



Communications Essentials 2014

Telco Academy

24 October 2014



- **Overview of regulation and key current areas of regulatory reform**
Speaker: James Halliday, Partner, Baker & McKenzie
- **The state of competition in the market**
Speaker: Sean Riordan, General Manager, Industry Structure and Compliance, Communications Group, ACCC
- **Carrier and CSP obligations and regulation**
Speaker: Anne Petterd, Partner, Baker & McKenzie
- **Regulatory priorities for the ACMA**
Speaker: Alan Chalmers, Executive Officer, Content and Code Compliance, ACMA
- **The NBN including Vertigan and where to from here for the project and the sector**
Speaker: Patrick Fair, Partner, Baker & McKenzie
- **Q&A**
Facilitator: Margaret Fleming, Communications Alliance

Telco Academy

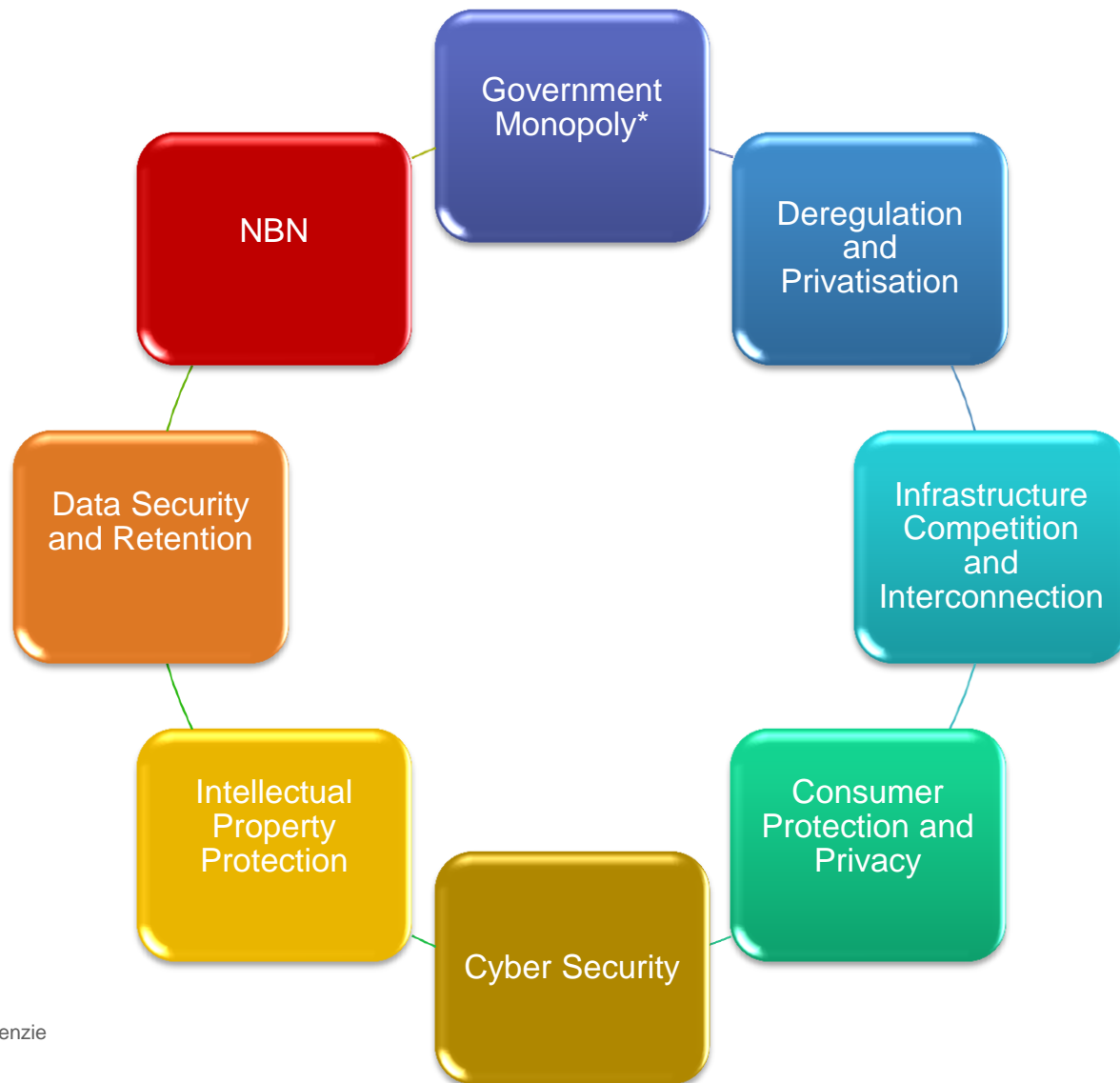
Key regulation and areas of current policy focus

James Halliday, Partner

Communications Alliance

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- Telecommunications Act 1997
 - goals
 - networks, interconnection, regulators
- Consumer Protection
 - Consumer Protection Act
 - Telecommunications Consumer Protection Code
 - Privacy legislation
- Current regulatory priorities
 - cyber security
 - privacy and data retention

Agenda

Telecommunications Act 1997



Goals of the 1997 Act

To promote:

- the LTIE of end-users of carriage or content services
- the efficiency and international competitiveness of the industry
- the availability of accessible and affordable carriage services that enhance the welfare of Australians

Infrastructure competition (1997 Act)

- Statutory powers to deploy networks:
 - Schedule 3 of the Act
 - allows carriers to install low-impact facilities without planning consent or permission of landowner
 - notice must be given to owner and occupier before entering onto land
 - Once installed, it is a criminal offence to interfere with networks

Interconnection and competition

- Interconnection rules established
 - Declared services under Part XIC of the Competition and Consumer Act
 - Schedule 1 of the Act (facilities access)
 - Negotiate/arbitrate model with ACCC as default arbitrator
- Competition rules created
 - Part XIB of the Act (competition rule)
 - Role of ACCC

The ACMA (2005)

- The ACMA
 - responsibility for telecommunications, broadcasting, radiocommunications and internet (converged regulator)
 - allocation of radiofrequency spectrum
 - numbering plan
 - Do Not Call
 - cybersafety
 - development and registration of industry codes and standards

- Telecommunications (Consumer Protection and Service Standards) Act 1999
- Telecommunications Consumer Protection Code
- Privacy legislation

