



**COMMONWEALTH OF AUSTRALIA**

# **JOINT STANDING COMMITTEE ON TREATIES**

**Reference: Agreement on economic and commercial cooperation with Kazakhstan**

**CANBERRA**

**Tuesday, 30 September 1997**

**OFFICIAL HANSARD REPORT**

**CANBERRA**

JOINT STANDING COMMITTEE ON TREATIES

Members:

Mr Taylor (Chairman)

Mr McClelland (Deputy Chairman)

Senator Abetz  
Senator Bourne  
Senator Coonan  
Senator Cooney  
Senator Murphy  
Senator Neal  
Senator O'Chee

Mr Adams  
Mr Bartlett  
Mr Laurie Ferguson  
Mr Hardgrave  
Ms Jeanes  
Mr Tony Smith  
Mr Truss

For inquiry into and report on:

Agreement on economic and commercial cooperation with Kazakhstan.

**WITNESSES**

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JOINT STANDING COMMITTEE ON TREATIES

*Agreement on economic and commercial cooperation with Kazakhstan*

CANBERRA

Tuesday, 30 September 1997

Present

Mr Taylor (Chairman)

Senator Abetz

Mr Adams

Senator Coonan

Mr Laurie Ferguson

Senator Murphy

Mr Hardgrave

Mr McClelland

Mr Tony Smith

The committee met at 8.29 a.m.

Mr Taylor took the chair.

**BARNES, Mr Andrew, Desk Officer, Russia and Kazakhstan, Department of Foreign Affairs and Trade, R.G. Casey Building, Barton, Australian Capital Territory 2600**

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**HAMIT, Mr Avdi, General Manager, Finance, Business and International, Telstra Corporation Ltd., 13/231 Elizabeth Street, Sydney, New South Wales 2000**

**WIJEYEWARDENE, Mr Kalinga, International Counsel, Asia South, China, Telstra Corporation Ltd., 13/231 Elizabeth Street, Sydney, New South Wales 2000**

**LEMMON, Mr Greg, Manager, Europe Office, Austrade, R.G. Casey Building, Barton, Australian Capital Territory 2600**

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**CHAIRMAN**—Thank you, lady and gentlemen. I formally open what is now the second public hearing into the economic and commercial cooperation agreement with Kazakhstan. As you would know, on 1 September we took evidence from DFAT on this particular agreement and, of course, as a result of that, our comments were to be included in report 10, which is due to be tabled in the House on 20 October.

As a result of the media reports, particularly about Telstra's licence problems, we believed it necessary to reopen the inquiry. We have just agreed, as a committee, to the draft report 10 but, subject to the evidence you give this morning, although the Foreign

Minister has been informed that we may delay this recommendation, we now agree that, subject to a clear steer being given by you this morning, we have got enough time to re-insert it into report 10. We plan to do that. Subject to your evidence, and that way being cleared, then I would inform the Foreign Minister, although I know he is away for a couple of weeks, that in fact we intend going back to what we originally planned.

The agreement involves some sensitive issues and I should say at the outset that what we want to do is to take as much evidence as we can on the open record, and we would like you to do that if you possibly can. If it gets to the stage that we need, for a number of reasons, to go into camera, then we would like to leave that until the back end of this morning. So, could you just bear that in mind.

We think that there are a number of sensitive issues: first of all, the actual relationship with Kazakhstan, why Telstra's licence was revoked and what Telstra proposes to do about its investment in that country. I think it would be useful if both DFAT and Telstra were to make a short opening statement on this and then we can go into the questioning. As I say, if we start getting into the sensitive areas, we can take that as we find it. Are you happy with that?

**Mr Wille**—Yes.

**CHAIRMAN**—Well, let us have a short opening statement from DFAT and then to Telstra.

**Mr Wille**—Thank you, Mr Chairman. I believe my colleague Mr Barnes has already given you an overview of the relationship with Kazakhstan when you met in September, but this is in the nature of a brief recapitulation.

