

SUBMISSION to the SENATE STANDING COMMITTEE on ENVIRONMENT, COMMUNICATIONS and the ARTS' INQUIRY into the TELECOMMUNICATIONS LEGISLATION AMENDMENT (COMPETITION AND CONSUMER SAFEGUARDS) BILL 2009.

Dear Senators,

We are shareholders in TELSTRA and we are very upset and concerned at proposed legislated changes crafted to affect OUR company. It is beyond belief that a Minister of the Crown could use DURESS as a means of forcing an iconic Australian Company to carry out a political agenda of the Government. In common law, the use of duress is illegal and we wonder, in the future, whether such action will be commonplace as it is in Communist Russia! Indeed, if the Government gets away with this, we little people will need to fear our Government and to have embedded in our brains a loathing and disrespect reserved for an enemy.

We acquired the majority of our TELSTRA shares from the three initial purchase offers, (IPO's). We paid more than a fair price (particularly considering the very high price of \$7.40 for the second IPO). In each of our purchases, we were aware of the assets and liabilities of the company and that it was a vertically integrated entity. Being sold by the government, we never expected to experience SOVEREIGN RISK from our own government! The shares were bought to provide us with income in our retirement as the Government told us to look after ourselves by providing for our future. The shares have been a disappointing investment. The Government has seen to it that the market price is now well below that of even the 1st IPO price which was set 12 years ago! In fact, we sold the second IPO shares at a considerable loss to us of \$21,056. However, by now, we expected increasing dividends to be flowing from the shares as Telstra's huge capital expenditure of the past, should mean that such expenditure would now be tailing off, leaving cash available for dividends. We now find that OUR government intends to STEAL from us, once again. Firstly, our capital was stolen. Then right through Telstra's existence, the ACCC has progressively forced the access price for competitors down below Telstra's costs and hence, we shareholders have subsidised competitor's profit margins. The government had two prior chances to separate Telstra's operations, the first being in 1990, when Paul Keating wanted Kim Beazley to take that action when it was corporatized and then privatised. Beazley caved in to the unions and didn't act. That's when that action should have been taken - right at the start. The second, although not ideal occasion, occurred in 1997, when John Howard could have taken that action prior to the second IPO. However, he wished to maximise the price paid and 'we shareholders shore paid dearly'. The Government had opportunities to structurally separate Telstra, but didn't, and should NOW STAND ASIDE, as any right was FORFEITED. We believe that's fair - We hear a lot from the Government about fairness (Julia Gillard in particular). Now, to come back and expect the shareholders to once again be the financial suckers and lay down and just take it, makes us very very angry, We hope that vast numbers of shareholders, like us, have long memories indeed!

It must be obvious to all Senators that the taxpayers, the Telstra executives, Telstra's competitors and the unions have all done well out of Telstra but shareholders have been screwed very badly. Conroy for the Government, claims that he is acting for the customers - well really, the baying and cheering band of journalists accept the Government's line. However, in reality, the customers will be paying more to Telstra from now on so that when they are progressively transferred across to the NBN, they will accept that pricing is little different than what they were paying to Telstra. What they will not realise, unless they are astute, is that the ACCC is abandoning their previous rent/build model for access to Telstra's infrastructure, to one where they artificially inflate the access price for reasons of deception to accord with Minister Conroy's statement that the NBN will offer prices comparable to that of Telstra. When the ACCC can change its pricing model, which for the first time, proposes the prices Telstra can charge its competitors for access to its unconditioned local loop (ULL). In the urban 'Zone A' which covers more than 80% of the population, prices would rise from \$16.90 per month to \$23.60 per month in 2011; an increase of almost 40%. The affect of the proposed new pricing regime is to make it less attractive for Telstra's competitors to seek ULL access to install their own infrastructure - digital subscriber line access multiplexers (DSLAMs) - in Telstra's exchanges and relative more attractive to be wholesale customers. Telstra's competitors say that the proposed pricing would raise the end price for consumers of all fixed line services. They also say that the direction of the prices is

