8 April 2005

Dr Jacqueline Dewar
Inquiry Secretary
Australian Senate
Environment, Communications, Information Technology and the Arts
References Committee
Parliament House
CANBERRA ACT 2600

Dear Dr Dewar

Inquiry into the performance of the Australian telecommunications regulatory regime

Please find attached AAPT's submission on the above inquiry. AAPT welcomes the opportunity to participate in the inquiry and the Senate's ongoing interest in a field that we consider to be of significant national importance.

AAPT has made some recommendations in the attached submission, but overall believe there are three principle matters that should be concluded by the Committee;

1. That the core principles of the set of reforms that were undertaken in the 1990s remain appropriate,
2. To ensure adequate resources for the ACCC in the performance of its functions, the single most important of which is a full-time Telecommunications Commissioner who is also a member of the Australian Communications and Media Authority, and
3. Implementing a process of regular reviews of the telecommunications industry and how effectively it meets the social and economic needs of Australia.

In addition to these major objectives AAPT recommends that there be further amendments made to the existing regime being;

That Part XIB of the Trade Practices Act 1974 be amended to;

- Create the ability for the ACCC to proscribe certain behaviours as anti-competitive,
- Provide the ACCC with cease and desist orders in conjunction with competition notices, and
- Provide for treble damages in matters brought under competition notices.

That Part XIC of the Trade Practices Act 1974 be amended to;

- Enable the ACCC to use an expedited process known as a "baseball arbitration" if a dispute remains unresolved six months after notification,
- Clarify the standard access obligations to firmly entrench the principle of non-discrimination; that is that the access provider provides the service to access seekers,

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- Provide that an access undertaking inconsistent with the model terms and conditions must be rejected,
- Require the ACCC to have regard to model terms and conditions developed for core services in any arbitrations.
- Provide for the rejection of an access undertaking if the ACCC is unable to reach a decision within the six month time limit for consideration of undertakings because they had to ask the access provider for any further information.

In relation to structural issues;

- Expand the scope of the regular reviews proposal to include all aspects of the achievement of policy objectives and continue to assess the effectiveness of structural arrangements.
- Require Telstra to support and participate fully in industry-wide programs to address consumer protection issues as part of any review of the regulatory arrangements relating to the further privatisation of Telstra, or agreements reached with Telstra in relation to the sale.

In relation to the powers and resources of regulators;

- The legislation be amended on the model of the energy industry so that there is a single Commissioner responsible for Telecommunications (and no other sector) and that that Commissioner be a member of the ACMA.
- AAPT believes the Department needs additional resources for policy work and policy research.
- We further recommend that a program should be developed to co-ordinate all consumer engagement and research through a funded consumer institute that would replace both the ACMA advisory committee and the ACIF Consumer Council.

I look forward to the opportunity to present the AAPT submission to the Committee and to be of any other assistance to the inquiry.

Yours sincerely,

David Havyatt
Head of Regulatory Affairs

Submission to the
Senate Environment, Communications, Information Technology and the Arts
References Committee

Inquiry into the performance of the Australian
telecommunications regulatory regime

by

AAPT Ltd
April 2005

1. Introduction

AAPT Ltd is pleased to have the opportunity to make a submission to the Senate Environment, Communications, Information Technology and the Arts Legislation Committee's Inquiry into the performance of the Australian telecommunications regulatory regime (the "**regime**").

AAPT has been a participant in the Australian telecommunications regime as a service provider since 1991 and as a carrier since 1997. Our involvement began as a consequence of the experiences of our original parent company, Australian Associated Press, in trying to distribute its content services to its customer base in the regulated environment that existed in the 1970s and 1980s. As AAPT we have been active participants not only in the market for customers, but also in the consideration of telecommunications policy.

