

## **NBN: 'CHERRY PICKING' PROTECTION**

### **Top lines**

- The National Broadband Network will be a wholesale-only, open access network.
  - NBN Co must provide equivalent access to all access seekers.
- This will introduce real competition into the supply of retail broadband services. Competition of this kind has not been possible in the industry previously, due to the unrivalled dominance of Telstra.
- The NBN Companies Bill contains measures to deal with 'cherry picking', to ensure that firms competing with NBN Co meet the same technical and access requirements that NBN Co is required to meet.
  - This does not prevent companies competing with NBN Co. It simply ensures that, where they do so, there will be a level playing field.
  - This safeguards NBN Co's ability to provide an open access fibre network to 93 per cent of Australian premises, including in rural and regional areas.
- The Government has an open mind about the best means of ensuring a level playing field for superfast broadband network operators, and welcomes the views of stakeholders in developing these measures.
  - The NBN legislation is currently being considered by the Senate Environment and Communications Committee, and I encourage all interested stakeholders to take part in that process.

### **Key facts and figures**

- The NBN Implementation Study identified that a 'major risk to creating a viable nationwide network is cherry picking, where private firms could compete with NBN Co selectively in the lowest cost regions' (page 439).
  - It therefore recommended legislative protection from cherry picking, including technical standards (to ensure compatibility with NBN infrastructure) and open access and equivalence conditions.
- The Government's Statement of Expectations for NBN Co (dated 17 December 2010) indicated that new fibre networks built after 1 January 2011 would have to be Layer 2, wholesale-only and open access.
  - The Statement notes that the Government 'has already indicated it will consider the introduction of a levy, if necessary, to prevent opportunistic cherry picking'.
- NBN Co's Corporate Plan, released on 20 December 2010, records this commitment. It notes that given its 'initial focus on regional areas and the need to cross-subsidise non-commercially viable market segments, NBN Co will not be

able to compete effectively with cherry pickers, who focus on commercially attractive areas only' (page 13).

- The Plan notes that, if cherry picking protection is not effective, projected returns would reduce to 5.4 per cent, and there would be a \$1.7 billion additional requirement in Government equity. Further, if there was an impact in the most commercially attractive areas of brownfields, this 'would take the returns well below 5%' (page 52).
- The National Broadband Network Companies Bill 2010 was introduced into Parliament on 25 November 2010, and is currently before the House of Representatives.
  - Among other things, the Bill would impose the technical standards and access conditions required to ensure a level playing field for competitors with NBN Co.
  - These standards will apply to telecommunications networks that are built or upgraded and that will be capable of supplying superfast broadband services (download speeds of more than 25 megabits per second).
- Telstra has made a submission to the Senate inquiry into the Bill, criticising the cherry picking protections:
  - 'The provisions requiring regulation of all new superfast broadband networks risk damaging investment and foreclosing future network competition. Requiring regulation of new broadband networks before they are even built will create a powerful disincentive to investment in infrastructure and will discourage competition with NBN Co.'
  - These comments were reported in *The Australian* on 28 February 2011.

## **Government policies and election commitments**

- The Government has introduced legislation that would deal with cherry picking by requiring competing networks to meet the same technical standards and access conditions as NBN Co.
- The Government has also indicated that it will consider the introduction of a levy, if necessary, to prevent opportunistic cherry picking.

## **Opposition policy**

- We are not aware of any explicit Opposition statement concerning cherry picking.

## **Who is affected?**

- Potential competitors with NBN Co.