Senate Environment, Information Technology, Communications and the Arts Committee

Inquiry into the Performance of the Australian Telecommunications Regulatory Regime

Submission by the Communications, Electrical and Plumbing Union

April 2005

OVERVIEW

The CEPU believes that a review of Australian telecommunications regulation is timely, not only because of the proposed full privatisation of Telstra but also because of the considerable dissatisfaction that now appears to exist with the operations and outcomes of the present arrangements.

The Union does not consider that all the voices now being raised in criticism of the current regime should be given equal weight. Some are clearly opportunistic and express immediate commercial (or political) interests. Nevertheless, collectively they point to a lack of confidence within the industry and within the larger community about the coherence and adequacy – one might almost say the existence - of Australian telecommunications policy. If the current clamour resonates loudly it is largely because it is filling an empty space.

It is now over a decade since government last undertook a comprehensive review of telecommunications regulation. The Duopoly Review, which paved the way for the *Telecommunications Act 1997* (TA), was initiated in 1994. The Productivity Commission considered key elements of the current regime in 2001, but its focus was the telecommunications-specific competition provisions of the *Trade Practices Act 1974* (TPA) rather than the regulatory framework as a whole. Moreover, insofar as its careful report raised doubts about the functioning of Parts XIB an XIC of the TPA, and particularly about the way the Australian Competition and Consumer

Commission (ACCC) exercised its powers under the Act, the main thrust of its recommendations was largely rejected by government.

Similarly, the Universal Service Obligation scheme has been the subject of a number of inquiries during the last ten years, but not (since the Duopoly Review) in the context of a review of telecommunications policy as a whole.

In the meantime, the telecommunications industry, both within Australia and internationally, has undergone considerable upheaval. A period of rapid expansion, marked by high levels of investment and a proliferation of market participants, has been followed by one of contraction of investment and consolidation of companies. These reversals, in our view, have been themselves sufficient to warrant a re-examination of the aims of policy and the assumptions underlying the competitive experiment.

But technological change is now adding a further dimension to the policy challenge. Central to this process are changes at the network level – the transition from the circuit-switched Public Switched Telephone Network (PSTN), designed primarily for voice telephony, to the multi-product packet-switched (and IP-based) networks of the future. Around the world, governments and regulators are now considering what arrangements will best ensure timely investment in these Next Generations Networks (NGN) and smooth the transition to the new communications environment that will be created with their development.

In the words of the UK regulator, Ofcom:

> The utility-based industry of the past, which delivered largely uniform products, is evolving into an industry characterised by complexity, multiple platforms and ever more diverse products. We are at a critical point of technological change in this evolution.[1]

[1] Ofcom, *Strategic Review of Communications: Phase 2 Consultation Document*, November 2004, p.8.

An awareness of the far-reaching significance of these changes has prompted Ofcom to undertake a comprehensive review of the British telecommunications industry, the Strategic Review of Telecommunications, which was commenced in December 2003. The regulator has produced a dispassionate assessment of the successes and failures of UK policy to date and given extensive opportunities for industry and the community to engage in a constructive discussion about the way forward. This dialogue has now entered its second year.

This process stands in marked contrast to both the tone and dynamics of the present Australian debate, driven as it is by the prospect of the full privatisation of Telstra and by the desire of stakeholders, including regulators, to exert maximum leverage through what they perceive to the small window provided by the government's legislative timetable. In the Union's view, these circumstances are not conducive to the development of good public policy.

The CEPU remains firmly opposed to any further privatisation of Telstra. No persuasive arguments have been advanced to show that full privatisation will produce public benefits. On the other hand, it involves clear risks. While the government remains the majority shareholder of Telstra, it can exert leverage over the company over and above that provided by regulation. The community understands this well, especially those living in regional and rural areas. Majority public ownership also guarantees that the company remains predominantly in Australian hands.

Nevertheless, the challenges posed by technological and structural changes in the industry exist irrespective of the ownership of Telstra. They require solutions based on the long term interests of the community and not on the short-term goal of securing majority support for further Telstra privatisation in the Senate. The Union is concerned, in this regard, with the truncated timeframes established for both this inquiry and for that recently announced by the Federal Government.

In our view, the public interest would be better served if a more extended review of Australian telecommunications regulation, along the lines of that being conducted by Ofcom, were held prior to any further moves to privatise Telstra (including introduction of enabling legislation).

Such a review would:

- Build on the work recently undertaken by the Australian Communications Authority (ACA) in its Vision 20/20 project to develop a strategic perspective for the Australian industry;
- Re-examine the assumptions of the competition provisions of the present regime in the light of market and technological trends;
- Consider the recent pricing recommendations of the ACCC in the context of these broader trends. In the meantime, the current controls should be extended for 12 months.
- Consider any recommendations arising out of the ACA's investigation into regulation of Voice over Internet Protocol (VoIP) services;
- Consider the implications of the transition to Next Generation Networks for the universal service regime and make recommendations on how to protect and enhance universal service in the new environment;
- Examine whether current institutional arrangements, particularly the current dispersal of regulatory responsibilities, are suited to meeting the future needs of the industry and the community.

The Union recognises that the current Senate, whose term expires at the end of June, cannot itself conduct or require such a review. The initiative must come from government. The current Ofcom review offers a useful model, but alternatively the recently announced three person Telecommunications Review Panel established by the Canadian government provides another. Whatever the model, however, the aim should be the creation of what Ofcom terms a "new regulatory contract" which offers a way forward for the industry as a whole and establishes a solid basis for its ongoing technological evolution.

1. Context and timing of the present inquiry.

The Federal Government's determination to proceed towards the full privatisation of Telstra when it gains control of the Senate in July has prompted both this inquiry and the more recently announced review of policy by the Department of Communications, Information Technology and the Arts (DoCITA). It is, indeed, ironic that the electoral success that has created the preconditions for the Telstra sale has triggered something of a policy crisis.

A chorus of voices has been raised in alarm – whether real or merely purported – at the likely impacts of full privatisation on Telstra's competitors, on consumers and on the ability of regulatory agencies to exert discipline over the company. Radical remedies, including structural interventions of varying degrees of severity, are again being canvassed. The Page Research Centre has proposed the creation of new rural broadband access networks, funded by government or, alternatively, by the private sector. With a heroic disregard for the (bi-partisan) thrust of policy over the last 15 years and for Australia's international trade commitments, the Centre suggests that the owners of such infrastructure (whether private or public) could be allowed to enjoy monopoly rights, if only for a specified period of time.

