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SENATE

ENVIRONMENT, COMMUNICATIONS, INFORMATION
TECHNOLOGY AND THE ARTS REFERENCES COMMITTEE

Reference: Performance of the Australian telecommunications regulatory regime

MONDAY, 20 JUNE 2005

CANBERRA

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SENATE
ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS
REFERENCES COMMITTEE

Monday, 20 June 2005

Members: Senator Cherry (*Chair*), Senator Troeth (*Deputy Chair*), Senators Mark Bishop, Conroy, Lundy and Tchen

Participating members: Senators Abetz, Allison, Bartlett, Bolkus, Boswell, Brown, Buckland, George Campbell, Carr, Chapman, Colbeck, Coonan, Crossin, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Harradine, Humphries, Knowles, Ludwig, Mason, McGauran, Nettle, O'Brien, Payne, Robert Ray, Stephens and Watson

Senators in attendance: Senators Cherry, Conroy, Lundy, Tchen and Troeth

Terms of reference for the inquiry:

To inquire into and report on:

- (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 inadequacy for participants, consumers and the competitive process;
 - (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;
 - (c) whether there are any structural issues in the Australian telecommunications sector inhibiting the effectiveness of the current regulatory regime;
 - (d) whether consumer protection safeguards in the current regime provide effective and comprehensive protection for users of services;
 - (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;
 - (f) the impact that the potential privatisation of Telstra would have on the effectiveness of the current regulatory regime;
 - (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;
 - (h) whether the current regulatory environment provides participants with adequate certainty to promote investment, most particularly in infrastructure such as optical fibre cable networks;
 - (i) whether the current regulatory regime promotes the emergence of innovative technologies;
 - (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; and
 - (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.
- (2) That the committee make recommendations for legislative amendments to rectify any weaknesses in the current regulatory regime identified by the committee's inquiry.

WITNESSES

BRYANT, Mr Simon, General Manager, Competition and Consumer Branch, Department of Communications, Information Technology and the Arts	28
CHEAH, Mr Christopher, Chief General Manager, Telecommunications, Department of Communications, Information Technology and the Arts	28
COOPER, Mr Colin, Divisional President, Communications Division, Communications, Electrical and Plumbing Union.....	16
EASON, Ms Rosalind, Senior National Industrial Research Officer, Communications Division, Communications, Electrical and Plumbing Union.....	16
McNALLY, Ms Carolyn, General Manager, Regional Communications Policy, Telecommunications Division, Department of Communications, Information Technology and the Arts.....	28
O’HARA, Mrs Dianne, General Manager, TransACT Communications.....	2

Committee met at 7.18 pm

CHAIR (Senator Cherry)—I declare open this public hearing of the Senate Environment, Communications, Information Technology and the Arts References Committee in relation to its inquiry into the telecommunications regulatory regime and I welcome everyone here this evening. The committee is inquiring into whether the current telecommunications regulatory regime provides competition, encourages investment in the sector and protects consumers to the fullest extent practicable. We have received 49 submissions from organisations and individuals and this is our eighth hearing.

For the benefit of all witnesses today, I point out that the committee prefers all evidence to be given in public. However, should you at any stage wish to give your evidence, part of your evidence or answers to specific questions in private, you may ask to do so and we will consider your request. Witnesses are reminded that evidence given to the committee is protected by parliamentary privilege and the giving of false or misleading evidence to the committee may constitute a contempt of the Senate.

[7.19 pm]

O'HARA, Mrs Dianne, General Manager, TransACT Communications

CHAIR—I welcome Mrs Dianne O'Hara. Thank you for your time today; it is much appreciated. As you have provided no written submission, I invite you to make an opening statement before we move to questions.

Mrs O'Hara—I will give a brief outline of TransACT by way of an opening statement. TransACT Communications is an ACT based privately owned telecommunications company that was formed in 2000. It has invested over \$200 million in building and operating a full-service communications network, predominantly throughout the ACT.

We have a phase 1 VDSL network, which takes optic fibre to within 300 metres of the home. This technology can support downstream usable bandwidth of approximately 36 megabits per second. Over this network, we offer telephony, broadband data connections and video services. We also have a phase 2 ADSL network, which uses Telstra's unconditioned local loop to deliver a voice and data service. The phase 2 network uses TransACT's fibre network and infrastructure from its head end up to the Telstra exchange. We store our electronics in TEBA spaces and we use Telstra copper out to the home. Through our phase 2 ADSL network, we currently offer telephony and broadband data connections. The take-up of our services in the years since 2000 demonstrates that we can compete with all other carriers, including Telstra, with products and pricing.

We are experiencing some difficulties, however, where Telstra uses its dominant position to delay TransACT's access to markets. This is particularly noticeable in our phase 2 network, where TransACT interfaces more widely with Telstra and relies on certain Telstra inputs to provide specific retail services. In the telco environment, where speed to market and a continual refresh of products and pricing are vital, delaying tactics can be quite damaging. Telstra's actions can range from anything as simple as delaying access to exchanges to more technical issues or just a general increase in Telstra activity in areas we have earmarked through our TEBA processes going to those various areas. I am happy to go to some of those issues in further detail, should the committee require me to do so.

We welcome the ongoing debate regarding the regulatory environment and the promotion and encouragement of further competition. We are now a member of the CCC group; they are examining in more detail the various models being put forward. But TransACT is happy to share some of its operational experiences and views, if they can be of assistance to the committee.

Senator CONROY—You are an infrastructure competitor of Telstra's; is that right?

Mrs O'Hara—Yes.

Senator CONROY—Do you have any plans to extend your infrastructure roll-out?

Mrs O'Hara—Yes, we do. We have currently utilised six Telstra exchanges throughout the ACT. We have studies in for a further three and will look at how we continue throughout the ACT, using various technologies as required. We are also offering some limited telephony services in the capital region—preselect predominantly, at the moment.

Senator CONROY—How would you characterise the current status of competition in the telecommunications market?

Mrs O'Hara—TransACT feels that it has made a significant infrastructure contribution. Many other carriers rely on Telstra's infrastructure. Being an open access network that offers infrastructure to other service providers, we were trying to use our own infrastructure in our initial roll-out in such a way as to avoid duplication. Competition though is very difficult when you have such a dominant player that can use its position to delay or to confuse at various points.

Senator CONROY—You have mentioned Telstra's behaviour in the market—certainly of giving you a disincentive for undertaking various activities. Could you outline a couple of examples?

Mrs O'Hara—The most recent was a heat load issue. We have rolled out currently to six Telstra exchanges throughout the ACT; we did that from late 2003 until the first half of 2004. We again applied for TEBA space at the Telstra exchange at Gungahlin, when it was constructed. At that time there was a new change in the process that had been followed quite uniformly with the previous six exchanges. At the preliminary design study stage, TransACT was informed that the heat loading within the TransACT racks that we proposed to put in at that exchange was too high. That same heat loading requirement had not been imposed previously. TransACT was informed that their study would not be approved, as the heat load in the racks exceeded Telstra's policy guidelines.

We asked about what the policy guidelines were because we were not able to reference them either in the facilities access agreement or in Telstra TEBA design documentation. TransACT was referred to a web site. We were unable to reference the web site so we went back to Telstra again and were given a password. The password did not work and ultimately, after a delay of some weeks, we were faxed a hard copy of a working draft—marked 1997—on heat load. That is what has been applied since. The practical result of that is that TransACT has to rent additional space at the exchange to meet the heat load requirements. The other thing is that at the same stage as the Gungahlin exchange preliminary study went in, the same preliminary study went in for the Mawson exchange and that was approved without reference to the same heat load study.

Senator CONROY—In your view, would those heat loading requirements have been exceeded in those other exchanges?

Mrs O'Hara—They were not applied. They just were not an issue, so they could have been applied. It is a working draft and had not been applied in the previous six. When Nos 7 and 8 went in, it was applied to exchange No. 7 but not No. 8.

Senator CONROY—How many exchanges would you have gone into where it was not ever raised with you and the concentration of DSLAMs that you were putting there would have been similar to other exchanges?

Mrs O'Hara—Six, and a seventh has been approved.

Senator CONROY—And this was never an issue?

Mrs O'Hara—No.

Senator CONROY—Sorry, I interrupted there.

Mrs O'Hara—There are further examples of delays for the Gungahlin exchange. Although they are minor delays, because of the speed that you have to get to market, they can be quite damaging. When you start doing work throughout the TEBA processes, you apply online and get an access pass to these exchanges. That is what we did. They are issued to each individual person.

In the case of the Gungahlin exchange, the access pass was acquired and used. Telstra then started constructing a fence around the exchange. At a certain point, they padlocked the gate, so when you went to use your pass at the exchange you could not get in because you could not get through the gate. Effectively, that meant that TransACT personnel who had been granted access passes using Telstra's processes could not get access to that exchange. In order to access the exchange, our staff member had to then call the Telstra area manager, who would then issue them with the key to the padlock so they could get through the fence to get into the exchange. They did that on every separate occasion. They did, I suppose, attempt to make some effort to allow you to get in. At the same time as that, we had to apply for a key to the padlock—which we did—but that took some months to arrive.

Senator LUNDY—Months?

Mrs O'Hara—Yes.

Senator CONROY—They lost the key to the padlock to the gate?

