-2007);
  - Delayed the introduction of basic broadband by 6 years (1998-2004);
  - Delayed the introduction of higher-speed broadband by 5 years (2003-2008).

### 3. RFP IS ADDRESSING THE SYMPTOMS RATHER THAN THE CAUSE

As BuddeComm stated in 2002, when the government announced its intention to fully privatise Telstra, it was the slow progress in broadband that finally in 2005 brought about the reactive position taken by the previous government – and this approach is now continuing under the current government.

Initially it seemed that the current government was going to take a more strategic approach, but it now looks as though it, also, is failing to address the underlying problems that have been the cause of all the trouble, dating back to 1988. At that time the then Labor government failed to use the opportunity to structurally change the industry, and allowed Telecom Australia to merge with OTC, which ultimately allowed this company to arrive at its present all-powerful status.

### 4. GOVERNMENT IS SHYING AWAY FROM MAKING THE TOUGH DECISIONS

Telstra's structure is unique in the world; no other telco in the OECD wields such market power as it does.

For more than a decade the Labor opposition (as it then was) campaigned against this state of affairs, but now that they are in power they also are failing to address the issue – this despite the fact that all industry and consumer organisations and many others have asked the government to take strong action.

There is unprecedented support for such a policy but our political leaders have, yet again, failed to address the real issues.

So why haven't they used this golden opportunity to get it right? Why not show the same level of national leadership as governments have shown in New Zealand, Singapore, UK, Netherlands, etc?

The reason is that the government is dead scared about Telstra's threat to unleash what they threatened would be *the mother of all court battles*. The Minister might have used tough language, but he isobviously not going to follow through.

And why would Telstra change under such weak conditions? It would be against their interest and the interest of their shareholders to do so. There is no mandate for change from the government in the RFP, so Telstra would, in fact, be acting against corporate law if they were to voluntarily make changes - or even suggest possible changes - as that would reduce their profits.

## **5. CHOICE: TELSTRA'S MONOPOLISTIC PROFITS OR AFFORDABLE CONSUMER PRICES**

The choice for the government is rather simple:

- Allow Telstra to maintain its high-level profits by charging its customers premium (monopolistic) prices.
- Force Telstra to make structural changes that would make high-speed broadband affordable, but which will see Telstra profits going south.

All the countries that have made those tough decisions have seen a drop in the profits made by their incumbents. That is the unavoidable price that must be paid – unfortunate for the incumbent, but good for the nation. Most countries and their incumbents eventually acknowledge that such monopolistic behaviour can't go on forever. And most incumbents, when forced to change, have cooperated with their governments in creating a new and better telecoms environment. Yet the Australian Government is not willing to follow a similar tough medicine policy.

If the RFP had been clear on this Telstra would have been forced to make some tough decisions. This could have resulted in a change of management and that, in turn, could have created an environment for cooperation, with a good chance that the Rudd Government could deliver on its promise to start rolling out the new NBN before the end of the year.

Within the current RFP it is doubtful that we will see the rollout of a truly innovative and competitive national network before the end of the year. Telstra is more than happy to step in and roll out its version of the NBN, but this will be at a price, they want to maintain their high level of monopolistic profits and the Government will, based on this very weak RTF, have no other choice – if it wants to start rolling out before the end of the year - than to accept whatever Telstra puts in front of them, with perhaps a few minor changes so they can save a bit of face.

## **6. LACK OF LEADERSHIP WILL HAUNT THE GOVERNMENT**

What the Minister has done is simply delaying the serious decision. A Labor Government simply can't afford to tell their voters that they are going to offer them an unaffordable broadband service; as this would be the outcome of a Telstra led solution – the company can certainly not be accused of not making their (pricing) intentions clear.

With perhaps a few minor sweeteners Telstra can, thanks to this weak RFP, now safely stick to its guns. It will not offer affordable high-speed broadband charges under the NBN plan, as that would mean a potentially voluntary cut in profits.

On the other hand, the competition will tell the Minister again that they need nothing less than structural changes before they can offer an alternative, so the result of the RFP will be no serious

competition what soever.

When this all becomes clear in August will it than be back to the drawing board for the government, or will he simply handover the money to Telstra? The easiest option would be to let Telstra run the show, but without structural changes that course would result in a national revolt, as the users will see a dramatic increase in broadband charges – well above the international threshold of around \$40 per month.

This would make the new, government-funded broadband service affordable to only 10%-20% of the residential market. It would make it among the most expensive in the world.

If the Minister then belatedly decides to take decisive action he will still face *the mother of all courtbattles* and that could easily derail the rollout of the National Broadband Network, within the parameters set by the Government – and result in perhaps the first broken promise of the Labor government.

I believe that the Prime Minister is also unwilling to take a tough stance, and if this is the case he is also part of the problem. However, when it comes to the crunch and the NBN plan begins to unravel, it will be the Minister's head that will roll, not that of the Prime Minister.

## 7. STRUCTURAL CHANGES ARE THE ONLY SOLUTION

The government has failed to seize a once-in-a-lifetime opportunity to change the rules of the game and de-monopolise the telecoms market. All the stars were aligned: there is money available, they are in the early stages of their government and they would have won *the mother of all court battles*, as ultimately they are the ones who make the rules.

It would have been better to use the \$4.7 billion to fix the fundamentals rather than using it to try and address the symptoms. The longer the tough decisions are delayed the more difficult it will be to make them. We don't believe that the Rudd Government will get a second chance, without seriously damaging themselves in that process.

It is very worrying that the government has specifically kept open the option of a vertically-integrated company – something that the rest of the world – including the OECD and the EU - has identified as the major stumbling block to innovation, competition and affordable user charges.

