



COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

JOINT COMMITTEE ON THE NATIONAL BROADBAND NETWORK

(Public)

MONDAY, 16 MAY 2011

SYDNEY

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JOINT COMMITTEE ON THE NATIONAL BROADBAND NETWORK

Monday, 16 May 2011

Members in attendance: Senators Birmingham, Cameron, Fisher, Ludlum, Ian Macdonald and Xenophon, Mrs D'Ath, Mr Fletcher, Mr Hartsuyker, Ms Ley, Mr Oakeshott, Mr Symon and Mr Turnbull

Terms of reference for the inquiry:

To inquire into and report on:

Rollout of the National Broadband Network

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Committee met at 9:33

CHAIR (Mr Oakeshott): I declare open this first public hearing of the Joint Committee on the National Broadband Network. When setting up this committee, the commissioning minister told the House of Representatives that this is an important committee. I think that is an understatement. We are made up of members from all political parties, plus Independents, from both the Senate and the House. The government has purposely given us a very broad mandate. The Prime Minister, in November last year, stated:

First the government agrees that there is a valuable and ongoing role for parliamentary scrutiny to properly scrutinise the implementation of policies. With this in mind and in the interests of accountability and transparency, the government will move to establish a joint committee on the National Broadband Network ... The ... committee ... will report on rollout progress, report against the final business plan, assess risk management processes and look at other matters the committee determines are relevant to its deliberations.

We are required to report to parliament and ministers on the rollout every six months, with the first report due in August, and we look also at any other matter relating to the rollout that the committee considers relevant. At the minimum, we would envisage hearing from the CEO of NBN Co. at least twice a year in connection with our six-monthly review, but there may well be other occasions when we need to take evidence from the company. The National Broadband Network is an issue that is attracting lots of public attention. At the parliamentary level there has been a Senate select committee into it and currently the House of Representatives Standing Committee on Infrastructure and Communications is completing an inquiry into the impacts of a National Broadband Network. As that committee concludes its work in the coming months, this committee will pick up the issues it has covered and will be the pre-eminent committee in parliament looking at the NBN.

As of today this committee has 14 voting members but 62 participating members, which shows just how important the National Broadband Network is across the parliament. Having high-speed and reliable bandwidth broadband is important to many Australians. It is vital to rural and regional Australia. It is important to business; it is important to schools, to the health sector, to growing our economy and to maintaining our international competitiveness. It is without doubt a significant undertaking by public policy—one which our nation cannot afford to get wrong. For that reason, as members of Parliament we all have a stake in scrutinising the largest infrastructure project in Australia's history on behalf of the Australian people. Although it is early days for this committee, at the outset I would like to acknowledge the productive and constructive discussions we have held so far.

Before I call witnesses, I would like to explain how today will proceed. The committee is looking today at both the NBN rollout and a referral from the parliament on the Telecommunications Legislation Amendment (Fibre Deployment) Bill 2011. We propose to look at the bill towards the end of each session with NBN Co., the departments and the ACCC. This afternoon Telstra and Greenfields Fibre Operators in Australia are appearing and they will exclusively address the bill. I think it is fair to say it will be a long and interesting day and I thank everyone for their cooperation in advance.

QUIGLEY, Mr Mike, Chief Executive Officer, NBN Co.

[9:36]

CHAIR: I welcome the first witness, Mike Quigley from NBN Co. Ltd. Although the committee does not require you to give evidence under oath, I advise you that these hearings are formal proceedings of the parliament and warrant the same respect as proceedings of the respective houses. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. The evidence given today will be recorded by Hansard and attracts parliamentary privilege. Before we proceed to questions on the rollout, I would like to remind everyone that we will deal with issues surrounding greenfields developments and the fibre deployment bill at the end of Mr Quigley's evidence, so I would ask you all to hold off on these matters until then. Mr Quigley, would you like to make an opening statement?

Mr Quigley: Yes, I will, thanks. I would first like to address the issue reported in today's press. On 27 December 2010 the US Securities and Exchange Commission, the SEC, working with the US Department of Justice, the DOJ, announced the conclusion of a five-year investigation, after which Alcatel-Lucent agreed to pay fines of a bit over \$137 million to settle bribery allegations against a small number of employees. Following media inquiries on this matter, Alcatel-Lucent issued a statement on 31 December 2010 which said:

In its investigations, Alcatel-Lucent found no evidence that either Mr Quigley or Mr Beaufret had any involvement in, or knowledge of the actions of the former Alcatel or its subsidiaries' employees that are outlined in the allegations presented by the US Department of Justice or the Securities and Exchange Commission in connection with Monday's announcements.

Following press queries, I queried and was advised by one of my previous colleagues in North America who is currently still with Alcatel-Lucent to check for me whether Costa Rica was within my area of operational control. On the basis of that advice I stated that it was not. This was an error, for which I unreservedly apologise. I issued a correction the same day I became aware of that error. It is not my intention to familiarise myself with the results of the five-year investigation carried out by the Securities and Exchange Commission or the Department of Justice, which I believe is subject to a settlement hearing in the US in early June. I will not be commenting further on the matters other than to repeat that at no time has the US SEC or DOJ sought to interview me or question me regarding any of those matters. I will put that issue aside now. I would like to return—

Mr TURNBULL: Do you want to deal with some brief questions relating to this issue?

CHAIR: No, we will deal with that in the questions.

Mr Quigley: I would now like to turn to the job I have been hired and paid to do, which is to run the NBN. My further opening remarks will relate, as best they can, to the terms of reference for the committee. Just to remind you again, we are designing and building a wholesale-only, open access, layer 2 ethernet network. We are trying to satisfy the government's objectives, which are to fibre 93 per cent of premises throughout Australia, with the remaining seven per cent to be covered with a combination of fixed, wireless and satellite.

We intend to use, in all three technologies, four product constructs, which are: device in the home, which is providing the user network interface and a network terminating device with four data ports and two analog terminal adapters to which people can plug in normal analog phones; we then have some speeds in megabits per second as a product construct; we also have a connectivity part of our product offering, so that retail service providers, our end customers, can differentiate the plans that they offer into the marketplace; then, of course, we have a connection point at a point of interconnect where the network-network interface takes place. As I think many of you know, there are 121 of these points of interconnect decided by the ACCC.

We are trying to make sure that those four product constructs are as similar as we can possibly get them across the three technologies. That is not possible to do completely, but we have certainly endeavoured within the constraints of technology to bring them as close as we possibly can.

Ubiquity and standardisation are also very important across the country, so that people can connect from the same point of interconnect using the same BSS processes and interfaces, using the same processes and, as I have said, at the same prices and product constructs as far as we can across the three products.

Fibre to the premise is now the technology that is being deployed widely by telcos around the world when they are looking at high-speed broadband, particularly those that are looking for a long-term investment in networks. In our rollout, there are five distinct and discrete network components. There is the box that is in the premise, the network terminating device. There is the lead-in that goes from the premise, from that box to a point normally on the street from the premise, which can either be at the top of a pole or in an underground pit. There is the local network that connects from that point back up to the splitter, which is in a fibre distribution hub. And then there is

the part that connects that fibre distribution hub or splitter, because this is a GPON network, back up into the fibre access node, the fan sites from which all the fibre fans out. Then from the fibre access nodes, of which there are approximately a thousand across Australia, you go back to the 121 points of interconnect through the transit networks.

Our job is to build those five different components right throughout the country. We have speeds, as you know, starting from 12 megabits per second down and one megabit per second up all the way through to a gigabit per second down and 400 megabits per second up. And we have complementary capacities on our connectivity virtual circuit.

We are trying to make sure that we leverage third-party construction projects wherever they occur, in types of coinvestment strategies. You may have a state government, a utility, a local government or a company that is undergrounding power or doing network maintenance in which it is possible for NBN Co. and that company, utility or authority to share the cost of fibring or ducting. Wherever that is possible to do, that is what we are doing. It could be if new roads are being created or the like.

We are also trialling in Tasmania, as we do the next seven sites in Tasmania, a fibre network extension. This is to try and accommodate those people who are not in the planned 93 per cent of premises in our fibre footprint but nevertheless would like to get a fibre connection. So we are trialling a process for those people who are prepared to pay the differential cost between the last percentile up to the 93 per cent. As you know, the costs go up with each percentile you do. So the costs go from the 93 percentile to whatever the additional costs are for them to have a fibre service. They would then pay and then we can fibre those premises.

There are some misunderstandings around the wireless product. We are providing not a mobile service but only a fixed wireless service. I keep repeating that. It is also the case that, as we all know, a lot of services these days are delivered via some type of radio technology, including wifi. I would reiterate that wifi is almost always terminated on a fixed line connection. It is on ADSL today and will be on fibre in the future. On our wireless product, we are dimensioning to make sure people get a very good service—in other words, they get high throughputs on their fixed wireless service—which means we are limiting the number of premises per cell that we will dimension on the fixed wireless path. Once again on wireless, we have speeds ranging from 12 megabits down and one megabit up. Those speeds of 12 megabits per second will extend out to the very edge of the cell.

We have two satellite products that we are doing as part of the NBN. The first is an interim satellite product until we can launch the final satellite product. The interim satellite product is a transition from the current Australian broadband guarantee and we announced that just a week or so ago. We have a relationship with Optus and a number of other parties so that we can deliver that six megabit down and one megabit per second up existing satellite and we hope to significantly improve the satellite services available to Australians from the middle of this year.

In order to deliver the final satellite product, we will be launching two large K_a band satellites with 80 gigabit per second capacities on each. In Australia we have some five per cent of the world's land mass, so there is a very large area to cover—I think a bit over 7,000 kilometres between Cocos Island and Norfolk Island. That means the satellite design is not easy. We are anticipating providing services to at least 200,000 premises. Just to give you an idea, today's broadband satellites that are above Australia have capacities of around four to six gigabits per second and each of these satellites will have an 80 gigabit per second capacity.

We are obviously going to be tracking a number of metrics as we build the network and I think some of those will be of interest to the committee. Of fundamental importance, of course, is the number of premises passed or covered. What we mean when we declare a premise passed is that we have put everything in place so that the owner of the business or premise can take a service. Everything is there. All we have to do then is drop the lead in and hook up the network terminating device, which will normally be done in consultation with the retail service provider. So when we say a premise is passed it means we are ready to deliver a service. When we talk about a premise being activated, we mean that we have received a valid service order and we have turned on a service through a retail service provider. They are two definitions of things that we will be tracking that I imagine will be of great interest to the committee—premises passed or covered and premises activated. In the case of greenfields, the premises passed definition has to be modified somewhat because we are talking there about lots passed. Over time, the lots are built out, so we will pass a lot.

Those are targets we will be making the committee aware of and you will find them in the corporate plan. There were some targets for numbers of premises passed and premises activated, but I would like to draw the committee's attention to the fact that they were indicative targets in the corporate plan with a number of dependencies. The first and most important dependency is the availability of exchange facilities for the location of the semidistributed POIs. As you all know, our intention is to use Telstra facilities for a large number of those

points of interconnect. Clearly, until the Telstra negotiations are completed and the Telstra deal is finally done, we cannot move ahead with making those points of interconnect available. That is an issue with which we have to deal. We also, I think, gave some indications of greenfields numbers, and we now have 1,480 applications for a total of 133,000 premises. As you mentioned, Chairman, we will deal with that one a little bit later.

Obviously we have been working very hard on tenders to make sure that we have all the materials and the services that we need to build out the network. We have a solid track record of negotiating what I believe are cost-effective deals for the goods and services that we will need. Over the past 18 months we have conducted some 90 tenders involving literally hundreds of companies, and that has been an intensive piece of work.

I have stated that we will not 'build at any cost'. We understand our obligations to taxpayers to deliver value for money for their tax dollars, so we announced on 1 April that we had suspended the existing construction process and entered into a new process, which is ongoing. As I said, my expectation is still that we will successfully conclude that and produce a good result for the Australian taxpayer.

I move now to Tasmania. We have had with stage 1 a prerelease of three towns—Midway Point, Scottsdale and Smithton—that have been fibred. Seven hundred and twenty-three services have been ordered in those three places as of 6 May, and 712 services have been activated. Some 4,000 premises have been passed and some 2,000 premises provided consent to have a lead in connected through their home. While we did not expect those numbers to be very large, we are in fact quite happy with the results that we got from the three Tasmanian sites and the learnings that we had in that place.

We have now announced, on 28 April 2011, Tasmania's stage 2, which is seven towns—Deloraine, Kingston Beach, George Town, Sorell, South Hobart, St Helens and Triabunna. That is a total of just a little over 11,000 homes and businesses in that fibre footprint. We have selected our partner down there, which is the energy utility Aurora Energy, and community engagement activities are well underway. I think we have already started some community information sessions and brief councils.

I have some information on greenfields, but I will leave that—as you suggested, Chairman—to the later part of today's proceedings.

I also want to stress that, with tens of thousands of people who will be working on the project, some of them in traffic-exposed locations using sometimes large machinery or potentially working at heights or close to pylons, safety is a priority. We have quite a number of strategies in place to make sure that we deal with health, safety and environment issues. We are working to Australian standard 4801 or ISO 14001. We have appointed an HSE general manager. We have an HSE manager assigned full time to each construction site. I personally chair the HSE reviews that we conduct in the company every two weeks, and we have a number of key performance indicators that we are reviewing with the board of NBN Co. We have put in place stringent HSE requirements in all of our construction contracts and, most importantly of all, we are establishing a no blame safety culture across NBN Co. where people are encouraged without fear or favour to report any potential near misses or anything that they think should be drawn to the management's attention.

Likewise on quality. We are putting a lot of focus on quality, establishing a quality program to ISO 9001. We have appointed a quality manager. We have some specialists in quality technology. And, once again, I chair a quality review that takes place on a fortnightly basis. We also have a subcommittee of the board that reviews both safety and quality, and that meets on a regular basis.

As we know, it is a risk in these types of large construction projects that costs can be an issue as you build. We have put in place a number of mitigation strategies to ensure that we achieve the cost targets we have set ourselves, including a very strong focus on continuous improvement. I reiterate what I said before: this is not a one-off bridge construction or tunnel construction; this is like running a large factory in which you are doing the same thing over and over and over again around the country, so the opportunity to use a modular methodology to get improvements in the supply chain and ongoing improvements in construction is a very important thing for us. It is to that end that we think the right way to start is with a primary construction partner rather than to go out with multiple partners all at the same time. We also have work going on, as you know, in five mainland sites around Australia. They are in Armidale, Willunga, Brunswick, Townsville and Kiama. I will not go through all of the statistics on that, other than to say I think you did ask about complaints in any of those areas. We did in fact obviously have some complaints as we were doing the rollout in those places, mostly related to the physical aspects of the build. The total number of construction complaints we had was 133, which represents a complaint level of one per cent of the premises covered in those first release sites. In each of those complaints, we address them and we make sure they are resolved to the satisfaction of the complainants; we have a process in place to try to do that to the best of our ability.

There were a number of other matters which were raised in the in camera session, and I have some information on that, but perhaps it would be best to finish at that point and answer those during questions.

CHAIR: Thank you, Mr Quigley, for the introduction. I am sure there will be a full range of questions over the next hour and a half. You touched on Alcatel, you touched on the Telstra deal and you touched on workforce and governance. I think they will all be covered by questions from others. On some procedural matters, we have been joined by Senator Fisher and also I am hoping to have Senator Ludlam on the phone from Perth.

Senator LUDLAM: Yes, I am here. Can you hear me?

CHAIR: You may get some questions from him, or not. As well, Senator Cameron quite rightly wants to move a couple of procedural motions for the committee in light of the fact that there is so much press interest.

Senator CAMERON: It is quite simple if we approve the press filming and taking photographs during the hearing. Normally at Senate inquiries we approve that. Secondly, we should resolve that no filming or photographing of senators' laptop screens be allowed.

Senator FISHER: Or indeed members.

Senator CAMERON: And members.

CHAIR: Or paperwork, but other than that—

Senator CAMERON: It is simply a procedural issue and I will move that way.

CHAIR: It is common courtesy as well. I know, having been a victim of that in the past. There being no objection, it is so ordered. That is passed. You are safe. I might lead with some questions really shaping around the seven per cent—the satellite wireless—and leave some other questions for some others.

Senator IAN MACDONALD: Can I just understand how you chair meetings. Do you expect senators to indicate if they want to ask questions, or will we go around the table.

CHAIR: I was just about to lead into that. We talked about this beforehand. Essentially I will go to the Deputy Chair, Mr Turnbull, and maybe Senator Ludlam if we can find him. Then it is really first in best dressed. Roughly, on the time we have, it is going to work out at around 10 minutes of questions from each person.

Senator IAN MACDONALD: Do you want us to indicate to you if we have questions?

CHAIR: Yes. Mr Quigley, I will start. This is really just an awareness exercise that I will be asking both yourself and the department. You are obviously aware of the terms of reference of this committee, as you have mentioned. You are obviously aware of the statement of expectations received.

Mr Quigley: Yes.

CHAIR: Are you also aware of the letter of agreement between Senator Xenophon and the Prime Minister? Have you sighted that?

Mr Quigley: I believe I have sighted that, yes.

CHAIR: From my perspective, they are probably the three key documents that are going to frame this exercise. The second question is probably a broad one seeking some confirmation. From my perspective, a lot of Australians now want this project to hit the 'go' button. There is a sense that there has been a policy debate and there are some pilot projects up and running, but really there is that issue of, in a scheduling sense, hitting the 'go' button and getting on with the job. Do you have that sense as well? If so, when can we really expect the 'go' button to be hit?

Mr Quigley: This is a vexed question, obviously. We are all keen to get on with the build as fast as we can but it would be unwise to build while there were open questions on policy issues such as we talked about the points of interconnect. That is just one of them. There are a number of other policy issues which did need to be resolved and it would be foolish to start really doing more than doing trials where you can learn something about construction but you are not moving into volume. So that is the first thing, that policy issues needed to be resolved. The second issue is that we have to make a decision about whether we wait for the Telstra potential deal to be finalised, in which case we have available to us an enormous number of facilities, huge facilities in terms of underground duct, the exchange facilities, backhaul facilities. If we were to ignore those, we may in fact go ahead and start building and then be building, for example, aurally where we could have used the Telstra ducts, or drilling underground and putting new duct in when there is usable duct on the same street with Telstra. So in our view it would have been a bad outcome for the Australian taxpayer and a bad outcome for the community if we had gone ahead ahead of having those facilities available.

It is a fact that the Telstra deal has taken somewhat longer to finalise than we had hoped. One of the reasons for that is that in a commercial deal itself it is a very complex deal. In addition, there is another part in parallel, that

this deal is a vehicle for structural separation and that adds another set of complexities. So for good reasons the deal has taken somewhat longer than we had hoped. We have done a lot of preparatory work and continue to do that preparatory work, but we really cannot press the final go button on ramping into volume until we have that deal finalised.

CHAIR: So this is not going to be an exercise of place by place; it is not a false expectation to expect the go button and some real volume to come down the line as soon as all the deals are in place.

Mr Quigley: Yes, but remembering that even once you have signed the definitive agreements, the shareholder approvals need to be done, and there is a process for Telstra to go through that shareholder approval, so it will be some months between definitive agreements being executed and shareholder approval in which the definitive agreements then become unconditional. There are a number of conditions precedent that need to be met. So while we have obviously spoken to Telstra about being able to do a number of things, we will not get unlimited access to, for example, ducts and backhaul until those conditions precedent are finally met. It is also the case that Telstra does need to do some remediation work in certain areas. It needs to do some make-good work in exchanges and do some regrooming of traffic so that we can have access to the dark fibre and it needs to do some remediation of the ducts. That all needs to be sequenced and planned. That does to some extent constrain which places we can go to at what times, particularly in the backhaul and the establishment of points of interconnect about how difficult that regrooming of traffic around Australia is.

CHAIR: I have got a particular interest in the seven per cent of the satellite and wireless. We are getting a bit of feedback in regards to some councils that have already got some fibre cabling running through their communities but they are not part of the statement of expectations and therefore are seeing this thing and feeling it is all a bit odd. Can you clarify for the public record just what is the arrangement and the expectation for communities that may want to upgrade beyond satellite and wireless? Is that an agreement directly with NBN Co., or is it going to work with government? What is the process of trying to upgrade if they want to, and at whose cost?

Mr Quigley: You are talking about if they are in our wireless and satellite footprint, in that seven per cent, but they want to have a fibre connection.

CHAIR: Yes, and particularly for those that are on the fibre cable network that is already part of the design.

Mr Quigley: Plan.

CHAIR: The Julia Creek example.

Mr Quigley: Just to make sure there is no misunderstanding, people may see fibre being run but that is a bit like, as I might have mentioned, a railway track where you have got a high-speed train on it. You cannot stop at every station along the way or every street. You have to decide where you are going to break out of that fibre and then distribute traffic. It would be a hideous cost to keep interrupting that traffic all the way down. While the fibre itself may be physically passing, it is like an off-ramp on a highway or a high-speed train; you just cannot keep stopping things along the way.

But we have a process in place which we are beginning to develop now. I cannot give you all of the details of it because it is in development but it is going to be trialled in Tasmania. We have a plan footprint. We make that public before we roll out into an area so that people know where the fibre will stop. If they are outside that, they can apply to NBN Co. We are expecting that sometimes a number of premises may all be interested in the fibre and want us to run out to them. We will then cost that on the basis of, 'What is the incremental cost to provide fibre to those premises rather than to address them with fixed wireless or satellite?' We will give a quote back to those people and say, 'This is the incremental cost. Would you like to proceed with that?' It will be on the basis of cost.

We will try to make this public. We will have the website and have people available who can discuss this and give people quotes and go through the issues with them and tell them what would actually happen and how it would happen. That is what we are going to be trialling in Tasmania. Our intention is to give people that opportunity but still try to stay within the bounds of what the government has asked us to do, which is to do 93 per cent of premises with fibre.

CHAIR: How far away from that process being clear for this committee do you think that is?

Mr Quigley: I believe we will be trialling it over the next few months in Tasmania. So I imagine that within the next few months I could certainly be talking about that in more detail.

CHAIR: In the longer term, for that same seven per cent, even for those who are off the fibre network, with the expectation of technology change and complementary measures—I think you mentioned Wi-Fi before—is

that the same process that the company expects will be in place? If something changes it might be complementary to wireless and satellite or it might not be. Therefore, the importance of tapping into the fibre network increases. Is that a consideration as well for this process or is that, in your mind, a separate process for consideration?

Mr Quigley: Sorry, I am not sure I have completely understood the question.

CHAIR: In the longer term there are going to be technology changes. They will, I hope, based on all logic, be complementary measures to what we are doing. Therefore, is it going to be the same process, particularly zoning in on the seven per cent who are satellite or wireless? Is it going to be the same process of consideration by NBN Co. if a technology change changes the cost benefit for a local council, for example, to tap into the fibre network and to then tap into a complementary measure? Is this going to be the same process at your end or has that not been considered at this stage?

Mr Quigley: I would not anticipate it. We have not given that a lot of thought, but I can certainly tell you the principle I believe we would follow, and I am fairly sure our shareholder would agree. If new technology became available that would lower the cost of the fixed wireless—

CHAIR: Or increase the benefit.

Mr Quigley: or increase the benefit and it was neutral to the overall business case we would obviously use it. Our intention is to keep up with technology as it evolves. As speeds evolve and as prices come down we will be using new technology. The technology we are deploying today we expect to be modified even in three or four years time with new generations. The number of ports on a card will come down and performance may increase. We would expect to be constantly using the newer equipment as it becomes available—within limits. When I say 'within limits', certainly for a project such as this you do not want to be the guinea pig for a new type of technology that has never been trialled anywhere before. It is just not a sensible thing to do. So as it becomes proven then we would use it. I have been asked the question, for example, 'Why aren't we using the fourth-generation LTE technology?' The answer is: we are. Our fixed wireless solution is LTE. It is just not used in a mobile application; it is used in a fixed wireless application.

CHAIR: This is my final question, so we can get into some others, and this comes full circle: does your last statement therefore indicate that the statement of expectations is not necessarily set in stone and that there should be an expectation in the future, by future ministers or the same ministers, that there will be a bit of a rolling statement of expectations depending on what happens in the marketplace?

Mr Quigley: I have not had those specific discussions with our shareholder, but I would anticipate that over the rollout period we could see some changes. You would not expect to be rolling out in an identical way in eight or nine years time to the way you are today. Technology evolves. That may allow you to do some improved things at lower costs, and we would expect to take advantage of that.

Mrs D'ATH: Mr Quigley, now that you are moving to the second release, I am interested in what lessons you have learnt in relation to the engineering, the budget and costs and the scheduling that you are now applying in this second release phase.

Mr Quigley: Certainly we have learnt a number of lessons. Some of them can be relatively straightforward things about what type of bracket you use when you are mounting fibre on a pole—what you can and cannot use; what works well and what does not. It can range from things as mundane as that to some misunderstandings—in other words, when you are interacting with communities, the information that you provide to them. We have certainly improved, I believe, the ability for people to get onto the NBN Co. website and get information, and we have also realised, obviously, the importance of having very solid community engagement that takes place as we roll out there. There are obviously a number of detailed technical things that we see as we have gone through this process as well, and there are all the usual things you would expect of a telco to confirm. So there is nothing radical that has come out, other than that these trials have allowed us to confirm some of the assumptions that we made—which is also very important, because it is one thing to test things in the laboratory and another to get them up and running in the field. We have just slightly rejigged the fibre architecture itself. I will not go into any details. It makes no fundamental difference to what is delivered; it is just the way in which the fibre architecture is optimised.

Mrs D'ATH: Can you also tell the committee where the Regional Backbone Blackspots Program is at and whether you have seen from that anything in relation to the pricing as yet.

Mr Quigley: I would suggest, if I could, that perhaps the department would be in a better position to answer that one. The regional black spot program is not something that NBN Co. is managing.

Mrs D'ATH: This is my last question before we pass over to other committee members. You talked about contractors being used, and you talked about a particular focus on health and safety. Can you just talk about what

NBN Co. are doing, where contractors or subcontractors are being engaged to roll the fibre out, to ensure the health and safety compliance.

Mr Quigley: We have a set of standards for health and safety which we make absolutely known to our contracting partners. We have a process whereby we have a discussion with them about what their health and safety standards are. We do the comparison and we require them to at least be at our standards. If in some areas they are doing something even better, that is good. We also have a process of incident reporting, which we train the contractors and subcontractors on how to use, so we are getting regular incident reports. We also have safety inspections done by our orders. We have a health and safety manager that is an NBN Co. employee. The contractors themselves have safety people on site. It has been the case that a number of subcontractors have been terminated—not that there was any particular incident; nobody was injured, but they could have been because they did something that we did not consider was in line with the safety standards. It could even be as simple as driving around in a truck without seatbelts on site. So it is those types of things that we are paying close attention to. I cannot overstate the importance of building a culture that does not assign blame to people reporting near misses. That is very important, because if you systematically analyse near misses over a period of time then you can, perhaps, head off real safety incidents.

Mrs D'ATH: I will leave it there for the moment. Thanks.

Mr TURNBULL: Mr Quigley, at the outset you corrected a misstatement you had made about Costa Rica, where there was a very serious bribery scandal with corrupt practices by Alcatel employees, in respect of which there is litigation ongoing. You had earlier said it was not your responsibility. You now know it was and you have corrected that. We thank you for that.

I would like to give you the opportunity to correct, if you deem it appropriate, some other statements that you have made. You did not disclose to the federal government or NBN Co. the fact of the ongoing investigations into what was in fact a global pattern of corruption on the part of Alcatel at the time you joined the NBN board, and apparently the federal government was not aware of that. They had not investigated that and found that out by themselves. You were asked about this on 5 May and you said, writing in the *Australian* on that day:

I did not raise the investigation of Alcatel-Lucent during my recruitment to NBN Co because it was resolved to the satisfaction of the SEC and Department of Justice well before NBN Co even existed.

The NBN Co. was formed on 7 April 2009. Its board first met on 20 April 2009. On 31 March 2009, Alcatel filed a form 20-F with the SEC and this is what it said regarding the investigation. This is 31 March, a week before NBN Co. was formed:

Neither the Department of Justice, the SEC nor the French authorities have informed us what action if any they will take against us and our subsidiaries.

In regard to several alleged acts in Costa Rica—the corrupt acts as now acknowledged—Alcatel stated:

We intend to defend these actions vigorously and deny any liability or wrong doing with respect to those claims.

The next 20-F was filed by the SEC on 23 March 2010. It stated that an in-principle agreement with the SEC and the Department of Justice to a plea deal was not obtained until December 2009, more than eight months after NBN Co. was formed. They said:

As previously disclosed in its public filings, Alcatel-Lucent has engaged in settlement discussions with the DOJ and the SEC with regard to the ongoing FCPA investigations. These discussions have resulted in December 2009 in agreements in principle with the staffs of each of the agencies. There can be no assurances, however, that final agreements will be reached with the agencies or accepted in court.

What I would like to tell you the committee is this: was your statement that, at the time NBN Co. was formed, the corruption investigation by the Department of Justice and the SEC had been resolved to the satisfaction of the parties; or was that statement also mistaken, because it appears to be quite clearly and expressly contradicted by the official corporate filings of Alcatel itself.

Mr Quigley: I was not following at that time the official filings that were going on. As I have said before, the reason I did not raise this with the government was I have never been questioned by either the Department of Justice or the Securities Exchange Commission. I was aware of a process that was going on in Alcatel. From everything I had heard, it was proceeding as these things normally do. As I have also mentioned, in the period 2008 to 2010, there were 44 companies that paid a total of \$3.3 billion in fines to the SEC and to the Department of Justice. This is a process which is well known. I am not excusing the illegality that took place or whether or not Alcatel's processes were tight enough. Clearly, if illegal activity took place, they were not. That is what was being investigated. I probably spoke too loosely at that point in time, not reading the 20C filings. My understanding is that it was a process that was going on and it would resolve itself in the same way as all of those other 44

companies had resolved themselves. So you are correct: on the basis of that timing, I probably spoke too early about what I anticipated—what is now an eventuality; it has happened. But I should not have anticipated; I absolutely agree.

