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Dr Jacqueline Dewar  
Acting Secretary  
Reference Committee  
Environment, Communications, Information, Technology and the Arts  
Canberra ACT 2600 As per email ecita.sen@aph.gov.au

Dear Dr Dewar,

**Re: Inquiry into the Australian Communications and Media Authority.**

Please accept my submission to the enquiry.

The most serious issue with Telstra is the market power that exists from the media, and in particular the cartel as identified many times by the ACCC.

My document especially focuses on the increasingly more powerful media influences over time that has lead to the chaotic situation with Telstra and how it has corrupted the Government's digital transition program. With this power behind them, Telstra ignores the regulations. Without a new Government disciplinary system, new regulations will be just as ineffective.

My suggestion is that Government regulations should mandate the international standards so essential to complete the digital transition. Government then must have conformance testing within a public institution, preferably a University. The networks must conform to these standards. Regulations should be simple enough for the average Australian to understand.

Australia has complex regulations and too many ambiguities, like UK, that need the law courts to interpret. They do not call up standards and conformance testing. Technologies should not be allowed in consumer markets before University evaluations and conformance testing to standards is complete. Non of these are available to discipline Telstra or markets in Australia. This is a hopeless way to regulate a market.

This would never be permitted with, the motor industry, with the electricity supply industry, with the gas industry with the aircraft industry etc, only with the telecommunications,

television and inter active multimedia industry, an industry now almost in the complete control of a private media cartel.

The USA and the EEC recommendations are far more straightforward and clear in their intent. The technologies are far better understood as being of special importance to their economy. China now is even more intensely focussed on technologies for open world markets and international standards, not inefficient proprietary systems, as we seem to be supporting to assist the media to monopolize markets in Australia.

News Ltd in particular is extremely clever at getting ambiguities into Legislation. In Australia when Government was preparing legislation for the introduction of PayTV, News Ltd had five Lawyers in Australia from London working with the Government drafting group. Philips, from Europe advised me of three lines that they interpreted as permitting a private encryption scheme in all PayTV services, pointing out that this should be the Government's responsibility, not private. When I personally, with another senior manager from Philips drew this point to the Minister, his response was "Well, we will see what the House does with it". It was passed in legislation.

The Government has clearly defined the problem, "Neither Fish nor Fowl" but lacks analysis of the true causes. The Government's action, as the solution, is to sell Telstra. If Telstra is sold, the causes remain. Telstra would be another asset that by persuasion or Government influence is controlled by News Ltd. Too many politicians seem powerless against such influences.

Government's major problem with Telstra is "Government no longer has legal, financial or technical controls to discipline Telstra" even with its 51% ownership. The technical, commercial and social values of Telstra to the public is such that the idea to sell Telstra is absolutely irrational, illogical, and most certainly, a most abusive and most destructive concept of fair trade and open markets and democratic principles, possibly a world's worst experience.

The media quite easy defend almost any anti competitive market behaviour by good lawyers as in the UK and in Australia. I was involved with the UK problem for two and a half years, even from Australia. Even then, an out of court settlement was never realized. It has been done many, many times at severe costs to electronic industrialists, retailers and consumers, both in UK and Australia. The media power to influence law is real, especially a media cartel with also Telstra on it side. The discontents run out of money while the media cash still flows. It must be restrained.

The ACCC have all the information.

I will be sending to you, with a hard copy, of a letter sent to me via Dr Brendan Nelson who has been assisting me to get the electronic industrialists arguments to the Ministers. The response letters for many years from the department have been along the same line of argument, "Government must sell Telstra to pay off debt", but never from the same person twice. Daryl Williams was the first to focus in on the issues of industry concerns.

Our industry organized teams of up to twenty engineers at a time to visit Australia. The team members were the more specialist engineers from different companies of the

international electronic industrial consortium, from France, Belgium, the Netherlands, UK and USA. They generously united, world wide, to come as, a coordinated team, to demonstrate digital systems to Government, to Broadcasters and to Retailers. Moving all the equipment and setting up in Sydney at Darling Harbour and then to Canberra. These several visits cost many millions of dollars, to bring complete broadcasting systems from different countries, through customs, with transmission equipment and HDTV cameras, for live demonstrations of all these technical issues, free and subscription, inter operability, backward compatibility, telephony, that were researched, invented, developed and put into production.

Systems are engineered from studio to receiver by the consortium of 250 international companies. The demonstrations were on air, via Terrestrial channels, via the new Telstra cable, from Sydney to Melbourne, via Optus cable from Sydney to Adelaide, and on satellite, and in mobile vans crossing the Sydney Harbour Bridge. Optus gave us free satellite time for days on end, normally \$30,000 dollars an hour. We have demonstrated these for both free and subscription, for standard and HDTV and how it can be managed with telephony. We had links for hours on end to Europe and USA to show compatibility with these circuits, mainly for broadcasters.