Mrs O'Hara—No, they did not lose the key, but you have to apply to get your own key.

Senator CONROY—Did they put another fence around that one when you went out next time?

Mrs O'Hara—No.

Senator CONROY—It has seven fences around it now, has it?

Mrs O'Hara—It means that, in progressing through the TEBA exchange, getting your equipment in there and kitted out and inspected so that you can then offer your services to customers, there are just little delays which make it hard to schedule accurately and hard to then market and sell.

Senator LUNDY—The obvious interest I have to declare is that Gungahlin is in my electorate of the ACT. As a local representative, I have conducted a number of community meetings where there have been representatives of Telstra, Optus, TransACT, AAPT et cetera. How would you rate the feeling in Gungahlin, of wanting broadband, given the inhibitions that Telstra's rim services have imposed on that area?

Mrs O'Hara—The interest in Gungahlin is extremely high and has been for some time. TransACT finds a lot throughout the ACT that one of the complaints it regularly receives is that people cannot receive TransACT services because we are progressively rolling out our network. That was one of the reasons for going to the phase 2 roll-out; it was a way of reaching a greater range of customers.

Senator LUNDY—Which is reselling ADSL access in Telstra's network.

Mrs O'Hara—Yes. With regard to Gungahlin, as soon as the Telstra exchange was built it allowed us to try to access these people. But, yes, you are right; a lot of community meetings are regularly held. A lot of newsletters go around that community. We have a lot of letters to TransACT saying, 'When are you coming and what services are you offering?' So it is trying to satisfy that demand.

Senator LUNDY—When the exchange was announced it was heralded by Telstra as a solution to the broadband problems in the area, wasn't it?

Mrs O'Hara—Yes, it was. From TransACT's point of view, there will be a percentage of Gungahlin that remains RIM fed so that will not be readily accessible from our point of view. But the parts that we can get to we certainly will be doing so.

Senator LUNDY—So there is still some of Gungahlin that Telstra cannot access, you cannot access, no-one can access because of the RIM network but there are some new areas now or some existing areas where you could possibly provide the service if you could get access to the exchange.

Mrs O'Hara—There are areas we can access using Telstra's copper. I get a bit lost in the technology, I must say. But there are also RIM fed areas of Gungahlin which will be extremely difficult if not impossible for TransACT to get through using Telstra's infrastructure, although I think Telstra may still be able to offer services in those areas. Then, of course, there are the new developing parts of Gungahlin. As those new suburbs come online we will be working to put suitable infrastructure in those from TransACT's point of view as well.

Senator LUNDY—Are you able to give a broad description of the impact this has had on TransACT's potential customer base—if you had had, for example, access in a timely fashion as opposed to being locked out?

Mrs O'Hara—We started rolling out in Monash late in 2003 or early 2004 and have progressively tried to roll out to other Telstra exchanges as quickly as possible. There have been delays in that, and broadband growth has been phenomenal in that time. TransACT is concerned that if we had been able to access some of that infrastructure in a more timely fashion we would have been more on the wave of that broadband uptake.

Senator LUNDY—So you would have had A bigger market share.

Mrs O'Hara—Yes. Also, of course, customers are often locked into contracts now with their bundling and various packages that are offered.

Senator LUNDY—How important is it for a carrier to get to the customer first, or at least to be there when the customer makes the choice of which carrier to provide the ADSL service?

Mrs O'Hara—I think it is extremely important for a number of reasons. One of them is the bundling. Quite often you do not just buy telephony. You buy your telephony data and you might even buy your TV services. In TransACT's case, we also bundle with ActewAGL, so you can get your electricity, gas and internet services. Also, once they have an internet service, people are quite often loath to change their addresses. They are loath to change phone numbers, which you do not necessarily have to do but sometimes you do. So it is important to get to them first. Often they are locked into 18-month or two-year contracts so you have to wait for those cycles to go through. So you need to be right up there at the beginning.

Senator LUNDY—When the fence was built around the Gungahlin exchange, you said it was months. Can you tell me how long it was and specifically what your assessment as a company was of that conduct?

Mrs O'Hara—I am told by the people who were involved—I checked this morning—that it was a three-month period. I did not ask them to specifically check dates but that is why I said it was a period of some months. During that time, he did emphasise that he was able to call the Telstra area manager and get access to a key if he signed for it. He could then go and use it and he would return it. If he needed it later that week he would then have to repeat the process. So Telstra did make some arrangements but, again, it should not be so hard to get a key. We went through the process of applying for it, as we had to, but it was just some time before the key arrived. There does not seem to be a good reason that a key cannot be produced in a more timely fashion.

Senator LUNDY—Do you think it was just a tactic to delay TransACT's entry to the market?

Mrs O'Hara—It did not necessarily delay, because we could still get into the exchange. It was just another case of making it a lot harder than it needed to be.

Senator LUNDY—With respect to the situation in Gungahlin, Telstra have acknowledged the presence of RIMs. I do not know if you can answer this; if you cannot, it would be useful if you took it on notice: to what degree, if any, are TransACT able to put miniMUX, CMUX, or mini ADSL units inside the RIM units in Gungahlin? Have you done that at all or been able to?

Mrs O'Hara—I would have to take that on notice. I understand, but I cannot be sure, that it is a case of having to put infrastructure next to it. Something like that might be able to be done. But I would have to check on that.

Senator LUNDY—If you could take it on notice, I think your technical people will know what I am looking for. The other question I have, which might fall into the same category, is: what arrangements surround access to the fibre that connects the RIM units to the exchanges and

whether TransACT has attempted any negotiation with Telstra to have access to that fibre in the context of mirroring a RIM unit or some such infrastructure in the way that you have described.

Mrs O'Hara—That is something that I would have to ask our technical people and those who deal with that.

Senator LUNDY—Finally, going back to the content sharing arrangements that the ACCC oversaw some years ago, I recall that at the time one of the conditions by which that content sharing agreement between Foxtel and Optus would go ahead was that companies like Neighbourhood Cable and TransACT would come to some arrangement with Foxtel for accessing their content. Are you able to advise the committee of the outcome of those negotiations and whether TransACT was ultimately able to negotiate a commercial arrangement to provide Foxtel content?

Mrs O'Hara—At the time the undertakings were signed off by Foxtel, TransACT had negotiated an agreement with Foxtel for the delivery of the analog Foxtel service over the TransACT network. We ran the service throughout 2003, certainly. Foxtel undertook to get the certain consents that they needed from the various channel partners to allow the full range of Foxtel services. Over a period of not that long, I must say, that was achieved, so we did offer the full analog Foxtel service. We have not actively sold the service this year because, as Foxtel are making changes based on encryption for their digital service, it is becoming increasingly difficult for TransACT to offer that service. So it has a limited life, I suppose. From TransACT's point of view, there were undertakings given: 'Yes, we got the service, but it is fairly short-lived.'

Senator LUNDY—Finally, given that you are an open infrastructure provider, has Telstra ever discussed or approached TransACT with a view of selling their retail services over your network and thereby purchasing access to your network?

Mrs O'Hara—No. We have certainly had a number of discussions with Telstra, BigPond et cetera in terms of opening up our network to them, but they have not proceeded very far.

Senator LUNDY—So they build their own exchange and then build a fence around it?

Mrs O'Hara—Yes.

Senator LUNDY—Thank you.

Senator CONROY—What factors do you think are inhibiting the establishment of an effective competition in the Australian telecommunications sector at the moment, on a broader level?

Mrs O'Hara—TransACT is very operationally centred. It is fairly small and it has defined resources that it commits to certain things. What we come up against most is the dominance of Telstra and the various processes—'tactics' is perhaps not the right word—that are employed to slow, delay or make difficult effective competition at that level. From TransACT's point of view what we and other carriers would like is to be treated equally by Telstra wholesale. We want

Telstra retail to be treated in exactly the same fashion as Telstra wholesale treat us without giving them additional information—

Senator CONROY—Given their size, though, is that possible for your company—put aside the others—that you have described as relatively geographically based and relatively small compared to Telstra retail? Do you think it is viable for you to say that you want the same treatment as something as large as Telstra?

Mrs O'Hara—I think that it is because some of what we want is a non-price issue as well; it is not simply the equivalent prices that are offered. Obviously, all companies offer to a certain extent volume discounts, but there is a range of non-price issues as well, be it information sharing or decision-making processes, and quite often it is those sorts of things that impact more on us than just the straight-out pricing issues. Pricing issues you can deal with because you know what they are to a certain extent. It is the non-price issues that are hard to predict and that vary.

Senator CONROY—Does TransACT acquire declared services from Telstra?

Mrs O'Hara—Yes, terminating access et cetera.

Senator CONROY—Could you just give us a bit of an outline of those?

Mrs O'Hara—The predominant one is mobile terminating access to a fixed line. We use their facility so there is obviously facilities access.

Senator CONROY—Telstra, in discussions both publicly here and in private, do not seem to believe that they actually have many issues with their customers. They say that they do not receive any complaints from their wholesale customers about the way they provide access to declared services. They have even taken to FOI-ing the ACCC to obtain details about complaints. Have you ever expressed the concerns that you have outlined here to Telstra?

