

Dear ACCC,

I write in respect of the following two questions in the ACCC issues paper of July 2011 concerning the non-discrimination provisions of the NBN.

Q 2) Are there any existing and/or potential industry practices which could be considered discrimination in the supply of services and where ACCC guidance is needed?

Q 3) Are there any existing and/or potential industry practices which could be considered discrimination in the supply of services, but which you do not consider would be counter to the objectives of the non-discrimination provisions, such as the promotion of competition?

Executive Summary

The ACCC decision in November 2010 to impose on the NBN architecture more than 120 Points Of Interconnection (POIs), rather than the technically optimal 14 POIs, is in fact anti-competitive, increases wholesale costs to all retail providers and especially to smaller ones, slows the fibre rollout, and increases the risks of network outages for regional cities from a single point of failure.

A new class of "NBN POI aggregator" has appeared, being a company which will buy connections to all NBN POIs and on-sell universal access - at higher wholesale cost - to small RSPs.

This creates a two-tier market, in which four incumbent owners of longhaul fibre are unfairly advantaged and every other provider will be unable to compete for regional customers on a level playing field.

It imposes on NBNC_o an additional infrastructure and operational cost that unnecessarily increases the common wholesale charge it must recover from all providers and raises the retail price for customers.

Finally, it increases the complexity of network routing and cancels large areas of in-built redundancy of the original 14-POI proposal, risking outages due to single points of failure which would not have happened if the design was left to the experts instead of lobbyists for the longhaul fibre owners, who are acting quite legitimately in the interests of profit rather than competition or customers.

Therefore, in the best interests of both Consumers and Competition, to avoid retarding the NBN rollout, and to improve the robustness of the network, the ACCC should allow NBNC_o to determine the best network architecture, including the optimal number of Points Of Interconnection.

Background

The *NBNC_o Corporate Plan 2011-2013* was released in late December 2010.

It had been delayed several weeks by an ACCC determination in November 2011 that the proposed network architecture comprising 14 Points Of Interconnection (POIs) was anti-competitive against four longhaul fibre owners, and that more than one hundred additional facilities must be provided by NBNCo.

Real estate, construction and operation costs of more than one hundred additional regional installations now had to be costed in by NBNCo, and more complex network routing and billing had to be designed.

The entire NBN wholesale cost structure from that decision is predicated on the costs of operating a hundred additional and unnecessary regional facilities, to the exclusive benefit of four large providers and the new POI aggregators.

14 POIs are NOT bad for longhaul fibre owners

The rationale of lobbyists for more POIs (they actually sought over 200) was that four companies own significant longhaul fibre assets that would be stranded if only two redundant POIs per capital city were provided.

But are they really disadvantaged?

In fact, many corporations, retail chains and government departments have extensive private networks requiring longhaul fibre, and this will not change under the NBN.

NBNCo itself needs longhaul fibre, and it will be a major customer of those fibre owners rather than build its own fibre longhaul, in order to save time and expense.

In other words, those four fibre-owning companies would not, in fact, be disadvantaged by the 14 POI architecture, indeed they will have access to greater and growing revenue streams, maximising the income from fibre that is today largely "dark" and under-utilised.

I therefore contend that the number of POIs will **NOT** materially affect the profitability of the longhaul fibre owners, but I don't blame them for trying to maximise their shareholder profits by excluding the minnows from equal access to regional customers.

The remainder of my observations concern the effects on competition from hundreds of small providers, costs to customers and network robustness.

14 POIs are better for competition

The level playing field test is twofold:

- can any retail provider sell a service to any customer, regardless of geographic location and the last-mile technology (fibre, wireless or satellite) of their last-mile NBN connection, for the same wholesale access cost? and
- can any customer buy a service from any retail provider, and not only from a few

large providers?

Plainly, the emergence of NBN POI aggregators creates a two-tier cost structure for RSPs. The four providers with their own longhaul fibre to reach every POI pay the same NBN wholesale access charge for any customer in the nation. But every other RSP must pay a third-party longhaul fibre owner, or an NBN POI Aggregator, for additional fibre to reach non-capital city customers. They must recover the extra cost of reaching regional customers. They may do so by charging a higher price for regional customers, or by lowering their profit on a regional customer, or by charging all customers an averaged surcharge to cover the cost. Only four providers will be able to service regional customers on a level playing field, and hundreds of others will be disadvantaged.

Regional customers will then have an effective choice of only four providers, and experience with banks and supermarkets proves that customer service will be the first area to decline, followed by cost. Some RSPs may wish to offer regional services at a higher rate than for capital city customers to recover the extra costs, but the longhaul fibre owners will surely then ask the ACCC to stop them from charging more.

14 POIs are better for network architecture

NBNCo's ideal architecture sees two geographically separate POIs in each capital city, providing redundancy against outages of any single facility. Since NBNCo would be in control of the statewide network it would manage multiple redundant paths back to each capital, so that a single broken fibre trunk would not cause a regional centre to be blacked out.

Not only does an arbitrary inflated architecture of 120+ POIs cost NBNCo more to build, staff and maintain, it increases network complexity and causes some of the regional redundancy to be lost. In practice this means that the inevitable occasional backhoe incident will be more likely to cause a broadband outage of entire regional cities.

NBNCo has the engineering expertise to be better placed than armchair experts like myself.

It may be that 16 or 20 POIs are better than 14.

But it is very easy to see that 120 POIs are worse than 14.

Recommendation

That the ACCC revise its 2010 determination regarding the optimal number of Points Of Interconnection to the NBN, since the overwhelming subsequent evidence is that the commercial interests of fibre owners are not disadvantaged by allowing NBNCo to determine the appropriate location and number of such POIs.

I remain

Yours sincerely
Francis Young
Maitland NSW