HD **NBN goes on the offensive**

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THE NBN has launched a legal action against TPG's PIPE Networks alleging misleading or deceptive conduct.

The court action lodged in the NSW Supreme Court last week is part of the government monopoly's attack on TPG, which is exploiting a loophole in the rules that allow fibre to be rolled out within set conditions including being close to established networks.

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The ACCC has said TPG's plans fall within the law but yesterday the federal government formally sought comment on plans to enforce licences on the proposed fibre-to-the-basement networks which would include demands to sell the fibre on a wholesale basis at $27 a month.

This would put TPG under the same rules as the NBN but TPG's David Teoh has made clear he will battle on regardless of the licence conditions.

The NBN court action is targeted at the way the network is being marketed, not at its existence. The fear is if TPG can get away with the plan then Telstra and Optus would do likewise and undercut the NBN economics.

Telstra has the government on the hook for $98 **billion** over the next few decades in compensation for the trashing of its **copper** network, and Optus is also on a promise to get compensation for its HFC network so neither is planning any similar cherrypicking assault.

The wholesale licence conditions also change the economics.

The NBN is also trialling its own fibre-to-the-building networks ahead of a planned **commercial** release next year.

Its battle against TPG then is three-pronged — **commercial**, legal and government — which tends to show how much it is threatened by TPG's plans.

Telstra's promised cash pile underlines that negotiating power with the NBN does not reside with either the government or NBN.

So when Telstra boss David Thodey confided after the annual meeting that the NBN negotiations could drag into the New Year, he was engaging in that classic Telstra custom of gaming the regulator.

It is in everyone's interests to get the new multi-technology NBN deal completed as soon as possible, except for Telstra, which is happy to play the "next year" games.

The reality is a definitive agreement subject to regulatory approval is still due to be signed by the year end.

The loose ends may need to be mopped up early in the new year, as Thodey was reported as saying, but the bottom line is the new deal will be done this year. In fact NBN is already operating under its new multi-technology platform.

Writs have been lodged against TPG alleging misleading advertising over its claims to be able to wire some **apartment** buildings.

The trial plan with Telstra to roll out fibre to the nodes is already proceeding with pace, with the first nodes laid on the NSW central coast and, in all, 1300 will be laid out covering 250,000 people using Telstra's **copper** connections.

Communications Minister Malcolm Turnbull already has the latest NBN corporate plan, and that will map out the fibre-to-the-node neighbourhoods, making clear everyone who is getting Foxtel via an HFC cable will be effectively hooked up to NBN by the same mechanism.

Telstra playing regulatory arbitrage is why we ended up with NBN in the first place.

CFOs in a funk

A COMBINATION of Canberra's inability to make decisions and the **China** slowdown has sent chief financial officers back to their holes unwilling to make decisions.

The latest Deloitte survey says CFOs see uncertainty setting in to the environment for the next 12 months, with the result that risk appetites have fallen to June 2013 lows with only 30 per cent of those asked saying now was a good time to take on more risk.

An extraordinary 74 per cent of CFOs surveyed said the government's inability to deliver its budget had dampened business confidence and a third wanted a mini-budget to repair the fiscal problems as soon as possible.

Gloom buster

FUTURE Fund boss David Neal yesterday played down RBA concerns on the risk of any violent reaction to the end of the US Fed's bond subsidies.

Neale's overall outlook for investment markets is overwhelmingly cautious but well short of RBA deputy Guy Debelle's doomsday lecture.

"There tends to be a violent reaction when there is a change in investor views … and now there is no likelihood of a major disruption," he said.

The Fed has been pumping money into the US economy for some seven years and Neal rightly noted "it is reasonable to expect that volatility will pick up when there is a major policy reversal".

He cautioned that his own performance may well have peaked. "Times might be getting harder," he said.

His comments came after the fund reported for the first time since its inception that it has managed to top targets of CPI plus 4.5 per cent over every time period.

Over the last year the fund has tended to direct more funds into emerging market equities and other offshore equities away from Australia and cash levels doubled over the period to $10.2 **billion**.

This was due in part to the **sale** of one key investment in US shale gas infrastructure, Access Midstream, to Williams Partners in a $US5.9bn **transaction**.

Chief investment officer Raph Arndt declined to say how much the fund made on the deal, which was a co-investment with client Global Infrastructure Partners.

Arndt said the fund was increasingly finding good co-investment opportunities in infrastructure, **property**, debt and private **equity** investments. The fund is required to outsource management to external managers, which means it must pay out fees.

The fund has recently hired Joel Posters from Rabo Bank to replace Gordon Hagart who had taken the top job at ACSI.

When asked about ANU's recent decision to divest some fossil fuel stocks, Neal noted he had found engagement rather than divestment was the best policy.

Neal is being cute because being a BHP shareholder is probably not the ideal stage to tell the **company** to quit its **coal** investments. Neal, it should be noted, had invested in tobacco stocks until parliamentary scrutiny forced him to sell the stocks.

Prime Minister Tony Abbott yesterday attacked ANU's decision to sell stocks like Santos, **Oil** Search and Iluka as "stupid".

The extraordinary attack on ANU shows just how strong and noisy the vested interests in the resources sector can be when their self-interest is touched.

The university is entitled to invest its funds where it chooses so long as it is in accordance with the overall mandate. If that mandate rules out certain resources companies on environmental, social and governance grounds then it is up the trustees to make whatever decision they choose.

Free market advocates who attempt to dictate what stocks funds should invest in should question their motives.

The fund has a policy which bans investments in munitions and now tobacco stocks. On Friday the fund's legal battle with Australian Super over the Perth Airport investment inches further with another directions hearing.

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