This policy turmoil appears to have caught the government somewhat off guard, but in retrospect it might have been anticipated, given the tensions which have always been inherent in telecommunications liberalisation: tensions between competition policy and social policy objectives (as in the fraught issue of price rebalancing); between community expectations and commercial imperatives (relatively low levels of investment in regional and rural areas); between a market model that assumes multiple providers and the economics of the industry, at least at the network level.

Such tensions confront policy makers in all countries which have embraced a programme of liberalisation and privatisation in telecommunications, but here their impacts are amplified by the particularities of the Australian context – a relatively small population (20 million), some 84% of which is concentrated in the most densely populated 1% of the continent, the rest scattered thinly over a vast hinterland. Such

demographics act against the achievement of the economies of scale and density necessary for sustainable fixed network competition and encourage the skewed patterns of investment which have accompanied liberalisation.

These same demographics have also had their influence on the pace of price restructuring in the post-monopoly period. Concerned to protect consumers from sudden "rate shock", successive governments have followed a policy which until 2002 allowed only modest rebalancing of retail prices and virtually no de-averaging.[2] While this approach has shielded all consumers from sharp price increases, rural and regional Australians, who could otherwise face very high line rental charges, have been its chief beneficiaries. Its effect, however, has been to preserve largely intact a web of cross-subsidies that has bedevilled wholesale and access pricing and increased opportunities for regulatory arbitrage.

Since the turn of the century, technological and market developments have added to the stress on the policy framework. The post-liberalisation expansion of investment and proliferation of companies has been followed by a period of consolidation which, in the Union's view, is still in progress. This trend is being reinforced by the high costs associated with the introduction of new products and new delivery platforms. In the case of third generation mobile services (3G), these costs have prompted a move toward infrastructure sharing. It is possible such arrangements may also come to characterise the next phases of fixed network development.

While the Union deplores the waste of resources and the human costs of recent corporate failures, it regards the current processes of consolidation in the telecommunications sector as both inevitable and rational, particularly at the network level. It does not, to our mind, so much represent a failure of competition policy (at least not in the sense commonly used by those calling for stronger pro-competitive regulation) as suggest the limits that objective factors (technologies and related economics, market size) will place on competitive opportunities at any given period. Regulation which ignores such factors or attempts to engineer them out of existence is

[2] De-averaging was not prohibited under either the *Telecommunications Act 1991* or the *Telecommunications Act 1997.* During the duopoly period (1991-97), however, the scope for such adjustments was limited by the price discrimination prohibitions of the Act. Since 1997, the constraints on de-averaging have been political and, perhaps, commercial rather than regulatory.

likely to create inefficiencies, to involve very large cost burdens for regulators and regulated alike and, ultimately, to be futile.

In its Strategic Review of Telecommunications Phase 2 consultation document, Ofcom has offered a lucid summary of the factors which are acting to limit competitive opportunities in the UK telecommunications market. Its analysis is pertinent to the Australian situation and indeed to any mature market that has undergone liberalisation.

> .. the fixed telecommunication industry now faces fundamental challenges. In the 1990s, in particular, although almost all of BT's competitors were loss-making, investment funds flowed into the industry in the expectation of increasing demand and high, sustainable margins. Up to now, much of the competitive advantage that BT's competitors have enjoyed – which held the prospect of such margins – has come from four sources. Most of BT's competitors:
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> - have been able to operate more cost efficiently compared to the once-nationalised incumbent;
> - have targeted products, such as international calls, where high margins resulted from lack of competition;
> - built newer networks which often leapfrogged BT's technology, and used higher functionality or lower cost technologies: and
> - have exploited arbitrage opportunities brought about by regulation: for example, the requirement for BT to charge geographically-averaged prices, or restrictions on BT's ability to rebalance between calls and line rental.
>
> Each of these sources of competitive advantage is in decline.[3]

[3] Ofcom, *op. cit.*, p.10

It is notable that, whatever sins BT may have committed since 1984, when the company lost its monopoly, Ofcom does not locate the present policy challenge in the anti-competitive (competitive?) conduct of the incumbent or, primarily, in the adequacy of the available regulatory tools in this area. It is located rather in the current circumstances facing the entire industry and, indeed, in the dynamics of the competitive process itself.

For it is worth recalling that the avowed aims of competition policy in telecommunications have been to spur companies to the achievement of greater efficiencies, to compete away monopoly rents and to drive prices towards cost. To the extent that such a policy is successful, its effect will be to narrow margins and to close off opportunities for arbitrage, with obvious consequences for the viability of some company operations. In an industry characterised by large economies of scope and scale, policy success may thus be barely distinguishable from policy failure, at least if both are to be measured primarily by the number of firms in the market.

As Ofcom goes on to note, this dilemma for competition policy will become sharper as the industry evolves towards IP-based services, where margins are expected to be lower than has historically been the case for circuit-switched products.

Of course, regulation can (and already does) intervene in this process to preserve margins between wholesale and retail services – or in fact to create them, since in the telecommunications industry such distinctions have been the product of regulation. The question now facing policy is whether such interventions should be deepened in response to the trends described above (through forms of structural separation for instance) or whether new approaches can be developed which accept these trends but preserve opportunities for value-added retail offerings, including the content-rich services of the NGN era, while providing incentives for infrastructure modernisation.

Ofcom is pointing the UK industry down the latter path. The CEPU also supports this approach and recommends it to the Senate inquiry.

The development of such a policy framework – embodied perhaps in a regulatory "compact" of the kind now being canvassed in the UK – cannot, however, be the

work of a moment. It requires a more extended gestation than the timeframes of either this inquiry or that of the Department of Communications, Information Technology and the Arts (DoCITA) have provided. These timeframes are being determined by short-term political imperatives. They are patently too limited either to allay the concerns that have mushroomed during the Federal Government's long policy night or to develop a comprehensive and robust response to the policy challenges discussed above.

The CEPU notes the Productivity Commission's recommendation that the 2007 review of telecommunications competition regulation be brought forward so as to be held before any further privatisation of Telstra. The Union supports this recommendation, with the following caveats:

- The review should be expanded to encompass inter-related elements of the current regime, such as the operation of the Universal Service Obligation.
- It should build on the work done by the Australia Communications Authority (ACA) and the Australian Communications Industry Forum (ACIF) on emerging technologies and related policy issues.
- Its timeframe should be extended beyond that currently set for the DoCITA review. It should aim (following the UK model) to produce a draft report/stage 2 document by, say, November this year with a final report by mid - 2006.
- Insofar as the recommendations of the Government's privatisation scoping study bear on matters of telecommunications policy, they should be offered as inputs into the review.
- Legislation to allow the full privatisation of Telstra should be held over until the completion of the review.