Mr TURNBULL: So you agree then that the statement you made in the *Australian* on 5 May that the matter had been resolved well before NBN Co. even existed was in fact false?

Mr Quigley: Legally, yes. It sounds—

Mr TURNBULL: Well, factually yes. I would like to now go to another matter. In the same article on 5 May 2011, you said:

When the company—
that is, Alcatel—
became aware of this illegal activity it notified the relevant authorities, including the SEC.
And in an interview on the same day you said:

... the investigation was in fact initiated by Alcatel reporting to the authorities that there was a suspicion that two individuals, one in Costa Rica and one in France, had committed an illegal act.

I put to you that those statements are also contradicted by Alcatel's own public filings. Alcatel's 2009 form 20-F filed with the SEC on 23 March stated:

Beginning in early October 2004, Alcatel learned that investigations had been launched in Costa Rica—
by the Costa Rican prosecutors—
and the National Congress, regarding payments alleged to have been made by a consultant on behalf of an Alcatel subsidiary—
Alcatel CIT, a French subsidiary, now called Alcatel-Lucent France, or other Alcatel-Lucent subsidiaries—
to various—
public—
officials in Costa Rica, two political parties in Costa Rica and representatives of ICE, the state-owned telephone company, in connection with the procurement by ... Alcatel ... of several contracts for network equipment and services from ICE. Upon learning of these allegations—
by the Costa Rican authorities—
Alcatel ... commenced ... an investigation into this matter.

Isn't it the truth, Mr Quigley, that Alcatel did not draw these matters to the attention of the authorities but in fact the Costa Rican authorities launched an investigation, and it was not until the Costa Rican law enforcement authorities started investigating your former employer's other employees' corrupt practices that Alcatel itself started to look into it?

Mr Quigley: I do not see the contradiction there. I believe that Alcatel at that time reported to the SEC and the DOJ before they were approached by the SEC or the DOJ.

Mr TURNBULL: Okay, so you are saying that what you meant to say there was that—

Mr Quigley: No, what I did say.

Mr TURNBULL: So you are saying that the term 'relevant authorities' or 'authorities' does not include Costa Rican authorities?

Mr Quigley: I was talking about the SEC, because the question I believe I was asked was—

Mr TURNBULL: All right. Okay.

Mr Quigley: I will also say that one of the reasons it is probably wise that I do not try and go into any detail is that I am simply not familiar with the filings of the SEC and DOJ, and if there is one thing I certainly have learned it is now to be very precise, so if I do not know something I am not going to try and answer it. There is a hearing that is taking place, a settlement is taking place, and I for sure I understand that, even if I am talking about the general principle of something, I have to be quite precise. So, if you ask me quite a number of questions today on details, I simply will not know the answers.

Mr TURNBULL: Well, that is fine.

CHAIR: As chair: each member has about 15 or 20 minutes to ask questions—

Mr TURNBULL: I just have one final point to raise.

CHAIR: on this topic, because it has to stay within the bounds of the government and NBN, which is why I am allowing a longer—

Mr TURNBULL: No, I understand. Can I just say this to you, Mr Quigley: nobody is making any allegations against you, least of all anybody here.

Mr Quigley: I appreciate that.

Mr TURNBULL: You have corrected one misstatement voluntarily. You have now corrected a second that I raised with you and acknowledged your previous statement to have been false. For the third one you have given an explanation. I just want to raise one more with you, because you are running one of the biggest businesses in Australia and it is funded entirely by the taxpayer—

Mr Quigley: Absolutely.

Mr TURNBULL: and so we are entitled to ask a few questions. When Mr Beaufret was appointed, it was stated that he was the chief financial officer at Alcatel between 1999 and 2007. That was in NBN Co.'s press release. But the corporate filings indicate that he did not become CFO until 2002.

Mr Quigley: Yes. I believe that it was 1 January 2002.

Mr TURNBULL: So the NBN Co. press release had a mistake?

Mr Quigley: It sounds like it was wrong. I think he was the deputy CFO for that period.

Mr TURNBULL: I just wanted to clear that up. Finally, Mr Beaufret was the CFO and you were in a senior position responsible, as you have now acknowledged, for a country in which there really was a massive corruption exercise on the part of Alcatel. You have said that you had no involvement or knowledge of it, and nobody is suggesting that you did—least of all any of us. However, what have you and Mr Beaufret learnt from such extensive globally pernicious corrupt activity happening in a company under your watch?

Mr Quigley: I can say this. I had a discussion relatively recently with a senior person in the US who was going to a discussion with lawyers. As I have said, almost every large company in the world now dealing across 130 countries, as we were with Alcatel with 60,000 employees, has a very tough time making sure their processes are tight enough so that if some illegality takes place you can catch it. It is very difficult job. We are talking about a decade ago. There has been a lot of work done with Sarbanes-Oxley and everything else in the last decade, but even today it is still very difficult. That is why, as I have said, between 2008 and 2010 44 very large companies--General Electric, Volvo and others—have had to pay fines for this type of activity. That is not excusing it, but it is a tough job.

The issue we have in Australia is clearly much simpler. We are not dealing in 130 countries with different languages and cultures but, clearly, you have to always be vigilant. That is why inside NBN Co. we have made sure we have looked very carefully at probity issues and controls. The board is also conscious of it. There is certainly a more heightened awareness on boards today than there was a decade ago. We have certainly learned from that experience.

As I have said, it was for me, frankly, a particularly difficult time. I was appointed in March 2001 as the president of Alcatel in America after arriving in the US in December 1999. We were going through the tech wreck. I had to halve the size of the company in the US. It is no excuse. I absolutely must say that it is no excuse but that clearly was where my attention was. When you are laying people off and having to deal with the existence of a company you are running, which I was in the US, it occupies a lot of your attention. That is no excuse. Costa Rica was there. Collectively the company should have discovered it. It did not, and obviously Alcatel-Lucent is now settling that with the DOJ.

Senator LUDLAM: I would like to ask some questions about the NBN. I apologise for having to teleconference in because your network does not exist yet. Can you give us an update on when the Telstra agreement will be signed, because you outlined in your opening remarks that quite a lot is hanging on that and surely it must be starting to disrupt your timeline that you still do not have a definitive agreement with Telstra?

Mr Quigley: If I can address the last question first, it certainly is a constraint on what we can do, but we are still working towards doing the things that we need to be doing—building OSS and BSS systems and getting on with satellite and wireless. But, yes, it is a limitation. I cannot—in fact it would be unwise for me to—comment on when the Telstra agreements could be signed. It is a complex process that we are going through. There are many parties involved. What I can tell you—and I apologise if I have said this before relatively recently—is that that we are coming close to the final stages of it but there are some months of process to go beyond that. Clearly the ACCC needs to be involved in the lodging of structural separation undertakings by Telstra. There is the

shareholder approval that has to go through. So, yes, it is a constraint, but we are trying to make as much progress as we possibly can to be in a good position so that when things open up we can get on with them very quickly.

Senator LUDLAM: Have any numbers in your business plan, or anything that was published in that business plan, already been thrown by Telstra's decision to delay their shareholder vote?

Mr Quigley: Yes. In the business plan—the corporate plan that we submitted on 17 December last year—we made an assumption that the deal would be done by June of this year. Clearly that is not going to happen. It has not happened, and it will not happen by that date. So there will be an impact, and we expect that, once the deal is done and we have an opportunity to see the exact date of that, we will update those milestones.

Senator LUDLAM: You addressed very briefly the first and second release sites. Can you give us an update, for the mainland second release sites, on how work is progressing there?

Mr Quigley: Yes. We are doing a reasonable amount of planning. We have done what we call our top-level dies and network design on that, but the detailed design has awaited two things. It has awaited the ability to access some Telstra infrastructure. I think I can say, without giving away any confidences, that we have negotiated with Telstra a way forward on those second release sites, perhaps ahead of the shareholders' agreement. But I should say that that is negotiated; it is not final and complete. So we should be able to do something a little earlier. And of course we have yet to select a contractor, or a number of contractors, to do those second release sites. We are also in that process at the moment.

Senator LUDLAM: I am presuming that has also been held up by the tender process that fell over, which again you addressed very briefly in your opening comments. Do you want to give us a little bit of background to why that went so badly and whether you are back on track again?

Mr Quigley: In all of these large tenders, you have to make a judgment in the end about whether or not you believe you are achieving value for money. In our case, we are particularly sensitive to this because this is taxpayers' money which the company will be spending. We were not satisfied, with the construct we had put in place and the responses that we had, that we were going to get the best outcome, so we changed that process. We suspended that process and moved into another process. I cannot say too much more than that at this point in time because we are in the middle of that second process.

Senator LUDLAM: That is fair enough. I understand those negotiations are ongoing. But presumably you must have put something very different on the table, because virtually the entire industry ganged up on you and said, 'You can't get it for what you are asking.' So what have you changed to ensure that the outcome is different next time?

Mr Quigley: These are always negotiations back and forth, and it is impossible, across the large number of tenders we were tendering with, to have the sorts of detailed discussions that we are having in this second process. But they are essential in order to try and iterate down on what we think is the right set of conditions. I should also say, as I mentioned earlier, this is one tender process out of a very large number that we have concluded successfully. Some of them were hard bargains. I will not pretend to you for a moment that the Australian contracting industry are not hard bargainers. It has been tough going, but we were adamant we were going to get what we believe is the right outcome for the Australian public.

Senator LUDLAM: I want to raise one issue with you that does not seem to have had a great deal of scrutiny, which is the security of the network and its resistance to attack. We are all reasonably aware of the threats that are faced online as far as corporate espionage or actual espionage from other governments are concerned. We are building a new piece of critical infrastructure here. What new vulnerabilities does that open up in that particular domain and what are you doing to address those?

Mr Quigley: In some areas in fact it will make the network a little more secure at the physical layer, and remember that a lot of these attacks take place at layers that sit above us. We are at layer 2, the ethernet. We move bits across the network. So what we have to pay close attention to is the security of the equipment, the physical security of the plant. The fact is that it is certainly not as easy to tap into fibre as it is to tap into either copper or a wireless service. We are looking at the physical security of points of interconnect, we are looking at the physical security of the systems that we lay into the ground and of course we are looking at the physical security of buildings. It is also the case that we are working closely, and have been right from the beginning, with the various agencies within the government that you would expect us to be talking to and cooperating with. I met one of those agencies very recently and they told me that they were very pleased with the cooperation that has been ongoing and NBN Co.'s responsiveness to their requests. Obviously I cannot go into the details of those discussions.

Senator LUDLAM: I understand. Do you have a particular unit or division concerned with security or someone whose responsibility that is?

Mr Quigley: And we are also taking further steps to enhance that as we move forward, as we are in most areas. But yes, we have assigned a specific person whose responsibility is security.

Senator LUDLAM: Can you tell us who that is or which—

Mr Quigley: No.

Senator LUDLAM: Is it secret?

Mr Quigley: Yes.

Senator LUDLAM: All right. Chair, I will come back with some other questions later if there is time.

Senator IAN MACDONALD: First of all, I want to ask about the tender that Senator Ludlam just spoke about. Do you concede that the original tender put out by NBN Co. was basically flawed? If so, are you thinking of compensating those who spent a lot of money to put in for those tenders?

Mr Quigley: No, I would not say at all that the previous tender was flawed. What I would say is we went out with our requirements and, if in fact we had had responses which were satisfactory and in which we believed the prices were acceptable, we would have moved ahead on that basis. But it did not work out that way.

Senator IAN MACDONALD: But almost everybody tendered, as I understand it, around the same. Is it that everybody else is out of step and you are the only one in step?

Mr Quigley: No, that absolutely was not the case that everybody tendered much the same. There was huge diversity in the response we got.

Senator IAN MACDONALD: Does that suggest that your tender was not terribly precise?

Mr Quigley: No, it reflects what normally happens. In almost every tender we put out we have a very large diversity. That is the process. People tender for different reasons. They varied, by the way, not just in prices but in statements of compliance to requirements. That is not abnormal at all in tender processes.

Senator IAN MACDONALD: On notice, can you give us the range of difference in the tendering that came in and perhaps one or two other tenders that you say there is a wide range in—perhaps without specifying them but just so that I can understand what you mean when you say there is a wide range?

Mr Quigley: I may be able to do that in terms of percentages, but I certainly cannot do it in absolute numbers because it would be foolish to put numbers out when we are in the process—

Senator IAN MACDONALD: But you have rejected them all. Why would it be foolish? You are not dealing with any of those tenderers.

Mr Quigley: I also cannot do that, I believe, just on disclosure issues. I believe when people put tenders in they have every right to expect—

Senator IAN MACDONALD: But I am not asking you to name them. Just give me the range.

Mr Quigley: No, I cannot. I will have to take some advice, but I may be able to do that on a percentage basis. But it would be commercially foolish of me to say, 'This was the lowest and this was the highest.'

Senator IAN MACDONALD: We could argue about that, but my colleagues and time will not permit me. Perhaps at estimates we might come into that, and we have the pleasure of having you in a special meeting a little while after next week, as I understand it. Are you involved in financing, or is that entirely the department?

Mr Quigley: Financing of what?

Senator IAN MACDONALD: I see the Aussie bonds—the bond issue—have come up again. Is that something NBN is doing or is that a departmental issue?

Mr Quigley: No. If I can distinguish the two, the case of the financing of the equity injections which the government would inject into the company is completely an issue for the government. Ultimately, in the long term, we expect to raise funds for NBN Co. on its own behalf.

Senator IAN MACDONALD: Are you working towards that now? If I ask you questions at estimates—here is notice—will you be able to answer questions about the long-term funding proposals?

Mr Quigley: Yes, I believe so, in general terms. We have based our corporate plan on some long-term funding projections, and we have taken advice, as you would expect, from investment banking companies on that.

Senator IAN MACDONALD: Okay. We will talk about that at estimates. You said that when new technology came up, provided it did not cost you too much, you would go to it. Why would you bother? You have no competition in Australia. It does not matter what sort of service you provide; once the fibre is in, nobody can go anywhere else.

Mr Quigley: Because I believe the very ethos of the company is to try to provide the best possible broadband service to the Australian public at the lowest cost and as efficiently as possible. I do not think we have a person in the company who does not believe this is a very important project for Australia. They are not inclined to do a bad job of it. They will want to keep up with the latest technology. Why wouldn't they? If we can continue to provide better and better service, that would be what we would be doing.

Senator IAN MACDONALD: But it will be provided at a cost.

Mr Quigley: Yes.

Senator IAN MACDONALD: You will not be able to get better service without a cost.

Mr Quigley: As I think I have said before, this company's aim is not to generate the maximum amount of profit; it is to try to provide an acceptable return to the government and to provide the very best broadband service we can across the nation.

Senator IAN MACDONALD: The original concept was that you would provide a return on investment to the government.

Mr Quigley: Yes.

Senator IAN MACDONALD: As well as that, the government was going to sell you out to a private company, who were not going to buy you unless you were returning a market rate on your investment.

Mr Quigley: Yes. At some point in time, as we go down the track—it is all part of the funding plan—you would expect that, first of all, people would be willing to lend money to NBN Co., and that is certainly the expectation we have. The question of equity of the company and the long-term ownership is really a question of policy that I think is best referred to the government or the department.

Senator IAN MACDONALD: Sure.

Mr Quigley: But, to make sure that we are absolutely clear, we have every intention of prudently using the best technology that is available to us to provide the best service, and I believe the company should be measured on how good a job it does by its customers, which are the retail service providers.

Senator IAN MACDONALD: I am sure Telecom or the Postmaster-General had the same thing, but without competition they did not put it into effect. Anyhow, that is a comment. Were the complaints of one per cent even across Australia or were there more in one particular area?

Mr Quigley: No, if I look at the numbers, my recollection is that there were more in Kiama than in other places.

Senator IAN MACDONALD: Being parochial, can I ask you on notice what the Townsville situation was.

Mr Quigley: Yes.

Senator IAN MACDONALD: You mentioned, as I understood you, that 723—I think that was it—premises in Tasmania had been connected and 710 had signed up out of a total passing of around 3,000 to 4,000.

Mr Quigley: I think those are roughly the numbers; I could look them up again. But that is the number of service requests we have. In other words, the slightly higher number—seven hundred and whatever it was—is the number of people who have requested a service, and the slightly smaller number is the number we provided a service to through a retail service. So that is the gap, if you like, of the orders that have come in and have not yet been fulfilled.

Senator IAN MACDONALD: Didn't the implementation study indicate that you would need something like a 90 per cent take-up to make it pay? That is certainly not a 90 per cent take-up.

Mr Quigley: No, I do not believe they said it was 90 per cent; I think the number was considerably lower in the implementation study.

Senator IAN MACDONALD: What was it? Just remind me.

Mr Quigley: I cannot remember.

Senator IAN MACDONALD: America said 40 per cent.

Mr Quigley: We have made an assumption, I believe, in our corporate plan. I would have to check it, but I believe it is around 73 per cent. But that is on the basis of a Telstra deal. I would like to distinguish the difference here. If you are comparing overseas take-up rates on fibre to the premises—

Senator IAN MACDONALD: No, I am not. That was an aside. I am interested in the Tasmanian take-up, which is about 25 per cent while you want 73 per cent.

Mr Quigley: I would not draw any long-term conclusions from the Tasmania take-up rate. First, it was a prerelease trial; second, the places we went to in Tasmania are absolutely not representative of the whole of Australia; third, it is not part of a deal that we have done with Telstra for the retiring of the copper and the replacement by fibre. It is an entirely different business proposition.

Senator IAN MACDONALD: Is it true that in Tasmania you did not charge the retail service providers for your network until 1 July this year?

Mr Quigley: Yes, it is absolutely the case. One of the reasons is that we have not built the OSS and BSS systems to make that process automatic. It would have been a very manually intensive process. It was not a sensible proposition. It is also not what we were trying to prove. We were looking at construction methodologies and operations and technology issues. We were not trying to generate a profit.

Senator IAN MACDONALD: But the 710 who have signed up have obviously signed up on a deal that gets no return whatsoever for your \$55 billion investment.

Mr Quigley: That was not—

Senator IAN MACDONALD: I am sorry; it is not \$55 billion for Tasmania.

Mr Quigley: No. But that was not our intention. The whole exercise of conducting a trial is not aimed at making a return.

Senator IAN MACDONALD: I am not talking about your intention; I am talking about the willingness of people to sign up to your organisation when they are getting all of your work buck free.

Mr Quigley: They are not. Remember: we are providing it free to retail service providers; retail service providers then price.

Senator IAN MACDONALD: Yes, but what the retail service provider charges the customer must take into account what you are charging them, and it was nothing.

Mr Quigley: They may also view this as a temporary, short-term—

Senator IAN MACDONALD: So they were ripping their customers off because they were allowing for your payment but not paying you?

Mr Quigley: Not necessarily, because they have, as part of a trial, with small numbers in these locations, costs which they otherwise would not in an ongoing business. So it is not an unreasonable proposition.

Senator IAN MACDONALD: We might explore that at estimates when we have a bit more time. Finally, I might just talk about the Julia Creek example, if I can call it that, because we had the letter, and it is an easy way to explain. It is an example where the fibre goes through the town but they cannot connect up. You say you will work out what the incremental cost is to deliver to Julia Creek and then offer it to, I assume, the council, to say: 'If you want to pay this, we will connect you.'

Mr Quigley: No, it is generally the other way around. If a council or householders or business premises put a request to us, we will make sure it is well known that there is a process: that people can apply to NBN Co. to see if we can extend the fibre footprint. So, generally, we will cover every town throughout Australia with 1,000 or more premises with fibre, and if they are on our transit links we will cover them if there are 500 premises or more. If a town has, for example, 300 premises but the council would like us to provide a fibre solution to that town, then they can apply to us. We will tell them what the incremental cost will be and then they can make a decision as to whether they would like us to do that.

Senator IAN MACDONALD: So you are saying that, notwithstanding the government's comment that anything above 1,000 people would be connected—

Mr Quigley: No, 1,000 premises.

Senator IAN MACDONALD: you are saying that you are going to do 500 anyhow, notwithstanding what the government said, but for 300 you might have to.

Mr Quigley: That decision of 500 on the transit links—in other words, where we have backhaul fibre already going—was made in consultation with the government. They were well aware of that. We wrote it into the corporate plan.

Senator IAN MACDONALD: Then, on notice, could you tell me the difference? I accept there would be an incremental cost for a smaller number of connections, but it does not seem that there is going to be a huge difference in the incremental costs between 500, say, and 300, or even—going back to the government's original comment of 1,000—between 1,000 and 300. I am wondering if on notice you could give me some indication of—

Mr Quigley: I could attempt to give you some indication, but you have actually got to do the design to know that. I will try to give you an indication about what the orders of magnitude would be for that difference. We will do our best to estimate it. Would you like me to actually look at Julia Creek specifically?

Senator IAN MACDONALD: That would be a great example, and they will be delighted and will give you every assistance I am sure. Julia Creek is a little town. It is fairly compact. It is on flat land. When you talk about design, I assume you mean technical design?

Mr Quigley: Technical design, yes.

Senator IAN MACDONALD: But then the technical design would apply to Charters Towers, which is not all that far away.

Mr Quigley: If I can take that on notice, I will try and have a look specifically at Julia Creek. It is always good to have a concrete example we can look at. This is, by the way, one of the issues that the company faces: on the one hand, we get people saying, 'We should not have fibre; it is a complete waste of time to go above a small number,' and then we get people such as you arguing that we should really fibre much more than 93 per cent.

Senator IAN MACDONALD: Hang on; don't verbal me!

Senator CAMERON: I am wondering about that, Senator Macdonald!

Senator IAN MACDONALD: You are getting like Senator Cameron with the verballing!

CHAIR: I am conscious that we have about 45 minutes and there are seven more—

Senator IAN MACDONALD: I just want to correct that for the record. You know our policy on the whole NBN, which I abide by, but the government of the day has commissioned your company to put the fibre there. It is going there regardless of what I want or think or care, so, accepting reality as it is, I am then asking you. Do not suggest I am—

Mr Quigley: Mayor Woodhouse, from Julia Creek, would be very happy to be in touch with you, Senator Macdonald.

Senator IAN MACDONALD: Of course the public want it, but they want to be able to pay for it.

Mr FLETCHER: Mr Quigley, could you remind us what percentage of homes will be connected using overhead cable? Approximately how many thousands of kilometres of overhead cable do you expect in the access network?

Mr Quigley: That question I would have to take on notice, I think, Mr Fletcher. It really depends precisely on how much underground duct will become available. We have had those discussions with Telstra, of course. It is also the case that we will be doing some ducting if the Telstra duct is not available. We will do some ducting ourselves, but obviously there is going to be some overhead cable as well. Probably those estimates are in our previous corporate plan.

Mr FLETCHER: I think the corporate plan says 25 per cent.

Mr Quigley: Twenty-five per cent seems about right, yes.

Mr FLETCHER: Okay. I am concerned at the prospect of a duplication of overhead cable in areas that are presently covered by the HFC cable, which is overhead. Is that a likelihood?

Mr Quigley: I cannot answer precisely but my feeling would be not. The reason why I think that would be the case is that they tend to be in built-up areas. The places where the HFC cable went were generally the built-up areas, the more affluent areas, which means there is almost certainly Telstra duct. HFC is a different proposition from rolling fibre, as you know. HFC is much bigger, so we have a much greater chance of being able to put fibre in ducts and even potentially in underground lead-ins than you do with HFC.

Mr FLETCHER: I am thinking about both the Optus overhead cable and the Telstra overhead cable. Just to understand that: you are suggesting to me that it is unlikely that there would be a duplication of overhead cable?

Mr Quigley: No, I would have to take that one on notice, have a look and make that estimate, but I am saying that I think we should not assume that because the HFC cable was overhead the fibre necessarily has to be. It could be that you could use existing ducts or lead-ins.

Mr FLETCHER: I have a particular concern about the heritage areas of my electorate of Bradfield. Are you able to give me or my constituents any comfort on that point about the risk of additional overhead cable?

Mr Quigley: I can only take that on notice and perhaps, in the same way as I have with Senator Macdonald, give you some indication. I will go back to the network engineers, the planning engineers, and ask, 'How does Bradfield look?'

Mr FLETCHER: What planning permission will you need to obtain before you install either overhead cable or any other facilities?

Mr Quigley: That depends on whether they are low-impact facilities or not low-impact facilities. Those processes we are working through, mainly at the state level and local council level.

Mr FLETCHER: It is right, isn't it, that if they are so-called low-impact facilities you are not required to get local council approval?

Mr Quigley: Yes, I think that is the case.

Mr FLETCHER: Therefore there is the risk that in a number of parts of Australia people might well find facilities being built that have not been approved by the local council?

Mr Quigley: Yes, but that generally means they are falling within the local council guidelines. The reason why they do not have to give approval is that they have already kind of preapproved low-impact facilities.

Mr FLETCHER: I think low-impact facilities are under the Telecommunications Act, aren't they, as opposed to local council?

Mr Quigley: You could be right. These are already, I believe, pre-existing—already negotiated and agreed—guidelines and rules.

Mr FLETCHER: They are. I am just trying to get to the risk of additional facilities and particularly overhead cable being built which duplicates existing cable included in heritage areas.

Mr Quigley: If I can take that one on notice, I will have a look specifically at Bradfield and see what the situation is. It would probably be a good example to look at concretely.

Mr FLETCHER: Thank you. It has been stated publicly, I think, that the arrangement that is being negotiated between Telstra and NBN Co. requires Telstra to move traffic across from the copper network to the NBN. That is right, isn't it?

Mr Quigley: No, they have an obligation to disconnect. They cannot dictate to their customers whether they move on—

Mr FLETCHER: So their obligation is purely to disconnect their customer from their network. Are they also obliged, then, to decommission the copper network?

Mr Quigley: That is part of the whole structural separation undertaking. So they do in fact decommission and they move onto a wholesale network.

Mr FLETCHER: Is it the case, therefore, that the payment that NBN Co. will make, or that Telstra will receive, does not include giving NBN Co. the option, should it choose to exercise it, to use the copper, if it finds that to be a more economic or practical solution?

Mr Quigley: That is not an issue that we have discussed or negotiated.

Mr FLETCHER: So, just to understand that: if it were the case, for example, that you came back at some time in the future and said, 'Actually, we find it would be cheaper and more practical to use the copper in this location—we could still deliver 100 megabits per second', you would have no rights under your existing agreement, and you would presumably have to go back and pay Telstra a second amount of money to be able to use the cable.

Mr Quigley: No, not necessarily. As with all of these things—and, by the way, it is not something we have investigated; our objective set by the government is to deliver fibre-to-the-premise—if there was a change, you would go back and look again at the situation.

Mr FLETCHER: Have you considered seeking that right under the agreement?

Mr Quigley: No, I have not, because it would involve a great deal of technical understanding of a different architecture in order to have a sensible discussion about it. In these sorts of negotiations, just having a general right would be very difficult. It is a completely different migration construct.

Mr FLETCHER: It does not seem to you that it would be a prudent measure, to give yourself a fallback plan which might be cheaper, for example?

Mr Quigley: This deal is already hideously complex. To introduce yet another scenario, that the government has not asked us to look at, would involve the company's time investigating a scenario which we had not been asked to look at.

Mr FLETCHER: What will happen to Telstra's direct fibre connections—for example, the fibre loops in CBDs, in business parks and other areas?

Mr Quigley: With Telstra, as with other direct-fibre suppliers in CBDs, our intention is not to overbuild those. If a premise is already adequately served with fibre then it is adequately served; the government can declare it adequately served and we do not need to fibre it.

Mr FLETCHER: So you will not overbuild direct-fibre connections in the CBDs but you will overbuild HFC in the suburbs?

Mr Quigley: It is not a question of us overbuilding; it is a question of a discussion that we have had with Telstra, where they had agreed that it makes sense for them to retire that ageing HFC network for broadband and voice and retain, for a duration, their Foxtel service.

Mr FLETCHER: When you say 'ageing', it is about 16 years old, isn't it?

Mr Quigley: The HFC?

Mr FLETCHER: Yes.

Mr Quigley: Yes, but it constantly, as with all copper plant, needs upgrading.

Mr FLETCHER: When do you intend to start charging a wholesale price to retailers?

Mr Quigley: That will happen in phases. Obviously, in Tasmania it will be at a date that is not too far off. The first release site will be—

Senator IAN MACDONALD: On 1 July, you told us before.

Mr Quigley: That is right; that is what we are aiming for. It will probably be a few months after that with the first-release sites on the mainland, such as Armidale, Townsville and others. As with the rollout, obviously part of beginning a volume rollout is that you have all of the billing systems and activation systems, so you would be billing from the time that you turn a service on.

Mr FLETCHER: In your business plan, in the corporate plan released in December last year, there is a statement that wireless-only homes have risen from four per cent, in I think 2004 or so, to 13 per cent in 2010. The corporate plan assumes that wireless-only homes will reach only 16.3 per cent by 2025 and 16.4 per cent by 2040—that is on page 49. Can you just explain to us why you assume that the growth rate in the number of wireless-only homes will taper off?

Mr Quigley: Just to be clear, we did commission a study. The study we looked at said that 11 per cent of residential premises do not have a fixed-line service today, but from that you have to subtract the four per cent that are called naked broadband. So 11 per cent do not have a voice service but four per cent have a naked DSL service. The true figure for wireless-only homes is more like seven per cent. We assumed it would continue to grow. The reason we have assumed it will plateau off is that we are seeing evidence today of a rapidly increasing amount of data being used on mobile devices—iPhones and iPads. In fact, the predictions I have seen are that even by 2015 some 90 per cent of the traffic onto those devices is going to be data and close to 90 per cent will be indoors. A huge amount of that data is being shifted off on to wi-fi and, as we know, wi-fi is a fixed-line network—a little radio cell at the very end of a fixed-line network.