In essence the trade agreement is the latest of a series of measures in which we are seeking to build a commercial relationship with Kazakhstan. When the Soviet Union collapsed, we were faced essentially with building new relationships. This involved support for the economic reforms in market economies of the former states of the Soviet Union. Underlying this support was the recognition of the commercial potential of these former states of the Soviet Union. It is fair to say that, after Russia, Kazakhstan was seen as having the most potential for the development of our commercial interests in sectors such as mining, agriculture and services, for example telecommunications.

These series of measures we embarked on from an early stage. We established diplomatic relations in 1992. We opened an embassy there in 1995. We had a visit by the President of Kazakhstan in late 1996. In between there had also been visits by the former Prime Minister of Kazakhstan, Mr Tereshchenko, and by our then Governor-General, Mr Hayden.

The trade agreement is part of this process. There are, as we see it, benefits from

our viewpoint. In a country where the rule of law is virtually non-existent and Western style commercial frameworks are developing only very slowly and where the business environment is difficult, it is useful to have, we think, the Kazakhstanis signing on to an internationally binding legal treaty that commits them to best endeavours to facilitate and develop trade. Both of us have been keen on this agreement; the Kazakhs have been very keen to have it. They have already met their domestic requirements to finalise the agreement. One can assume that having an agreement would increase the pressure on them to live up to its provisions.

I should also mention that the Kazakhstanis are very keen to develop their relations with the West and become a normal partner in Western commercial processes, becoming a member of the WTO. Agreements such as these, I think, help to sort of underline this process where they are being brought into a normal commercial global framework.

The agreement is a fairly standard one. It involves basically no financial outlays. We think there are benefits in going ahead and, as I said at the beginning, it is part of the building blocks we are seeking to establish with Kazakhstan. Lastly, I should say that our business community, which has an interest in going into Kazakhstan, is very keen to see this agreement proceed.

**Mr Hamit**—I will just give a bit of a position as to where we have come from and where we are at the moment, which may lead to the direction you may want to head then. Telstra's involvement in Kazakhstan began in 1991 with basic international telephony services providing the Kazakh economy with greater communication links to the rest of the world.

In 1994 Telstra began a joint venture with what is now known as Kazakh-Telecom. This joint venture is known as Satel and it provides high quality telecommunications to the large MNCs operating in Kazakhstan. As we know, Kazakhstan is rich in resources and has attracted a large number of the world's largest companies.

The Satel partnership had been positive and cooperative until some nine to 12 months ago. At that stage we were required under a change in Kazakhstan law to reregister the company. This reregistration required the signatures of both shareholders. However our partner, Kazakh-Telecom, withheld their signature, principally as a leverage to renegotiate the commercial arrangements between us. The principal impasse to solving this issue was one of management control over the venture. Whilst trying to resolve this impasse the company was deemed to be operating illegally by the procurator. A government commission was appointed by the Prime Minister to examine this dispute and also determine if the company was operating illegally due to its failure to reregister.

Following this declaration, Satel's bank accounts were frozen and there was a demand for immediate payment to the state of revenues earned from 1 January whilst the company was deemed to be trading illegally. For your information, the size of the Telstra

investment in Satel is about \$7.5 million.

**CHAIRMAN**—Did Austrade want to make an opening statement?

**Mr Lemmon**—I think DFAT has covered it.

**CHAIRMAN**—Is that all you want to say at this point? One of the elements of the NIA that came out in our previous discussion was that they demonstrate that they can integrate themselves into the world economy. It would seem from what you have said that there is a big question mark over that. How can an agreement like this be justified in the changed circumstances?

**Mr Wille**—Basically, I think we have to be aware of where they are coming from. It is only five years since the Soviet Union collapsed and this sort of agreement and the nature of contracts of this sort is completely new territory to them. They are finding their way in international commercial dealings. I think we recognised from the start that we would have to be patient with them in trying to educate them into a process where they will accept these dealings.

**CHAIRMAN**—But is it worth it for a little over \$2 million—\$2.11 million?

**Mr Wille**—That is the latest figure, but certainly bilateral trade has not been high. There are, we understand, good prospects for future trade in this area. It is just a question of hanging in there.

