

CHAPTER 4

THE BEST WAY TO PROTECT CONSUMERS: REGULATION OR OWNERSHIP?

4.1 Many of the submissions argued that once Telstra is fully privatised it will no longer be committed to maintaining and improving services to regional Australia and that the government will be powerless or lack the political will to compel it to do so. These submitters claimed that only by continuing to have majority ownership of Telstra will the Government have the ability to exercise control over Telstra and ensure that it fulfills its community obligations.

4.2 This view was not shared, however, by most of those directly involved in the industry, either as industry players or as regulators. Amongst this group there was almost universal acknowledgement that ownership had nothing to do with the Government's ability to regulate, and indeed some submitters amongst this group pointed out that the Government would be a more effective and impartial regulator when it was no longer the majority owner and beneficiary from the profits of one of the industry participants. AAPT commented that:

While the Government has appeared to be hands-off in the management of Telstra, there is nevertheless concern among industry participants that telecommunications policy may be unduly influenced by the Government's desire to enhance the price of Telstra shares and to return dividends to Telstra shareholders (including itself) over and above the returns to shareholders of other firms investing in telecommunications.

Opponents of Telstra privatisation argue that a public controlling interest in Telstra is necessary to curb undesirable behaviour of Telstra. Yet there is no evidence that over the last six years the Government had influenced the behaviour of Telstra any more than it has influenced any private sector corporation.

The Government's control of Telstra has been exercised principally through legislation. ...legislation has controlled aspects of Telstra's behaviour (and other carrier's behaviour) such as the ongoing requirement for universal service, customer service guarantees, and some price controls.¹

4.3 While these comments relate principally to competition and carrier access issues, they apply equally to consumer protection.

4.4 In this regard, the Committee noted the general lack of awareness by many private submitters of the extent of government regulation already in place to ensure

1 Submission No. 114 (AAPT), p. 5.

that consumers, no matter where they live, receive an adequate standard of telecommunications services. There was also a tendency by many submitters to fail to recall how things were before the privatisation process began. Again to quote AAPT:

It is now hard to remember the days prior to any liberalisation of the telecommunications regime. In that era Australian business and residential customers were dependent on the service provided by Telecom Australia. They were subjected to a number of incredibly damaging industrial disputes that brought Australian business to a near standstill. They suffered long delays in receiving new and innovative services, and customer service was very poor.²

4.5 There was no effective intervention by government on behalf of consumers in those days, when it fully owned the monopoly telecommunications provider. Telstra seemed only to connect telephones and repair faults when it was good and ready. It was only when the Government decided to move to full privatisation that regulation was introduced to protect consumers, as well as to promote competition which is the subject of the next chapter.

Current consumer safeguards

4.6 Telecommunications legislation currently provides a large array of consumer protection measures. In addition to general consumer protection (general contract law, State and Territory fair trading laws and Part V of the Trade Practices Act), the Telecommunications (CPSS) Act and telecommunications carrier licence conditions provide a range of specific safeguards. As well as these safeguards which apply to all telecommunications service providers, there are a number of Telstra specific regulations.

4.7 Telstra is responsible for providing the Universal Service Obligation (USO) that ensures that all people in Australia have reasonable access, on an equitable basis, to standard telephone services, payphones, prescribed carriage services and digital data services.

4.8 The Network Reliability Framework (NRF) that came into effect in January 2003 requires Telstra to meet performance standards, particularly in relation to multiple faults, for its nearly 8 million residential and small business customers with five lines or less. If the threshold level of multiple faults is breached, Telstra must take action to fix the problem. All breaches must be reported to the ACA and the ACA can direct the remediation of individual services and take enforcement action, including in the Federal Court. Telstra is also required to publicly report every month on the performance of its network, and the ACA can use the data to identify problem areas requiring remediation. Indeed, as a result of the NRF, the ACA has identified 54 exchange service areas (ESAs) throughout the nation (in NSW, Queensland, the Northern Territory, Western Australia, Victoria and Tasmania) in need of

2 Submission No. 114 (AAPT), p. 3.

improvement and plans will be developed to improve their performance. It is expected that work to improve most of the ESAs will be completed by the end of the year and the ACA will monitor and report on Telstra's progress. According to Telstra, 'This activity complements continuing Telstra programs to upgrade its network including a \$231 million Network Reliability Program starting in 2003/04. In 2002/03, Telstra undertook the \$165 million Rural Network Taskforce and began implementing the Network Reliability Framework'.³

4.9 Telstra also has the following obligations in relation to pricing and services for disadvantaged groups:

- for residential customers, a right to untimed local calls for voice and non-voice calls; for business customers, a right to untimed local voice calls;
- price control arrangements for carriage services, content services and facilities supplied by Telstra, including a requirement to have in place a package of measures for low-income consumers; and
- medical priority assistance arrangements, which provide for a priority assistance service to eligible customers who have a diagnosed life-threatening medical condition.