In fact, Analysys Mason, a well-known analysis group, is saying that the whole term of fixed mobile substitution is now reversing itself as telcos around the world are trying to get traffic off their mobile networks and on to fixed networks. We thought it was a reasonable assumption, with traffic growing and video growing, that that trend would continue. We have even allowed for doubling of wireless-only homes. Whether that happens or not we are yet to see.

Mr FLETCHER: You have not really provided for doubling of wireless-only; you have assumed it will go from 13 per cent to, I think, 16.3 per cent.

Mr Quigley: Yes, but remember we have to factor the naked broadband into that as well.

Mr FLETCHER: I think they are consistent definitions in the two parts.

Mr Quigley: We have certainly assumed that there is going to be an increase in wireless-only homes, but we are beginning to see, obviously, a reversal of that trend for data. For voice, I do not think there is much doubt that people either will be on VoIP—voice over IP—or will be using voice on their mobile devices. But for data, particularly video, it is more likely they will be on the fixed-line network.

Mr FLETCHER: Does NBN intend to sell backhaul to the mobile operators—Telstra, Optus, VHA and anybody else who comes into the market?

Mr Quigley: That is a product construct that we are investigating. We need to talk with the government, obviously the shareholder, about making a product available. It would not be exactly the same as the normal

residential or business product, but if it is to a base station that is a possibility. We have not committed to that, but it is something we are actively investigating.

Mr FLETCHER: In Telstra's network, in addition to the direct fibre connections in the CBDs, there is also a reasonable amount of fibre going out, for example, to rims. Will Telstra be free to continue to use that fibre?

Mr Quigley: Yes. We have an arrangement in place that has been negotiated that, clearly, fibre will be grandfathered. It is not our intention to not utilise existing plant. It would be silly of us to not do so. Telstra of course can continue to use fibre it has laid.

Mr SYMON: I would like to ask you about structural separation. You were just talking about it briefly in the last round of questions and you also touched on it in your opening address. What are the problems with structural separation? For the benefit of the committee, what are you trying to fix with structural separation?

Mr Quigley: It is not so much us trying to fix structural separation. This is a policy objective of the government, but it clearly impacts on the Telstra negotiations that we undertake. I think the department or the government would be best placed to answer those questions.

Mr SYMON: How does the construction of the NBN, though, facilitate structural separation?

Mr Quigley: If the NBN is the vehicle, it means that no longer will the other retail service providers in the country have to rely on the copper network. In other words, they will not be competing with the same group that is supplying them with their underlying infrastructure; they will use the NBN. We are just a wholesaler; we do not compete with any of the retail service providers. In the end, if there is no longer a copper network and people are riding on the NBN, you have achieved structural separation.

Mr SYMON: In relation to availability of service and reliability, especially at the customer's premises, I know that there has been a lot of discussion about the battery backup units for network terminating devices in premises. Do you see a role there for the NBN in providing information down to the customer level as to the benefits of that or do you see that solely as a function for retail service providers?

Mr Quigley: As we go out and engage with the community, we obviously need to explain to them what the elements are that are being put in the premise. One is the network terminating device—the ethernet device from which they get their services. But there is also a battery backup unit, which is a device that, in the event of a power failure, we will keep that network termination device running for some hours. We will certainly be explaining that to them.

Mr SYMON: In relation to exchanges, Telstra exchanges have extensive battery backup facilities. Will that be the case for an NBN exchange?

Mr Quigley: Certainly, we will have generators. There are different grades of diesel generators that you can have for air-conditioning and security—those types of facilities. We are obviously paying very close attention to that.

Mr SYMON: Is that also the case for other network structures, whether they be fibre distribution hubs or fibre access nodes? Is that then going to be out in the field, as it were? Are those parts of the network also going to have that backup capability?

Mr Quigley: One of the advantages of a GPON network is that you do not need battery backup in a fibre distribution hub because it is all completely passive—you have no electronics. This is unlike, for example, a fibre-to-the-cabinet or a fibre-to-the-kerb or fibre-to-the-node network. With them, you need local power. Those cabinets need to be powered. A fibre distribution hub in a GPON network is completely passive—there is no power required. In fact, I have seen an interesting picture from somewhere in the south of the US in which an entire fibre distribution hub was under water and full of mud. The local fire department were using a high-pressure hose cleaning it all out, and the service was still running.

Mr SYMON: Very interesting. Therefore, fibre-to-the-node would suffer in reliability in compared to fibre-to-the-premises.

Mr Quigley: Because there are active electronics in these cabinets, they are clearly at risk if there are floods or anything like that. They are more at risk because you need power to them and there are active electronics. If you look at fault rates on copper versus fibre, copper is carrying potential. There is a current flowing through it, and therefore it is more likely to cause problems when it rains.

Mr SYMON: Obviously, copper has problems with electrolysis and various other things.

Mr Quigley: Yes.

Mr SYMON: You are not going to get that with your fibre network.

Mr Quigley: You will not get that with fibre. It is inert glass.

Senator XENOPHON: I have many questions and very little time, so brevity would be good.

Senator CAMERON: From you or Mr Quigley?

Senator XENOPHON: From both of us, Senator Cameron! I refer to Mr Turnbull's line of questioning about Alcatel. Have any lessons been learnt by you in terms of your role as head of the NBN about probity issues?

Mr Quigley: I would stress that the situation with NBN Co is quite different to that of Alcatel. One is a company wholly in Australia; the other one was a multinational operating in 130 countries with 60,000 people. Nevertheless, it is clearly the case that you always have to be vigilant. You simply cannot assume that people will always do the right thing, so you have to have checks and double-checks on that. That is much easier to do in Australia than it is across the world.

Senator XENOPHON: Are you satisfied that we have the most rigorous system of checks and double-checks in terms of the NBN procurement process?

Mr Quigley: Yes. We are auditing that. It is an area that the board of this publicly funded company is paying close attention to.

Senator XENOPHON: Let us move onto the issue of the suspended tendering process. It was announced because you do not believe that taxpayers would get value for money as a result of the tender process.

Mr Quigley: That is correct, yes.

Senator XENOPHON: The Australian Contractors Association criticised NBN, saying that the criticism that you made of them is surprising, given that it was a vigorously competitive tender process involving 14 bidders. Do you agree with the Australian Contractors Association?

Mr Quigley: No, in the sense that we did not criticise them. We were reported to have criticised them.

Senator XENOPHON: Right.

Mr Quigley: But we never did criticise them.

Senator XENOPHON: But do you agree with their comment that it was a vigorously competitive tender process involving 14 bidders?

Mr Quigley: Yes. It was certainly vigorous and it was a tender process involving 14 people—absolutely.

Senator XENOPHON: So does the fact that we did not get value for money as taxpayers as a result of that vigorously competitive tender process mean that there needs to be a complete rethink of the tender process?

Mr Quigley: Clearly, suspending the process and moving into a different one says that you could do things with a much smaller number of tenderers than you can with 14 simultaneously. Remember, in these types of public processes if you open the tender process to 14 you have to treat them all absolutely identically.

Senator XENOPHON: A few days after that, on 5 April, your head of construction, Patrick Flannigan, resigned quite abruptly. Was that linked to the suspension of the tender process?

Mr Quigley: That is a private matter for Mr Flannigan, so I will not comment.

Senator XENOPHON: A few days later, Nick Sotiriou, the manager of cost and resources estimates for the NBN Co. also resigned. Can you comment on that?

Mr Quigley: No. I cannot comment on that. I should not comment on any—I cannot answer for those individuals.

Senator XENOPHON: Sure. Is there a replacement head of construction and a replacement manager of costs and resources? Have they been appointed to NBN Co.?

Mr Quigley: Yes, we have Mr Dan Fleming, who is our acting head of construction. He is a very capable individual. I have been working closely with him for the last month or two.

Senator XENOPHON: There has been a four-month delay as a result of the tender process being postponed—is that right?

Mr Quigley: No, I would not say there has been a four-month delay because in the end you always have to look at the critical path in these projects, and the critical path, as we spoke about before, really is the Telstra infrastructure availability.

Senator XENOPHON: And that relates to the structural separation undertakings as well?

Mr Quigley: That relates to doing the deal with Telstra, yes.

Senator XENOPHON: How close were you to that deal being done, in time frames?

Mr Quigley: Close, I hope!

Senator IAN MACDONALD: The emphasis on 'I hope'!

Senator XENOPHON: You have said that rolling out the NBN is like running a large factory; it is modular methodology—doing the same thing over and over again.

Mr Quigley: Yes.

Senator XENOPHON: Has any consideration being given to NBN Co. employing a workforce rather than seeking outside contractors?

Mr Quigley: I think there are very capable companies in Australia to do that type of work. I think it would be a pity if we did not use them, and I am confident that we will—notwithstanding the suspension of the original process—find an accommodation that will be good for the contractors—we expect them to make money—but also good for the Australian taxpayer.

Senator XENOPHON: Given the delays and going back to the drawing board for the tender process, are you still absolutely confident that the NBN Co. can be delivered on budget?

Mr Quigley: Yes.

Senator XENOPHON: And on time?

Mr Quigley: Yes. There are always unknowns in all of these projects. It is very difficult to tell—you have got to make estimates—but I have absolutely no indication that we cannot achieve what we set out in our corporate plan. There are things which are beyond our control; there could be policy shifts, there could be ACCC decisions that change things or all sorts of things. But I have to assume that we are where we are and the rules are as they are, and that is all I can base it on.

Senator XENOPHON: Before I go to comments made by two senior telco players, Simon Hackett and Bevan Slattery; how are the decisions made about what will be next in the actual rollout? Will it be medium- to large-sized regional communities? What is the priority for the rollout of the NBN, and how will that tie in with value-for-money considerations?

Mr Quigley: Obviously, we have an obligation to execute on the government's policies, including a focus on regional Australia. We will try to balance all of those competing interests, including what infrastructure is available at what time and, assuming we go ahead with a contractor, which are the areas that make the most sense. We will put all of those competing interests in somewhere along the line, take that back to the shareholder and say, 'This looks like the three-year plan,' and seek their endorsement of that.

Senator XENOPHON: Internode boss, Simon Hackett—a good South Australian address—

Mr Quigley: Yes, I know Simon.

Senator XENOPHON: and NEXTDC founder, Bevan Slattery—I think he made a few hundred million quid by selling his pipe networks to TPG Telecom last year—have raised some serious concerns about how this would work. You are aware of my view on volume discounts, and that some amendments were passed to that effect?

Mr Quigley: Yes.

Senator XENOPHON: But it seems that you can also levy a usage-based fee to carry aggregated traffic to groups of customers over the network, which is a connectivity virtual circuit charge?

Mr Quigley: That is correct.

Senator XENOPHON: And that has Simon Hackett pretty fired up. He says that he has done the sums and it will make it impossible for providers with fewer than 250,000 customers to supply a national service because the fees are based on a minimum transmission volume that greatly favours larger providers. The whole intent behind trying to get rid of volume discounts was to level the playing field for smaller operators. What do you say about Mr Hackett's concerns?

Mr Quigley: First of all, subsequent to those comments from Mr Hackett, we have had ongoing discussions with him and his team about their concerns. There is a balance here between having a CVC charge to a point at which you can say, 'How small do you go where it is absolutely equal?' Clearly at some point a retail service provider has to make some investment in infrastructure.

Senator XENOPHON: And what is your threshold?

Mr Quigley: We are working through that at the moment, but I have a set of cases—I do not have them with me, but I would be happy to send them to the committee—which say: 'This is how it breaks out. These are what the charges are for a given size.' Obviously, as you go to 121 points of interconnect you need to take that into

account. It is also clear that we tested this rigorously with quite a number of retail service providers. Would they like our prices to be lower? Of course they would. But we have to balance between aiming for a seven percent return and getting the right prices.

Senator XENOPHON: But there is a potential for smaller operators to be disadvantaged when it was the intent of the volume discount amendments to ensure that there would be a much more level playing field.

Mr Quigley: Smaller operators tend to focus on specific areas; they do not try to cover the whole nation. If they try to cover the whole nation then they have to make investments, including in CVC capacity, across all 121 points, but if they are small and focus on regional areas the investment is much more modest. We are working through those in more detail with Mr Hackett and his team to see if our understanding is the same.

Senator XENOPHON: But do you acknowledge that if you do not get the CVC charges right we will be back to a situation where the big operators can dominate the smaller operators through competition in the marketplace?

Mr Quigley: No, I think we are certainly a long way from that point. It is also clear, which I probably need to put on record again, that the decision of 121 points of interconnect is certainly a less favourable outcome for smaller operators than our original 14 points of interconnect, but that is not our decision—it is an ACCC decision.

Senator XENOPHON: Finally, will any CVC charge be subject to ACCC scrutiny?

Mr Quigley: Yes, of course.

Senator XENOPHON: How far away are we from that so that those small operators can plan?

Mr Quigley: We have had our product construct out into the public domain for quite some time for consultation. We will have it embedded in our special access undertaking which has been prepared for submission to the ACCC. So it will get quite a hearing.

Senator XENOPHON: When Mr Bevan Slattery told an audience that they should invest in the old enemy, Telstra, because, as he said, the NBN will fail because their CVC charges will make it uneconomic for any player to make a profit. What do you say to him?

Mr Quigley: That is not what we are hearing from the customers we have done deep dives with—which is a raft of retail service providers.

Mr HARTSUYKER: Mr Quigley, I want to go back to the corporate program that is contained on page 19 of the corporate plan. You did touch on the issue of the impact of the POI and the Telstra deal on your programming, and I know that you have undertaken to provide us with regular updates on the program. What elements of this original corporate plan are still on target to hit their dates? Obviously those ones that are dependent on the POI and the Telstra deal are not, but there is a range of other issues.

Mr Quigley: It is probably best if I get back to you, if I can, because I probably should not comment off the top of my head on all of these. It is rather difficult until we know when the Telstra shareholder meeting takes place. If I was going to update this, which I am not proposing to do at this time because I have to give it back to the government, I would have to make an assumption about when the deal would become unconditional and base the plan from that date.

Mr HARTSUYKER: But there is a range of other items that which are not dependent on the deal, such as IT centres and OSS/BSS.

Mr Quigley: And they are generally running, as we would expect, to this plan.

Mr HARTSUYKER: Your head of corporate services, Kevin Brown, said in relation to the construction contract and the pricing given by the companies in the suspended contract tendering process that, 'In our view it does not reflect capacity constraints in the industry,' or that the prices received did not reflect capacity constraints in the industry. If the prices that you received did not reflect capacity constraints, what did it reflect?

Mr Quigley: It reflected a whole range of issues, some of which are unknowns. Many of these companies of course have never rolled out a fibre-to-the-premises network before. There were clearly some unknowns related to what would be the access to Telstra facilities. They knew that a deal was being negotiated but obviously they did not have all the details to that. Given that circumstance, there are clearly some unknowns.

Mr HARTSUYKER: Could I add a little supplementary: didn't your tender document specify the access to the site that you would be providing those people trying to tender for the project?

Mr Quigley: Yes, but when we say 'access to the site', in a lot of these cases it is the actual ducts. It is also clear that there are risks in any new project, and they had to be factored in by these construction companies. I would also say that I think the question of availability of sufficient resources must have played a part in the

thinking of these companies. But, as I have said, I am reasonably confident we will come to a satisfactory outcome, which will be good for the Australian taxpayer when it comes to construction.

Mr HARTSUYKER: But it seems to me that a fair bit of the concern in the tender process then harks back to the fact that the offering that they were required to make was not clearly defined by you.

Mr Quigley: We defined it to the best of our ability at that time, given that it would have to go right out to the total community of tenderers, potentially. At the time we did not know exactly what that number was, but it is a large number. It is very difficult to have detailed discussions with a large number of tenderers, which we would have had to do simultaneously—unless we moved into a different process.

Mr HARTSUYKER: I would have thought that that was essential in a contract of the magnitude that was being let. The actual rationale that you put forward in this tender process, without wanting to be absolutely specific, what were you seeking: fixed time, fixed price? What risks were you expecting those contractors to take?

Mr Quigley: We were expecting a range of risks. They were also free to say which areas they would accept and which they would not accept.

Mr HARTSUYKER: Which risks were in the range? Which risks were you seeking the tenderers to take?

Mr Quigley: I would not like to try to articulate them here. There was a range of those risks. I also have to be, as you would understand, a little careful in what I respond to now simply because we are still in a tender process.

Mr HARTSUYKER: Okay, but all of those tenderers would know the risks that you were asking them to take. It is interesting from a taxpayer's point of view as to which risks you were seeking to pass to the contractor.

Mr Quigley: That is part of the tender conditions and I really should not talk about those specifics—neither pricing nor terms and conditions of a tender that is not yet completed.

Mr HARTSUYKER: In relation to the current alliance format that you are proposing, on what basis do you see the risks being shared? Or is that still something that you cannot comment on?

Mr Quigley: Of course, I cannot comment on that one.

Mr HARTSUYKER: In relation to the deal with Telstra, there is a sum being expressed as a net present value. I would like to quote your financial officer, Mr Beaufret, who said that, 'It is absolutely wrong to add \$35.7 billion and \$13.8 billion to achieve the true cost of the project, because the \$13.8 billion Telstra deal is completely offset by the revenues you are going to get over this period of time.' Part of that relates to the migrations of customers across to the NBN. I would put it to you that in a typical commercial transaction the purchase of a customer base probably would be considered a capital item. Upon what basis would you not treat that as capital?

Mr Quigley: I should not try to get into the details of what should be treated in here as capex and opex. I have taken our discussion from the last in camera session back to our CFO and asked him to look carefully at that issue. He assures me that he has done so. He has consulted with a number of experts in the area and I think he has had discussions with the Taxation Office to make sure that we are treating that as we should treat it. He has confirmed that the process that we are using and the way in which we account for and classify expenditure is correct.

CHAIR: And once the deal is complete that will be public information?

Mr Quigley: I believe so to some extent, yes.

CHAIR: The secretary of the Department of Broadband, Communications and the Digital Economy has very kindly and some would say wisely offered us a little bit of his time. If we do run over, I think the next witnesses will be okay with that but I will leave that up to the committee as to whether you want to speed it up or keep talking to Mr Quigley.

Mr Quigley: That is very generous of Mr Harris. I owe him one!

CHAIR: The benefits of going second!

Ms LEY: I have two quick questions, Mr Quigley. I am just looking at the statement of expectations which talks about the rollout period for 93 per cent of premises. I just want to ask you about the 94 to 97 coverage percentiles which do not seem to similarly have a rollout period described. What date do you anticipate that that technology of 12 bits per second will be available to those citizens of Australia?

Mr Quigley: We have already made the purchase of some spectrum. We are going through a process also with ACMA looking at an additional 2.3 gig in the places where we could not purchase it. We are well advanced in negotiations with potential equipment suppliers of that and also system capability. We will have, obviously, that wireless network rolled out well before the completion of the fibre network. In anticipation in response to, especially, the pressures from regional Australia we will be trying to roll that out as fast as we can. I probably

should take on notice to give you the end date for when that should take place but it will be underway fairly quickly.

Ms LEY: Is it the case that the government has not given you an end date for that?

Mr Quigley: No, of course not. It is because we need to advise the government of what is an achievable rollout for those premises.

Ms LEY: But you do not have in your mind even an approximate date that you can tell people?

Mr Quigley: We will be starting in 2012 with the volume rollout. We will be doing some trials of the fixed network and I expect it will be a number of years to roll out that network—not a large number of years but a number of years. I can bring back to the committee a projected date. The reason I hesitate just slightly is that the points of interconnect for the fixed wireless network are the same points of interconnect as we are using for fibre. So there is a dependency on Telstra infrastructure again—not in this case on ducts but on exchange space in point of interconnect and dark fibre.

Ms LEY: I do look forward to you bringing that back to the committee so that I can certainly advise my constituents—and there are many in related electorates who live in small towns of maybe 500 to 1,000 people—as to the approximate date they can expect to get the better technology. My second question concerns cybersecurity. It is not so much about the security of the wholesale network but from the fibre access node to the premises which of course is managed by the internet service provider. As you tell us you are a wholesale provider and this is in the province of the retail provider. I know there are discussions and that this has been talked about in Senate committees but I want a statement from you as to what degree you feel that the NBN is responsible for, if you like, educating, informing or assisting what may be an unsophisticated consumer who is going to be at the end of this very high-speed network of the quite serious cybersecurity implications of being in that position. It is just something that you believe the ISPs need to deal with 100 per cent or will there be something that NBN Co. is doing?

Mr Quigley: We will discuss that with our shareholder to see if there is something as we are rolling out. There is an opportunity here, obviously, as you are rolling out the network right across Australia, and we are providing information on broadband to homeowners and also small businesses. There is an opportunity to raise again the issue of security. While we do not directly control many elements of assuring that security—we do control some, but not a huge number—there is an opportunity, if we are communicating, to use that to communicate on the issue of security. That is an issue we will be discussing with the government.

Ms LEY: But you believe that your responsibility is just to communicate about security?

Mr Quigley: No, the issue is also to make sure that the part of the network for which we are responsible is secure.

Ms LEY: What about that part of the network from the fibre access node to the premises?

Mr Quigley: We are not responsible.

Ms LEY: You are not responsible, so—

Mr Quigley: Sorry, I would not say we are not responsible from the fibre access node to the premises. We are, but it is more where we sit in the stack. In other words, many of these attacks do not take place on the physical infrastructure. If they take place on the physical infrastructure then clearly we are responsible. If they take place at a layer that is above us, we do not even know that that attack is taking place, because we do not have access to that information. It is taking place using the bits that are sitting above us.

Ms LEY: I was talking not so much about what you might know but about the circumstances of somebody who is connecting to the fibre network who may have very limited information about the exposure that they will then be under and who is going to provide them with that information or put measures in place to make sure that they are not subject to cyberattack given that that section is the retail part of the network.

Mr Quigley: Yes. So we are certainly doing all we can, working with the government, to try to use our resources, if we can, to deliver that message. That would be good. But, if I can draw that analogy, we are building the highway. We cannot really make too many statements about what each kind of vehicle that goes on that looks like and what you have to watch out for. That is the closest analogy I can draw.

Ms LEY: Thank you.

Senator CAMERON: Thanks, Mr Quigley. Obviously we will continue to have the scare campaigns being run against NBN and attacks on you personally, but I just want to come back to a report I have just seen in *Communications Day*, which refers to Gibson Quai AAS—are you aware of that company?

Mr Quigley: Yes, I am aware of that company.

Senator CAMERON: The report quotes Gibson as saying that the NBN will cost between \$60 billion and \$80 billion, and the government has set aside \$35 billion. Can you just deal with that issue for us.

Mr Quigley: I would be interested to see his analysis and what numbers he is using. I do not know on what basis he would draw those assertions. They are obviously not the estimates that we have made, and I would be interested to see why he would assume it would be the case. As we have said, we have gone through a large number of tenders now. Our estimates have come in just about where we wanted—some are a little lower—for a whole range of services and equipment. We are obviously in the process of looking at the contracting for the building and, as I have mentioned, we will proceed with that only when we are confident that we have the right outcome. So I honestly do not know where he gets those sorts of numbers from. But I would be happy to engage them, have a discussion and have a look at what they think.

Senator CAMERON: You are confident about your numbers?

Mr Quigley: Yes.

Senator CAMERON: In terms of the overhead cables that have been raised in Bradfield, how does NBN deal with the issue that pay TV cables are already in heritage areas? Does that diminish the heritage position of a community, and how do you deal with that?

Mr Quigley: We tend to deal with it area by area. For example, in one of our first release sites—in Brunswick, a Melbourne suburb—the council was very stringent about heritage issues. In fact, when you walk down the streets of Brunswick, there are overhead cables all over the place, so it is quite visually polluted, but nevertheless in that case we put the cables underground, and we paid Telstra to remediate their ducts and pits in that process in one of the first release sites. But that does not mean we will necessarily do that everywhere; we will treat it on a case-by-case basis.

Senator CAMERON: A lot of these cables went under the Howard government in their competition argument for pay TV; isn't that correct?

Mr Quigley: I believe so. I should stress again that fibre aerial cable is not the same as HFC. In fact, some of the ugliest parts of HFC are the in-line amplifiers that get strung up on the cable. You just do not have in-line amplifiers in fibre. There are no amplifiers at all, except at the two ends.

Senator CAMERON: In response to that question from Senator Macdonald when he compared the NBN to Telecom and the old PMG, you said that the service providers would judge the service. Would you expand on that? I have seen lots of quite glowing commentary from some of these service providers about the NBN.

Mr Quigley: We are conscious that we are basically a public utility and that there is no large competition. That does not mean that there is not competition in small areas but there is no large competition. There is an obligation on us to make sure that the company stays lean, focused and efficient, and I think the best people to judge that are the telcos. In the end, we are providing a service to them and they should be able to judge how well we are doing. So I think that certainly it would be a wise move for the committee to listen to our customers and potential customers. In the long term, I hope to put in place—and I have tasked somebody to look at this but I have yet to get shareholder approval for it—a kind of report card from our retail service provider customers asking: 'Are we providing good service? Are we being efficient?' These are commercial entities so they should be saying to us: 'Are you guys keeping up with technology? Are you guys doing it efficiently? Are you doing it well?' We would listen very carefully to that. For a publicly funded company such as ours, having customers' report card on the public record is probably not a bad thing. Will it be enjoyable scrutiny? I suspect not but I think it is probably not a bad thing for us to do.

Senator CAMERON: At the private hearing and in previous Senate hearings you have commented on the cost of fibre to the node versus fibre to the home. Do you have any further information that you could give us this morning?

Mr Quigley: Nothing other than that there is clearly a trade-off. Some countries are choosing to do fibre to the node or, increasingly, not just fibre to the node but fibre to the kerb or fibre to the cabinet, pushing the fibre even further out. In the end, it is a long-term, short-term trade-off, you would have to say. There are some pluses to a fibre-to-the-node rollout. You could do a fibre-to-the-node rollout to a part of Australia—certainly not 93per cent. You could not use fibre to the node to get to 93per cent of premises with a high-speed service. You could go only so far and then you would start to run into the problems you have with ADSL and ADSL2, unless you just keep pushing that fibre further and further, which will make the copper loops shorter and shorter, so there is a cost-benefit trade-off there. But, remember, as you push the fibre further and deeper and make the copper loops shorter and deeper with a fibre to the node or fibre to the cabinet, you need to put in more and more and more cabinets.

Each one of those cabinets needs to be powered and active, and then they will have the same issues that we have talked about, such as of water ingress. So there comes a point at which you say this still is not the end architecture. Almost everybody in the world says that the right end architecture is fibre to the premise. So you would maybe make some savings in the short term but it may in fact cost you more in the long term.

Senator CAMERON: The other issue that continually comes up is the debate that there is some new technology in wireless waiting to suddenly appear and that the National Broadband Network will become redundant. Would you explain where you see that debate at?

Mr Quigley: Yes. Rather than me, I think the committee should look at some of the experts around the world, including right here at our very own Hugh Bradlow, who was the chief technology officer for Telstra and is now looking at future technologies. He has stated quite clearly on the record that anybody who thinks that wireless is a substitute for long-term fibre is making a big mistake. They are just not comparable. We find even with our fixed wireless technology, which is using LTE—we are obviously using one of the world's leading suppliers for that—that it is just no comparison to fibre. There is no technology that we can see in the labs that will replace fibre. You hear some extravagant claims that wireless, even with LTE, can do 100 megabits per second but, as we keep saying, it can potentially—if you turn the error correcting off, if you are right at the centre of the cell and if you are the only person in the cell. That is the reality of it. That is the physics of it. There simply is no technology that we know of that is a substitute for fibre, and no technologist I have heard of is saying there is. There is a legitimate short-term versus long-term question about fibre to the node and fibre to the premises, and that is a policy decision about whether you want to invest for the short term and get a return or whether you want to invest for the long term. That is a legitimate question, but there is no technology we know of that is a substitute for fibre. You can ask: how can you guarantee that there never will be? Well, I cannot, in the same way as I think aeroplane manufacturers cannot guarantee there will never be some new technology and some new flying machines. You just never know. But there is nothing in the labs that any of us are aware of that could substitute for fibre.

Senator BIRMINGHAM: Thanks, Mr Quigley, as always for your cooperation with these parliamentary inquiries. Can I return very briefly to the Alcatel-Lucent matter. You voluntarily provided a column to the *Australian* that was published on 5 May, didn't you?

Mr Quigley: Yes.

Senator BIRMINGHAM: And you voluntarily entered into an interview with Chris Uhlmann on 7.30, also broadcast on 5 May?

Mr Quigley: Yes. I absolutely was not forced to do that.

Senator BIRMINGHAM: It was your statements through those mediums that ultimately led to you issuing a corrective statement last Friday and responding to questions from my colleague Mr Turnbull today and offering an apology in regard to some of that information, was it not?

Mr Quigley: Yes.

Senator BIRMINGHAM: A statement issued on Friday, and you have reiterated the point here today, is that now you do not intend to comment further on this matter as it is the subject of ongoing legal proceedings in the US to which you are not a party. Why did you decide to enter the debate in the first place and was it an error of judgment to enter the debate which has led you to have to make these corrective statements?