**CHAIRMAN**—Unfortunately, the Minerals Council has not seen fit to come this morning. It would have been reasonable evidence, I guess, to hear from them. I guess Austrade has a fairly good feel for the minerals side of it. As Telstra has just said, it is resource rich and one assumes that the Minerals Council of Australia has got some keen interest in the area.

**Mr Lemmon**—Mr Chairman, perhaps if I can quickly make some comments. There is no question that Kazakhstan is certainly a very resource rich country. While the current trade flows are actually quite low, our view is that strategic investments in Kazakhstan will ultimately lead to greater trade flows, and I think it is important that we get the basics right and get the investments there to assist in that development.

**Mr McCLELLAND**—If, however, we ratify the treaty, are we sending a message to them that what happened in the circumstances of Telstra they can do again with impunity?

**Mr Wille**—My own feeling is that it makes it that much harder for them to take actions of the sort that they have taken against Telstra when they have committed themselves to an internationally binding treaty on this. If there is not a legal force, there is



at least a much stronger moral force.

**Senator ABETZ**—What articles would you point to in support of that?

**Mr Wille**—Basically article 1, I think, the best endeavours one. No, sorry, it's— Well, of course, article 1 itself—to facilitate, strengthen and diversify trade. Article 2 covers that.

**Senator ABETZ**—It is all 'feel good' language, isn't it?

**Mr Wille**—Yes.

**Senator ABETZ**—It does not stop them from doing that again, does it?

**Mr Wille**—It does not. Perhaps I can defer to my legal colleagues here, but it is an international treaty in a sense.

**Senator COONAN**—Just going to article 7, just assuming that this treaty was ratified, would you see that as some appropriate mechanism to look at how this dispute would be resolved? We fully understand that there are very different processes and an unfamiliarity with what we are very familiar with as a legal framework for resolving disputes. What, for instance, would the Kazakhs do as far as what their respective law would be? How would we go about resolving a dispute in these circumstances? It has to mean something. To me, that is meaningless unless you have some idea of the legal frameworks we are working within.

**Mr Wille**—From a diplomatic sense, I think it gives us a peg on which to approach the Kazakhs at the level of government to government to say that they have committed themselves to obligations and therefore we feel that they should live up to them. They profess to be keen to build good relations with us and we have made an effort jointly, we feel, with them to get to a stage where we sign an agreement with them. We can take up with them the fact that we have met halfway on an agreement and, therefore, these agreements are not made, certainly by us, to be meaningless and we expect them to abide by those provisions, however general they may be.

**CHAIRMAN**—What we have just heard Telstra say is a commercial method that they have used, albeit a fairly unusual one. That is not going to stop them. Irrespective of an agreement, they could just jump in and say that, because they have deregistered, they are infringing our laws and therefore use the same sort of argument. I do not know if other members feel the same way, but I just worry that this overall agreement is going to get across those sorts of things. You cannot guarantee they will not do that again, because of their internal commercial arrangement.

**Mr ADAMS**—Could we get something on the Telecom situation, on whether

telecom was trying to get too much out of the deal? We are assuming that Telecom is all virtue. Maybe they were trying to extract too much out of the other side of the deal. Can I ask that question? Was there any transfer of technology to the other side?

**Mr Hamit**—The way that we can answer is that we struck an agreement in 1994 as to how the venture would be run and the conditions.

**Senator MURPHY**—How long was the agreement for?

**Mr Hamit**—The joint venture was for an indefinite period. Some of the background to it was—

**Senator MURPHY**—You say it was for an indefinite period.

**Mr Wijeyewardene**—As long as the parties agree.

**Mr ADAMS**—That is forever, is it?

**Senator COONAN**—As long as they love each.

**Senator MURPHY**—As long as the parties agree, it could be six months or three months or three days?

**Mr Hamit**—Sure, but you strike up these deals in good faith that you are there for the long haul. I think when we look at the arrangements that we put in place, Telstra provided the financing for all equipment. That got the joint venture up and going. Kazakh-Telecom and its predecessors were party to revenue sharing for no outlay at all, and this is a reasonably standard approach to commercial dealings in these regions.

