Vocus Group MD/CEO Kevin Russell
Speech to ACCANect Conference
'Communications and Consumers: The Next Ten Years'
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Introduction

Good morning everyone, and thank you to ACCAN Chair Deirdre O'Donnell and CEO Teresa Corbin for the opportunity to speak today.

It is fitting that the title for today's conference is *Communications and Consumers: the next ten years*. Because the thing which will have the single biggest impact on consumers in the next ten years is the NBN.

Over the last ten years there has been plenty of noise over how the NBN should be built and paid for, most of it highly subjective.

So I'd like to open with a few simple facts:

- While the NBN has delivered higher broadband speeds, it has also delivered higher prices.
- While in theory the NBN provides a level playing field for greater competition, in reality the largest retailer has increased its market share on the NBN compared to ADSL.
- And while the NBN has been a huge *public* investment, it has come at the cost of *private* investment.
- There is a fundamental, core problem with the NBN which has led to these inconvenient truths.
- The real market value of the NBN is far, far less than what it cost to build.

And because of this failure to recognise the underlying market value of the NBN, we're left in a situation where NBN's decision-making is driven as a monopoly targeting financial returns, rather than consumer needs and market reality.

So what can we do to make things right for consumers in the next ten years?

First, the immediate priority is to give consumers choice, and make broadband pricing market-led.

Second, the medium-term priority is to get back to encouraging infrastructure competition, instead of actively penalising it.

And third, the long-term priority is to get the settings right for NBN's ultimate privatisation.

So, let's begin with the immediate priority – making broadband market-led not monopoly-led, and giving consumers the right to choose.

This is personal for us at Vocus. Under our consumer brands of Dodo and iPrimus, we have some serious credentials in this market. We're the fourth-largest NBN retailer with 8% market share. We have got over 450,000 NBN consumers.

And we've been in the retail telecoms market for more than two decades, since the days of dial-up. So we do know what we're talking about. And we have an obligation to speak up on behalf of our consumers. And put simply, NBN's pricing model is broken.

Because NBN's financial targets are based on recovering its cost to build, rather than recognising the real value of the network, prices are far higher than would be achievable in a market-led environment.

And consumers are paying for it – literally.

NBN's flawed pricing model manifests itself in three ways.
One: The basic wholesale access cost is simply too high.
Two: NBN's usage-based pricing guarantees prices will only go up in future.

And three: NBN has been consciously forcing consumers onto higher-cost plans, whether they like it or not.

So let me tackle the first issue – NBN's basic wholesale access cost is simply too high.
Back in the days when most broadband consumers were connected via ADSL, Dodo's prices consistently trended downwards. Consumers got more value or lower prices – or both – over time. This is in stark contrast to Dodo's NBN plans, where all we have done is continually put prices up, to cover NBN's increasing wholesale costs.

Since 2008, retailers have had access to the ADSL Unconditioned Local Loop Service, or ULL, at a regulated rate of less than $15 a month[1]. Compare this to a retailer's average wholesale cost on the NBN – which today stands at $44[2]. That's around a 300-per-cent increase in wholesale costs from ADSL to NBN. And consumers don't have an option. If they want fixed-line broadband, they have to be on the NBN.

As ACCC Chair Rod Sims has said, "We were never meant to get to a situation where some consumers, in switching to the NBN, will be left worse off by paying more, or getting less."[3] But that's exactly the situation we're in.

The second way that NBN's flawed pricing model manifests itself is the unprecedented growth in NBN's usage charge – CVC. It's simple: CVC is a download tax on consumers. It is a completely artificial tax. It charges something for nothing. It creates artificial scarcity where there is none.

The overwhelming majority of broadband consumers are on unlimited download plans, so they pay a predictable monthly rate. But retailers pay an unpredictable monthly rate, which forces them to ration bandwidth to manage costs. If NBN were led by consumer needs rather than its own financial requirements, pricing would be set to promote usage, not ration it.

This approach is inconsistent with almost every other telecoms market around the world, where pricing doesn't penalise higher usage. It is inconsistent with the underlying cost of the product, which does not increase with greater usage. And it is inconsistent with consumer expectations for broadband at a fixed monthly price.

From a consumer's perspective, buying broadband is not like buying electricity, where you pay for what you use. Because in electricity there is a cost attached to generating power. But unlike electricity, there is no price attached to generating megabits of data. Yet NBN charges as if there is. Now, NBN would respond by saying it has only ever decreased its usage charge over time.

But while NBN may decrease its price, constant download growth far outweighs these reductions, and ultimately Australian consumers keep paying more. This goes part-way to explain why NBN's average revenue per user has increased from $37[4] in 2013, to $44 in 2019, and is on-track to increase to $49 in the next few years[5].

Meanwhile, the ACCC has kept the price of ADSL at less than $15.

The third way NBN's flawed pricing model manifests itself is by forcing consumers onto more expensive plans. Since the introduction of NBN's latest pricing, affordable broadband packages have been abolished in preference for higher speeds at higher prices.

