

31 March 2008



National Broadband Network Panel of Experts
Department of Broadband, Communications and the Digital Economy
GPO Box 2154
CANBERRA ACT 2601

Email: nationalbroadbandnetwork@dbcde.gov.au

Dear Panel,

Consultation on the National Broadband Network Request for Proposals

Thank you for the opportunity to comment on the form and content of the National Broadband Network (NBN) Request for Proposal (RFP).

About Vodafone

Vodafone's global footprint

Vodafone Group PLC has operating companies in 25 countries and partner networks in a further 39 countries. We have approximately 252 million registered proportionate customers as at 31 December 2007. Vodafone is listed in the London and New York Stock Exchanges.

Vodafone Australia

Vodafone Australia's direct customer base was reported as 3.572 million at 31 December 2007 including mobile broadband customers. Further, we are undertaking a national mobile broadband rollout based on High-Speed Packet Access (HSPA) for completion in December 2008 – which will provide coverage to 95 percent of the population.

More than mobile

Mobile is always at the heart of what we do, and now we are moving into integrated mobile and PC communication services.

We are doing that in two ways – wirelessly through 3G and HSDPA (High-Speed Download Packet Access), and also using fixed line broadband services such as DSL (Digital Subscriber Line). We offer a suite of products that, starting with voice calls, offers our customers an alternative to a traditional fixed line. Vodafone Zuhause in Germany and Vodafone Casa in Italy, provide our customers with an easy-to-use mobile service, combined with low-cost fixed line telephony and DSL (Digital Subscriber Line) broadband.

We have extended our reach into the office by delivering richer business applications and integrated fixed and mobile services, such as higher speed internet access. With developments in technology we can provide integrated mobile and PC offerings to give our customers a consistent experience whether they are at home or on the move.

Vodafone Australia Limited

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The Importance of the National Broadband Network

The selection and implementation of an NBN proposal is a matter of critical importance to broad Australian communications market and the future development of the Australian economy. The NBN will comprise significant telecommunications network infrastructure that will be the primary delivery platform for fixed line high bandwidth services to Australian homes and businesses.

In implementing a competitive selection process, rather than relying on market forces to deliver competitive networks and services, the Government has clearly recognised that the NBN has monopoly characteristics. Accordingly, the NBN will comprise bottleneck network elements over which will be delivered a wide range of very services and applications and both wholesale and retail levels.

The NBN will be established at great cost to investors, but also to tax payers in view of the Government's commitment to provide up to \$4.7 billion in funding. Further, if an inappropriate regulatory framework – new and existing – is applied to the NBN, this may result in very significant costs to the long term interests of end users (LTIE) and also to net consumer welfare (in comparison with optimal regulatory rules).

Accordingly, the NBN, and the manner in which the NBN is operated and regulated, will have a major impact on the broader communications industry in Australia and on all users of communications services. In many respects the nature of this impact will be determined by the procedures for the NBN bidding process and the substantive regulatory settings that are assumed for the purposes of that process.

Vodafone's perspective on the NBN

While Vodafone does not intend to submit a proposal to the RFP, as an owner and substantial investor in mobile network infrastructure throughout Australia, Vodafone does have a significant interest in ensuring that the construction of an NBN does not have any negative consequences for the broader communications industry.

In particular, Vodafone is concerned to ensure the following:

- The selection criteria by which proposals are assessed are appropriately focussed on ensuring that the successful proposal will promote competition and the LTIE. This objective is best met by ensuring that the NBN is regulated in a manner that ensures open access and negates the potential for cross-subsidisation; and
- The RFP process is conducted in a considered, open and transparent manner that will maximise competitive tension, and therefore extract the best outcome possible for the Government, consumers and the industry.

Open Access, Competition and Structural Separation

It is vital that under the successful proposal third parties will be able to access the services provided by the NBN on fair and reasonable terms and that they will not be discriminated against by the network owner and/or operator in favour of related parties. Fair and non-discriminatory access to the NBN must be an essential pre-requisite of all proposals, with access prices based on an efficient TSLRIC model and continued ACCC oversight of regulated access terms.