**Mr HARDGRAVE**—Wasn't Telstra taking the risk? It was a bit opportunistic so early on in the life of the independent state of Kazakhstan for you to roll on in there, sign an agreement, expect it to stand in complete isolation from any sort of official agreement like we are talking about here today, and the Kazakhs found a better deal and gave you the flick. It is a simple commercial reality. You took a risk and it failed. Is that a fair assessment?

**Mr Hamit**—Risk is a just a natural part of dealing in these ventures. From Telstra's experience in exposure to these countries—and I will trace back to our Vietnam experience; we were one of the earlier companies in there—we have learnt to cope with these situations over time. In fact, we did start in Kazakhstan in 1991, before they became an independent state. So we have been there with them evolving. Risk is just a normal part of it and you assess the risk as to whether it is manageable and controllable.

**Mr HARDGRAVE**—So you were taking a manageable, controllable, opportunist

approach to a deal with Kazakhstan? Is that what you are saying?

**Mr Hamit**—I am not too sure what you mean by ‘opportunistic’.

**Mr HARDGRAVE**—It was early days for them as an independent state. They might have been a little bit vulnerable to the idea of actually finding a friend in the case of Telstra and now they have found other friends in the case of Daiwoo and whoever else. Any comment on that?

**Mr Hamit**—I think part of a commercial organisation’s role is to go and find new business, and you take those on balance and you just assess it.

**Senator ABETZ**—And if you did not, you would be criticised?

**Mr Hamit**—It is a no-win situation.

**Senator MURPHY**—When did Telstra become aware of the laws that they have used to terminate the agreement?

**Mr Hamit**—In terms of the re-registration which you are referring to?

**Senator MURPHY**—Yes. Were you aware from day one?

**Mr Hamit**—No, the change in the re-registration which was the change in the law occurred last year.

**Senator MURPHY**—I would assume that companies that had agreements would have been made aware of this?

**Mr Hamit**—There are a number of other companies that are exposed to the same change in law. As we understand from advice given in the country, they were experiencing the same sort of difficulties.

**Senator COONAN**—I can well understand that different people have different rules for commercial conduct, to put it in the broad sense, but everyone, whether you are evolving or not evolving, understands good faith. I think that is the critical issue here. I am just interested to know to what extent in the process of negotiating this agreement there was any discussion of that kind of concept, and was there any mention of the Telstra fiasco?

**Mr Wille**—I do not think the question of good faith has been mentioned. I should mention that it is a problem we have faced in establishing commercial relations with virtually all my bailiwick. In Russia, in the Ukraine, this seems to be the path we have to traverse. There is a limit to what governments can do on this. Basically, we have to keep

commercial businesses separate. What governments can do is try and set in place some frameworks for what are normal dealings with these countries. There are, it appears, things like a trade agreement, an investment promotion and protection agreement, and agreements on double tax. This is what it seems they want. This is what it seems our business community will feel more confident with. That is where we are coming from. It is very difficult for us at the outset go to the Russians or the Kazakhs and say to them, 'We expect that you act in good faith in this.'

**Senator COONAN**—If there is no ability to come to a meeting of minds on appropriate commercial conduct, this is farcical. It might make the links, it might make the connections, but it does not actually mean anything when it translates into the actual international dealings.

**Mr Wille**—I think you have a point. I think we are just making the best of a bad situation here. We realise it is a very difficult business environment. We are trying to make things easier. We cannot guarantee that this agreement will open the doors and make things all right. We just think the options for us are fairly limited and these are the building blocks we can establish to try and change things for the better from our viewpoint and also in the process try and educate these people toward what Western practices accept as normal.

**Mr Lennard**—This is something which hangs off that and perhaps something which will assist the committee. I guess the point that A-G's has come from at looking at this is that fundamentally this is a trade agreement. It does have some implications for investment and wider cooperation, but fundamentally, as indicated in article 1, it is essentially a trade agreement. For example, in article 7.1, which has been discussed, it says:

The Parties shall encourage, subject to their respective laws, the use of alternative dispute resolution procedures . . . between commercial enterprises. . .

