

**Submission to the
Standing Committee on Foreign Affairs, Defence and
Trade:**

**Inquiry into the Indian Ocean region and Australia's
foreign, trade and defence policy**

13 April 2012

Executive Summary

Telstra's international business serving multinational corporate customers is active in several countries in the Indian Ocean region, particularly Singapore, with expansion underway in India. Closer to home Telstra provides services to Australia's Indian Ocean Territories and to the resources-rich areas off the Western Australia coast. Western Australia is a major cargo, resources, investment and skills gateway to the Indian Ocean region and Telstra expects that there will need to be a commensurate increase in telecommunications connectivity from WA to its near east Asian neighbours. Telstra International has recently announced its intention to participate in a new submarine cable system from Perth to Singapore and Jakarta.

Telstra owns capacity on several submarine cable systems traversing the Indian Ocean region. These systems are critical infrastructure supporting a developed and diverse network of business activity between nations with coastlines on the Indian Ocean. Australia has implemented a world leading legal regime for protecting cable landing routes in territorial waters which should be promoted to other nations in the Indian Ocean region.

Foreign investors face significant barriers to entering telecommunications services markets of key Indian Ocean countries such as India. Bilateral trade agreements offer one path towards addressing these restrictions, however the agreements must be genuinely liberalising, by eliminating or substantially reducing barriers to trade. Australia's Free Trade Agreement with Thailand falls short of this test because it does not include a telecommunications services chapter, and undertakings to add commitments on telecommunications services in the TAFTA have not been fulfilled. There is a need for capacity building in regulatory agencies in the region, and the Singapore IDA's international arm provides an example of good work being done in this area.

Bodies such as the Indian Ocean Rim Association for Regional Cooperation (IOR-ARC) can play a useful role in providing a focus specific to the Indian Ocean region, and in providing low key contact channels to nations with which Australia otherwise has difficult relations. Australian companies should also seek out companies from the Indian Ocean region which have complementary skills and contacts, creating opportunities to work together in the rest of the region.

It should be Australia's strategic and commercial aim to be an integral part of the wide trading arc from Africa and the Indian subcontinent through to Northern Asia and the Pacific Rim.

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1. Introduction

Telstra thanks the Senate Standing Committee on Foreign Affairs, Defence and Trade for the opportunity to contribute to its inquiry into the Indian Ocean region and Australia's foreign, trade and defence policy. Through its Telstra International business, Telstra is active in several countries in the Indian Ocean region. In particular, Telstra International has recently commenced expansion of its business in India serving multinational corporate (MNC) customers, and Telstra International also controls significant capacity on major submarine cables traversing the Indian Ocean as well as providing satellite services to numerous locations in the region.

Additional to India, Telstra International conducts business in the following countries with Indian Ocean coastlines and commercial activity: Singapore, Indonesia, Malaysia, Thailand and Bangladesh. However, Telstra International's customer base is wider yet, as MNCs in other Indian Ocean countries require telecommunications services in Asian jurisdictions which are their major trading partners. For example, Telstra International has recently concluded a deal to supply Global Wide Area Network services at 32 sites across 13 countries to South Africa's largest bank.¹

Telstra also supplies telecommunications services in Australia's Indian Ocean Territories, the Christmas and Cocos Islands, and supports resource exploration activities in Australia's Indian Ocean territorial waters using satellite and mobile services. This includes supply of NextG® mobile services on Western Australia's Barrow Island providing outdoor handheld coverage to the eastern half of the island and out to sea.² Telstra plans to add a new base station in the centre of Barrow Island to extend NextG® coverage, including out to sea for some of the other facilities on the North West Shelf.

Telecommunications services are a massive enabler for regional business activity as well as interaction in education, the arts, health, and all facets of civil society. Telstra's interest in the Indian Ocean region is commercial in nature, however Telstra recognises that the telecommunications services it supplies can and likely will play a wider role in regional interaction and development. For this reason Telstra will be following the Committee's inquiry closely.

Telstra's comments in this submission will address the following aspects referred to the Committee:

- item (a): trade and tourism opportunities for Australia, including the role of free trade agreements; and

¹ Telstra International Media Release, "Standard Bank halves IT costs by choosing Telstra as primary GWAN provider", 16 March 2012, available at: <http://www.telstrainternational.com/news/nid-100/standard-bank-halves-it-costs-by-choosing-telstra-as-primary-gwan-provider/>.