While there have been numerous reviews of aspects of the regime over recent years, the outcomes have been sometimes inconclusive. The regime is appropriately predicated on being technology neutral, and avoiding as much as possible intrusive regulation. Given the impending completion of the change of ownership of Telstra Corporation Limited (**"Telstra"**) and the current state of technological change it is likely that aspects of the regime will need to be kept under regular review. Consequently, while AAPT will make some recommendations for change both in this submission and to any process the Government may commence in relation to the further privatisation of Telstra, the most important consideration is that the Government and the Parliament reaffirm their commitment to the current objects of the *Telecommunications Act* 1997 and that these objects will continue to be pursued despite any change in ownership.

While there could be some scope for refinements in the wording the current objects are expressed in terms of consumer outcomes, and address the balance between economic efficiency and social equity, thus as set out in section 3;

> *(1) The main object of this Act, when read together with Parts XIB and XIC of the Trade Practices Act 1974 , is to provide a regulatory framework that promotes:*
>
> > *(a) the long-term interests of end-users of carriage services or of services provided by means of carriage services; and*
> >
> > *(b) the efficiency and international competitiveness of the Australian telecommunications industry.*
>
> *(2) The other objects of this Act, when read together with Parts XIB and XIC of the Trade Practices Act 1974 , are as follows:*
>
> > *(a) to ensure that standard telephone services, payphones and other carriage services of social importance are:*
> >
> > > *(i) reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business; and*
> > >
> > > *(ii) are supplied as efficiently and economically as practicable; and*
> > >
> > > *(iii) are supplied at performance standards that reasonably meet the social, industrial and commercial needs of the Australian community; ...*

This submission consists of three further parts; the first is an expansion on the objects of the regime and achievements of the current telecommunications policy, the second is a detailed

response to each of the terms of reference and the third is a summary of recommended legislative changes.

2. Policy Context and Achievements

The current policy in relation to telecommunications is very largely the consequence of a consensus position between the ALP and coalition. The Labor Government commenced a series of reforms of telecommunications in 1987, and made a significant reform with the introduction of the *Telecommunications Act* 1997. This allowed the introduction of competing operators to the incumbent (AOTC later renamed Telstra) which was limited to one fixed line network (Optus) and two mobile networks (Optus and Vodafone).

A key feature of the 1991 reforms was that the Government indicated it would remove the limits on the number of fixed and mobile operators from 30 June 1997. In September 1994 the then Communications Minister, Michael Lee, issued an issues paper titled *Beyond the Duopoly: Australian Telecommunications Policy and Regulations.* In his foreword to that paper Minister Lee noted "Australia cannot escape the technological and global market pressures in this industry: we must continue to update policies so that we capture the full benefits from the opportunities offered by modern communications."

The process that Minister Lee commenced resulted in most of the principles of the post-1997regime being prepared before the change of Government. There were some items that were finalised after the change of Government and a number of last minute amendments were made in the Parliament. The final outcome was one that is as close to a bipartisan outcome as can be experienced in public policy. That said, at the same time the Government commenced the privatisation of Telstra, but the regime has largely relied on legislative rather than ownership constraints on Telstra.

Whether the overall regime has been a success is a very difficult matter to assess. Comparisons of outcomes with those under the pre-existing regime appears to provide considerable evidence that consumers and the economy are better off. The Australian Communications Authority (the **"ACA"**) has assessed that the economy is 1.6% bigger as a consequence of the telecommunications competition reforms since 1997, and the ACCC competitive safeguards reports have detailed a continuing decline in the prices of telecommunications services and continuing introduction of new services.

However, the story is not entirely rosy. The price of fixed line rentals has increased so low use customers may be worse off. There is also great contention about the speed of deployment and take-up of broadband internet services. The ACCC in both its competitive safeguards reports and its emerging market structures report has identified that the level of competition is still insufficient, and that the pace of change has slowed. At the same time the question of exactly what is equitable access to services remains elusive.

Unfortunately, over the last seven years the focus of debate around the policy issues has been on the question of ownership rather than the underlying questions of policy. Communications Minister Senator Coonan has identified the difficulty created for Government in reviewing policy by its position of majority ownership of Telstra. Senator Lundy when she was Shadow

IT Minister identified an alternative scenario of making ownership a "benign" issue by both committing to not sell the Government's share of Telstra and not attempting to use the position of ownership for control. Unfortunately, neither view has triumphed, so we continue to view the sector through a distorted prism.

