



## **Submission No 34**

**Inquiry into Australia's relationship with India as an emerging world power**

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Dear Dr Kerley

**UPDATE ON DEVELOPMENTS: Inquiry into Australia's relationship with India as a world power**

I refer to Telstra's submission to the Joint Standing Committee on Foreign Affairs, Defence & Trade ('the Committee') dated 2 June 2006.

Thank you for your letter of 26 September 2006 inviting amplification of any of the material provided to the Committee to date.

Telstra wishes to update the Committee on developments since June 2006 regarding foreign direct investment ('FDI') limits on telecommunications service providers in India as well as the associated restrictions contained in proposed revisions to the international long distance ('ILD') licence guidelines.

**Background**

In late 2005, the Indian Government issued its Press Note No. 5 announcing that FDI limits in the telecommunications market generally would be increased from 49% to 74%. However, Press Note No. 5 also set out certain conditions and restrictions that were subsequently incorporated into the proposed revised ILD licence. The principal restrictions involve constraints on the flow of accounting and network data outside India, routing of data, and remote access and network management from outside India. Some of these conditions are, unfortunately, so restrictive as to make entry by foreign competitors into the Indian international telecommunications market completely impracticable. Although the proposed restrictions notionally apply to all ILD licensees, domestic or foreign, the impact of the restrictions is overwhelmingly on foreign operators whose network management infrastructure is located outside of India. The conditions also set out requirements for senior positions within an ILD licensee entity's board and day-to-day management to be held by Indian citizens.

**Update on developments since June 2006**

Following representations from interested foreign telecommunications operators, several foreign governments and some Indian industry representatives (in particular, NASSCOM – a highly respected organisation representing the Indian ICT and BPO industry), the Indian Government issued two stays (in March and July 2006) of these

restrictions. The second stay expired on 2 October 2006, but a further extension of the stay for three months to 2 January 2007 has now been issued.

Regrettably, there has been little or no formal Indian government communication concerning developments. It appears that the Indian government is attempting to resolve differences within the industry and within stakeholders in various ministries. With little information forthcoming directly from the Indian government, foreign telecommunications operators have been reliant upon Indian media reporting.

The Indian media claims there are two opposing camps:

- the Communications and IT Minister, as well as the Department of Telecommunications ('DoT'), favour a relaxation of the proposed restrictions;
- the Prime Minister's Office, Defence Ministry, and the Home Ministry oppose such moves because of perceived national security considerations.

Since the end of the first stay in early July 2006, it has been variously reported that:

- there would be a significant dilution of the ILD licence restrictions; or
- the ILD licence restrictions would remain in full; or
- the ILD licence restrictions would apply only to those potential ILD licensees with greater than 49% foreign ownership (there has been press speculation that the latter would cater to current majority Indian-owned ILD licensees who have already appointed foreigners to senior management positions).

In late September 2006 it was reported that the DoT had recommended that Press Note No. 5 be suspended in its entirety – reducing the FDI limits back to 49%. This return to the status *ante* was the only remaining option, according to the report, because the Indian government could not reach a consensus regarding the FDI amendments. Subsequent reporting of statements by the Finance Minister suggested that this recommendation was not accepted by the Indian Cabinet, with the further stay being agreed until January 2007 instead.

Government sources are reported to have commented that a group of empowered ministers on FDI, headed by the Defence Minister, may be charged with resolving the matter. The Defence Ministry is reported to have previously expressed strong national security concerns.

As noted, the above information is all culled from media reports. While India's press is as free and as vigorous when it comes to reporting on financial and economic matters as that of Australia, the Committee will be aware that press reports on such matters may not always be accurate.

Much of this information has been collected by REACH Limited, a company in which Telstra holds a 50% joint-venture interest. REACH's Indian subsidiary holds an Internet Service Provider licence in India, and REACH has been a leading participant in a group of foreign international telecommunications operators actively lobbying the Indian Government for relaxation of the proposed ILD licence restrictions. This foreign carriers group has argued for the need to ameliorate the ILD licence restrictions such that the restrictions will not effectively exclude foreign competitor entry into the Indian telecommunications market, yet will still address the Indian

Government's legitimate national security concerns. This is a balance that has been achieved successfully in many other jurisdictions.

### **Conclusion**

In summary, the overall position regarding FDI and the ILD licence restrictions remains unclear. With this high level of uncertainty most foreign operators are not in a position to progress any plans to apply for ILD licences. One or two foreign operators believed that nonetheless it was worthwhile to risk initiating ILD licence applications (which remain under consideration by the Indian authorities). But most foreign operators remain unconvinced that the required expenditure of several million dollars and traversing the onerous application vetting process is justified until the FDI and ILD licence restrictions are clarified by the Indian government. The level of clarity requested is a reasonable threshold requirement for any foreign investor, in any industry sector.

Telstra asks that the Committee note in its Inquiry Report the above serious and ongoing barriers to entry to the Indian telecommunications services market, as well as the repercussions for all Australian service exporters for whom telecommunications services are key enablers, which Ms Drake-Brockman and Mr John explained in the Committee hearing of 20 September 2006.

Telstra and REACH would be glad to supply any further information that the Committee requests on this matter.

Yours sincerely



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