

SETEL Submission - Senate ECITA Legislation Committee Inquiry - package of bills for the Telstra Sale.

Terms of reference

In examining the bills, the committee consider only the following issues:

- (a) the operational separation of Telstra;
- (b) the role of the Australian Competition and Consumer Commission (ACCC), including:
 - (i) the requirement that it consider the costs and risks of new infrastructure investment when making access decisions, and
 - (ii) streamlining the decision-making processes, including the capacity for the ACCC to make procedural rules;
- (c) the role of the Australian Communications and Media Authority, including:
 - (i) the provision of additional enforcement powers,
 - (ii) improvement of the effectiveness of the telecommunications self-regulatory processes by encouraging greater consumer representation and participation in the development of industry codes; and
- (d) the establishment of a perpetual \$2 billion Communications Fund.

SETEL Comments

SETEL supports the concept of operational separation of Telstra to provide opportunities for the development of competition in the supply of communications services in outer metropolitan, regional, rural and remote areas of Australia.

- We do not want to see imprecise rules perpetuating the ‘gaming’ that has characterised regulatory activity in recent years.
- We accept that there must be a compromise if the Government is to relinquish its partial ownership of Telstra and gain a ‘satisfactory’ return.
- The trend towards market partnerships or supplier aggregation should be perpetuated to ensure provision of viable services in all, including non-commercial, areas.

The ACCC should be empowered to provide additional protection to infrastructure/service supply entrepreneurs along the lines of an “infant industry” protection regime so that investment is not wasted and potential users are not denied timely access to improved communications services.

- Consideration by the ACCC of the costs and risks of new infrastructure/service provision investment when making access decisions has some merit in terms of ‘guaranteeing’ continuity of service supply to users.
- Consideration should be given to provision of protection to market entrants proposing to aggregate supply in areas in which no affordable and suitable broadband service exists. (A community/regional supplier concept.)

- The streamlining of decision-making processes by the ACCC would tend to negate the first-mover advantage enjoyed by the incumbent operator, particularly where access to networks services has to be notified and negotiated by the access seeker. Stronger provisions could be applied where the new entrant was the initiator of service supply in a designated area/region.

The Australian Communications and Media Authority requires additional incentives, or the provision of additional enforcement powers, to address malpractice in the telecommunications sector. Stronger enforcement by regulatory authorities would lessen reliance on the self-regulatory regime and hopefully encourage better practices within the broadening converged communications industry.

- SETEL considers that effective 'enforcement' of consumer codes is being hindered by the lack of obvious 'first-line' statistics on complaints and code breaches. (Too much emphasis is placed on 'last resort' complaint statistics gathered by the TIO.)
- SETEL supports the encouragement and resourcing of greater consumer representation and participation in the development of industry codes and sees merit in the provision of financial support for industry participants or industry associations for the development of consumer codes. (The level of industry participation in ACIF is far too low and is not representative of the broad scope of the communications industry.)
- SETEL advocates the 'licensing' of any participant in the broader converged communications industry that seeks to offer services to residential and/or small business consumers. (Mandatory recognition of any relevant communications industry consumer codes of practice should be encouraged.)

SETEL supports the establishment of a Communications Fund but:

- is concerned that this proposed Fund and the Connect Australia Program applies to regional, rural and remote to the exclusion (apart from the \$50m Metropolitan Broadband Blackspots Program) of small and home businesses located in outer metropolitan and urban areas of Australia in which inadequate communications services are available.
- believes that the total emphasis on non-metropolitan areas of Australia may inhibit or restrict the provision of matching funding from other sources.
- Proposes that the Mobile Connect Fund place more focus on expanding coverage of CDMA networks rather than increasing less relevant, to local users, coverage of GSM networks.

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 8 September 2005.

Attachment 1. (Article for SETEL Newsbrief # 10 25 August 2005)

Connect Australia – A Plan to Future-proof Telecommunications. Does it cover all the bases?

The Minister for Communications, Helen Coonan, recently released a comprehensive package of reforms (Connect Australia) designed to bring Australia up to date with modern telecommunications services. At the 'eleventh hour' the CEO of Telstra sought to entice the Federal Government with a proposal to spend over \$5B (of which a substantial component was to come from Government) to provide high speed (6Mb) services in metro areas and very decent speed services (1.5Mb) in country areas. (If such offerings had been made by Telstra several years ago, instead of burning cash overseas, Australia may not now be so far behind most other OECD countries in terms of broadband development and we would be much happier, with high-speed data services).

The Telstra proposal would have undoubtedly entrenched the monopoly position or domination by the incumbent carrier.

SETEL is pleased that the Minister saw fit to foster the development of competition in the pursuit of broader supply of alternative high-speed data and modern voice services. On a prima facie basis the Plan matches the policies and representations by SETEL in relation to the communications needs of small business. It shows significant promise if it can stimulate competitive supply of modern voice and data services, at affordable levels, throughout the country/nation.