Below we describe the essential features of the current regime. It is perhaps worthwhile repeating these, albeit at a very high level, to demonstrate how comprehensive the regime is, and to highlight some of the distinctions that exist in parts of the regime. In no particular order of importance the regime consists of the following elements:

Carrier licensing – to operate network elements for the purpose of supply to the public it is necessary to hold a carrier licence, though there are no limits on the number of licences. A carrier licence provides certain powers in relation to the construction of facilities, and obligations to share facilities. Carriers are required to pay carrier licence fees and to contribute to the USO levy. Carriers may have licence conditions attached to their licence (and a great deal of obligations exist in the Telstra licence conditions).

Carriage service providers – persons who supply services to customers are CSPs and have a number of obligations in the way these are provided. The distinction between carrier and CSP is often forgotten as our largest providers are both, but the majority of their obligations arise as CSPs not carriers.

Access regime – it is recognised that access to each other's network to provide interconnect facilities, and access to certain services is essential and that general competition law under Part IV of the *Trade Practices Act* 1974 could not fulfil the requirements; these provisions exist in Part XIC of the TPA.

Anti-competitive conduct regime – it is also recognised that standard anti-competitive conduct provisions are designed to preserve, not create, competition, consequently a harsher standard exists in Part XIB of the TPA that is also intended to produce swifter outcomes.

Removed barriers to entry – a number of other entry barriers are specifically removed, including through the provision of pre-selection, a common numbering plan with number portability, and access to information. (Additionally the *Radiocommunications Act* 1997 has made provision for access to spectrum through auction)

Use of self-regulation and provision of standards – extensive frameworks for technical and consumer regulation, but including provision for speedy and flexible responses through self-regulation.

Other consumer protections – An extensive collection of specific consumer protection measures that used to be in the Telecommunications Act 1997 but got moved to the Telecommunications (Consumer Protection and Service Standards) Act 1999 merely to highlight their existence, these include; Universal service regime, the National Relay Service, Customer Service Guarantee, Telecommunications Industry Ombudsman, emergency call services and price controls.

The regime has not sought to address directly structural issues in the industry. It is AAPT's contention that there is no reason why the regime should need to do so directly, however, there are two ongoing concerns. The first is the extent to which a regulator like the ACCC whose main function is the preservation of existing competition levels is equipped to drive a

process to create competition. The second is whether an industry can effectively evolve to act co-operatively to enhance consumer outcomes (what is often called self-regulation) in the face of extremely distorted market structures.

In this submission AAPT will detail a number of specific weaknesses in the current regime and propose remedies. However, this list is not complete nor does AAPT expect that telecommunications policy will sufficiently advance until such time as the fundamental focus can shift from the question of ownership. In the meantime there are three simple priorities for policy makers;

1. Recommit to the core principles of the set of reforms that were undertaken in the 1990s.
2. Ensure adequate resources for the ACCC in the performance of its functions, the single most important of which is a full-time Telecommunications Commissioner who is also a member of the ACMA.
3. Implement a process of regular reviews of the telecommunications industry and how effectively it meets the social and economic needs of Australia.

3. Response to Terms of Reference

(a) Whether Part XIB of the *Trade Practices Act* 1974 deals effectively with instances of the abuse of market power by participants in the Australian Telecommunications sector, and, if not, the implications of any inadequacy for participants, consumers and the competitive process.

The question really can be considered in two parts. The first is whether the provisions cover sufficient sets of behaviours and have therefore been invoked; the second is what occurs when they are invoked.

The ACCC has issued competition notices under Part XIB on only four occasions. It is difficult to conclude from this whether the lack of action is due to their not being any anti-competitive conduct, or there not being a great deal of success in identifying the anti-competitive conduct that mat be occurring. What we can conclude though, given the number of complaints made about conduct versus the number of actions brought, that there is a great deal of confusion in this regard. There is no doubt that there is a lack of clarity of what constitutes anti-competitive conduct. This is complicated by the fact that existing case law in the area is related to markets that are initially competitive being preserved, whereas the telecommunications market is initially uncompetitive and we are trying to promote competition.