One reason that is fairly soft is that you are talking about trade between two commercial entities. We could not, for example, agree in a treaty to require commercial entities to solve their dispute settlement by arbitration because they might prefer to do things differently. So a lot of what this treaty is doing is dealing with the commercial relationships between parties who are not actually, of course, parties to the treaties—not being governments.

As a result of that, I think a lot of the issues which arise—I do not know enough about the Telstra presence in Kazakhstan—relate more to Telstra's relationship to the Kazakhstan government. A lot of those would be the sort of things which would be dealt with in an investment treaty, because we do keep fairly distinct—and DFAT could talk on this—the concept of the trade treaties, which sometimes have some wider sort of encouragement aspect for investment, and the investment treaties, which generally are

much stronger in essentially giving the non-government party the ability to take certain dispute resolution actions; and we have several with several countries.

I guess the point we would make is that this treaty does certain things, and it is largely an encouragement aspect. The most favoured nation treatment is something which is much firmer and which a government must provide. But, again, it is most favoured nation treatment in respect of trade things, customs duties and things like that.

An investment protection treaty might give wider most favoured nation treatment in respect of investments generally and require that an investment by an Australian company is treated the same as another company. Those sorts of issues might arise in this case.

To close off, I would say that this treaty has to be looked at in the framework of what it is—essentially a trade treaty with some wider commercial encouragement—and perhaps some of the issues and some of the concerns would actually relate to whether there should be an investment protection treaty.

**Mr LAURIE FERGUSON**—I think a lot of what has come from opposite is characterised by implied arguments of cultural relativity and the concept that we really do not quite understand their level of development et cetera. I would put to Mr Wille that really, to me, this seems to characterise the whole situation, that subregion of privatisation being essentially ripped off by elements in the government, fairly non-competitive political systems.

To me, from outside, it is more a knowledge of the region rather than Telstra specifics. I would be concerned that essentially this is just a shakedown which is basically a very long-term concern to Australian companies that might be encouraged to go into Kazakhstan as a result of the government's treaty. Can we have a broader kind of comment on the state of commercial dealings facing other companies within the country and the degree of protection for them, because I really have got doubts here, quite frankly, that Telstra is at fault at all. It really does seem to me characteristic of a whole lot of other things that I have heard about the region.

**Mr Wille**—I think that is right. I think all companies, Australian and otherwise, are having similar difficulties to us. I am not sure whether there are any special elements in the Telstra case that makes them discriminate against Telstra, but all countries and companies trying to do business in Russia and other countries are facing very similar problems.

**Mr LAURIE FERGUSON**—What I am getting at is that I do not really feel that this is, quite frankly, in the long term even, a matter of us teaching them or educating them to legal practices in this country because you have too close a connection between government and the commercial interest of those running the government in these ventures.

**Mr Wille**—Are you suggesting that we then tell our commercial people not to do anything?

**Mr LAURIE FERGUSON**—I have got concerns, as I said earlier, that this kind of treaty to some degree might give encouragement to people to think that things are in a better state than they are. I have got very big questions about the value of the thing; it does not seem to give protection to anybody but might act as an encouragement.

**Senator ABETZ**—It would give a false sense of security to investors.

**Mr ADAMS**—Just going along with what my colleague said, can you give us a broader overview of what you feel and what the department feels about this regime and what their feelings are towards us or foreign companies being there to invest? Can you give us a broader view on that?

**Mr Wille**—I think it is fair to say that, on a government to government level, we are in fairly good standing in Kazakhstan. We recognised them very early; we established diplomatic relations. Our decision to go ahead and establish an embassy, the second one we established in the region of the former Soviet Union, has been well received by that government. We have been to Almaty. We are a sort of prominent feature in a small town.

**Mr ADAMS**—So we are one of the leading diplomatic posts in that country?

**Mr Wille**—In a sense we are prominent, there's not many others from our part of the world. Of course the Japanese and the Koreans are there. But, on the Nazarbayev visit, they were pressing for a long time for him to come, and we from the beginning agreed to him coming. He cancelled once and then he came last year on a visit. That has been a plus for us. In fact, I understand from our former ambassador there that certain companies actually benefited from the fact of that visit by having a chance to meet with the president here.