This is the CEPU's preferred approach. In the meantime, however, we offer the following comments for the Senate's consideration.

2. Competition Regulation.

2.1. Background.

The CEPU believes that assessment of the efficacy of the current regime requires clarity as to its objectives. As the Union has reiterated many times over the years, we regard competition as a tool, not as an end in itself. The active fostering of the competitive process through such measures as access regulation and price controls can, in our view, only be justified if it produces clear benefits to the community, chiefly in the form of accessibility and affordability of services. More broadly, competition policy will be beneficial if it creates a framework that encourages an efficient and timely allocation of national resources and stimulates innovation and will be detrimental if it discourages investment or produces waste.

Viewed in the light of this last requirement, recent telecommunications competition policy could hardly be considered an unqualified success. Both domestically and internationally, the second half of the 1990s saw huge over-investment in the sector (especially the creation of overcapacity in transmission), followed by multiple corporate collapses. Trillions of dollars were wiped off the market value of companies world-wide and hundreds of thousands of employees were thrown out of work. Although the chief victims of this "bust" were the newer market entrants, several of the majors only narrowly escaped and have been left heavily burdened with debt. France Telecom, whose debt today remains at some 50 billion euros (Aus$84 billion), was only saved from collapse by state intervention.

The CEPU continues to marvel at the scant attention paid to this crisis by policy makers and their reluctance to draw conclusions from it. The explanation for this hesitancy, however, appears to lie in the challenge these events pose to the neo-liberal orthodoxies that underlie current policy. To the Union's mind, the boom and bust cycle of the last decade clearly demonstrates that market mechanisms cannot be relied upon to produce investment decisions which are rational or socially optimal. The ensuing consolidation also suggests that a sustainable industry structure may involve considerably fewer participants than were initially envisaged, even in markets much larger than Australia's.

These events should have prompted a reconsideration of what forms of competition are sustainable and productive in any given market. In Australia, however, the opposite has been the case. Consolidation has led to calls for the introduction of stronger pro-competitive measures. In its response to the Productivity Commission's 2001 report on telecommunications competition regulation,[4] the Government specifically cited this process of industry rationalisation as the basis for its decision to reject many of the recommendations (and indeed the overall thrust) of that inquiry. The CEPU believes that that decision should now be revisited.

2.2. The Productivity Commission Review (2000-01).

Responding in 2002 to the Productivity Commission's report, the Government argued that its recommendations could be seen generally as "moving towards light touch regulation"[5] and that, while certain of them were acceptable, a major shift in policy emphasis was inappropriate at a time when "the industry is undergoing consolidation and that effective competition in the sector is not yet well entrenched."[6]

While it is true that the Commission's report to a degree reflected the more sanguine outlook still possible in 2000, it is only partially accurate to characterise it as advocating lighter touch regulation. What it did seek was a closer alignment between the telecommunications-specific sections of the *Trade Practices Act* 1974 (TPA) – Parts XIB and XIC – and those of the TPA as a whole. Central to the report was a desire to clarify the objectives and hence the procedures of telecommunications competition policy in light of ambiguities which had emerged since 1997. In particular, the report questioned aspects of the declaration process, suggested greater guidance be given in the matter of access pricing principles and queried a perceived tendency by the ACCC to rely on Part XIB mechanisms (competition notices) when Part XIC procedures may have been more appropriate. The underlying concern of the report was that competition regulation foster efficiency and support (prudent)

[4] Productivity Commission, *Telecommunications Competition Regulation: Inquiry Report*, Ausinfo, Canberra, 2001.
[5] Government Response to Productivity Commission Report on the Review of Telecommunications Regulation, 2002, p.1.
[6] *Ibid*, p.1

investment and that these goals not be compromised in an attempt to encourage short-term entry into the market.

In the Union's view, these questions all remain highly pertinent. Indeed, subsequent events, most notably the long regulatory struggle over broadband (ADSL) pricing, have acted to further justify the Commission's concerns.

2.3. ADSL pricing issues.

Industry participants have, predictably, drawn differing conclusions from the ADSL pricing episode. To the Union's mind, however, it has illustrated both the contradictions of the current regime and the tendency of the ACCC to deal with these in a pragmatic manner.

The Commission first intervened in the matter of Telstra's ADSL pricing in September 2001, issuing a Part A Competition Notice alleging anti-competitive conduct in the pricing and structure of its wholesale ADSL services. At issue was the question of whether (or when) Telstra should make a layer 2 ADSL service available at a wholesale level and whether the company's pricing of layer 3 ADSL service ("Flexstream") constituted anti-competitive conduct.

The first question was clearly one which invited consideration under Part XIC (the access regime). The second, similarly, was essentially a question of access pricing and could scarcely be resolved without ultimate reference to Telstra's costs. The ACCC chose, however, to deal with the issue under Part XIB (anti-competitive conduct), alleging that Telstra's tardiness in supplying a level 2 product had the effect (or likely effect) of lessening competition in the residential and small business broadband retail market and that its Flexstream pricing allowed competitors "only a small positive margin or a negative margin" at retail level. Telstra should, the ACCC argued, supply wholesale services at prices which allowed the company's rivals to "compete with Telstra's retail services without incurring significant financial losses". In the Union's view, these processes, particularly the last requirement, raise troubling problems for policy.

The CEPU understands the real world pressures acting on the ACCC and the difficulties it faces in bringing about a prompt resolution of what are essentially access disputes. Nevertheless, by using mechanisms that allowed it to by-pass Part XIC procedures, the ACCC made two questionable presumptions: firstly, that any carriage service that competitors deem necessary for their own product offerings should be made available to them, without reference to the declaration criteria of Part XIC and, secondly, that firms should always be able to enjoy a "significant" wholesale/retail margin (how much?) irrespective of either their own or Telstra's actual cost structures. Such an approach carries obvious risks of discouraging product innovation and fostering a section of the industry that survives only through regulatory rents.

