

## **State Government Submissions on NBN Regulatory Issues**

### **NSW Department of Commerce and NSW Department of State and Regional Development:**

“The proposed tender for the network and associated review of the regulatory framework provides a ‘once in a life-time’ opportunity to help improve competition in the telecommunications industry.

The highest priority for the Expert Panel should be the promotion of competition in the development of the RFP and ultimately in selection of the preferred tenderer/s.

The proposed open access regime should ensure that the network owner treats all service providers seeking access to the network on an equal basis to promote genuine retail competition.

It is highly desirable that there be separation between the network ownership and retail services to avoid anti-competitive behaviour.

The experience in the United Kingdom is relevant where the incumbent telecommunications carrier implemented a functional separation of its activities between network ownership and operations from its retail activities.

It is also relevant that this was only initiated after the Government granted its telecommunications regulator the ability to structurally separate the incumbent carrier.”

### **Government of South Australia:**

“Where the NBN owner/operator is vertically integrated across wholesale and retail operations, complete transparency should be evident on price and non-price terms and conditions.

Infrastructure-based competition has been a core part of the Australian telecommunications landscape for over a decade, and has facilitated the development of highly competitive and innovative broadband service providers, many of which are based in South Australia.

Unless carefully managed, the NBN has the potential to adversely affect these businesses and lessen the benefits of competition.”

Tasmanian Government:

“It is clear that the current regulatory regime is not working effectively and is not promoting the long-term interests of end-users in Tasmania.

This highlights the need for the NBN to be built and operated on a genuinely open-access basis, even if this means that compromises must be made in relation to initial coverage or timeframes.

A genuinely open-access network is likely to require effective separation of the operator from consumer retail activity, either structurally or functionally, including a regime of service equivalence in both price and non-price terms.

The Tasmanian Government agrees with the many commentators and interested parties who have noted that up-front regulatory certainty and transparency will be essential for the success of the NBN.”

West Australian Government:

“There must be non-discrimination in the provision of access to infrastructure and wholesale services for all parties and at every level of the network. Equivalence should be both on price and non-price terms, with all service providers treated in the same manner.

It follows that, to ensure that this can occur, the provider or providers of an NBN should be subject to formal separation of network control from the entity which offers the provision of services at a retail level.

That network retail business should then be subject to the same avenues for the provision of wholesale services as any other retail service provider. The network operator should also be prohibited from providing retail services directly to the market.

Notwithstanding, an open access regime should apply, where another party can seek and obtain access, on fair terms and conditions, to any part of the broadband network on a non-discriminatory basis. Access seekers should be offered equivalence in the way the network operator provides key access services compared with its own network retail business including, but not limited to:

- Taking all reasonable steps to ensure that the technical and operational quality of services and information supplied to the access seeker are equivalent to that which the network retail business is provided in comparable circumstances;

- Services are made available to the access seeker within a timely period. That period is comparable with that for making services available to the network retail business under comparable circumstances.

The open access regime should be regulated by an independent regulator such as the ACCC with powers commensurate with the level of monopoly created.

In particular, consideration should be given to the regulator being provided with powers to intervene where there is evidence of anti-competitive behaviour – without formal complaints necessarily being made.”

Queensland Government:

“Ideally there needs to be full separation between any existing wholesale and retail business units under NBN providers’ ownership or control.

Should the Australian Government not accept full structural separation, all the terms, conditions and pricing for services and access need to be tightly regulated with full accounting transparency.

Retail companies associated with the NBN provider(s) should not be permitted to obtain wholesale prices lower than those available to non-associated companies.

The Queensland Government maintains that the NBN must be an open access network, defined as providing all parties with access to services, facilities or capacity on the same terms, conditions and pricing for similar purchases.

The ACCC’s role should be strengthened to support an open access regime and improved market competition.”