

## Telecommunications

- 13.1 According to the *Guide to the Agreement*, the obligations in this Chapter apply to government measures affecting trade in telecommunications services. The Committee notes that measures relating to broadcast or cable distribution of radio or television programming are specifically excluded from the Chapter, other than to ensure that enterprises operating broadcasting stations and cable systems have continued access to, and use of, public telecommunications services.<sup>1</sup>
- 13.2 The Chapter consists of four broad parts, a total of 25 articles, and an exchange of letters which establishes regular consultation on issues and developments in the communications and IT sectors. There is also a non-binding letter associated with the Chapter which outlines the Government's policy in relation to Government ownership of Telstra.
- 13.3 The Committee notes that little specific evidence was received which commented on the purpose or operation of this Chapter.
- 13.4 The *Guide to the Agreement* makes several references to specific provisions under the Telecommunications Chapter. These include
- there are strong provisions on transparency and review for regulatory decisions. Regulators must be independent impartial and properly explain decisions, such as determining which services are subject to regulation and licensing decisions. Australia and the US have also embraced a hands-

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1 DFAT, *Guide to the Agreement*, p. 61.

off regulatory approach where markets are functioning competitively.<sup>2</sup>

## **Access to and use of public telecommunications services**

- 13.5 This section reaffirms the obligations of both Parties under the GATS which ensure that any enterprises of the other Party have access to and use of any public telecommunications service, including leased circuits, offered in its territory or across its borders, on terms and conditions that are reasonable and non-discriminatory, including with respect to timeliness. The Committee notes that Parties will only intervene ‘to ensure the security or confidentiality of messages’.<sup>3</sup>

## **Obligations for Suppliers of Public Telecommunications Services**

- 13.6 The *Guide to the Agreement* states that the commitments in the section are consistent with, and build upon the respective GATS obligations of both Parties and that no legislative or regulatory changes are required.
- 13.7 Both Parties agree to ensure that suppliers of public telecommunications services provide interconnection with suppliers of public telecommunications services of the other Party, number portability, dialling parity and reasonable and non-discriminatory treatment for access to submarine cable systems.<sup>4</sup>

## **Obligations for Major Suppliers of Public Telecommunications Services**

- 13.8 The commitments in this Section cover obligations on the Parties in relation to regulating telecommunications companies that control

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2 DFAT, *Guide to the Agreement*, p. 61.

3 DFAT, *Guide to the Agreement*, p. 62.

4 DFAT, *Guide to the Agreement*, p. 62.

essential facilities or have a dominant position in a particular market. The Committee notes DFAT's view in the *Guide to the Agreement* that

a supplier will only be subject to these additional commitments where it is a major supplier for a particular service. That is, a company which is a major supplier for most telecommunications services but not, for example, for mobile services, will not be treated as a major supplier for mobile services.<sup>5</sup>

- 13.9 Further to paragraph 13.6, the Committee notes DFAT's advice that the commitments in this section are consistent with, and build upon, Australia's obligations under GATS and do not require any legislative or regulatory changes. The Committee notes that

the commitments on resale, leased circuits, collocation and access to poles, ducts, conduits and rights of way are additional to our GATS commitments, but similar to provisions contained in the Singapore-Australia FTA.<sup>6</sup>

- 13.10 The Committee has not received any evidence from telecommunications service providers to suggest that these obligations will present any difficulties in the conduct of their business.

## Other measures

- 13.11 There are several commitments under this section of the Chapter which add to Australia's existing commitments under the GATS. DFAT have advised that these commitments are consistent with existing laws and practices and do not require any legislative or regulatory change.<sup>7</sup>
- 13.12 Conditions covered in this section include an agreement by the Parties to maintain their approach to transparent and independent regulatory procedures which incorporates basic principles of natural justice.<sup>8</sup> Both Parties also agree

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5 DFAT, *Guide to the Agreement*, p. 63.

6 DFAT, *Guide to the Agreement*, p. 64.

7 DFAT, *Guide to the Agreement*, p. 64.

8 DFAT, *Guide to the Agreement*, p. 65.

to maintain their robust frameworks for enforcing their own laws, and have committed to maintaining some of the basic principles for resolving domestic telecommunications disputes.<sup>9</sup>

## **Additional letters – consultation and Telstra**

- 13.13 The side letter on consultation commits the Parties to discuss and resolve any issues and to maintain a forward-looking and cooperative relationship. According to the *Guide to the Agreement*, initial subjects for discussion include developments in market structure, convergence, technological innovation including in relation to advanced wireless services, Internet charging, voice over Internet protocol, broadband, number portability, and digital products.<sup>10</sup>
- 13.14 The side letter on Telstra is a non-binding part of the Agreement. DFAT advised that

[the letter] makes no commitments but serves to explain the current Government's policy with regard to Telstra ... it explains that the current Government has long been committed to the full sale of Telstra subject to certain conditions being met. The letter does not commit the Government to selling its remaining share of Telstra. Rather, it explains that the Government had recently tabled a bill in Parliament proposing the full sale of Telstra which was rejected, and any future sale would be conditional on such a bill passing through Parliament. The letter explains Telstra's operational independence, Australia's rigorous regulatory framework and principles of competitive neutrality which ensure that government enterprises such as Telstra do not derive any commercial advantages from having government ownership.<sup>11</sup>

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9 DFAT, *Guide to the Agreement*, p. 65.

10 DFAT, *Guide to the Agreement*, p. 66.

11 DFAT, *Guide to the Agreement*, p. 66.

## Concluding observations

- 13.15 The Committee was advised of the views of the Australian Services Roundtable, which is supportive of the Chapter on telecommunications, and refers to the complexity of the area.

There were some very negative and worrying outcomes that could have emerged from this chapter, consistent with the line the US was pushing, and the government has largely resisted those. The Australian telecoms users in particular are pleased that we did not have a horrible outcome. We did not make much forward progress either. All the hard issues are left for Geneva, for the WTO, and we hope that our position in Geneva has been preserved by language in the chapter which agrees to disagree on the definition of value added services. We have a small concern about that. We will be very vigilant about that but, in essence, we did not push the US forward. Basically, Australian telcos cannot invest in the US because of the regulatory chaos in the US. We did not make the investment climate for Australian telcos any better, but nor did we do ourselves any damage. I think that is worth saying because the telcos area is a particularly complex one.<sup>12</sup>

- 13.16 DFAT's view is that the Agreement's provisions in this Chapter will provide greater certainty for Australian telecommunications firms in the US market.

It establishes a framework for regular consultation in relation to the communications and IT sector, which will give both government and industry an avenue to consult with US policy makers on issues of concern and consider developments affecting evolution of this rapidly evolving sector.<sup>13</sup>

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12 Ms Jane Drake-Brockman, *Transcript of Evidence*, 20 April 2004, pp. 95-96.

13 RIS, p. 8.