Recent disputes in this area have covered when bundling is anti-competitive behaviour, when a price offered to a retail customer versus that offered to a wholesale customer is anti-competitive, and when failure to supply a service to a wholesale customer is anti-competitive.

There are two alternative methods that could be used to address this situation. The first is to detail in legislation more specific rules on what is considered anti-competitive; a second alternative is to empower the ACCC to "proscribe" types of behaviour with the consequence

that if a provider engages in the behaviour described the onus of proof shifts to them to prove it is not anti-competitive.

In the cases described this would enable the ACCC to proscribe the bundling of certain types of telecommunications services (where bundling does not just mean the existence on one bill but the provision of a discount for acquiring both services), but a provider could bundle if they felt they could prove that the bundling was not anti-competitive. Similarly in relation to the recently completed broadband notice the ACCC could proscribe the imputation test that they would apply to establish that the relativity between wholesale and retail prices is not anti-competitive. The process of proscription would not otherwise limit the existing general prohibition on anti-competitive conduct.

In the matter of how effective the provisions are once the ACCC is satisfied it should issue a notice, the recent experience of the broadband competition notice is also instructive. The first point to note is that Telstra continued to offer its cheaper retail prices after the issue of the notice, some providers reduced their retail prices below cost as it was their only option to compete and it was an act of faith that they would eventually get a price outcome that would enable them to compete. The second point to note is that the ACCC spent considerable resources in continually reviewing each new wholesale price offer made by Telstra and whether to lift the notice instead of dedicating them to construct the full case. As a consequence the ACCC found it hard to get quality witness statements as they came to it very late in the whole process.

Both these problems existed because Telstra continued to offer anti-competitive prices after the issue of the notice. The problem would be avoided if the ACCC had the power to issue "cease and desist orders" in conjunction with a competition notice.

To date only one of the parties affected by Telstra's conduct has commenced action against Telstra for damages (and that in a case where Telstra had commenced an unrelated action against the other party). It is surprising that we recognise the whole imbalance between the parties except in the cost and process of litigation. In other jurisdictions, notably the US, this imbalance is recognised through the provision of treble damages in ordinary anti-competitive conduct actions. Treble damages would redress the risk/reward balance that frightens competitors from taking their own actions.

(b) Whether Part XIC of the *Trade Practices Act* 1974 allows access providers to receive a sufficient return on investment and access seekers to obtain commercially viable access to declared services in practice, and whether there are any flaws in the operation of this regime.

This reference is very broad as it goes to both the substance and operation of the provisions. The Productivity Commission reviewed the operation of Part XIC in detail in 2000-2001 and a suite of legislative amendments was introduced in 2001 and 2002 as a consequence.

It is clear that the prices set by the ACCC do not under-compensate investors, despite much protestation from them. Telstra was successfully allowed to charge an Access Deficit

Contribution in its PSTN interconnect rates while line rentals were "rebalanced". The rules the ACCC must follow requires the ACCC to address returns and the rules effectively address that question.

However, it is also abundantly clear that the processes continue to be slow and protracted and create too much room for manoeuvre. This behaviour is not only exhibited by Telstra but by other access providers of declared services, now notably Vodafone and Optus. This delay also has consequences on the investment decisions of competitors, as the competitor needs to make complimentary investments. For example, AAPT believes the delays in resolving mobile termination are creating delays in the provision of Voice over IP (VoIP) services.

Therefore it is appropriate to consider further reform to speed up processes.

The first concern is that there is no time limit on the consideration of arbitrations. To achieve their purpose of creating certainty of access arbitrations should take no longer than six months. However they are often dragged out through the slow release of information to the ACCC or a slow processes. While a strict six month limit on the conduct of an arbitration would be desirable, there is no guarantee that the ACCC would be provided with sufficient information to make a considered response within that time.

