

CHAPTER 5

COMPETITION REGULATION

5.1 It is worth recalling that under the Labor Government there was little by way of competition in telecommunications – very little choice of phone company and access to very few services. The Howard Government introduced full and open competition to the telecommunications market in 1997. This has resulted in:

- greater choice of provider. There are now 89 licensed telephone companies (40% of whom operate in regional Australia) – in 1996 there were just three;
- significantly lower prices; and
- an increased range of products and services.

According to the latest statistics from the ACCC, all call prices fell 24.8 per cent between 1996 and 2001. Fixed to mobile call costs fell by 13.3 per cent, mobile call costs fell by 27.4 per cent, local call costs fell by 29.1 per cent, long distance call costs fell by 29.6 per cent and international call costs fell by 61.2 per cent. The price of fixed telephone calls for people living outside capital cities fell 22.4 per cent.¹

5.2 An independent report by the Allen Consulting Group, commissioned by the ACA, found that competition benefited consumers to the tune of between \$595 and \$878 per household in 2001-02 and led to \$900 million in increased profits per year for small business.² Mr Willet of the ACCC said that, ‘I think it is true to say that the reforms implemented to date have been positive in terms of increasing competition in communications services-telecommunications services more generally-and increasing benefits to consumers’.³ In addition to open competition stimulating new investment of almost \$20 billion, the Allen Consulting report found that it has increased the size of the economy by \$10 billion and created 100, 000 new jobs.

5.3 Most of Telstra’s competitors, while supportive of full privatisation, expressed concern about Telstra’s market power and argued that consideration needed to be given to strengthening the powers of the competition regulators and to structural issues.

5.4 Telstra’s corporate governance is covered by four main classes of laws:

1 ACCC Telecommunications reports 2000-01.

2 Allen Consulting Group Benefits resulting from changes in Telecommunications Services Report for the ACA – October 2002.

3 Mr Ed Willet, *Proof Committee Hansard*, 14.10.03, p10.

- laws applying generally to Australian companies such as corporations law, taxation laws, and the Australian Stock Exchange listing rules, as well as;
- the Trade Practices Act;
- laws relating specifically to the telecommunications industry such as the Telecommunications Act, and the Telecommunications (CPSS) Act ; and
- specific requirements on Telstra contained in the Telstra Corporation Act .

5.5 The competition elements of the telecommunications framework are covered by two parts of the Trade Practices Act. Part XIB addresses anti-competitive conduct and a range of competitive reporting requirements. Part XIC specifically addresses issues of access to telecommunications facilities and services. The telecommunications specific rules complement, while going considerably beyond, normal trade practices law.

5.6 Part XIB supplements the ACCC's general powers to deal with anti-competitive conduct by enabling it to issue competition notices to carriers and carrier service providers with substantial market power engaging in conduct with the purpose or effect of substantially lessening competition. The issue of notices is designed to promptly stop the conduct and opens the way for substantial penalties and damages. Under Part XIB, the ACCC can also require a carrier or carrier service provider to file its charges and can make record keeping rules requiring them to keep both financial and non-financial information in a prescribed form. The ACCC is also required to report on competitive safeguards and telecommunications charges and, where directed, about the level of competition in the industry.

5.7 The telecommunications access regime under Part XIC is designed to promote the interests of end users by facilitating access to the networks of carriers. This includes declaring services for access, approving access codes, approving access undertakings, arbitrating disputes for declared services and registering access agreements.

5.8 The ability to access the networks and services of competing carriers and carrier service providers, particularly to originate and terminate traffic, is considered essential to the development of competition in telecommunications. If the ACCC declares services, carriers and carrier service providers are required to provide interconnection with, and access to the services, together with various ancillary services (eg. billing data, conditional access equipment). In the first instance, terms and conditions of supply for declared services, including price, are negotiated commercially. If these negotiations are unsuccessful, then access is provided under terms set out in an undertaking given by the access provider. If a matter cannot be resolved and is not covered by an undertaking, or an undertaking is not in place, the ACCC may determine terms and conditions.

5.9 In 2001, the Government introduced amendments to streamline the access regime, thereby facilitating the commercial settlement of access disputes.