Mrs O'Hara—There are a number of issues that we have expressed concern to Telstra on. I was most heavily involved in a DIAS issue, but that was some time ago. The day-to-day phase 2 roll-out ULL issues are dealt with at an operational level but we have our network build manager interacting with our wholesale account manager. We also have our more operational activations and build people involved in regular meetings with Telstra to go through issues lists. So, yes, Telstra would be well aware of what our issues are.

Senator CONROY—Specifically, for the non-price ULL issues, Telstra says that there are no problems, that they are just not aware of any. Do you think that you are not getting through to management?

Mrs O'Hara—I think that we are. We are not taking them to the very high levels of Telstra and perhaps that is part of the issue. But we are certainly taking them to the people that we are dealing with on a day-to-day basis through our wholesale account manager. We have issues with missed appointments. Telstra will acknowledge in these regular meetings that there is an issue and they will address it. So the issue then goes away for a short period of time. There might be a staffing issue and they bring on more staff and the issue goes away. A few months later it will come back and you will then again experience further missed appointments. You will be asked to

compile data. You will give the data to Telstra and they will say that there is another issue. They do attempt to fix it but with each step there is delay. There is delay while you get the data to them. There is delay while they consider the data. There is delay while they come up with a solution to it and it has been implemented, and all the time your market is moving.

Senator CONROY—How effective has the ACCC been in responding to some of the issues that you have raised?

Mrs O'Hara—TransACT interacts with the ACCC on a number of levels. We have brought things to their attention, generally on an informal basis, and we also respond to their requests for information on various issues. As a small organisation, though, we do find it difficult to use the ACCC in order to achieve outcomes. TransACT's view is that with a lot of the ACCC processes you need time and resources to achieve an outcome, and those are things that TransACT generally does not have a lot of.

Senator CONROY—You have not got the largest legal department in the country?

Mrs O'Hara—No; in fact, you are looking at her. One example of that is the heat loading issue. Looking at the practicalities of it, we wanted to get to Gungahlin as quickly as possible, part of that is you settle and a practical outcome of that settlement is that you just get the extra rack space and you wear that additional cost. If we had gone through some sort of ACCC process we would not be as far down the track with the Gungahlin exchange as we are now.

Senator CONROY—You have been involved in some quite rigorous competition with Telstra at the retail level, haven't you?

Mrs O'Hara—Yes, there have been a number. The first one was probably over the terminating access for data calls. That was some time ago. TransACT's view was that we were placed in a position where we had to accept a settlement. It took a long time. Telstra simply did not pay TransACT for those calls that it considered to be not voice calls, data calls. But if we had in turn withheld moneys from Telstra, Telstra have a bond, so my view was that they would just take the money out of the bond. So, yes, there have been some rigorous arguments with them.

Senator CONROY—In your view has Telstra gone beyond mere vigorous business practices and engaged in anticompetitive conduct in this market?

Mrs O'Hara—Telstra are such a dominant player. It is hard to make distinctions because I suppose they are protecting their market, and that is what any commercial practice would do. But TransACT's view is that it wants to be treated equitably. It wants to compete on a level playing field using its products and prices. I think part of Telstra's conduct is anticompetitive, but it does not fit neatly within the anticompetitive components of the Trade Practices Act.

Senator CONROY—You are not a tiny player in the market. You are a substantive player in the Canberra market, which is a reasonable market.

Mrs O'Hara—Yes, we are. We have been extremely successful in some of our take-up in various areas throughout the ACT.

Senator CONROY—You would not be defined as a small business or a little start-up or like the couple of uni students who started up a wireless service that got smashed by Telstra—you are a substantive corporation.

Mrs O'Hara—Yes. As I said before, we have invested over \$200 million. We pass 90,000 homes and we have 27,000-plus customers. We employ 160 people.

Senator CONROY—You are a reasonable sized company and you still find it difficult dealing with Telstra. They are still keen to push you around a fair bit and, as you jokingly said, you are the legal department.

Mrs O'Hara—Yes. Most of our resources are pushed to operational areas. We are now operating under a management agreement with ActewAGL, so when I say I am the legal department, I was the legal department; we can now call on some of the ActewAGL resources. But, yes, things are fairly tight.

Senator CONROY—Senator Lundy declared that she had a vested interest—her electorate, and possibly where she lives.

Senator LUNDY—No, I do not quite live in Gungahlin, but I know that Telstra were for many years saying that I did, as some justification for my interest in it.

Senator CONROY—I can vouch for the fact that Senator Lundy does not live in Gungahlin.

Senator LUNDY—No, just my constituents.

Senator CONROY—She lives just around the corner from where I stay, which is at my parents', who are TransACT customers; I should put that on the record, just so there is no suggestion—

Senator LUNDY—Yes, indeed. I am certainly a TransACT customer as well, so I need to pass that on.

Senator CONROY—I am a frequent observer of your product. If I wanted to transfer my telephone account from Telstra to TransACT, how long would that take?

Mrs O'Hara—It depends. If you take your telephone account and you take a new TransACT number, we can do that more quickly than we could if you wanted to retain your existing number. We do encourage TransACT customers to take TransACT numbers, but if you wanted to retain your Telstra number you would go through the porting process, and it takes longer.

Senator CONROY—How long is it in days?

Mrs O'Hara—To tell you the truth, I could not give you an exact figure. Generally, because of the way we sell, we have to build in consumer protections such as a 10-day cooling-off period and things like that, but we aim to connect as quickly as possible after that. Generally it is about 13 days.

Senator CONROY—I know you have mentioned some of this in talking to Senator Lundy, but what impact has Telstra's behaviour had on the speed of your roll-out of broadband products?

Mrs O'Hara—As I said earlier, our main interface with Telstra goes to our phase II network. We have much more control over our phase I network. We do not roll out phase I anymore, but that was totally our own infrastructure so it was harder for Telstra to interface there. With the phase II network, we rely on Telstra to go through the TEBA process—that is, the studies to get into the exchanges, the detailed design studies to then indicate what equipment we are putting in and how we are putting it in, and the TEBA contractors that you use to put the equipment in. You then have a further Telstra inspection before you can go through the activation process, which I think takes up to two days with Telstra. You can then start selling. So there is a lot more interface with Telstra and there is a lot more ability to delay. We have seen that more so in some cases—I suppose the Gungahlin exchange is the predominant one where we have seen that delay.

Senator CONROY—One of my staff who lives here in Canberra has just transferred from Telstra to TransACT, and he was told it would take between four and six weeks. He did want to keep his current number, and I appreciate that you made some points about that, but does four to six weeks sound normal?

Mrs O'Hara—Yes, it would be. We try and move the customers across as soon as possible, but you go through a process—

Senator CONROY—It is a pretty long lag from buying a product to having it turn up six weeks later.

Mrs O'Hara—Yes, but TransACT tries to keep its customers fully informed so they do not get to a certain point and lose patience. But you go through a process of asking whether there is a vacant line, getting the response back, booking the appointments with Telstra technicians and getting your own contractors out there. So, yes, it can be a reasonably lengthy process.

Senator CONROY—So is there any difference in the length of time it takes to churn the phase I area compared with the length of time it takes to transfer to the phase II area?

Mrs O'Hara—It is longer in the phase II.

Senator CONROY—Longer? So is it seven to eight weeks?

Mrs O'Hara—No. I would say that at four to six weeks your staff member would have probably been in a phase II area. It is not quite that long in phase I.

Senator CONROY—Why is it longer? Is there a technological reason?

Mrs O'Hara—Yes, because when a customer—

Senator CONROY—Or are you a greater threat to Telstra?

Mrs O'Hara—When a customer in a phase II area wants to churn to TransACT, you again have that regular interface with Telstra. You have to ask whether there is a vacant line there. If there is not, you have to make other arrangements. They come back. You then put in a request to use that line. You then book an appointment for a Telstra technician to go out there and do whatever they need to do, both at the customer's house and at the exchange. You need our own contractors to then follow up and hook up our equipment at the house.

Senator CONROY—It sounds as if they draw it out a fair bit—that is being polite.

Mrs O'Hara—We have had issues before with appointments and missing appointments, and that is one of the ongoing issues that this working level committee is trying to address and at various times has addressed, and then it seems that something slips again. But, yes, it is complicated, and it can be a drawn out process.

Senator CONROY—But where you have your own infrastructure, is it pretty quick?

Mrs O'Hara—Yes. If the customer wants to retain a Telstra number, you still have to go through the porting process, but we have our own contractors who can go out and do their own work.

Senator CONROY—Is it possible to get a copy of the heat load draft that you made reference to?

Mrs O'Hara—Yes.

Senator CONROY—That would be great. It would be very useful for the committee. How do you think Telstra's behaviour overall has affected the pace of broadband take-up in Australia?

Mrs O'Hara—I can speak only from TransACT's own experience. I suppose it has made it sporadic. Again, TransACT's experience is: by going through the process of indicating where you need TEBA space you are clearly signalling to Telstra where you are next going to be rolling out your network, and when you go back and forth to that exchange generally there is a flurry of activity. So, in some ways, I think Telstra would almost appear to be waiting and then, when a competitor such as TransACT says, 'We're now going to be selling into that area,' there seems to be a flurry of activity.

Senator CONROY—It seems to be consistent all over Australia?

Mrs O'Hara—Again, I can only really speak from TransACT's direct experience.

Senator CONROY—Senator Lundy was talking about Foxtel. You are a competitor of Foxtel in the pay TV market in Canberra. I would like to ask you a few questions about the market. Would you briefly outline the television services you provide over your network?