In its Draft Report the Productivity Commission considered the use of "baseball arbitrations" as a means of speeding results. In this model each party is asked to make their "best and final" offer to the other party and the arbitrator then chooses one of the offers. In a normal arbitration parties are incented to put in "ambit claims" as the view is the outcome will be about the middle, whereas in a baseball arbitration both parties have an incentive to get as close as possible to what they genuinely believe is fair. There is a view that the ACCC would already have the powers to proceed down this route.

For clarity, AAPT recommends that Part XIC be amended so that when a dispute remains unresolved six months after the date of notification, the ACCC may proceed to a "baseball arbitration". The procedures for this should also be included in the legislation with a timetable requiring parties to make their best and final offers within two weeks of being notified and the ACCC deciding between them within a further two weeks.

In addition, there needs to be a clarification of the standard access obligations to firmly entrench the principle of non-discrimination, especially in relation to the measurement of service levels. While any proposal of the operational separation of Telstra will facilitate this, Telstra is not the only access provider to whom it is relevant.

The 2002 amendments to the TPA created an obligation for the ACCC to prepare model terms and conditions for "core" services, with a set of initial core services defined (which were PSTN interconnection, local call resale and unbundled local loop). However, this has merely added another step in the process for consideration of appropriate access prices for these services. After the setting of the model, the access provider (only Telstra in this case) still lodged undertakings that deviated from the model. The ACCC is still required to review the undertaking and accept or reject them. Further, the existence of the model terms and conditions does not appear to have facilitated arbitrated outcomes.

Therefore there are two recommended amendments. The first is that if an access provider submits an undertaking inconsistent with the model terms then it must be rejected, and that the rejection cannot be appealed to the Australian Competition Tribunal. The second is that the ACCC should be required to have regard to model terms and conditions developed for core services in any arbitrations.

Finally, to avoid delay it is imperative that the regime creates adverse outcomes for the party that has introduced the delay. In the case of access undertakings, if the ACCC is unable to reach a decision within the six month time limit for consideration of undertakings because they had to ask the access provider for any further information that the application be rejected with no appeal.

(c) Whether there are any structural issues in the Australian telecommunications sector inhibiting the effectiveness of the current regulatory regime;

There are structural issues inhibiting the effectiveness of the current regime, but at their core remains confusion about whether the competition that we wish to promote is services based competition of facilities based competition. The over-reliance on a model of facilities based competition creates an environment where competition is seen to be an activity between vertically integrated firms, and the level of competition will eventually be constrained to the number of efficient networks. Services based competition however can see a far more vibrant level of activity at the retail level while still achieving scale efficiencies at the infrastructure layer.

Further, structural issues are a major impediment to the extent that they make the identification of anti-competitive conduct difficult or that they make the assessment of non-discrimination difficult. Were these fixed there would not be a structural issue in the competition field.

We note that there have been suggestions that as part of the further privatisation of Telstra that there will be further operational separation of Telstra. Any such development needs to be carefully designed to ensure that the separation is not merely illusory, as the consequence could be the introduction of additional cost without matching benefit. Most important will be the continued monitoring of the effectiveness of any reforms, and a pronounced willingness of Government to continue to act in the future. This is one of the matters that can be addressed in the wider scope for regular reviews that AAPT has proposed in response to consideration of the Regular Reviews Bill.

There is another structural issue created by the widely distorted retail market shares. There are a number of occasions where it would be rational to expect "industry" responses to social matters that don't result in industry wide solutions. This arises because the one or two largest providers have the scale to institute solutions of their own and seek to achieve brand recognition as a consequence, while the remaining players do not have sufficient scale collectively and are unable to respond. As an example, consumer advocates continue to seek

an industry-wide disability equipment program, but this cannot happen unless Telstra agrees but Telstra continues to choose to run their own program. It is recommended that any review of the regulatory arrangements relating to the further privatisation of Telstra, or agreements reached with Telstra, require Telstra to participate fully in industry-wide programs.

