

# The Australian

## Shield protects NBN from competition

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An illustration by Jon Kudelka.

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### **THE Gillard administration is rolling back the reforms of previous Labor governments.**

YESTERDAY, the Gillard government became the first government in decades to seek to exempt a significant industry from the competition provisions of the Trade Practices Act.

The industry is telecommunications; the exemption is for the agreements between NBN Co, Telstra and potentially other industry players. The National Broadband Network, we were told, was needed to save competition; clearly, so as to save competition, the government has decided it must be destroyed.

That it has come to this is readily understood. The NBN was never viable without Telstra's agreement. But the agreement that was struck is profoundly anti-competitive.

Under that agreement, Telstra would not only sell its customers to NBN Co: it would also scrap its hybrid fibre coax network, which would otherwise have many years life ahead of it.

As the chief executive of NBN Co, Mike Quigley, recognised in giving evidence to a Senate committee, HFC networks are fully capable of competing with the fibre-optic network NBN Co proposes to deploy. Indeed, in countries as diverse as the US, Canada, Britain, France and Switzerland, it is HFC networks that have set the pace in ensuring consumers benefit from ever higher speeds at ever lower prices.

To scrap so valuable an asset, Telstra obviously requires compensation. And that compensation will be provided with taxpayers picking up the tab. Taxpayers, in other words, are being forced to pay to destroy existing, perfectly serviceable, capital and drastically limit the choices consumers are free to make. This is unprecedented in Australian economic history.

But it gets worse.

For it has now been disclosed (not by NBN Co or the government, which are refusing to disclose information, but by Telstra) that the agreement also hobbles wireless competition, including by prohibiting Telstra from encouraging customers who might move to NBN Co to choose high-speed wireless services instead.

Yet both Broadband Minister Stephen Conroy and Quigley have claimed time and again that wireless is not a serious rival to the NBN. If so, why prevent it from competing as best it can?

And how can it possibly be justified for the government to deprive consumers of options that are available to them, on an unimpeded basis, in virtually every country worldwide?

Those questions have not been answered. But without the exemption the government is proposing, they would have to be.

This is because the act does not prohibit agreements (such as this one) that are likely to substantially reduce competition. Rather, it requires that they be authorised by the Australian Competition and Consumer Commission.

That authorisation can be obtained only if the parties demonstrate that the public benefits from the agreement outweigh its competitive harm. Moreover, the parties need to make their case in a public, transparent process, where their claims are subject to rebuttal and, crucially, where the outcome can be appealed to an independent tribunal. In contrast, under the government's legislation, the minister can effectively direct the ACCC to approve the agreement.

It follows that the exemption the government is seeking is not needed for the agreement to proceed. Rather, it is needed for the government to escape the process that would test, openly and subject to tribunal review, the public benefits the NBN is claimed to bring. The exemption has, in other words, one aim and one aim only: to avoid public scrutiny.

Ensuring that scrutiny applies every bit as much to proposals coming from governments as to those coming from the private sector was at the heart of the 1993 Hilmer report. The subsequent reforms, initiated by the Keating government under the rubric of national competition policy, set a crucial precedent: that the commonwealth government would scrupulously respect the disciplines it wanted the states and territories to accept. Plainly, if the commonwealth exempted itself, it would be only a matter of time before other jurisdictions followed; equally plainly, the result would be a return to the pervasive inefficiencies that for decades plagued our economy.

That is the precedent the government is trashing. There is no parallel to this internationally. Rather, broadband programs in the US, Canada and Europe are required to meet the full requirements of competition laws no less stringent than those in force here.

But it doesn't end there. The government has also moved to ensure the NBN will not be subject to scrutiny by the parliamentary standing committee on public works, which would otherwise review the project's progress.

So much for full disclosure. And so much, too, for the parallels to the Snowy scheme, which the Chifley government ensured was subject to extensive and effective parliamentary scrutiny, including by that very standing committee, both before it proceeded and throughout its implementation.

Plainly, this is one area on which Julia Gillard does not want the light on the hill to shine.

Here, too, the government is destroying an important precedent. The requirement that significant government projects be subject to ongoing control by a parliamentary standing committee on public works goes back to the great reforms Henry Parkes introduced into the governance of NSW in 1888. In the previous decade, easy access to foreign loans had led to the abandonment of the longstanding criterion that public works be of "manifest utility". The result was pervasive waste and pork-barrelling. Parkes sought to bring a return to effective fiscal disciplines, not least through the glare of publicity.

These are precedents that are easily discarded but only painfully retrieved. That the government places great importance on the NBN is obvious. But that cannot justify undermining the immense effort successive governments have had to put into improving public decision-making. That the independents and Greens care little for rigour in public expenditure is disappointing but not surprising. That Labor, which did so much to put that framework in place, should be willing to squander years of hard work is tragic.

"Transparency and competitive neutrality, ensured by a regime of competition and consumer-protection law, are essential", Kevin Rudd wrote last year in his essay in *The Monthly*. Delivering on these, in his words, was integral to "social democracy's continuing philosophical claim to political legitimacy".

That claim is now being tested. So far, it doesn't stack up.

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