4.10 In addition to the above, all carriers and carrier service providers must comply with the provisions of the Customer Service Guarantee (CSG) scheme. Under the CSG customers are compensated if a provider breaches performance standards in relation to timeliness of new service connections and fault repairs and the keeping of appointments. The CSG also protects residential customers against failure by a provider to provide standard carriage services. The CSG has been kept under regular review and has been improved several times with installation and repair times reduced significantly.

Targeted funding for future proofing

4.11 In addition to consumer safeguards, the Government has embarked on a strategy of targeted funding initiatives to support the development of sustainable improvements in telecommunications services, particularly in rural and regional areas.

4.12 To date, the Government has provided more than \$1 billion to improve communications and information technology infrastructure and services in regional, rural and remote Australia. The principal vehicle for allocating this support has been the Networking the Nation (NTN) program which was established under the first partial sale of Telstra to provide \$250 million over five years.

4.13 A further \$670 million has been provided under the Social Bonus package for a range of initiatives, targeting areas such as alternative network support, extending

3 Telstra Response to the Regional Telecommunications Inquiry (Estens Inquiry) September 2003, p. 3.

mobile phone coverage, supporting local government networks and upgrading services in Australia's most remote areas.

4.14 The Government's response to the Etsens Report includes allocating over \$180 million to a number of initiatives aimed at further improving existing telecommunications services, 'locking in' service improvements and 'future proofing' telecommunications services in regional, rural and remote Australia. The initiatives aim to ensure that improvements to services achieved in recent years are maintained into the future and that regional users share equitably in the benefits of future advances in technology. This blueprint for 'future proofing' includes a National Broadband Strategy with funding of \$142.8 million over four years to provide access to affordable broadband services in regional, rural and remote Australia.⁴

Additional safeguards

4.15 The Bill reflects the Government's ongoing commitment to protect the interests of consumers, competitors and the community generally. In addition to maintaining the consumer regulatory safeguards such as the Universal Service Obligation, the Customer Service Guarantee, price controls and the Network Reliability Framework outlined above, the Bill provides for new safeguards and future proofing for regional Australia, giving effect to the recommendations of the Estens Report.

4.16 In accordance with recommendations 8.1 and 8.2 of the Estens Inquiry, the Government has undertaken to impose a licence condition on Telstra to maintain a local presence in regional, rural and remote Australia, including through developing a local presence plan setting out the range of activities and strategies it will undertake to maintain its local presence in regional areas, and reporting publicly on its achievements against the plan. Specifically, the Bill gives the Minister for Communications, Information Technology and the Arts the power to impose a licence condition requiring Telstra to prepare and implement local presence plans, outlining proposed activities in regional Australia. A provision will be added to the Telecommunications Act to enable the Minister to establish administrative arrangements for the implementation and monitoring of these plans.

4.17 The local presence plan requirements are aimed at ensuring the continuation and further development of such Telstra initiatives as Telstra Country Wide (TCW) which was established to improve the delivery of services to regional, rural and remote Australia. In its response to the Estens Inquiry, Telstra confirmed, 'its commitment to regional, rural and remote Australia and will continue its local presence based on the Telstra Country Wide business model (Recommendation 8.1).

4 Submission No. 135 (DCITA and DOFA), p. 22-26.

Telstra would have no difficulty with a licence condition that has the objective of maintaining the benefits from an ongoing local presence.’⁵

4.18 Telstra Country Wide was launched in June 2000 and is responsible for 5.9 million services with revenue of more than \$5 billion. According to Telstra, ‘Telstra Country Wide has delivered significant and sustainable improvements in communications across Australia and is committed to continuing these gains on behalf of our customers. The key to our progress has been the Telstra Country Wide business model that bases our 35 Area General Managers and their sales and service teams in the communities they serve around Australia’.⁶ Inherent in the TCW concept is the devolution of responsibility to local managers for building business opportunities and understanding and meeting the service requirements of regional customers. During the course of the inquiry a high degree of satisfaction with the Telstra Country Wide business model was evident. Mrs Brown of the Country Women’s Association of NSW, for instance, said at the Sydney hearing, ‘Country Wide had given us back a face ... Country Wide brought back, to a large extent, a local face. I have to say that all their representatives are wonderful people and are willing to backtrack’.⁷

4.19 In line with the recommendation of the Estens Inquiry, the Bill also provides for the establishment of a Regional Telecommunications Independent Review Committee (RTIRC) to review services in regional Australia at least every five years and to report its findings to the Minister. The RTIRC will be tasked with reporting on the extent to which people in regional, rural and remote Australia have equitable access to telecommunications compared with urban areas and with recommending to the Minister whether action should be taken to improve equitable access. Reviews must include public consultation with people in regional, rural and remote areas. If the RTIRC does recommend particular actions, the Minister will be required to issue a statement announcing the Government’s response. This will ensure that the Commonwealth responds to recommendations and justifies its approach to regional, rural and remote Australia.⁸