Today, NBN is measuring its success by how many consumers are on higher speed tiers, because this drives up NBN's revenues. It should be measuring its success by how many consumers are connected, and let them choose speeds which are appropriate for their requirements and their

[1] CommsDay, 11 January 2008: "ACCC final decision cuts ULL Band 2 to $14.30"
[2] NBN Corporate Plan 2020-23
[3] Rod Sims speech to CommsDay Summit 2019
[4] NBN Corporate Plan 2014-17
[5] NBN Corporate Plan 2020-23

budget. NBN started with affordable 12-megabit broadband plans comparable in both service and price to ADSL plans, which most consumers are transitioning from. But with the introduction of the new pricing, the 12-megabit broadband speed tier was effectively removed. And the 25-megabit speed tier was rendered obsolete by being price-matched to a 50-megabit service.

As a result, if a user wants an affordable 12- or 25-megabit broadband plan, they simply no longer exist. This shift plays into the hands of premium brands which charge premium prices. And it hits value brands, like Dodo, which used to be able to charge affordable prices.

It helps explain why Telstra's broadband market share has jumped from 41% on ADSL to almost 50% on the NBN, and why the market share of value-providers has been slowly but steadily decreasing since the new pricing was introduced[6]. In Vocus' response to NBN's most recent pricing consultation, we said NBN needs to do three things to make broadband affordable again:
One: Abolish CVC, to provide price certainty for both retailers and consumers.
Two: Move to four flat-rate speed tiers, to give consumers a choice between affordable broadband or premium speeds at premium prices.
And three: remove the complex web of discounts, non-recurring charges, and rebates, to provide certainty and simplicity for retailers as they create broadband plans.

Without these changes, Vocus will have no choice but to keep increasing retail prices in line with our wholesale NBN costs – regardless of what Australian consumers deserve. To quote Rod Sims recent speech to the CommsDay Summit, "There is a fundamental question of fairness here for those on low incomes". And we agree. This is personal for us at Vocus. These are our people being left behind.

The ACCC should be applauded for speaking out in defence of consumers, particularly those on low incomes, who are the 'forgotten people' in NBN's product line-up. I expect we'll see the next version of NBN's proposed prices within the next week or two. And when we see it, we'll find out if NBN is listening – and if NBN is willing to put consumers on low-incomes ahead of its own financial interests. Because it's worth remembering that the ACCC has a backup option to stand up for these consumers, if NBN won't.

As the regulatory regime stands today, only NBN's fibre-to-the-premises network is covered by the Special Access Undertaking accepted by the ACCC. NBN's fibre to the node, fibre to the basement, fibre to the curb and HFC networks are not covered by this Undertaking. And these networks account for 70% of NBN services available today – around 7 million premises[7].

So if NBN won't set prices which are fair for people on low incomes, the ACCC has the fallback option of making an access determination, which would give it the power to directly regulate pricing for those 7 million premises.

Speaking on behalf of our NBN customers, if NBN isn't prepared to act, I do hope that the ACCC is. So, having addressed broadband pricing, I'd now like to turn to my second point about how we should prioritise consumers in the next decade: by encouraging infrastructure competition, instead of penalising it.

The measures which have been deliberately put in place to penalise competition are the consequence of the core issue with the NBN I mentioned earlier: the real market value of the asset is far less than what it cost to build.

As a result, successive Governments have put up protectionist barriers to assist NBN in recovering this cost. Part of this problem is the original policy intent of the NBN which mandated uniform national wholesale prices, later amended to wholesale price caps[8]. This approach baked-in the expectation that NBN's profitable metropolitan networks would cross-subsidise its loss-making regional networks.

[6] ACCC Communications Market Report 2015, ACCC NBN Wholesale Market Indicators Report 2019
[7] NBN 2020 Corporate plan p49: 7.0m premises connected via FTTN/B/C & HFC out of 10m total.
[8] https://www.itnews.com.au/news/govt-ditches-uniform-wholesale-network-pricing-398737

As a result, NBN had to be protected from competition in profitable metro markets, or its ability to cross-subsidise its unprofitable regional networks would be affected.

Accordingly, attempts to set up infrastructure competition to the NBN were penalised. And consumers have suffered as a result.
For example, in the ADSL market, regulated pricing incentivised investment in competitive exchange equipment by pricing ULL access at less-than $15 a month, resulting in competitive offers that brought down prices for consumers. The pursuit of required returns has sent the NBN market in the opposite direction.

Rewind to 2010, when the Government introduced legislation designed to prevent network competition – what it called “opportunistic cherry-picking”[9]. The Telecommunications Act was amended to require all new broadband networks to operate on a wholesale-only, open-access basis, the same as the NBN. Two years later in 2013, TPG announced plans to roll out a fibre-to-the-building network, taking advantage of grandfathering arrangements for existing fibre assets[10] – what some called a loophole in the law.

They planned to offer unlimited 100-megabit broadband for under $70 per month[11] – the same price some RSPs are offering 50-megabit NBN plans for, six years later. When asked about this competition, NBN’s Chairman said, “The economics of NBN would be severely impacted[12].”
Since TPG’s plan didn’t breach the anti-cherry-picking laws, new Carrier Licence Conditions were imposed which forced competitive telcos to structurally separate and offer wholesale service in the same manner as NBN.