The media development is with engineers, for instance in Israel and UK, to work out modifications to make the new-engineered systems proprietary. This corrupts inter operability with international standards as News Ltd has done on in the UK, New Zealand and on the Telstra cable. They interfere with the Standards Australia work groups to delay the introduction of digital into Australia. I was personally responsible, for the digital engineering between Telecom Australia engineering and the consortium digital directions in technologies and later Telstra. Broadcasters were well supported with trial equipment for studio management and free to air digital broadcasting before commercial commitments.

The brilliant young engineers work in worldwide consorted teams, (in a way politically supported by some countries like the space program, now with sixteen Government members). These engineers work towards an international common inter operable digital package for all people, for free, pay and subscription, not for media cartels to then monopolize (the digital divide).

In the mid 90's the international consortium of electronic industrialists, with the financial support of the EEC sent council members to visit the Australian Government and invite the Australian Government to become a member of the international consortium. Their prime mission is for one world inter-operable seamless package of digital standards for telecommunications, television and interactive multi media to realize outstanding efficiency gains in all markets. Government members listened to their lectures and attended conferences. But this was not an objective for media companies. FACTS persuaded the Minister, and Standards Australia that membership was not necessary.

When the Telstra cable was near ready for commercial applications, News Ltd engineers from London modified the Telstra public cable to install News Ltd proprietary system.

Since this was done and since the Government has ignored their advice to the contrary, the consortium of international electronic industrialists has agreed not to spend any more money for the Australian program. So Australian distributors have a major job to convince their

laboratory and factory units to manufacture digital equipment for Australia. If they did they are faced with the continual inclusions of privately owned proprietary modifications, an expensive program that also destroys their international objectives.

UK, Australia, New Zealand and China have News Ltd proprietary systems. China permitted News Ltd to install a system for PayTV but only on the basis that China controls programming. News Ltd will not be able to achieve these objectives in the USA as it has now been blocked by the recent FCC announcement. The FCC put the News Ltd arguments on their website as they were presented and discussed. This transparency does not exist in Australian politics. In Australia such discussions are kept in secret from the public, as was the case in UK. The easiest and most valuable world's best prize for News Ltd is the new Telstra cable with no capital-intensive outlay, for the worlds largest optical cable system to the home under proprietary control of News Ltd. Telecommunications networks have always been open to anyone in Australia, until near two decades ago.

Since, Government has not been able to control Telstra and instruct the telecommunications utility be open to all users. Telstra with digital, not analogue, networks for telecommunications, television, interactive multi media services is just a modern telephone utility and should be treated by Government accordingly.

Telephone utilities were built to service markets, like road networks, like rail networks. Telephone utilities were never built by nations to buy up market segments, one at time and lock out access by some to these markets as Telstra now does in Australia. Telstra is completely out of the control of Government, financially, technically and socially.

The Australian required modifications to the digital television receiver not only delayed the start of digital free to air in Australia by six or seven years but added considerable additional costs and blocked it from being used on cable or satellite.

I attach a hard copy of a letter from Mr Daryl Williams to Dr Brendan Nelson. Dr Brendan Nelson has been assisting me with inputs to Government and the ACCC. With Senator Coonan, we are back to the department again, with the usual reply on her behalf. It's hard work!

So I will use Mr Daryl Williams's letter to explain my comments that would have been returned to Mr Daryl Williams as further input. However, the Minister stepped down before we could expand on these issues.

The numbers refer to the content text as numbered on the hard copy I will send by mail.

- 1 Telstra, a telecommunication utility manages electronic carriageway, electronic roads to and from homes. It is one of the most important utilities in the information age, but privatisation will not allow it to realize its full potential. Already the media have blocked any new potential for nearly two decades. Telstra has already dismantled what Telecom installed, to ensure that it will not provide for Australians its full potential. It now has been "fixed" to provide the full potential for a media cartel. The News Ltd roadblocks have already been installed to block open access to all. No one is allowed to use the cable for what they need in the "information age" only those as