There are three components of relevance to small business – Broadband Connect, Clever Networks and Mobile Connect. In addition, a range of future proofing measures (dependent upon the passage of the Telstra sale legislation – not the actual sale) will be introduced along with reforms to telecommunications competition regulation, a requirement for operational separation of Telstra, tougher consumer protection measures and a public information campaign on consumer rights and legislated safeguards.

Connect Australia must extend to consumers in suburban, outer metropolitan and metropolitan fringe areas and not be restricted to those consumers in regional and beyond areas. The 'bush' is important but so are people in non-CBD areas!

Broadband

Broadband Connect will build on the existing HiBIS scheme (a good concept but far too narrow in scope) by providing an eightfold increase in subsidy funding. It is intended to support the rollout of a range of new suitable infrastructure capable of delivering broadband services to a much larger number of users. SETEL continues to advocate for subsidies in this area as a means of stimulating competition and expanding opportunities for supply of broadband services.

Government Services

Clever Networks will hopefully pick-up on the SETEL representation for other governments (State and local) to become involved in the support of infrastructure enabling the provision of their growing range of services through electronic means. It will also foster the involvement of private entities in partnerships for the provision of infrastructure. SETEL believes that specialist infrastructure providers can work effectively with governments to provide long-life infrastructure (cabling and ducting) to regions and communities thus facilitating faster market entry for service providers in a competitive environment. SETEL also advocated for government infrastructure to be made available to benefit the community and Clever Networks is intended to mesh with Broadband Connect to expand the impact of broadband rollout.

Mobiles

Mobile coverage continues to be an issue of concern for many small businesses, particularly when users are away from urban coverage areas. The expectation for ubiquitous coverage has increased with the number of mobiles in use. Having one system effectively for the country (CDMA) and another for cities (GSM) raises the ire of many users when a service is not available. Therefore Mobile Connect should provide benefits to non-urban users. An added advantage is the capacity of CDMA to be used for reasonable speed data services thus providing flexibility for users in regional areas.

Regulation

SETEL policies advocate competition reform through greater powers being given to the ACCC to enforce operational separation within Telstra and to restrict unconscionable conduct in the marketplace. If new entrants are to be able to gain a foothold in the market they need protection from predatory behaviour. Small business wants to see the opportunities for choice in services made available rather than being 'forced' to accept a single avenue of supply.

The additional consumer measures outlined in the Connect Australia Plan are welcome. Limitations to situations in which companies can claim exemptions for mass service disruptions will lessen the frustrations of businesses affected by network or service outages.

SETEL previously claimed that the inclusion of telecommunications services provided to big business distorted the overall results in the price-capping regime. Segregation of results into the various sectors revealed that residential and small business users were experiencing price increases whereas big business benefited from price decreases. Now big business results will be excluded from the price capping formula but the trade-off is allowing line rentals to increase in line with inflation rather than a lower rate. This could be forward-looking as pricing plans are increasingly losing the volume component (subject to a set limit) and concentrating on an access charge. Mobile 'bucket' or cap plans and internet download plans are good examples.

Consumer Awareness

SETEL has long held the view that consumers are not provided with sufficient information by suppliers about communications products and services to make an informed choice. From a highly protected market environment (involving a single national telco) prior to the introduction of competition, consumers have never been given the opportunity to keep up to date with developments in the communications sector. Suppliers tend to market products and services in technical performance terms rather than benefits to the user.

The Besley Telecommunications Service Inquiry report recommended the need for consumer friendly information and SETEL was pleased to see its claims for consumer information resources to be accepted through production of valuable toolkits by the Australian Communications Authority. However the level of awareness by consumers of telecommunications services and of their rights remains a matter of concern. The small business sector is facing an increasingly complex communications environment when seeking to respond to expectations to make much greater use of electronic services for business operations. So any assistance in demystifying telecommunications is welcome.

Maintaining Momentum is Important

Many former programs in the telecommunications environment have provided only partial solutions. This new plan has the promise of delivering widespread improvement and addressing a large number of concerns. It thrusts the onus of developing competition onto the marketplace (the correct environment) whilst offering strengthened Trade Practices measures. The desired, and expected, end result is the delivery of a vastly improved range of communications services throughout the nation benefiting all users and stimulating the development of applications that will appeal to small businesses and get them more involved in electronic commerce. The communications industry will benefit from considerably expanded expenditure by users.

Attachment 2. SETEL Proposals - Innovative additional Projects

- Suggestion of new projects to enhance effectiveness of Connect Australia
- Establishment of a role for SETEL in promoting broadband to the small and home-based business sectors. Components include involvement of industry associations and identification of areas of need.

Immediate activation of Connect Australia Plan programs.

The following initiatives are recommended to enhance the impact of the Connect Australia Plan by providing support to aspiring service providers who have already sought to offer competitive broadband services in regional areas of Australia.