Nor does this approach offer any stable longer-term solution to questions of access pricing and the related issue of efficient and sustainable industry structure. It is notable that when the question of ADSL pricing again flared in early 2004, the ACCC once more had recourse to Part XIB mechanisms to protect the retail margins of Telstra's wholesale customers, again without any reference to Telstra ADSL costs which, in the two years that had elapsed since the first notice, the ACCC had not moved to assess.

The CEPU does not deny that Telstra's February 2004 restructuring of retail ADSL prices may have threatened the viability of some of its wholesale customers. Clearly one of the objectives of the exercise was indeed to close margins which had allowed the growth of Telstra's wholesale ADSL business to rapidly outstrip that of its retail operation in the period following the first ACCC intervention.

Between December 2001 (after Telstra had cut ADSL wholesale prices by some 30%) and December 2002, Telstra broadband wholesale customer numbers grew by 275% and retail customers 88.2%. Between December 2002 and December 2003, Telstra broadband wholesale subscribers grew by a further 286% while its retail base grew by 52%. By December 2003, total retail subscribers only just outnumbered wholesale (287,000 vs 222,000).[7] This is hardly a situation that any competitive firm, however

[7] All figures are from Telstra half-yearly reports.

benign, would long tolerate. Indeed, a quite disinterested observer might consider that these numbers suggested that existing pricing structures were unbalanced and, in fact, inefficient.

Moreover, they clearly allowed ample room for a major attack on the broadband market by Telstra's chief rival, Optus, who could also use the DSL service as a component of attractive service bundles. In 2003, Optus signalled its intention of entering the retail DSL broadband market, signing an agreement with Telstra for wholesale services in November. In January, the company announced its new broadband pricing plans, with entry level set at $49.95 a month. When Telstra moved, however, to undercut this offer and at the same time fold the retail price umbrella that had sheltered runaway wholesale growth, its competitors complained of a price squeeze.

The CEPU is not in a position to comment on the degree to which the retail pricing offers Telstra put in the market in February 2004 in fact made it impossible for efficient firms, using Telstra wholesale inputs, to operate profitably.[8] Nor can it independently assess what relation Telstra's wholesale ADSL prices bear to its own costs. The Union is concerned, however, with a process that allows these questions to go unanswered while guaranteeing competing firms significant margins, irrespective of their efficiency. This, however, is what Part XIB of the *Trade Practice Act 1997* effectively allows, especially in the absence of a merits appeal provision.

2.4. Other access pricing issues.

While the issue of ADSL pricing has attracted a high level of public attention, other areas of wholesale/access pricing regulation are equally problematic. As the Productivity Commission noted in its 2001 report, the main focus of access regulation since 1997 has been the Customer Access Network (CAN). This focus has, if anything, intensified since that report, as falls in the price of broadband access

[8] The Network Economics Consulting Group (NECG) considers however that there is "no compelling evidence of a price squeeze – as evidenced not merely by extensive imputation testing but also by the fact that Telstra's retail competitors have consistently led prices down and set retail prices that Telstra has not matched." See Ergas, H., *Telecommunications: Competition Regulation and Communications via the Internet*, July 2004, p.7.

technologies (DSLAMS) and the maturing of products such as Voice over Internet Protocol present new competitive opportunities. The attendant rise of (wholesale) demand has led to a proliferation of access services, some, though not all, of which have been declared.

Telstra's competitors may now gain access to carriage services involving use of the CAN through the use of PSTN originating and terminating access services, ISDN originating and terminating access, local carriage service, ADSL wholesale products, conditioned local loop (CLL) and unconditioned local loop (ULL) services, the Line Sharing Service (LSS) and wholesale line rental. All but two of these services –ADSL wholesale and wholesale line rental - have been declared (or deemed), meaning that the ACCC may intervene in the determination of their prices. Unfortunately, but predictably, this process has been both contentious and costly. Moreover it has produced inconsistencies. These are partly the result of pricing constraints at the retail level but also reflect a policy and regulatory bias that since 1992 has kept access, and more recently resale, prices low to encourage competitive entry.

In the case of local call resale, for instance, wholesale prices are determined on a flat-rate, retail-minus basis, a methodology which guarantees margins irrespective of costs. This approach is a way of dealing with the difficulties posed by the legacy pricing structures of the monopoly period, during which local calls were priced close to (or below) cost and common costs were recouped largely from high margin services, primarily STD. With such prices structures largely frozen by retail price controls, a wholesale local call product based on cost-plus estimates was likely to provide little or no margin to competitors.

The untimed local call obligation (which the Union supports) is at the heart of the dilemma. The proposition that longer call holding times should incur longer wholesale costs is accepted in relation to PSTN originating and terminating access charges, which are levied on a timed basis. With flat rate wholesale charging, however, the longer the call duration, the greater the likelihood that the access provider will be undercompensated for its costs.

Further problems arise from the structure of retail line rental charges and their relation to costs. The degree to which the historic subsidies embodied in these charges (the Access Deficit) have been reduced as a result of rebalancing remains a matter of contention (and one on which the ACCC itself does not appear to have a settled view). Nevertheless, an approach which requires some access services to make a contribution to the Access Deficit and others not creates anomalies which are likely to distort market behaviour. Yet this is the position which the ACCC has taken in relation to Unconditioned Local Loop Service (ULLS) and Line Sharing Service (LSS) prices, neither of which will be allowed to include an Access Deficit component.

More radically still, the ACCC proposes that the LSS not make any contribution at all to "line-related costs", arguing that these are already fully recovered from other products. Even if this were the case, however, the exclusion of such costs from the LSS charge amounts to offering access seekers a free ride over the CAN. The prices arising from such an approach must distort the build-or-buy decisions of other firms and act as a disincentive to investment by the access provider.

As the Network Economics Consulting Group (NECG) has argued,[9] such inconsistencies in pricing are compounded by the ACCC's preference for LSS charges to be set on a geographically averaged basis (like retail line rental) while ULL services are de-averaged (like originating and terminating access charges). In regional areas, access seekers will therefore have even greater incentives to use the LSS service.

This divergence between the treatment of the two services arises ostensibly from the decision that no component of line costs be included in the LSS charge. As LSS-specific costs are, the ACCC argues, not geographically related, there is no basis for anything other than an "average" i.e. standard rate. It might be surmised, however, that the ACCC's decisions also relate to the anticipated pattern of take-up of the two services (ULLS and LSS).