Consumer Protection

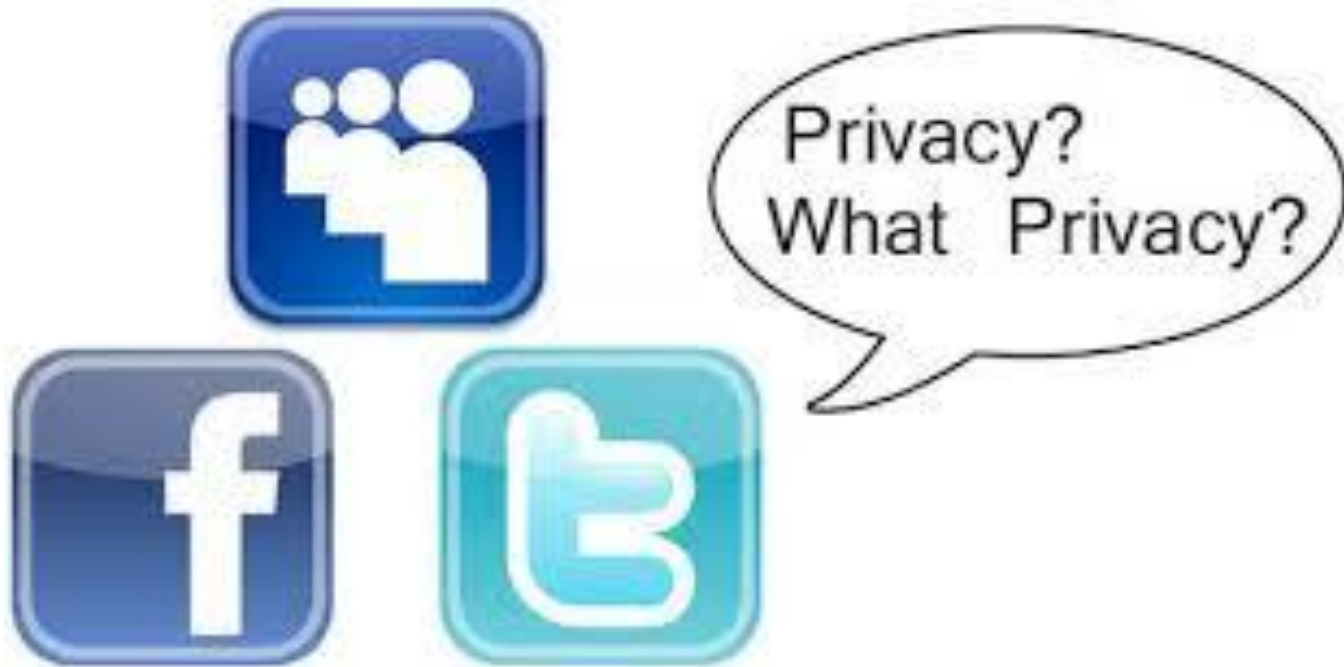
Telecommunications (Consumer Protection and Service Standards) Act 1999

- Universal Service regime and levy arrangements
- Untimed local calls
- Customer Service Guarantee
- Telecommunications Industry Ombudsman
- Emergency Calling Service

Other Consumer Protection measures

- General consumer reforms:
 - Privacy reforms
 - Fairness in customer contracting
 - Unconscionable contracts
- Telecommunications Consumer Protection Code
 - advertising
 - product summaries
 - billing information
 - credit management and complaints handling

Where to from here



- Cyber security
 - carrier interception powers
 - mandatory data retention
- Privacy
 - recent privacy reform
 - data breach notification
 - tort of privacy?

Regulatory reform

Interception

- Some recent reports:
 - Attorney-General's department report shows 339,067 warrantless metadata authorisations in 2012-13;
 - ACMA report shows 551,942 authorised disclosures (2012-13) and 582,727 (2013-14)
- Agencies which access data include police, Medicare, councils, worksafe regulators, the RSPCA, tax office, Australia Post, ASIO, ASIC and many other agencies

Privacy Legislation

- Privacy Act applies to service providers that are not small businesses (ie turnover > \$3M)
 - information must be collected in accordance with Australian Privacy Principles (APP)
 - service provider must only use, disclose and store personal information in accordance with APPs
 - restrictions on use of information for direct marketing
 - rules relating to cross-border disclosure

Telecommunications Act Part 13

- Criminal offence for industry participants to use or disclose information relating to:
 - the contents or substance of a communication carried by a CSP (includes telephony, internet, email and VoIP)
 - carriage services supplied by a CSP
 - affairs or personal particulars of another person
- Exceptions include where the use or disclosure is necessary to provide service, or is authorised by law

Regulatory reform: Interception Act

- Senate has referred the following questions to Legal and Constitutional Affairs References Committee:
 - recommendations from ALRC Privacy report (May 2008) including whether the Telecommunications Act and Interception Act continue to be effective;
 - how the two Acts interact with each other and other laws
 - whether the Acts should be consolidated
 - role of various regulatory bodies
 - recommendations from the PJCIS Committee (May 2013)

Parliamentary Joint Committee on Intelligence and Security (May 2013)

- Report on potential reforms of Australia's national security legislation
 - interception of communications and data
 - reform of telecommunications security provisions
- Some proposals (43 in total):
 - Strengthening privacy protections (proportionality test)
 - reduce the number of agencies eligible to intercept
 - standardising information access and sharing provisions
 - mandatory data retention

Proportionality Test

- A proportionality test would guide the circumstances in which law enforcement can access communications.
- The content of this test is hotly debated, some proposed elements include:
 - impact on privacy
 - public interest (including gravity of the offence)
 - availability of less intrusive investigative techniques

Mandatory Data Retention

— PCJIS recommended:

- a scheme should apply only to metadata not content;
- there should be controls on access to data
- internet browsing data should be excluded
- data to be stored securely by using encryption
- storage generally for no more than two (2) years
- government to reimburse providers' costs
- mandatory data breach notification scheme;
- obudsement oversight and independent audit function

Mandatory data breach notification

- Privacy Amendment (Privacy Alerts) Bill 2014
 - currently before Parliament
- To provide for mandatory notification
 - applies when unauthorised persons access, obtain, use, disclose, copy or modify some personal information
 - can arise following a hacker breach, accidental loss or disclosure

Mandatory data breach (2)

- The breach must be serious, ie a real risk of serious harm to the individual (or release of sensitive information)
- Serious harm includes physical and psychological harm, as well as injury to feelings, humiliation, harm to reputation and financial or economic harm
- Minor breaches not to be notified

Tort of Privacy

- ALRC report March 2014
- Elements of the proposed tort
 - intrusion into the plaintiff's privacy or misuse or disclosure of private information about the plaintiff
 - invasion must be intentional or reckless
 - person in plaintiff's position must have a reasonable expectation of privacy
 - the invasion must be 'serious'
 - counterbalanced by freedom of expression

Back to the future?

