SENATE ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS LEGISLATION COMMITTEE

Inquiry into

Telstra (Transition to Full Private Ownership) Bill 1998

Telecommunications Legislation Amendment Bill 1998

Telecommunications (Consumer Protection and Service Standards) Bill 1998

NRS Levy Imposition Amendment Bill 1998

Telecommunications (Universal Service Levy) Amendment Bill 1998

MINORITY REPORT OF ALP SENATORS

March 1999

CHAPTER 1 - OVERVIEW AND RECOMMENDATIONS

Introduction

This is the third time in as many years that the Senate has considered a proposal by the Coalition Government to privatise part or all of Telstra.

This most recent attempt is the culmination of a tawdry process of political deception and sleight of hand by the Coalition Government.

Despite the creation of a perception by the Ministers for Communications and Finance on 22 July 1998 that the Government would, in the first instance, seek to sell no more than 49% of Telstra, the Government has introduced legislation that, if passed, will authorise the sale of 100% of Telstra without further reference to the Parliament, and without Parliament being aware of the criteria for the sale beyond 49%.

This is in spite of numerous pleas from its own backbench and from rural, regional and remote constituents all over Australia, fearful of a voracious private monopolistic Telstra.

Conclusions

The Opposition members of the Committee remain strongly opposed to the sale of any further portion of Telstra.

Opposition Senators condemn the Coalition Government for its crude attempt to dupe the public and its own backbench and bypass the authority of the Parliament by instituting a sham inquiry as the trigger for the disposal of the Government's controlling equity in Telstra.

Opposition Senators do not believe it is appropriate to hold for ransom reform of the regulatory environment for telecommunications. The case for reform of aspects of the current regime is a compelling one and legislation to effect change in this area should be considered in advance of and independently of any proposal to sell more of Telstra.

Opposition Senators believe that a strong case has been made for a closer examination of the proposed amendments to the current pro-competitive regime. Evidence received by the Committee has indicated that the proposed legislation does not go far enough towards addressing some of the inadequacies of the existing framework, in particular the problems caused by procedural delay.

Opposition Senators welcome the move to enshrine in legislation consumer protection measures and guarantees of service standards but warn that in the absence of a more effective Government information and awareness campaign and more effective

monitoring by the relevant authorities, consumers will continue to suffer the inconvenience of sub-standard service.

Recommendations:

Opposition Senators recommend:

1. That the Government not proceed with the *Telstra (Transition to Full Private Ownership) Bill 1998*

2. That the Government urgently pursue a comprehensive public review of the competitive regime and make further amendments to the regime where appropriate.

3. That the *Telecommunications (Consumer Protection and Service Standards) Bill 1998* be amended to ensure that in the event of a delay in the provision of service due to a network fault, the carrier responsible for the fault, not the carriage service provider, be required to compensate effected consumers.

4. That the Government pursue further the notion of competitive tendering of the Universal Service Obligation on a regional basis, so long as it is understood that Telstra will remain as the National Universal Service Provider.

CHAPTER 2 - FURTHER SALE

Opposition Senators continue to strongly oppose the sale of any further shares in Telstra for all the reasons outlined in the Majority Report of the September 1996 Senate Environment, Recreation, Communications and the Arts References Committee inquiry into the proposed sale of the first third of Telstra and the Opposition Senators' Minority Report of the May 1998 Senate Environment, Recreation, Communications and the Arts Legislation Committee inquiry into the first *Telstra (Transition to Full Private Ownership) Bill 1998.*

No new evidence has been presented, by the Government or any witness to this inquiry, to justify any further sale of Government shares in Telstra.

Rationale for Continuing Opposition to Telstra Privatisation

Labor's reasons for stridently opposing any further sale of shares in Telstra are summarised in brief terms as follows:

- Since the sale of the first one third of Telstra, service levels in the less profitable areas of Australia have declined. By keeping Telstra, Australia's dominant service provider, in public hands the Federal Government will retain the right to direct Telstra to ensure that adequate service levels and access to up-to-date technology are delivered to all Australians, particularly in rural, regional and remote Australia.

- The money that Telstra generates each year and pays to the Government directly benefits taxpayers. As the level of Government ownership in Telstra decreases, so does the dividend to Government at the end of each financial year. By keeping Telstra in public hands the Federal Government will continue to receive these funds, funds which will grow each year into the future.

- 35% of the profits of a fully privatised Telstra will go off shore.

- Investment in and maintenance of Australia's national telecommunications infrastructure will decline as more of Telstra is sold. Australia's telecommunications infrastructure is too crucial an element of the economic, industrial and social framework of the nation to allow any further dilution of government ownership and control.