² Telstra's NextG® mobile network extends between 20 to 70 km out to sea from mobile base stations located on the coast of Western Australia. Factors such as the weather, tides, sea conditions and antenna installation (type and height above sea level) can significantly influence coverage, data speed and performance. NextG® mobile out-to-sea coverage maps can be viewed at: <http://www.telstra.com.au/mobile-phones/coverage-networks/our-coverage/out-to-sea-coverage/>.

- item (d): the Indian Ocean Rim Association and any other relevant bodies and their future directions.

2. Trade opportunities for Australia in the Indian Ocean region

Telstra considers that there are important trade opportunities in the Indian Ocean region as well as a developed and diverse network of business activity between nations with coastlines on the Indian Ocean, which is particularly significant in requiring the support of advanced high capacity telecommunications services. While Indian Ocean trading opportunities are smaller by volume than those in Northern Asia / Pacific Rim nations, the recent Issues Paper released by the Australian Government for its “Australia in the Asian Century” White Paper process correctly observes that,

“The Eastern Indian and the Western Pacific Oceans were previously thought of as separate strategic arcs but could now be seen as one.”³

Telstra International observes this phenomenon in traffic demand from its MNC customers whose supply chains extend from Africa and India through to China, Japan and the United States. Telstra’s experience suggests that Australia’s current trading focus on Northern Asian should not come at the expense of activity in other regions, particularly trade between developing nations which is growing rapidly and in its sophistication. For example, Telstra International currently has bilateral network arrangements with a number of African telecommunications providers which enables it to provide services to the sites of MNC customers in Egypt, Kenya, South Africa, Zimbabwe and Mauritius. Western Australia is a major cargo, resources, investment and skills gateway to the Indian Ocean region and Telstra expects that there will need to be a commensurate increase in telecommunications connectivity from WA to its near east Asian neighbours. To this end, Telstra International has recently announced its intention to participate in the proposed ASSC-1 submarine cable system from Perth to Singapore and Jakarta.⁴

3. Submarine cable and satellite infrastructure in the Indian Ocean region

The Indian Ocean region is traversed by a number of significant submarine cable systems operated by the world’s leading telecommunications providers connecting Europe, Africa, the Middle East, the Indian sub-continent, Asia and Australia.

These submarine cable systems include SEA-ME-WE-3, SEA-ME-WE-4, SAFE, EASSY, EIG, LION2, SEACOM, TEAMS, I-ME-WE, FLAG (Europe Asia), FLAG Alcatel-Lucent Optical Network (Falcon), TGN Gulf, Gulf Bridge International, WARF, Tata Indicom (TIISCS) and i2i.

Telstra International has significant interests in a number of these submarine cable systems traversing the Indian Ocean:

³ Australian Government, *Australia in the Asian Century – Issues Paper*, December 2011, p10.

⁴ Telstra International Media Release, “ASSC-1 announces Perth to Singapore submarine cable system”, 19 January 2012, available at: <http://www.telstrainternational.com/news/nid-97/assc-1-announces-perth-to-singapore-submarine-cable-system/>.

- **SEA-ME-WE-3** submarine cable system, a two-fibre pair cable extending 38,000km from Germany to Singapore, Australia and Korea via the Middle East. The cable system presently uses 10 Gbps Wavelength Division Multiplexing (WDM) technologies with Synchronous Digital Hierarchy (SDH) transmission. SEA-ME-WE-3 also provides interconnection to the China-US, APCN2 and RNAL cable systems;
- **SEA-ME-WE-4** submarine cable system which connects Singapore, Malaysia, Thailand, Bangladesh, India, Sri Lanka, Pakistan, United Arab Emirates, Saudi Arabia, Sudan, Egypt, Italy, Tunisia, Algeria and France;
- **SAFE** submarine cable system which traverses the Indian Ocean connecting Malaysia, South Africa and Europe; and
- **Europe India Gateway (EIG)** submarine cable system which connects the United Kingdom, Portugal, Gibraltar, Monaco, France, Libya, Egypt, Saudi Arabia, Djibouti, Oman, the United Arab Emirates and India.

As mentioned above, Telstra has recently announced that it intends to participate in the new ASSC-1 system which will comprise three express fibre pairs between Perth and Singapore, and one omnibus fibre pair between Perth, Jakarta and Singapore. Telstra has agreed to purchase one of the four fibre pairs on the ASSC-1 system and will also provide landing party services in Perth.

There are a number of other new submarine cables in the planning and development stages which hold the potential to significantly increase connectivity between developing countries in the Indian Ocean region.

