

**Submission by PowerTel Ltd
to the
Senate Environment, Communications, Information Technology and the Arts
Legislation Committee**

Trade Practices Amendment (Telecommunications) Bill 2001

PowerTel is pleased to have the opportunity to make a submission to the Committee.

PowerTel wishes to raise a specific issue relevant to Part XIC which is threatening to affect a number of other carriers in their dealings with Telstra. It points to a significant flaw in the operation of Part XIC of the Trade Practices Act.

Part XIC of the *Trade Practices Act* was drafted at a time when the focus of the industry and the regulators was on access to the incumbent's PSTN network. In more recent times, new entrants have become more established and are generating significant traffic flows from Telstra's networks to theirs.

There have been disputes within the industry over Telstra's unwillingness or inability to provision its network adequately to deliver these volumes of traffic to new entrants. PowerTel highlighted this in the recent Productivity Commission hearings. The ACCC's suggestion to the Productivity Commission to overcome this situation was that section 152AR of the *Trade Practices Act* be amended to require access seekers to "do all that is necessary to interconnect their facilities with those of an access provider so that there is no impediment to the access provider providing the service".

It has become evident that although this amendment is necessary, it is still not sufficient.

There are currently a number of arbitrations being conducted under Part XIC to determine the price which Telstra pays for the delivery of data traffic to new entrant networks. PowerTel is a participant in such an arbitration. [REDACTED]

[REDACTED] PowerTel is not confident that current regulatory provisions sufficiently bind Telstra to abide by any regulator's decision to attempt to enforce continued connectivity. The need for any-to-any connectivity is a fundamental underlying object of Part XIC and telecommunications regulation (see section 152AB(2)(d) of the Trade Practices Act). The any-to-any connectivity provisions must be strengthened so that industry participants with market power cannot simply refuse to connect to other networks. As a consequence, PowerTel strongly recommends that in addition to the amendment to section 152AR specified above, Part XIC of the

Trade Practices Act be amended to insert a requirement for carriers to provide any-to-any connectivity with other telecommunications networks, at least in respect of declared services, unless specifically exempted by the ACCC.

Alternatively, if this is not acceptable, there should at least be a provision in Part XIC giving the ACCC the power to direct a carrier or carriage service provider to interconnect with one or more other telecommunications networks for the supply of a declared service, or for the continued supply of an existing service, to allow commercial and contractual arrangements to be finalised between parties.

PowerTel would be pleased to provide any further information that to the Committee requests.