

SENATE ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS COMMITTEE - "INQUIRY INTO PERFORMANCE OF AUSTRALIAN TELECOMMUNICATIONS REGULATORY REGIME"

ACT GOVERNMENT SUBMISSION

Preamble

The ACT government is developing its own voice data network to provide telecommunications services to ACT agencies. Therefore the ACT government is less reliant on private sector telecommunications carriers for its services.

However the ACT government is concerned that telecommunications services provided to the Canberra business and community sectors and residential consumers are of a type which provides maximum choice and flexibility, high quality service, and affordable pricing arrangements. The comments in this submission are generally based on these requirements.

Comments against specific terms of reference

The ACT comments against specific terms of reference of the inquiry are below.

(1) *Whether the current telecommunications regulatory regime promotes competition, encourages investment in the sector and protects consumers to the fullest extent practicable with particular reference to:*

(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 inadequacies for participants, consumers and competitive process*

Telstra is the single most dominant telecommunications provider in Australia with its ubiquitous copper wire infrastructure embedded in telephone exchanges (providing fixed phone, narrowband and broadband services), its HFC¹ network in some capital cities and mobile phone infrastructure and services. The Foxtel/Telstra arrangements also provide a key foothold in pay/cable TV in terms of ownership of infrastructure and content for home communications.

Commercial practices such as predatory pricing, cross subsidisation, bundling and frustrating access to infrastructure (including towers and telephone exchanges) are relevant in this context. Achieving remedies under the *Trade Practices Act 1974* can be a lengthy process and the delay in obtaining action can be sufficient to frustrate major competitors and starve out start ups.

The future convergence of telecommunications, broadcasting, IT and media streams is expected to cement development of all home communications/entertainment systems through integrated services in a box (a PC, TV or other hardware) in the next few years. This will be particularly critical in the current deployment of digital

¹ HFC – Hybrid fibre coaxial cable

technologies for home entertainment systems (digital TV) and communications/information systems (fibre-optic cables to provide broadband services).

It would be detrimental to participants, consumers and the future growth of the broader Australian telecommunications sector if any company or consortium was able to establish a monopoly position in providing both infrastructure and content to consumers. The effectiveness of part XIB might be reviewed in this context.

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

Telstra's ownership of both the core telecommunications infrastructure and the services (fixed phone, mobile and Internet) provided through that infrastructure and the wholesale/retail business arrangements applying through this framework, inhibits the effectiveness of the current regulatory regime.

Telstra uses its dual ownership situation to its maximum advantage and this prevents the existing regulatory regime from being as effective as it should.

Core infrastructure extends beyond telephone exchanges and includes ducts, wires and all of the other elements of an end to end telecommunications network. Critical capacity issues exist in this network in spite of the regulatory regime. Economic and efficiency considerations demonstrate the need to avoid duplicating or triplicating the end to end distribution infrastructure. The regulatory regime must achieve this requirement.

The Australian Competition and Consumer Commission (ACCC) has indicated that the 'virtual separation' transparency in accounting arrangements within Telstra for its wholesale and retail operations has been ineffectual. The ACCC has not been able to determine, or has had excessive difficulty, determining the true costs of each category of services provided by Telstra.

The 2004 ACCC competition notice on broadband pricing, whereby Telstra's retail prices for broadband were not passed on to wholesale customers, illustrates this point.

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

Given the track record of Telstra exerting its market influence over other telecommunications providers and consumers whilst in Government ownership, there are serious doubts about the capability of the existing regulatory regime to oversight a fully privatised Telstra.

It is considered any future regulatory regime must have the capability to effectively oversight a fully privatised Telstra (which would be expected to operate more freely in the marketplace on the lines of a private company without any of the constraints now imposed on it as a government owned entity).

(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

Through the ACT digital divide program 2001 - 2005 various target groups have been provided with Internet access (usually dial up PSTN)². These groups are increasingly seeking access to broadband services consistent with the trends which have developed over the wider community.

Broadband services (whether provided through copper wire, fibre optic, wireless, satellite etc) are still considered as above basic services by telecommunications providers; these services are priced at more of a premium level, making them less affordable for low income and disadvantaged groups comprising the digital divide. Web site design is also much richer now and assumes that users have basic access to broadband; without this access, some groups in the community are effectively denied use of these sites.