Mr Quigley: In hindsight, it probably would have been better to say nothing at all, saying it is subject to an ongoing investigation. But I am not sure that even you would have allowed me to make no comment on that. I made a query of somebody who I thought should know the situation, and on the basis of that information as an existing Alcatel-Lucent employee I made a statement which turned out to be in error. I corrected it as soon as I found out it was in error. But, if I can repeat again, all this is a question of: is there anything that I am being investigated for? The answer is categorically no. I was in the company in which there were illegalities that happened. This company is not alone. A very large number of international companies have the same issue they have to deal with. I was never under any investigation, never questioned by any of those authorities. So there really was not, in my view, anything to answer for in terms of any wrongdoing on my part. It was on that basis and on the information that I had before me that I tried to defend myself.

Senator Cameron interjecting—

Senator BIRMINGHAM: You can pursue that in your other inquiries, I am sure, Senator Cameron—as you do.

Senator CAMERON: I don't hear you say much about John Dickson.

CHAIR: We are on the clock.

Senator BIRMINGHAM: I think that is a matter of fact that Alcatel are a contractor, but I think equally, Mr Quigley, you have made clear you were not a party to that contracting decision.

Mr Quigley: No, and if you do a survey of the number of people you can buy Dupont equipment from on a worldwide basis the list is not long.

Senator BIRMINGHAM: Let's move on to the issues around Telstra and the construction tender. The construction tender has been delayed because through the initial tender process you say you were not confident of getting value for money for taxpayers. Is that correct?

Mr Quigley: I was not satisfied that the position we got to was good value for money for the Australian taxpayer.

Senator LUDLAM: Were the delays in the agreement with Telstra being caused by an equal concern?

Mr Quigley: No. They have been caused by the fact that the deal is very complex. It has a lot of moving parts, including a relationship with the policy that is going on and structural separation. It is just a very complex deal.

Senator LUDLAM: Is value for money for taxpayers a concern at all in the Telstra deal? Have you cleared that hurdle, in a sense?

Mr Quigley: If I had not taken it as a serious issue, we would probably have had the deal done a year ago. It is something we have taken very seriously. The negotiations have been tough. They have been hard. I know I have seemed to have been unreasonable in the positions I have taken in those negotiations at times, but I was trying to protect the public's interest by making sure we were paying no more than we should pay for facilities. In that issue with Telstra, by the way, as I have said on the public record, the issue was not about finding a small area in which both companies would be willing to sit. It is often the case that you try to find an area where you have mutual ground. The fact is that this deal is very good for Telstra and it is also very good for NBN Co. The interval of overlap there is quite large, which means it makes the negotiations tougher as you try and establish fair value. There simply is not a precedent that you can easily use in this, so you have to negotiate point by point.

Senator LUDLAM: The construction tender will give you—I think in your opening statement you use this phrase—a primary construction partner. Is that correct?

Mr Quigley: Yes.

Senator LUDLAM: So out of the 90 successful tenders you have completed so far, this would be the most important?

Mr Quigley: They are all important. You would think that choosing the satellite partner is also very important. If you make the wrong decision on a construction partner, you can correct it. If you make the wrong decision about a satellite, it is up there and you are in trouble.

Senator LUDLAM: Sure. This is to build, potentially—you will not be locking into all 93 per cent, I assume—

Mr Quigley: Obviously not.

Senator LUDLAM: the primary construction partner for what is the 93 per cent aspect of your business.

Mr Quigley: I would not even conclude that. This is a primary—'primary' being the first—construction partner.

Senator LUDLAM: If I look back on your opening statement, when you spoke about a primary construction partner, that came across as a principal construction partner, not the first of many construction partners.

Mr Quigley: I would not try and put any nuances on that. Also, I would say to you that we are in a tender process, so I really do not want to comment on which of those interpretations you would choose to put on it. It is a primary. Obviously we are negotiating with a contractor.

Senator LUDLAM: I cannot recall whether it was in response to Senator Macdonald or Senator Xenophon, but in response to one of them you gave a very categorical assurance that you believed the project could still be done on time, on budget and within what was outlined. If you had, in relation to your primary construction partner, concerns about value for money, and if in relation to the Telstra deal—and you had a wonderful turn of phrase that I now cannot find in my notes—

Senator FISHER: Hideously complex.

Senator LUDLAM: Hideously complex—that was the phrase.

Senator FISHER: It stuck in my mind, too.

Senator LUDLAM: The hideously complex Telstra deal. How can you have such absolute confidence with regard to the budget when you are encountering these difficulties so early?

Mr Quigley: These are not difficulties with the outcome; these are difficulties in the process of getting there. They are very complex deals, particularly the Telstra deal. It is a very, very complex deal. The documents are now a large set of documents to batten down. There is a lot of detail to go through, so it is very complex. If I say 'hideous', I mean that in the sense that it has taken a long time—many hours, lots of weekends and lots of working through the night. They have been very tough negotiations. I am confident that the board of NBN Co. will not enter into an agreement unless they are assured that this is in the best interests of NBN Co. And when I say 'in the best interests of NBN Co.' I mean in executing the government's objectives.

Senator LUDLAM: Of course, without crossing into the deal with Telstra—I understand the sensitivities—will the payments that will be made to Telstra under that deal be made exclusively by NBN Co. or will they be made by the department, or is it a combination of both?

Mr Quigley: There are two parts of the deal, I think, which is on the public record. There is the part we have announced, which is approximately \$9 billion, and there is the part that government has announced, which I think is approximately \$2 billion. They are separate issues, and we will be responsible for the bit we are responsible for.

Senator BIRMINGHAM: Are both issues still under negotiation for finalisation?

Mr Quigley: Yes.

Senator BIRMINGHAM: Do you have absolute confidence that the appropriations to NBN Co. of taxpayer equity that were outlined in last week's budget will be sufficient to meet your obligations in delivering the build and the payments to Telstra under whatever deal is finally struck?

Mr Quigley: Yes. I believe that the arrangements that were put in place between the company and the government for funding the company will be satisfactory. It will clearly be the responsibility of the board to ensure that is the case.

CHAIR: I am conscious of the time. I am sure NBN Co. will take questions on notice from the committee as well.

Mr Quigley: Certainly.

CHAIR: So perhaps we could start to wrap up. I am conscious that there is a department that we also want to get before us.

Senator BIRMINGHAM: I have a couple of very quick questions, then. Who will be eligible to connect to the satellite service that will be available from 1 July?

Mr Quigley: A document is going to be put out saying who can access that. I am speaking here in general terms, but we will give you the exact words. For people who cannot get a satisfactory broadband service today—they are on wireless or on copper and there are limitations in terms of how long they have had the existing ABG service—there will be certain conditions around that, but it is obviously aimed at providing a service to those people who cannot access a satisfactory service any other way.

Senator BIRMINGHAM: Somebody who lives in an area of an ABG footprint but has lived in that area of footprint for only a very limited period of time—

Mr Quigley: It is not necessarily that they have only lived there for that time. I am saying that it depends on whether they have had an ABG service or not—how long ago.

Senator BIRMINGHAM: So, even though there was a good speed service available through that ABG provider, because it did not meet a price definition—

Mr Quigley: I do not think they would have got the ABG service unless it met the price definition. I suggest what we do is give you the precise rules around that service. When somebody applies for an ABG service they go through a process to do that.

Senator BIRMINGHAM: That would be great if you could give us those rules. Lastly, going back to Alcatel and Mr Turnbull's questioning, you said that Alcatel drew the Costa Rica investigation to the attention of the SEC. You may need to take this on notice, but are you able to point us to an Alcatel filing that states this and makes this clear or to some other evidence that makes this clear? I am at least advised that the 2009 20-F filing makes no such claim and simply states that following the Costa Rican investigation the SEC and the Department of Justice were made aware of those issues.

Senator CAMERON: I have a point of order.

Mr Quigley: I am happy to answer that.

CHAIR: We will take the point of order first.

Senator CAMERON: Mr Quigley may be happy to answer, but all these questions are trying to smear Mr Quigley—

Mr TURNBULL: Mr Quigley has admitted—

Senator CAMERON: You know what this is about. This is you carrying out Tony's commands to destroy the NBN.

Mr TURNBULL: This is about you trying to smear us. You are a disgrace.

Senator CAMERON: This is you carrying out Tony's command. Anyway, the point of order is this: I am interested to know how much of this falls within our terms of reference.

CHAIR: I am allowed a broad scope on the government's questions, because of the obvious news relevance of this issue in the last 48 hours. Mr Quigley has been very kind in answering the questions this morning, and I think it is fair for all that he has allowed that to happen. He is willing to answer this question as well. I hope we allow him to answer it, and then we can have a short break and get the department in front of us.

Mr Quigley: In answer to Senator Birmingham's question, it is clearly unwise for me now to say anything more because I have not read these filings in detail. I know that certain people in the press are poring over them looking for every possible inconsistency. So I will not be saying anymore in detail about this, particularly since I understand that there is a hearing—and, by the way, I am giving you my understanding based on the verbal advice that I have had from people who I believe do know—taking place in early June in the US at which there will be a settlement between Alcatel-Lucent and the SEC and DOJ. I do not know the details of all of that. I do not know the details of the five years of investigation that took place. I do not pretend to know the detail of that. But, what I can repeat, for the 20th time, is that I have never been questioned and never been asked anything by the Department of Justice or the SEC. So I do not believe that it is my job to start defending Alcatel-Lucent over this five-year investigation. It is all on public record; it is all there. I am not going to be involved in a situation where, if I say something in response to a question on the basis of what I believe I know, I might get it wrong and then it is pointed out to me. The best thing I can do is stop trying to answer these detailed questions.

Senator FISHER: I have three areas in which I want to ask some quick questions. Hopefully, you have left some of your most informative answers until last.

Mr Quigley: It depends on what subject, Senator Fisher.

Senator FISHER: It is a subject close to your heart. You have in the past expressed concerns about finding workers to build the NBN and concerns about wages. You have also told the committee that you are concerned about value for money in the first round of tenders, and you are continuing to seek value for money and for the taxpayer in now seeking the primary contract for the build of the NBN. What fat is there in the budget for building the NBN to accommodate what may need to be the wages to find workers? Do these workers exist at the moment or do they need to be trained? What reassurance can you offer the committee that, despite the claims for some unions of annual wage increases of some five per cent increase and the NBN implementation study forecasting 2.5 per cent increases a year, wages costs will not cause a blowout in the budget of the NBN? On what do you base that reassurance?

Mr Quigley: I will start, if I can, by clarifying one thing. The numbers that you have are in the implementation study. That is not necessarily our business case.

Senator FISHER: Understood.

Mr Quigley: The implementation study was different. Clearly, it would be illogical of me to say that there is not going to be an issue about finding sufficient people. In some places in Australia, it will be relatively easy; in some places, it will be much more difficult—in Western Australia and the northwest of Australia it will not be easy. But we are addressing that. We are already undertaking discussions with various departments within various levels of government about training requirements. We have been speaking to training companies. We are going to have to do some level of training or make sure that it is done—we understand that. We are having discussions, as you know, with the contracting community.

Can I guarantee that we will not run into issues of labour availability? No, I cannot guarantee that. I suspect that we will at some point, and we will need to juggle that and handle that as best we can. On the issue of what we have in our budget for construction costs and what are the facts, I would be really seriously remiss if I not only made a statement about the budget but even acknowledged that there was any fat in the budget. That is the sort of information that people who are tendering would love to know. They would love to know your budget; they would love to know where you can move to. I will simply make no statement about that.

Senator FISHER: So you cannot reassure the committee that wages costs will not cause a blowout in the budget to build the NBN?

Mr Quigley: We are taking the whole question of labour rates very seriously. It needs to be something that we think about. I have in Mr Kevin Brown a very experienced individual in labour rate issues and I turn to his expertise on that.

Senator FISHER: So that is no—you cannot reassure the committee.

Mr Quigley: I can only reassure you that in thinking about all of those issues we believe that we can build this network in the budget that we have laid out in our corporate plan.

Senator FISHER: You have previously stated that, given the size of the project, it is likely that the NBN plan may have to be modified over time. In what ways could be NBN plan be modified and could that involve a build of fibre to the node in lieu of fibre to the home?

Mr Quigley: That was not what I was alluding to; I was thinking of labour availability. If we had planned to go to this particular region, call it region X, and we find that labour shortages are a problem, we may have to divert for some time to region Y and come back to region X when we have solved the labour issues in region X. And we have that ability. For example, if costs were going to be very high in this region over here until we had made sure people were available, then obviously we are not going to build at inflated costs; we will go and build somewhere else until we get there. That is what I meant by that.

Senator FISHER: Thank you for that clarification. You have reassured the committee that it will be sorted, if I can put it that way, with your good people, including Kevin Brown. You spoke to my colleagues, and in particular Mr Turnbull, that you spoke too early, for example in respect of the Alcatel-Lucent deal, regarding what you anticipated—wrongly, as it transpires. You spoke too loosely. In attempting to reassure the committee that you will work through the processes to find the skilled workers and contain labour costs, how can you reassure us that you will not find yourself again, if I can put it this way, having spoken too loosely or too early, given the hideously complex, in your own words, nature of not only the deal with Telstra but the NBN in totality?

Mr Quigley: When I said hideously complex, I was talking about the deal itself, which is quite complex.

Senator FISHER: I know.

Mr Quigley: There is a big difference in those two, with respect, Senator. I am running the NBN company; it is my life just about every hour of the day these days, so I am focused a great deal on it. When I make statements to you about what we are doing with the NBN, I generally either take them on notice or give you an impression. As I said, you can never be 100 per cent sure about this, because there are still things that may in fact be beyond our control. There could be regulatory changes or other changes—they are beyond my control. In talking about the Alcatel-Lucent issue, I have been out of Alcatel-Lucent for quite some time now. I have not read all of those cases, but I was trying my best to respond to questions that were being asked of me. I agree that, as turned out to be the case, I got one of the facts wrong based on information that I had obtained in good faith.

They are two entirely different situations. One is, frankly, not only a peripheral issue but an issue that is diverting me from the main job that I am being paid by the government to do, which is why I really need to stop debating it and leave it to the hearings and the public record.

Senator FISHER: Thanks, Mr Quigley. My final area of questioning is on every hour of your day: the NBN—and no doubt you need some time away from that. In respect of Senate estimates, we have set aside a special hearing just for you, if you like, because you will not be fronting for Senate estimates during the scheduled fortnight commencing next week.

Senator CAMERON: I have a point of order, Chair.

CHAIR: Hang on.

Senator FISHER: In that respect, you have told the Senate that you will not be attending next week because you have an overseas family trip that has been planned for a very long time and falls in the same period as the hearings. I do appreciate the need for all of us to have some time off, but, as to having an overseas trip that has been planned for a very long time, the Senate estimates timetables were released in November.

CHAIR: You are stretching it, Senator.

Senator CAMERON: You have to take the point of order, Chair.

Senator FISHER: Was your trip planned at that time or still in the planning stages? This is a matter arising from the rollout of the NBN.

CHAIR: That is a very long link. You can answer that at your will, Mr Quigley. You do not have to answer it.

Mr Quigley: This has been a trip which I am—

Senator CAMERON: Before Mr Quigley answers, I would take a point of order on this. The point of order is that the committee that deals with the communications and environment area—

Senator FISHER: On which you have the numbers, Senator Cameron.

Senator CAMERON: has made decisions about this. The issue of how estimates run is way outside the terms of reference of this committee. Mr Quigley does more than any other private company executive I know in terms of coming and answering questions at every committee I have been involved in and estimates. I think it is outrageous that this is being used—

Senator IAN MACDONALD: It is the biggest infrastructure deal that the government—

Senator CAMERON: to again try to smear Mr Quigley. That is what this is about.

Senator FISHER: Mr Quigley has the opportunity to explain.

Senator BIRMINGHAM: Senator Cameron, you know that Mr Quigley did not even have to attend.

Senator CAMERON: You are all being totally—

Senator FISHER: In fact, we were happy to have others than Mr Quigley. Did you tell Mr Quigley that, Senator? No.

CHAIR: Order! I am trying to wrap this up.

Mr TURNBULL: Senator Cameron has defamed every other member of this committee.

CHAIR: Order! We are going nowhere fast here.

Mr TURNBULL: Mr Chairman, I suggest you—

CHAIR: Mr Quigley, do you want to answer that question? It is your call.

Mr Quigley: All I would say is that I do my very best under every circumstance to turn up at all of the committees that I am asked to attend.

Senator FISHER: Understood.

Mr Quigley: I did have a longstanding arrangement with not only my wife but also my grandchildren and families and, frankly, I really do not want to get into a discussion on my personal life in a public hearing.

CHAIR: Thank you. There is one other issue that we need to deal with to wrap this up. We are not going into people's personal holidays.

Mr TURNBULL: I am not interested in Mr Quigley's personal life, but there are a couple of technical issues about the answers to fibre to the node that I want to ask him about if I may. It will take just a few minutes.

CHAIR: I will allow that. But there is this fibre deployment bill that we also need to talk about. Rather than talk about it now and run the clock down, are you happy as NBN Co. if we as a committee meet with the greenfield fibre operators in Australia and Telstra and potentially come back to NBN Co. with some questions if need be?

Mr Quigley: Of course.

Mr TURNBULL: Alcatel-Lucent published a technology white paper recently which said:

But the economics of FTTN are hard to resist, given cost points that can be 50% or less than those of PON.

Mr Quigley: Yes.

Mr TURNBULL: You agree with that?

Mr Quigley: I would say yes. I do not know the exact numbers, but certainly you expect fibre to the node to be cheaper if you want to cover a given area and you can actually cover it in fibre to the node. If they are talking about a larger area that you cannot cover with fibre to the node, it is a different situation.

Mr TURNBULL: The same paper from Alcatel-Lucent states that fibre to the node can offer for distances of 1.1 kilometre or less—that is to say a copper length of 1.1 kilometre or less—download— speeds of 25 megabits per second and upload speeds of three megabits per second. Does that fit with your experience of this technology?

Mr Quigley: There are a lot of other factors there. One thing I have learnt from broadband planning and DSL technologies is that you have to be careful with broad generalisations. Loop lengths is not the only issue; there are issues around what is called—since we are getting into the details here—near-end cross talk and far-end cross talk, whether you are using vectoring or dynamic processing, and how many cables are in the binder. There are no simple answers.

You cannot draw simple conclusions. So there is no easy answer to that. You have to plan a network. In Australia we have long loop lengths and some of these newer techniques to squeeze the, best using VDSL technologies, out of copper requires pair bonding. And with pair bonding you can use phantoming. There is a whole range of things but they all have their constraints and they are all squeezing the last bit out of copper. What I think is indisputable is that if you are looking at a long-term decade long investment, you want to be sure you are backing a technology that you are not going to have to upgrade in five years or even 10 years.

Mr TURNBULL: But you do not disagree with the statement that I just read to you from the Alcatel-Lucent paper?

Mr Quigley: I neither agree nor disagree until I know the details of the plant it is referring to.

Mr TURNBULL: Do you agree that very high speeds of about 25 down and three meg up can be achieved over fibre to the node?

Mr Quigley: Yes, of course they can under some circumstances.

Mr TURNBULL: Are they—

Mr Quigley: It is not a yes or no answer; it is under some circumstances and depending on the physical plant and the condition of the physical plant and the techniques that you use, some of which, by the way, are increasingly expensive.

Mr TURNBULL: Given that what on any view is very high-speed broadband for residential purposes can be achieved over fibre to the node and given that you are paying Telstra \$9 billion to decommission their copper network, why are you failing to acquire the right, if you so choose, to use part of that copper network, if you or your shareholder in the future want to have, for at least part of the NBN network, a fibre-to-the-node design? Why are you depriving yourself and the taxpayer of that flexibility?

Mr Quigley: I am executing the objectives that were set by our shareholder. They asked the company to build a fibre-to-the-premise network. They did not ask us to build a hybrid of fibre to the node or a fibre to the cabinet or some other technology.

Mr TURNBULL: Mr Quigley, but you agree that situations change and companies and businesses need to be flexible because the resources that are available change and technologies change. Why are you depriving your company of that technical operational flexibility?

Mr Quigley: If it were relatively simple and straightforward and it did not require a lot of work, I may think about it, but to look at a completely different construct, where we would build a hybrid network where we keep some of the copper open and you retire other parts of it, I know how complex that would become. One of the benefits for Telstra is that, when they fibred an area, they can close down the copper and rationalise their exchange base. If they do not know which parts are closing and which parts will stay open, because we do not know what the performance of the copper is, that is a very, very complex negotiation.

Mr TURNBULL: But we are talking about potential savings of many billions of dollars. Isn't that worth a little bit of complexity?

CHAIR: This might be the last question.

Mr Quigley: Perhaps I could suggest, Mr Turnbull, that—this is perhaps to the department or the government—if they would like us to, at this point in time, go and look at that issue, we could certainly investigate it, but it is their policy issue; it is not an issue for—

Mr TURNBULL: It is a shareholder issue.

Mr Quigley: Yes, of course.

CHAIR: There is plenty of room for questions from any committee members to be put on notice via the secretariat. NBN Co. has been very kind in saying they will respond to those. Mr Quigley, thank you for attending to assist the committee.

Mr Quigley: It has been a pleasure. Thank you.

CHAIR: You have been asked to provide additional information on some issues. Could you please forward that to the secretariat by 30 May because the committee has to report by August. We all have some time schedules. Thank you very much. I appreciate you allowing a long lead on many of the questions today. I am sure we will be talking again.

Mr Quigley: I look forward to it.

Proceedings suspended from 12:13 to 12:18

**EDGE, Mr John, First Assistant Secretary, Government Business, Special Claims and Land Policy,
Department of Broadband, Communications and the Digital Economy**

HARRIS, Mr Peter, Secretary, Department of Broadband, Communications and the Digital Economy

**MASON, Mr Philip, Assistant Secretary, National Broadband Network Implementation Division,
Department of Broadband, Communications and the Digital Economy**

CHAIR: Welcome. Although the committee does not require you to give evidence under oath, I advise you that these hearings are formal proceedings of the parliament and warrant the same respect as proceedings of the respective houses. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. The evidence given today will be recorded by Hansard and attracts parliamentary privilege. Before we proceed to questions on the rollout, I would like to remind everyone that we will deal with issues surrounding greenfields developments and the fibre deployment bill in the introduction. I will ask people to hold off on questions until we get to the issues.

Mr Harris, would you like to make an opening statement to the committee? Senator Macdonald, did you want to wait?

Senator IAN MACDONALD: Yes. I thought we were starting just to get through those formalities, which I think is appropriate. Rather than have Mr Harris repeat his statement, we should at least get a few more people at the table.

CHAIR: We have a quorum, but if that is a request of a committee member we will wait. If you could round up your crew, that would be appreciated.

Senator IAN MACDONALD: I think most of them are just about here.

Senator FISHER: It is a bit like herding feral cats.

Senator IAN MACDONALD: We have the senators here, so that is all we really need!

Mr Harris: I am sure the members of the House of Representatives will be bored rigid by my brief opening statement, whereas the senators have far greater tolerance; they are used to this! I will be very brief because of the amount of time that has already been taken up this morning with Mike Quigley's evidence. Then I might hand over to Mr Mason, who will want to talk about the bills this committee has had put in front of it.

Members of the committee are aware the department handles many things other than the NBN, so I was going to talk about that, but in the interest of time I am not. I am also not even going to mention that the budget had rather a lot of money in it for the NBN; I am just going to skip straight over that. The particular issues that I remind everybody that the department has primary responsibility for are quite important. We do the development of legislation and regulation that addresses the major policy issues in telecommunications; thus, the Competition and Consumer Safeguards Act, the National Broadband Network Companies Act and the National Broadband Network Access Act. Plus, as Mr Quigley mentioned in his evidence, the \$2 billion element of the agreements with Telstra relating to the universal service obligations and the creation of USO code belongs to us. We do support and advice to the minister and the board of NBN Co.

I will skip over all the wondrous achievements of the last 12 months. I am sure the committee will endorse all of them. I will note, however, for the committee's benefit, the Regional Backbone Blackspots Program belongs to us and has come up quite a few times. I think individual members would probably have some questions on that. Not only is the program moving very rapidly to a conclusion in the course of this year, there have been some significant benefits already achieved through that and some partial answers. For Senator Macdonald's benefit, I think we can provide those on towns that are adjacent to or on that network. We have a document for the committee that it had asked for previously on international submarine cable linkages. We will provide it to the secretariat, and that can be circulated. I am not sure it will be subject to questioning today.

Finally, as I have noted, the committee has allocated time for discussion on the fibre deployment bill, and my colleague Mr Mason is here to provide brief comments on that and to answer questions in relation to it. I will cease at this point, and we can move onto Mr Mason's introductory remarks.

Mr Mason: I think it would be useful to make some brief comments about how this fibre deployment bill differs from an earlier version of the bill which was introduced into the parliament in March 2010. That bill lapsed when the parliament was dissolved last year. There are a number of important differences between this bill and last year's. The most important difference stems from the decision announced in June 2010 that NBN Co. would be the fibre provider of last resort in new developments. As a result, this bill focuses more on ensuring fibre-ready passive infrastructure—that is, pit and pipe—is installed in new developments to pave the way for the roll-out of fibre.

As before, the bill provides that where passive infrastructure is installed it must be fibre-ready. As a further safeguard, however, this bill also provides for a monetary penalty if the corporation sells or leases a property in a real estate development in the fibre footprint without fibre-ready passive infrastructure being installed. Given this approach, there are new mechanisms to exclude premises that may not be in the fibre footprint—notably, a utility test, the ability for NBN Co. to give a statement and the ability for the minister to give exemptions. There is still scope for the minister to make an instrument to require the installation of fibre in new developments as opposed to passive infrastructure, but this now plays a reserve role. The previous bill allowed for the creation of an access regime for non-carrier pit and pipe via regulation. In this bill that access regime has been set out in legislation.

In general the bill is less reliant on subordinate legislation. Obligations are generally set out in a statute rather than having to be activated by subordinate legislation, as in the previous bill. As a result, this bill also has provision for specific exemptions—for example, where construction of passive infrastructure is already contracted or already underway at the commencement of the bill. The bill also expands the powers of the Australian Communications and Media Authority so it can make standards for in-premises cabling and customer equipment for use with the NBN or other superfast broadband networks. It also creates a power for the minister to direct the ACMA to make such standards as required. Those are my introductory comments on the bill. I am happy to answer questions on it. Thank you.

CHAIR: Thank you. We might deal with the bill first. Is there anyone who has some specific questions now? The other option is that we wait to hear from the greenfield fibre operators and Telstra and then, if the department is comfortable, we will put questions on notice to the department. I would hope the department are okay with that.

Mr Harris: Of course it is entirely in the committee's remit to manage it in that way. As you know, we have an awful lot of questions on notice and so, particularly as you have got a quick reporting deadline here, it may be better if I could just ask for any questions even of what I call a generic nature—as in: 'What do you mean by this bill?'—would hopefully reduce some of the time for witnesses.

CHAIR: I am easy either way.

Senator FISHER: Chair, I do have sympathy with Mr Harris's view.

CHAIR: So do you have any specific questions now?

Senator FISHER: Not at this stage. Also, to the extent to which this hearing is supposed to be an inquiry into the fibre deployment bill, I have got some concerns that we are able to do that job adequately and diligently and to give fair regard to the witnesses in that respect.

CHAIR: Sure. So do you have a question?

Senator FISHER: Not at this stage, Chair.

CHAIR: Okay. Member for Bradfield.

Mr FLETCHER: What is the department's view about the impact of the arrangements on the speed with which access network is being built in new developments at the moment?

Mr Harris: At the moment there is continuing activity of a contracted kind, as you will be aware, from the past in terms of continuing to roll out telco services across Australia. But increasingly, as developers finalise their developments and put in their submissions for new telecommunications facilities, there will be a growing queue of development applications. Both Telstra and NBN Co. are aware of this and are currently managing with developers to prioritise, if you like, developments that are ready to go, because the way the development industry works there is a history, for example, we have encountered in this process of applications that are five years old. Developers have not progressed them, in other words; they have lodged them, but they have not actually progressed them. So there is an exchange going on now to keep the rollout in new developments going on, but there is a developing set of applications which will have to be prioritised, and Telstra and NBN Co. are doing that, as we speak right now, on a continuing basis.

Mr FLETCHER: This arrangement effectively creates a bottleneck, doesn't it, in that all developers for developments above a certain size have to go to NBN?

Mr Harris: No, I do not think it creates a bottleneck of that kind. It is primarily about the obligations of developers in the future to supply passive infrastructure for the purposes of a rollout. That is what this bill is primarily trying to do. I do acknowledge your point, but I do not think it is the bill. I think it is the fact that applications are going to have to be lodged and decisions are going to be made as to what kind of infrastructure is going to be placed in the passive infrastructure, the pit and pipe, that we are trying to put in place right now.

Mr Mason: The only thing I would add is that the policy is that developers can use what fibre provider they want. NBN Co.'s role is there as a fibre provider of last resort.

Mr Harris: The important thing here is that this is like saying: 'There is a transition to a new style of network and we want the development industry to be very conscious of what will be their obligations under this.' Their quid pro quo for that is: 'Yes, and you should be very conscious of your obligations, which is: when we ask for it, give us the appropriate cabling and put it in place.' So that is the Telstra-NBN discussion at the moment, and the bill is trying to say: 'Here is the future infrastructure, the passive infrastructure rollout approach of the government.'

Mr FLETCHER: Mr Mason, when you say that the bill provides for the developer to choose any network builder that they wish, once the network is built what is then required to happen?

Mr Mason: I actually said that the policy provides for a developer to use any provider of first choice. The legislation, as the secretary pointed out, fundamentally relates to the provision of fibre-ready infrastructure—that is, the pit and pipe and so forth. Assuming the fibre network is constructed, it is up to the service provider to provide the services on it for RSPs to come to that network and use that to provide services.

Mr FLETCHER: I will ask the question another way. Is the policy scheme that NBN Co. will operate the network in new developments?

Mr Mason: As I said, developers can choose to use whatever provider they want to provide the infrastructure, but if they choose NBN Co. then NBN Co. would operate the network.

