Telstra

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Dear Mr Carter

Australia's relationship with ASEAN

Thank you for your letter of 15 July 2008 to my colleague David Thodey, Group Managing Director, Telstra Enterprise and Government.

I am replying on Mr Thodey's behalf.

Telstra welcomes the Sub-Committee's inquiry into Australia's relationship with ASEAN. It is a region that is important to Telstra. The predecessors of Telstra and its present-day telecommunications carrier counterparts in ASEAN have done business with each other since the advent of international telecommunications. Over the past two decades Telstra made significant investments in Vietnam and Indonesia in particular, and to this day Telstra and its joint venture international connectivity business REACH continue to run offices and hold licences in Indonesia, Singapore, Malaysia, Thailand and the Philippines.

Telstra's history in ASEAN

Telstra entered into a series of business cooperation contracts to develop Vietnam's international fixed-line and satellite services, concluding in 2003 with the scheduled handover of the assets to our partner VNPT. Telstra's involvement included the construction of three satellite earth stations, international gateway exchanges in Hanoi, Ho Chi Minh City and Da Nang, a SDH fibre backbone link from the north to the south of the country, a 3,367 km submarine fibre optic cable link between Vietnam, Thailand and Hong Kong, and the training of more than 3000 VNPT employees.

Telstra's Indonesian investment was in the Central Javan fixed-line carrier Mitra Global Telekomunikasi Indonesia. Telstra seconded the CEO and CFO to the company, and is proud to have been associated with the construction of 412,000 basic access lines, the installation of 2000 kilometres of optic fibre in Central Java, the upgrading of exchange facilities, and the training of close to 3000 Indonesian employees. It is important to note that all of this was done in the seven years from 1996, through the duration of the Asian financial crisis and against a background of political upheaval in Indonesia, a period when most other international carriers could not leave fast enough. Telstra, by contrast, fulfilled its commitments and was able ultimately to benefit from a good sale price to a domestic Indonesian company in 2003.

Telstra today in ASEAN

Telstra operates a business unit called Telstra International (www.telstrainternational.com), which supplies telecommunications services across Asia to multinational corporate and government customers. Typical multinational corporate customers include suppliers of consumer goods, banks, hotel chains, technology vendors and resources companies, and require sophisticated and highly reliable managed data and voice services. Telstra International has traditionally competed for this business in Asia against the likes of AT&T, Verizon, BT, France Telecom and SingTel. We now face new Asian competitors such as VSNL and Reliance of India, and the Chinese state-owned carriers.

Standing behind this business is Telstra's 50% joint venture international connectivity supplier called REACH (www.reach.com), which has interests in more than 40 international submarine fibre optic cable and satellite systems, including several serving ASEAN. The REACH network stretches over 364,000 km around the globe, with nearly half of its traffic terminating at its major hubs in Hong Kong and Australia. This constitutes the most diverse high-speed network in the region.

Telstra continues to build and acquire new submarine cable capacity, for example Telstra is a significant investor in the new Asia-America Gateway cable system which is currently being constructed and will traverse Malaysia, the Philippines, Singapore, Thailand, Brunei and Vietnam, ultimately passing through Hong Kong (where REACH is landing the cable) and then continuing to the United States. This new cable system will span 20,000km and will use the latest Dense Wavelength Division Multiplexing (DWDM) technologies with a minimum design capacity of 1.28 terabits.

Telstra also continues to consider new strategic investments in the ASEAN region. This is a particularly challenging area because of foreign ownership restrictions on domestic telecommunications carriers that continue to apply in most ASEAN countries.

ASEAN restrictions on foreign ownership of telecommunications services suppliers

Almost all ASEAN countries maintain foreign ownership restrictions on foreign investment and control of domestic telecommunications carriers. For example, it respect of what the WTO describes as "basic telecommunications services" (meaning infrastructure-based voice and data services), examples of the restrictions that apply, are:

- Malaysia: up to 61% initially but subject to an obligation to reduce to 49% within 5 years;
- Thailand: up to 49.9% though voting rights are permitted to exceed this limit under the so-called "List 3" which applies to telecommunications. The issue of foreign ownership of telecommunications has become highly sensitive in Thailand due to the sale of former Prime Minister Thaksin Shinawatra's business interests in the Thai telecommunications sector, and exceeding the direct foreign investment limit of 49.9% is now considered to carry far more risk than in the past;
- Indonesia: up to 49% for fixed-line services and up to 65% for mobile services;
- Philippines: up to 40% (though this has been exceeded in some exceptional cases);
- Brunei: no foreign ownership or control allowed until 2010 at the earliest;
- Vietnam: up to 49%; and
- Cambodia: up to 51% from 2009.