Revised USO requirements also need to be considered to enable lower socio-economic groups and the disadvantaged in the community to have affordable and equitable access to the full range of telecommunications services which the mainstream community has access to. This will be increasingly important in terms of the adoption of digital TV and broadband services to the home and access to mobile telecommunications services (eg mobile phones) for disadvantaged members of the community.

(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 core of the ACT's domestic infrastructure for voice and data services is provided through Telstra's ageing copper wire network. Similar problems exist in the ACT as elsewhere in Australia in respect of this Telstra infrastructure including physical degrading of the network and saturation levels in transmission of data/information being reached.

A major exception with Telstra infrastructure is in newer developments (eg Gungahlin) where fibre optic cable has been laid, which provides greater reliability and capacity.

The other major carrier in the ACT is TransACT. During the 1990's both Telstra and Optus declined to roll out their HFC broadband network which was being deployed at that time in other capital cities, in the ACT. This resulted in the ACT establishing its own broadband provider – TransACT. TransACT's VDSL³ network provides fixed phone, internet (broadband) and pay TV services to government, business and residential customers across most of the ACT.

² PSTN - Public switched telephone network

³ VDSL - Very high speed digital subscriber line

Telstra's existing copper wire infrastructure in the ACT will need replacement within the next decade. New or emerging technologies (example fibre-optic cable/wire perhaps complemented by wireless networks) to provide all ACT citizens with access to the full range of digital services within premises and mobile telecommunications services are envisaged to provide this.

A number of players that have the capability to roll out fibre from exchanges to buildings (ie the last mile) have now entered the market. These include Optus, iNet, Powertel and Primus.

Due to economic and efficiency considerations, we need to avoid the deployment of duplicate or triplicate fibre networks (as occurred in the 1990's when Telstra and Optus followed each other up streets in the other capital cities with their HFC network).

More certainty would be provided to participants to invest in the new fibre infrastructure (which provides 'infinite' capacity) if there were a single network from the exchange to the last mile, which is accessible by all participants. In effect, Telstra would need to be removed from control of this network. It is also critical to achieve the right level of investment in the most effective last mile technology (ie fibre) otherwise there may be a skewing of investment to less effective last mile technologies such as wireless.

Whether any regulatory framework regardless of its robustness would achieve this is a debateable issue. Broader telecommunications policy requirements (such as a more pro-active role for governments including strategic capacity planning in the provision of infrastructure) also arise in this context and would need consideration prior to review of regulatory aspects.

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

A number of innovative technologies have emerged in the ACT under the current regulatory regime. However such technologies have tended to be more successful where they have not had to rely on access to Telstra or other carriers' infrastructure or other Telstra support in the ACT.

The deployment of TransACT's network has in part relied on access to Telstra exchanges. Some difficulties and delays have arisen for TransACT, in this context, whether through incompatible technologies, Telstra's business requirements or other factors.

Since February 2005, the deployment of Personal Broadband Australia (I'Burst) wireless service has been part dependent on obtaining access rights to existing infrastructure including Telstra's Black Mountain tower. Telstra is seeking payment from I'Burst of a surcharge for access which would result in a premium annual rental. This matter is still to be resolved.

TransACT's pay TV operations are also affected by restrictions on access to satellite transmitted channels, which has meant TransACT has to haul content via landline from Sydney.

(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

Having regard to the monopoly position of Telstra (owning both the core telecommunications infrastructure and providing its own services through this infrastructure), and the number of services problems which have occurred because of Telstra's domination of the market place under the current regulatory framework, it is not considered appropriate for the current regulatory regime to be lessened to any degree.

As the issues in this submission indicate, there is more of an argument for strengthening the current regulatory frameworks to ensure that adequate competition, technical innovation and promotion of investment by other business/private sector interests is achieved, once Telstra is fully privatised and not subject to any constraints that it currently operates under as a government entity.

The only alternative to reducing the scale and scope of existing regulation would appear to be the actual separation of Telstra's infrastructure and service layers.