Mr FLETCHER: Are they free to choose any other party that has the skills and competence to both build a network and operate it?

Mr Mason: Yes, this legislation does not deal with those arrangements.

Mr Harris: In fact the legislation that does deal with those things is the NBN access bill which went through at the end of the last things. That is the bill that says there is wholesale open access if you are going to go down this path, as long as you meet the technical standards. There will be technical standards put in place by ACMA as well for the stability of the fibre network. I am not a technologist so I cannot explain those but there will be some developed by appropriate technologists. As long as you meet the competition requirements for wholesale open access you will be able to put another network in. For the purpose of these developments you can plug that into the NBN is part of the rollout.

Mr FLETCHER: It is correct, is it not, that if there were operators who previously had a business model of building fibre networks in new developments and then providing retail broadband services over those networks, under the overall legislative scheme that business model is now not available?

Mr Harris: No.

Mr Mason: Under the access bill that was passed by parliament, if those providers were supplying a superfast network—and we accept that a fibre network in a new development is a superfast network—they would have to operate on a wholesale only basis.

Mr Harris: But the question is ultimately one of price from that point on. The question is: can they do it? A developer will still be able to go to a third party and say that NBN Co., as Mr Mason has made clear, will operate in a major developments at least as a provider of last resort. The burden that I think you are referring to and which has been complained about by individual developers is that they do not necessarily want to operate to the standard of the NBN because that has not been their commercial approach. That is the interface that causes contention.

Mr FLETCHER: I want to specifically understand the logic behind introducing a policy which now effectively precludes what I understand to have been a nascent and emerging business model in which operators would enter into a contract with a developer to build a fibre network within the development and would then offer services to residents in that development over that network.

Mr Harris: There will be two factors, and let us assume that we are talking about a development of significance here because it will help the debate but I can go back a tiny scope too if you want me to. The first is that ultimately the government is creating not only a national network but also a national network with uniform national pricing which inherently involves a cross-subsidy and therefore a concern about cherry picking.

Ultimately, if somebody wanted to run a series of big developments in wealthy parts of the country the take-up might be exceptionally high and data use might be extremely high, then, as you know from a commercial perspective, that undermines the possibility of cross-subsidising from those areas to support those in the bush—to be crude about it. That is a factor, and then there is the Balkanisation of the network concerned; that is, if you do not run a technical standard that makes interoperability easy you have created the little Balkanised states of fibre or different technologies that have been referred to earlier today—HFC or whatever. The idea is, effectively, to say that we have to have a legislative structure that is consistent with the concept behind the NBN, and the concept behind the NBN, as the committee has heard me say previously, is both that there is a national network of nationally uniform wholesale pricing and that it is consistent with structural separation—a voluntary undertaking from Telstra to structurally separate from its network.

The pieces of legislation that you have seen coming through in the last 12 months from the department have been designed to be consistent with that overall vision of the kind of national network we are talking about. We attempted to accommodate the parties which were upset about this, and if I understand rightly you will probably be talking to some of them today, firstly by running a tender process under which they could bid to be effectively the subcontractors to NBN for the purposes of this. Their business models were definitely varied under that, but they would still be viable, and that process has resulted in the announcement from NBN Co. that it is going to go with Fujitsu on a scale basis. I guess that when you asked Mr Quigley for his comments on that this morning that is probably where you will be going to. I am not in a position to answer questions on this regard about Fujitsu, but there was a process where we attempted to accommodate the needs of the multiple parties who had been in this area—the smaller players. It was, effectively, that this is a contracting arrangement—

Mr FLETCHER: Is it a fair statement of the policy you are implementing that in the government's view the prohibition of a business model that a number of operators had been following is just a regrettable consequence of its policy objectives?

Mr Harris: No, I do not think that is right. As I said, we attempted to accommodate them firstly through—

Mr FLETCHER: But you would agree that the business model which a number of these companies that had been pursuing this is no longer open to them?

Mr Harris: In the second sense of an NBN today it is no longer, but it is clearly going to have to change as a result of the NBN.

Mr FLETCHER: It is correct, is it not, that they are not able to sell retail services?

Mr Mason: With due respect, I think you are oversimplifying the market model that those kinds of providers were actually operating. Many of them are operating on a wholesale-only basis, and at a very low level in the stack. There are some operators who also have retail businesses, but that is not the uniform model. So to say that the model under which they were operating in the past is no longer available to them is—

Mr FLETCHER: Is it right or is it not that there is a business model that was available previously which is now not permitted?

Mr Harris: No, the individuals had the ability to tender to NBN Co. for this purpose.

Mr FLETCHER: No, it is right is it not, that it was previously open to operators in this situation to deliver retail services within a development and that is now not permitted under the law?

Mr Harris: No, retailers are quite open to contractors—NBN, not their customers.

Mr FLETCHER: No, I am talking about people who build a network and then deliver a retail service over it. That used to be permitted under the law and that is now not permitted.

Mr Harris: Let us be clear, because I know I do not agree with your statement. If you want me to go clearly on the record: I do not agree with it. We are talking wholesale here. That is what NBN does.

Mr FLETCHER: Again, let me put my question to you. I am not talking wholesale, I am asking you the question: is it the case that it was previously open to companies that wish to pursue this as a business model—to build a fibre network in a new development and to then sell retail services on that network to residents of that development—and that that business model is now not permitted under the law?

CHAIR: To clarify that: wholesale plus retail as a business model?

Mr FLETCHER: What they do with wholesale is a matter for them. I am asking—

CHAIR: But that is building the platform and then selling retail off the back of it?

Mr FLETCHER: Constructing the network is one thing, but then delivering a retail service to people who live or work in that development: that is the question

CHAIR: As a self-contained exercise?

Mr FLETCHER: Yes.

Mr Harris: Still in terms of your question: no, I do not think that is correct. But Mr Mason and I have just conferred over what we think you are aiming at, and vertical integration is no longer a possibility. You say 'retail' but you are talking about wholesale and retail. In retailing you can be a retailer—let us live with that right now—

Mr FLETCHER: I am talking about a player who owns a network then delivers retail services. I accept the point that Mr Mason makes that it is a question of fact as to what business models those companies have actually been pursuing, and we can ask them that when they actually appear before us. I want to get it clear—

Mr Harris: The only thing the law is preventing is a question of being unwilling to be wholesale open access. That is what the law has dealt with but it is not this bill. It was in previous legislation, now an act of the parliament.

Mr FLETCHER: It is part of a regulatory system.

Mr Harris: It is part of a structure, I agree. I am not trying to evade your point. I agree it is part of a structure.

Mr FLETCHER: I will close on this question. I just want to be clear. It is correct, is it not, that it would previously have been open to companies who chose to pursue this is a business model to build out a fibre network in a new development and then sell retail services over that network to residents of that development and that business model is now not permitted under the law?

Mr Harris: Under the access act.

Mr FLETCHER: Is that correct?

Mr Harris: From a wholesale point of view, yes.

Mr Mason: The amendments made to the Telecommunications Act through the access act that was passed by parliament last month put in a new part 8, which says if they operate a superfast broadband network, which is fibre network, basically they will need to be a wholesale-only company.

Mr FLETCHER: They cannot operate a retail service.

Mr Mason: They have to operate that part of the network on a wholesale-only basis. It does not preclude them having a retail business at arm's length, though.

CHAIR: How do you define arm's length?

Mr Mason: A separate company.

CHAIR: Does it include the seven per cent area as well, the satellite and wireless coverage—the Julia Creek issue that is now becoming so famous in this committee?

Mr Mason: Those rules only apply to a fixed line network.

CHAIR: What is emerging is that NBN Co. may very well be entering into separate arrangements with some communities to potentially upgrade their services. The question of where a private provider may sit in that arrangement then becomes—

Mr Harris: It would have to be wholesale open access, consistent with the provisions of the access bill if you were to be an alternative fibre provider extending into the seven per cent. The law is the same.

Mr SYMON: My question is on the cost of passive fibre-ready infrastructure. I have gone through the explanatory memorandum. It is put at \$800, about, compared to \$13 if it is done with no passive infrastructure. What do you get for the \$800? A new housing estate would have underground power, underground water, underground gas and underground telephone connections. In that case, what extra is required in that \$800 figure for the underground fibre-optic connection? Is it allowing for a separate service to be run or is that going to be shared with an existing copper service?

Mr Mason: The \$800 figure that we have used in the explanatory memorandum is very similar to the estimated cost of putting in an underground phone connection. You are right: there are not that many differences between ordinary pit-and-pipe as put in today and what needs to be done to be fibre ready. There are some differences, for example, in the pit sizes, the conduit sizes and the angles of the conduits so that the fibre can travel through it smoothly. What that costing involves is trenching for the conduit, the conduit itself, the pits, the reinstatement and the provision of the lead-in from the street to the property. Basically, it is the building of the pit-and-pipe infrastructure, the digging, the installation of the hardware and then the filling-in of the trench. It is what you would expect in most developments.

Mr SYMON: That is also taking into account the cost of running it down the streets and connecting back to a central point and then averaging that cost across each household?

Mr Mason: Yes, it is an average. It is basically the cost of the pit-and-pipe infrastructure within the development. Typically, you would have a kind of hub site or a central point in the development, so it is the pit-and-pipe from there.

Mr TURNBULL: The greenfield companies ask the question why NBN Co. is not simply a provider of last resort and why they are not able, with the same degree of government support, to continue in their business in rolling out fibre infrastructure in those greenfield developments, as long as it does comply with the relevant standards.

Mr Harris: That is currently the case.

Mr TURNBULL: They are complaining that it is not. They have seen that in practical terms they are not going to be able to do it.

Mr Harris: As with the question put to Mr Fletcher, it sort of requires me to accept a position. I am not questioning that the NBN is going to change their ability to sell their businesses. I am saying what the law currently says is that you must be wholesale open access and you must eventually meet a technical standard established by ACMA so that interoperability is not an issue. That is because that is the government's aim. The government's aim is wholesale open access, and obviously interoperability is common sense.

Mr TURNBULL: Again, why would a developer choose to use one of the greenfield companies rather than wait for NBN to do the work for him or her?

Mr Harris: I think simple practicality might be a very good reason for doing this, as long as the developer is conscious of the standard, if you want to get your development done super swiftly. It is true of today with Telstra that there is a queue. If you want to get that done and you want to sell fibre then certainly in Victoria, where I have been working for the last 10 years, there are developers who have done that and who have sold housing developments on the basis of fibre complete estates and the attraction of superfast broadband and all of that sort of thing. They have contracted parties to do that. The important issue here for us, from the government's perspective, is that they are saying, 'You can do it; it is just going to have to be done differently. You are going to have to be wholesale open access.' Some parties are saying, 'That is not the way I run my business.' I think that is the point Mr Fletcher was trying to make. We are not disagreeing. That will be different. But we are not, as it were, rubbing them out.

More importantly, what we were trying to do with the tender process was give them an ability to be a subcontractor to NBN because that, again, seems to be an entirely practical option. It has not worked the way that we the government would have preferred in the tender. Because the tender is run by NBN Co., I am not going to go into the details of why that might be, but they ended up with Fujitsu as the primary provider, which is what they have just announced.

Mr TURNBULL: Let me put to you what I anticipate the greenfield fibre operators group will be saying. They have said to the committee that the NBN Co. should be directed by this bill to focus only on new development areas where commercial development does not have a choice of available and experienced commercial operators ready, willing and able to provide fibre to the premises connections. Developers should have the choice of either NBN Co. or a private provider of FTTP networks for voice, internet and data services to the standards required by the NBN but without the pain of self-funding the build cost above the cost of pits, pipes, trenching and any additional services. How would you respond to that?

Mr Harris: Maybe I misheard, but it seems to me that in the latter statement they are effectively saying, 'Pay us to do this.'

Mr TURNBULL: Yes. They are competing with a free service. So what they are saying is, 'Why don't we get the same degree of subsidy so that we are not put out of business by this great big new government monopoly? Why can't we continue in our business and keep our employees on the payroll as long as we are delivering the fibre infrastructure that meets your requirements? Why can't we continue doing that?'

Mr Harris: I think the answer is reasonably clear. The government's investment is to create a national network and that is why it has set up NBN Co.

Mr TURNBULL: But if what they build is compatible with the national network—

Mr Harris: That is what the law requires them to do. That is all it currently—

Mr TURNBULL: But, at the moment, if I am a developer and I have the NBN Co. saying, 'I'll build this. You provide the pits and pipes and I will provide the cabling and electronics for free,' and then I have a greenfield

operator saying, 'I can do just as good a job as NBN, but you are going to have to pay me for it,' the greenfield operator is not competitive, is he?

Mr Harris: You are right. In the circumstances, the government is paying for a national network and that is its plan.

Mr TURNBULL: Is there any reason why the government cannot make available the same level of funding to these operators to provide the same infrastructure so they are not put out of business.

Mr Harris: It is like everything that goes into a budget process. There are plenty of things the government can pay businesses to do if it chooses to do so.

Mr TURNBULL: But this is not going to cost anything additional. They have got to pay someone to do it. Either the NBN is going to have to be paid to do it or a greenfield operator will be paid to do it. It seems that you have got government subsidised business that is putting private businesses out of business.

Mr FLETCHER: Could I make some comments?

Mr TURNBULL: Please.

Mr FLETCHER: I understand the issues you are raising. They are issues that we have grappled with. One of the problems that we found in looking at small providers providing solutions in greenfields was their scale. There was a consistent issue in relation to providing backhaul. I think it is generally accepted that the cost of providing fibre within the new development itself is fairly consistent, and most of the data the providers provide to us seems about equivalent in terms of price; however, they were in very poor circumstances in relation to providing backhaul to those states. They are relatively small undertakings. The government's policy as Mr Harris has indicated is to provide a national broadband network, including any new developments. It was not seen that those small fibre providers could always help achieve that objective and that NBN Co. was better placed to do that. That is why the emphasis has been placed on NBN Co. as being the fibre provider of last resort nationally in new developments.

Mr TURNBULL: Can I just interrupt you there: you say the fibre provider of last resort, and new developments would really be the fibre provider of first and last resort because it is offering a fibre build that is free, whereas the private sector has got to charge for it.

Mr Mason: The phrase 'fibre provider of last resort' is used because a developer can choose to use whoever it wants. Some of the small providers in light of the Fujitsu announcement have said, for example, they are interested in competing in terms of time of delivery, value-adds and things like that. I think it has recognised that the scope to compete is harder now. However, it is not as if NBN Co. is providing the infrastructure for free. I think the actual difference between the providers is the size and scale of their operation. NBN Co. obviously, is the national operation of far greater scale and scope and it has greater opportunity to recover its costs over time. I would not agree that NBN Co. is providing fibre for free in new developments.

Mr TURNBULL: From the developer's point of view, he or she will have to pay the private sector fibre company a sum of money to cable the premises and the development, whereas, with the NBN, there will be no construction cost to the developer from the NBN.

Mr Mason: That is the way the small fibre operators choose to run their businesses. I accept that that is because of the nature of the operation, but it is the way they recover the costs of providing the infrastructure.

Mr Harris: The likely point ultimately is the one I have been making: there is scope for developers who want to get developments done quickly to continue to use these providers.

Mr TURNBULL: Mr Harris, wouldn't it be equally cost-effective and in terms of efficiency—we have a gigantic housing shortage in Australia, we have got a housing affordability problem, constraints on supply; as you know, from your previous departmental roles, it is one of the big economic problems we face—to get these developments completed, out and sold and occupied. Wouldn't it make sense and wouldn't it be from a cost point of view neutral to the government if a developer could say, 'I have my private sector cable company here. They're prepared to cable my estate in accordance with the ACMA standards. He's prepared to do it right now. NBN's got me on a six-month wait. Let him get on with it, and he can build the NBN.'?

Mr Harris: This is where we were: I keep referring to the request we put to NBN to run this subcontracting role. That is, frankly, from my perspective, what I expected to see the greenfield operators put in, and we spoke to them about this opportunity.

Mr TURNBULL: Where did this run off the rails then?

Mr Harris: Not being the manager of the tender process, I cannot tell you. That was done by NBN. As Mr Mason has said, we did anticipate this and they did their best to tell us about it. It is not as if we were sitting there

learning it at the last minute. The operators did come in and tell us about this. We saw this as being the best way to marry them with the national rollout objective, anyway. Also, with the time frame, particularly, there is this queuing issue, which has been there through Telstra and is still there. We now own a good chunk of it and we are going to own all of it in the future. We saw that as being the right way of getting this delivered. That did not work. Perhaps I should not make a comment—

Mr TURNBULL: When you say it did not work, do you mean that the tender process with NBN did not work?

Mr Harris: I think you should ask the operators about how they ran that tender process.

Mr TURNBULL: We will. They will be here this afternoon.

Senator CAMERON: I want to get back to some of the bigger issues that we are facing. There has quite clearly been a market failure in telecommunications in the supply of broadband in this country, hasn't there?

Mr Harris: In the international data we see comparisons that strongly suggest that that is the case.

Senator CAMERON: Has part of that market failure been in the vertical integration of Telstra and the dominance of Telstra?

Mr Harris: Yes.

Senator CAMERON: There has been an argument put forward that the government should buy from Telstra the copper for the last few hundred metres to the home. Given that you are advising government on some of these issues, I have seen a figure of between \$15 billion and \$20 billion to buy that copper from Telstra. Is that a figure you have seen or would agree with?

Mr Harris: I have heard of the figure and when I heard of it I searched for its source. I think it is what you would call market speculation. It is not rejected by anybody in the market and when you ask people this—and I do not just mean Telstra—everybody says that it sounds about right. But I do not have any more credible commentary on it than that. I think the most important thing with the copper, as Mr Quigley pointed out, is that it is the government that chooses as a shareholder to say to NBN, 'We want the fibre to the premises network.'

But, more importantly, how did we get here? The government started out with fibre to the node and ran a tender process for that purpose. For whatever reason the Telstra proposition to that failed and the independent panel that assessed the bids said there was no value for money. And probably the most important aspect to me when I came in and looked at this is that the ACCC said that this investment in fibre to the node was unlikely to necessarily deliver the kind of benefit that the government perceived of it and that a substantial part of it would effectively be wasted, in terms of competition outcome. So the government is there, again, with an attempt to do fibre to the node that was previously unsuccessful and it is required to either do nothing or move up to fibre to the premises. It chose to move up to fibre to the premises and charged Mr Quigley with the responsibility for delivering that.

Senator CAMERON: The fibre-to-the-premises approach allows Telstra to migrate its customers from the existing network and onto the NBN, and that provides for a level playing field of competition at the retail level, doesn't it?

Mr Harris: That is the idea. Moreover, because of the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act that was passed at the end of last year, Telstra has the choice of functional separation or structural separation, and that is the preferred model from Telstra's perspective, as I understand it. I do not want to claim to be speaking on behalf of them, but we have been negotiating it for a hell of a long time, the preferred model for delivering that competition policy outcome is structural separation and migration of the customers.

Senator CAMERON: A fibre-to-the-node operation would effectively move exchanges closer to the home. I have seen some estimates of 50,000 cabinets being built across the country. Is that correct?

Mr Harris: I have heard that order of magnitude as well. I think there was assessment work. It was done prior to my time. If the committee is interested, I can probably dig out the numbers, but it was certainly assessed at the time for what fibre to the node would mean. 'Additional street furniture', as I think it was called, was one of the factors that were raised at the time.

Senator CAMERON: Mr Fletcher this morning raised the issue of overhead cables in heritage areas. To do fibre to the node, you would have very large cabinets in heritage areas, wouldn't you?

Mr Harris: For fibre to the node, you would have to have some kind of street furniture, yes. I guess that is right.

Senator CAMERON: And these street cabinets are powered, noisy and less energy-efficient—correct?

Mr Harris: That is correct.

Senator CAMERON: Malcolm, are you—

Senator FISHER: They were your policy for 12 months, Senator.

Senator CAMERON: I thought Tony had sent him another email to tell him what to do again, you see.

Senator FISHER: Who is sending you yours?

Senator CAMERON: It is not Tony Abbott, let me tell you. Does fibre to the node support multiple services in premises?

Mr Harris: No.

Senator CAMERON: Part of the argument is that there should be more competition. Therefore, does fibre to the dwelling create more competition?

Mr Harris: I think Mr Quigley has pointed out that he has a number of ports that are potentially available in his network termination unit for individual services, so the answer is yes: in the structure that NBN Co. is rolling out, there is more capacity for that than there would be in a fibre-to-the-node network.

Senator CAMERON: So, in summary, there is anywhere between \$15 billion and \$20 billion to buy the copper network; it is less efficient in terms of being able to get competition into the household; and there is more visual pollution. That is basically what we have looked at here in this questioning.

Mr Harris: There are ups and downs with every network, and they are certainly things that fibre to the node has as characteristics in those orders of magnitude. I guess yes.

Senator CAMERON: Thanks.

Mr TURNBULL: I will ask a follow-up on that—just one quick question. Mr Harris, you have been very agreeable in your discussion with Senator Cameron and agreed with all of the leading questions he put to you.

Senator CAMERON: You're the QC that never does a leading question!

Mr TURNBULL: You seem to share his view that fibre to the node is an inferior technology. If that is the case, why is that by far the more common way of delivering broadband around the world? In particular, why is it that the South Koreans, who on most views would be the most advanced country in terms of broadband deployment, use fibre to the node or fibre to the basement but certainly do not use fibre to the home—or very rarely use it?

Mr Harris: Can I answer the Korean question first, since it has been asked in that order.

Mr TURNBULL: Please.

Mr Harris: Then can we go back to the other question, because it is equally important and I do not want to lose sight of it. In fact, I will summarise it. The answer to your start-out question is that it is not structural separation. Fibre to the node is not structural separation; let us be clear on that.

Mr TURNBULL: But they do have structural separation in Korea.

Mr Harris: No.

Mr TURNBULL: They have a lot of competition there.

Mr Harris: It would not be structural separation in our terms. You could argue for that. Let me do it in the right order. In a commercial sense, why do people favour fibre to the node? Because it is commercially cheap. Yet, as the ACCC advised the government—and I was not here at the time, but I went back and did the due diligence—if you are going to invest in a fibre-to-the-node network, just be aware of this: if you were to want a competitive wholesale network, most of that investment would be wasted, because it will commercially advantage one party. So I am answering your question. You asked me why everyone favours it. The answer is that they are mainly investing on their own behalf; they are investing in their own networks and they would like to do it cheaply, because you make more money that way. That is why you do it. So it is common around the world. What are we doing? We are doing a big government investment in a national network. I have been happy to publicly call it unique. There are 70 governments around the world, as I understand it from the UN broadband commission, that are investing some billions of dollars in fibre networks of different kinds, but we are right out there. The Economist Intelligence Unit said this, and everybody says it. We are right out there. We are building a national network. But that is the government's plan. So fibre to the node is—

Mr TURNBULL: So we are right and 69 other governments are wrong?

Mr Harris: I would say 69 other governments are investing billions and we are investing more billions. That would probably suit your agenda and everybody else's agenda if I said that because I think it is the only thing that is absolutely common ground: we are just spending a lot more on this. We are doing it for structural separation reasons—that is what we are doing. We are pursuing competition objectives—

Mr FLETCHER: Can I follow up on—

Mr Harris: Before you do can I go to the second half of Mr Turnbull's—

Mr FLETCHER: I also have a question on the Korean thing. Have you finished Mr Harris?

Mr Harris: On the Korean issue, we had the Korea-Australia-New Zealand Broadband Summit in Hobart a few weeks ago. I asked the Korean communications commissioner about these issues.

Mr TURNBULL: Who was that?

Mr Harris: I asked the CEO of the Korean Communications Commission. He is a senior representative in creating the plans by which the Koreans are doing these investments. The important issue to him is fibre to the basement. As I think Mr Quigley said to you, fibre to the basement is an acceptable way to do MDUs if it can be made to work sufficiently for your objectives and so I think there is reasonably common ground there. Korea has a Fibre-To-The-Home Council and is clearly running, in their advice to us, fibre-to-the-home network planning. They are doing fibre to the home. They are just sequencing it as we have done, fibre to the basement, as you have said, we have done some fibre to the node and we are keeping on going and now doing fibre to the home. It has not stopped. Their program continues and their objective is fibre to the home.

CHAIR: Is it correct that fibre to the basement is considered in the statement of expectations as fibre to the premises?

Mr Harris: It is now more an NBN issue than it will be a policy issue for us but I can assist you at least with this: in circumstances where multidwelling units bodies corporate do not enable the NBN to connect, the NBN will still seek to connect fibre to the basement to provide the best service they can to that building and in that sense it is included in the plan. Otherwise the government's plan is fibre to the premises including the apartment. In other words we would do fibre to the basement if a body corporate would not let us get in to the home.

CHAIR: So the concept of DSLAM that has come up in previous discussions in this committee is not part of the statement of expectations?

Mr Harris: It is not the intention of the government, no. But if NBN Co. has no other mechanism by which it can offer its service, our intention is that it goes as far as it can in offering its services. There will be a lot of effort put in by NBN to try to sell this to the bodies corporate and this is one of the reasons that we are in Brunswick because it has a lot of unit developments. The idea is to try to work out the best techniques for getting in touch with bodies corporate and giving them some encouragement. Nevertheless, the way I understand it is that it may end up in the basement if it cannot be taken to the apartment.

Senator XENOPHON: On a different topic, very quickly, Mr Harris, did you hear the questions I asked Mr Quigley in relation to the issue of the connectivity virtual circuit and the concerns expressed by Simon Hackett from Internode?

Mr Harris: Yes, I think I did.

Senator XENOPHON: Basically there is a concern that, despite the prohibition of volume discounting, the larger players could still dominate the market and not have as competitive a playing field by virtue of the CBC. Simon Hackett says it would make it impossible for providers with fewer than 250,000 customers to supply a national service because the fees are based on a minimum transmission volume that greatly favours larger providers.

Mr Harris: I have heard it said. I must say that the discussions we have had to any effect is that that might actually be a commentary on a likely mechanism that some retailers will attempt to use to maintain their margins. It is more a margins issue than it is a volume issue.

Senator XENOPHON: Where are we at with that though? The ACCC needs to sign off on that, don't they?

Mr Harris: That is right.

Senator XENOPHON: Given the time constraints, could you take on notice where we are at with that?

Mr Harris: Yes, we can. I am pretty sure you will see because the access undertaking and the Telstra undertaking as well—the structural separation undertaking—have to be in. Telstra's has to be in by 30 June. The SAU I would hope from NBN Co. would go in roughly the same time frame. So you will see it pretty soon because—

Senator XENOPHON: If you could comment on that. These were supported in a *Financial Review* article headed 'Telco bullies to prosper with NBN' on 16 April. If you could comment on notice on those issues raised.

Mr Harris: Sure.

Senator XENOPHON: Just out of left field—and my esteemed colleague Senator Heffernan alerted me to this—I have a question about battery backup. At the moment if there is a power blackout, you do not need a battery backup, but you will with fibre. Has that been factored into the budget?

Mr Harris: Yes, it is funded.

Senator XENOPHON: But who is paying for it? Is it a separate line item?

Mr Harris: It is part of the NBN.

Senator XENOPHON: What is the ballpark figure for that battery backup?

Mr Harris: I do have a ballpark figure in my head. I am wondering whether I should take the Fifth though. I should. I am old, my mind is feeble and I might get the number wrong. We do have an estimate and we can provide it to the committee in writing.

Senator XENOPHON: But it will be up to consumers to have their own battery backup after the first lot?

Mr Harris: We think our retailers will include in the service replacement of batteries as they reach the end of their life. The NBN is planning an alarm system, which will effectively enable them to tell a retailer: 'Your customer's battery is about to run down. Go and replace it.' We think that will be part of the product suite.

Senator XENOPHON: So they will be able to tell which individual batteries are going flat?

Mr Harris: Yes, we will have monitors. That is one of the great things about fibre to the home—you can have any service you like running down it. That will be relatively costless. It will be added in.

Mr FLETCHER: I just want to make sure that I was not mishearing you. You are not putting to us that fibre to the home is necessary to achieve structural separation.

Mr Harris: I know that I said fibre to the node was not structural separation. That is what I said.

Mr FLETCHER: You would agree that structural separation relates to the access network being under different ownership than the retail business and that is independent of technology?

Mr Harris: Of course. You may not have heard me, Mr Fletcher, but I went through the sequence of how the government arrived at this and I was saying that the advice from the ACCC to the government was: 'A lot of your investment will be wasted here if you intend this to support the competitively neutral market circumstances of structural separation.'

Mr FLETCHER: But you agree that there could be quite readily a structurally separated market under which—

Mr Harris: Yes, you could sell off your copper network to a third party and—

Mr FLETCHER: You could have a fibre-to-the-node access network in a structurally separated model?

Mr Harris: You could.

Mr FLETCHER: I want to come back to the greenfield sites from moment. Did the department or the government consider an alternative model under which any operator with requisite skills that met the necessary technical standards would be free to build a fibre network in a new development? Why did you discard such an approach?

Mr Mason: I think there might be another part to the question. The model we have now enables any fibre provider to offer its services to provide fibre in new developments. I think, as we discussed, the issue is what price they can charge. If the question is: 'Did the government consider such a model with direct funding of all providers of subsidies?', that option obviously was apparent to us and has been considered.

Mr FLETCHER: You considered it, but you did not proceed with it?

Mr Mason: That is correct.

Mr FLETCHER: And why was that?

Mr Mason: Because the government is making an investment in the National Broadband Network and that is the means by which it is delivering fibre nationally.

Mr FLETCHER: Let me put the question another way. There is no reason, is there, why the objective of having a fibre network owned and operated at the wholesale level by different companies that provide the retail

services could not be achieved in a world where in some places the fibre network is owned by NBN Co. and in other places, such as new developments, it is owned by non-NBN Co. players?