Mrs O'Hara—We have a subscription television service. As I said, in the past we actively sold the Foxtel analog service over the TransACT network. Since May last year, we have added to our own TransTV services, as we call it. We now have roughly 30 channels that range from documentaries—the National Geographic type channels, the soundtrack channels, the

parliamentary channels—to a range of foreign language channels and Turner type channels. We also have a true video-on-demand service and we retransmit the free-to-air channels as well.

Senator CONROY—How important is the pay TV, video demand component in the bundle of products that you are offering to the market?

Mrs O’Hara—TransACT regards it as quite important. It completes the full suite of communication services that we can offer. In the case of video on demand, it is something that no other provider can offer. It is a true video-on-demand service. That is what TransACT is: full-service communications.

Senator CONROY—That would give you a key edge, though, in promoting yourself.

Mrs O’Hara—It is something we have that nobody else does, yes.

Senator TROETH—This is a general question. If a company were setting out as a medium sized company—which is what you are—to enter into the services that you are providing, what advice would you give that company to manage in the commercial atmosphere in which you manage at the moment

Mrs O’Hara—I suppose I would say to them: ‘To the extent possible, put in your own infrastructure so you do not have to rely on Telstra’s infrastructure. You also can be certain of what you have got.’ Again, with the phase II roll-out, the quality of the copper is quite variable and it is almost a try it and see situation. I suppose you need to acknowledge that it is a capital-intensive venture. But on the upside there is a huge demand out there for a reasonably priced, advanced technology communications market, and the full service offers you a good range of bundling opportunities.

Senator CONROY—The recent Productivity Commission report on national competition policy highlighted the importance of ensuring that rival networks can access premium pay TV material such as Foxtel’s premium content. The Productivity Commission said that Telstra’s 50 per cent shareholding of Foxtel, which in turn has exclusive access to much premium content, raises some important competition concerns. Has TransACT had any difficulties accessing content with the pay TV service?

Mrs O’Hara—TransACT would love to access the premium sports channels. We do have some sports channels but we do not have what are seen as the premium sports channels—that is, the rugby, the cricket and that sort of thing. We have the other sports channels that we can gain. So I would have to say yes to that—there are channels out there that we simply cannot get at this point in time.

Senator CONROY—Could you get ESPN, for example?

Mrs O’Hara—Yes, we do have ESPN.

Senator CONROY—I understand that Foxtel gave the ACCC some undertakings in relation to access to get the commission’s approval for the content sharing deal with Optus. Have they been any use at all?

Mrs O'Hara—They did in the sense that they encouraged Foxtel and TransACT to reach an arrangement which we had been trying to do for some time, and we were able to reach a conclusion at that point in time. I must say, though, it did not help us to gain access in our own right to some of the more important premium channels.

Senator CONROY—The Productivity Commission recommended that work should be undertaken to explore the possibility of developing an access regime for premium content. It suggested that such a regime might be a better way to promote competition between telecommunications networks than forcing Telstra to divest its stake in Foxtel. Do you have any thoughts on that?

Mrs O'Hara—I suppose that the regulation of access to some of the channels would help, but, again, it goes to the way it is done. It is not just a matter of price, it is also the terms that go with that. It remains something that TransACT would certainly be interested in to round off that complete package.

Senator LUNDY—I have a question that you might like to take on notice. I would like to know in full detail what the process is that TransACT has to go through if a customer requesting a TransACT ADSL service is found to be on a pair gain system and what the potential remedies are for that customer.

Mrs O'Hara—I will have to get that information.

CHAIR—That you, Mrs O'Hara, for your evidence today.

[8.03 pm]

COOPER, Mr Colin, Divisional President, Communications Division, Communications, Electrical and Plumbing Union

EASON, Ms Rosalind, Senior National Industrial Research Officer, Communications Division, Communications, Electrical and Plumbing Union

CHAIR—I welcome representatives from the CEPU. Thank you for your time; it is much appreciated, particularly late at night on a Monday. The committee has received your submission, which is numbered 40. Do you wish to make any amendments or additions to your submission at this stage?

Mr Cooper—No.

CHAIR—You are reminded that evidence given to the committee is protected by parliamentary privilege and that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. I now invite you to make an opening statement before we move to questions.

Mr Cooper—Firstly, we would like to thank the Senate for this opportunity to address it on matters which we believe are of the utmost importance for the communications future of this country. This might seem a disproportionate claim for an inquiry which, on the face of it, is concerned with the rather dry question of telecommunications regulations. But I think we all know that the larger question that hangs over this discussion is the question of the full privatisation of Telstra and the consequences it would have for all Australians, not only those who live in rural and regional areas.

Our submission has not addressed the arguments for and against privatisation at any length. This was not the direct subject of this inquiry and, at any rate, the views of the union on this question are well known. But, with your indulgence, we would like to make a few short observations on this matter now because it has become tied up with the present debate over regulatory policy. The government would have us believe that in the future we can achieve through regulation what was once achieved through government ownership—that is, industry behaviour which delivered modern and high-quality communications services to all Australians on an equitable basis. The CEPU has never been convinced of this, nor has the community. This is why most Australians continue to oppose the full sell-off of Telstra. Such scepticism is all the more justified because of the far-reaching changes which are now occurring in the industry and are leading it in directions which were unimaginable a few decades ago.

We have stressed in our submission the uncertainties and challenges that these changes are creating. It is our view that the present circumstances require a policy response which is at once far-sighted and prudent. Current government policy is neither of these things. It is not prudent to surrender the control that government enjoys, as a majority owner, over our only nationwide telecommunication network provider. And it is particularly rash when you consider that no good public policy grounds have been advanced for such moves. As for far-sightedness, the sad fact is

that, for nearly a decade, policy has been dominated by the sole objective of privatising Telstra and of securing the necessary political support for successive sell-offs.

Despite the talk of future proofing, there has been no plan put forward as to how egalitarian communications outcomes would be guaranteed in the future. So it is not surprising that, as the moment of truth draws near, sections of the government's own base have become nervous and have started casting about for models that would provide the same degree of certainty as public ownership has done to date. The latest of these are so-called operational separations. It is a remarkable symptom of the present policy vacuum that an idea which really has so little practical substance and which has meant such different things to different people could have gained such certainty in the present debate. Yet today we read that the National Party is making operational separation not only of Telstra but of its competitors as well a precondition of its support for the privatisation legislation.

The position at least has the virtue of consistency. We have never been able to see the policy sense in denying Telstra and, by extension, its customers the benefit of vertical integration while other companies are free to enjoy them both here and, in the case of SingTel Optus, in their home markets. But even if the government were willing and able, politically speaking, to impose such sweeping changes on the industry, what could they reasonably hope to achieve through them? Will operational separation stimulate one extra dollar of investment in the new generation networks of the future or will it do the opposite? Will it ensure the timely delivery of advanced services to the thin markets of rural and regional Australia?

We have argued in our submission that these questions, essentially ones of investment in the new national capabilities, deserve a more extensive and dispassionate examination than the government's privatisation timetable is allowing. There are no quick fixes to the complex policy and regulatory issues that it now faces. What we need is a comprehensive re-examination of policy in light of the newly emerging technological environment. In the meantime, any future sale of Telstra should be put on the backburner and preferably taken off the agenda altogether.

CHAIR—Thank you, Mr Cooper. I have a couple of questions before we move to the opposition and government senators. Have you or Ms Eason read any of the other submissions to the inquiry, particularly the submission from Telstra?

Ms Eason—I must say that I have not seen Telstra's submission to this inquiry. I have been looking at their submission to the parallel inquiry and also the Optus submission.

CHAIR—Other than the obvious one of the opposition to the privatisation of Telstra, could you outline the differences between the union's position and Telstra's position? A cursory reading of your submission shows a great deal of similarity with the position Telstra takes on issues like part XIB and XIC of the Trade Practices Act, structural separation, the universal service obligation—on those key regulatory issues you seem to have a very similar position.

Ms Eason—I think we would have differences on the universal service obligation. Historically we have had similar positions on the Trade Practices Act sections and as the implementation of those has progressed I suppose there has been a dovetailing of our positions. We would have similar positions on the question of access pricing, broadly. We have differences on the universal service obligation where Telstra for at least quite a long time has had the

position that that should be funded by government. I think they have perhaps realised that that is no longer politically likely. For a time it was not, but there was a long period when Telstra adopted that position. Telstra also adopted the position of supporting competitive tendering, which we oppose. I am not quite sure where they are on that now but that is dead in the water. And of course we oppose them on the question of privatisation and as well we have our differences with them industrially. So if the gist of your question, Senator, is: are we always in agreement or 90 per cent in agreement, I would say we are probably 60 per cent in agreement on some key regulatory questions and 40 per cent against, and usually opposed on industrial questions.

CHAIR—You mentioned the USO as one area where you had a significant difference of policy. I know it is touched upon a little bit in your submission, but what is your view on the adequacy of the current USO standards? How should it be funded? How should it be expanded, if at all, to cover new products?