As the Sub-Committee will be aware, Australia permits 100% foreign owned entities to enter the Australian ICT market, and supply services without restriction. The only restrictions on access to the Australian market by foreign investors are those applied under the generic Foreign Investment Review Board criteria and in respect of foreign ownership of Telstra itself.[1] There are additionally no behind-the-border restrictions on foreign telecommunications companies entering the Australian market, given that carriers can obtain a licence under the *Telecommunications Act* (C'th) 1997 with very little administrative burden and at nominal cost, and Carriage Service Providers need not obtain any licence at all. Many of Telstra's leading competitors in the domestic Australian market are majority or entirely foreign owned and controlled: SingTel Optus, Vodafone, Hutchison '3', AAPT, Primus, etc. Similar ease of entry applies to the IT and software services market.

In addition to overt foreign investment limits, there are difficult behind-the-border barriers. Domestic telecommunications regulation in many ASEAN countries is notoriously opaque, and efforts by international carriers to enter those markets have been routinely stymied by highly bureaucratic (or non-existent) regulatory requirements. International gateway and last-mile services are typically reserved for local incumbent carriers. In the absence of competition, the services provided are of markedly inferior quality and tend to inflate end-to-end charges far in excess of typical competitive end-to-end rates for international telecommunications services between developed countries. As bandwidth requirements grow exponentially, this will become a serious impediment to Australia's services exporters, who rely on telecommunications as an export enabler.

A 2006 Australian Services Roundtable submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade demonstrated that the telecommunications

[1] Foreign ownership in Telstra is restricted by Part 2A Div 4 of the *Telstra Corporation Act (C'th)* 1991. The maximum foreign ownership limits are 35% in total by all foreigners and a limit of 5% applicable to each foreign person. Div. 8 and 9 prescribe additional rules: central management and control of Telstra must ordinarily be exercised within Australia; Telstra must ensure that it maintains a substantial business and operational presence in Australia, and must remain incorporated in Australia; Telstra's chair must be an Australian citizen, as must be a majority of its directors.

requirements of an Australian architecture firm exporting its services to India would cost around four times than for the equivalent set-up cost of the same services to Hong Kong.[2] The monthly cost would be more than double. By 2010, architectural firms would require 45 Mbps links to allow simultaneous multi-destination videoconferencing and collaborative Computer Aided Design. Absent further liberalisation in the destination country the costs would be as prohibitive. The costs measured by ASR for services into India can be doubled and even tripled for some ASEAN destinations.

Australia's Free Trade Agreements with ASEAN nations

ASEAN—Australia–New Zealand FTA negotiation

Telstra has participated extensively in industry consultation conducted by the Australian Department of Foreign Affairs and Trade (DFAT) in regard to the negotiation of a proposed FTA between Australia, New Zealand, and ASEAN.

In its detailed submission, Telstra called for the ASEAN-Australia-NZ FTA to include a comprehensive telecommunications services chapter modelled on the similar chapters in the Australia-Singapore FTA and the Australia-US FTA. Telstra noted that several ASEAN countries had introduced domestic liberalisation measures which now far exceeded their earlier scheduled commitments under WTO agreements. For example, Malaysia had drafted its own non-conforming version of the WTO Telecommunications Reference Paper by including some of the Reference Paper's regulatory principles but excluding others, e.g. competitive safeguards, cost-based interconnection, and transparency of reasons for refusal of a licence. However, in practice Malaysia's domestic regulation was now largely compliant with the Reference Paper. Therefore, Telstra argued, at the very least the ASEAN countries ought to bind themselves to commitments reflecting the current status in their domestic law.

Telstra also recognised that some ASEAN countries, for example Brunei and Myanmar, were very far off being able to comply with the commitments of such a telecommunications chapter. Telstra proposed that these ASEAN countries commit in the FTA to phased implementation specifying the number of years within which they would fully comply.

Telstra made the point that Australia, New Zealand and Singapore should be active in capacity-building in less developed ASEAN countries, because for many developing nations it was extremely difficult to develop a working telecommunications regulatory regime due to a lack of skills or strong institutions. It is important that programs such as the international training program run by the Australian Communications and Media Authority (which is in hiatus in 2008),[3] should continue to receive appropriate government funding. Telstra as well as other Australian telecommunications suppliers and organisations have participated in these programs for many years.