5.10 The competition regulation was also amended in 2002, in response to the Productivity Commission report, *Telecommunications Competition Regulation*. Key measures included provisions to:

- encourage further investment in infrastructure for broadband and other key communications services, by enabling potential investors to obtain up-front certainty about access prices and terms and conditions;
- provide greater certainty and more timely access for access seekers by removing merits review of ACCC arbitrations, requiring the ACCC to produce model terms and conditions for 'core' telecommunications service, encouraging voluntary undertakings and ensuring the effective operation of the standard access obligations;
- improve the operation of the anti-competitive conduct regime; and
- enable the Minister to give a direction requiring the preparation and publication of enhanced accounting separation measures to provide greater transparency of Telstra's wholesale and retail operations, particularly in relation to the core interconnection services provided over Telstra's network.⁴

5.11 Mr Cheah of DCITA stated that:

I think the government's view at the moment is that the competition regime now strikes the right balance in relation to competition issues. As you would be aware, competition issues have been subject to amendments over the last two or three years on an almost annual basis, the last one being a fairly comprehensive set of changes in response to the Productivity Commission Inquiry. I think the government's view currently is that it is comfortable with the current settings and thinks that they need to be given a chance to work through. The evidence from disputes within the industry seems to have died down a lot. I think the view is that the current settings need to be given a chance to work properly.⁵

5.12 In any case, the question of competition regulation is separate to the ownership of Telstra. Competition regulation is not static and the Government has consistently displayed a willingness to improve the regulatory regime. There is no reason that this will not continue into the future. According to Mr Cheah:

I think the government's consistent view is that the issues of competition regulation have been delinked from the issue of privatisation. The two things are not related, in the government's view. You can deal with competitive structural issues without looking at ownership questions. Ownership is not linked to regulatory matters.⁶

4 Submission No 135 (DCITA and DOFA), pp. 17-22

5 Mr Chris Cheah, *Proof Committee Hansard*, 7.10.03, p. 2.

6 Mr Chris Cheah, *Proof Committee Hansard*, 7.10.03, p. 3.

Accounting separation

5.13 In June 2003 the Minister for Communications, Information Technology and the Arts issued a Direction to the ACCC that requires the ACCC to issue Record Keeping Rules to Telstra to implement the enhanced accounting separation measures.⁷ This accounting separation will make Telstra's costs and its treatment of access seekers more transparent and it was considered a particularly important step by a number of submitters. ATUG commented that:

The issue with services based competition is that whoever owns the infrastructure gets to control the cost structure of the downstream retail service providers. That is why the accounting separation regime that has just been put in place is terribly important for us to get transparency on what those costs look like if the infrastructure owner is selling to their own retail arm compared to selling to their competitors' retail arms.⁸

5.14 In his evidence Mr Feil of the National Competition Council (NCC) stated that:

The legislative changes required Telstra to prepare separate accounts for its wholesale and retail operations. To complement this accounting separation by Telstra, the ACCC has been introducing changes to record keeping rules that it applies to the major telecommunications companies. These reforms in general somewhat mitigate the concerns about the market power of Telstra.⁹

5.15 The measures introduced by the Government in recent years have considerably enhanced the powers of the ACCC to create a more competitive environment. Even before these measures were introduced, evidence provided by the ACCC showed that prices for telecommunications services overall fell by approximately 19 per cent between 1997-98 and 2001-02, and increased competition was thought to be a major contributing factor in this fall.¹⁰ The ACCC went on to state:

I think it is true to say that the reforms implemented to date have been positive in terms of increased competition in communications services – telecommunications services more generally – and increasing benefits for consumers. As I noted, I think those benefits have been most pronounced where competition has worked best.¹¹

7 Submission No. 135 (DCITA and DOFA), p. 22.

8 Mrs Rosemary Sinclair, *Proof Committee Hansard*, 30.09.03 p. 57.

9 Mr John Feil, *Proof Committee Hansard*, 14.10.03, p. 3.

10 Mr Michael Cosgrave, *Proof Committee Hansard*, 14.10.03, p. 9.

11 Mr Ed Willett, *Proof Committee Hansard*, 14.10.03, p. 10.

5.16 In terms of whether there was any link between ownership and its ability to regulate, the ACCC confirmed that its regulatory power was entirely independent of ownership:

None of our role relies on partial ownership or on any ownership issue. Our role is a regulatory one and it relies on our powers under legislation.¹²

5.17 While some submitters argued that the recent strengthening of competition regulation was welcome, but did not go far enough, the Committee took the view that the full impact of the recent changes to competition regulation introduced by the Government had yet to be felt and it would be premature to be considering further changes at this early stage.

5.18 Some submitters raised concerns about structural issues, but stopped short of advocating full structural separation at this time given the complexities involved and issues of compensation for private shareholders. The Committee noted that in February this year the ALP announced that it would not be pursuing structural separation as:

... the existence of the minority shareholding in Telstra and the cost and complexity therefore associated with such separation, make that an inappropriate strategy for reforming Telstra.¹³

12 Mr Ed Willett, *Proof Committee Hansard*, 14.10.03, p. 11.

13 Lindsay Tanner MP, 6 February 2003.