Ms Eason—We support, and always have, regular reviews of the content of the USO. We think it should be progressively upgraded, but of course that question cannot be separated from how it is funded. We have always supported it being funded by industry and we continue to do that. But in reality, of course, the rest of the industry baulks at funding even the current USO—the question has always been contentious—and has absolutely set its face against funding any extension of the USO. That is not a reason for not forcing it upon industry, of course, but one has to recognise the political difficulty of it. In the end we think that is the only way to go, but there has to be an agreement on the part of the industry as a whole that it has an obligation in that direction, and that is not accepted in the current political climate.

CHAIR—I was also interested in your views about the investment in the future needs of the network, and that is something that you touched on in your submission on page 30. In relation to next generation networks you say:

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.

You go on to say:

... regulatory policy which discourages this process by (say) restricting Telstra's ability to enter the product markets or to exploit economies of scope and scale is not in the community's best long-term interest.

Are you essentially saying there that Telstra should have access holidays or regulatory holidays to promote investment? I am interested in particular because you refer heavily to the Ofcom review and I think they have put a great deal more emphasis on the need to roll out new investment, essentially saying to BT: 'If you do not do the investment, we are going to regulate you.' That is certainly how I read it, not quite the way you read the Ofcom review. Certainly there is the potential for regulation if the investments do not follow through. What are your recommendations to us in terms of rolling out investment?

Ms Eason—You have touched on a number of points all rolled into one there—

CHAIR—I did indeed.

Ms Eason—We do not talk explicitly about access holidays but that is one mechanism. But more fundamentally, I suppose, that statement is aimed at policies of structural separation, which in our view would retard innovation and therefore also inhibit investment as well as possibly cutting off future revenues from products which rely for their development of vertical integration.

But, looking forward, there are obviously questions about the current long-term incremental cost modelling—whether that is appropriate for new investment as opposed to investment that has already occurred when you are determining access pricing—and there is also the question of access holidays. I do not think the union would ever support an indefinite holiday, as it were, from access obligations. We still have a commitment to the common carrier model. But I think also we are now faced with a different situation from the one that historically we have been faced with when we look at access. It is one thing to come in and impose a regulatory model on a network which already exists; it is another to actually get investment when it is forward looking. How do you just avoid a capital strike? You have liberalised markets, you have privatised the companies, you have essentially said that the market will largely determine the investment behaviour of companies. How do you then create the conditions that will bring about that investment in a timely way? All we are pointing the committee's attention to is that it is a different ball game when there are large amounts of money which have to be committed in the future from the situation where you are giving competitors access to a network which already exists. The investment has been made; it is sunk. That is not what we have got now.

Senator LUNDY—In the context of the whole privatisation agenda, to what degree do you think the Howard government has now acknowledged that motivation to keep Telstra effectively dominant—to maximise their bottom line so there is some appeal for privatisation—has impacted on broadband and technological innovation generally in the Australian telecommunications market?

Mr Cooper—I do not know if it is all about providing a share market price. I think basically it is the issue of how you provide what I would say are universal services and costs.

Senator LUNDY—Mr Cooper, I know that, but government ministers have said that they are motivated by Telstra's bottom line in their handling of the whole regulatory and competition environment.

Mr Cooper—I would think they are also motivated by their concerns, particularly in rural areas—and I think it goes beyond rural areas—about how a privatised company is going to actually provide that service and how it is going to provide it now, once it is a totally profit driven operation. I do not think it is just about trying to keep the share price up. It is about meeting those expectations of the constituency, who are now quite worried about it. That is their dilemma. In my view they need to allow Telstra—if 'dominant' is the word—to be able to provide its range of services and to be in the new services and the new areas that generate revenue if you are going to provide the services that the Australian community demand. I suppose I think it is a by-product, in my own view, and Ros is free to disagree—that it is about keeping the share price up. I think it is about actually meeting constituent expectations and the contradiction that, if you break Telstra up, you will not be able to do it. A product of that might be keeping the share price up as well, but I would believe that that is the biggest pressure the government has got on how you provide this sort of competition—pseudo competition—and yet

meet the expectation of the community, which I think can only be provided by one network in the country, as it has been provided. This is our argument of why it should stay in public hands and not be privatised.

Senator LUNDY—What are your observations on the employment levels in rural and regional areas? I know we have taken evidence from various parts of the union previously. Are Telstra keeping up the level of maintenance staff and infrastructure staff in the very areas the government claims to care about?

Mr Cooper—My view is no, particularly in the more highly skilled areas. Because highly skilled people are usually the better paid, sometimes when the accountants get to work they take out the highly skilled people because they cost more in wages. They do not realise that they are essential to maintaining the skill levels. For example, sometimes you have to send a highly skilled technician hundreds of kilometres because they have made the locals redundant. There are problems like that. Our concern is that, with privatisation, we see that becoming a bigger problem. That has been a difficulty since about 1996, and we have seen a great number of redundancies in Telstra. That is a problem of how you balance the skill levels and the redundancies with the need to have people on site. One of the contradictions is that even the competitors need Telstra's network working at a high level of efficiency.

Senator LUNDY—Indeed, as we have just heard from a previous witness. On the basis of Mr Trujillo's comments during his fleeting visit to Australia, when he made reference to further cost cutting, has the union been advised either formally or informally about where more jobs will go from within Telstra?

Mr Cooper—No. As always there is an element of redundancy, and there are always considerable rumours, but we are seeing, from my observations, some fairly highly skilled people going out of the system. For example, we lost some people the other day because of Telstra's purchase of a company called Kaz. In the rationalisation of that they have brought some of their operations to Canberra, and all the people in Melbourne are going.

Senator LUNDY—How many people are going as a result of that?

Mr Cooper—I think they number about 16.

Senator LUNDY—Would they be former Telstra Enterprise Services people?

Mr Cooper—Yes, a lot of them would have been—fairly high-level technical staff. They are going to replace them with contractors now. In that case it is Telstra's network itself, so I suppose if there is a problem Telstra will be the first to suffer. But their internal network is very big—Telstra Directors, they call it. There seems to be more of an attack on the highly skilled jobs, which is of concern to us.

Senator LUNDY—I cannot remember whether Mr Trujillo put a number on the jobs to go. Did he put a value against jobs to go?

Mr Cooper—I cannot recall that he did.

Ms Eason—No. Can I make a response to the opening question about the relationship between the impending privatisation and government policy at present towards Telstra, which threw me a bit initially. I think we were trying to highlight in our submission that, in our view, because there is a kind of policy vacuum as far as telecommunications goes, as far as the long view goes, the impending privatisation has brought all of these strange ideas out of the woodwork, and some are stranger than others. It is muddying the waters. It is very hard to have a policy debate now about what sort of regulatory framework we might need in the next 10 years without it being overlaid by the whole privatisation question. On the one hand is the notion that the government is rejecting all ideas simply because it wants to enhance the share price. Certainly they do want to enhance the share price—

Senator LUNDY—They have said as much.

Ms Eason—Yes, they have said as much; of course they do—and they are unlikely to do things, whether good or bad, that will affect the share price. On the other hand are various interests, more or less opportunistic depending upon where they come from, who see this as the moment—the kind of ‘we have only three months to get it right otherwise this country is doomed’ sort of argument—to gain policy leverage. The whole thing seems to us a very unfortunate conjuncture. That is why we have argued that the privatisation matter should be put aside for the time being. Let us look at the regulatory framework, let us look at new generation networks, the changes happening and what is needed to roll out a modern communications suite of services in Australia, then let us perhaps come back to that matter 10 years down the track.

Senator LUNDY—Thank you for that really good point. In reference to previous inquiries, for example the Australian telecommunications network inquiry, one of the big issues was the way in which Telstra maintained that existing network and how much use it will be in the future. What are the union’s observations, now that a little time has passed since the ATN inquiry, about the state of the network? What are your concerns about the network’s ability to provide that base-level, particularly last mile or first mile or whatever you want to call it, network infrastructure?

Ms Eason—As you would be aware, there has been a certain amount of remedial activity. We think the regulatory framework that now looks at the state of the network is an improvement in terms of pointing out areas where there may need to be remedial work, but it is necessarily a bit piecemeal. As the National Farmers Federation report has suggested—and it is the most recent diagnosis of the state of the network—there are still many areas where we have ageing copper and areas where, as a result of cutbacks in staff, we have short-term quick-fix practices in patching up the network. That means that we are not necessarily getting a state of the art, best quality network, even in terms of the old technology.

We have always argued, as this committee knows, that the basic Telstra network will provide the transitional pathway to a national, next generation type network. To do that money has to be put in—both capital and operational expenditure. That is why we say: let us look at the regulatory framework which will encourage that while at the same time providing fair opportunities for competitors and good price and service outcomes for consumers. But we have to start looking at where the money is going to come from. To come back to the good Mr Trujillo: if all he is talking about is cutting costs, where is the future investment going to come from?

Senator CONROY—I point you to Terry McCrann and a very interesting article he wrote. I am sure you would agree with much of it. How would you characterise the development of telecommunications policy by the Commonwealth government over the past 10 years?

Mr Cooper—I think we have summed it up. Our concern is that there has been a total focus on privatisation. There were complex issues emerging, and still are emerging, in the network. How you run telecommunications, its whole regulatory regime, is a very complex issue. I would say that very few people in this country really engage properly in the discussions and try to come to grips with what is the impact of the new generation IP networks in this country. There are particular problems with who is going to maintain the switch network in the country. People are running all these ideas about how we are going to fibre-optic the whole nation. It is a great idea, but I do not know who is going to pay for it. They are very big issues and I think they have just been left alone. We are a union that is willing to engage and spend a lot of time trying to get people to focus on these issues, but it has been all about privatisation.