Vodafone is conscious that some bidders may seek changes to the existing regulatory environment as part of their proposal and Vodafone will comment on these specific proposals further once they are made available. However, to the extent any regulatory exemptions are requested solely for the NBN they will need to be very carefully assessed.

Vodafone and other mobile carriers continue to invest in 3G mobile networks nationally in a very competitive environment and with no specific regulatory exemptions. The NBN on the other hand will comprise bottleneck network elements and therefore should be subject to a higher regulatory burden than other more competitive telecommunications infrastructure and services.

Vodafone has an ongoing concern ensure that vertically and horizontally integrated carriers do not deploy their market power in any market to constrain competition, including in the mobile sector. This is an existing issue, although one that could be significantly heightened in circumstances where any such integrated carrier owned or was associated with the NBN in an environment where the NBN was not suitably regulated. Specific regulatory attention must be given to the potential ability for the successful NBN proposal to cross-subsidise across the different wholesale and retail markets.

A vertically and horizontally integrated network owner will always have an incentive to use its ownership of bottleneck infrastructure to prevent its rivals from competing on a fair and equivalent basis in downstream markets, and will seek to "game" or avoid any regulatory regime that conflicts with this incentive. In addition, a vertically integrated network owner that operates across a number of different markets may seek to generate monopoly profits in one market to subsidise competitive pricing in other markets. Specific regulatory attention must be given to and the ability to cross-subsidise across different infrastructure, and different wholesale and retail markets.

Vodafone considers that structural separation, including rules governing the relationship between the NBN owner and associated downstream service providers, and an open access regime monitored by the ACCC are the most appropriate means of ensuring that the market power associated with an NBN may not be used to stifle competition across the different wholesale and retail markets. Vodafone considers that it is preferable for the owner/operator of the NBN to be structurally separate from any associated retail service operations. The NBN ownership entity should be limited to offering wholesale services.

The RFP Process

The RFP process is an essential opportunity for the Government to ensure that the nature and terms of the investment in the NBN and the terms for the supply of telecommunications services using the NBN are consistent with those that would be achieved in a competitive market. This objective will be best achieved by:

- balancing the bidding process with longer term considerations by allowing sufficient time for the detailed preparation and consideration of proposals, including public consultation;
- creating an assessment environment that maximises competitive tension to achieve the best possible long term outcomes for the LTIE and taxpayers; and
- providing sufficiently detailed and transparent assessment criteria.

Balancing the bidding process with longer term considerations

There must be a sufficient period of time during the consultation process for other proponents, including industry and public interest groups, to properly consider and analyse the various proposals in order to make substantive and useful comments.

The Government clearly recognises that the construction of the NBN is a matter of significant national importance. Broadband communications services will play an increasingly critical role across all facets of daily life, from entertainment to education, health and the national economy.

However, in many respects the broadband services that the NBN will be capable of supporting, but which are not supported by current networks, are not yet commercially available or are not subject to high levels of existing consumer demand. That is, it is not currently the case that consumer demand for broadband services materially exceeds the capacity of existing technologies, for example, recently introduced ADSL2+ broadband internet services, broadcast HDTV and Foxtel's proposal to introduce HDTV over cable.

Broadband network equipment costs are also declining rapidly and quality is improving. Moreover, the greater the certainty that is available regarding market demand and technology solutions the more likely it is that debt and equity financing costs for the NBN will be lower, and a benefit that will ultimately be passed on to consumers and taxpayers.

Therefore, while it is important to progress towards an NBN with appropriate speed, the selection of the successful NBN network and its implementation need not be accelerated in a manner that does not allow appropriate time for consideration of the bids, bid conditions and the associated regulatory environment. It is entirely possible that short term benefits from advancing on the NBN rollout could come at a very significant disadvantage in terms of overall network costs and long term consumer welfare impacts from inappropriate regulatory settings. In this context perceived benefits of a "fast process" may not only be entirely illusory, but may also create negative or unsustainable long term consequences for the broad communications market and therefore the Australian economy.