[9] Ergas, *op. cit.*, p.9

If, as appears to be the case, the ULLS will be the preferred service for those intending to create their own DSL networks, then it might also be anticipated that ULLS take-up will be largely in areas of high population density, where recovery of infrastructure costs is better assured. De-averaged ULLS prices are optimal for competitors seeking to enter these markets. In thin non-metropolitan markets, on the other hand, where entry is less certain, potential entrants will at least have the advantage of averaged LSS prices (while making no contribution to line costs.)

Viewed from a pro-competitive perspective, this outcome has a certain pleasing logic. Looked at from another angle, however, it suggests an attempt by the ACCC to shape the broadband market by actively creating conditions most favourable to entry. The CEPU questions whether this is an appropriate role for the competition regulator.

2.5. Retail price regulation.

It is not, indeed, only in the area of access/wholesale pricing that the ACCC may be seen as taking an increasingly interventionist and proactive approach to competition in the telecommunications market. In the CEPU's view, the recent recommendations on retail price controls also show signs of its increasing regulatory ambition.

The ACCC's recommendations for the 2005-08 price control period have been rightly seen as representing a tightening of the current system, despite the small relaxation of the level of the cap on the main basket (CPI – 4 as opposed to CPI – 4.5).[10] They have been greeted with some disquiet by financial markets pondering their likely impacts on Telstra PSTN revenues (already in decline) and are widely seen as posing something of a dilemma for a government looking to maximise Telstra's sale price. The Union's chief concern, however, is the way that regulatory mechanisms designed primarily to benefit consumers are now being deployed to benefit companies. The Union's further concerns as to the longer-term appropriateness of the ACCC's approach, given technological trends, is discussed at Section 4 below.

[10] The change in the overall revenue weighted cap is much greater and in the opposite direction. The ACCC estimates the revenue weighted cap of the current controls (broad and line rental baskets) to be CPI-1.5. That of the proposed regime has been estimated at CPI-3.8. See De Ridder, J., "Price capping or knee capping" *Exchange*, 8 April 2005, p.10

The Union considers that elements of the proposed pricing package are clearly designed to constrain Telstra's ability to compete in key retail markets and to control the price of wholesale products where these have not been declared. The removal of business services from the broad basket is the most obvious example. The ACCC argues that business services have been excluded because competition is sufficiently well-established in this sector of the market. The likely effect of this decision, however, will be to relieve competitive pressures in this area.

If Telstra is forced to meet its price control targets solely through reductions in residential prices, it will have less incentive (indeed, a disincentive) to engage in price discounting in the business market. The chief beneficiaries of these arrangements will be Telstra's competitors, who will be able to preserve margins by pricing just under the incumbent.

Likewise, the constraints on the line rental component of the BusinessLine Part and Homeline Part plans appear chiefly designed to benefit Telstra's wholesale customers. At first blush, it is difficult to see why the ACCC has singled out these particular plans, out of the many now offered by Telstra, to be subject to the intricate controls proposed in relation to them. The answer appears to lie primarily in the fact that these plans act, in the ACCC's words, as "reference points" for Telstra's wholesale line rental prices. Through freezing the real line rental charge and preserving the discount over standard line rentals contained in the packages, the ACCC aims to give greater certainty to Telstra's wholesale customers.

The creation of what is effectively a wholesale (retail minus) price cap on line rentals marks a new form of intervention by the ACCC into Telstra's pricing, one that goes beyond the traditional bounds of the retail price control regime. Although the relevant legislative provisions do not stipulate that the price control power relates only to retail pricing, its use has to date been confined to this level. And although technically the Homeline Part products are retail offers, it is their function as wholesale price markers that has evidently attracted the interest of the ACCC. In the Union's view, this recommendation is another indication of the ACCC's push to extend its regulatory

reach. And again, it is an instance of the ACCC side-stepping the declaration process in its regulation of access pricing.

2.6. Some provisional conclusions.

In the CEPU's view, recent ACCC decisions reveal a growing pragmatism in its approach to competition regulation together with a desire to shape the market to a degree that, in the Union's view, goes beyond anything envisaged when the current regulatory structure was created.

The first trend appears largely to reflect the ACCC's frustrations with the operation of Part XIC of the TPA. The declaration process has resulted in protracted inquiries and even more protracted considerations of carrier undertakings. It must be admitted that, as a result, it has not produced timely outcomes or provided access seekers and access providers the degree of certainty that they reasonably require. It has also presented all parties with ample opportunities for regulatory gaming. These circumstances have provided the ACCC with the incentive to find short-cuts in the determination of access pricing issues. Part XIB and now the retail price controls have provided the means.

However, to recognise these difficulties is not necessarily to endorse the proposition that the ACCC's telecommunications-specific powers should be enlarged. (On the contrary, as explained at Section 6 below, the CEPU leans towards the view that administration of the access regime should be transferred to the Australian Communications and Media Authority.) This is because the problems encountered in developing a rational and consistent approach to access pricing are not essentially administrative in nature.[11] As we have argued above, they spring ultimately from the economics and dynamics of the industry itself and from the persistence of retail pricing structures which embody widely supported social objectives.

[11] Although it might be argued that at least some part of the problem lies in the ACCC's own failure to produce cost analyses that are timely and robust. In its price control report, for instance, the ACCC acknowledges that it has not reviewed its estimates of line rental costs since 2001.

The CEPU supports the view that there is a need to simplify access processes and to rationalise the multiplicity of products and prices which are now the object of regulation at both wholesale and retail levels. This is very much the thrust of Ofcom's thinking. As it argues in relation to the UK market, current regulatory arrangements have:

> ..created a regulatory mesh which places a series of obligations on BT at the retail and wholesale levels. While all individually justifiable, the combination of obligations creates additional costs and often conflicting incentives. This is particularly so when competition is promoted at multiple layers of the value chain, using a variety of overlapping instruments.
>
> This outcome is not optimal for citizens and consumers, for BT's competitors nor for BT itself. It is restrictive and costly to all parties, and at this stage of network and technological development it is potentially damaging to our long-term competitiveness as a nation. This will become an even more critical issue with the deployment of next generation technologies, where current rules of interconnection and many of the related wholesale products will no longer apply.[12]

In response to this situation, Ofcom calls for a "..fresh and coherent approach, based upon clear principles..".[13] The need for such an approach is no less pressing in Australia, but the initiative required to develop it goes beyond the ACCC's brief and is properly the responsibility of government. In the meantime, in the absence of a comprehensive review (and if necessary recasting) of all the elements of current policy, with an eye to both current issues and future trends, the ACCC will continue to fill the policy vacuum.