Senator CONROY—How has the continued debate about the privatisation of Telstra affected the overall debate? Expand on some of the things you have just mentioned: the actual substantive issues that should be being talked about at the moment.

Mr Cooper—I think they are largely being ignored and people are able to run off at a tangent to issues—and some of them are pushed by people who want to take very opportunistic advantage of Telstra. From our point of view, it has been a very difficult debate sometimes. We are probably Telstra's greatest critics but we also have to be careful that we are not out there assisting people who are actually out there to destroy Telstra. Because that debate is complex and people try to oversimplify it, I think these structural and operational separation arguments are ones that, as I said in my opening address, are not really thought out. People find it a very difficult issue, suddenly they try to find a magic bullet to solve it without really thinking it through. For Australia, there is no easy way for this to be thought through. Industrially, we obviously have some conflicts with Telstra. We think the network would be much better if their industrial policy was better. That is, again, another issue.

Senator CONROY—How does government ownership of Telstra benefit the Australian economy?

Ms Eason—Historically—until the 1990s, let us say, or to the beginning of network liberalisation—it has provided us with what was a world-class ubiquitous telecommunications network in a very difficult environment. We had in Australia higher levels of household penetration than the United States two decades ago—and we still do, as a matter of fact. That has served the country well. The real question, I suppose, is: what is the value of continuing majority public ownership in a context where, as I said before, the market has been liberalised and Telstra is largely driven by a kind of commercial imperative, maximising profits and handing them back to institutions. We have answered that in the sense that it does still in our view respond to community pressures for investment and service delivery as a majority publicly owned carrier in a way that we do not think it would if it were fully privatised. Regulation is a strong tool but having majority public ownership adds another level of leverage—one that can, we would hope, see levels of investment prodded towards. That guarantees ongoing majority Australian ownership and hence the giving back of profits to the community through not only the

government portion but also that other portion that remains with the Australian economy. They would be very strong features in our view of a continuing majority ownership.

Senator CONROY—I want to take up one issue you mentioned a little earlier. What impact do you think the privatisation of Telstra will have on the future of the universal service obligation? You indicated you had a difference with Telstra on this.

Ms Eason—I think it will freeze it where it is. It will guarantee that it remains frozen in time and possibly funded from budget, which we regard as a very precarious funding source because it is subject to political cycles.

Senator CONROY—In your submission you express a degree of cynicism about the prospects for sustainable and productive competition in the Australian telecommunications market. What is the basis for your cynicism in this regard?

Ms Eason—We would not call it cynicism; we would call it scepticism or perhaps realism. It is based on our understanding of the economics of the industry and of the changing economics with new technologies. You only have to look at mobiles, for instance. We have supported three mobile carriers in the analog phase and second generation digital phase. It is very likely as we go into more advanced forms of mobile networks that we will only have two. It is not impossible. I see you are looking sceptical—or is it cynical? We are seeing the infrastructure sharing agreements starting to appear both here and in Europe in relation to third generation mobile networks. This is an industry where there are very large economies of scope and scale which limit the number of participants that can operate on the basis of their own infrastructure.

As technological change hastens, as the pace quickens, huge investments have to be made even more quickly. We are already seeing that operators need to have global markets to amortise the kind of investments that they are making, so we think it is unrealistic to imagine that the Australian telecommunications market is going to look like the market for haircuts. It is always going to be concentrated and the question is what degree of concentration is due to anticompetitive conduct and what is simply due to the economics of the industry. But that is basically the underlying question that we are asking, particularly as we move to next generation networks, where the margins are going to be thinner, as we understand it, on retail products.

I did point out, though—I will further flesh that out—that we regard as very lucid the analysis in the Ofcom submission on the forces that were acting to foreclose competitive opportunities in the British market. They were not predominantly to do with BT's behaviour—although I am sure BT engages in the same kinds of games that every incumbent engages in—but, more dispassionately, they were to do with the fact that the competitive opportunities were just not there. As the incumbents modernised their own networks in response to the more nimble and more modern competitors, the competitors' advantages started to be less and their disadvantages on the level of scale started to tell. So in the UK market, if one is to understand the Ofcom paper correctly, there have been very few profitable competitors, just as there have been here in Australia.

Senator CONROY—Another issue you raised in your submission was how the emergence of next generation networks will change the way that telecommunications services are provided to end users. What implications will this have for approaches to regulation?

Ms Eason—I think the key question that we have raised in this submission in relation to next generation networks is, again, the question of the funding of infrastructure. That is, the questions of cost recovery that will be involved when voice, for instance, which has been the driver of PSDN development, is just an add-on or maybe free but certainly not charged for in the same way as it is charged for now. We can see a whole new pricing structure coming at us with the development of next generation network type technologies—IP based pricing—and those new pricing structures will pose issues for how you amortise your investment in the basic infrastructure. It may, if you are following an internet type model, mean that we are going to see customers paying a larger part of their total telecommunications costs in an access charge and less in a usage charge, including for voice. The questions that we raised here were about simply about starting to think about that now.

Senator CONROY—Moving on to another issue, with respect to broadband ADSL, you state that prior to Telstra's significant price cuts of last year Telstra sold a substantially higher proportion of wholesale lines than retail lines. In your submission you indicate:

... a ... disinterested observer might consider that these numbers suggested that existing pricing structures were unbalanced and, in fact, inefficient.

Might the disinterested observer also have concluded that one product is preferred over another for reasons other than price—for example, customer service?

Ms Eason—That is possible, but when you get runaway growth of a product such as this you would have to think that the people buying that product—that is, the wholesale product—thought they were on to a very good thing indeed, and presumably they were able to on-sell it to end customers, although that is not necessarily borne out. We do not necessarily know that from these figures. But I think it is quite clear, when you look at that growth over that period of time, that it is not a commercial situation that a carrier who offers products at both levels would find tolerable.

Senator CONROY—I have just been called to the chamber to debate a Telstra regulatory bill, so I am going to have to leave. I am sure you would want me to go and do good work!

Senator LUNDY—You have made comments on part XIC, the access regime. In your submission you state that the access regime has not produced timely outcomes or provided access seekers and access providers the degree of certainty they reasonably require. You also state that this failure has caused the ACCC to inappropriately extend the reach of part XIB. How is the access regime failing to produce the timely outcomes and what impact is this having on the ACCC's regulatory activities, in your view?

Ms Eason—The undertaking process has been extremely protracted and unsatisfactory from everybody's point of view. Telstra puts in an undertaking. It can then take the ACCC up to 12 months to decide what it thinks about the undertaking. Then it might say that it is unsatisfactory and then Telstra withdraws it and submits another one and so on. In the meantime, the commercial negotiations go on in a kind of regulatory limbo. Sometimes they come up with good outcomes, sometimes they come up with unsatisfactory ones and provide parties on all sides with opportunities for gaming. It is not only Telstra who can game these situations; the competitors can as well.

My sense of it in the industry is that everybody thinks that is unsatisfactory. But the remedy, which the ACCC appears to be tempted by, which is to use the competition notices to get a much quicker response, we feel, for the reasons we have outlined here, is not a very satisfactory one either because it short-circuits what should be really a much more rigorous process of deciding what is an appropriate price. It makes that a different kind of gaming, if you like—pick the price that the ACCC and the industry will cop. It has nothing necessarily to do with costs; it is to do with what the traffic will bear commercially. Again, as we say, the underlying assumption is that there has to be a commercial price for every product out there at the wholesale level which allows competitors to thrive, irrespective of their size or competence and irrespective of what constraints are put on commercial success by retail price regulation.

Senator LUNDY—You have mentioned the frustrations that are quite universal with respect to the competition notice exercise. What are the sorts of remedies that the CEPU has identified?

Ms Eason—We are attracted by the approach that seems to be there in the Ofcom review, which is to look at a simplification of access pricing. We draw attention to the fact that we have a multiplicity of products now out there. We have unbundled local loop, we have local call resale and we have originating and terminating access—you name it. There is an ever-multiplying series of products depending on new technological possibilities that are essentially covering the same ground.

We are not pricing experts—in the sense that we can put forward the solution to this—but it seems that it must be possible, particularly as the technology is moving along, to start some simplification of that process to come up with a simpler common access price. It might be based on bit rates. That leaves aside, in a sense, the non-price terms and conditions but gives us something that simplifies it at the pricing level. That would perhaps allow a more sustained regulatory focus on a smaller area rather than on this multiplicity of products. As far as we can see, that seems to be the direction the thinking is going in other countries such as the UK.

Senator LUNDY—I appreciate that pricing is very complicated, but do you have a view on rebalancing—Telstra's formula for justifying the wholesale costs of their services, linked to the sunk costs in the network, maintenance and so forth?

Ms Eason—Historically, we have had an attitude towards price rebalancing. Reluctantly, from 1990, when the debates first occurred about deregulation, we have supported price rebalancing to bring market prices more closely into line with costs, because otherwise all you do is encourage arbitrage.

Senator LUNDY—What role do you think arbitrage plays in current pricing in the market?