## 8. MONEY CAN'T BUY MY LOVE

The Minister thinks he can persuade Telstra to change by dangling the money. However, money is not the problem. If the regulatory regime - and thus the parameters for investments - was clear neither Telstra nor a new consortium would need that money.

- If Telstra is allowed to maintain its monopoly it doesn't need the money. It can easily finance its affairs from its annual profit of around \$4 billion.
- If the government were to implement structural changes newcomers wouldn't need (most of) that money, as they would get affordable access to the national infrastructure. Examples from around the world make it clear that investments are made under those circumstances.

With that level of uncertainty embedded in the RFP it is hard to imagine any serious bidders. Compare this with the Singapore market. It is a much smaller market than Australia, yet the Singapore government has come up with clear policies and a strategic approach and has been able to attract 11 bidders. It seems to me that we should count ourselves lucky if we get two or three national contenders.

This brings me to the next issue ..... Again making a comparison with Singapore, where close to a year is available for the industry to develop its plans, and these are based on a solid regulatory environment – in Australia the industry must do a rush job in just over three months, with no regulatory guidance whatsoever.

The Australian government argues that its plans have been around long enough for the tenderers to get their plans in by July. This is exactly the problem. All of the potential tenderers have been looking at the government's plans for the last year and have all indicated that they require much more clarity on the regulatory environment, before they can put in a serious bid. This request has not been addressed in the RFP, so the government should not blame the industry if they are not responding in droves.

## 9. BUDDCOMM'S PREDICTED OUTCOMES OF THE RFP PROCESS

Without any clear policy from the government on how it sees the future of the national telecoms infrastructure neither Telstra nor the rest of the industry will be in a position to make sound proposals for such a network, within the spirit of the NBN (open networks, innovation, competition).

- The only option Telstra has is to further entrench itself in its monopoly, as there are no requirements whatsoever for it to make changes. It doesn't need the money, so the \$4.7 billion will not entice it to make any serious changes to its well-known position.
- The rest of the industry will have to make a stab in the dark.
  - Should they base their proposals on possible structural changes?
  - Should they overbuild?
  - Should they go for niche markets?
  - Or should they opt for a combination of the three?

And all of that to be worked out within three months, please.

If you have to tender for a network in a functionally-separated environment (where less overbuild is required) your tender would be totally different to one that requires to overbuild the network or parts of it; in which case solid regulatory guarantees are needed to prevent anti-competitive behaviour.

The telecom market has been in a position of uncertainty for over a decade already. It would have been much better to, for once and for all, clarify the rules of engagement up-front.

There has been no leadership from the government in pointing out directions, setting proper policy guidelines or even indicating preferences from a national interest perspective. It simply placed the money on the table and told the industry: *see if you can grab it*.

It appears most unlikely to BuddeComm that anybody else, other than Telstra, can win the national tender –with perhaps the exception of one or two token regional networks that Telstra may allow to drop as scraps from the table (eg Western Australia).

BuddeComm would like to state again, that it sees no problem with Telstra winning the RFP, it would actually be in favour of that and the company certainly is in the best position to do so. What our problem is that their solution will understandably be based on maximising their profits. However, we believe telecoms is essential national infrastructure needed for healthcare, education, e-government, smart grids, etc. So there is a conflict of interest here, the national interest would require the lowest possible price, yet Telstra's interest is in high profits. The Government is the only one who can solve this conundrum and in order to maximise the national infrastructure that is already in place, they can only do so through regulations. That being the case, why than not make those essential discussions upfront, rather than keep pussyfooting around that issue.

The new government seems to be unwilling to fix the problem.

## 10. WHERE IS THE REGULATOR?

The regulatory framework is not defined, and for organisations to develop a proper tender document they need to know what the environment will be in which they can build a network. To ask the industry to develop that regulatory environment is putting the cart before the horse.

Yet another glaring omission in the RFP is the lack of clarity on the role of the ACCC. Others have

already interpreted this as yet another indication the Government is willing to please Telstra.

It is impossible for any national tenderer to come up with a plan that doesn't involve Telstra. Nobody can develop a business plan in the absence of a clear indication that Telstra will be required to cooperate, as there would be far too many uncertainties. Telstra has indicated it doesn't want to work with the industry and it would be more than happy to develop its own plan, without the \$4.7 billion from the government, as long as it is left alone to exploit its monopolistic position.

None of this can be done without a very forceful regulator, one with strong powers to enforce proper government policies.

## 11. THE MINISTER IS AGAIN RAISING THE BAR FOR HIMSELF

As I have said before, the Minister knows this industry inside out – none of the above would be a revelation to him. He is on the record as supporting open networks, competition and innovation. He has been very supportive of the regulatory actions taken in Britain, Singapore, the Netherlands and New Zealand. He has on more than one occasion expressed his dismay at Telstra's behaviour in the market. He has acknowledged the high prices and low quality of services.

He apparently believes that through this RFP he can change Telstra's behaviour.

BuddeComm strongly disagrees.

By cancelling the OPEL contract he cut out an important competitor in the market. We gave him the benefit of the doubt because we believed that he would address this via a strategic RFP.

We don't believe that this RFP will deliver more competition, innovation nor better prices for consumers.

If he fails to deliver this would mean two lost opportunities within the timeframe of one month.

For the sake of the country we sincerely hope that this analysis proves to be totally off the mark – that maybe we have simply failed to see the Minister's grander vision behind it.

Paul Budde

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[Analysis of the Privatisation of Telstra - 1997-2002](#)

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