[12] Ofcom, *op. cit.*, p.12
[13] *Ibid* p.12

3. Is structural separation the answer?

3.1. Proposals for structural intervention.

The intractable nature of the difficulties discussed above is one of the reasons that structural separation of Telstra into separate wholesale and retail companies continues to attract supporters, despite this policy option's having been rejected in the course of numerous debates and reviews over the last decade. (Another reason, perhaps, is a deep seated assumption within the industry that the whole PSTN represents a public resource which should be available to all at minimum cost.)

The latest body to reject this false and, in our view, technologically naïve, "solution" has been the Productivity Commission. [14] Similarly Ofcom has accepted arguments that the costs associated with such an intervention would be likely to outweigh any benefits. Such costs involve:

- Loss of economies of scope and scale
- Disincentives to investment and barriers to innovation
- Implementation costs.

Moreover, as the CEPU has pointed out many times, any proposal to structurally separate Telstra must be viewed in the context of industry structure as a whole. Telstra is not the only vertically integrated company in the Australian telecommunications market. Splitting Telstra into two separate companies, while leaving (say) Singtel Optus to enjoy all the advantages of vertical integration has never seemed to the CEPU to represent a coherent policy option.

The CEPU has presented its arguments against structural separation in more detail in its response[15] to former Shadow Minister for Communications, Lindsay Tanner's paper *Reforming Telstra.* As most policy makers appear now to have accepted (albeit reluctantly in some cases) that a full wholesale/retail break-up of Telstra is simply not

[14] Productivity Commission, *Review of National Competition Policy Reforms*, Canberra, 2005, p.238ff.
[15] CEPU, *What Role for Telstra*?, June 2002. Available at www.cepu.asn.au

part of the present Government's agenda, we will be content here simply to refer the Senate to that paper.

We would also refer the Senate to the Union's later publication, *Telstra at the Policy Crossroads*,[16] for a discussion of the proposals for horizontal separation (divestiture of Foxtel and the Telstra HFC network) that have been put forward by the ACCC. The CEPU does not support these proposals and notes that the Productivity Commission has taken a sceptical view of their merits. Again, however, as these recommendations do not appear to have found favour with Government, the Union will not dwell on them here. We would note, however, that the ACCC report which gave rise to these recommendations allows further insight into the sweep of the ACCC's regulatory ambitions.

3.2. Operational separation.

This brings us to the latest remedy being proposed to address what are essentially issues of access pricing - "operational separation" of Telstra. Part of the problem in addressing this proposal is that it remains so ill-defined, at least at the present moment. The ACCC has, however, made some attempt to fill out the concept and there has been interest shown in what (if any) changes to BT's internal organisation may flow from Ofcom's Strategic Review.

3.2.1. The ACCC proposal.

In its submission to the Productivity Commission's review of national competition policy, the ACCC outlined its proposal for operational separation in the following terms:

> Under this arrangement, each business would have its own management, location and information systems, and operate as an independent profit centre with specific objectives. The wholesale business would be expected

[16] CEPU, *Telstra at the Policy Crossroads*: C*arriers, Content and the Broadband Future,* April 2004. Available at www.cepu.asn.au.

> to treat both its internal retail counterpart and external third party retailers at arm's length and on a non-discriminatory basis. Legal or corporate separation is a potential variation where the entities take the form of legally separated firms.[17]

More recently, the ACCC has further clarified its vision, suggesting that the separated businesses should:

> (1) deal with each other on a commercial, arms-length basis, including transparent pricing arrangements between Telstra's wholesale and retail arms as well as separate invoicing and billing;
> (2) maintain fully separate accounts and reporting systems, capable of capturing all transactions between the businesses; and
> (3) maintain separate staff at all levels, with staff remuneration tied exclusively to the performance of the relevant separated business.[18]

As usual, the ACCC is nothing if not ambitious. It envisages a sweeping physical re-organisation of Telstra (separate locations for its two business arms, separate staffing structures) which would appear only to differ from structural separation to the extent that two separate corporate entities (with potentially different ownerships) are not created. To all intents and purposes, however, the retail and wholesale arms would act as separate companies, each with its own commercial objectives.

The costs associated with this proposal are obvious enough. It would involve considerable initial implementation costs (not least of which would be those associated with the duplication of systems) and further ongoing costs in the form of inefficiencies (loss of economies of scope and scale). It may not represent the same barrier to innovation as full structural separation but nor, on the other hand, does it remove the need for access regulation or guarantee that pricing issues at this level will be less contentious. (Indeed, it Telstra wholesale is to act as an independent

[17] ACCC, Submission DR165, p.19
[18] ACCC, *Promoting Effective Competition Within the Telecommunications Sector*, Speech by Commissioner Ed Willet, April 2005, p.2ff.

profit-maximising firm it may take a more aggressive stance in relation to access pricing disputes.)

The more fundamental problem with the ACCC's model, however, is that it is offered without reference to other aspects of policy. There is no consideration, for instance, of what further policy provisions might be required for such separation, once established, to be maintained. Would Telstra wholesale be permanently debarred from offering retail products? Would Telstra retail be denied the right to invest in new infrastructure (e.g. spectrum)? And what would be the effect of imposing what amount to line-of-business restrictions on Telstra, but not on any other vertically integrated operators?

What are the implications of the model for the pricing of "wholesale" products which regulation currently requires be offered on a retail-minus basis i.e. local calls? Would Telstra wholesale be allowed to charge for these services at prices that allow the recovery of traffic sensitive costs i.e. on a timed basis? If so, what happens to the untimed (retail) local call obligation?

What impacts would "virtual separation" have on residual cross-subsidies such as those involved in the geographic averaging of line rental prices? What are the implications for the funding of universal service?

No discussion of "operational separation" which the CEPU has seen to date offers answers to these questions.

The CEPU is not convinced that the hypothetical benefits of embarking on the "operational separation" experiment would outweigh the readily identifiable costs of such a step. It is clear to the Union, however, that both the sustainability of the model and its implications for other elements of policy would need to be carefully considered before such a step could be seriously entertained.