Telstra suggests the Committee should review the protection measures for this key infrastructure in international and territorial waters. Telstra notes that Australia has implemented a world leading legal regime for protecting cable landing routes in territorial waters with the support of Australia's telecommunications industry.⁵ A similar regime could be adopted by other nations in the Indian Ocean region if sufficient resources were available.

Telstra also facilitates satellite carriage of communications services to countries and territories in the Indian Ocean region, for example Indonesia, Singapore, India, the Christmas and Cocos Islands, and several African countries. Satellite products may include a combination of services such as uplink, downlink, telehousing and teleporting, and provision of the space segment. These services may also be bundled with terrestrial links to extend a customer's communication link from Telstra's satellite teleports in Hong Kong, Perth and Sydney to a customer's point of presence. In many Asian and African jurisdictions the provision of satellite services is heavily regulated, and Telstra has developed relationships with domestic providers in these jurisdictions to enable deployment and legal operation of customer equipment (typically VSAT dishes).

4. Individual Indian Ocean economies of particular commercial interest

There are several countries in the Indian Ocean region which are driving commercial activity and are hence of particular interest to Telstra:

⁵ http://www.acma.gov.au/WEB/STANDARD/pc=PC_300133

a. India

As the Committee is aware, the rapid growth of the Indian economy and its services sector is of significant commercial interest to Australian business. Growing interaction with India is also reflected in immigration, with India having become one of the top five source countries for migrants to Australia.⁶ Telstra International has recently embarked on a significant expansion of its Indian business, by obtaining new International Long Distance (ILD) and National Long Distance (NLD) licences in a joint venture with Microland, a specialist IT infrastructure services provider based in India.⁷ Telstra owns 74% of the new Indian business, the maximum permitted foreign equity under current Indian regulation.

However, there are well-documented challenges for foreign investors in India. Telstra previously participated in the 2006 inquiry by the Joint Standing Committee on Foreign Affairs, Defence and Trade into “Australia’s relationship with India as an emerging world power.”⁸ In its submission Telstra set out a range of concerns regarding barriers to foreign telecommunications carriers obtaining licences for provision of international services from the Indian Department of Telecommunications (DoT). While some of the issues raised by Telstra have been addressed in the subsequent five years, significant barriers to entry remain, for example the very high upfront entry fees to obtain a licence (currently Rs 2.5 crore which is over a half million Australian dollars).

Foreign investors have also experienced difficulties with the approach taken by the Indian tax authorities, highlighted by the recent high profile tax litigation involving Vodafone in which a multi-billion dollar tax assessment was finally overturned by the Indian Supreme Court following four years of appeals by the taxpayer.⁹ Delays in administrative and judicial processes are another concern for foreign investors in India. A recent case under the Bilateral Investment Treaty (BIT) between India and Australia highlighted the difficulties of an Australian contractor which had won an arbitral award against Coal India (a state-owned company) in 2002 but was unable to obtain enforcement of the award by the

⁶ Australian Government, *Australia in the Asian Century – Issues Paper*, December 2011, p13.

⁷ Telstra International Media Release, “Telstra expands in India with new telecoms licences”, 1 November 2011, available at: <http://www.telstrainternational.com/news/nid-88/telstra-expands-in-india-with-new-telecoms-licences/>

⁸ See Telstra submission at <http://www.aph.gov.au/house/committee/jfadt/india2006/subs/sub18.pdf> (2 June 2006); and see also an update submission to the same inquiry dated 9 October 2006 available at <http://www.aph.gov.au/house/committee/jfadt/india2006/subs/sub34.pdf>. Additional to its submissions, Telstra appeared before the Committee in its public hearings. The transcript for that hearing, in which the issues raised by Telstra are expanded upon and placed in a wider context of facilitating the entry of Australian service suppliers to the Indian market, is available at: <http://www.aph.gov.au/hansard/joint/commtee/J9606.pdf> (see pages FADT 49 – 59).

⁹ *Vodafone International Holdings B.V. v Union of India*, Civil Appeal no.733 of 2012, Supreme Court of India. Judgment available at: <http://www.legallyindia.com/images/stories/docs/sc2652910%5b1%5d.pdf>. See also: *Legally India*, “The lawyer who lost then won \$2bn: Vodafone GC Andre Jerome’s insider account of taxes, the value of Salve & dark days”, 31 January 2012, <http://www.legallyindia.com/in-house-interview/the-lawyer-who-lost-then-won-2bn-vodafone-gc-andre-jeromes-insider-account-of-taxes-salve-a-dark-days>.