Mr Mason: Technically, that is correct. The original model that was put forward by the government was one in which there were multiple providers, of which NBN Co. could have been one, and developers would fund the installation of that infrastructure. So yes, that model is a valid model. It does have problems in implementation. I talked about some of those. Some went to the scale of the providers, some went to backhaul and some go to nationally consistent outcomes. There is so much you can achieve with technical standards and so forth. I think you will be aware that many of the small providers are concerned about having standards that are too inflexible, and that would impact on outcomes. There are also issues about policy outcomes as well. Mr Harris mentioned uniform national pricing before and how you would achieve that in a multi-provider environment. So those are a range of factors which went into the role of NBN Co. being the fibre provider of last resort.

CHAIR: I have a couple of questions. These are broader questions based on the conversation this morning with Mr Quigley. There was a conversation around the seven per cent under satellite and wireless. Some evidence was given that a process is about to be established to assist communities that may want to upgrade at some point in the future. Do you have any input into that at all and, if so, is there anything you can report to the committee?

Mr Mason: I can give you the context as I understand it, although there may have been some recent developments in NBN Co. that I am not aware of. The way NBN Co. operates is that it identifies a potential addition that the government is planning to date—decisions about the implementation study, the points of interconnect, the statement of expectations. It will develop a plan in-house, write a paper and consult with relevant parties on the paper and then will send that to the government and see whether we are interested in the endorsement of it. My understanding is NBN Co. have done some work already on this idea, but I have not seen a paper as such from them. My understanding is they have been working on one. I think the idea has been provoked by some councils who have approached NBN directly and said, 'If we are not on the fibre network, we would like to put some support towards getting ourselves onto the fibre network.'

CHAIR: The evidence this morning suggested that the issue of technology change outside of the statement of expectations, particularly for those seven per cent, had not necessarily been considered alongside that process. Do you have any comment on that evidence given this morning at all?

Mr Mason: No. Technology issues are much more a matter for NBN Co. than for me, certainly. I do not know whether our other officers here want to comment on it. We have a technical advisory unit in the department but they are not here today, and I am not sure anyway whether this isn't really much more a matter for NBN to determine. We have had a parliamentary debate where this was extensively argued about in the Senate. The question is ultimately: is there a technology that is ready to put in place today? From the NBN perspective, certainly they are trying to put in place the latest technology, but it has to be commercially available technology. So they are going down that path. Nevertheless, they have made some undertakings which I think were the subject of discussion in the House of Representatives when that bill came back for confirmation when the House was recalled at the end of the last sittings. Commitments were effectively made by the government to continuously look for updated technologies. I think Senator Macdonald might have raised this from the inverse perspective earlier with Mr Quigley. The government's statement of expectations can vary and will be capable of varying in the light of improved availability. In the corporate plan where you see the \$24 figures across the 12/1 for all technologies and you see blanks in the columns below that for the faster speeds, that is because the fibre can deliver it and the planning is for the wireless and the satellite to do the common 12/1 entry standard and for the same price nationally. Clearly, when technology is available the government's intention, as I understand it, is to try and introduce improved offerings. But that will be a question, ultimately, of whether that technology is deliverable and in such a state that you could roll it out nationally, because people will be entirely dependent upon it for their broadband services.

CHAIR: You may have answered my final question along that line. I would have to check the *Hansard*, but I thought that Mr Quigley indicated this morning that in his view the statement of expectations is not necessarily a document set in sandstone; it is a document that is fluid; it is a working paper, if you like.

Mr Harris: I could get Mr Edge on the record here, but the statement of expectations is an updateable document. Do you want to leave it at that?

Mr Edge: It is an updateable document and it will change.

CHAIR: Depending on a whole range of circumstances.

Mr Harris: Over time, as that becomes available, the statement of expectations will be updated. I should say for the benefit of the committee that the statement of expectations is treated very seriously by both us and NBN Co. There are deep arguments over the meaning of individual words to ensure that there is no doubt at all.

CHAIR: The final question is on an administrative issue. The committee has called for the Productivity Commission to turn up. There have been some issues in regards to whether they will turn up or not. I just want to be very clear that the department and the government, as far as you are aware, have informed all the relevant bodies that have been mentioned in the letter between the Prime Minister and Senator Xenophon in the establishment of this committee. If not, would you be willing to assist?

Mr Harris: Perhaps I will take it that way. I will agree to assist rather than put on the record that I am absolutely sure that everybody who needs to be informed has been, because I guess you can always find someone who will say that they were not told. So why don't I do it in the reverse order; why don't I take on the obligation of trying to make sure that everybody who I can possibly think of who needs to be is aware of the possible need to come in front of the committee? I will inform them that the committee is a very important institution and the government expects to see advice provided to it.

Mr TURNBULL: Who was the gentlemen from the KCC?

Mr Harris: Let me find out who it was.

Mr TURNBULL: I met with a gentleman from the KCC on 7 March in Seoul and in said to us that in Korea it is fibre to the basement and in almost all cases the lines in the apartment buildings are the property of the owners corporation, so the individual apartment owners can choose who they connect to. They encourage facilities based competition, so typically there will be at least one fibre provider to the basement, a cable HFC provider, who will resell his bandwidth to a telco. Sometimes there will be copper DSL as well. They emphasised that in their experience service level competition—which is what we are proposing here—had not worked and that it is important to get facilities based competition as well. That is from my notes of that meeting. I leave that for your information and for the information of the committee. In terms of GPON, the architecture, would you agree that a fibre-to-the-home network using GPON architecture is in fact a shared network?

Mr Harris: Mr Turnbull, just before you go on, in terms of everybody's notes, we asked the Korean Communications Council what their planning was. I do not think that at any point in my answer previously I said that they were not doing fibre to the basement. I talked about their intentions to do fibre to the home—and they are rolling that out. We followed this up and requested advice from the Australian Embassy in Seoul and the advice to us indicates that a majority of the new buildings in Korea have fibre to the premises as the service and that older buildings have the fibre to the node. That is reasonably consistent with what you have been saying, but the Korean intention is to keep going with fibre to the home.

Mr TURNBULL: Again—I have the advantage over you of having been there—the biggest new urban developments in Korea are the huge new cities being built in the Incheon area. There are three huge cities there. The new residential developments are gigantic and have a very futuristic design. I inspected one of them with Cisco, our hosts, and the cabling in the new residential buildings is in fact cat 5 cable. That is a brand-new development. They had not even completed selling it. So maybe there is a factual thing there.

Mr Harris: I suspect it is not a factual thing; I suspect it is a difference of emphasis, because I do not think the post in Seoul would have given us bad advice.

Mr TURNBULL: Do you think I was misled by Cisco, or I don't know the difference between fibre and cat 5?

Mr Harris: No. I think you can go to a location and see a story and apply it nationally, and it may not necessarily be the case.

Mr TURNBULL: Let me get back to this critical thing about FTTN. You agree that fibre to the home where you are using GPON architecture does involve a shared network; isn't that correct? In other words, the actual maximum speed available to any single customer is dependent on the total utilisation of the GPON segment. That is the CV circuit that has been so contentious. Do you agree with that?

Mr Harris: I do not think I am going to comment on that, no, because I am not a technologist and I am not appearing here in that capacity. Perhaps Mr Mason would like to come in?

Mr Mason: I would like to hear the full question.

Mr TURNBULL: Do you agree with the point I have just made, Mr Mason?

Mr Mason: I am not a technologist either, and I think it is a question better directed at NBN Co., but I would have thought: to the extent that the CV circuit involves backhaul, then backhaul is generally shared.

Mr TURNBULL: Correct. You would agree with me, wouldn't you, that xDSL—meaning any ADSL, VDSL or whatever—networks have an underlying point-to-point architecture; that is to say, there is one line to the customer's premises, that twisted copper pair, or it might be two copper pairs bundled together. In other words, there is a one-to-one contention in that service.

Mr Mason: From the exchange.

Mr TURNBULL: From the exchange or the node.

Mr Mason: Yes, or the node.

Mr TURNBULL: You would agree with that, wouldn't you?

Mr Mason: Yes—

Mr TURNBULL: With that architecture, it is not a shared network.

Mr Mason: But the analogy is the backhaul from where the node is, which would be shared. When you are talking about a CV circuit, you are talking about the backhaul from the splitter cabinet, I guess, or the hub.

Mr Harris: In other words, Mr Mason's earlier answer to you agreed with you on the basis of backhaul but not on the basis of what I think you are now going to, which is the street immediately outside the house.

Mr TURNBULL: No, the way a GPON segment works is that you have 32 users sharing a common amount of bandwidth, so there is potentially contention.

Mr Harris: And instantly upgradable.

Mr TURNBULL: No doubt—

Mr Harris: Unlike the copper.

Mr TURNBULL: Let me just make this final point, though. You have now conceded that fibre to the basement, which is basically what they do in Korea, is within your vision for the NBN. So you are happy—you are not going to insist—

Mr Harris: No, 'happy' would be utterly inconsistent with what I said, Mr Turnbull. I said 'when NBN Co. cannot get access to a multidwelling unit'. On NBN's current planning it will do its best to get itself plugged in as far as it possibly can and, in those circumstances, will go to the basement, because an owners corporation, as you know, can be very—well, they may not get their act together.

Mr TURNBULL: It might be physically difficult, too.

Mr Harris: There might be any number of reasons, but what I was trying to do there was say to you that it is not ruled out, because you could equally say to me: 'How stupid that is. How are you going to get past the owners corporation?' So I was trying to deal with that issue. The owners corporation will eventually decide whether someone can or cannot come onto the premises and convert every apartment. As to our intention, I think I have pretty clearly said on the record, but if I did not let me say it very clearly now: our intention is to try and get to every apartment. But owners corporations will ultimately be able to decide that matter.

Senator CAMERON: I have two quick questions. Mr Turnbull wants the government to buy the copper network. Can you provide—you can take this on notice—any details of the maintenance costs of the Telstra copper network, if that is available, and also the reliability of the Telstra copper network?

On the issue that Mr Fletcher has been raising—the question of vertical integration and competition—it seems to me that the argument that has been put forward is one for cherry picking. Could you advise us of the implications for the cost of providing the NBN to rural and regional areas if cherry picking was allowed?

Mr Harris: We can attempt to do that. It would be an interesting calculation but we could attempt to do it.

Senator IAN MACDONALD: I have just informed myself. Until the last couple of questions, I thought we were only dealing with the bill but I now realise that the department was talking about a broader range of things.

CHAIR: The department is available on an ongoing basis; there is no time sensitivity.

Senator IAN MACDONALD: Today?

CHAIR: No, you have a copy of the agenda. They can take questions on notice and they have made it very clear—

Mr Harris: I would prefer if I did not take 100 questions on notice.

CHAIR: Yes, but you are willing to come back.

Senator IAN MACDONALD: Okay, I am just giving you notice that in estimates I want to ask about the financing, which I started asking about with Mr Quigley. So please come prepared for that.

Mr Harris: Yes, I have taken notes from your earlier comments. Since you asked about the Julia Creek issue and things like that earlier, I think we are providing the committee with the list of the 100 towns that you asked for previously. They are on the network. I have gone back and clarified this because the question did come up in the private hearings. I think there is little doubt that as the fibre servicing areas are determined by NBN Co., a town that is on a big backhaul network is going to be—all other things being equal—in a much better place to be part of the fibre servicing areas than a town that is not. While Mr Quigley could not give you an assurance about this issue either, the bottom line is that I went back and asked what was likely to happen under the circumstances. The answer is that you are better advantaged by being on the big backhaul network than otherwise.

Senator IAN MACDONALD: All Mr Quigley said was that he would do the cost exercise on the incremental costs.

Senator FISHER: Mr Harris, can you advise the committee whether the Prime Minister and/or the government wrote to the Productivity Commission and the ACCC to inform them that if this committee requested that they appear they would do so, as she promised in her letter to Senator Xenophon on 23 November last year?

Mr Harris: We will.

CHAIR: Thank you for assisting the committee today. You have been asked to provide additional information on the fibre deployment bill and the secretariat would really appreciate that by 23 May so that we can progress any reporting on that. On all other issues we would really appreciate it by 30 May, if that is okay, because as you know we have a reporting deadline of August. If the committee has any further questions they will be sending them through in writing. We will try to limit this in light of your obvious workload.

Proceedings suspended from 13:33 to 14:14

COSGROVE, Mr Michael, Group General Manager, Communications Group, Australian Competition and Consumer Commission

HOME, Mr Richard, General Manager NBN Engagement Group Coordination, Australian Competition and Consumer Commission

NICHOLLS, Mr Rob, General Manager, Australian Competition and Consumer Commission

PEARSON, Mr Mark, Deputy Chief Executive, Officer Regulation, Australian Competition and Consumer Commission

CHAIR: I now welcome representatives of the Australian Competition and Consumer Commission. Thank you for attending this afternoon. Although the committee does not require you to give evidence under oath, I advise you that these hearings are formal proceedings of the parliament and warrant the same respect as proceedings of the respective houses. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. The evidence given today will be recorded by Hansard and attracts parliamentary privilege. Before we proceed on the rollout, I would like to remind everyone that we will deal with issues surrounding greenfields development and the fibre deployment bill and, at the same time, the ACCC's evidence, I think. So, if everyone is okay with it, we will mix the questions in together. As the ACCC has indicated they do not have an opening statement, we will go straight to questions.

Mr HARTSUYKER: What is the role of NBN engagement and group coordination within the ACCC?

Mr Home: Primarily, we are dealing with establishing the arrangements for access to the NBN and a range of assorted and related activities that arise out of the NBN bill, as recently passed; for example, the development of non-discrimination guidelines and so forth and various other tasks. In addition, my group deals with coordinating activities across the communications group.

CHAIR: Were you involved in the statement of expectations?

Mr Cosgrave: No, we were not. We have obviously seen the statement of expectations, but we were not involved in its compilation.

Ms LEY: We are in receipt of a submission from Australia Online urging to the government to ignore the ACCC's recommendation to increase the number of POIs from 14 to 121. Can you give us your side of the argument.

Mr Nicholls: Broadly, the approach we took in the advice to government on points of interconnection was driven by the long-term interest of users and took into account both the retail and wholesale aspects of where the points of interconnection with the National Broadband Network would be. This was in an environment where there is existing transmission competition in a number of areas, and effective competition, such that the regulations occurred in another set of areas. So our approach was to look at how we move the points of interconnection to be appropriate to a natural monopoly—that is, not to see scope creep so that the last few kilometres became the last few hundred kilometres.

Although Australia Online and a number of smaller ISPs, or retail service providers, have expressed concerns about the number of points of interconnection, we are of the view that there is a reasonable prospect, if not current existing competition, for transmission from points of presence, which is typically what an ISP or RSP has in capital cities, out to the 121 points of interconnection that we provided advice to government on. So Australia Online and other providers in the future would expect to be able to acquire services that deliver from their point of presence to the POIs either from current the transmission providers or potentially new services that offer layer 3 connectivity.

CHAIR: Because the member raised a potential submission from Australia Online, I will take this opportunity to ask committee members to resolve to accept Australia Online's submission as evidence and authorise it for publication.

Ms LEY: So moved.

CHAIR: There being no objection, it is so resolved.

Ms LEY: Do you think you adequately analysed the needs of rural and regional Australia in coming to those conclusions?

Mr Nicholls: Yes. Our review of this was to look, as I mentioned, at both the wholesale and the retail aspects of the effects of where an appropriate set of points of interconnection should lie. One of the balances is between

where you put the points of interconnection to ensure effective competition to those points of interconnection and where you end up saying, 'We can't go as far out as we might like because there isn't current effective competition.' So the practical outcome is that a significant majority of the points of interconnection are actually located in metropolitan areas. In the regional areas they tend to be located at major regional centres in order to ensure that more remote and rural retail customers have effective access to the NBN.

Mr Cosgrave: Allied to the decision on the points of interconnection, as my colleague said, there are a couple of things militating towards where we got to. One was a concern around correcting an NBN Co. omission that you are dealing with potentially contestable backhaul markets. Where we felt there was no potential either now or in the future for backhaul competition, we have not extended beyond the semidistributive approach. We have taken a more active role since the passing of the Competition and Consumer Act late last year in setting indicative prices around backhaul transmission to bring them down in rural and regional Australia, and we think that is the correct approach.

CHAIR: We had a fair bit of conversation about communities that are on the fibre backhaul who can see it but cannot access it with regard to the fibre option. What looks to be emerging as evidence is that there will be a process to negotiate an option for local councils and potentially others directly with, by the looks of it, NBN Co. Has the ACCC been involved in establishing that process at all? If not, are there concerns about competitive neutrality in the development of a process?

Mr Cosgrave: Firstly, no, we have not been involved in that. Secondly, probably the first we heard of it was around the time you heard of it, so we have not really analysed whether there are any competitive neutrality issues—although it is difficult on first blush to see that there would be. It having been raised by the committee, we will go away and think about it a bit more.

CHAIR: Do you think there are any issues that might engage it?

Mr Cosgrave: It is difficult to see that there would be, but we are happy to take it that people are thinking about it and we need to think about it as a consequence.

Mr HARTSUYKER: In the *Sydney Morning Herald* the minister is reported as saying:

The decision cost NBN Co. three to four months because it had to redesign the network architecture and scout for suitable exchanges at each connection point.

Do you share the minister's view that the ACCC is to blame for the three- to four-month delay?

Mr Cosgrave: I do not think I have any comment about that. We gave advice to the government and the government accepted the advice. NBN Co. is implementing the government's decision.

CHAIR: Do you want to take the opportunity to comment on negotiations between Telstra and NBN Co. and the ACCC's role or lack of role or is it better not to comment at this stage?

Mr Cosgrave: It is difficult to comment in any great detail. We are aware, to a greater extent perhaps than are members of the public, of some matters under negotiation, but we have had the benefit of some documents on the way through. As I understand it, negotiations are still ongoing. We are certainly in discussion with Telstra in the event that those arrangements are consummated around the relationship between those agreements in any structural separation undertaken—that Telstra would have the option of lodging under the Telecommunications Act.

Mr TURNBULL: Gentlemen, the scheme of the NBN, as you know, is to allow service level competition on a structural facility. The parliament has legislated to make it very difficult to provide facilities based competition, and that has been justified on economic grounds. Would you agree that, from a competition point of view, it would be preferable if there were no barriers to facilities based competition?

Mr Cosgrave: It is a difficult time to proffer a view around that in the event that arrangements that are contemplated in the financial heads of agreement are ultimately consummated—and I am thinking about, for instance, the restricted use of the HFC in the structure. That has the considerable potential of being precisely the matter that the ACCC will have to consider in its contemplation of a structural separation undertaking.

Mr TURNBULL: But the legislation basically deems that not be a breach of the act, doesn't it—any part of the Telstra-NBN deal?

Mr Cosgrave: In the event of ACCC approval of a structural separation undertaking. In the event that it is approved, any conduct under the agreements becomes authorised—that is right—but only after ACCC approval.

Mr TURNBULL: The reason I ask this is that we had a discussion—you may not have been here—with the department earlier about Korea. I looked at my notes of my meetings with the Korean communications commission, which has a similar role to you in respect of the telecom sector. One of the points they made most

emphatically was that they did not believe that service level competition was enough or was ever genuinely effective. Part of their policy is to promote facilities based competition wherever possible. Are you able to discuss the merits of service level versus—

Mr Cosgrave: I will make a few general comments around that without wanting to, in any way, prejudge matters that may ultimately come to the commission. The commission, as with most economic regulators, has, particularly in its early regulation of the sector from 1997 onwards, certainly talked a lot around facilities based competition. Indeed, in 2003 we gave a report to the then government recommending the divestment of Telstra's HFC network and, basically, the divestment of Telstra's interest in Foxtel. Both of those pieces of advice were given in an attempt to promote what is generally called intermodal competition, or competition between copper and cable. That advice was given in 2003. It was not then accepted and, I have to say, was not wholly embraced by industry at that time. We have had a number of things since then. We had Telstra apply to exempt itself from its access obligations where Optus had its HFC network. Optus was fundamentally able to convince both the commission and, on appeal, the Australian Competition Tribunal that it was not a particularly efficient use of infrastructure for it to take first mover advantage and up the speeds on its HFC at the time.

So I guess a few things like that along the way have caused the commission to reconsider the extent to which the customer access network—the CAN—is a piece of natural monopoly infrastructure. I think that, if you looked at commission publications over the last two years, in particular we have changed our pricing approach over the last two years to move away from a pricing methodology that really talked about promoting an efficient build-buy decision—a decision on whether you build or buy or, in other words, whether you engage in full infrastructure-based competition or not—to a recognition that the CAN is much more a natural monopoly, which is why we have started to price it much as we would price an electricity utility or any other natural monopoly. So, without forming a view on it, I do not think we would think the issue is quite as clear-cut as our Korean colleagues might have put to you.

Mr TURNBULL: But it is unusual, though. I know you keep up to date with what is going on in comparable jurisdictions, as you should. Can you think of anywhere else in the world where the potential for facilities-based competition is actually being eliminated? There are always arguments for not creating it because of cost, but to actually eliminate it, which is what the government is doing here, is surely unique, isn't it?

Mr Cosgrave: I am certainly not aware of any fibre-to-the-premises proposal that is similar to this government's anywhere else in the world, but I think that is well known.

Mr TURNBULL: Yes, it is. Peter Harris said it is out there; that is his description. In Singapore, for example, they are building a new fibre-to-the-premises network, but there is no restriction on the ability, for example, of the StarHub owned HFC network to compete with it.

Mr Cosgrave: Yes, but—again without reflecting on comparable policies—you have to recognise that the dynamics of a Singapore build and an Australia build—

Mr TURNBULL: Yes, I know, but that is just one example.

Mr Cosgrave: are vastly different. Again, being very careful not to judge positions put by any other parties, the rationale, as I understand it, for these various provisions is at least twofold: (1) the possibility of cherry-picking in high-value areas as opposed to low-value areas—that is the principal one. That is not to say that they are inherently provisions that a competition authority feels innately comfortable about or anything like that. Perhaps I will leave it there.

Mr TURNBULL: Thank you.

Senator XENOPHON: I have a couple of questions in relation to the issue of the CVC—the connectivity virtual circuit. There have been concerns expressed by the founding CEO of Internode, Simon Hackett, that whatever prohibitions or deterrents there are against volume discounts, larger operators will still be favoured by virtue of the CVC. What role will the ACCC have to ensure that will not occur?

Mr Cosgrave: Ultimately, one way or the other, it is clear that the issue of NBN Co.'s pricing will come to the ACCC. The preferred way in which it would come, and I think this has been indicated by all parties and is still the way we expect it to come, would be via a special access undertaking lodged by NBN Co. We have been in very substantial discussions with NBN Co. in relation to that undertaking, as we would with any party proposal—

Senator XENOPHON: In approving any such undertaking will you be guided by the legislative requirement that there not be volume discounts? Will you take that into account when considering how the CVC would operate?

Mr Cosgrave: The test we apply is a different one under the act—it is a reasonableness test. Whether it would encapsulate—

Senator XENOPHON: In considering the reasonableness test, would you consider the fact that there are some legislative prohibitions against volume discounts?

Mr Cosgrave: There are no exceptions to the non-discrimination test, which is another way of putting the same thing. So we will certainly have that—

Senator XENOPHON: So in other words, will your consideration of the reasonableness test be tempered by the non-discrimination test in the legislation?

Mr Home: Yes, it will be. We must have regard to what is in the legislation around that. To add to what Mr Cosgrave said, our reasonableness test encompasses effects on competition very directly and we will need to consider the effects on a range of players in the market.

Senator XENOPHON: In relation to the CVC, will there be a public consultation process?

Mr Cosgrave: Absolutely.

Senator XENOPHON: Again, with the CVC you have seen the concerns of Simon Hackett and others—

Mr Cosgrave: And spoken with Mr Hackett.

Senator XENOPHON: Okay, so you understand where he is coming from about the potential impact of the CVC on non-discrimination?

Mr Cosgrave: Yes, we understand that he has concerns. We have taken a deliberate approach with NBN Co.

Senator XENOPHON: It does not sound as though you accept his concerns; you cannot say that you will accept them or not.

Mr Cosgrave: We do not have an undertaking in front of us at the moment. We have not formed a view, and could not, until we go through a public consultation process. We have a statutory process which requires public consultation and that is the appropriate time to make that sort of judgment. I guess this has been guided by our experience with Telstra in relation to the use of access undertakings where, in the commission's view, they have been lodged without any industry consultation process, but what we have encouraged NBN Co. to do, before it brings us an access undertaking, is to consult broadly with industry around its pricing and access model. It has done that on one occasion and received comments. I understand that it is about to go out on a second round fairly quickly. But ultimately it has to bring its pricing and terms and conditions for access to us.

Senator XENOPHON: You have Simon Hackett saying that and you have Bevan Slattery saying something different. He controversially said that the NBN will fail because the CVC charges will make it uneconomic for any player to make a profit. How do you deal with that sort of statement in the context of your statutory role?

Mr Cosgrave: You do not until you start your statutory role and ask them to make detailed written submissions as opposed to representations they may make.

Senator XENOPHON: But do you see a tension between what Mr Hackett is concerned about and what Mr Slattery saying?

Mr Cosgrave: I guess we see plenty of tensions in any regulatory process.

Senator XENOPHON: How long do you think this process will take?

Mr Cosgrave: Our experience with special access undertakings is that we have considered about three of them, one in the context of the digitisation of the Foxtel network some years ago. That took between six and 12 months. The issues around this are likely to be both complex and, based upon what you have said to us, potentially—

Mr Pearson: Controversial.

Mr Cosgrave: Thank you, Mr Pearson—potentially controversial. We would expect there to be a full process and it will take around that length of time.

Senator XENOPHON: Thank you.

Senator CAMERON: The ACCC have been involved in telecommunications competition for some years, haven't they?

Mr Cosgrave: Since 1997, yes.

Senator CAMERON: The vertical integration of Telstra has been the fundamental problem in achieving successful competition in the industry. Would that be correct?

Mr Cosgrave: The ACCC has consistently expressed concerns about not only the vertical integration but the horizontal integration. But it would be fair to say that the extent of its vertical integration has been one of the primary concerns of the ACCC, yes.

Senator CAMERON: Would it be fair to say that for a number of years there has been a market failure in terms of competition?

Mr Cosgrave: I think we have consistently said in our competition assessments that whilst there has been progress it has been patchy progress, yes.

Senator CAMERON: How do you reconcile the term 'patchy' with the national interest? We have to look at the national interest on an issue such as telecommunications, don't we?

Mr Cosgrave: I am not sure how to answer that question. I guess by patchy I mean that we think—and I think I have had discussions with you about this before—there have been some successes in the regime via access to the copper CAN and as a consequence of DSL services and their provision by competitors in particular where that competition has been able to flourish. We would also say that the mobile area, which is not one we regulate in a particularly intrusive way, has been an example of infrastructure based competition succeeding. So we would say there have been some successes in competition, but when I used the word 'patchy' that is what I meant: it has been patchy.

Senator CAMERON: The role of the ACCC relates to both consumers and competition. Theoretical competition does not always benefit the consumer, does it?

Mr Cosgrave: Competition is not an end in itself is the way I have often heard it put, and I think that is consistent with not only the ACCC's views but the fact that in various processes we do take into account matters other than competition, particularly around the authorisation process under our act.

Senator CAMERON: Mr Turnbull, I think, asked you about looking worldwide at different approaches to the NBN. Do you also monitor the response of the retail providers to the NBN?

Mr Cosgrave: I might ask you to clarify that, Senator. I am not quite clear what you are driving at.

Senator CAMERON: A number of retail providers have made public comment about the NBN and the capacity for the NBN to increase competition at the retail level. Have you seen any of that?

Mr Cosgrave: Certainly. Of course, as you would expect, my group monitors all comments around the NBN. So, yes, we have certainly seen those comments. Our remit is to encourage competition at all levels. That is the best way I can put it.

Senator CAMERON: There have been comments made not only by the retail providers but some of the biggest technology companies in the world like Google and Microsoft. Have you monitored that?

Mr Cosgrave: Yes.

Senator CAMERON: What are they saying?

Mr Cosgrave: At a broad level there are various expressions of support, some support for the policy and some people are expressing a broad debate around this policy as you would expect.

Senator CAMERON: Is the ACCC satisfied that there will be sufficient retail competition with the introduction of the broadband network?

Mr Cosgrave: I think it would be premature to make any judgment as to that at this stage.

Senator CAMERON: Is there any fundamental, either theoretical or practical, issue that you would say is a problem?

Mr Home: I will point out that, as Senator Xenophon, noted certain parties are flagging some concerns around the structure of NBN Co.'s pricing. That is a matter that we will be considering through the SAU process in terms of its impact on competition.

Senator CAMERON: There has been some questioning today in relation to the access of other companies to the wholesale network in being able to build their own wholesale and retail networks—small vertically integrated networks. Have you had a look at what that might do to the pricing policy that NBN has if there were cherry picking into the big metropolitan areas?

Mr Home: It is fairly early days in terms of NBN Co.'s proposed pricing. The SAU I would expect would cover the conditions, circumstances and limitations under which they can change their pricing. Those are matters I think we would need to consider through that process.

Senator CAMERON: Thank you.

Senator FISHER: With respect to the connectivity virtual circuit charge if NBN users actually start to use the full capacity of the NBN, for example, three video streams per home then a retail service provider responsible for providing that service would be requisitioning a significant amount of CVC capacity from NBN Co.

Mr Cosgrave: That would be a matter for their judgment. The contention ratios they run will ultimately be a matter for each RSP.