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[2] Australian Services Roundtable, Submission to Inquiry into Australia's relationship with India as an emerging world power, 10 July 2006, http://www.aph.gov.au/house/committee/jfadt/india2006/subs/sub28.pdf

[3] See ACMA website at http://www.acma.gov.au/WEB/STANDARD/pc=PC_300158

Telstra understands that DFAT has worked hard to attain agreement on the inclusion of a telecommunications services chapter in the ASEAN FTA, and the outcome of this negotiation should be known later this year.

Australia-Thailand FTA

Telstra's strong view on the need for a telecommunications chapter in the FTA with ASEAN stems from our disappointment that the FTA agreed with Thailand did not provide any improvement in market access for Australian telecommunications service providers. Although Thailand was supposed to participate in regular reviews of the possibility of expanding the FTA to include telecommunications services in a more meaningful way, nothing has happened – which the Thais attribute to the political upheaval in their country. The lesson learned by Telstra from the Thai FTA is that when FTA negotiators put telecommunications services in the 'too-hard' basket for later attention, it really means that our sector will never be included.

Malaysia FTA negotiation

As noted, Malaysia continues to maintain a maximum foreign ownership cap of 49% notwithstanding that 61% can be held for the initial 5 years of the investment. It is commercially disadvantageous for a foreign investor to have to sell down its interest and its control of that business, after 5 years.

Telstra has participated extensively in DFAT's consultation process with Australian industry in regard to the Malaysia FTA negotiation, again arguing that the FTA should include a comprehensive telecommunications services chapter. In its submission on the Malaysian FTA, Telstra has primarily focused on the foreign ownership cap as behind-the-border barriers in Malaysia are less pronounced than in any other ASEAN countries. Telstra provided a detailed submission to the inquiry held by the Joint Standing Committee on Foreign Affairs, Defence and Trade that looked into Australia's relationship with Malaysia in 2006,[4] in which these issues were discussed in greater detail. Telstra also appeared at a hearing of that inquiry in November 2006.

Telstra understands that the Malaysian side has agreed to the inclusion of a comprehensive telecommunications chapter in the proposed FTA, and that the content of this chapter has largely been settled. As the Sub-Committee will be aware, there have been delays in the conclusion of the FTA with Malaysia due to other factors.

Singapore-Australia FTA

The SAFTA includes a comprehensive telecommunications chapter. Telstra is aware that another Australian telecommunications supplier has attempted to improve the available level of regulated market access under Singaporean domestic regulation by referring to the terms of the SAFTA telecommunications chapter, but that the Singaporean side has rejected those attempts. For its part, the Singaporean government has raised concerns about access to the Australian telecommunications

[4] Inquiry into Australia's relationship with Malaysia, http://www.aph.gov.au/house/committee/jfadt/malaysia/report.htm

market by reference to SAFTA, in order to advance the commercial interests of SingTel Optus. Telstra takes the view that the appropriate forum to raise these concerns is, at least in the first instance, by means of the very extensive avenues available under domestic regulation in Australia, particularly Parts XIB and XIC of the *Trade Practices Act* (C'th) 1974. However, Telstra is not surprised that foreign suppliers will make use of every means to advance their commercial interests, including by framing claims under bilateral trade agreements with Australia. Telstra's view is that it prefers to have the telecommunications chapter in the SAFTA and wear the occasional annoyance of dealing with premature and spurious claims made by foreign-owned competitors under that agreement, rather than the converse.

Australia-Indonesia FTA Feasibility Study

Telstra has submitted a detailed submission to DFAT in response to its request for industry input on the feasibility study for a proposed FTA with Indonesia. Telstra's focus in its submission was on the foreign investment caps and behind-the-border barriers associated with telecommunications regulation and licensing practices in Indonesia. Telstra is particularly concerned that Indonesia bind itself in a FTA to its current foreign investment caps which were recently introduced under the new Indonesian *Investment Law* (Law No. 25 of 2007), as these caps significantly exceed Indonesia's WTO commitments. When the new foreign investment caps were introduced in 2007, they were regarded as a reduction compared to what was available to foreign investors prior[5] – though it should be emphasized that the foreign investment limits on telecommunications in Indonesia were opaque until the 2007 law was passed.

Telstra is supportive of an FTA with Indonesia, as it would strengthen protections for established investments and provide further opportunities for new investment. A FTA would also provide an opportunity to bind Indonesia to its current foreign ownership restrictions as a minimum, thereby preventing any further backsliding. Inclusion of a telecommunications chapter would enable reiteration of the need for transparent licensing procedures and other regulatory best-practice measures. These domestic regulatory principles could be deepened and expanded in a telecommunications chapter. Both the negotiating process and the FTA text itself could include capacity building measures for Indonesia's telecommunications regulatory and competition authorities.