at odds with the commission's 'clear direction' over many years that competitors were expected to invest more deeply in the copper network in competition with Telstra. They rightly claim this will deliver a windfall to Telstra and underline the value of their investment. Telstra's competitors have, as ULL pricing was steadily forced down, installed DSLAMs in Telstra's exchanges, capturing margins in the mid 60% range, and a pay-back on the investment of between 24 and 36 months - the incentives have been compelling. It is clear from this that the ACCC demonstrates that the access prices it set in the past, forced Telstra to compensate its competitors, but now the increased prices will be used to migrate competitors off the Telstra infrastructure. Hence pricing is not transparent it is a political football.

To make sense of the actions of the NBN, we can see that they are acting to reduce what could otherwise be a massive and open-ended HAEMORRHAGING OF TAXPAYER FUNDS. They are acting to create a monopoly network, albeit a purely wholesale monopoly, by displacing Telstra's copper and gaining its customer base. All of this can be seen for what it is - A SCAM OF THE HIGHEST ORDER. It reveals robbery of Telstra in the past and hence lower profits and robbery of Telstra's shareholders of additional dividends, all achieved by the ACCC, continuously reducing access prices to Telstra's networks below operating costs. Telstra, and others have argued that the ACCC's focus on continuously driving access prices down below its actual marginal costs - has distorted the build/buy signal by providing an overwhelming incentive for competitors to buy access rather than build competing infrastructure. This statement is proven by the ACCC's own actions in now increasing the access prices to Telstra's network to achieve the objective of forcing Telstra's competitors onto the NBN. In a letter penned by the Chief Executives of seven of Telstra's biggest competitors, the CEO's of Netspace Networks, Macquarie Telecom, Optus, iiNet, Primus, Internode and TransACT wrote to the ACCC expressing their deep concern about draft pricing principles and indicative prices for fixed line wholesale services that the Commission issued late August. One of the challenges confronting the NBN is how to convince Telstra's competitors to migrate from a copper network that generates fabulous margins and returns on investment, to a fibre environment where returns and margins will be significantly less attractive!

For the NBN's economics to work, or at least for its potential losses in its build and scaled-up phases to be reduced, it would not be enough to convince the Internet Service providers to defect from Telstra. It is Telstra's customer base the NBN needs, which means that the copper has to be made unattractive - or unavailable - to Telstra. That is why Conroy announced that Telstra could either volunteer to subject itself to structural separation or be denied access to Wireless Spectrum in future (which would ultimately destroy its wireless business). The manipulations involved in all this is achieved at a cost to Telstra's 1.6 million shareholders. This demonstration of the Government's intent to do whatever it takes to buttress the rubbery foundations of its NBN vision would impact the value of any infrastructure spin-out in a de-merger. The Government is attempting to deny shareholders 20 billion compensation by coercion of Telstra's Executives to volunteer to damage their own shareholder's interests and the NBN does not intend to pay Telstra anything close to the 12 billion valuation Goldman Sachs' telco analysts recently placed on it, nor the 8 billion at which they thought it might be sold to the NBN. No, the Australian Government will steal from its own taxpayers who had purchased the entity as a going concern. Talk about Kerrie Packer at the time he re-purchased Chanel 9, stating "There is only one Allan Bond". At least Bond was paid something, which is far more than the swindle perpetrated against Telstra's owners. The half ownership of Foxtel has cost Telstra plenty and at last we expect to earn some money for shareholders and now we are likely to lose FOXTEL as well. WHY? - So that it can be sold off to Consolidated Media Holdings ie., Murdoch, Packer and Stokes. Again, the big-end of town! This is just crazy and deceitful. The mantra of FAIRNESS is just a babble of words.