Indian courts for nine years thereafter. Relief was finally obtained under the BIT.¹⁰

Telstra recognises that these issues are not unique to India, and has been encouraged by the reform agenda undertaken by the current Indian Minister for Communications and Information Technology. Telstra understands that the Minister intends to visit Australia later this year, and it would be worthwhile to develop closer dialogue between Australia and India in respect of policy and regulation of telecommunications services. Telstra has made a detailed submission to the Department of Foreign Affairs and Trade (DFAT) regarding the proposed Australia-India Comprehensive Economic Cooperation Agreement (CECA), and considers that the inclusion of a telecommunications services chapter in that agreement is highly desirable.

b. Indonesia

A subsidiary of Telstra International currently holds licences for supply of telecommunications services to its MNC customers with locations in Indonesia. Previously, Telstra was a significant shareholder in the Central Java fixed line operator Mitra Global Telekomunikasi Indonesia (MGTI) from 1994 until 2003, when it exited on amicable terms with its Indonesian partners. Indonesia remains a market of significant interest to Telstra, however current regulatory and foreign investment conditions do not favour expansion significantly beyond the existing Telstra International presence. Telstra has made a detailed submission to DFAT regarding the proposed Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA), highlighting the benefit of inclusion of a telecommunications services chapter as well as promoting institutional capacity building.

c. Singapore

Telstra regards Singapore as a key gateway jurisdiction for both the Indian Ocean region and Asia more generally. Telstra International has operated in Singapore since 2003, predominantly as a sales office for its products, and to serve several key MNC customers based in that country. Recently Telstra upgraded its Singaporean licence to Facilities Based Operator (FBO) status, which will enable Telstra to build the local backbone required to support its plans for new cable submarine capacity to Singapore.¹¹ While Singapore's approach to telecommunications regulation has some complexities, its lead regulatory agency, the Infocomm Development Authority or "IDA", works productively with licensees. Telstra recommends that the Committee look into the development work done by the IDA's international division (www.idainternational.sg) as a good example of capacity building in the Indian Ocean region and beyond.

¹⁰ *White Industries v India*, see: Max Bonnell and Jason Clapham, "India held liable to King & Wood Mallesons' Australian client as a result of the failure of the Indian courts' to promptly enforce an arbitration award", 9 March 2012, <http://www.mallesons.com/publications/marketAlerts/2012/Pages/India-held-liable-to-King-and-Wood-Mallesons-Australian-client-as-a-result-of-the-failure-of-the-Indian-courts-to-promptly.aspx>.

¹¹ Telstra International Media Release, "Telstra secures new licence to enhance breadth of service to businesses in Singapore", 15 December 2012, <http://www.telstrainternational.com/news/nid-91/telstra-secures-new-licence-to-enhance-breadth-of-service-to-businesses-in-singapore/>.

d. Malaysia

A subsidiary of Telstra International holds a Malaysian licence entitling it to supply services to its MNC customers with locations in that country. Telstra has had a longstanding business relationship with Telekom Malaysia which in turn has deeper experience in the Indian Ocean region and provides Telstra with the ability to service MNC customers in countries such as Sri Lanka. While the Malaysian domestic market is relatively small, Malaysian and Australian companies have complementary skills and contacts creating opportunities to work together in the rest of the region.

Telstra has made detailed submissions to DFAT in regard to the proposed Malaysia Australia Free Trade Agreement (MAFTA) which has been in the process of negotiation for an extended period of time. Telstra's focus has been on Malaysia's foreign ownership restrictions in respect of the telecommunications services market which require foreign investors to sell down their interest to a minority stake after five years. Telstra has previously made a submission to the 2006 inquiry by the Joint Standing Committee on Foreign Affairs, Defence and Trade into Australia's relationship with Malaysia in this regard.¹² Telstra notes that in practice the Malaysian authorities have made concessions on a case-by-case basis, and is hopeful that one of the outcomes of the successful conclusion of the FTA negotiation will be a formal change to the foreign investment limit in telecommunications.

e. Thailand

Telstra International has a minority stake in an entity which holds a Thai licence enabling Telstra to provide data services to its MNC customers in that country. It has been a longstanding concern for Telstra that Australia's Free Trade Agreement with Thailand (TAFTA) does not include a telecommunications services chapter. Moreover, in a side-letter to the TAFTA the Thai government committed to further negotiations on telecommunications market access by the end of 2007, but this has not occurred.¹³ Telstra notes that there have been significant developments in telecommunications regulation in Thailand, and that it would be helpful to achieve clarity on foreign ownership restrictions and permitted market access by means of the mechanism contained in the side-letter.