(d) Whether consumer protection safeguards in the current regime provide effective and comprehensive protection for users of services;

The regime includes a comprehensive list of consumer protection measures. There can be some complaint about the inadequacy of the structure of the USO regime and the failure to include price and quality parameters within that regime rather than generally. The USO regime is discussed further below.

There have been a number of claims made recently that the reliance on self-regulation as it relates to consumer protection has resulted in inadequate outcomes, and that a suite of protections needs to be mandated by the ACA as a single standard. AAPT finds these arguments unconvincing. No evidence is provided of large scale or systemic protection failures, the debate seems to be based more on a claim that as there have been no prosecutions under the regime that the regime must be failing.

It is unfortunately the case that there are individual instances where the regime or processes may have failed. It is, for example, clear that there was a significant problem with youth debt and mobiles prior to the introduction of pre-paid services. The subsequent introduction of pre-paid and the consequent changes to credit management approvals for post-paid phones have largely eradicated this problem. The industry and consumers continue to work effectively together through self-regulatory forums, including ACIF and the TIO, to address issues rapidly and effectively.

There are, however, instances where industry co-operative action doesn't occur due to perceptions by individual firms that they can exploit their market power as referred to above.

(e) Whether regulators of the Australian telecommunications sector are currently provided with the powers and resources required in order to perform their role in the regulatory regime;

Given the number of current access undertakings that have been lodged, disputes notified and complaints made about anti-competitive conduct it is apparent that the ACCC is inadequately resourced for the management of telecommunications functions. It is not easy in a legislative sense to guarantee that the regulator is adequately resourced. What can be achieved through legislation is ensuring that sufficient focus is placed on the function and that the ACCC is properly engaged in the breadth of the sector's issues. In our submission to the Committee's consideration of the ACMA Bill AAPT recommended that the legislation be amended along the lines of the model of the energy industry so that there is a single Commissioner responsible for Telecommunications (and no other sector) and that that Commissioner be a member of the ACMA.

It is also apparent that the number of issues in a policy sense continues to be large arising from new technologies, the slow but inexorable process of convergence and the developing standard of community expectations. AAPT is concerned that over recent times the relevant regulators have been asked to undertake policy review tasks that are more appropriately conducted by the Department. Departmental review does not preclude the views of the regulator being sought. During the period of reform in the 1980s and 1990s many of the developments were driven by the research of the Bureau of Transport and Communications Economics, which in part continues as the Communications Research Unit. AAPT believes the Department needs additional resources for policy work and policy research.

Finally, a deal of discussion has been generated of late about the level of consumer consultation in the industry. AAPT found the *Consumer Driven Communications* report prepared for the ACA an extremely disappointing document as it did little more than asked for more of the same kind of consultation as currently occurs. This consultation is highly duplicative and entails very little structured research on consumer issues. In our submission to the ACMA Bill AAPT suggested that the funding of consumer research and consultation be tied to the level of funding of the telecommunications function of the ACMA. We further recommend that a program should be developed to co-ordinate all consumer engagement and research through a funded consumer institute that would replace both the ACMA advisory committee and the ACIF Consumer Council.

(f) The impact that the potential privatisation of Telstra would have on the effectiveness of the current regulatory regime;

AAPT continues to believe that the full privatisation of Telstra is an essential element of continuing the reforms in telecommunications, and is an essential step in enabling effective future regulation.

(g) Whether the Universal Service Obligation (USO) is effectively ensuring that all Australians have access to reasonable telecommunications services and, in particular, whether the USO needs to be amended in order to ensure that all Australians receive access to adequate telecommunications services reflective of changes in technology requirements;

The USO regime is effective in what it set out to do, which was to preserve an existing level of service. It is not well designed or adaptable for delivering new services – and still perhaps is an impediment to that. It acts as an impediment in two ways. The first is by creating an expectation that the solution to a local community's needs can be delivered by a central planner located in Melbourne or Canberra. The second is by creating the perception that unless services are subsidised they will not or should not be delivered. The latter view is entirely inconsistent with a view that telecommunications is more important for people in small communities than those in cities.