- commercially permitted by the media cartel. (I thought all ages were information ages, I think the statement should be “ the digital transition age”).
- 2 How do “electronic roads” create a conflict of interest? Are there three or four private companies with auctioned licenses from Government to provide a choice of roads for me to leave my house? This is illogical. My paper explains how it is just as illogic for telecommunications. Imagine five rows of wires and telephone poles past my house so that I can have a choice of which phone company I will use and five phones in every room, for competitive choice. The Government has a responsibility to the people to provide the most efficient roads as possible, not as many as possible (phone utilities in USA by inheritance are several companies, in most countries, one Government owned utility. In USA they are very strictly regulated.)
  - 3 Following the publication of this ACCC report, I wrote to Professor Allan Fels and to the Minister and explained why the ACCC recommendation to “divest the cable”, was so illogical. I support the divestiture of Foxtel. If the ACCC had even a very basic engineering study of the problem they would immediately recognize the nonsense of Foxtel. Professor Fels did focus on the most serious problem for Australia, the media cartel. The professor was retired 12 Months early.
  - 4 No one yet has received permission to use the cable, either via Foxtel, or via Telstra (except BigPond), which as the Minister’s letter points out, is illegal, if access is denied. I refer to a court case Telstra v Ch 7. Channel seven lost their case. But no one should need to negotiate with Foxtel. The cable belongs to Telstra. Telstra should not only allow open access but this would be good business, Telstra should be promoting the use of the cable for the new digital technologies. They don’t. It is still restricted for the use of Foxtel and Foxtel cartel partners. The cable should be open for any one to use as the Minister’s letter points out. It is not. My concerns have already been realized. Foxtel is the only company permitted to use the cable for digital television.
  - 5 Standards Australia have with long delays, produced the Free To Air standard, with a unique requirement, for Australia. But for the digital transition, the standards that must be in the market include, satellite, cable, terrestrial, telephony, free and subscription for one home system (home digital network). The EEC specially states that if Governments are not getting support in all consumer markets for digital standards, then the only solution is to mandate the standards. Australia is way beyond the need for correction due to exceptional circumstances. The public has lost the use of their cable, now for two decades, from when it was functioning to international standards. The FCC has mandated digital standards.
  - 6 The minister is correct. Any private cable owner, the “setting of the standards”, the Minister, Mr Daryl Williams explains before stepping down early, belongs to the cable owner. The owner has the right to set the standards is true. This is the proprietary switch system in front of an analogue TV. The set top box analogue “cable switch” is not a TV. These, are in a sense, switching devices to switch off the cable to those people who did not pay the cable rent. The cable owner would never even consider letting a customer set the standards of his switching device in front of

an analogue TV. That would be insane management on his part. Each private cable company has the right to switch off services if the cable rent was not paid.

But subscription TV and subscription multi media is not about the cable rent or use, its about buying programs from suppliers. The FCC understands that we are not talking about a switch in front of the standard analogue TV when we talk about digital television and inter active multimedia. The FCC has its own engineering group to study these issues. Industry never developed a technology for analogue subscription TV. This switching device never interfered with analogue TV markets or free television. All switching devices still required analogue TV's after them. The "set top box" cable switching later became a channel switch as well as a cable switch and started the trends towards anti trade and anti competitive abuse. Analogue transmissions and programs were complimentary, so there was no simple engineering solution. Digital offers most flexible fair-trade opportunities, hence the FCC announcement for mandated standards re free and subscription TV.

Digital television has a system that analogue television never had. Digital transmission channels are analogue (RF) channels and therefore complimentary with the channel tuner. The programs, or better described as the products, are digitally modulated on the transmission as discrete products. The digital channel can be transmitting several discrete products at the same time. Some can be free, some can be "one off payment" and some can be subscription, any or all options for the delivery and payment of discrete product via the one TV channel, together or one at a time. This flexibility is a special attribute of the digital system for every one to use, customers and suppliers.

The digital subscription system does not control the channel or the cable. It controls the products. It controls each discrete product. This is not the renting of cable or channels being managed. It's about giving or buying a program, a commercial product, from a supplier of choice. If a private cable owner is renting his cable to a household, he is entitled to switch off the use of the cable if the rent was not paid. Telstra should be renting the cable for delivery and payment of TV products to any wishful user in the same way as telephones are rented or roads are rented (the rent of roads are paid by car licence and registration fees and exercise taxes on petroleum etc).

Telstra rents the telephone. Some people use the Internet to buy for instance from e-bay auctions. Telstra has no right to control where and how a telephone line user can buy goods. Telstra has no right to control the distribution channels of e-bay. But Telstra does have the right to switch off phone services if the phone rental is not paid. The media cartel claim is for control of all, the cable, the channels and the products whether the cable is public or private. Even more, the cartel does not have to pay for any cable build, the Telstra cable, that is the public's cable paid for by the public. This I suggest is Government complete loss of financial control of Telstra assets. The public is denied access unless by special arrangement, not from Telstra, the cable owner, but from Foxtel as controlled by the media cartel, not to international standards but by a proprietary system.

The FCC has mandated that no one will do business in USA the News Ltd way. The UK realizes the problem so financed the BBC for about 30 channels to compete with News Ltd's abusive monopoly that had to be tolerated for near a decade.

Government has given the media cartel the control of the Telstra and OptusVision cable, the control on all suppliers as the media cartel's exclusive private control on cable. Every Member of Parliament should know about this most abusive anti competitive, anti social, control on Telstra while the Government at "bull in a china shop" haste, is committing the future of Australians to this already private control, permanently!