- Levels of investment by Telstra in research and development for the public good have already begun to decline. Instead of selling Telstra, the Government should be ensuring that Telstra continues to invest time, resources and expertise in the innovations and technical infrastructure necessary to take Australian industry into the new millenium.

- Privatisation gives rise to an environment where the emphasis is on reducing staff and staffing costs - this means less workers, and degraded workplace conditions for those lucky enough to keep their jobs. Telstra has shed nearly 25% of its total workforce in less than two years with further job cuts scheduled for both the current and subsequent financial years.

As more and more of Telstra is sold, the pressures on the Telstra Board to make decisions based solely on economic and logistic imperatives, will increase. Profit for shareholders will become the primary and eventually, under a fully privatised Telstra, the only concern.

Bitter experience, since the sale of the first third, has shown that as more of Telstra is sold:

- Service levels will decline, particularly in rural and regional areas;

- Investment in research and development for the national good will cease;

- Levels of foreign ownership will increase - with more of Telstra's profits going overseas;

- More jobs will be lost in regional Australia;

- Investment in and maintenance of the telecommunications infrastructure in rural and regional areas will decrease;

- Any notion that Telstra has a social (and not just a legislative) obligation to provide services to the sick, the disabled, the elderly and the isolated in the Australian community, will vanish completely.

Reforms Held to Ransom

Opposition Senators are strongly of the view that the Government's proposal to further privatise Telstra is completely irrelevant to the issue of the adequacy of the regulatory regime for telecommunications. The *Telstra (Transition to Full Private Ownership) Bill 1998* should be considered entirely independently of legislation relating to any proposed reform of existing consumer and competition provisions.

There was considerable support for this view in evidence presented at the public hearing by witnesses to this inquiry:

> *We are concerned about going any further down that track (further privatisation) while we are still in a period of uncertainty about how that regulatory regime might operate and, fundamentally, how the further privatisation of Telstra and the demands of the shareholders*

will match with the overall social objectives which are stated and set out in the Telecommunications Act 1997.[1]

The problem is that, if you release the shackle from Telstra before you have actually achieved the goal of full competition, you actually put at risk achieving competition and all the other objectives that are set out in the (Telecommunications) Act.[2]

The Charter Council concludes that it is not yet 'safe' to relinquish government control over Telstra through its majority shareholding. Given the inadequacy of the current regulatory framework, and the history of Telstra's unwillingness to comply with the spirit of privacy principles, the Committee should recommend that the Sale Bill not proceed. Ideally, the accompanying legislation strengthening the ACA and the Minister's power should proceed independently.[3]

That is our fundamental message: while it is in public ownership governments of any calibre or any colour will be making sure that the country constituency and all those other disadvantaged areas get a reasonable deal.[4]

The WA Government has no objection to the partial sale of the next part of Telstra but is very keen to see consumer safeguards in place and actually proven to be working before the sale.[5]

Proposed Sham Inquiry

Irrespective of their attitude to the question of the further privatisation of Telstra, witnesses before the Committee almost universally condemned the Government's model for an inquiry into the service levels of Telstra.

Witnesses variously criticised the extraordinarily short timeframe of six months, the proposal to conduct the inquiry in secret, the fact that the public were not being asked to make submissions to the inquiry, the fact that the terms of reference for the inquiry had not been released prior to consideration of the legislation by the Senate, the fact that those terms of reference would ultimately be set by regulation not legislation despite an ironclad commitment to the contrary by Government ministers, and finally

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[1] Helen Campbell, Consumers Telecommunications Network (CTN), Evidence 3 February 1999, p 39

[2] Stephen Horrocks, CTN, Evidence 3 Feb 1999, p 40

[3] Submission No. 15 (The Australian Privacy Charter Council) p 282

[4] Ian McLean, Communications Electrical and Plumbing Union (CEPU), Evidence 3 Feb 1999, p 43

[5] Philip Skelton, Government of Western Australia, Evidence 3 Feb 1999, p 59

that the inquiry would examine only Telstra's service levels, not the behaviour of Telstra vis-à-vis its competitors.