- Establishment of the National Broadband Network
 - wholesale monopolist of fixed line broadband
 - uniform national pricing, cross-subsidisation
 - restrictions on infrastructure competition (superfast broadband networks)



Thank you



Australian
Competition &
Consumer
Commission

Comms Essentials Seminar - State of Competition

October 2014

Introduction

- ACCC role
- Assessing competition in communications markets
 - Market structure
 - Supply side
 - Demand side
 - Consumer benefits

Industry reform

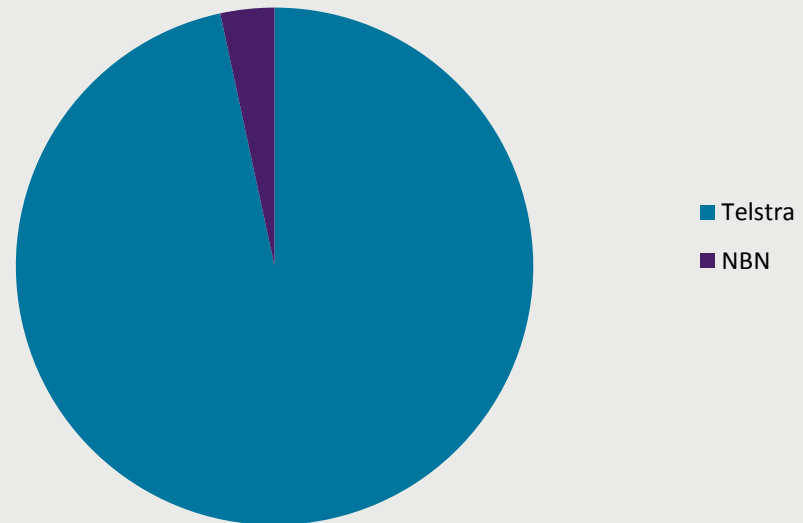
Telstra access lines

8.6m lines (as at 30 June 2014)

NBN lines

0.2m brownfield active lines

0.1m greenfield lots passed (NBN Co only)



Copper Access

Metropolitan DSL access lines

	June 2008	June 2011	June 2014
Telstra DSLAM	69%	51%	49%
ULLS/LSS	31%	49%	51%

Regional DSL access lines

	June 2008	June 2011	June 2014
Telstra DSLAM	99%	96%	96%
ULLS/LSS	1%	4%	4%

Consumer satisfaction

- Range of offers
- Product value
- Consumer access and ability to use information
 - Improving through some tariff simplification and additional point of sale disclosures, also network quality reporting in mobiles
- Consumer switching
 - Very good in mobiles for some time, some improvement in fixed line switching
- Complaints
 - Down significantly, but some issues remain

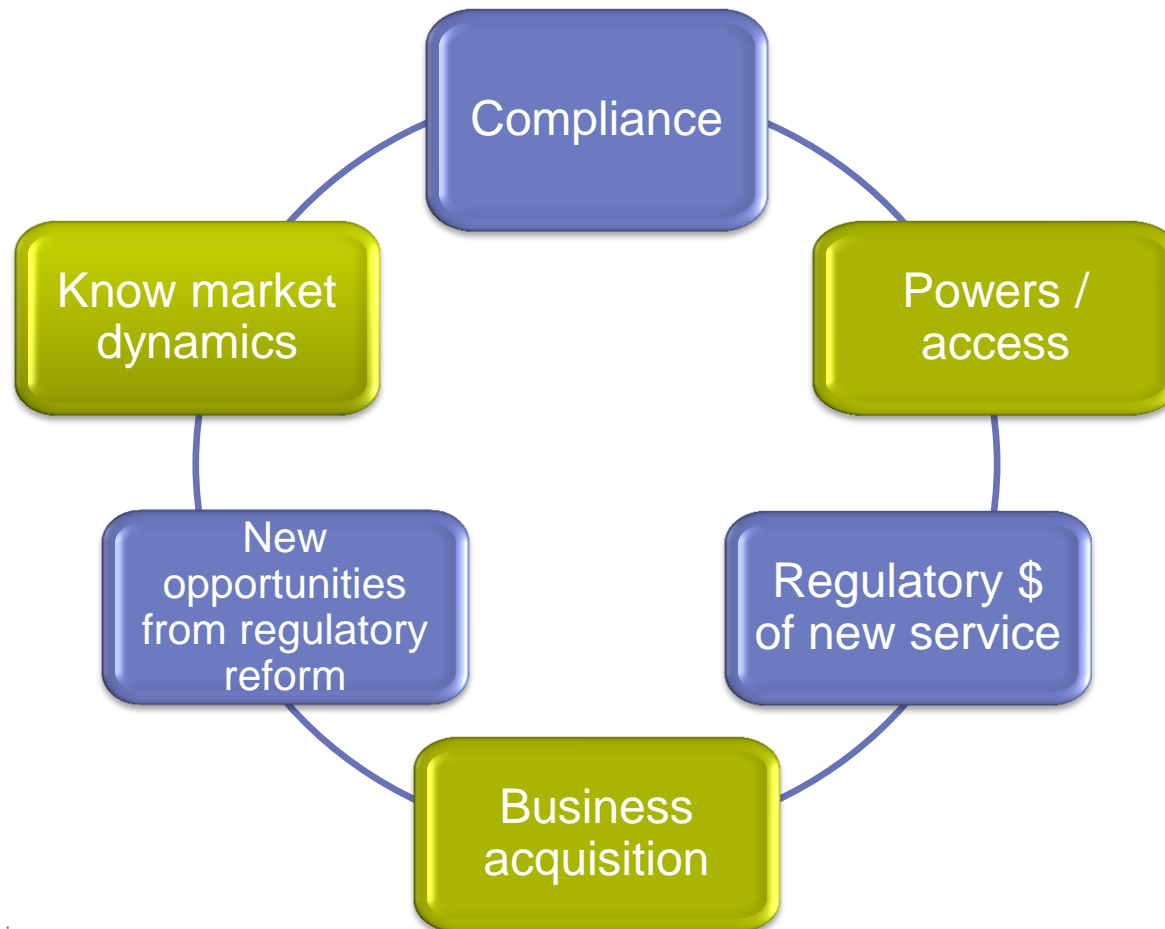
Carriers and service providers

Anne Petterd, Partner

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Why know requirements?



When do you need a carrier licence?