Ms Eason—Anywhere where there is a regulated gap between wholesale and resale prices which is maintained by regulation, or where retail prices are kept artificially low in some parts by regulation and made up with larger margins in other products, you have an opportunity for arbitrage. In the period of deregulation, the first place it occurred most obviously was in STD and long-distance calls. Historically, as you would be aware, margins in STD were very high, the margins in local calls were virtually non-existent and line rental was offered at a loss. That was the historic pricing structure in a monopoly market, and it makes sense in a monopoly market

because you have low access charges to get people onto your network. But Telstra was given very little room to readjust those prices in the early nineties.

In most countries, such as New Zealand and the UK, when you had privatisation and deregulation occurring at once there was quite rapid and brutal price rebalancing, but the incumbents were allowed to raise their access prices quickly, because they knew they would be attacked in their high-margin markets. That was not the case in Australia. Telstra was not allowed to significantly rebalance early, so the margins remained in STD—this is just an example. It was easy pickings in the STD market for companies such as Optus and the resellers during that period. That is what I mean by arbitrage.

Senator LUNDY—Recently, we saw the cost of a residential service increase against decreases in other areas of the market. How does the CEPU's view on rebalancing fit with what has been occurring in the basic residential service market?

Ms Eason—We said that we reluctantly supported rebalancing. When we opposed the initial deregulation in the market, we pointed out that this is what it would mean for consumers. The idea that deregulation and competition would be a win-win for everybody is a nonsense. It would mean that some prices would rise and, of course, it will be the prices in those areas of the market that are less juicy and less targeted by competitors.

Senator LUNDY—I am interested in your answer or any other observations you think are relevant to the committee's inquiry about the trends in pricing, so could you take that on notice?

Ms Eason—Yes.

Senator LUNDY—Thank you very much,

CHAIR—Thank you very much, Ms Eason and Mr Cooper, for your assistance today and for your submission. It was very interesting.

[8.50 pm]

BRYANT, Mr Simon, General Manager, Competition and Consumer Branch, Department of Communications, Information Technology and the Arts

CHEAH, Mr Christopher, Chief General Manager, Telecommunications, Department of Communications, Information Technology and the Arts

McNALLY, Ms Carolyn, General Manager, Regional Communications Policy, Telecommunications Division, Department of Communications, Information Technology and the Arts

CHAIR—I welcome the representatives from the Department of Communications, Information Technology and the Arts. Thank you for your time today, late at night. It is much appreciated by the committee, as always. You are reminded that evidence given to the committee is protected by parliamentary privilege and that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. I remind members of the committee that the Senate has resolved that departmental officers shall not be asked to give opinions on matters of policy and should be given a reasonable opportunity to refer questions to superior officers or to a minister. There is no submission, so we will move straight to questions.

Senator TROETH—I would like to ask the department's view on one issue to do with the Estens report. We have heard many times throughout this inquiry that that committee's recommendations on services to rural and regional areas have not been adequately implemented. Even those on the government side know that there is a not necessarily substantiated view about concern in the bush about the sale of Telstra. I would ask you to briefly encapsulate your response to those criticisms and also to the view of the NFF last week that legislation is needed to guarantee future proofing as well as regular telecommunications services for rural Australia. I realise this is a long question, but an overview from you would be much appreciated.

Ms McNally—I think we answered some of these questions at the previous hearing. At that hearing I talked about the fact that the RTI was a priority, that we were progressing through implementing the recommendations. I gave an outline of which recommendations still had to be implemented. At this stage we have implemented 29 of the 39 recommendations. Two of the remaining 10 relate to implementing a local presence plan on Telstra and about five relate to passage of legislation through the parliament relating to regular reviews. Three others are more policy related issues. One of those relates to the issue around online access centres. That recommendation is that the states and the Commonwealth have formed a committee which is reviewing online access centres, and they are due to make a report by the end of this month. In relation to the network reliability framework, which is another outstanding recommendation, we are currently working with Telstra and the ACA to look at what the response is to a review that has been undertaken by the ACA, and we are expecting that that should be completed by the end of this month. The final outstanding recommendation relates to network extension and trenching, on which we have provided some advice to our minister. We are waiting to hear back on that advice.

CHAIR—I have a question about the current state of the review of telecommunications policy. What is the timetable for the completion of that and has the department engaged any outside consultants or assistance in doing that review?

Mr Bryant—To answer the second part of your question first, no, we have not. We have engaged one person to work with the department to do some advisory work not directly related to the issues paper and the submissions but around the issues we are looking at, particularly operational separation, which is on the agenda, as you are aware. In relation to the timetable, we are not able to say with any certainty at the moment. As you know, we have received submissions and we have put those submissions up on the web. We are in the process of analysing those submissions and working through the issues. No doubt there will be some follow-up questions to submitters and so forth and in due course the government will make a decision.

CHAIR—You mentioned an issues paper. Is that something you are producing?

Mr Bryant—The issues paper has been released, I think.

Mr Cheah—The issues paper was released back in April. We got submissions in May and we reported on that issues paper when we last gave evidence to the committee.

Senator CONROY—It is good to see you all again. I want to start off by quickly addressing a question we discussed last time you were at this inquiry. Could the department update the committee on its consideration of the Page report? Last time the department appeared before this committee, you indicated that you were only considering one of the proposals in the Page report—the international customer service standards recommendations. Is that still the case?

Mr Cheah—I think when we last gave evidence I said that a number of the issues mentioned in the Page report were the kinds of issues that the department would be looking at anyway in terms of its normal course of consideration. They included issues like spectrum and looking at future networks, optic fibre networks and so on. I think I indicated that we were not doing any specific work that had flowed from the Page report other than on that one issue.

Senator CONROY—Has anything changed?

Mr Cheah—No, nothing has changed.

Senator CONROY—What was the result of the department's consideration of the customer service standard recommendations? Were there any problems with this proposal?

Mr Cheah—The outcome of that was that we raised the issue with Telstra in the first instance and asked Telstra to examine it to see whether the proposal made any sense commercially from their point of view. I suppose we have to wait and see what comes of that once Telstra's consideration is fully finalised.

Senator CONROY—You have not heard back from Telstra.

Mr Cheah—That is not entirely true. I heard back I think today from Telstra on an initial view from them but we have not had a chance to talk to Telstra about it in any detail, so I do not particularly want to discuss that in any more detail.

Senator CONROY—Okay. The Page report specifically asked for a feasibility study of an optical fibre rollout. Have you done that?

Mr Cheah—We have not done a feasibility study as such, no.

Senator CONROY—What have you done?

Mr Cheah—As I indicated last time, our communications research unit in the department does research into the economics of different kinds of network rollouts and the CRU has done work in that area. They have done some costing and other related work—

Senator CONROY—But they did that before the Page report came out, though?

Mr Cheah—They have been doing work in that area for some time, over 12 months. They have not explicitly changed their work program as such.

Senator CONROY—Let us move on. Since you are the last witnesses today, I wonder whether you could give the committee a quick outline of the importance of an efficient telecommunications sector to the Australian economy.

Mr Cheah—That is a rather big question.

Senator CONROY—As a business input; it is important to have cheap—

Mr Cheah—And international competitiveness and whatever. There is a long list of reasons why in the past governments in general have discussed the importance of the telecommunications sector to the Australian economy. As you rightly point out, one of the important ones is that it is a key business input. It is also important for the competitiveness of the Australian economy that business has access not only to cost-effective services but also to a broad range of telecommunications services and innovation as well. This is the kind of question I would almost prefer to have a bit of a chance to think about given that it is at this high level. It is obviously also important socially for Australian society. Communications networks are important for allowing communications in a very wide range of social interactions. I could probably go on for a long time about this one.

Senator CONROY—I take your point about wanting to have a think about it. I was not trying to catch you out there or anything. If you would like to take that on notice and expand on it, that would be great.

Mr Cheah—Sure. I would prefer to do things that way.

Senator CONROY—As we are probably getting towards the very end, if you could do it as quickly as you could that would be very helpful to the committee.

Mr Cheah—It should not be a problem at all. We can easily provide you with a couple of paragraphs which, hopefully, will summarise our views on that issue.

Senator CONROY—Regarding the research that you mentioned earlier, have you or any other parts of the department done any modelling on the potential benefits of a competitive telco sector?

Mr Cheah—Over the last decade, various different studies have been conducted, and not just by the Communications Research Unit. One was recently done by the Australian Communications Authority into the effects of the introduction of competition since 1997. That concluded—

Senator CONROY—That is five years old, though, isn't it?

Mr Cheah—No, it is a couple of years old—I think they reported in 2003. I can check on that and get back to you.

Mr Bryant—I think it might have been later than that, actually.

Mr Cheah—It might even have been 2004. That study made a significant macroeconomic analysis and, from memory, concluded that the Australian economy was \$10 billion better off than it would have been had we not introduced competition in 1997.

Mr Bryant—It was \$10.4 billion. The report, incidentally, was undertaken as part of the ACA's section 105 annual report to the government on the telecommunications sector.

Senator CONROY—Are there any prospective figures? That is a large figure. Is there any modelling? That is normally what modelling does: it looks forward and says, 'These could be the expected benefits if we went further in competition reform.' Are there any studies like that at all?