> *We view with alarm the apparent reneging on the Government's commitment to ensuring there would be a public process in which there would be public access to information and the opportunity for the public to participate. As we have said in our submission, it appears to us that, despite the fact that there will be a review, that can be conducted in secret. There is no obligation on the minister to reveal the results of the review or, indeed, if the review makes a recommendation, there is no obligation on the Minister to follow the recommendation.*[6]
>
> *The period of six months is short in the context of a decision whose impacts will be felt for generations. With Telstra management publicly and vigorously committed to full privatisation, it is hard to imagine that the company will not be able to muster the energy to jump the immediate hurdle presented to it.*[7]
>
> *The six months mooted in the Bill as a period under which a measured service performance would be a criterion for the government relinquishing majority ownership would not be acceptable. A period of twelve months is considered an absolute minimum.*[8]
>
> *I think the Government should have confidence that past experience of an open consultative process has been very successful. Therefore it seems to us very inappropriate to do it that way (in private).*[9]
>
> ***Senator Allison**: Can I ask you then about the inquiry that is proposed prior to full privatisation. Is it your view that that ought to include some criteria for what is happening in the bush in terms of current services and new services? Should that be a public inquiry? Would you wish to make a submission to it? And would you expect to see the report at the end of the process?*
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> ***Dr Wendy Craik**: Yes, yes, yes and yes.*[10]
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> *Cable & Wireless Optus believes that any independent inquiry ordered before a further sell down to remove Government ownership*

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[6] Helen Campbell, CTN, Evidence 3 Feb 1999, p 41

[7] Submission no. 19 (CEPU), p 381

[8] Philip Skelton, Government of Western Australia, Evidence 3 Feb 1999, p 59

[9] Alan Horsley, Australian Telecommunications Users Group (ATUG), Evidence 3 Feb 1999, p 6

[10] Wendy Craik, National Farmers Federation (NFF), Evidence 3 Feb 1999, p 33

should also involve an investigation of the health of competition in the telecommunications market.[11]

The "Social Bonus"

According to the provisions of the *Telstra (Transition to Full Private Ownership) Bill 1998*, $671 million of the total funds derived from the further sale of Telstra will be set aside in the form of a "social bonus" and allocated to various initiatives, principally for the benefit of residents of rural and regional areas.

The Department of Finance and Administration gave evidence to this inquiry that the current value of the Commonwealth's remaining shares in Telstra is $55.4 billion[12]. According to the Explanatory Memorandum to the *Telstra (Transition to Full Private Ownership) Bill 1998*, fees for the sale of these shares are expected to amount to between 1.5 and 2 per cent of sale proceeds. On this basis, the Government will pay bankers and lawyers between $800 million and $1.1 billion for the sale.

So, while the bankers and lawyers collect in excess of $1 billion, the people of rural and regional Australia stand to reap just $671 million in compensation for the sale of the remaining two thirds of Telstra.

Opposition Senators condemn the Government its pitiful attempt at bribery. The residents of rural and regional Australia, far from feeling placated by additional funding, should feel outraged that their telecommunications needs are worth less than the services supplied by the myriad of bankers and lawyers fortunate enough to be aboard the Telstra sale gravy train.

Recommendation

Opposition Senators recommend that the Government not proceed with the *Telstra (Transition to Full Private Ownership) Bill 1998.*

[11] Submission no. 18 (Cable & Wireless Optus), p 336

[12] Answers to Questions on Notice from Senator Allison, 24 Feb 1999.

CHAPTER 3: THE COMPETITION REGIME

The current pro-competitive regulatory framework for telecommunications is still in its infancy. Nonetheless it is possible, even at this early juncture, to identify failings in the regime's operation.

That we do not have a fully operative competitive environment in telecommunications in Australia is clear from the evidence, not only of industry participants but consumer and community organisations, who consistently claim that Australian consumers, particularly those in regional and rural Australia, are paying substantially more for telecommunications services than consumers in other countries and getting poorer service.[13]

As was the case in the last Senate inquiry into a Government proposal to privatise Telstra, a number of witnesses have alleged that the regulatory scheme, even with the passage into law of the legislation currently before this Committee, is inadequate to prevent Telstra from using its market dominance for anti-competitive purposes.

> *The main cause of Australia's lack of international competitiveness is Telstra's bottleneck control over the local network. As the Industry Commission, the Hilmer Committee and Professor Henry Ergas have recognised, Telstra is able to impose price and non-price terms on access on its competitors which limit their ability to compete against Telstra's retail arm.*[14]

> *The danger for non-Telstra telecommunications service providers, particularly new entrants without a critical mass of capital or customers, is that the dominant player uses its position to directly or indirectly flout the rules in order to damage its competitors.*[15]

Opposition Senators welcome, as do most in the industry, the recent draft decisions of the ACCC with respect to interconnection charges and access to Telstra's local call network and the issuing and pursuit to the Federal Court by the ACCC of competition notices against Telstra in regard to "customer churn".

These actions represent important steps in the right direction, but much relies on cooperation by Telstra for any practical effect.

In evidence, Telstra has demonstrated an unwillingness to submit passively to the authority of the Regulator.