3.2.2. The UK debate.

Both the ACCC and the Minister for Communications have recently referred to regulatory developments in the UK when canvassing "operational separation" of Telstra. Two points need to be made, however, about the UK debate. Firstly, Ofcom has not put forward any specific proposal for "operational separation" of BT (although it has identified persistent problems for competition policy and pointed towards possible remedies). Its analysis focuses instead on certain outcomes ("equivalence" at the wholesale level) which it considers necessary for competition. It has been left to BT, at least at this stage, to consider what steps it might take in response to Ofcom's concerns.

> At this stage we do not wish to propose any specific solution to this problem *and it is not Ofcom's role to design BT's internal organisation.* (Our italics.)[19]

Secondly, while Ofcom has canvassed a number of organisational changes that BT might make to address competition issues, it has also outlined changes to current regulation which it is willing to consider, most notably rationalisation of wholesale regulation ("..regulation needs to be focused on a more limited range of wholesale products than to date.."[20]) and relaxation of regulation at the retail level. It has indeed proposed a staged evolution in this direction, with a regulatory timetable which reflects anticipated changes in both technology and market behaviour.

In short, what Ofcom is proposing is a reconfiguration and simplification of existing regulation, not simply more severe constraints on BT. BT has replied in kind, proposing organisational changes which will be dependent on Ofcom's willingness to "..commit to rapid and significant deregulation in the highly competitive consumer and business markets.." and to "..create a stable investment environment..", especially in relation to the development of Next Generation Networks.[21]

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[19] Ofcom. *op.cit.*,p.70.
[20] *Ibid* p.6
[21] See BT's response to Ofcom's Strategic Review of Telecommunications Phase 2 consultation document, p.5.

The outcomes of what are, in effect, public negotiations between the incumbent and the regulator remain to be seen. Nevertheless, Ofcom's approach in seeking what it describes as a new regulatory contract with BT is, to the CEPU's mind, more productive than that of the ACCC, which simply seeks deeper intervention in Telstra. Moreover, Ofcom's gaze is focused clearly on the emerging environment – the transition to NGN – while the ACCC persists in discounting the significance of these developments.

4. The transition to Next Generation Networks: some implications for policy.

It is true that, unlike BT, Telstra has not yet publicly announced a timetable for the roll-out of an integrated IP-based broadband network and the migration of its customers to it. A timetable for the parallel development and implementation of regulatory policy may therefore seem less urgent here than in the UK, where BT has announced its intention of commencing migration of its customer base to its 21st Century network (21CN) in 2006, with over 50% of migrations to be completed by 2009.

Nevertheless, the transition to an IP-based telecommunications world has begun and is set to accelerate in Australia in the next few years as broadband penetration increases. The Australian Communications Authority has moved to address regulatory issues associated with the appearance of Voice over Internet Protocol (VoIP) services in the local market (numbering, provision of emergency service access etc), but these represent only the tip of the policy iceberg. Deeper underlying questions involve the impact of the new technologies on pricing structures and hence on infrastructure cost recovery and, by extension, universal service.

The transition to new networks forms will also pose problems for PSTN funding, not only at the geographic margin (the focus of the current universal service scheme) but across the board. As traffic migrates from the circuit switched PSTN to IP networks, the costs of providing access to services will be spread over fewer lines, while at the same time the universal access provider can be expected to face diminishing revenues. (Telstra's PSTN revenues are already in long-term decline.) If these trends are not to

lead to a crisis in PSTN funding, it is likely that access prices will have to rise, at both wholesale and retail levels.

This issue has been explicitly recognised by Japanese and UK regulators and been highlighted in the report to the European Commission prepared by Analysis. Outlining the likely impacts of VoIP and other "convergent services" on current pricing structures, Analysis warns that

> .. line rentals may have to rise slowly to match increased per-line costs resulting from a fewer number of lines. If the rise in line rental charges (to maintain balanced tariffs) did not happen e.g. due to inappropriate price caps, the net cost of USO will increase here too.[22]

Similarly Ofcom notes that as DSL becomes more widespread

> A particularly important (and complex) issue that arises is how those costs that are common to PSTN and broadband networks would be recovered. At present, PSTN revenues tend to cover most of the common costs associated with the BT network. As these revenues are eroded, BT will need to recover its common costs elsewhere and the charges for naked DSL would have to reflect this.[23]

In the longer term, the flat rate (and even zero rate) pricing structures that are expected to characterise many broadband service offerings are also likely to lead to more weight falling on access pricing for infrastructure cost recovery.

Clearly, the pace of the transition to new networks and services and hence to new pricing structures will vary from country to country. Nevertheless, regulation needs to at least have an eye to these issues. The CEPU is concerned, in this regard, that the ACCC tends to discount the relevance of new technologies and services to current price regulation. This is partly because it has, to date, considered the issue chiefly in

[22] Analysys, *IP Voice and Associated Convergent Services*, Final Report for the European Commission, ECSC-EC-EAEC, Brussels –Luxemburg, 2004, p.103

[23] Ofcom, *op.cit.*, p.80. Naked DSL is defined by Ofcom as a service which allows VoIP providers to rent access lines at prices which exclude PSTN specific costs but include the costs of the copper pair.

terms of the impact of services like VoIP on competition and not in terms of their impact on PSTN cost recovery. But the ACCC also appears to underestimate the degree to which a relatively small shift in demand to the new services may affect cost structures. As Analysys explains in its discussion of VoIP, initially

> Changes to the total number of access lines rented will be small, because most broadband end users will use products based on line sharing. Nevertheless, even a few percent fewer end-users lines .. can have significant effects on the cost of access. This is because the cost base of the access network is (in essence) almost all fixed cost, thus 1% fewer lines implies nearly 1% increased cost per line.[24]

Ergas has pointed out how the relatively highly concentrated nature of PSTN traffic exacerbates this problem.

> The top 5 per cent by traffic of business and residential PSTN lines account for close to 60 per cent and 30 per cent of all pre-selectable call volumes for each of these groups respectively. As a result, even a relatively small shift of traffic off the PSTN would have major implications for the scope for cost recovery and, if recovery is to be secured, for the burden on remaining users.[25]

Policy decisions which enlarge opportunities for arbitrage by depressing access charges (as for the LSS) or relaxing regulatory requirements (e.g. the provision of emergency service access) will only add further to this policy difficulty.

Lastly, the CEPU would suggest that the demographic particularities of the Australian market make it likely that the period of transition from circuit-switched networks to NGN will be more protracted than in other advanced economies and that the issue of maintaining the declining PSTN, especially in regional and rural areas, will be more acute. That is all the more reason why policy should be addressing these matters now, not at some time in the indefinite future.