Personal contacts are very important. Being on the ground is very important. That is why it was felt—and I think Telstra would agree—that the fact that we have been there has been helpful for them in opening doors into senior levels of government. It is also true to say that the government works in different ways to what we are used to here or in Westminster.

There are all sorts of connections and links within the government. There is the Russian element in society there, there is a Kazakh element, there are these sorts of clan based relationships, coupled with the difficulties of ignorance of the procedures under which Western commerce takes place or, getting back to the start of it, total ignorance of this. It is just a process we are going through. It is a very difficult one. It is something that is mirrored in other countries we are facing as well.

**Mr TONY SMITH**—You mentioned before that Telstra was aware of the problem about nine months ago or that is when the problem arose. Is that right?

**Mr Hamit**—Yes.

**Mr TONY SMITH**—Did you inform the Department of Foreign Affairs and Trade about that? Mr Wille is nodding.

**Mr Hamit**—I have just been told, yes, we did.

**Mr TONY SMITH**—So about nine months ago. Just looking at the evidence that was given at the hearing on 1 September, it was stated by a representative of that department:

Kazakhstan's domestic regulatory environment is not as complete as it could be and this agreement will go some way towards filling the gap.

Why were we as a committee not informed of that problem back on 1 September if the Department of Foreign Affairs and Trade was aware of it? Why was it not referred to in the national impact analysis and why were we not told about it?

**Mr Biggs**—There are two things to be said. Firstly, at that stage the trouble Telstra was facing in Kazakhstan was not public knowledge, and there was presumably an expectation that it could still be solved within normal commercial arrangements and that this was not something that had yet reached government to government level. And it was essentially a commercial-in-confidence matter affecting one company. This was not something that the department felt could be cited as central to the entire relationship. This is one contract.

**Mr TONY SMITH**—Yet 18 days later the *Sydney Morning Herald* is reporting on it. I find it extraordinary that we cannot be told even in camera about these things as members of parliament and that there is a problem. We are asked to make a decision when you are aware of information that could very much influence our decision. I just find it extraordinary.

**Senator ABETZ**—How many other countries have signed up with Kazakhstan on a similar type of treaty?

**Mr Wille**—I understand Britain, Spain and Germany have similar agreements.

**Senator ABETZ**—So we have just got three. Can I ask Telstra: given that you deal in emerging economies, what message would it send if we were to ratify this agreement in the circumstances that a major Australian company finds itself in? Would it be sending out a message that you can walk all over us and we are too spineless to react

in a negative way to them and say, 'You haven't shown good faith; therefore we won't sign this agreement until you're willing to come to the party and show that you are willing to act in good faith,' or should we sign up and say, 'Despite that glitch in your record, we're still willing to show the hand of friendship and expect you to behave differently in the future'? What would you be recommending, from a hard-nosed commercial point of view. How do these countries react? What is the way to make them come into line?

**CHAIRMAN**—Can I just add to that. If this agreement were in force, what would be Telstra's view as to the impact it would have? For example, what would be your assessment if the same situation occurred when this agreement was in force? Would the same circumstance occur?

**Mr Hamit**—Truly, that is very difficult to answer.

**CHAIRMAN**—But you must have a feel for it.

**Mr Hamit**—Our general view would be that some treaty would be better than no treaty. Anything that promotes evolution in these regions—practices we acknowledge and recognise—is useful. Whether it would have helped in this specific instance I cannot speculate. We are hopeful that we can still reach some commercial agreement, and we are working towards that end anyway. So there is a commercial approach to life. Whether it could have helped in this specific instance, I honestly could not speculate. What has been the experience of the department in previous countries where situations have arisen where agreements were already in force, I do not know. In fact, perhaps history may be able to tell us how they have worked before.

**Senator ABETZ**—But, given your experience with emerging colonies, what message would it send if we were to ratify after we have been done in the eye?