Maximising Competitive Tension

It will be essential to maximise competitive tension in order to extract the optimal value from the RFP process, by maximising the LTIE and the "value-for-money" of Government funding. Therefore, consideration should be given to whether a single round of submissions followed by public consultation is the process that will best ensure that the successfully represents the best outcome that may be achieved.

Consideration should be given to whether having multiple phases of assessment, and opportunities for the revision of proposals would maximise competitive tension. In addition, Vodafone submits that the greater the specificity and clarity of the Government's objectives and assessment criteria including minimum service levels, the greater the competitive tension that will be harnessed.

The Need for Transparency

Vodafone considers that it is critical that the process and evaluation criteria in the RFP are as open and transparent as possible, in substance as well as form. This will enable the various proponents, industry participants and public interest groups to make constructive submissions which take into account the nature of the proposals and how they will be evaluated by the Expert Panel.

Set out below are key issues which the Expert Panel should take into account in determining the process and evaluation criteria to ensure they are as open and transparent as possible.

Information Requirements for Proposals

The proposals should be required to:

- be sufficiently detailed so that it is clear whether the proposed infrastructure will be able to deliver services at the maximum promised level of functionality and capacity from the beginning of its operation, or whether it will begin by providing a minimum level of functionality and capacity with the ability for those features to be enhanced over time;
- clearly identify the different components of the cost of the proposal, for example, the proportion of the total cost of the proposal that is attributable to the initial deployment of the network and the services that are attributable to later upgrades in capacity and functionality;
- identify with as much precision as possible the proposed timetable for the implementation of the proposal, including whether any aspect of the proposal is dependent for completion or implementation of future factors; for example, that a particular high bandwidth service will not be provided until there is proven consumer demand for it or until regulatory approval of a particular price for the delivery of that service is obtained;
- specify whether the proposal involves the use of a mix of technologies to provide a range of services for different geographic areas;
- identify whether the proposal will use existing infrastructure;
- specify what, if any, changes the proponent will seek to the existing telecommunications regulatory framework and, if so, why such changes are needed, as this will enable other industry participants to comment on the broader ramifications of any proposals for regulatory change; and
- minimise the amount of substantive information about the proposals for which the proponent claims confidentiality and which, as a result, cannot be the subject of meaningful consultation.

The Evaluation Criteria

The Expert Panel will have to weigh up the costs and benefits of the competing proposals in making its decision, including the relative importance of factors such as the speed, quality and coverage of the service each proposal is seeking to provide, the financial cost of the various proposals and non-financial costs (including any proposed regulatory relief). This will inevitably involve the Expert Panel giving preferential weight to certain factors over others. The cost of each proposal is particularly important given the Government's commitment to provide public funding for the successful proposal and the need to ensure that it receives real value for money.

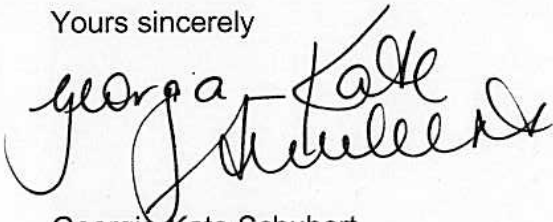
To assist in this process, the RFP should specify:

- each of the criteria that the Expert Panel will take into account in evaluating the proposals;
- the relative weighting to be given to different criteria in evaluating competing proposals;
- whether the Government has a preference for the method of funding the NBN; and
- any minimum requirements that the Expert Panel has for services to be delivered by the NBN.

While Vodafone does not submit that the Request for Proposal should specify any particular technology solution, it should specify any minimum criteria that the Expert Panel has for services delivered by the NBN.

Vodafone will be pleased to comment further on any of the above matters and looks forward to making more detailed submissions at the appropriate time.

Yours sincerely

A handwritten signature in black ink, appearing to read "Georgia-Kate Schubert". The signature is written in a cursive style with a large initial 'G' and 'K'.

Georgia-Kate Schubert
General Manager Public Policy
Vodafone Australia