This is the most deceitfulness misinformation that is coming from the very top of Telstra, the board and management of Telstra, to the very top of Government, supported by the media cartel, supported by the ACCC and kept completely secret from the consumer. This information has been supplied to Government and to the ACCC from the electronic industrialists now for two decades.

Government, the Telstra board and the Telstra management have all consolidated to permit Foxtel to lock in the exclusive use of the national public telecommunications network as per the requirements of one media cartel. It is not available to any of the media cartel's competitors. They remain locked out by these devious practices.

Government "Competition" policies are completely upside down. Government allows private monopolists to privately control public financed infrastructures. Now in control of the infrastructure the private monopolists use these infrastructures to build in systems that place major constraints and controls on their competitors marketing of "products", thus their monopoly in the market of PayTV and control of Government Technology, financial, legal and social policies. Telstra is out of the control of Government.

(I have, with Philips international assistance, put many quotes and business plans together for broadcasters and PayTV companies, both for the technical and commercial operations. These include for satellite, cable and terrestrial companies, including China Government programs, so have ample experience what these companies try to do and how they do it and how it should be done. Digital can remove these illegitimate trade practices from all markets. Media monopolists are fighting this tooth and nail! Australia has the most powerful).

- 7 The "Multichannel" issue is covered in my document. Another programs to confuse the Government. The industrialists input was ignored and the FACTS proposal was put into the legislation.

The international consortiums planning for future opportunities do not use lawyers and economists for their future international planning for efficient economies. They use science, technology and engineering and then use economists to evaluate the opportunities for markets. China is the world's best example of this approach. USA is number one in % but not growth.

The consequences of the sale of Telstra cannot be more serious for Australia. Telstra would, by normal regulatory standards, be an illegal operator. Telstra is far too valuable and profitable for the public, especially post digital transition, and far more so than it could ever, ever be in private ownership when, then all Australians do not share the profits. But the most important issue of all is its economic and social values to all Australians for Australians and for Australians entry to international (global) markets for Australians not for global owners or private monopolists.

Telstra is a profitable public utility. The sale makes it a profitable private company for the stakeholders' objectives (the ones controlling the Telstra system and also with major influence re public opinion of the share market capitalization. Book value or par value is hardly ever mentioned).

Private owners have far too many conflicts of interest and private objectives. Corruption that facilitates these consequences should not be ruled out. Media companies can promote demote and trade their own shares, or shares they have in small companies. These permit schemes for influence. This is legal but most unethical. Media owners have not become amongst the worlds richest because their businesses make profits. (OneTel and Lake Technologies are examples of small companies involved with the media objectives where media stories differ from reality – quite legal but too often with coordinated public misinformation).

The profit of News Ltd is a pittance.

News Corp Share price	\$22. Div 6c, Yield 0.3%, forecast 0.3%, 2005 and 2006.
Telstra Share price	\$4.92, Div 26c, Yld 5.3% forecast 34c cents and 33c.)

The huge cash flow of Telstra privatized is most likely to benefit News Ltd and cartel partners not Australians. Why should any Government claim that they are being responsible to the people when they insist that Telstra be privatize while News Ltd operates a monopoly on the Telstra cable and controls Telstra a public utility?

So to fix this problem in Australia requires much more than redrafting the regulations. It requires a system and process to enforce the regulations, regulations that are simple to understand by the average person. Mandating technical standards and enforcing conformance testing within a University will do this. This is like the warrant of fitness for motor vehicles, and specifications for road works etc.

Problem solving and improvement programs follow a simple process. Define the problem, find the causes, study and analyze solutions and implement the repairs in priority order.

My document defines the problems, describes the causes and offers a repair solution that will also revolutionize Australia's telecommunications. Improvement process should be continuous, and this should be the ongoing task of the commission proposed in the document. All Government discussions with anybody concerning public property should be made public, transparent as is the FCC process.

The media have the right to operate enterprises in their markets. The people also have the right for protection from abusive practices and the right of access to pluralism of information

and right of open access to telecommunications, television and multi media networks. This must be put into balance. The legislation is really not the problem. The problem is enforcement. Government needs help. Telstra sold is the media cartel win and an intolerable loss for Australians.

In the short time to comment on such a major and most serious problem in Australia, I have tried to cover most essential issues. Please let me know if any points need expansion.

Thank you for this opportunity

Allan J Williams

Director

Attachment: "Digital Telecommunications Infrastructure, a reform proposal." As emailed plus copies of a letter from Daryl Williams, the only Minister that at least took the time to explain with any sense and meaning, the Governments points of view.

(My apologies for typo's, the rush has excluded proof reading)