**Mr Hamit**—Honestly, until you start attacking this, you do not know. We are trying to work our way out of it. It could possibly be viewed as an act of good faith in that we wish to even strongly continue. To be quite frank, I am just not too sure what impact it would have. I really do not know.

**Senator ABETZ**—Can I ask our departmental officials: it seems to me that often in international negotiations we fall over ourselves as a country wanting to sign up to every deal that is on the go and behind closed doors certain elements laugh at us as we do not have sufficient rigour and backbone to stand up for ourselves. I am just wondering what your view is in relation to this agreement.

**Mr Wille**—I prefer not to think that the Kazakhs think they are taking us for a ride on this one. They are going through all this motion simply to do as they have always done. One has to assume, I think, that they are acting from some sort of sense of moving forward towards their links in developing a market economy. They are keen to be a



member of the World Trade Organisation and we will be part of helping them work in that process. We have never had a problem like this, I do not think it is fair to say, in my area similar to that faced by Telstra.

**Senator ABETZ**—But how can we take that at face value when they have just done us in the eye and you tell us to basically accept at face value that they still want to act with us in good faith? It is like somebody punching you in the face and then smiling afterwards and saying, ‘No bad blood between us. Let’s keep on as though nothing has happened.’

**CHAIRMAN**—To take up your point, if they are going to do as they have always done, it raises the basic question: why have the agreement in the first place?

**Mr Wille**—No, we assumed they would not do as they have always done.

**Mr HARDGRAVE**—I suppose, if you have got the agreement, at least you know what it is they have breached.

**Senator ABETZ**—But they do not need the agreement to know that they have breached good faith, and basically that is all the agreement is going to do. Talking about good faith, there is no actual legal framework, as Senator Cooney said.

**Mr Lemmon**—I think we also need to think about the signal that it would send if we were to not ratify this particular treaty.

**Senator ABETZ**—A bit of strength, a bit of—

**Mr Lemmon**—But is that really the case?

**CHAIRMAN**—That is your view, and Telstra was just saying they are not sure.

**Senator ABETZ**—Yes, but why would you say that it would be a good signal after we have just been done in the eye? Could it not also be interpreted, as I said before, that Australia is a walkover in the international community, signs up to anything, you can treat them like dirt and they will still come back and sign up on a good faith agreement oblivious to what has just been done to them?

**Mr Lemmon**—It could also be viewed as a signal that Australia is not interested in trade and economic cooperation with Kazakhstan.

**Senator ABETZ**—How can you come to that interpretation when we have gone all this way with this treaty and we then pull out on the basis that we have been done in the eye absolutely and we say, ‘Until you show some good faith towards us, we’re not going to continue down the path with you any more’?

**Mr ADAMS**—And, with other countries, do you think we would get in there and start to take over any influence that we already have in that country? Maybe you can deal with that as well.

**Mr Rose**—I don't think there were mineral companies interested in investing and which would not were we not to go ahead with this agreement. They are going to decide to go ahead based upon what they consider the opportunities and risks to be. They will look at Telstra's experience. Their decision will be irrespective of whether we have an agreement in place. The agreement would only serve as an extra support, some sort of security for them. How much security is questionable.

When doing business in the economies in transition there are generally three planks in the raft of legal agreements that are signed. The first is a double tax agreement, the second is an investment promotion and protection agreement and the third is a trade agreement. The trade agreement is the weakest in what it actually provides, although it does give most favoured nation treatment status. Although the enforcement provisions there are weak, it does set out that principle. It is valuable for that reason because those countries are not parties to the GATT; they are not members of the WTO.

The problem that we have with Telstra's investment would be covered by the investment promotion and protection agreement, the second plank, which is more important than the trade agreement from this perspective and which is almost complete at this stage and which has dispute resolution procedures and goes to an independent tribunal, the International Centre for the Settlement of Investment Disputes. So that has actually got some teeth. The double tax agreement everybody acknowledges is worth while, but Treasury has a long list of those that it is doing.

Those are the three elements, of which this is noticeably the weakest but still an important part because of the most favoured nation status part. But it does not address investment disputes as such.