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[13] see Submission no. 18 (C&W Optus) p 336, Submission no. 12 (CTN) p 196, NFF Evidence 3 Feb 1999, p 32

[14] Submission no. 18 (C&W Optus), p 336

[15] Submission no. 22 (Macquarie Corporate Telecommunications), p 497

> *We do not believe, particularly with the modified processes that we have put in place, that we are in contravention of the Trade Practices Act. The ACCC clearly has another view.*[16]

The Witnesses' view of the Telecommunications Amendment Bill 1998

It is perhaps telling that, of all of the witnesses to this inquiry, Telstra was the only one to criticise attempts in the proposed legislation to improve or modify the current regulatory framework.

> *Telstra continues to have concerns with the measures proposed by the Government for amendment to the Trade Practices Act - specifically, increasing the powers of the ACCC to enable it to order disclosure of Telstra's costs to its competitors. Telstra considers this is harmful to competition, because it would enable competitors to price Telstra's costs, rather than their own, which is at odds with the primary aim of the access regime which is to promote the long term interest of end users.*[17]

This provision in the Bill is justified by the Department of Communications Information Technology and the Arts:

> *These amendments will make a wider range of information available to industry participants, particularly cost data, thus enabling more informed access negotiations and scrutiny pricing and other practices of competitors.*[18]

None of the other carriers expressed any objection to the provisions contained in either the *Telecommunications Legislation Amendment Bill* or the *Telecommunications (Consumer Protection and Service Standards) Bill*, but all, bar one, were of the view that a number of additional measures were warranted in order to counteract what they maintain is a market monopoly or market dominance by Telstra.

> *We support the measures that are contained in the Telecommunications Legislation Amendment Bill, which relates to the opening up of competition. We advocate a number of other things.*[19]

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[16] Graeme Ward, Telstra, Evidence 16 Feb 1999, p 6

[17] Submission no. 21 (Telstra), p 456

[18] Submission no. 10 (Department of Communications, Information Technology and the Arts), p 174

[19] Bruce Meagher, C&W Optus, Evidence 3 Feb 1999, p 9

> *So I guess overall, we would be supporting the thrust of the legislation. However, we see there is significant opportunity for finetuning to make the competitive framework actually work.*[20]

"Ring-fencing"

AAPT, Cable & Wireless Optus and Macquarie Corporate all expressed support in their submissions and at the public hearings for the notion of "ring fencing" Telstra's corporate entities requiring them to deal with one another at arm's length.

The rationale for this proposal was expressed by Mr Grant of AAPT to be as follows:

> *The primary need for ring fencing arises from the fact that Telstra is an incumbent-forming monopolist. It is a vertically integrated operator so it provides the access and all the retail and wholesale services and it is also horizontally integrated in that it provides the full range of services at the retail level. Now a fundamental regulatory problem is how to stop a vertically integrated operator providing preferential treatment to itself as opposed to its competitors, and how to stop a horizontally integrated operator cross-subsidising profits from areas that are not subject to competition… to those services that are subject to competition.*[21]

Opposition Senators note the recent draft determinations of the ACCC with regard to Telstra's access prices and access to the local call network. These decisions represent important advances in respect of ensuring existing barriers to competition are torn down.

Ring fencing is an artificial commercial device and Opposition Senators are not persuaded that currently, at this early stage in the development of the competitive environment, such a measure is warranted.

Delay

Telstra's competitors have all expressed concern with delay - that is the time taken by the ACCC to take action in respect of alleged anti-competitive conduct or to finally effect competitive changes. They refer variously to Telstra's anti-competitive and persistent monopolistic behaviour, timidity on behalf of the ACCC to act speedily for fear of legal challenge, and the infancy and inadequacies of the regime as possible reasons for such delay.

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[20] Maha Krishnapillai, Macquarie Corporate Telecommunications, Evidence 3 Feb 1999, p 20

[21] Alasdair Grant, AAPT, Evidence Feb 3 1999, p 11

> *At the moment that is possibly the major criticism if you like of the legislation over the last 18 months or so - that there are a number of major issues which have taken far too long to be resolved and there are a number of major issues that will take far too long to be resolved in the future.*[22]

> *We are looking at a situation where a competition notice investigation will continue for periods of three or six months - perhaps even longer. This is simply an unacceptable period of time for the industry to be able to withstand anti-competitive conduct, if that conduct is subsequently held to be so.*[23]

Mr Horsley of the Australian Telecommunications Users Group expressed a similar concern:

> *I think most of us are of the view that delays have been too great and that, in fact, delays have become somewhat of a disease in the industry.*[24]

The ACCC, in giving evidence at the Committee, seemed to accept that the concern with delay was valid, but it nonetheless defended its own conduct in this regard:

> *I would certainly say that we have been disappointed and concerned about the length of time it has taken to deal with some of the anti-competitive issues that confront us. The reason for that is not any lack of expedition on our part but essentially just the processes that we have to go through. The basic point about the processes that we have to go through is that we have to be affirmatively satisfied, in the same way as a court would be, that we have a breach of the Act.*[25]

"Cease and Desist" orders

A number of witnesses to the inquiry addressed this issue by advocating amendments to Part XIB of the *Trade Practices Act 1974.* The most substantive of these purports to enable the ACCC to impose an interim "cease and desist" order on a carrier or carriage service provider who is the subject of an investigation into anti-competitive conduct commenced under that Part.[26]

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[22] Maha Krishnapillai, Macquarie Corporate Telecommunications, Evidence 3 Feb 1999, p 20

[23] Alasdair Grant, Evidence Feb 3 1999, p 11

[24] Alan Horsley, ATUG, Evidence 3 Feb 1999, p 1

[25] Rod Shogren, Australian Competition and Consumer Commission, Evidence 3 Feb 1999, p66

[26] see Submission no.s 7, 18 and 22

Mr Alasdair Grant of AAPT made the case for a "cease and desist" power on the grounds that in order for the Regulator to be effective it needed a power to stop suspected breaches of anti-competitive conduct swiftly.

> *The primary policy objective of Part XIB is to act as a deterrent. It is to require a party to cease engaging in anti-competitive conduct. The ACCC's commercial churn competition notice, or set of notices… took 14 months for the ACCC to get to the point of issuance. Now that Telstra has decided to challenge those, it will be at least a year, we believe, before the issue will be finally resolved.*
>
> *It is quite clear that if the competition notice regime is working so that judicial enforcement of all those decisions is required, then it clearly cannot meet its objectives… So we feel that Part XIB needs to be beefed up so the deterrent effect of the competition notice is strengthened.*[27]

Mr Shogren appears to have some sympathy with this argument when he says that:

> *the basic point about the processes that we have to go through is that we have to be affirmatively satisfied, in the same way as a court would be, that we have a breach of the Act.*[28]

He then goes on to say:

> *The sorts of things we look at in telecommunications tend to be like section 46 misuse of market power cases. They tend to be big and difficult issues where we have to go through complex processes of defining the market, deciding where the market power is, whether it is being abused and whether there is a substantial lessening of competition. You just cannot do that quickly - not if you want to do it properly.*[29]

Telstra disagrees:

> *We believe that proposals that are currently on the table very much err on the side of discouraging and potentially dooming healthy competition.*[30]

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[27] Evidence 3 Feb 1999, p 9

[28] Evidence 3 Feb 1999, p 66

[29] Evidence 3 Feb 1999, p 66

[30] Graeme Ward , Telstra, Evidence 16 Feb 1999, p 5

Both Telstra and the Department expressed the view in evidence that an attempt to empower the ACCC to issue an interim cease and desist order would be in breach of the constitutional doctrine of separation of powers and therefore unconstitutional.[31]

The ACCC's view of the adequacy of the current regime

Opposition Senators note the statement of Mr Shogren from the ACCC that *"by and large we think the legislation is working satisfactorily"* and that *"overall we think the legislative framework is adequate to the job."*[32]

But we also note Mr Shogren's reluctance to canvas ways in which the legislative framework could be improved:

> *We are not in the policy advising business or the legislative change business. We deal with the legislation we have and we administer it as efficiently as we can.*[33]

Evidence from Mr Cameron, Acting General Manager, Telecommunications Competition and Consumer Branch, of the Department of Communications Information Technology and the Arts, that Mr Shogren has in fact raised with the Department certain matters is an indication, however, that the ACCC, far from viewing the regime as perfect, has some concerns with its current operation.

> *The issues that have been raised by Rod (Shogren) with the ACCC and the Department are issues that the Minister has indicated he does want advice on in relation to whether there should be particular amendments to the provisions of the anti-competitive conduct provisions of the Trade Practices Act with a view to actually facilitating a faster operation of those services.*
>
> *The Department is aware of the comments made by the industry, and the Minister has indicated that if amendments can be made to improve or speed up the operation of those provisions then he would give consideration to those.*[34]

Mr Cameron made it clear to the Committee that the Minister had requested the Department to prepare as a matter of priority a report into the adequacy of the legislation:

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[31] Department of Communications, Information Technology and the Arts, Evidence 16 Feb 1999, p17; Telstra, Evidence 16 Feb 1999, p 5

[32] Evidence 3 Feb 1999, p 66

[33] p 66

[34] James Cameron, Department of Communications Information Technology and the Arts, Evidence 3 Feb 1999, p 66

Mr Cameron: *The Minister has indicated that he would hope to make relevant decisions on this as early as possible this year.*

Senator Mark Bishop: *Is it regarded as a matter of priority or urgency?*

Mr Cameron: *It is certainly an issue that we would want to deal with as rapidly as possible, yes.*[35]

Conclusion

Opposition Senators are sympathetic to the concerns of Telstra's competitors on the issue of delay in the identification and determination by the ACCC of anti-competitive conduct by a telecommunications carrier. The complex processes adopted by ACCC under Part XIB with respect to an investigation of perceived anti-competitive conduct, render speedy resolution of any matter nigh on impossible.