1. Regional Broadband Entrepreneur Program

- Recognise important contributions to competitive delivery of broadband services to users in regional and outer metropolitan areas by entrepreneurs (such as YRLEES4U).
- Fast-track applications for Government assistance programs such as HiBIS and MBBP.
- Provide promotional support from Minister.
- Establishment of dedicated team in ACCC to deal with complaints against predatory behaviour or unconscionable conduct by much larger competitors, in order to maximise effectiveness and speed-up implementation of valuable assistance programs.
- Develop and distribute case studies to assist similar projects.

2. Regional Community Broadband Committees

SETEL sees a role for regional communities to become more involved in the organisation for the provision of broadband services in their respective areas. SETEL is aware of the Broadband Broker Program and the broadband awareness program being continued by ATUG, but considers that there is a need for local 'ownership' of responsibility for facilitating broadband supply to regional areas.

In some cases this may require lobbying/representation activity rather than simply waiting for the market to provide supply. Current incentive/assistance programs operate at a high level or rely upon the individual aspiring user to activate supply (Telstra's ADSL Register or HiBIS program). (*MBBP provides for service providers to 'aggregate' user interest.*)

The Government could enhance the impact of its Connect Australia Plan by facilitating the establishment of a number of Regional Broadband Infrastructure Development Committees.

SETEL's current policies call for the establishment of a number of Registers and Mapping facilities to clearly demonstrate the deficiencies in supply of broadband to specific areas in outer metropolitan and regional Australia. These committees could

take into consideration the following SETEL policies in determining what action may be necessary to encourage the supply of broadband services in their respective areas/regions. It would be beneficial for these committees to be sufficiently empowered to make decisions about investing in infrastructure or to contract specialist infrastructure developers (e.g. Leighton's or Transfield) to provide community infrastructure.

There is scope for involving equipment suppliers (e.g. Ericsson, Marconi, Alcatel) in these projects.

The main purpose is to gain momentum in the provision of modern communications facilities as part of the innovative Connect Australia Plan.

- Register of Designated Areas in which there is deemed to be zero or unsatisfactory availability of broadband services to small business and residential consumers at affordable rates, equivalent to those payable by counterparts in metropolitan areas.
- Register of Designated Areas in which there is deemed to be zero or unsatisfactory competition in the supply of broadband services available to small business and residential consumers at affordable rates, equivalent to those payable by counterparts in metropolitan areas.
- National Infrastructure Duct Program – Governments to promote (and subsidise if necessary) a national program for the installation of infrastructure ducting in metropolitan, outer metropolitan, regional and rural communities (including country towns in excess of a population of 250 persons) and where there is a lack of critical infrastructure to provide competitive access to broadband services to enable regional communities to take greater control over communications services of relevance and benefit to their communities.
- National Infrastructure Cable Program – Governments to promote (and subsidise if necessary) a national program for the installation of infrastructure cable in metropolitan, outer metropolitan, regional and rural communities (including country towns in excess of a population of 250 persons) and where there is a lack of critical infrastructure to provide competitive access to broadband services to enable regional communities to take greater control over communications services of relevance and benefit to their communities.
- National Register of ADSL-enabled Exchanges – the Commonwealth Government to maintain a register of all telephone exchanges in Australia that enable the provision of ADSL services to users in that region.
- Area Maps to signify reach of ADSL service from exchanges - the Commonwealth Government to maintain a register of spatial and area-specific information relating to telephone exchanges in Australia that have been made ready for the provision of ADSL services to users in that region to indicate the ready availability of ADSL services in that region or area. (Now included in proposed Metropolitan Broadband Blackspots Program).

- Publicly available register (at suitable level of detail) of existence of RIMS/Pair Gain features- the Commonwealth Government to maintain a current register of the location of all network facilities such as RIMS & Pair Gains that affect the provision of ADSL services to users supplied by exchanges denoted as ADSL-enabled.

3. SETEL Project to Work with Industry Associations and Chambers of Commerce to Promote Use of Broadband Services for Business Operations in the Small Business Community.

The Federal Government provided funding to ATUG & SPAN to conduct a series of programs throughout Australia on Broadband during 2004. ATUG is continuing this project but the SPAN Broadband xChange section of the partnership was disbanded after the initial program.

The Federal Government also provided funding to industry associations (including ACCI) to promote the then NOIE program – the e - Business Guide. The uptake of broadband and e-commerce by small business has been far from spectacular despite these programs and SETEL considers that much more promotional work needs to be done to alert small businesses to the utility of e-commerce and broadband communications services to their business operations.

The proposal is for SETEL to seek project funding to work with industry associations and Chambers of Commerce to promote broadband/e-commerce. Part of the process could involve skilling-up regional associations to play a major role in the Regional Broadband Development Committee proposal.