There is the small matter of the consumer interest, of course. If Telstra were to retain its network and maintain its customer base on it, there would be competition between two broadband networks, one cheap enough and offering fast-enough speeds for most households and smaller businesses. However, cheap copper-based broadband means a very expensive cash drain for taxpayers from the NBN. Given the scale of the project, and the politics surrounding it, it would be far more appealing to the Government to have customers pay a lot more and for Telstra's shareholders to help subsidise it. For that, it needs to create a new, albeit more expensive monopoly. Conroy said that the competing infrastructure model had failed to produce broadband prices comparable with those charged under the NBN's jurisdictions. What a stupid comment, the NBN has not even been costed. It does need to be remembered that the ACCC has for years, consistently driving down prices

for wholesale access to Telstra's network. It will take at least seven years for the NBN to be fully built. In the meantime, the ACCC is pointing towards a reversal of the ever-declining price path for broadband access to Telstra's network. It is, therefore, technically possible that with Telstra incentivised to milk as much cash from the network by the ACCC rising prices to the point where the NBN would be able to meet the charges, comparable to those end-users were experiencing before being transferred across to the NBN. This means that consumers are facing increasing charges, artificially to make the NBN look good and the Government to deliver comparable prices. WHAT A SHAM - a Government Ponzi Scheme inflicted upon Australians, in a country which is joked about in Asia, as we do all we can to raise our costs, so we can easily be out-competed by the rest of the world, in almost everything we do.

Telstra has been forced into a situation where the fiduciary responsibilities of Directors cannot be measured relative to the status quo, but rather by the lesser of the evils presented by the Government - which of the limited courses of action allowed by the Government destroys the least shareholder value. This apparently is seen by the dotting press as a smart move by Minister Conroy. However, no matter what, it is still forcing an action which would not necessarily be taken by the directors, so they will act under DURESS! However, whilst the Government might be able to put the board in such an envidious position, the board cannot guarantee that their shareholders - all 1.6 million plus of them, will rubber-stamp any decision!

The massively expensive NBN can only be justified by forcing Telstra (a privately-owned near-monopoly in fixed line telecommunications) and its shareholders, to be displaced with a new public-controlled monopoly is creating considerable disquiet not just within Telstra and its shareholders, but in the broader business community. If Telstra can be forced to negotiate to sacrifice shareholder value by the threat of even greater losses, any business could be placed in the same position. The current board of Telstra will have to decide, for instance, to go without 4G Spectrum and remain integrated, in which case they will definitely compete with the NBN - otherwise why remain integrated? Or if the Board decides to join with the NBN, there does not seem to be any way that Telstra would get an advantage out of being a shareholder of the NBN - doing an asset for scrip deal with the NBN Co., would simply be a back-door structural separation. If Telstra does not co-operate, the economics of the new national broadband network would be a disaster. While the copper network is degrading and is not capable of the types of speeds the NBN Co., promises to deliver, it would be cheaper and fast-enough for most people and purposes to retain the bulk of its customer base for quite some time, certainly long enough to turn NBN Co., into a financial disaster for the government and taxpayers. If Telstra declines the Government's invitation and the Government blocks future access to spectrum, Telstra's wireless business would decline over time. But the wireless sector, having sidelined the biggest and most willing balance sheet (Telstra), would then be a duopoly controlled by Optus and Vodafone (controlled overseas). Telstra could, perhaps, sell its network to a new entrant that was free to acquire the spectrum, but the Government would find it difficult to explain. It might also face litigation and even bigger, electoral backlash than the one already developing. At that point, if Telstra had rejected separation, it would be punishment without purpose that damages consumers as well as Telstra. How did the Government get itself into this mess?

**CONCLUSION:** Given the implications for competition in the one sector of telecommunications, where there is substantial and fierce competition and where Telstra has invested in innovative networks and services, a Government decision to proceed with the destruction of the Telstra business will result in significant structural reduction in competitive intensity, and would be without precedent in Australia. A House of Review decision is called for, which will see Senators DEFEAT this Bill.

From Janet and Peter Ellis