A carrier licence is required if a person

- Owns a network unit

- Used to supply a carriage service

- To the public (outside carrier's immediate circle)

A carrier licence is not required if any of the below apply

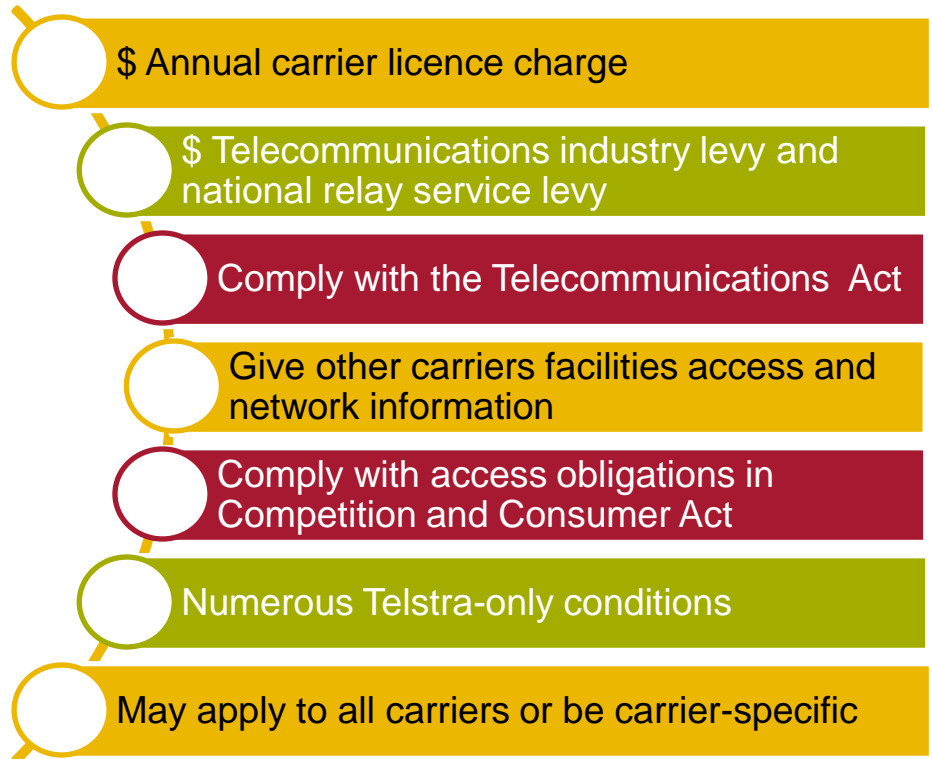
- Nominated carrier declaration in place

- An exemption applies

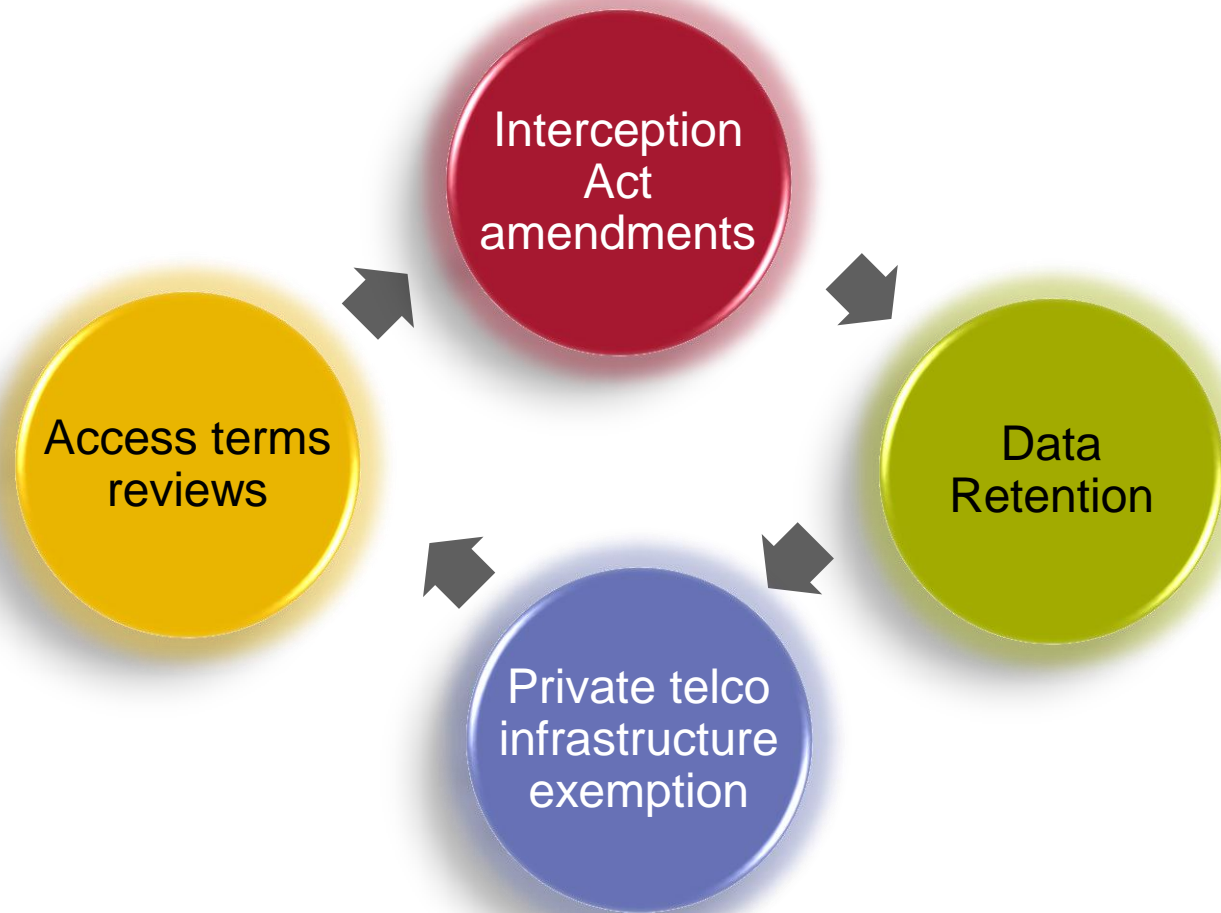
A “carriage service” is a service for carrying communications by guided and/or unguided electromagnetic energy

Carrier obligations

1. Pay annual charges
2. Standard carrier licence conditions (Sch 1)
3. Other carrier licence conditions
4. Carrier-specific licence conditions
5. Minister determined licence conditions



Developing issues for carriers



Service providers

A service provider may be a:

Carriage service provider

- Eg a provider of
 - A fixed voice service
 - A mobile service
 - An internet service

Content service provider

- Eg a provider of
 - A broadcasting service
 - An online service

Service providers

Carriage service provider (CSP)	Content service provider
<ul style="list-style-type: none">• Provides a carriage service<ul style="list-style-type: none">• Between points inside and outside Australia• To the public (outside carriage service provider's immediate circle)• Using network units	<ul style="list-style-type: none">• Person using a carriage service<ul style="list-style-type: none">• Provided between points inside and outside of Australia• To provide a content service• To the public (outside content service provider's immediate circle)
<ul style="list-style-type: none">• Resellers of carriage services	
<ul style="list-style-type: none">• But not if exempt	

Service provider obligations

No licensing scheme

Standard service provider rules (Sch 2)

- Comply with the Telecommunications Act
- If supplying services to end users with a public number - give details to IPND
- Comply with STS requirements

CSP comply with standard access obligations if supplying declared services

ACMA determined rules issued for specific services

- Eg prepaid mobile identity check requirements

Consumer services requirements

- Eg TCP Code

Standard telephone service (STS) requirements

An STS is a carriage service for the purpose of

- Voice telephony
- Other equivalent form of communication for a person with a disability

STS providers must

- Comply with Customer Service Guarantee Standard
- Make operator services available
- Make directory services available
- Enable end user to make emergency calls
- Meet itemised billing requirements

Service providers – what's new?