Senator FISHER: Yes, but for example one retail service provider has said that an example like that might require 1,000 gigs. So one retail service provider is saying if that were to mean the requisitioning of CVC capacity to service say 1,000 gigs then that would mean a cost to the retail service provider of, I think, about \$84 a month that being the \$24 charge plus an additional \$60 before you even think about GST and a retail service provider's profit margin. If that sort of scenario were to eventuate, and I appreciate your point, Mr Cosgrave, that it is for the RSPs at the end of the day, surely the ACCC would have a competition based perspective on that and if so, how would you handle it.

Mr Cosgrave: I am going to give Mr Nicholls his head, I think!

Mr Nicholls: Firstly, there is a technology issue associated with the approach. If a retail service provider were using the technology called multicast, proposed by NBN, ultimately that can deliver broadcast-type video very efficiently and would not lead necessarily to those big CVC charges, so it is for certain types of video distribution, particularly broadcast style—that is, it is a linear stream of programming rather than on-demand programming. The CVC would not be as adversely affected, in addition to considering the contention issues that you might not want to. So it may be that it depends on the type of service being offered as to whether big, fat CVC pipes are really required.

Senator FISHER: I like that term; I can understand 'big, fat'. Although, we are left in the dark as to how NBN Co. is factoring in, in terms of its revenue streams, where the 'big, fat' is an alternative to requisitioning significant amounts of CVC capacity. Are you able to rule out the scenario painted by that retail service provider in the example I have given?

Mr Nicholls: I do not think we could rule it out, because it depends on the retail service provider and the types of service they want to provide—things like the quality of service that they expect to provide and what the demands are of their customers. One of the things implemented in the design of the network is a way to reduce the requirements of CVC if what is being provided is linear video.

Mr Home: I think the example you have described is effectively the usage by one household of the CVC charge.

Senator FISHER: Yes.

Mr Home: The CVC charge would cover a wide range of households, and so it would be difficult to isolate cost per household.

Senator FISHER: The retail service provider in that scenario also suggested that a thousand gigs is currently being provided by it to an individual household. But, yes, you are correct: it is to an individual household. How would NBN have factored in CVC revenue or otherwise into its forecasts?

Mr Home: I think that is primarily a question for NBN Co.

Senator FISHER: Fair enough. Thank you for fronting up here today, once again. Has the Prime Minister or anyone else from government written to the ACCC saying that the government expects that you will appear before this committee if and when required? She promised in her letter of November last year to Senator Xenophon that the government would so write. I want to know whether you have got the memo.

Mr Cosgrave: Not that I am aware of. We are of course happy to appear before this committee at any time with or without the letter.

Senator FISHER: Indeed, but it would appear without any help from the Prime Minister.

Mr Pearson: We are clarifying that issue.

Mr Cosgrave: I think I said, 'not that I am aware of.'

Mr Pearson: Senator, we will take that on notice and check because it would go through our executive area, not necessarily to Mr Cosgrave.

Senator FISHER: Mr Cosgrave, in response to the chair you talked about the Telstra deal and outlined, if I understood you correctly, that the ACCC is involved in considerations in the event that the deal is 'consummated', which I think were your words. So you are involved in a way in respect of Telstra, as I understand it. You might want to clarify this. I am not asking you about the terms of the conditions of the deal but about the capacity in

which the ACCC is involved in the process of reaching the deal itself, as opposed to the consummation of which you spoke.

Mr Cosgrave: It goes back to the authorisation provisions and the fact that for any arrangements under any agreement to be authorised the ACCC has to be given a copy of them prior to them being authorised. Understandably, both parties to the negotiation are interested in the ACCC broadly being aware of how their negotiations are going. From time to time we have had some briefings from both parties to the negotiations. We are not involved in those negotiations, and that is the extent of it at this stage.

CHAIR: If there are no other questions, I will just finish with a general question in regard to the Telecommunications Legislation Amendment (Fibre Deployment) Bill 2011. Has the ACCC been involved in any issues to date and, if so, what? If not, having a look at the bill, is there any consideration of any issues that the ACCC thinks are of concern and, if so, what?

Mr Cosgrave: Mr Nicholls will take the issue of consultation to date because he has been involved in some, I believe.

Mr Nicholls: We provided advice when asked in respect of the advice which is mentioned in the regulatory impact statements. Stakeholders were asked to consider issues. Broadly, the regime that is set up from an ACCC perspective looks very similar to the facilities access regime under schedule 1, which is an intercarrier of the Telecommunications Act 1997, which is a carrier-carrier relationship. In this case, it would be other access seekers and access providers to facilities access.

Mr Cosgrave: It appears broadly similar to responsibilities we already have under the Telecommunications Act, but I have to say we have not considered it in any detail. That is the current state of affairs.

Mr TURNBULL: I have a question about the bill. Are you familiar with or aware that, apart from our general inquiry of oversight of the NBN, we are also looking at the Telecommunications Legislation Amendment (Fibre Deployment) Bill?

Mr Cosgrave: We are aware of that, yes.

Mr TURNBULL: I may not be doing them justice, and it is a pity they could not have given here evidence first, but the greenfield operators, and I am sure you know who they are, have said that essentially the NBN is putting them out of business because instead of a circumstance where they will be able to—you are not familiar with this?

Mr Cosgrave: I am aware in general that there have been concerns expressed by some people. I think in the context of legislation that is being prepared those concerns have primarily been addressed to the policy department rather than the commission. Other than seeing some public reports of those concerns, I am not aware of any representations being made.

Mr TURNBULL: As we understand it at the moment, a developer has to provide the pit and pipe infrastructure. The developer will have the option of either waiting for the NBN to connect fibre to the premises in his development, at no cost to the developer, or, alternatively, paying a greenfield operator out of his own pocket to do exactly the same thing. That is obviously not a level playing field. The argument being put is that as long as these greenfield operators, private cable companies, install technically compliant infrastructure they should be able to get paid to do that and get the same benefit of the subsidy that the NBN is getting. I think that is a serious competition issue. It does seem odd that we would be putting companies out of business when they are perfectly capable of building the infrastructure that is required. Can I get a reaction from you on that, and also any other issues you see with this bill from a competition point of view?

Mr Cosgrave: I am not going to give you an extensive one, because it is not legislation we have closely considered. There has been, as I understand it, a working group chaired by the policy department in relation to the development of this bill, and we did attend as an observer at that. We have only just been provided the bill, as have you. We will examine the bill, but I make clear that we have not had any representations to my knowledge put to the commission in relation to competition concerns.

Mr TURNBULL: Could you come back to the committee with your comments on the bill?

Mr Cosgrave: We will do that.

Mr TURNBULL: That would be very helpful.

CHAIR: That is a nice way to wrap it up.

Senator CAMERON: I might have some questions on notice on this issue.

CHAIR: I hope the ACCC is happy to have questions on notice through the secretariat.

Mr Cosgrave: More than happy.

CHAIR: Thank you for attending today to assist the committee. Due to the time sensitive nature of the legislation, any feedback would be welcomed by 23 May, if possible.

Mr Cosgrave: That would be next Monday.

CHAIR: Yes, that would be next Monday. As well, if the committee has any further questions, they will send them through in writing via the secretariat. Thank you all very much for attending today. It was appreciated.

Mr Cosgrave: Thank you.

APPLEBY, Mr Steven John, Member, Greenfield Fibre Operators of Australia

SEAMAN, Mr Benjamin Edward, Chief Technology Officer, Service Elements

SPARKSMAN, Mr Michael John, Chairman, Greenfield Fibre Operators of Australia

THOMPSON, Mr Peter, Member, Greenfield Fibre Operators of Australia

YELLAND, Mr Donald Malcolm Ross, Market Development, Comverge Networks

[15:06]

CHAIR: Welcome. Although the committee does not require you to give evidence under oath, I advise you that these hearings are formal proceedings of the parliament and warrant the same respect as proceedings of the respective houses. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. The evidence given today will be recorded by Hansard and attracts parliamentary privilege. Before we proceed to questions would you like to make an opening statement to the committee?

Mr Sparksman: Greenfield Fibre Operators of Australia believe that the current approach of the government to deliver the NBN is misguided and will unfortunately result in higher prices in both construction costs and operational costs. As far as that is concerned, those costs will be passed on to end users—the mums and dads of Australia—and that has arisen because of basically five factors. The first of which is that it appears it is the intent of this government and NBN Co. that NBN Co. needs to be a monopoly provider of fibre to the home networks in greenfield developments. I pause there to mention networks because, in fact, NBN Co. is presently planning to build 120 separate networks.

The second point is that NBN Co. is promoting itself as the provider of first choice and not as the provider of last choice, as described by the minister in the explanatory memorandum to the bill. The Australian government is also ignoring its own competitive neutrality policy that the government has for government owned enterprises like NBN Co. That policy dictates that no competitive advantage should be given to the government owned business over private sector competitors by virtue of its public sector ownership or by using fiscal or regulatory powers. The fibre deployment bill should not aid to prevent or inhibit private sector competition; impose unknown costs or time burdens on the development industry; or impose NBN Co. network design standards or specifications on the telco industry itself, such as we represent today. The government should also fund the deployment of fibre networks that meet industry standards and specifications for performance and, if they are operated by carriers, are on an open-access, wholesale-only basis. It should not just be funding the NBN Co. but providing the fibre and the pits and pipes, preferably to be vested at the end of the build stage in the USO Co., in local authorities or in some other public institution, and preferably not sold off at some point in the not-too-distant future through NBN Co. I would happily take any questions you have at this point, or I am happy to continue.

CHAIR: Sure. I might lead off.

Mr Sparksman: I can tell you more about us.

CHAIR: No, you are right. I am sure you will over the course of this discussion. In relation to the actual fibre deployment bill itself, what is your advice to this committee on particular issues of concern?

Mr Sparksman: The bill fails to address a number of issues which I have just mentioned. It also compounds that felony by allowing the minister to make determinations in relation to conditions on the deployment of fibre installations or fibre-ready requirements: in other words, the deployment of the passive network—the pits and pipes—and the active network—namely, the fibre and the equipment. By setting conditions that will be only NBN Co. conditions or NBN Co. standards and specifications rather than the customary industry codes or industry specifications and standards, the minister would effectively eliminate certainly our competitive edge and our market. The minister could also do so by doing what he has been doing for the last 12 months, and that is to say nothing about the standards and specifications, because if he does nothing then the industry as it is today—that is,

the property industry as it is today and our industry—is simply unaware of what the standards and specifications are for the deployment of FTTP networks in the Australian greenfield market.

In addition, as I have said, that is a specific concern about the legislation. We actually do applaud much of the legislation. We see no harm in compelling the deployment of fibre—the preference of fibre over copper networks. We see no harm in much of the legislation, and indeed we applaud most of it. But the most significant failing, of course, is the failure to address the fundamental difficulty with greenfields and indeed brownfields in Australia for the last 20 years. Fibre deployment requires backhaul. The Australian government started in 2009 with the black spot backhaul program, with funding of \$250 million, by way of a contract awarded to Nextgen Networks to build 6,000 kilometres of network line around Australia to various remote and regional parts. That was a step in the right direction. It was to be one of many, but there have not been many. For some reason of which we are unaware, there is no further funding available, but it appears that there is plenty of funding available for NBN Co. to compete at the other end, where there was never a problem. There has been plenty of competition in the greenfield marketplace for over a decade. All of my companions here, and some who are unable to make it because they are in other states and because of the short notice, have been competing with one another, with Telstra Velocity and with our friends from Opticom, who are represented in the gallery behind us, for over a decade. It is indeed, I understand, a question which I put to the government: why is it that the fundamental problem of backhaul is not being addressed when there is plenty of money to go around to build what has never been a problem?

Senator FISHER: For clarification, I wonder if Mr Sparksman has a copy of his opening statement that he might like to table.

CHAIR: It will be in *Hansard*.

Mr Sparksman: For convenience, I do have a copy. I am happy to table that now.

Senator FISHER: I would welcome a copy. Thank you.

CHAIR: I am pretty sure you were all in the room when the ACCC discussed this issue at the end of their evidence. Without verballing them, they seemed to be indicating that they either were unaware of competition issues in relation to this or really had not considered them and were going to come back to the committee with some more advice. Would you like to comment on any contact you have had with and any responses you have had from the ACCC—anything at all from what is supposedly the government arm—to deal with the issues you have just raised.

Mr Sparksman: First of all, I will just clarify that the document which I have tabled is more than simply my opening address. It contains submissions more broadly about subject matters concerning the bill and, indeed, the NBN more broadly, and specifically about the effects of the NBN policy in greenfields and the NBN Co.'s conduct in the marketplace. So I direct your attention to that and now I will address your question.

As to the ACCC, I do not believe that a formal approach has been made, although I know that for my own company's part we have alluded to the fact that we are looking at whether or not we can and should make a complaint to the ACCC in respect of the conduct of the NBN Co. Indeed, we may yet do so. I cannot speak for the others, but we are certainly looking at that.

More particularly, we have made a complaint to the Australian Government Competitive Neutrality Complaints Office about the conduct of the NBN Co., a government owned enterprise conducting a significant business—which were the two tenements of the threshold issues—and the competitive advantage afforded it in the marketplace, specifically in the greenfield marketplace. The details of the competitive neutrality complaint have been made available in summary to members of the Senate when they were making inquiries about the earlier legislation, the access measures bill. They are available and I am quite happy to provide this joint committee with a copy of our complaint.

A further complaint has been made by Comverge Networks, and I understand that Service Elements and Pivit will be also making complaints of a similar nature in respect of the various aspects of NBN Co.'s dealings in Greenfields. We say that they are indeed breaches of the competitive neutrality policy, which has been the policy of government since 1994.

CHAIR: From an administrative point of view, for the exercise of the committee's work on this bill, if you want those complaints considered as part of this process they would have to be in pretty quickly. On another matter, are you happy for these documents to be released publicly?

Mr Sparksman: We are.

CHAIR: Is it the wish of the committee that the submission from Mr Sparksman dated today be accepted as evidence and authorised for publication? There being no objection it is so resolved.

Senator CAMERON: I am looking to see what businesses your organisation comprises. I do not need a detailed list now, but do you have a list of members?

Mr Sparksman: Yes I do, it is quite succinct, so it is easy to tell you about now. We are an alliance of leading fibre to the home operators and carriers in the greenfields across Australia. Our members are OPENetworks, Service Elements, TransACT, Comverge, Broadcast Engineering Services Australia and Pivit—that is, six of the 10 providers that were asked by NBN Co. to express interest in being appointed to their panel of experts and experienced operators and builders of networks in December 2010 when NBN Co. advised that it did not and would not have capacity to build in the greenfields for up to 18 months.

Senator CAMERON: If I want you to answer that, I will ask you a question. I have limited time, so I would appreciate you just answering my questions and trying to keep it as succinct as possible. You say the government is committing a felony—what is your definition of a felony?

Mr Sparksman: I think a felony is a non-indictable offence.

Senator CAMERON: You are wrong. I just think you should be accurate in your submissions here. I hope you are not going to be over the top in all your submissions because a felony is a serious issue.

Mr Sparksman: We are taking this matter very seriously.

Senator CAMERON: I am not saying that you are not taking it seriously but you should be accurate in what you say here.

Mr Sparksman: Thank you, Senator, I will endeavour to be so.

Senator CAMERON: That is good. How many employees does your organisation have?

Mr Sparksman: I do not have the exact figures of all of the gopher memberships. There are, I would say, quite a large number, there are 400,000 homes connected, 250,000 of them approximately in Canberra, in the ACT region. They would have hundreds of employees. There would be hundreds across the entire group. In addition to that there are contractors who work for each of our organisations permanently retained. My own organisation retains BSA which has 4,000 employees to do fibre rollouts. We each have various numbers. It depends on the business model.

Senator CAMERON: Can you take it on notice and provide the committee with details of your various employees. If you could give us details of the various classifications of employees that you employ and their qualifications, that would be handy as well. I am wondering where you have been for the last 10 to 12 years in terms of providing this broadband network that you think you can provide now. The issue I think—

Mr Sparksman: Is that a question, I am sorry?

Senator CAMERON: Yes, take that on notice as well.

Senator IAN MACDONALD: I want to raise a point of order on that. I am not quite sure how big an operation the Greenfield Fibre Operators group in Australia is. If it is a group that has its own secretariat—

Senator CAMERON: What is the point of order?

Senator IAN MACDONALD: It seems to me to be a very unreasonable question to ask these people who are out there trying to make a living to sit down and detail and add up every single employee, their classification—

Senator CAMERON: That is not a point of order.

Senator FISHER: It is a question as to reasonableness.

Senator CAMERON: If they cannot tell us, they cannot tell us but that is not a point of order.

Senator FISHER: It is not their business, Chair, it is contractors and subcontractors.

CHAIR: But they will know in their business model. What is unnecessary is any reflections that say people have been missing for the last 10 years when they have probably been building a business.

Senator FISHER: Accuracy, Senator Cameron.

CHAIR: If we can get to a question.

Senator IAN MACDONALD: Do they know when questions are supposed to come in by? If I were them, I would tell you to get lost.

Senator CAMERON: But you are not them.

CHAIR: If we can get to the question.

Senator CAMERON: And they are probably not as rude as you are.

Senator FISHER: It takes one to know one, Senator Cameron.

CHAIR: Everyone will get their chance to ask some questions.

Senator CAMERON: I think I am entitled to ask what you have been doing for the last 10 or 11 years. That is a reasonable question. That goes to your capacity to be able to challenge the government when there is a clear market failure. I am interested in what you have been doing for the last 10 or 11 years. I would like to know if there are business plans in place from each of your member companies to be able to provide broadband services across the country.

Senator IAN MACDONALD: Outrageous.

Senator CAMERON: Is okay to be critical, Senator Macdonald. As you say, this is outrageous. It might be outrageous from your point of view—

CHAIR: No, your question is to the witnesses.

Senator IAN MACDONALD: Clearly your problem is that you are not employing unionists; you are employing contractors.

Senator FISHER: That will be the next question.

Senator IAN MACDONALD: You are offside with Senator Cameron, for a start.

Senator FISHER: No ticket, no start.

CHAIR: This is not the Senate.

Senator CAMERON: I would not have a clue who they employ.

CHAIR: Is there a question? If there is not a question, I will move on to Mr Turnbull.

Senator CAMERON: I will come back.

Mr Sparksman: Might I answer the question?

CHAIR: I am not sure that there was a question.

Mr Sparksman: I think there certainly was. I might just address what I think the question was alluding to, which is: where have we been in the last 10 years? Is that a good place to start, Senator?

CHAIR: Yes.

Mr Sparksman: Since 2000, the GFOA members have been designing, building and operating advanced broadband networks in greenfields. Some have even designed optical fibre equipment that is still used throughout the world in optical fibre networks today. GFOA members connect or pass over 400,000 homes. We have a further 350,000 homes, potentially, either under development contracts or within the footprint of our existing networks capable of being connected. The members deliver high-speed data, internet, voice, free to air, pay TV and many other digital services, including CCTV, security services, building services, building management, utility management and community management services as well as a raft of other wi-fi and other forms of services. That, Senator, is one of the fundamental differences between GFOA, for example, and the NBN Co., which chooses not to provide those additional services. It is simply a last mile network operator.

In the early days of NBN, GFOA members were in fact the raft of experts that the minister called upon to represent task forces and working groups to provide substance to the then dream of the NBN. As I said earlier, we have been invited to assist the NBN Co. with their proposal to build whilst it is unable to do so over the next year or so.

It is interesting that, without having to tap into the USO funds, we have been able to spread our networks throughout the greenfields, whilst there has been no encouragement by government to address the fact that Telstra was running around using the USO funds to provide a copper network, a very antiquated network, throughout that same decade.

Senator CAMERON: An antiquated network, I agree.

Mr Sparksman: So, in order to give some further direction to this conversation, I would suggest that what we have been doing is what no-one else in this country has been doing in respect of fibre-to-the-home networks, and I would suggest to you that it is our expertise and experience that were most valuable to NBN Co. when last Friday they decided to close down the expert panel because they had obtained what they thought were all our prices and all of our intellectual property and decided that it was a good idea to scrap the expert panel and go with our subcontractors. So, Senator Cameron, I think you will find that the Greenfield Fibre Operators are in fact the only people who have been building fibre networks in this country. One of our former members represented in the

gallery, Opticomm, was the contractor engaged by NBN Co., and before that the Tasmanian government, to deploy fibre in Tasmania. They were the principal contractors and managers, and I am sure that their managing director, Phil Smith, who is here today, would be more than happy to be sworn in to tell you more about that.

Senator CAMERON: His head is going to fall off nodding in a minute. He agrees with everything you say. I have two questions on this. You indicated TransACT is one of your members. They are one of the biggest members, aren't they?

Mr Sparksman: They are.

Senator CAMERON: If you take them out, that would be a big lump of your membership, wouldn't it?

Mr Sparksman: It is not a matter of the size of the membership; it is only a matter of how they are funded as to whether or not they are able to capture more premises or pass more homes with their fibre. The members here all represent different businesses and different business models. We treat them equally whether they have 250,000 homes passed or whether they have 10,000 homes passed.

Senator FISHER: What is your definition of 'large', Senator Cameron?

Mr Sparksman: These are very sophisticated networks. Some are much more complex than others.

Senator IAN MACDONALD: No ticket, no start—that is what it is all about.

Senator CAMERON: In relation to your capacity to challenge NBN and provide a service, how many homes could your whole group add to a national broadband network in the next five years or so?

Mr Sparksman: It would be quite within our grasp easily to do 150,000, which is the exact number that is annually connected to residential networks.

Senator CAMERON: How many does NBN foreshadow connecting?

Mr Sparksman: I understand on Friday it was advised in the press that there is a backlog of 133,000 connections that have registered with NBN Co. for connection since 1 January this year.

Senator CAMERON: That is not what I asked you.

Mr Sparksman: I am sorry.

Senator CAMERON: I asked you how many connections NBN will make over the build of the NBN?

Mr Sparksman: In greenfields?

Senator CAMERON: No, the whole lot.

Mr Sparksman: I would refer you to the business case for more accuracy, but my understanding of the business case of NBN is that there are 10 million brownfield connections, and during the life of the NBN, whenever they start it, there will be a further 1.7 million greenfields homes added to that.

Senator CAMERON: So you could make a contribution but you could not displace NBN, could you?

Mr Sparksman: No, we would not displace NBN Co.

Mr TURNBULL: At the moment, a developer has the option of either waiting for the NBN to install fibre at no cost to the developer other than providing the infrastructure—the passive pipes, pits and so forth—or paying one of your members to do it. Correct?

Mr Sparksman: That is correct.

Mr TURNBULL: So that basically puts your members in quite an uncompetitive position, doesn't it?

Mr Sparksman: It does.

Mr TURNBULL: Does it put you out of business?

Mr Sparksman: It does, yes.

Mr TURNBULL: So it is not a fine issue of competitive neutrality. It seems you are just run out of town, basically, by the government dollar, aren't you?

Mr Sparksman: That is correct.

Mr TURNBULL: We had the department in here a little while earlier and we asked Peter Harris, the head of the department, about this and he essentially agreed. He did not cavil at that. But he said there had been an opportunity for your members to effectively subcontract to the NBN. I was not entirely clear about what he was trying to say. I did not follow the narrative he described. Can you just describe what happened? What has gone wrong? It seems incredible that well-established businesses like yours are going to be flattened, put out of business, by a new government monopoly.

Mr TURNBULL: That is Senator Conroy?

Mr Sparksman: Yes. In the middle of 2010 we raised the issue of the concerns. We wrote to the minister and sought to explain to the minister our broader concerns. Unfortunately, because of the timing of the election, the government went into caretaker mode and we were contacted by the chief of staff to advise that the minister would see us after the election, if he was elected, which he did. Then, after some discussion, we were invited first of all to put a business model to the department and to the minister. In fact we provided the department with a business model that suggested in short that we would be quite happy to build and operate the new advanced broadband networks to the standards required by the NBN. At the same time we would convey to either the USO Co., or such other body as the minister dictated, the pits and pipes and passive network, being the fibre, because you need to replace and repair and upgrade active equipment over the life of networks.

We asked the minister for funding and the order of the amounts, for example, provided to do fibre in greenfields equivalent to the NBN, and the department advised, because the minister directed them to do so, that that was not a model that accorded with the government's then direction. The minister then invited us, after further discussion, to consider taking a position on a panel, which was yet to be announced by NBN Co., he understood, of expert and experienced providers in greenfields whilst NBN Co. lacked capacity over the next year and a half, or more.

On or about 17 December that request for proposal was sought of 11 providers. The six existing members were Opticon, who are represented here, Fujitsu, who are not a carrier and who are really consultants, and other providers, including Telstra, VicUrban, and I believe that Broadband Multinet may have been the other provider. Of those 10 or 11 providers, the 'GofA' members comprised the majority. The requests were to provide our response by 7 January. Whilst the NBN had Christmas, we did not. We provided our response on time and after a series of further extensions and changes to the panel requirements, ultimately in or about the end of February the NBN Co. decided that they would give us four days to put forward a proposal for up to four sites each and provide backhaul solutions, which we did. We costed it, we located the backhaul for them, we provided the business models and the build costs to them, and it is fair to say that after discussion with my friends and colleagues here today there was very little between us in terms of the overall price. We basically can build a FTTP broadband network in greenfields for about \$1,500 per lot. That excludes the cost of backhaul and, as I have already indicated to you, the fundamental problem—

Mr TURNBULL: To hold you up for a second, does that include the pits and the pipes?

Mr Sparksman: No, it does not include the pits and pipes, because the NBN Co. requirement is for the developer to do pits, pipes and trenches.

Mr TURNBULL: So what is included in that \$1,500 per premises cost?

Mr Sparksman: At that time, the NBN Co. was going to provide all of the equipment as well as the pits and pipes, of course, through a separate contract and, as part of our arrangement, we were simply to build it initially.

Mr TURNBULL: You were going to roll out fibre or pull fibre through the pits and pipes?

Mr Sparksman: Yes.

Mr TURNBULL: Were you going to provide the optical network terminal in the premises?

Mr Sparksman: Yes, using equipment of our selection and specification.

Mr TURNBULL: What other electronic equipment would you provide?

Mr Sparksman: We would provide the optical termination units that ultimately would be deployed in the homes.

Mr HARTSUYKER: Given that you were a doing subdivision, for instance, would they be held in store and rolled out as needed?

Mr Sparksman: Yes, and we would also provide the management software and equipment back at various points of presence, in all of our cases in the CBD or metro areas to enable the interconnection of retail service providers back at the central CBD—unlike the NBN, which is providing its interconnection to 120 different places at least out at the community.

Mr TURNBULL: That is what you proposed to them. What was the response? Obviously it was negative.

Mr Sparksman: There were a number of changes. I will not take you through all of the changes to the requirements, but after the four days the tenders were deemed to have closed and after a further period of assessment, I believe up to about a month or so, the various members of our organisation were all advised that we were no longer required.

Mr TURNBULL: What has happened subsequently?

Mr Sparksman: Last Friday, the NBN Co. announced that it has appointed our former subcontractors, Fujitsu, to do network management and activation, which is really a consulting management job, and for Service Stream, who were the former deployment contractors for Telstra, to do the physical deployment of fibre networks directly to the NBN Co. So they have engaged contractors to do the build.

Mr TURNBULL: Is Service Stream the company Mr Flannigan is working for?

Mr Sparksman: Yes, I believe so.

Mr TURNBULL: So he has left NBN and gone back to Service Stream. Did he come from Service Stream originally? There is a gentleman at the back who is nodding his head.

Mr Sparksman: I imagine Mr Smith would know the answer to that better than me.

Mr TURNBULL: Thank you. So that means that the rest of you are basically out of the fibre deployment business henceforth in Australia?

Mr Sparksman: Unless we can persuade developers to buy what NBN Co. is giving away, that would be the case.

Mr Appleby: And there are some of those.

Mr TURNBULL: Are there?

Mr Sparksman: There are some sceptics who do not believe that the NBN Co. will survive in its current form past the election and therefore will not be able to complete the developments. There are those who believe that they need to have a deployment now and not wait—

Senator CAMERON: They are not sceptics; they are political partisans.

ACTING CHAIR (Mrs D'Ath): We have a very short period of time left, so one at a time, please.

Mr Seaman: I think it is fair to say also that there are some services that NBN is refusing to deploy on its networks that these property developers are interested in.

Mr TURNBULL: What are they like?

Mr Seaman: They would be free to air TV, pay TV and certain community services.

Mr Sparksman: Those are very important services. If you were a local planner, for example, much less a resident of an estate in an NBN Co. land, you would find that having a satellite dish and an aerial on every home would be an unsightly matter for the community to consider about its amenity. I would also be concerned if I were the emergency service operators in remote and regional Australia, because, of course, NBN Co.'s solution in those areas seems to be a very vague footprint. No-one seems to know where the 93 per cent is. It seems to be drifting in and out and can be wherever it wants now, if this bill comes about, because the NBN Co. can simply disclaim it. If you look at what the landscape would be in remote and regional Australia, you see that the NBN Co. services would be completely inadequate because they do not offer anything but wireless and satellite, and those of course are affected by all sorts of climatic, terrestrial and solar activities and are not as reliable. If you are in the remote and regional areas and a bushfire, flood or natural disaster occurs, those services would be completely inadequate. I believe that emergency services in Victoria are most concerned to hear that towns with under 1,000 connections, which is the vast majority of towns in Australia, will not receive a fibre connection; they will be wireless and satellite.

Mr TURNBULL: Mr Sparksman, I am trying to get a clear idea of what your argument is. You would say that the government should make available to you a sum of money equal to the NBN's cost per premise of connecting fibre to a greenfield site as long as the fibre network you deploy meets the technical specifications which enable it to be connected to the NBN; is that right?

