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Committee Secretary
Senate Standing Committee on Environment,
Communications and the Arts
PO Box 6100
Parliament House
CANBERRA
ACT 2600

Dear Sir or Madam

**RE: SENATE INQUIRY INTO TELECOMMUNICATIONS LEGISLATION
AMENDMENT (COMPETITION AND CONSUMER SAFEGUARDS) BILL 2009**

We are writing in response to the Committee's request for written submissions from interested organisations regarding the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009.

Australian Foundation Investment Company is Australia's largest Listed Investment Company. The Company was formed in 1928 and has over 80 years experience investing in companies listed on the Australian market. Currently we have over 90,000 shareholders who are mostly retail investors. We are writing to the Committee as one of the major shareholders in Telstra Limited. We have over \$160 million invested in the company and are one of the top 20 shareholders.

We do not support the passage of the Bill. We acquired our investment in Telstra at various times since it was listed in October 1988, but we specifically participated in the three share offers by the Government. The Government encouraged participation in these offers of shares on the basis that Telstra was a fully integrated telecommunications company. We acquired shares at full value and in good faith based on the representations made by the Government.

Those representations did not include that at some point in the future the company would be structurally separated or harshly regulated. The Government reaped the benefit of that in the substantial value that it received for the Telstra shares it sold. We believe that the proposed structural separation if it occurs would result in a permanent reduction in shareholder value. We are not aware of any examples overseas where structural separation has been mandated where the competitive environment has been substantially improved. Furthermore, we believe that shareholders of the companies involved suffered significant loss in value and opportunity from the changes. By changing the regulatory framework in the manner proposed in the Bill the Government will be penalising Telstra for being successful and thereby penalising the many Telstra shareholders who relied on Government representations.

We are very concerned that the Bill appears to have been formulated with the objective of forcing Telstra down a path of the Government's choosing. If it does not do what the Government wants it will be forced to sell its investment in Foxtel and divest its hybrid fibre coaxial cable network or it will be unable to have access to additional spectrum for fourth generation and beyond mobile telephone systems. We are not aware of any other legislation which specifically targets one company with the intent of inducing it to follow a course of action at the risk of being forced to sell off some of its valuable assets or be blocked from future technological developments.

With respect to the potential divestment of Foxtel and the hybrid fibre coaxial cable network Telstra has invested substantial amounts of its shareholder's capital in developing these assets. Shareholders have borne the risk of the investments and should be allowed to reap the rewards of those investments which are only now starting to be realised.

We view the threat to Telstra of not being given access to additional spectrum for fourth (and higher) generation mobile phone networks as potentially also a very major issue for the company and hence shareholders. If the ban was realised it would mean in a few years time as Telstra customers wanted to upgrade their mobile phones to the latest technology they would have to switch to a different provider because Telstra would be unable to give them an upgrade path. We see this as extremely damaging to the shareholders of Telstra as it would, over time, mean the decline of the company's mobile communications business through lack of an upgrade path.

We do not think that legislation should be used as a negotiating lever by the Government to manoeuvre a publicly listed company into a position where it has no alternative but to agree to whatever the Government requires or it will be substantially disadvantaged. A very undesirable precedent will have been set if the Government succeeds with this legislation which so specifically targets a particular company.

Governments of both persuasions have invested a lot of time and effort in assuring investors, both domestic and international, that Australia is a safe and stable place to invest with little sovereign risk. If the Parliament passes this legislation we think Australia's investment standing could be significantly diminished. Investors, particularly international investors, will perceive substantially heightened sovereign risk if the Australian Government can act arbitrarily in this way.

The premise on which this legislation seems to be based is that the telecommunications industry in Australia can only be enhanced by impairing and restricting the one organisation that has been most prepared to invest significant capital in technological advancements to improve the service offering to consumers. We believe it is only by encouraging strong and healthy companies such as Telstra that there will be the capacity for the ongoing capital spending required for consumers to continue to be offered the latest in technological advancements and for the economy to prosper from better communications.

We feel very troubled that the Government has very little regard for the property rights of the shareholders in Telstra. Without giving any recognition of their position, it is proposing legislation that may well result in serious damage to the company and in significant loss in shareholder value. There are well over one million Australians who are shareholders in Telstra directly and there are many more who are indirect shareholders, because managed investment schemes in which they invest, or because superannuation funds, of which they are members, are investors in Telstra. The draft legislation is based on the presumption that whatever the outcome ultimately the shareholders of Telstra have to bear the costs of the changes and the reduction in the value of their investment without fair or just compensation.

We understand that the Government has policy objectives in the actions that it has taken to improve the telecommunications industry to the benefit of consumers and for the productivity of the economy. We support the Government's objective of establishing a national broadband network that will enhance efficiency and improve communications throughput and capacities by an order of magnitude. We have made the observations that we have in this submission because we believe that the Government also has a responsibility to deal fairly and equitably with the proprietors of Telstra in changing the regulatory framework.

We would urge the Senate not to pass the legislation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ross Barker', with a long horizontal flourish extending to the right.

Ross Barker
Managing Director