The impact of global warming

Telstra notes with appreciation the inclusion of this term of reference for the Sub-Committee's inquiry. It is a novel and welcome addition to the standard Terms of Reference that the Sub-Committee would usually consider when examining Australia's relations with other countries and regions.

In October 2007 Telstra released a commissioned report by climate change experts Climate Risk Pty Ltd, *Towards a High-Bandwidth, Low-Carbon Future; Telecommunications-based Opportunities to Reduce Greenhouse Gas Emissions*.[6]

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[5] See "Government of Indonesia cuts Foreign Ownership Limit for Telecoms Companies", Global Insight, http://www.globalinsight.com/SDA/SDADetail9820.htm

[6] See: http://www.telstra.com.au/abouttelstra/csr/climate_change.cfm

The report identifies seven opportunities using telecommunications networks and digital products that could lead to a reduction in Australia's emissions by almost 5% or around 27 million carbon tonnes by 2015. This compares to Telstra's reported emissions of 1.3m tonnes CO^2 equivalent in 2006-07. The leverage is remarkable.

These seven opportunities are:

- Networked demand–side energy management to increase renewable energy use
- Integrated personalised public transport to your door with a phone call, or ordered online
- "In-person" high-definition video conferencing in lieu of business travel;
- Presence-based power to turn appliances on or off using wireless presence sensors
- Real-time freight management with vehicle monitoring via wireless broadband to fill empty vehicles
- Remote power management for appliances not in use or on "stand-by", via broadband enabled sensors
- De-centralised business district: teleworking.

In the wider ASEAN context, there are obvious opportunities for realizing these same benefits from telecommunications and digital networks. However, emission reductions are likely be stymied if ASEAN countries continue to keep their markets largely closed to entry by foreign telecommunications carriers. This point was made in a thoughtful address given by my colleague Dr Tony Warren, Executive Director Regulatory Affairs at Telstra, to a WTO meeting in Geneva in January this year.[7] Dr Warren concluded:

> "...if businesses and households worldwide – and not merely in the richest, already most liberalised, countries – are to gain the fullest benefit from telecommunications, including the environmental benefits, we must now take the more difficult step of bringing the world's fixed networks into the 21st century. That requires a truly massive transformation, involving the deployment and operation of many billions of kilometres of cable and many hundreds of millions of nodes across the planet.
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> That transformation will simply not occur without a global move to remove remaining barriers to foreign investment and trade in telecommunications services. If nothing else, absent an international regime that gives global investors credible assurances about how their investments will be treated, the incentive to sink many billions of dollars into fixed networks will not be there."

[7] Dr Tony Warren, "Next Generation Networks: The positive environmental effects of expanding telecommunications services though high-speed broadband networks", World Trade Organisation's Symposium of Telecommunications to Commemorate the 10th Anniversary of the Fourth Protocol of the GATS, Geneva, Switzerland, 21 February 2008, http://www.in.telstra.com.au/ism/corporatenews2008/corporatenews022.asp

Conclusion

Soon after Telstra completed the roll-out of its world-leading NextG™ mobile network, it began receiving requests from around the world expressing interest in the project. A good part of this interest came from carriers and governments in the ASEAN region. Telstra – and therefore Australia – has in many respects forged ahead of its peers in the international telecommunications industry. This leadership can be used valuably within our region to broaden and strengthen economic relations. While much business attention is justifiably focused on the Indian and Chinese markets, we need to maintain and increase our ties with our closer neighbours in ASEAN.

The Minister responsible for the service economy, Craig Emerson, recently made the point that advocacy for Australia's service industries can veer at times into a thinly disguised plea for protectionism.[8] Although Telstra has made clear in this submission that the level of access to ASEAN telecommunications services markets is far from acceptable, this does not mean that Telstra is in any way suggesting a protectionist response. Telstra fully supports the openness of the Australian market and the competition that this openness generates. By competing with major international telecommunications suppliers in its home market, Telstra is able to develop and maintain the ability to be internationally competitive. Whatever restrictions ASEAN governments may apply to Australian suppliers entering their communications market, and however non-reciprocal market access between ASEAN and Australia may be, Telstra continues to support free access by ASEAN suppliers to the Australian market.

Telstra would be glad to provide further information to the Sub-Committee.

Yours sincerely

David Quilty

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[8] Craig Emerson, Minister for Small Business, Independent Contractors and the Service Economy, "The services industries: unsung heroes of Western Australia's economic growth story", speech delivered for the Committee of the Economic Development of Australia, Perth, 14 August 2008.