Standard form of agreement requirements in Telco Act repealed

- Seen as redundant due to TCP Code requirements
- 1st Red Tape Reduction Act

ACCC reviews into declared services

New offerings CaaS, IaaS, connectivity to devices

Carrier and CSP requirements

1

Protect information

Prohibited from disclosing protected information

Annual reporting obligations for disclosures

Penalties or imprisonment for unauthorised disclosure

2

Interception and law enforcement assistance

Give interception and law enforcement assistance

Additional responsibilities for carriers and nominated CSPs

Carrier and CSP requirements

3

Telecommunications Industry Ombudsman (TIO) Scheme

Carriers and eligible CSPs must belong to the TIO Scheme

Eligible CSP supplies:

- STS to residential or small business customers
- A public mobile telecommunications service
- A carriage service enabling end users to access the internet

4

Other Telecommunications Act requirements

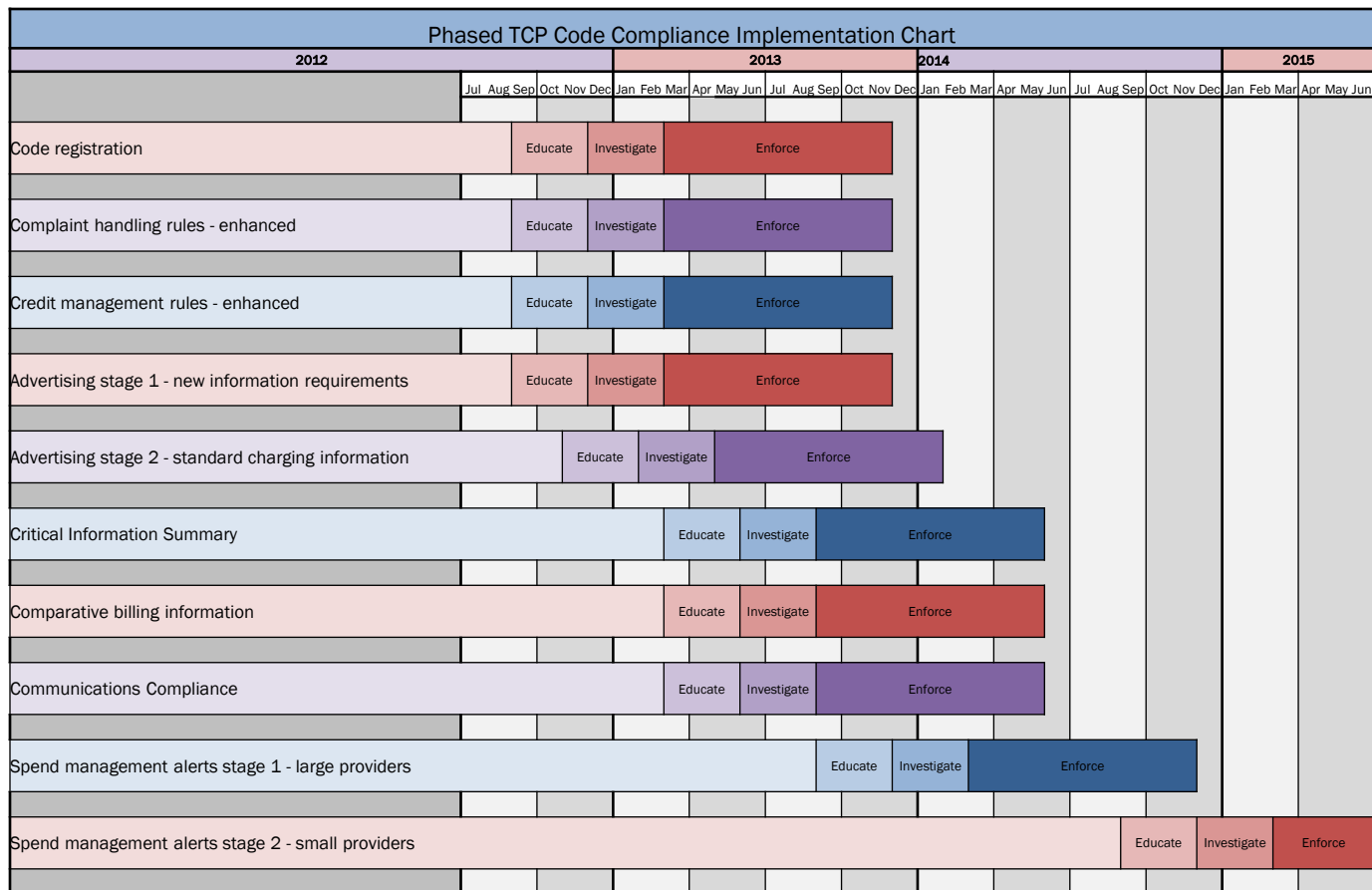
Technical standards and industry codes

Record-keeping rules

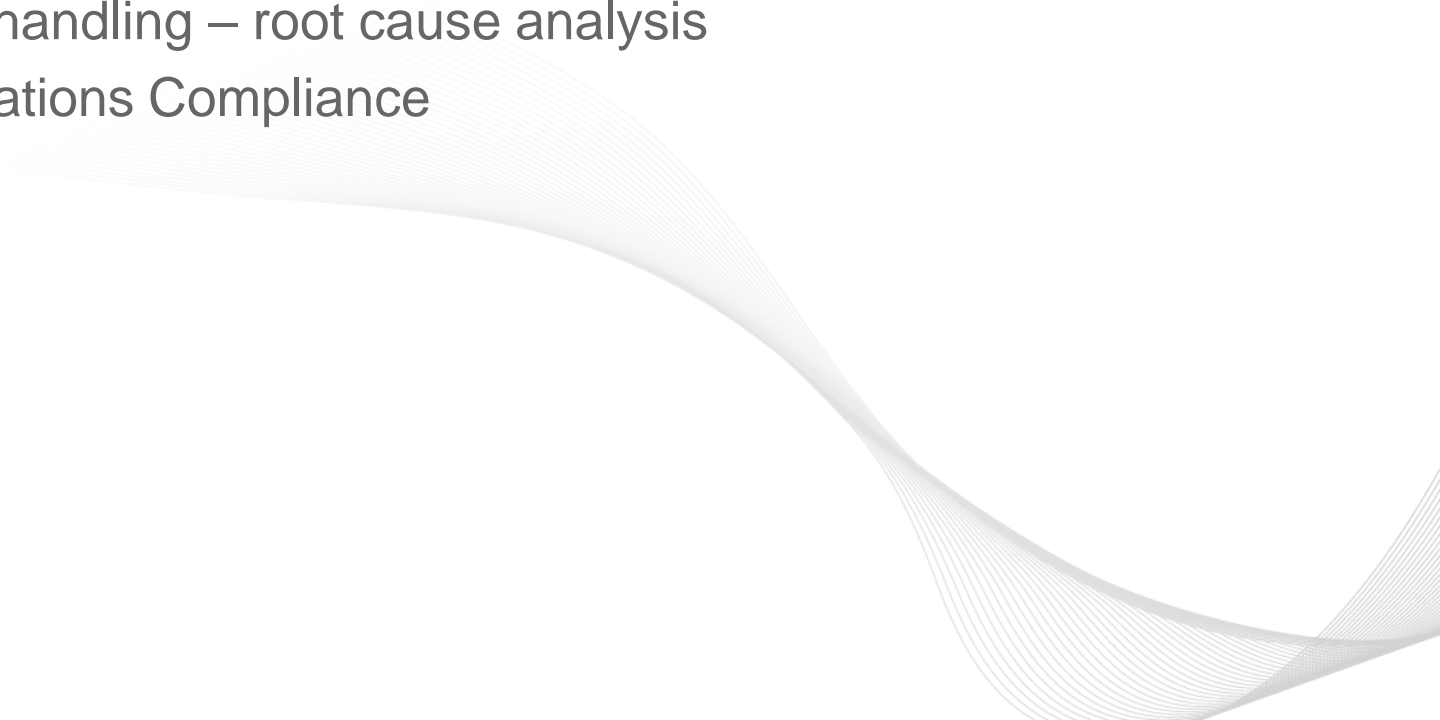
Thank you!

Compliance priorities TCP Code – third year


Alan Chalmers
Manager, Consumer Interests



Last year's priorities

- > TCP Code data usage alerts
 - > IMR standard - on arrival notifications
 - > Customer transfer – unauthorised transfers
 - > Direct debit – unauthorised debits
 - > Complaint handling – root cause analysis
 - > Communications Compliance
- 

This year's priorities

- > Usage alerts (TCP Code)
 - > Usage alerts (IMR standard)
 - > Complaint handling (actioning of undertakings)
 - > Customer transfer – unauthorised transfers (continued)
 - > Communications Compliance (continued)