Opposition Senators are horrified that the Government has proceeded with legislation when it had clearly not examined the issues in proper detail. Evidence given by the Department of Communications Information Technology and the Arts indicates that the Minister has only recently, almost three months after the introduction of the legislation into the House of Representatives, called for advice on the adequacy of the competition regime and whether any further amendments should be made to it.

It is clear to Opposition Senators that steps must be taken immediately to lessen delays in the issuance of a competition notice once evidence of anti-competitive behaviour exists.

Opposition Senators believe that a comprehensive review of the competition regime and the powers of the ACCC, as the Regulator, must be urgently conducted prior to the review currently scheduled for July 2000.

Recommendations

Opposition Senators recommend that the Government urgently pursue a comprehensive public review of the competitive regime and make amendments to the regime where appropriate.

[35] Evidence 3 Feb 1999, p 67

CHAPTER 4 - CONSUMER PROTECTION AND SERVICE STANDARDS

The Customer Service Guarantee

A number of witnesses to this inquiry have indicated that in spite of measures imposing performance standards on telecommunications carriers, implemented by the Government at the time of its initial one third sale of Telstra, adequate levels of service are still not being provided to Australian consumers.

The National Farmers Federation, the Consumers Telecommunications Network, the WA Government, the City of Yarra, and the Communications Electrical and Plumbing Union all gave evidence of poor performance by Telstra in the provision of service, particularly in rural and regional areas.

Their concerns have been underscored each and every quarter since the beginning of 1997 in statistics released by the Australian Communications Authority (ACA). The ACA monitors carrier performance using various indicators including the percentage of new services connected on or before the agreed commitment date, the percentage of faults cleared within one and two working days and the percentage of payphone faults cleared within one and two working days.

According to the ACA, Telstra's service levels in the provision of service to regional, rural and remote Australia hit a record low in the 1997 December quarter. Quarterly reports since have not indicated much improvement.

In its *Telecommunications Performance Report for 1997-98*, the ACA expressed its concern at the "apparent decline in service levels for the provision of telephone services and repair of faults, particularly in the country".[36]

In addition, anecdotal and deductive evidence, indicates that not all customers are being compensated when they experience unreasonable delays in connection or fault repair.

The ACA reports that in the first 6 months of the CSG's operation, Telstra compensated some 52,847 out of a total of 3.25 million consumers, for delays in service provision. That amounts to less than 2% of Telstra's customers receiving compensation. The ACA also reports that Telstra, on average, fails to comply with the CSG in 10-15% of cases, indicating that a significant number of consumers are missing out.[37]

C&W Optus makes the very valid point that improved competition will ultimately be the panacea to tardy service:

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[36] ACA *Telecommunications Performance Monitoring Report 1997* p viii

[37] see ACA *Telecommunications Performance Monitoring Report 1997-98*

> *We believe that measures such as the Customer Service Guarantee and other consumer safeguards like that are valuable and useful tools but, at the end of the day, if the penalty that is suffered for failure to connect the service or provide adequate service is some form of imposition of financial cost, that will not prove nearly as useful as an incentive as the risk that a customer can actually take the whole of their business away from a carrier and go to another competitor.*[38]

In the meantime, we see it as incumbent upon the Government to properly enforce the CSG by promoting consumer awareness of the scheme and by keeping a closer watch on carriers.

Clarification of the CSG

The object of the Customer Service Guarantee is to ensure that consumers, who are inconvenienced by slow or sub-quality service, are compensated.

In its submission to the inquiry Macquarie Corporate Telecommunications has identified what it perceives as a significant problem in the application of the Customer Service Guarantee Standard.[39]

Opposition Senators agree with Macquarie Corporate that the differential application of the Customer Service Guarantee to carriers and carriage service providers in the event of a network fault has the potential to form a significant barrier to fair competition, as consumers may be less willing to give their custom to a carriage service provider instead of the network carrier, Telstra.