[24] Analysys, *op. cit.*, p.103
[25] Ergas, *op. cit.*, p.10.

5. The future of universal service.

As noted above, the cost recovery issues that can be expected to arise in the course of the transition to Next Generation Networks have implications for universal service delivery. So does the question of third party access to new network infrastructure. The CEPU does not believe it is possible to "future proof" the universal service obligation because it is not possible to know what the future holds. Policy can, however, attempt to set a course in the light of emerging technological and market trends and known problems.

The CEPU considers that, on the whole, the current universal service arrangements have provided a reliable, if not entirely equitable, framework for the delivery of basic telecommunications services throughout Australia. Attempts to create alternative "new market models" based on competitive tendering of the universal service obligation (USO) have been a failure. If anything, they have confirmed the ongoing centrality of Telstra to nation-wide service availability. (This has also been the effect of the funding decisions arising from the government's mobile and broadband service extension initiatives.)

Nevetheless, the scheme has been under stress more or less since its inception. Telstra's competitors have persistently queried USO costs and claimed the present arrangements favour Telstra and suppress competition in rural markets. The industry has steadfastly refused to countenance any enlargement of the USO obligation to reflect technological advances and related rises in consumer expectations, at least while the USO is funded from carrier revenues.

Meanwhile, Telstra's claim that it is under-compensated for the costs it incurs as USO provider has been given greater credibility by the failure of alternative providers to emerge in the course of the contestability trials. This was, in our view, inevitable, given that the present USO methodology is based on the costs of an ideally efficient carrier, not those of real world companies. The effect of the trials has been to highlight the way that Telstra in fact anchors the USO scheme by simply absorbing any losses associated with it. For its part, government has taken the essentially

pragmatic view that these losses, if they are incurred, are not sufficiently large to hurt a company with deep pockets.

The time for such pragmatism appears now to be coming to an end. It is doubtful whether a fully privatised Telstra would be willing to continue to provide uneconomic services without adequate compensation, even if this obligation were still confined to the standard service (and payphones). But other forces, as discussed above, are also challenging the current system. If even the standard service is to remain available to all Australians at equitable and affordable prices in future, higher levels of subsidy, reflecting the cost impacts of migration of traffic off the PSTN, may be necessary. Alternatively, as Analysys suggests, line rental charges may have to rise.

Ensuring the universal availability of more advanced services, based on new infrastructure, represents a further problem. The CEPU does not deny that the present strategy of "targeted funding" to extend mobile coverage and broadband availability to areas not served by the market has benefited sections of the community. The Union does question, however, whether the development of national fibre-based Next Generation Networks can be dealt with in the same way. Roll-out of such networks is a hugely expensive task that will, in our view, require a systematic approach, including a regulatory framework which rewards investment.

The Union also remains of the view that the logical pathway for the development of a national fibre network is through the progressive extension of fibre deeper into the existing Telstra infrastructure. It follows that regulatory policy which discourages this process by (say) restricting Telstra's ability to enter new product markets or to exploit economies of scope and scale is not in the community's best long-term interest.

In sum, the questions surrounding universal service delivery in the future cannot be separated from the other policy issues (retail price regulation, access pricing, structural arrangements) which have been canvassed in the course of this submission. Contrary to the wishful thinking of the Page Report, there are no short cuts to an equitable broadband future.

6. Institutional arrangements.

In its submission to the Australian Communications Authority inquiry into the regulation of VoIP services, the CEPU expressed doubts as to whether the current division of regulatory labour in telecommunications would best serve the industry and the community in the coming period.

> Questions of cost recovery and the related issue of investment incentives cannot, we believe, be resolved through self-regulation. An access regime which, in practice, is driven primarily by competition policy objectives is likely to be equally ill-suited to this task. A coherent restructuring of pricing will remain difficult while responsibility for wholesale and retail price regulation resides with different parties, each with their own imperatives and constituencies.[26]

The regulatory history discussed in this submission tends to confirm us in these views. Irrespective of the merits of specific reports and analyses produced by our current regulatory agencies (including DoTAC), the current dispersal of responsibilities, in our view, acts against the development of a coherent regulatory framework for the sector during a period of major change.

Of course regulation is, or should be, merely the servant of policy and, as we have argued elsewhere in this submission, the chief responsibility for developing a timely and comprehensive response to emerging conditions rests with government. Nevertheless, institutional arrangements play a large part in determining the effectiveness of policy once a course has been determined.

At the time of the Duopoly Review, which established the framework for the *Telecommunications Act 1997*, the CEPU supported the proposition that telecommunications competition policy should be aligned as closely as possible with general competition law and that administration of competition issues (including

[26] CEPU, Submission to the Australian Communications Authority Inquiry into Regulatory Issues Associated with the Provision of Voice Services Using Internet Protocol in Australia, January 2005, p.8

access) should be the province of the ACCC. This position reflected both a concern over the impacts of the telecommunications-specific competition provisions during the duopoly period and an expectation that a well-functioning access regime would allow a relaxation of industry-specific regulation at a retail level. This latter expectation has not been met.

The final drafts of the relevant sections of the TPA (especially Part XIB) endowed the ACCC with telecommunications powers well beyond those it enjoyed in relation to other industries. In recent times, it has shown an increasing willingness to use these powers to break what it perceives to be the access log jam and to drive down wholesale prices without having to have reference to the disciplines (or frustrations) of Part XIC procedures.

This approach has offered some short-term relief to access seekers but cannot provide the certainty that access providers require if timely investment is to be undertaken, especially in a period of far-reaching technological change with all its attendant risks. In countries such as the UK and the USA, where those responsible for monitoring such changes also carry major responsibility for access regulation, there appears to be a greater appreciation of this point. The FCC, for instance, has shown itself willing to develop rules which will stimulate investment in fibre, as has Ofcom.

Indeed, as we have argued earlier, the CEPU believes that the present situation requires a closer coordination of all elements of policy and attendant regulation. In our view, this requires a reintegration of regulatory functions, with one agency having responsibility for both access pricing and retail price controls, as well as for costing and administration of the universal service regime. The body best suited to this task is the Australian Communications and Media Authority.

To some this may appear a backward step. Yet we need only ask why there is no one agency in Australia both empowered and equipped to play a role such as Ofcom's to see the difficulties Australia's present arrangements are causing. The Union believes it is time to remedy this situation.