

FUNDAMENTALS OF THE LEGISLATIVE FRAMEWORK FOR NBN CO.

Axia NetMedia Corporation (Axia) is pleased to submit our views on the legislative framework for the proposed National Broadband Network Company (NBN Co.). Through Axia's international experiences, including the successful lead consortium member in OpenNet, a Singapore-wide FTTP passive fibre services franchise, Axia has identified key success factors in defining the parameters of a NBN Co.

For the purposes of Axia's submission of the legislative framework, we will include key high level concepts that we suggest the Commonwealth adhere to as well as the inherent assumptions that position the company in the marketplace.

Axia recognizes that there is an extensive and detailed analysis that must be considered in defining the legislative framework for NBN Co. however, there are core concepts that should not be compromised.

Assumptions:

- NBN Co. is a special purpose company with its scope of business defined at a high level.
- This company is prohibited in participating in any business outside of the pre-determined scope.
- NBN Co.'s cost orientated rates and definition of its services are fully regulated by the ACCC.

Fundamentals:

"**Defined Scope**" combined with "**Ownership and Control Limitations**" and "**Ongoing Regulation**" when applied effectively, will create a truly un-conflicted, open access, Next Generation Network that supplies future proofed broadband services to 90% of Australians and meets the Commonwealth's objectives.

A **Defined Scope** as well as the **Ownership and Control Limitations** are fundamental to NBN Co. and its ability to reach Commonwealth objectives. Once these frameworks are established in legislation, they will remain true during the life of NBN Co. The **Ongoing Regulatory** framework to which NBN Co. will be subject to would provide the oversight that would allow NBN Co. to evolve technologies and services to meet the markets needs within the legislated scope and purpose.

1.0 Defined Scope of NBN Co. (Legislated Framework)

As NBN Co. will be a natural monopoly for fibre based services in Australia, and the intent is that it will evolve to be a private company, it is imperative that the scope of the company enables the vibrancy of the market as opposed to hinder it.

NBN Co.:

- Scope is limited to telecommunication transport and connectivity based services and enabling services that are approved by ACCC on an ongoing basis,
- Has the right to install and operate the infrastructure necessary to deliver the defined transport and connectivity services,
- Is obligated to offer approved services to Qualified Parties (Qualified Parties are those determined by the ACCC as eligible to purchase services from NBN Co.).

NBN Co. has the right:

- To recover its costs including those necessary to enable it to earn competitive private sector returns on the private capital invested.

Reasoning:

This approach creates the necessary fundamentals which set the framework for the ACCC to make regulatory decisions for the public interest whilst enabling NBN Co. to execute its business and raise private capital.

2.0 Ownership and Control Limitations on NBN Co. (Legislated Framework)

Any party or affiliate of a party, who holds a licence from the Australian Government in respect of telecommunications, is limited to owning less than 20% of the total private equity stake, (as compared to 20% of the total equity including the Commonwealth equity). The government should apply its current procedures of determining whether a party is deemed affiliated to a license holder in this space.

Reasoning:

As the Commonwealth plans to reduce its equity ownership, the rules governing the private sector ownership must be set at the outset to avoid a structural change to NBN Co. in the future. This is accomplished by defining the limits on private sector ownership independent of the Commonwealth ownership.

The Commonwealth should not seek control over Public Policy conditions through its ownership of NBN Co. In order to obtain optimal Public Policy outcomes, the legislative and regulatory framework that applies to both the Commonwealth and private investors in NBN Co. must be aligned. This creates the right separation of issues so that in respect to its investment in NBN Co., the Commonwealth has on an "investor hat" similar to that of the private sector. This would avoid most of the Public Policy complexities that were faced by the historical privatization of Telstra.

3.0 Ongoing Regulation of NBN Co.

ACCC, subject to the legislation, would have the regulatory oversight on an ongoing basis to ensure NBN Co. operates in accordance with the Public Policy objectives.

- ACCC is mandated to approve:
 - Definition of services,
 - Pricing of services such that eligible costs equal eligible revenues (Cost Based Pricing System),
 - "Qualified Parties" to purchase NBN Co. Services,
 - Capital expenditures,
 - Operating costs in the aggregate, and
 - Determine a competitive private sector cost of capital to be eligible for inclusion in NBN Co. eligible costs.

Reasoning:

The ACCC can maintain effective regulation whilst allowing NBN Co. to provide evolving services. All revenues and all expenses (on a pooled basis) are applicable in this cost based pricing system. This allows NBN Co. to respond to market needs by offering ACCC approved evolutionary services and commercially sustainable rates on individual services without having to do theoretical highly subjective cost allocations between individual services..