AAPT continues to believe that new access infrastructure should be developed in regional areas separately from the activities of any service provider. It should not require any direct

funding, but may need protection from overbuild from Telstra. AAPT believes the proposed amendment to Part XIB would allow the ACCC to proscribe overbuild in certain situations. The combined operation of anticipatory undertakings and such an overbuild proscription could facilitate the deployment of new access infrastructure by parties other than Telstra.

(h) Whether the current regulatory environment provides participants with adequate certainty to promote investment, most particularly in infrastructure such as optical fibre cable networks;

The current regime already allows for an access provider who may be concerned about the risk of future regulation to apply for special exemptions or to lodge anticipatory undertakings. These provisions in the 2002 amendments were designed (and supported by Telstra at the time) to deal with any suggestion of the lack of certainty. AAPT submitted at the time that we thought these were excessive provisions, and we see no evidence that there needs to be any further provision.

(i) Whether the current regulatory regime promotes the emergence of innovative technologies;

The current regime certainly promotes the adoption of emerging and innovative technologies in Australia. The development of technology has become a global activity in which Australia still plays a minor part, however the technologies we chose to adopt are accessed in this global market.

(j) Whether it is possible to achieve the objectives of the current regulatory regime in a way that does not require the scale and scope of regulation currently present in the sector;

AAPT does not believe there is a short-term possibility to reduce the scale and scope of current regulation, though we believe it should remain an aim. It is important to remember that the current regulatory regime is, in reality, a lot less intrusive than the regime that existed prior to 1988, which was an absolute Government run monopoly. There may not have been a lot of lines of legislation or regulatory institutions, but that position was greater in both scope and scale than what we face today.

One would hope that regular review of the regime will continue to focus on ensuring the scope and scale of regulation is no more than is necessary for achieving policy objectives.

(k) Whether there are any other changes that could be made to the current regulatory regime in order to better promote competition, encourage investment or protect consumers.

AAPT does not have any further proposals at this time. We continue to expect that the industry will continue to evolve competitively but at the same time embrace the opportunities for cooperative actions to enhance consumer outcomes. This activity is what the regulatory framework calls "self-regulation".

However, there are a great many factors involved in this evolution. That is why we believe it is essential that there be a commitment to ongoing reviews of the effectiveness of the regulatory regime in the achievement of the policy objectives.

4. Summary of Recommendations

Referance (a) Part XIB

- Create the ability for the ACCC to proscribe certain behaviours as anti-competitive.
- Provide the ACCC with cease and desist orders in conjunction with competition notices.
- Provide for treble damages in matters brought under competition notices.

Reference (b) Part XIC

- The legislation be amended so that when a dispute remains unresolved six months after the date of notification, the ACCC may proceed to a "baseball arbitration" and that the procedures for this be included in the legislation.
- Clarify the standard access obligations to firmly entrench the principle of non-discrimination; that is that the access provider provides the service to access seekers with the same quality etc as it provides to itself.
- If an access provider submits an undertaking inconsistent with the model terms then it must be rejected
- The ACCC should be required to have regard to model terms and conditions developed for core services in any arbitrations.
- In the case of access undertakings, if the ACCC is unable to reach a decision within the six month time limit for consideration of undertakings because they had to ask the access provider for any further information that the application be rejected.

Reference (c) Structural Issues

- Expand the scope of the regular reviews proposal to include all aspects of the achievement of policy objectives and continue to assess the effectiveness of structural arrangements.

- Require Telstra to support and participate fully in industry-wide programs to address consumer protection issues as part of any review of the regulatory arrangements relating to the further privatisation of Telstra, or agreements reached with Telstra in relation to the sale.

Reference (e) Powers and resources of regulators

- The legislation be amended on the model of the energy industry so that there is a single Commissioner responsible for Telecommunications (and no other sector) and that that Commissioner be a member of the ACMA.

- AAPT believes the Department needs additional resources for policy work and policy research.

- We further recommend that a program should be developed to co-ordinate all consumer engagement and research through a funded consumer institute that would replace both the ACMA advisory committee and the ACIF Consumer Council.