 - > Compliance with pre-paid identity determination
- 

On the drawing board

- > Info to people with disabilities

Annual sweeps

- > Ads in September
- > CISs in March

Questions?

The NBN where to from here for the project and the sector

Vertigan Market and Regulatory Report and some recent developments

Patrick Fair, Partner

Communications Alliance Essentials 24 October 2014

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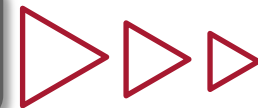
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- Recap
- The structure of the wholesale carriage market?
- The structure of wholesale market regulation?
- A separate telco competition regulator?
- New housing developments
- Government response
- Other developments

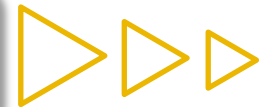
Outline

Recap

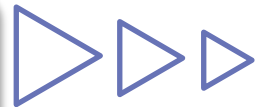
The NBN is designed as a monopoly supplier of “last mile” connectivity.



The plan is to prefer fixed but wireless must be provided where fixed is uneconomic.



Essential to the model



the cost to the government is off-balance sheet capital

a uniform price for the service which implies a cross subsidy (payable through higher user pricing) from users of city services to fund regional and country services

The structure of the wholesale market

Version 1: NBN acquires and progressively shuts down, copper and Optus and Telstra's HFC networks.

Now version 2: NBN acquires copper network for use in FTN and acquires HFC networks for service delivery.

NBN builds backhaul to 121 aggregation points

Gaps are filled by satellite and wireless services

Regulatory underpinning

1

The regulatory framework operates support the NBN monopoly by discouraging competing wholesale services.