Mr Cheah—I think the Treasury does general macroeconomic analysis, but we are not undertaking any specific analysis at the moment. Other kinds of analyses have been done in the department in the past. Another example is a major study of e-commerce take-up that was done by the National Office for the Information Economy, which is now part of the department. I think it was done about two or three years ago. Once again, that was a major macroeconomic analysis of the potential benefits of e-commerce. Included in that were some of the flow-on benefits from the communications sector. I think the way we would approach those issues is that from time to time we would rethink the issues and reposition them somewhat as new technologies and new products and services emerge.

Senator CONROY—Going back to the Page report which we were discussing earlier, you said you are doing some ongoing work. Has the Page report had any impact on the department's work program?

Mr Cheah—I do not think it has had any direct impact, no. Obviously its influence is a factor we have taken into account. As I think I explained last time, it was not a report to government as such.

Senator CONROY—I appreciate that. The department has presumably been looking at the performance of the Australian telecommunications regulatory regime pretty closely in recent times. Is that correct?

Mr Cheah—Yes, that is correct.

Senator CONROY—Has the department—I mean your area specifically—examined the level of competition in the Australian telecommunications sector?

Mr Cheah—I think we partly gave an answer to that question last time.

Mr Bryant—We rely quite strongly on the ACCC's regular reports on telecommunications competition as well. As you are aware, they have recently provided to the government a report into competition—it has been tabled, I think. That is obviously very important input; significant analysis has been done that we would use.

Mr Cheah—It would not be the only input, but it would be a key one.

Senator CONROY—What is the department's assessment of the level of competition in the sector? Do you think it is effectively competitive?

Mr Cheah—Across the board? Probably the best thing to do is to talk a bit about the ACCC's assessment, which I think we would be in broad agreement with in most areas. I think the ACCC's assessment was that some markets are effectively competitive, yes, and other services are not as competitive as yet and competition is still developing.

Mr Bryant—I think the ACCC's view is that they would like to see stronger outcomes in facilities based competition as opposed to services based competition. One of the terms which one of the commissioners used is that that indicates a certain degree of fragility in the competitive environment.

Senator CONROY—I was going to come to those issues. Do you think it could be more competitive? The ACCC has said in its recent market indicators report:

... market share data does not provide evidence of aggressive competitive behaviour in markets for fixed-line voice and mobile services ...

Is the department concerned that, almost a decade after the introduction of full competition, Telstra retains a market share in fixed-line services of over 80 per cent?

Mr Cheah—It is precisely because Telstra still has a high market share and the main competition is still developing that we have an access regime in the form of part XIC and an anticompetitive behaviour regime in the form of part XIB. If this were a market which was entirely normalised, we probably would not need to have those industry-specific forms of regulation. Traditionally, Telstra's historic control of the customer access network in the fixed sector is obviously a significant source of market power and that is why they are recognised. I would have to say that the level of competition in the overall telecommunications market is probably significantly affected by the fact that the mobile sector is a lot more competitive, and it

is the same in the internet and broadband markets—Telstra's revenue market share in all of those areas is below 50 per cent. In fact, its overall revenue market share in the telecommunications market is only just slightly over 60 per cent.

Senator CONROY—Has the regime lived up to expectations in terms of competition?

Mr Cheah—I think there have been very significant competitive advances since 1997.

Senator CONROY—Yes, from a monopoly. It was a monopoly in 1997!

Mr Cheah—As I described, the key statistics are that in some of the emerging market sectors in mobile phones, broadband and internet, Telstra's market share is now below 50 per cent. Its overall revenue share in the market as a whole is just over 60 per cent. There is an issue still in the fixed part of the market and that is one of the reasons we have a competitive access regime. There are some issues there and that is one reason why the minister has put out an issues paper and we are having a review of the competitive regulatory environment in advance of any privatisation of Telstra.

Senator TROETH—Before you continue, Senator Cherry is about to leave the committee physically and probably metaphorically speaking. I want to place on the record that this is his last hearing. Senator Cherry, on behalf of the committee, I thank you for the chairmanship you have shown and the way in which you have led the committee.

CHAIR—Thank you very much. I would like to get ready for the debate, so I will leave you for the last five minutes under the watchful eye of Senator Troeth.

Senator CONROY—The ACCC has consistently said that it has not lived up to expectations. What is the department's assessment of the level of competition and provision of telecommunications services in rural and regional Australia? Is it better or worse than in metropolitan Australia?

Mr Cheah—It is probably not as intensive in regional Australia and there are probably a few reasons for that, but it would be lower.

Senator CONROY—So Telstra's market share is 80 per cent plus on average across regional Australia?

Mr Cheah—That would be correct.

Senator CONROY—And that would make sense.

Mr Cheah—It is what you would expect, given the market entry strategies which competitors would be expected to follow.

Senator CONROY—Do you think that Telstra's extraordinarily high market share in many products is as a result of the operation of market forces? Telstra's annual review puts its market share of local call revenues at 92 per cent, basic active services at 91 per cent and broadband

internet at 79 per cent. Market shares like this would be a great result for any company, would they not?

Mr Bryant—If what you mean by market forces is competitive market forces then the answer is, as Mr Cheah has already said, no because Telstra has had the advantage of incumbency and obviously has a large amount of market power in particular markets as a result of that. Again, that is why we have part X1C in particular—the access regime—in place to ensure access to required services on the network.

Mr Cheah—That market share has also been changing in recent times. There are now significant numbers of customers on, particularly, the Optus cable network in Sydney, Melbourne and Brisbane and there are a number of other competitors who are now starting to roll out their own wireless networks. The effect of the unbundled local loop is that a number of other competitors are now looking at putting their own equipment into Telstra exchanges and renting lines from Telstra directly.

Senator CONROY—If a company were achieving these sorts of outcomes in a competitive market would you expect to see that they were a highly efficient company with a very strong customer focus—if they were winning that sort of market share?

Mr Bryant—It is a hard question to answer. There is not necessarily a correlation between the two.

Mr Cheah—I am starting to get a little uncomfortable answering hypothetical questions.

Senator CONROY—I accept that. Has the department undertaken any research into the level of customer service received by customers of telecommunications companies in Australia?

Mr Cheah—The Australian Communications Authority prepares an annual report on the operations of all the consumer safeguards and as part of that exercise they tend to commission annual surveys of customer satisfaction.

Mr Bryant—Those results are published in the section 105 report.

Senator CONROY—NFF cite figures that show average repair times for telephone services in rural and regional Australia have not improved in the last five years. In fact, they claim that repair times have gone backwards. Are they wrong?

Ms McNally—The repair time frames have remained over the 90 per cent benchmark that the ACA sets. There have been some seasonal fluctuations in the repair times. As to whether they have significantly dropped, I think they have remained fairly close to just above the 90 per cent benchmark. I think the NFF data is data that they received themselves directly from Telstra, and we do not have access to it. We cannot really comment directly on their data.

Senator CONROY—Despite this claim that service has gone backwards in the last five years in regional and rural Australia, Telstra retains over 80 per cent of the telecommunications market based on the PSTN. We agree that in rural Australia it is actually higher than 80 per cent, just by definition of what an average is. That is extraordinary, wouldn't you think? The NFF is saying

that service is going down and yet Telstra are maintaining a near monopoly in regional and rural Australia.

Mr Cheah—It depends partly on whether some of those claims are true. Ms McNally has already commented on that. CSG performance has been at that 90 per cent benchmark or very near to it for a very stable and sustained period now. We can also take the view that that is actually quite a good level of performance.

Senator CONROY—That telephone repair line service times have gone backwards?

Mr Cheah—No, that the 90 per cent threshold has been pretty much maintained at a consistent level over that period.

Senator CONROY—That is called painting as good a picture as you can, I guess.

Mr Bryant—It is important to appreciate that the CSG performance is one measure. It is basically timeliness in repair and timeliness to connect. There are other measures of network performance. One of the key measures that is in place is, as you are aware, the network reliability factor.

Senator CONROY—I would have thought fixing somebody's phone is a good key measure to work with.

Mr Bryant—It is a key measure, but there are others.

Senator CONROY—I am intrigued by this concept that the NFF gets better data than you do. How could that happen?

Ms McNally—I do not think it is a matter that they get better data but that they get different data. It often depends on the sort of data request—the way you pose the questions in relation to the sort of data that you get.

Mr Cheah—The Australian Communications Authority is collecting CSG data, which is there to support the customer services guarantee, and that is defined in particular ways. They collect that information in order to give themselves a fairly consistent time series so that we can do these kinds of comparisons. The NFF sometimes makes other requests of Telstra about different kinds of data, different formats and different forms.

Senator CONROY—I am conscious of the time, the fact that Senator Troeth has to go and that the committee is about to lapse, but I want to indicate that I have not finished asking questions. I am not sure how we could fix this. I appreciate that you have to go, Senator Troeth, so the committee at this point at least has to lapse and possibly, depending on availabilities, try to get you back.

ACTING CHAIR (Senator Troeth)—You could put your questions on notice, Senator Conroy.

Senator CONROY—I could do that, but I could also get to ask them. I do not want you to think I have finished.

ACTING CHAIR—That concludes this evening's proceedings. I thank all witnesses for their assistance. In his absence I would also like to place on record the committee's appreciation of the work of Senator Tchen, who left earlier but who has been a longstanding member of this committee. I declare this hearing closed.

Committee adjourned at 9.16 pm