Competitive Tendering for the USO

There was considerable discussion at the hearings on the issue of the Universal Service Obligation and whether there was room for more than one universal service provider. Many of the carriers expressed an interest in being allowed to bid for the USO on a regional basis:

> *We are a little bit frustrated that at the moment Telstra is the only one that is able to supply those services and we look forward to*

[38] Bruce Meagher, C&W Optus, Evidence 3 Feb 1999, p 9

[39] see Submission no. 22 (Macquarie Corporate Telecommunications)

> *opportunities to competitively bid for the provision of the USO in those areas.*[40]
>
> *We also, like AAPT, are scoping whether internally we could provide that service. What the engineers have told us and what we have looked at is we absolutely could provide those services.*[41]
>
> *This is a franchise that has just been allocated by Government to Telstra and I endorse what previous speakers have said about wanting the opportunity to tender for that.*[42]

A number of non-carrier witnesses, including the Australian Telecommunications Users Group, the NFF, the WA Government and the Consumers Telecommunications Network expressed a wish to look at the notion in more detail:

> *Yes, we strongly support the concept of competitive tendering so that one is able to bring to bear the best technological/service solution to a particular circumstance and be able to deliver the USO at the best price.*[43]
>
> *It is our view that what the marketplace needs to be is open and competitive. Once you get the competition in there, you tender out the universal service obligation and you have some competition, then if one carrier is not providing the service another one can.*[44]
>
> *…there is some competition in the provision of infrastructure in major cities and maybe a little bit in very large regional centres, but we would have only perhaps one in Western Australian and for the vast rest - around 200 towns in Western Australia - there are no incentives for incumbent carrier to upgrade or extend infrastructure. Perhaps competitive tendering for the USO might be part of a solution to that.*[45]

The Consumers Telecommunications Network expressed a concern that such a scheme might put service to a particular region at risk:

> *We have in our earlier submission indicated that we would have some concerns about the tendering model. It would be fair to say that concerns the implementation rather than the theory of it, if you*

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[40] Alasdair Grant, AAPT, Evidence 3 Feb 1999, p 8

[41] Adam Suckling, C&W Optus, Evidence 3 Feb 1999, p 16

[42] Chris Dalton, Network Vodafone, Evidence 3 Feb 1999, p 21

[43] Alan Horsley, ATUG, Evidence 3 Feb 1999, p 4

[44] Wendy Craik, NFF, Evidence 3 Feb 1999, p 29

[45] Phillip Skelton, Government of Western Australia, Evidence 3 Feb 1999, p 59

> *know what I mean. One of the concerns that was expressed about the tendering model was what happens if the tenderer fails.*[46]

Telstra expressed support for competitive tendering of the USO on a regional basis:

> *We would welcome competition in the provision of USO services. We think that if other carriers believe the costs of USOs that we provide - or indeed they see an opportunity to provide lower cost services - we would welcome that competition.*[47]

Opposition Senators note evidence from the Department of Communications Information Technology and the Arts that a discussion paper of this issue is forthcoming from the Australian Communications Authority.

Opposition Senators are in favour of pursuing further the notion of competitive tendering of the USO on a regional basis.

But we stress that our support for this notion is conditional upon Telstra remaining the one and only National Universal Service Provider. In order to ensure that a consistent level of service is available at all times to the residents of regional, rural and remote Australia, we must and should retain Telstra as the National Universal Service Provider. We must also maintain existing levels of Government ownership and control. Service standards cannot be guaranteed unless the Government retains a power to direct Telstra in the public interest.

Cost of the USO and Public Disclosure of USO levy cost data

Several witnesses to the Inquiry addressed directly the issue of Telstra's 1997-98 USO levy cost claim. The witnesses, Telstra's competitors, disputed the amount of the claim and called for amendment to the USO levy regime.

> *The recent $1.8 billion USO claim by Telstra has served to highlight the need to strengthen the legislation in this regard. The very size of the claim (over seven times the value of claims in previous years) and the inadequacies and shortcomings in the data provided by Telstra in support of its claim, have generally highlighted the inadequacies of the current arrangements.*[48]

Network Vodafone summarised its concerns with Telstra's claim in its submission, citing an inadequate sampling base for data, the fact the wireless local loop and satellite technologies have not been utilised by Telstra in the delivery of the service,

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[46] Helen Campbell, CTN, Evidence 3 Feb 1999, p 36

[47] Graeme Ward, Telstra, Evidence 16 Feb 1999, p 8

[48] Submission no. 8 (Network Vodafone), p 110

questionable financial parameter values and an equally questionable calculation of the weighted average cost of capital.[49]

Witnesses to the inquiry almost universally supported the notion of full public disclosure of information relevant to the formulation of a USO cost claim. Public disclosure of all data and the basis for calculation of expenses would, they suggest, assist in determining the voracity of the claim.