Mr Sparksman: That is essentially correct. The standards we urge, through this bill, the government to consider are the standards of industry which the department has funded for over two years and mysteriously in the last little while have stalled. They are the Comms Alliance standards for deployment of fibre networks in Australia—and I am quite happy to table those. There has been dead silence in the government about what standards would prevail. Of course, this bill does nothing to address that silence but, if it were to address it, it should address it in the usual way, which is the way that most countries address the issue of interconnection, by setting industry standards not the standards of one provider. We do not intend to go out of business. Our unfortunate circumstance, Mr Turnbull, is that we have over 400,000 customers now. We are not going out of business; it is just that we simply cannot continue to grow our business and we have legacy networks that need to be upgraded and improved over time.

Mr TURNBULL: Does NBN intend, as far as you are aware, to overbuild the existing fibre networks?

Mr Sparksman: We are not aware of that, but it is a possibility that the NBN Co. could overbuild. If there is no competitor network in Australia, you will see NBN Co.'s engineers dictate it has to be a ubiquitous network that only they can operate, design and do well at. It would not suit them to have a competitor network or networks. It also, however, is completely unnecessary. All around the world standards of interconnection and network deployment by industry have been developed for a very long time.

Mr Appleby: I want to make a point on Malcolm's earlier question. You asked if we want equal access to the funding. No, we do not. We believe we can build an equivalent product based on the standards—and we are not sure what they are—at half the price. One thing we wanted originally was to get access to the USO funding that Telstra gets so we could build the whole network and you do not need NBN Co. funding. The other thing we would mandate to the industry is that from a RSP perspective there is going to be a repricing of internet in Australia from about \$35 on average up to about \$75, which I am not sure the public are aware of. The NBN Co. funding at a wholesale port rate is vastly more expensive than what we currently charge the iiNets and the TPGs of the world. I think, whilst it is probably not part of this fibre bill, something that has been lost on the Australian public is that not only are we going to pay for it through taxpayer dollars but we are going to pay for it for the next 30 years as they wipe out all competition and innovation, and Australian homes will pay a lot for internet.

Mr TURNBULL: Monopolies are not noted for undercharging.

Mr Sparksman: They have no reason to change that practice. Our concern is that we are currently charging, for a symmetrical 25 meg by 25 meg service—that is 25 meg up and 25 meg down—\$15 a port. That is the standard industry rate. The NBN's rate—

Mr TURNBULL: What about the backhaul? Who pays for that?

Mr Sparksman: In addition to the backhaul. Backhaul is charged in this country on a distance and capacity basis. In other words, you pay for the size of the pipe and for how far the pipe goes.

Mr TURNBULL: But you are saying, for '25 meg up and 25 meg down', that is what you generally charge. And that is the equivalent—

Mr Sparksman: Of the local area connection fee only. Let us say their start-up pack is a 12 X 1 service: 12 meg down and one meg up. And, as a result, the difference between our service—a symmetrical service, well more than double their capacity—is, for the local area connection, leaving aside backhaul for a moment, \$15 compared with \$24 plus the CRV.

Mr TURNBULL: Well, this is a very—

CHAIR: No, I have three more people, we have 10 minutes to go—

Mr TURNBULL: Sure. My apologies.

CHAIR: and I am sure if there are any outstanding questions they would be happy to take them on notice and provide feedback to the committee.

Mr Sparksman: Yes, we would.

Mrs D'ATH: I just want to clarify: in the statement that you provided to us, it says that your members have been designing, building and operating advanced broadband networks in greenfields since well before 2000.

Mr Sparksman: Yes, that is so.

Mrs D'ATH: And you stated, in answer to one of the questions earlier, that you believe that the capacity of your members is to connect—was it to connect, or to pass over?—150,000 premises a year; is that accurate?

Mr Sparksman: Yes.

Mrs D'ATH: You have said that you have 400,000 residents you have either connected or passed over; is that over the last 10 years? And how does that fit with you stating that you can deliver 150 a year?

Mr Sparksman: Thank you for that. That is a good question. The issue of capacity drills down into experience and ability, and resources. The fundamental resource that is missing in our equation is funding. And that, I might add, is a very modest number: only 400,000. When you think that 150,000 a year come on stream, that is a very small, a minute number. But if you fund \$1,000 per connection—because the fund of the USO was \$145 million in 2010—for 150,000 connections, it is fairly close to about \$970 per connection. So if you deploy \$970 per connection to put copper in, instead of fibre, and therefore it appears to a developer to be free, it is not a surprise that a developer would choose the cheap—free—copper service over a more expensive fibre service, which we provide. So the felony—and I use that expression not in connection with the government's conduct—is that the USO fund has been deployed and wasted whilst fibre optics services have withered on the vine for lack of

funding. So it is not a question of our capacity or inability to provide those additional connections; it is a question of funding.

Mrs D'ATH: Can I ask one other question before I pass over? You have said that 250 of the 400,000 are in Canberra. Coming from Queensland—specifically, South-East Queensland—and being aware that most of our major black spots have been in greenfield developments over the last 10 years; they are our worst problems—have you had any presence in South-East Queensland?

Mr Sparksman: Yes. In fact two of our members, Pivit and OPENetworks, and, I believe, some of our nonmembers but former members in Opticomm, have considerable footprints in South-East Queensland. At the moment, for example, we have a network deployed in Varsity Lakes, which is a development by Lend Lease. Lend Lease being one of the largest community developers in this country, certainly one of the most experienced and respected, selected us to deploy a pilot program initially in Varsity Lakes where there is, as you quite rightly point out, a new development where homes did not have adequate access to broadband. The university students, when they went home to their units and dwellings, did not have adequate broadband and certainly new residents did not. So Lend Lease entrusted us with the responsibility to deliver those services there. There are many other examples. I know that our friends at Opticom are providing similar networks in a new development—relatively new, but evergreen—in Springfield, which you would know. We have had many other areas in South-East Queensland which have been serviced or provided by different operators. In the case of Pivit, they have networks at Brisbane airport, they have Kelvin Grove urban development estate, Coomera Waters and Sanctuary Cove.

Mrs D'ATH: The \$150,000 is outside Canberra, spread out across the country?

Mr Sparksman: It is in all states. I am not aware of any in the Northern Territory, although it is not a state.

Mr SYMON: I would like to swing the questioning back to standards. I know you mentioned the comms alliance standards before and they are going to be tabled up. What are NBN Co. Asking for that is different from the standards you have been working to? Do all your members work to that same standards document?

Mr Sparksman: The standards currently in place are those which are the Australian Communications and Media Authority standards. There are no standards other than that.

Mr SYMON: There are various standards related to cable and so forth which fit into building codes and so forth.

Mr Sparksman: They are not really network deployment. We consider network deployment to be the non-customer cabling component. There are standards certainly about customer cabling and equipment and they are regulated also by ACMA. Our standards are beyond the customer cabling back for the network operation.

Mr SYMON: I suppose where I am coming from is interoperability between different providers, different networks. Where are those standards at the moment? Do they exist? If your companies do things one way and someone else does them another way, what happens?

Mr Seaman: To answer that question, if we talk about the internet as it is today, those standards exist to support that interoperability throughout the internet. The retail service providers, the wholesale service providers in this market today work by those standards, whether they be industry standards or others. There is no one company which dominates telecommunication standards in the world.

Mr SYMON: Are your pit and pipe installed to a standard and is that the same for all your members?

Mr Sparksman: The standards for pit and pipe design are those the developer will require in compliance with the local authority because the local authority sets the development approval that the developer must adhere to. They also must adhere to separation requirements in respect of other public utilities—power, water, et cetera. There are standards in respect of that, which are agreements between utilities and carriers. In fact, I know that Telstra and Jemna, for example, in New South Wales, reached an agreement in 2010. That agreement has since failed to be observed and Jemna and Telstra have decided to go their own way. But the councils are still looking for guidance in respect of an agreed standard—as are all the developers.

Mr SYMON: I have some experience in this area. You would therefore be subject to the various standards affecting gas, electricity and water suppliers, because you are trying to be within the same space. What I am hearing is that there is no overall document that can apply Australia wide.

Mr Sparksman: At the moment, the only documents that has been forward that all of our members are prepared to adhere to are the communications alliance documents. Nine committees have been working with the department and various government instrumentalities. Committee members from almost all of the major carriers in Australia have provided their expertise free of charge to produce these documents. A lot of work has gone into

them. But at the moment the industry standards that the communications alliance had put forward have stalled, because the government have not taken them further.

Mr SYMON: So they exist as a draft document.

Mr Sparksman: As it stands, they are drafts. But they are drafts that the industry and certainly our members would adhere to.

Mr Yelland: There are various working groups. We are all working on trying to get various standards put together. At the moment, it seems to have come to a halt. We would obviously much prefer to continue developing those standards and come up with some sort of overall encompassing industry standard as opposed to having an NBN Co dreamt up standard imposed on it. There are obviously some real competitive issues if we then have to go ahead and build to a standard that suits their equipment and their operations.

Mr SYMON: My final question on this, then, is: where does this reside with Telstra at the moment? Telstra have their own standards for just about everything imaginable. How do you interface with the current provider?

Mr Sparksman: Telstra has in fact withdrawn, Mr Symons. I do not know whether you are aware, but Telstra used to have a business unit called Velocity. I went to the website yesterday to see whether they still exist, and there is still a product called Velocity but it refers to all sorts of other things. They were our competitor in the greenfields for the last several years. Telstra had standards for pits and pipes and generally fibre deployment by our operators would have adopted standards similar to the Telstra standards prior to the communications alliance standards. But Telstra have withdrawn from the greenfields market, having presumably done some deal with the NBN Co. As a result, they are not providing, as I understand it, fibre services anywhere in Australia. They are directed under this bill to provide copper services to let developments of less than 100 in infill and small developments. But those specifications would not be relevant to us. We are fibre operators of advanced broadband networks. We would not be deploying copper networks in greenfields.

Senator FISHER: Mr Sparksman, you have six members, although they are not all represented at the table today. Earlier on, you said that there are about 10 or 11 in your part of the industry. You have also said that your organisation represents the majority. How did you determine that you have the majority? Is it that six is more than half of 10 or 11?

Mr Sparksman: I cannot recall in what context it was—I think that I was addressing the question about whether it was the number of the connected homes, and 400,000 homes have been connected. My point was that our group includes six of the 10 organisations that NBN identified as being the most experienced and qualified providers of network services and advanced broadband networks in Australia.

Senator FISHER: So you represent the majority of those.

Mr Sparksman: I represent the majority of those. I do not represent some of those who were asked, obviously; Fujitsu was one of those. I should just qualify that. We do have a contract with Fujitsu for them to provide some services to us.

Senator FISHER: Thank you. So, nonetheless, you are saying that if NBN Co. knew who was in town in terms of greenfield operators then, of those 10 or 11, you represent the majority, six.

Mr Sparksman: That is right.

Senator FISHER: Okay, thank you. The greenfields fibre bill itself was introduced in the House of Reps on 23 March. When did your organisation find out about the bill?

Mr Sparksman: The first bill, I believe, was introduced in 2010.

Senator FISHER: I mean this bill, the bill that we are inquiring into today.

Mr Sparksman: I would have discovered a copy of the fibre deployment bill shortly after it was introduced initially, in 2010. More recently, a few days ago, I was given a copy when I was asked on Friday to appear and give testimony today.

Senator FISHER: Yes, of course, because the bill that we are inquiring into today is different from the bill in respect of which you made submissions at the end of last year.

Mr Sparksman: That is so.

Senator FISHER: This bill that we are inquiring into today was referred to this committee on Tuesday last week. Your submission says you were invited last Friday to appear here today. Correct?

Mr Sparksman: Yes.

Senator FISHER: So when are you saying you became aware of the existence and the terms of this bill?

Mr Sparksman: It would have been on Friday.

Senator FISHER: Up until that time, you had understood that the minister's commitment to involve your organisation on a panel of experts stood, and it was only on Friday, you say in your submission, that NBN Co. decided to discount the minister's publicised view and toss out the notion of an expert panel of providers and appointed subcontractors. That is correct?

Mr Sparksman: That is correct.

Senator FISHER: Basically, on Friday, you found out about this fibre deployment bill and you found out that the minister has aborted what was up until then his publicly disclosed commitment and publicly stated intent to involve your organisations as part of a panel of experts, and not even all of your members are represented at the table here today; I think you said in your earlier statement that some people were interstate. Do you consider that your organisation has had adequate opportunity to consider the bill that we are inquiring into today, and are your members happy with their opportunity to say what they think of the bill?

Mr Sparksman: Can I answer that by first correcting a slight error in your recounting of my statement.

Senator FISHER: Please.

Mr Sparksman: It is correct that the minister encouraged us to go into that process with NBN Co., but it was in fact NBN Co. that aborted the panel of experts—

Senator FISHER: Yes, your submission does say that.

Mr Sparksman: and therefore discounted the minister's views on it. Going then to your question, if I may, I know that, in the case of two of our members, they would have liked to have the opportunity to more closely examine the bill, and indeed they are obviously disappointed not to be able to be here. We have just done what we can with it.

Senator FISHER: Given that you found out about it on Friday.

Mr Sparksman: Yes. So, to the extent that our members would like more time to consider the ramifications of the legislation, that is certainly an issue for us.

Senator FISHER: Okay. They were operating under different rules, or the understanding of different rules, until Friday in any event.

Mr Sparksman: They would have been.

CHAIR: Thank you. For the committee, we have some choices to make. If we want to finish at 4.30, we either take further questions on notice from the three more members who want to ask GFOA some questions and have the remaining time with Telstra, or we go over now and completely limit the time with Telstra. The third option is to go over time. I am comfortable with any one of those three, but I am aware that there are committee members with travel arrangements.

Mr TURNBULL: I have to head off. I have to be out of here by 4.30.

CHAIR: So it is choice time: it is GFOA or Telstra.

Mr TURNBULL: I have to go at 4.30.

CHAIR: Yes, so I think that limits going over time. Shall we have further questions on notice? Are you happy with that?

Senator IAN MACDONALD: No, I am not. Could I suggest we limit those who wish to ask questions to, say, three minutes each. Others, like Senator Cameron, had 20 minutes.

CHAIR: Even though it will only leave 10 minutes for Telstra?

Senator FISHER: Telstra have made the effort to be here. I do not see how we can fairly not hear from them. You have to manage it, Chair.

CHAIR: I am throwing it open to everyone here.

Senator CAMERON: All I can see is Telstra smiling!

CHAIR: Will you able to keep your answers as close to yes and no as possible?

Senator IAN MACDONALD: Can I at least put my questions on notice?

CHAIR: Thanks.

Senator IAN MACDONALD: But perhaps Mr Sparksman could answer this one. Do you have a secretariat?

Mr Sparksman: That would be me. I am both the chair and the secretary.

Senator IAN MACDONALD: I repeat my urging to you not to accept Senator Cameron's earlier request and to speak to the secretariat on whether you are obliged to or not. My three questions all relate to money. Thank you for putting this together. Someone has been working over the weekend, obviously. You will have to take this question on notice. Regarding the penultimate paragraph on the first page—'Whilst the wholesale prices are far less than those by NBN'—I want to know how you know that and what they are likely to be in dollar terms. Secondly, Mr Appleby mentioned that \$35 is what people currently pay and that it will go up to \$70. I have been trying to alert people to this for three years, but unfortunately nobody takes too much notice of me. Can you tell me what the \$35 represents and how you know it is going to be \$70?

Mr Appleby: Yes.

Senator IAN MACDONALD: On the next page, under the heading 'Fibre deployment bill', you say: 'NBN is an obvious first choice for developers because NBN Co. can fund and build network costs that are otherwise paid by developers to private providers and the funding is recovered from NBN.' But the ultimate buyer will eventually pay. If you do it and charge the developer, they pass that on to the ultimate buyer of the property; whereas, if they do it NBN's way, it will go into all the operating costs and eventually come back to their dealers anyhow.

Mr Appleby: What if we provide you with some costing models?

Senator IAN MACDONALD: Could you, and just explain that? Thank you.

CHAIR: Thank you, Senator MacDonald, for placing those questions on notice. Senator Cameron has kindly said he will place some questions on notice. Mr Hartsuyker.

Mr HARTSUYKER: In relation to standards, you said: 'GFO believes the minister wants NBN Co. to be a monopoly and that he will therefore set standards and specifications that only suit NBN Co. network design.' And you were saying that they have not said what that is yet. Is that correct?

Mr Sparksman: That is correct.

Mr HARTSUYKER: So there are some standards out there, but you do not know what they are.

Mr Sparksman: NBN Co. standards?

Mr HARTSUYKER: Yes.

Mr Sparksman: There are some standards by NBN Co., yes.

Mr HARTSUYKER: That have been advised to you?

Mr Sparksman: They are in the marketplace and we have seen what those standards are, yes.

Senator XENOPHON: Perhaps you can give me a yes or no answer on this. Your submission expresses concern about the substantial disclosure of intellectual property and price sensitive information by GFO. Firstly, is this a matter that you will be raising with the ACCC? Secondly, are you seeking as to whether you have any legal redress for that disclosure and what has occurred subsequently?

Mr Sparksman: Yes.

Senator XENOPHON: Yes to both?

Mr Sparksman: Yes.

Senator XENOPHON: Both to legal action and to the ACCC?

Mr Sparksman: We are seeking legal advice in relation to these matters and certainly in relation to the ACCC.

CHAIR: Thank you for assisting the committee today. It is appreciated and it is acknowledged it was short at notice. The questions on notice will be sent by the secretariat. If your answers are specific to the bill itself, we would appreciate receiving that feedback by 23 May, because there are some critical dates.

SHAW, Mr James, Director Government Relations, Telstra Corporation Limited

CHORAZYCZEWSKI, Ms Yolanda, Acting Deputy Director Regulatory Affairs, Telstra Corporation Limited

[16:15]

CHAIR: For the rest of the afternoon we will deal with the Telecommunications Legislation Amendment (Fibre Deployment) Bill 2011. I welcome representatives of Telstra. Although the committee does not require you to give evidence under oath, I advise you that these hearings are formal proceedings of the parliament and warrant the same respect as proceedings of the respective houses. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. The evidence given today will be recorded by Hansard and attracts parliamentary privilege. Before we proceed, I remind everyone that Telstra is appearing today to deal with only one thing, and that is the fibre deployment bill. The committee will have the chance to question Telstra on other matters on many occasions at other times.

Mr Shaw, would you like to make an opening statement to the committee?

Mr Shaw: I was going to make an opening statement, but, in view of the time, to assist the committee, perhaps I could table that. I will just make two points. One is to reiterate what you just said in terms of the commercial negotiations that are happening. We are not in a position to discuss any aspect of that at this point in time, given the sensitivity of those negotiations. The other point I would like to make is that I recommend to the parliament that this bill be passed. We think it is important to get the necessary certainty to provide a regime in which we can continue to roll out infrastructure in greenfield areas and deliver services to consumers.

CHAIR: Yolanda, did you want to say anything?

Mr Chorazyczewski: No, thank you.

CHAIR: I noticed that you were both here when we just heard from GFOA. Would you like to make any comment in response to anything just presented?

Mr Shaw: We would be responding on the run. We would prefer to review the *Hansard* and, if there are particular issues of concern, we could come back to the committee. Generally, GFOA advocated for their constituency, as you would expect them to do, and at this point we are not going to choose to take a point on anything that they said. We will review the *Hansard* and, if there are issues of concern, we will come back.

CHAIR: Senator Macdonald, because you were cut short last time, would you like to—

Senator IAN MACDONALD: Mr Turnbull has to leave.

Mr TURNBULL: Thankyou Senator Macdonald and Mr Chair. The issue with this bill that has been brought to many of us is where greenfield operators described their concern that they are operating on a very unlevel playing field, vis-a-vis the NBN. You heard that and you want to reserve your comments on that. We understand that you are no longer in the business of connecting people's premises to fibre in new developments. Is that right?

Mr Shaw: No, that is not correct, Mr Turnbull. Where we have existing contracts with developers for the deployment of fibre, we will honour those contracts.

Mr TURNBULL: Once they are fulfilled, you will be out of that business—is that right?

Mr Shaw: Once they are fulfilled, we will be caught up with the provisions of the network access bill that the parliament passed recently which will require us to seek an exemption if we were to deploy high-speed broadband services over fibre in new estates. We are yet to draw a conclusion internally as to whether we will go down that path.

Mr TURNBULL: Fair enough. You said you would like to have the bill passed, but do you have any comments to make about the criticisms that have been made about the bill by the competitive fibre people?

Mr Shaw: Only to acknowledge that they are advocating for their business, which we respect, and they are entitled to the positions they put forward. Our focus has really been about where we stand in this debate at this point in time rather than about the issues of the other carriers. We would rather not be drawn into a public discussion about their views of the bill. Our focus has been around our role in all of this and our business.

Senator IAN MACDONALD: It was suggested to us by the last witnesses that you had done some sort of deal with NBN Co. I hear that you cannot discuss that, but is it right that you have come to some arrangement with NBN Co.?

Mr Shaw: In respect of greenfields developments, the position, as I said to Mr Turnbull, is that we are honouring existing contracts and assessing whether we would deploy further fibre under an exemption under the network access legislation that was passed recently. That is basically where we stand in respect of—

Senator IAN MACDONALD: That would suggest that you have not made an arrangement with NBN Co.

Mr Shaw: We are operating under the policy statement that the minister has put out in terms of the various responsibilities of us and NBN Co. Hence, we are keen to have the legislation passed in order to give the statutory certainty to that policy statement.

Senator IAN MACDONALD: In the past, Telstra had its own—what was it called?

Mr Shaw: Velocity.

Senator IAN MACDONALD: Velocity; I was thinking of Virgin's frequent flyer points! Does Velocity now exist?

Ms Chorazyczewski: It exists in that we have entered into numerous contracts to deploy fibre in greenfield areas and we have to honour those contracts and keep rolling out fibre under those contracts for those developers in those developments.

Senator IAN MACDONALD: Are Velocity employees Telstra employees or—

Ms Chorazyczewski: That is correct. It is just a brand name; everything else is Telstra.

Senator IAN MACDONALD: All right. It has been suggested to us that the new arrangement will be far more expensive. To put it another way, if NBN are going to do it in whichever way they choose, it has been suggested that there will not be a separate cost to NBN; it will be included in their general operations. But there is a cost, of course, for everything. Would you care to comment on whether the ultimate cost of allowing NBN to do it as opposed to maintaining the existing arrangement is accurate?

Ms Chorazyczewski: It is accurate in that, under the existing arrangements, developers would pay to put fibre into their development. If it is fully government-subsidised to put the fibre into the development, it is very difficult for a private entity to compete with that.

Senator IAN MACDONALD: Except that, as I say, there is no such thing as a free lunch, and, although the government include it in their thing, it means that NBN is—if I can put it this way—less able to return a profit to the taxpayers because they are adding this in as a free service. That would be correct, wouldn't it?

Mr Shaw: I think we are getting into areas around the NBN business case that we are not really qualified to discuss.

Senator IAN MACDONALD: Okay. Actually it is obvious, so perhaps I did not even need to ask it.

Senator XENOPHON: The Greenfield Fibre Operators of Australia expressed satisfaction in the following terms:

Without comment by the Minister but after substantial disclosure of intellectual property and pricing information by GFOA members, NBN Co. has now decided to toss out the notion of an expert panel of providers and has appointed subcontractors to those existing experienced builders and operators.

I am reading directly from their submission. We have heard from the GFOA where they have said that they are seeking legal advice in terms of any potential legal action against, presumably, NBN Co. and also seeking advice from the ACCC. Do you foresee any circumstances in which you would have access to any of the intellectual property that the GFOA referred to in their pricing information either directly or indirectly?

Mr Shaw: I find it difficult to envisage circumstances where NBN Co. would share that information with us, Senator.

Senator XENOPHON: Not even in an indirect sense?

Mr Shaw: Without knowing what the indirect sense is, our negotiations with NBN Co. have not involved disclosure of that sort of information—

Senator XENOPHON: Perhaps I can put it to you another way. NBN Co. now has access to commercially sensitive price information from the Greenfield Fibre Operators association according to the evidence. They have been quite explicit about it in their submission and in their evidence. Will that of itself change the nature of any negotiations between NBN Co. and Telstra?

Mr Shaw: Not from a Telstra perspective, no.

Ms Chorazyczewski: Telstra was a respondent into that request for proposal to NBN Co. as well. We disclosed information to NBN Co. in that process as well.

Senator XENOPHON: You do not see that there would be any prejudice to the Greenfield's operators in NBN's negotiations with you about greenfield sites by virtue of disclosure of information—

Mr Shaw: We are not in negotiation with NBN Co. on greenfield sites.

Senator XENOPHON: But in an overall sense you do not see that the disclosure of information could have any impact at all on any decisions that Telstra would make.

Mr Shaw: No, because we are not privy to that information.

Senator XENOPHON: But whilst you are not privy to it, it could impact on the way that NBN Co. approaches you in terms of this whole issue.

Mr Shaw: I suspect that is a question better put to NBN Co. I leave it to you to make your own conclusions about how they might behave but I cannot speak on their behalf.

Senator XENOPHON: All right. I want to raise the issue I have been pursuing all day with the CVC, the connectivity virtual circuit, and the negotiations. The concerns expressed by Simon Hackett of Internode that the usage fee would basically prejudice smaller operators—are you involved in negotiations with NBN Co. in relation to what an appropriate CVC threshold would be?

Mr Shaw: Not that we are aware of.

Senator XENOPHON: But it would be relevant. Telstra would have an interest as to what the threshold would be for the CVC.

Mr Shaw: Issues around the NBN pricing and the prices they are going to put into the market are not the subject of our commercial discussions with them around the migration of traffic onto their network and the use of our ducts and other infrastructure.

Senator XENOPHON: So you are not concerned what the threshold will be for the CVC?

Mr Shaw: We are always concerned about what price we might have to accept in the market but that consent is no more than any other commercial entity that is going to purchase from NBN Co. It is a reasonable concern of any participant in the market.

Ms Chorazyczewski: NBN has made what it proposes public and we have responded to NBN Co.'s calls for submissions.

Senator XENOPHON: Further to that you have a different perspective through NEXTDC founder, Bevan Slattery, who made \$373 million, and good luck to him, from selling Pipe Networks to TPG Telecom last year. He has been advising people to invest in Telstra, his old enemy, on the basis that NBN Co. will fail because the CVC charges will actually make it uneconomic for any player to make a profit. What is Telstra's position on that?

Mr Shaw: Mr Slattery is quite entitled to his view.

Senator XENOPHON: What is your view of Mr Slattery's view?

Mr Shaw: I actually have not formed a view personally. If the company had something to say further about Mr Slattery, I could come back to you on that.

Senator XENOPHON: I would like to know what Telstra's view is on Mr Slattery's view. He is actually saying we should buy shares with you guys at the moment.

Senator CAMERON: I do not think Mr Shaw would complain about that.

CHAIR: Senator Cameron, do you have a couple of questions to wrap up?

Senator CAMERON: I understand that you are in what has been described as some very complex negotiations. If it is not appropriate to ask these questions then I do understand, but Mr Turnbull has said to the media at lunchtime today that the government should buy your copper network. What value does Telstra put on the copper network?

Mr HARTSUYKER: That is not what he said.

Senator CAMERON: I was there.

Mr Shaw: I do not know whether somebody put a figure out to be quite honest on the value of the copper network.

Senator CAMERON: Would it be in the billions?

Mr Shaw: Definitely in the billions.

Senator CAMERON: Could you take that on notice to see whether you could give us more information?

Mr Shaw: In some ways it depends on how much of the copper you want and other things like that. There is an element of how long is a piece of string in that question. I will go back and see whether we have made any public utterances around the cost of our network, the price of our network and what we can get to.

Senator CAMERON: And also the maintenance costs of the copper network—is that a public position?

Mr Shaw: I do not believe so but again I will go and check with our finance people.

Senator CAMERON: It is not an insignificant amount of money is it to maintain your copper network?

Mr Shaw: It is not. It is not an insignificant figure to maintain any network the size of ours—a copper network or other.

Senator CAMERON: Thanks. Would it be in the billions to maintain?

Mr Shaw: Off the top of my head I would say it would have to be, but I would like to seek some advice on that before anyone was to draw a firm conclusion.

Senator CAMERON: Thank you.

Senator IAN MACDONALD: Velocity was a competitor but in the same business as GFOA, they say that GFOA people were providing internet, voice, data services et cetera whilst the wholesale price was far less than NBN Co. Did you agree with that? Were Velocity's prices when they were doing the same things as GFOA far less than NBN Co.'s?

Mr Shaw: The prices that we put out were retail prices which would make them difficult to compare with wholesale prices.

Senator IAN MACDONALD: You must have been able to identify within your organisation what was wholesale and what was retail.

Mr Shaw: We did not wholesale the Velocity product.

Senator IAN MACDONALD: Velocity doing whatever GFOA did.

Mr Shaw: Many of the GFOA members, and I have to admit I am not privy to the precise detail of all their business plans, but my understanding in the main is that they provided an open access network and other providers retailed on that whereas the Velocity product was a Telstra product that was not wholesale and we did not have other people operating on that network. So there is an element of apples and oranges there.

CHAIR: Thank you very much for attending today to assist the committee. If you can get questions on notice in by 23 May if possible to assist with your view that this legislation is time critical.

Mr Shaw: On a point of clarification we understand that this committee will be reporting every six months on the rollout of the NBN. What is the reporting time frame around this particular bill?

CHAIR: We are trying to report as quickly as possible. We will probably aim at early to mid-June. That makes your feedback as early as possible all the more important.

Mr Shaw: We understand. Thank you.

CHAIR: I hope that if there are any further questions from committee members, Telstra will be able to accept them in writing through the secretariat. Thank you once again for attending.

Resolved (on motion by **Senator Cameron**):

That this committee authorises publication, including publication on the parliamentary database, of the transcript of the evidence given before it at public hearing this day

Committee adjourned at 16:33