**Senator MURPHY**—I was just curious about articles 8 (a) and (b) of this agreement. It says in (b):

. . . periodic meetings of the Governments, including sessions of a Joint Commission—

whatever that is—

to discuss including with reference to the agriculture and agribusiness industry sectors the development and enhancement of bilateral trade relations and to seek solutions to any problems that may arise in the course of development . . .

Why can there not be some meeting in respect of the Telstra situation to try to work through some of those problems for the longer term?

**Mr Wille**—There have been. We have been constantly working with the Kazakhstan government to assist and facilitate trade. If I go back to that point made by Mr Smith earlier on the dates, we knew that Satel was having a problem of re-registration from the beginning of the year, virtually from the beginning, but we had been led to believe by the Kazakhs, including their Prime Minister who gave personal assurances to our then ambassador there, that this issue would be resolved. We had hoped that this would be the case. This new turn of events only erupted in late September, if my dates are correct.

**Mr Wijeyewardene**—July-August.

**Mr Wille**—July-August.

**CHAIRMAN**—I still think it raises some question marks about the whole process.

**Senator MURPHY**—What has happened since then, following the falling over of Telstra?

**Mr Wille**—We consulted with Telstra, and their view was to let them run this issue, but perhaps I will allow Telstra to develop that.

**Senator COONAN**—What happened to the Prime Minister's assurances?

**Mr Wille**—Nothing.

**Senator MURPHY**—They haven't been followed up either?

**Mr Wille**—They have been.

**Senator MURPHY**—They have been?

**Mr Wille**—Yes, not at Prime Minister level but certainly at a senior level in the foreign ministry. But nothing has happened. I am quite happy for that to be on the record.

**Senator MURPHY**—The Telstra thing may have gone forever, but in so far as it raises the question of other companies investing, which we would want in terms of having that agreement with Kazakhstan, isn't it worth while just raising that as an issue and saying, 'Look, it is going to be a bit difficult for us to keep this thing in place if these are the sorts of things that are going to happen'?

**Mr Wille**—We have been as disappointed as anybody else about this turn of events. In fact, Mr Downer is due to meet with the Kazakh foreign minister at the UN General Assembly, and we have particularly put in as one of his things to say to Mr Tokaev at the UN our disappointment at this development.

**Senator MURPHY**—At a departmental level, what has been the response? You say there has been departmental level contact about this issue and that there has been disappointment.

**Mr Wille**—Through our embassy we have asked them to keep making representations to the Kazakhs.

**Senator MURPHY**—How are they are going.

**CHAIRMAN**—Nothing is happening.

**Mr Wille**—Nothing is happening.

**CHAIRMAN**—We are going round and round in circles on this one. It is a very difficult one. It is a question of judgment as to whether by recommending ratification you give the right signal or whether withholding is better. I am in two minds at this stage. Unless committee members have got any other specific questions or comments, I think we as a committee need to discuss this. I think we have heard enough from the departments. I do not think that your response to Tony Smith's question about 18 September was a very good one, quite honestly. I just think that it should have been apparent. You said that it was apparent. If it was apparent, then it really should have been mentioned to this committee.

**Mr Biggs**—We drew attention to the commercial environment.

**CHAIRMAN**—In an oblique sort of way. I think departments have to understand that if this committee is going to carry out the job that it has to and not just be a rubber stamp on some of these things—we are not a rubber stamp—we have to have candid views. At times, if that means going on to the closed record, into camera, then so be it. I just think—my colleagues probably agree with me—that this has not been handled very well, and we need to reconsider it as a committee to see what we can come up with. I understand both sides—I am sure we all do—but our task is to make some substantive recommendation and at this point in time it is very difficult to understand which way to go as to what signal you might give, irrespective of which way you go. Are there any other questions.

**Senator MURPHY**—When is Downer meeting with the Kazakhstani minister?

**Mr Wille**—This week. He is at the UN this week.

**CHAIRMAN**—The GA is on at the moment. Thank you, gentlemen.

Resolved (on motion by Mr Hardgrave):

That this committee authorises publication of the evidence given before it at public hearing this day.

**Committee adjourned at 9.19 a.m.**