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Broadband needs big, fat open book

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CAN a deal be struck between Telstra, the government and the National Broadband Network Company? Yes. But the fact a deal can be struck hardly means it is in the best interests of the community. And the direction in which the whole saga seems headed raises crucial issues of transparency and accountability.

Start with a possible deal. A commercial agreement with Telstra could significantly improve the national broadband network's prospects. This is not because NBN Co needs a deal to gain access to ducts, trenches and other assets it could use to deploy its network; there is already an access regime in place and the Australian Competition and Consumer Commission has ample powers to tweak that regime should it prove inadequate. But NBN Co must hope that it can get access at a lower charge than will be set by regulation.

This is not to deny that NBN Co has an alternative to using Telstra's ducts: it could rely on aerial cabling, as it is doing in Tasmania. But aerial cabling is neither cheap nor easy. If a community backlash is to be avoided, the cables would need to be strung at the top of poles, rather than at the intermediate height that Optus and Telstra used to deploy their hybrid fibre coax pay-TV networks in the mid-1990s. Communications Minister Stephen Conroy already has committed to as much. But that means using licensed linesmen to do the job, as placing cable at that height involves hazards. Finding large numbers of linesmen is no simple task. Of course, the government could legislate to reduce safety standards, but just wait until the first fatal accident occurs.

Add to this the fact poles are vulnerable to the floods and cyclones that are common in northern Australia, and it becomes clear that aerial deployment involves high costs. But avoiding those costs is not where the main gains to NBN Co would come from.

Rather, it is from obtaining guaranteed and smooth migration to the NBN of Telstra's customer base, and the rental revenues it generates. Those revenues would provide NBNCo with immediate cashflows, helping to finance its high deployment costs. Even more important, an agreed handover would allow NBN Co to avoid competing with Telstra's existing access networks.

The operating costs of those networks are very low, especially in metropolitan areas, and are likely to remain so for many years. New techniques, some implemented only since the NBN project was announced, allow copper to be upgraded to speeds close to the NBN's at very low incremental costs. As for the HFC, it could compete with the NBN for residential and small business customers at incremental costs that are lower yet.

As a result, were Telstra and NBN Co to compete, NBN Co would struggle. Telstra's margins would also be forced down, but not by much; as it is the lower-cost supplier, many of its costs are sunk and it has a large retail base.

Little wonder NBN Co wants to avoid that competition. Little wonder, too, that Telstra's directors will not readily hand over to NBN Co the margins Telstra's lower operating costs allow. If they did, irate shareholders would soon meet them in court.

True, the government thinks it can force Telstra into a deal by relying on sticks rather than carrots. But both Telstra and (one presumes) the government know the threats are paper tigers. The greatest is that of preventing Telstra from bidding for the 4G spectrum. This would harm Telstra, though not greatly, in five to 10 years; but it would trash the revenue to government

from the spectrum auction sooner than that. Telstra can easily ride out the wait; a government that may not be around that long cannot.

Given that, the simplest solution would be for NBN Co to pay Telstra out, recovering that payment through future profits. But even with Telstra out of the way, those profits are highly uncertain.

NBN Co, understandably, will not want to make its future financial performance seem even less rosy by having those payouts appear as costs on its books.

Nor will the government want those payouts to appear as outlays in the headline budget figures and forward estimates. Even with the economy doing well, those are under enough pressure as things stand. This gives the government strong incentives to sweep the NBN spending, including any side payments to Telstra, under the carpet. Hence the search for ways to take the payments off-budget.

There are many ways in which this could be done. Whether they will prove acceptable to the Telstra board is difficult to say.

What can be said is that none is good policy.

Ultimately, it would be poor public policy to allow the NBN Co to strike a collusive deal with its likeliest rival. Forcing that rival into such a deal makes even less sense. As NBN Co chief executive Mike Quigley accepted in his evidence to Senate Estimates, in most countries fibre, copper and HFC networks compete.

Academic studies suggest that competition yields large benefits to consumers in lower prices and better service.

Given that, it is inconceivable that the ACCC would authorise any such collusive deal. Even if it did, that authorisation would almost certainly fail on appeal. But the word on the street is that the government will legislate to protect any deal from being challenged in the Competition Tribunal. Such an exemption would be both unprecedented and deplorable.

It would be even more deplorable were deals that impose burdens on taxpayers and consumers not transparently disclosed, including in the statutory accounts of the government entities for which they are made and then in the budget. That is what budgets are for: to allow parliament, and hence the community, to scrutinise every aspect of the government's proposed use of public resources.

The underlying principle is simple but powerful: what governments do not disclose, they have no mandate for. If the government wants a mandate for the NBN, it should publish the implementation report, fully disclose the projected spending requirements of the NBN and ensure that any NBN-related costs appear, transparently, on the books of NBN Co.

Until that is done, the NBN, whatever its merits, will remain seriously tainted.

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