4.20 Governments at all levels – federal, state and local – regulate the activities of privately owned companies in the public interest and Telstra is no different. In fact, as explained above, the current Bill strengthens the capacity of the government to regulate Telstra by enabling the Minister to include specific conditions in Telstra’s licence and by providing a regular review and reporting system on its performance. Some submitters argued that the Bill should not be passed until a much more extensive range of regulations was in place. This assumes that once Telstra is fully privatised the Government will be powerless to introduce new laws and regulations

5 Telstra Response to the Regional Telecommunications Inquiry (Estens Inquiry) September 2003, p. 2.

6 Telstra webpage.

7 Mrs Margaret Brown, *Proof Committee Hansard*, 30.09.03, p. 30.

8 Explanatory Memorandum, pp. 18-19.

should the need arise. Some of the same submitters made the point that laws and regulations passed by this Government will not be binding on future governments and could be changed. Existing regulation need not, of course, remain static and future governments can enhance it as circumstances require, for example by expanding the USO to include a requirement to introduce technological upgrades.

4.21 Indeed, the Committee would contend that the Government would be better able and more willing to regulate a corporation which it did not own than one it did. By privatising Telstra the inherent conflict between the government being both owner and regulator will be removed. In a free market Telstra will be just one among a number of private companies, required to compete for customers and meet certain standards, no longer owned by a regulator with a vested interest in its profitability. As long as Telstra remains a state owned enterprise there will always be the temptation for future governments to shift the regulatory balance away from protecting consumers to maximising revenue streams from this huge asset. The consumers who would be most vulnerable in this situation would be those living in rural Australia. The Committee agrees with ABN AMRO Rothschild that not only is regulation not dependent on ownership, but it can actually impede effective regulation:

The privatisation of Telstra, which, of course, is partly privatised already, and the further sell down of Telstra is an independent observation to the regulatory environment. It does not impede at all the government's ability to regulate. Arguably, to reduce the removal of a conflict actually improves the government's ability to regulate.⁹

4.22 Some submitters, while not unhappy with the level of existing and proposed consumer safeguards, were sceptical about the willingness of governments of any persuasion to effectively regulate what would be the country's largest and arguably most powerful privately owned corporation. The Committee took the view that the public would not accept sub standard telecommunication services and that no government would be prepared to risk losing voter support by failing to enforce regulations, especially as it no longer had a stake in Telstra's profitability or revenues.

4.23 The claim was also made that initiatives such as Telstra Country Wide were simply a marketing ploy to win public support for full privatisation and that Telstra could not be relied upon to continue with it once it was fully privatised. In its evidence to the Committee, Telstra said that TCW was a successful business model and practical evidence of this was that it was being extended to outer metropolitan areas. Telstra said that, '... our guarantee that we intend to maintain it is further evidence that we think it is in our commercial interests to do so. It works'.¹⁰

9 Mr McCann, *Proof Committee Hansard*, 30.09.03, p. 96.

10 Mr Scales, *Proof Committee Hansard*, 2.10.03, p. 58.

Disability services

4.24 Concerns were expressed by the Combined Pensioners and Superannuants Association of NSW and by the Telecommunications and Disability Consumer Representation (TEDICORE) about the future of the wide range of services currently provided by Telstra to people with disabilities. Both organisations expressed their satisfaction with these services, but were fearful that they would be discontinued or scaled back if Telstra were fully privatised.¹¹

4.25 Again the Committee took the view that ownership was not the issue here. Special provisions to ensure that people with disabilities have access to standard telephone services are prescribed in legislation and regulations. The USO provider, currently Telstra, is required to supply equipment to people with disabilities, including teletypewriter machines, modems, handsets with hearing aid couplers, hands free telephones, adaptors for people with cochlear implants and telephones with adjustable ring tones and voice amplifiers. TEDICORE made the point that Telstra provides some services to people with disabilities outside its USO obligations as a good corporate citizen. As Telstra already operates as a commercial enterprise, free of government interference in its management, there is no reason to believe that it would cease to provide these services after full privatisation. In any event there would be nothing to prevent the Government from introducing new regulations to ensure that these services continued in the unlikely event that they were ever under threat.

11 Mrs Maureen Ballantine, *Proof Committee Hansard*, 30.09.03, pp. 80-81. Ms Gunela Astbrink, *Proof Committee Hansard*, 03.10.03, p. 50-51.

Telecommunications Regulatory Controls Imposed on Telstra Corporation Limited