> *…given that the community pay the bill, they are entitled to know the basis of the calculation.*[50]
>
> ***Senator Mark Bishop:*** *Do you support Telstra's method of calculation of the USO being out there in the public domain so that other carriers, members of your organisation and other interested groups could participate in the debate, to try to have some objective determination of the true cost of the USO?*
>
> ***Ms Campbell:*** *Certainly. The more information that is available to the public and the more capacity we have to participate in this, the better we believe the regulatory regime will be overall.*[51]
>
> *We all have to pay our share of it (the USO). If we have to pay our share of it, we should be able to see the bill and get a decent invoice for us to look over.*[52]
>
> *It has certainly been the experience overseas - and we have always pointed to the UK - that a lot of these problems disappeared when the Regulator said, 'Alright British Telecom, just make your costs available to your competitors.' If for no other reason than the shame factor - that they could not have inflated and outrageous costs…*[53]
>
> *If we were the USO provider and we had put in a $1.8 billion claim, expecting Telstra to pay a levy of $1.5 billion to us, you can be sure that Telstra would be at the table here demanding that there be full disclosure of all our costs for making them pay a levy of $1.5 billion.*[54]

Telstra expressed its opposition to the notion of full public disclosure:

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[49] at p 111

[50] Alan Horsley, ATUG, Evidence 3 Feb 1999, p 1

[51] Helen Campbell, CTN, Evidence 3 Feb 1999, p 36

[52] Alasdair Grant, AAPT, Evidence 3 Feb 1999, p 10

[53] Bruce Meagher, C&W Optus, Evidence 3 Feb 1999, p 10

[54] Chris Dalton, Vodafone, Evidence 3 Feb 1999, p 21

> *…we do not have any problem with making most of the information available. However, we are in a competitive environment and there is certain information that we would not like competitors to have because it will give them a certain advantage. I have described one of those; that was the component parts of the weighted average cost of capital.*[55]

Opposition Senators are aware that the Australian Communications Authority is at present analysing and assessing Telstra's USO claim. Reports released by the ACA in recent weeks bring into question aspects of Telstra's calculation, in particular the figure allocated to the Weighted Average Cost of Capital.

Opposition Senators agree with Telstra's competitors and interested parties that there is far too much secrecy associated with the calculation of the USO cost.

There is particular validity in the argument that as the public are ultimately the ones to bear the cost of the claim, information relating to its calculation should be more readily available upon request.

Conclusion

Opposition Senators welcome the move to consolidate all existing provisions relating to consumer protection and service standards in the one Bill.

In respect of the Customer Service Guarantee, Opposition Senators urge the Government to work harder to promote awareness of the existence of the Customer Service Guarantee.

With respect to the issue of competitive tendering for the Universal Service Obligation, Opposition Senators note the evidence of witnesses that an ACA report on this issue will soon be released. We certainly agree that this notion is worth examining in more detail.

Opposition Senators share the concerns of numerous witnesses to this inquiry about the magnitude of Telstra's recent $1.8 billion USO cost claim, particularly in terms of its ramifications not only for consumers who ultimately have to bear the cost, but for the viability of competition in the industry if Telstra's competitors are forced to foot this enormous bill.

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[55] John Stanhope, Telstra, Evidence 16 Feb 1999, p 7

Recommendations

Opposition Senators recommend that the *Telecommunications (Consumer Protection and Service Standards) Bill 1998* be amended to ensure that in the event of a delay in the provision of service due to a network fault, the carrier responsible for the fault, not the carriage service provider, be required to compensate any effected consumers.

Opposition Senators recommend that the Government pursue further the notion of competitive tendering of the USO on a regional basis, so long as it is understood that Telstra will remain the National Universal Service Provider.

CHAPTER 5 - CONCLUSION

As in the two previous Senate inquiries into Telstra privatisation legislation, evidence presented to this inquiry confirms that there is significant and persistent community concern about any proposed sale of further shares in Telstra.

In this instance those concerns are magnified by the none-too-subtle attempt by the Government to by-pass the authority of the Parliament and sell off 100% of Telstra by way of a sham inquiry.

No new or compelling evidence has been presented by the Government to justify its ideological obsession with privatising Telstra.

Opposition Senators would welcome an opportunity to debate the merits of the *Telecommunications Legislation Amendment Bill 1998* and the *Telecommunications (Consumer Protection and Service Standards) Bill 1998* independently of the proposal to privatise Telstra. As stated above, the issue of Telstra's ownership is irrelevant to the effective operation of a pro-competitive telecommunications regime.

Signed this Day

8th March 1999

Senator Mark Bishop

Senator the Hon Nick Bolkus