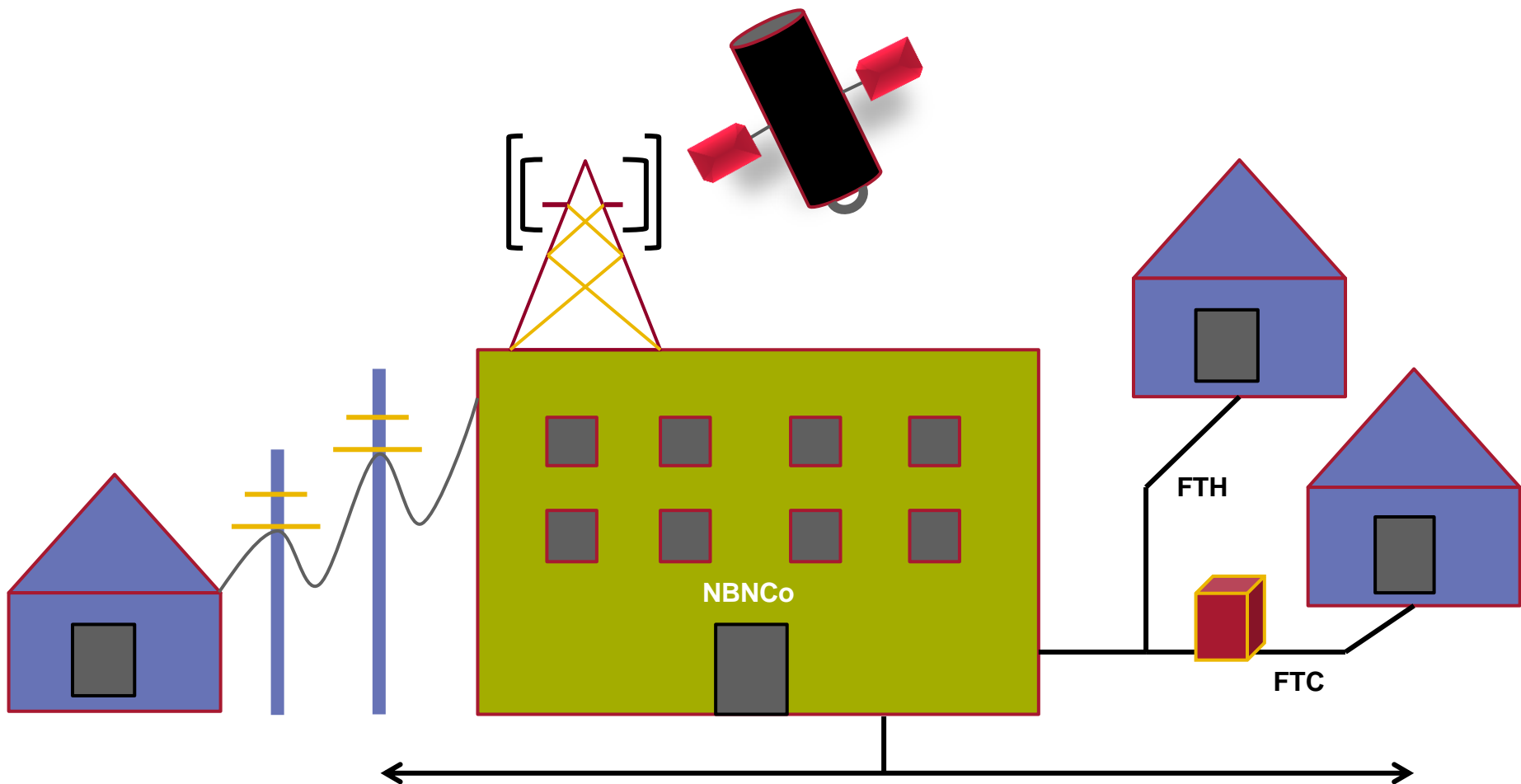


2

NBNco will build network in new housing developments for free.

Part 7 of Telco Act bans new competing local line “superfast services” to residential and small business customers. (<1km)

Part 8 of Telco Act + CCA permits new wholesale services on the same terms as the NBN.



Vertigan on markets and regulation

Vertigan Market and Regulatory Report

1

Competition should be guiding policy.

2

Disaggregate and divest transit, satellite and fixed wireless.

3

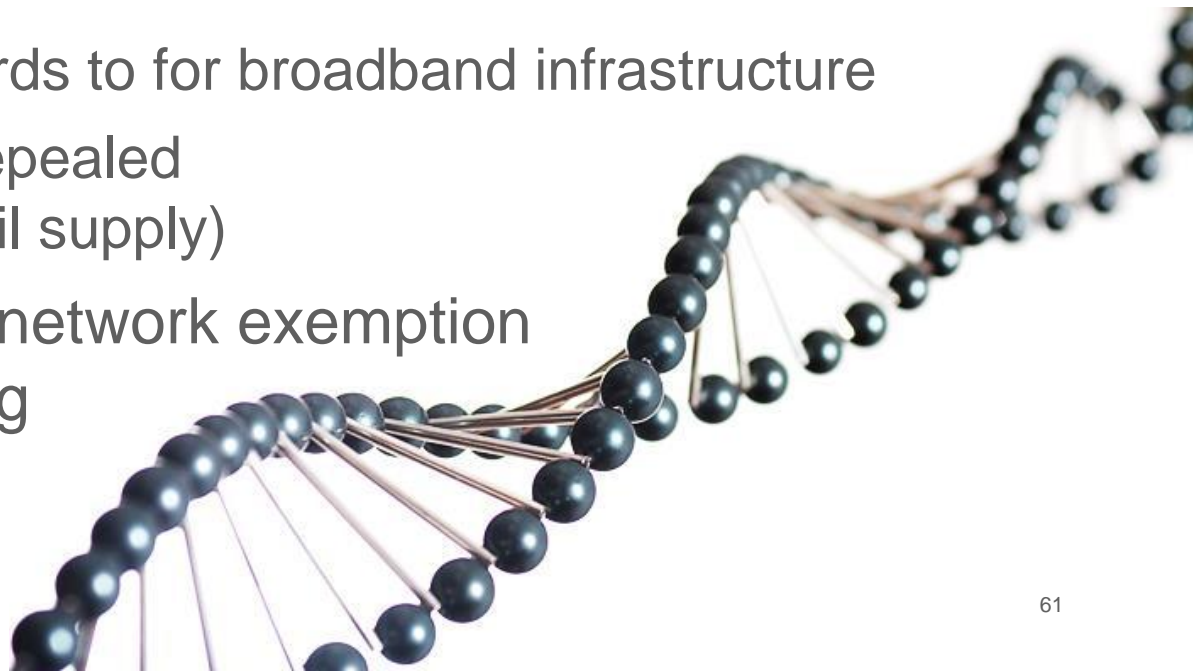
To the extent possible disaggregate or divest HFC network.

4

Allow competition but enforce structural separation by market undertakings to the ACCC.

The structure of wholesale market regulation

- Wholesale separation by Superfast Network Undertakings (SNUs)
 - ACCC with limited rights to refuse but detailed guidelines
 - Industry standards to for broadband infrastructure
 - Part 7 can be repealed (prohibiting retail supply)
- Remove the 1km network exemption but protect existing services



