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Gorillas and regulatory liposuction: CCC and Telstra square off

Telstra calls current regime “regulatory liposuction”, CCC calls Telstra gorilla with a fork

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*BY ANDREW HENDRY
COMPUTERWORLD*

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Does your executive search firm know its MIS managers from its elbow? Does it even know the difference between an MIS manager and a CIO, and if it does, can it explain that difference to its corporate clients?

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Telstra and the Competitive Carriers Coalition have gone toe-to-toe regarding where they believe the focus should be in the lead-up to the National Broadband Network build.

Speaking at the Broadband Australia summit in Sydney on Thursday, executive director for regulatory affairs at Telstra, Dr Tony Warren, argued that infrastructure investment and regulatory relief is the best recipe for ensuring effective competition and diversity in services for consumers under a new national network.

Telstra believes there is a "great deal of uncertainty" in the tender process and that the winning bidder needs to be assured that it won't be undercut by regulatory processes, overbuilding or price capping once it has invested in building the new network.

"The regulator needs to get out of the way to assist commercial certainty rather than add to it with regulatory uncertainty," Warren said.

"We must move on from the traditional regulatory approach...I call the traditional model the regulatory liposuction model that a) reduces the weight of capital investment and b) assumes there is plenty of fat to go around. That isn't going to work when it comes to securing billions of dollars in capital expenditure, especially during an international credit squeeze. We need to move from regulatory liposuction to regulatory certainty."

Executive director of the Competitive Carriers Coalition, David Forman, also argued that the current regulatory regime is inadequate, but for very different reasons.

"At the beginning of this month there were something like 36 matters being arbitrated by the ACCC between access providers and access seekers, and 18 that were being challenged in court. Telstra has been involved in almost all of those. In other countries [access disputes] are resolved by the regulator saying 'those are the prices, those are the terms, get on with it'. In Australia we don't have that system, we spend years resolving them," Forman said.

"We're completely bogged down in regulatory warfare. We've learned the hard way in Australia that using rules to control the behaviour of Telstra is like asking a gorilla to use a knife and fork to eat a banana - given half a chance it's going to stick the fork in your eye and eat whatever it wants."

Forman said there is no developed country in the world where the incumbent telco has the vertical and horizontal power that Telstra does, arguing that Australian consumers pay "ridiculous prices" for telecommunications services compared to the rest of the world.

"OECD prices demonstrate where we sit: For SMEs we're 40 percent above OECD average or third worst in the world. Similar for SOHOs - 35 percent above average...Mexicans do better than us.

"An Optus study released by Spectrum Value Partners examined the price of broadband plans of the incumbent in 18 countries across five categories of usage, from low to ultra high. Telstra is the most expensive in the world in three out of five categories of usage, and the second most expensive in a fourth, and we will continue to pay too much if the NBN is built on Telstra's terms," Forman warned.

He argued that the recent regulatory submissions to the government show that some form of structural or functional separation of the NBN owner/operator is essential to foster innovation, competition and to drive prices down.

"The separation genie is well and truly out of the bottle in this country. I think the task for stakeholders and policy makers from here is to identify what we want to achieve with policy and how best to design the regulatory separation arrangements for a future national network, that's the discussion we need to be having...we're going to be navigating a lot of distraction and noise, largely from Telstra, to suggest we shouldn't be having this conversation at all," he said.

And right he was. Telstra's Warren said the separation argument is a distraction, not a solution, and needs to be taken off the table.

"We've checked our views with leading global thinkers on economic regulation, and what they said should be sobering to the bandwagon separationists and crystal clear to policy makers...separation as a regulatory remedy has no track record of success."

Warren pointed to Professor Martin Cave, "the guy who invented much of the regulatory theory in the telecommunications space", who said vertical integration is efficient, separation will create very acute problems of investment co-ordination, and the best way to ensure healthy competition in a next-generation network is to start from a strong base of infrastructure competition. He also cited US academic Dr Mark Jamison who indicated "every flavour of separation" in the US was costly, disruptive and delivered more harm than good.

"Optus has rolled out one opposing expert who pointed to Mongolia as the poster child for network separation in telecommunications. I think I know where my money is," Warren quipped. Warren accused those calling for separation of being unable to agree on exactly what form of separation should occur, with mobile operators not wanting the NBN owner to also own a mobile service, ISPs not wanting the NBN owner to operate an Internet service, and other carriers wanting to "chop us up into little pieces".

"If we listen to them all the picture that jumps into my mind is the famous Black Knight from Monty Python; the separationists seem to believe that Telstra is endlessly divisible... this truly does belong I think in a Monty Python skit, it should be put aside," he said.

CCC's Forman rejected Telstra's claims that separation creates investment problems, asking whether Boeing needed to own and operate airports in order to begin development of a new airliner or to be aware of passenger loads that will ensure a return on that R&D.

"I would put forward this proposition - integrated ownership creates more risk for bad investment decisions because market signals are completely internalized."

He rejected Telstra's claims that separation in the UK and NZ were detrimental to competition. "It's not just BT, but regulators, competitors and consumers in the UK are saying what happened in the UK has been beneficial. It doesn't matter how many times we hear Telstra assert that there is some kind of disaster going on in the UK, it was a policy implemented to make the life of consumers better."

Forman also objected to claims that separation would damage Telstra's share price, showing BT's stock had, since accepting the separation model in 2005, risen compared to Deutsch Telekom over the same period, who had opposed separation. He pointed to New Zealand's communications minister who said, regarding the separation of Telecom NZ, that his job was to act for the benefit of all New Zealanders and for the good of the economy, not to protect Telecom NZ's share price from the impact of that company losing market power.

"I'm not saying Telstra is the devil, I'm saying Telstra is doing what it is structured to have an incentive to do and it will continue while it has that incentive and ability to discriminate in favour of its own business units against others.

"We should be arguing about the form of separation to get those incentives right. If Telstra still wants to argue against separation in any form then so be it, but the rest of us are having a debate that needs to be resolved."

For further information, please contact Andrew Hendry (02) 9902 2711 or andrew_hendry@idg.com.au.