And then NBN played catch-up, accelerating its own FTTB rollout[13] which delivered similar services, but at higher prices. As a result of these protectionist measures, the competitive rollout was scaled back and the potential benefits to consumers went unrealised[14]. Sadly, this was not the only case of legislative intervention designed to penalise infrastructure competition.

In 2017, legislation was introduced to establish the ‘Regional Broadband Scheme’ but never passed the last Parliament. The Government has committed to re-introducing it into the new Parliament by the end of this year[15]. Like anti-cherry-picking rules, this legislation penalises competitive infrastructure investments and protects NBN’s internal cross-subsidy from competition.
It does so by imposing a tax of $7.10 per line, per month on competitive high-speed broadband networks. And the revenues raised from competitive providers will be passed to NBN.

So once again, anyone that’s invested in competitive fibre infrastructure will be penalised to protect NBN’s cross-subsidy and required financial returns. This new tax is not in the interests of consumers, who will be paying for the NBN even when they’re not using it.

If we want to get it right for consumers in the next decade, we have to get back to encouraging infrastructure competition, instead of actively penalising it. Up to this point, both sides of politics have made a conscious decision to pursue the approach of NBN cross-subsidising its loss-making regional networks.

Some may argue this approach is the fairest way to ensure regional consumers can access broadband under the same wholesale price caps as people in metro areas. But I would argue that in the long term, the protectionism required to sustain NBN’s cross-subsidy costs us *more*.
It costs us the infrastructure investment that doesn’t occur.

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[9] National Broadband Network Companies Bill 2010 Explanatory Memorandum
[10] Telecommunications Legislation Amendment (National Broadband Network Measures—Access Arrangements) Act 2011
[11] https://delimiter.com.au/2013/09/17/screw-nbn-says-tpg-well-fttb/
[12] https://www.computerworld.com.au/article/540304/tpg_fttb_plan_could_upset_nbn_switkowski/
[13] https://www.computerworld.com.au/article/542913/it_war_nbn_co_responds_tpg_fttb_rollout/
[14] https://www.itnews.com.au/news/tpg-revises-reach-of-fttb-network-470625
[15] CommsDay 3 July 2019, “Telecoms bills listed for winter sittings”

It costs consumers higher prices in metro areas due to the lack of infrastructure competition. And it will soon cost consumers on competing networks $7.10 per line, per month to subsidise NBN's losses. But there is an alternative.

If we, as a country, believe that there is a social benefit in regional connectivity – even when there is no commercial case – these networks should be funded from the Federal Budget, rather than a market-distorting cross-subsidy. This would allow us to unwind the protectionist policies which penalise competition, and we can get back to incentivising infrastructure investment. This approach will deliver the greatest benefit to consumers. Which brings me to my third and final point.

The long-term priority is to get the settings right for NBN's likely ultimate privatisation – because that will set the foundation for how consumers are treated for the next decade. We can't repeat the mistakes of the past. And as we consider the various approaches to privatisation, we must address the fundamental issue that the real market value of the NBN is far less than what it cost to build.

Both sides of politics have committed to privatising the NBN at some point in the future, and when it occurs this will be the third major attempt to get Australia's fixed-line market settings right. On the first attempt in the early 90's, when the decision was made to establish Telstra as a vertically-integrated telco, Australia went against the global trend towards structural separation of incumbent monopolies. On the second attempt in 2009, NBN was established as a structurally-separated, wholesale-only operator.

But these good intentions were hampered by the fact that it would cost more to build the NBN than the asset would be worth, and so the network would be dependent on legislated protection from competition to meet its required returns.

So, on the third attempt, what do we have to do to put consumers first?

First, the privatised network must remain open-access and wholesale-only, regardless of who buys it or how it is sold. Consumers have suffered from a vertically-integrated monopoly model before – we can't repeat the mistakes of the past.

Second, the Government must resist the urge to 'fatten the calf' by entrenching the existing protection from competition that NBN enjoys today. The privatised network must be forced to compete against other providers in a marketplace which actively encourages infrastructure competition. Consumers have suffered from a lack of competition over the last ten years – they shouldn't have to endure it in the next ten.

And third, the privatised network must be properly regulated in areas where it is a monopoly provider. Not all consumers will benefit from the re-introduction of infrastructure competition, because there will not be a market for competing networks in all areas. So in areas where there's no choice, consumers should enjoy the strong oversight of a regulator that has their interests at heart. Consumers have suffered from a lack of effective price regulation over the past ten years – and they shouldn't have to endure it in the next ten.

Conclusion
I'd like to conclude today by saying that if we want to put consumers first, the next ten years have to look very different to the last ten. For me, and for Vocus, this is personal. The immediate priority is to give consumers choice and make pricing market-led. The medium-term priority is to get back to encouraging infrastructure competition, instead of actively penalising it.
And the long-term priority is to get the NBN privatisation right – because that will set the foundation for how consumers access their broadband services for decades to come. Thank you, and I hope you enjoy the rest of the conference.