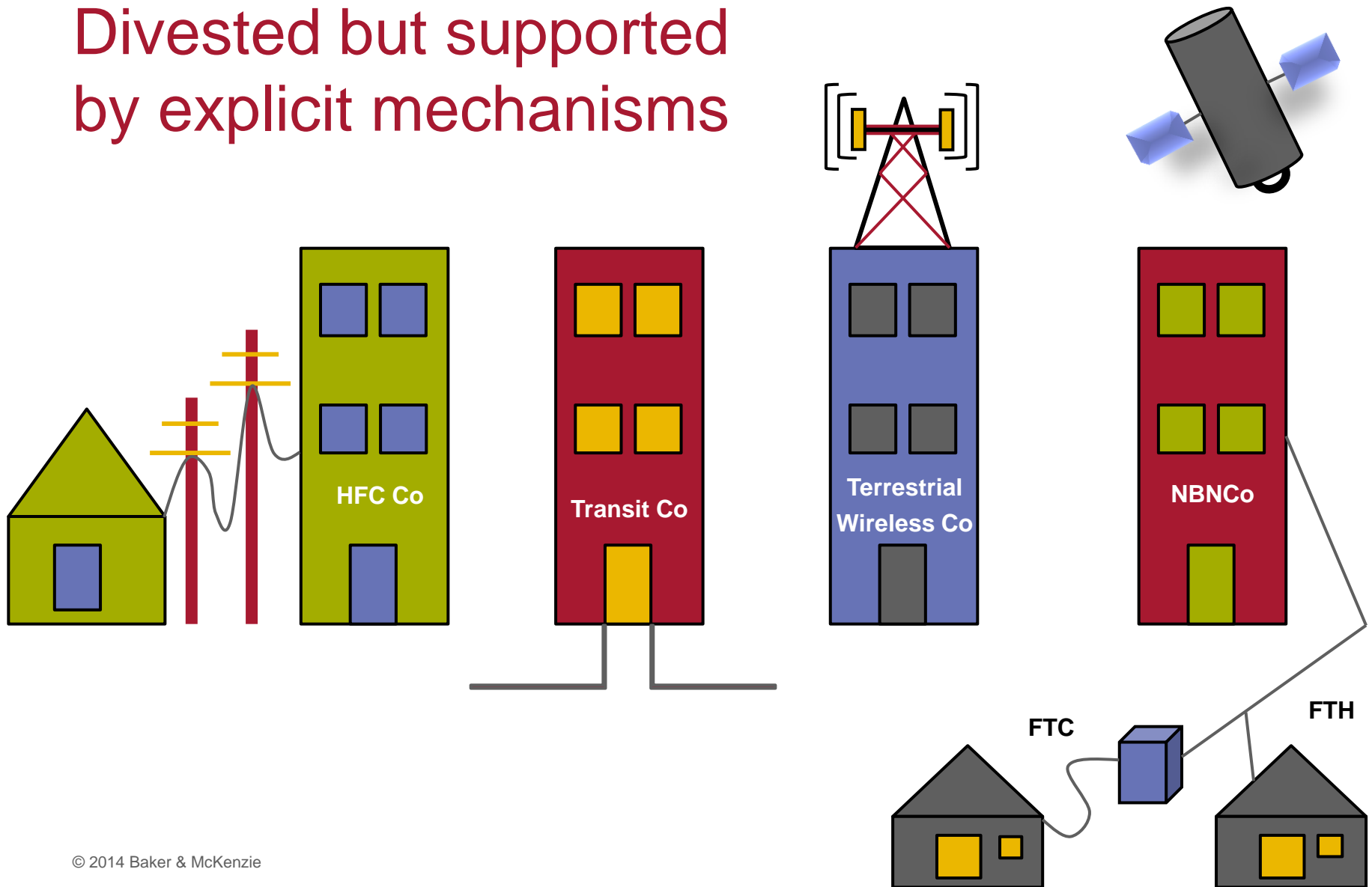
Adjusting the controls...

Full transparency to taxpayers = no cross subsidy + “explicit mechanisms” + “industry levy” for uneconomic satellite and wireless.

NBN to be instructed to act with competitive neutrality and “as a prudent investor” mindful of the impact of “overbuilding”.

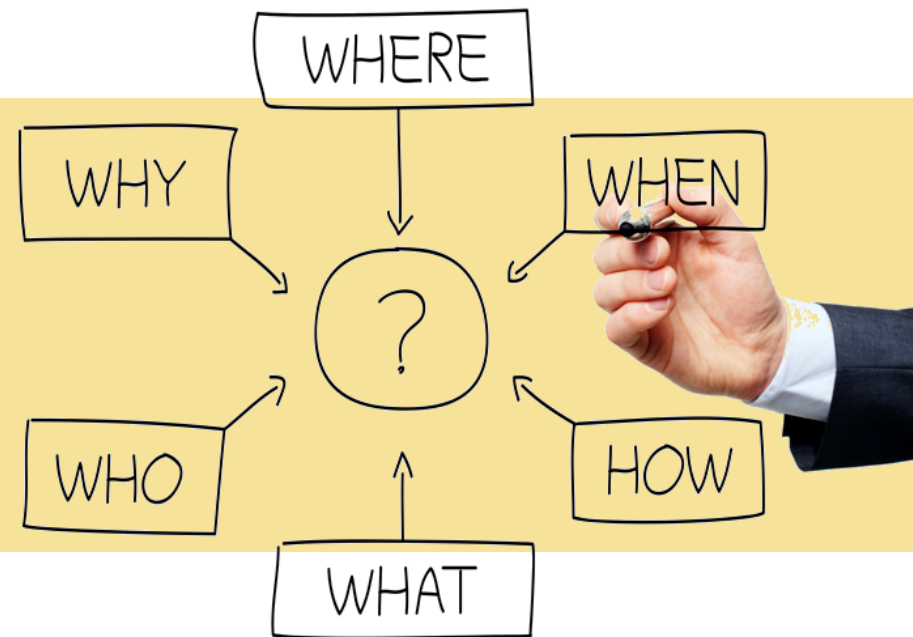
NBN to remain limited to supply of declared services subject to ACCC review.

Divested but supported by explicit mechanisms



If no separation of NBN Co

“ competitive neutrality requirements in respect of decisions about entry and expansion be established in legislation ”



New housing developments

NBNco should be required to recover its costs in full in new housing deployments.

Private sector should be able to compete with NBNco in the normal way for construction



A separate telco competition regulator

Most submitters supported the ACCC

ACCC was seen as an industry wide regulator in the context of declining industry specific regulation

The panel believes telco regulation will get more complex, will remain “bespoke” and involve “sheer scale”

Recommends a unique specific networks regulator

Subject to current Competition Policy Review (Harper)

Draft Harper report recommends separation of consumer watchdog and access and pricing regulator

Government response

Response

break-up “not ruled out”

BUT, not now:

- it’s an election commitment to deliver NBN as quickly and inexpensively as possible
- would distract management and delay provision of high speed broadband
- would result in large losses for taxpayers and the budget
- would increase uncertainty to industry (reject)



will consult on maintenance of level playing field (support)

will consult on changes to new housing developments (support)

Other matters and
discussion

Other matters

“The draft licence condition would require owners of high-speed networks servicing residential customers to **functionally separate their wholesale and retail operations**, and to provide access to competing service providers on the same non-discriminatory terms as those provided to their own retail operations.

The carrier's wholesale company would also need to supply **a Layer 2 Wholesale Service to other carriers and service providers**, with the price of that service set at \$27 per month.”

1

The Vertigan statutory review recommended relaxing anti-discrimination restrictions

2

Wireless and NBN support for mobile wireless via backhaul and tower access

3

15 October draft “anti-cherry picking” licence condition released

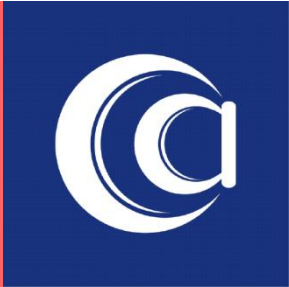
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Submissions due on 15 November 2014

5

HbbTV and the ultra-high definition television: 16:9, 3840x2160, uncompressed bit rate: 144Gbit/s





Q & A