5. The role of Free Trade Agreements

Telstra agrees with the following key point made in the Australian Government's April 2011 Trade Policy Statement:

¹² See letter from David Thodey of Telstra dated 18 September 2006 at: http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jfa dt/malaysia/subs/sub16.pdf; Telstra subsequently appeared at the hearing held by the Committee on 21 November 2006, see Hansard pages FADT 34 – 38, available at: http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jfa dt/malaysia/hearings.htm.

¹³ See side-letter to the TAFTA at http://www.dfat.gov.au/fta/tafta/services_exchange_of_ltrs.pdf. This is not unusual: a side-letter to Australia–United States FTA promising annual consultations on telecommunications policy and regulation appears to have similarly fallen into abeyance.

“Pro-competitive economic reform should be pursued in its own right; it should not be conditional upon other countries reforming their economies. Adopting a bargaining-chip approach of refusing to liberalise at home unless other countries offer trade barrier reductions as a quid pro quo only damages the home country’s long-term prosperity. Using domestic reform as a bargaining chip in negotiations is akin to an athlete refusing to get fit for an event unless and until other competitors also agree to get fit.”¹⁴

Australia’s telecommunications services market is highly liberalised and very open to international competition (indeed, many of Telstra’s competitors in the Australian market are foreign owned and controlled). Telstra has consistently taken the approach in Australia’s negotiation of bilateral and multilateral trade agreements that this openness of the Australian market should be relied upon as an example to Asian economies to persuade them of the benefits of liberalising competition in telecommunications services and opening their telecoms markets to greater foreign investment.

Telstra sees a valuable role for bilateral trade agreements to the extent that they can address behind-the-border impediments to trade. Commitments to due process and transparency can be especially helpful when dealing with issues such as licensing and regulation of telecommunications services. However, Telstra agrees with the Government’s Trade Policy Statement that bilateral and regional agreements “must be genuinely liberalising, eliminating or substantially reducing barriers to trade.” In Telstra’s view the absence of a telecommunications services chapter in the Thai FTA is an example of a significant failing in a bilateral agreement.

Telstra further agrees with the Government’s Trade Policy Statement that multilateral agreements such as the WTO GATS and its associated Telecoms Annex and Reference Paper should be first prize. Despite the proliferation of bilateral trade agreements with telecommunications chapters, the only instance of enforcement of trade commitments in telecommunications services has occurred in the WTO context.¹⁵

Telstra therefore supports the Australian government in pursuing bilateral agreements in the Indian Ocean rim region, with the priority being those negotiations already commenced with India and Indonesia, and the conclusion of the FTA with Malaysia. To the extent that there is an opportunity for a regional trade agreement in the Indian Ocean rim region (e.g. similar to that concluded with the ASEAN economies) the test is whether such an agreement would be genuinely liberalising.

¹⁴ *Trading our way to more jobs and prosperity*, April 2011, www.dfat.gov.au/publications/trade/trading-our-way-to-more-jobs-and-prosperity.html.

¹⁵ Panel Report, *Mexico – Measures Affecting Telecommunications Services*, WT/DS204/R (circulated 2 April 2004, adopted 1 June 2004).

6. The Indian Ocean Rim Association and any other relevant bodies and their future directions

Telstra considers that bodies such as the Indian Ocean Rim Association for Regional Cooperation (IOR-ARC) can play a useful role in providing a focus specific to the Indian Ocean region, and in providing low key contact channels to nations with which Australia otherwise has difficult relations. Telstra recognises, however, that there are many international bodies of this nature across different geographies in which the Australian government participates, ranging from APEC to ASEAN to Commonwealth institutions. The challenge for Australian companies such as Telstra is to justify the allocation of resources to support such activity in a meaningful way, for example through participation in the IOR-ARC Business Forum. Bodies of this kind often look to the private sector for sponsorship and it can be difficult in some cases for Australian companies to justify the business case for such sponsorship. Travel to meetings of these bodies can be very expensive and Telstra prefers to use technology solutions such as videoconferencing for such gatherings to save travel cost and reduce its carbon footprint. If Telstra can obtain a clear understanding of the purpose, agenda and potential benefit of involvement in meetings and work programs of bodies of this kind, it will make active participation more attractive.

Telstra suggests that Australia's forthcoming Chairing of the IOR-ARC from 2013 to 2015 provides an opportunity to develop strategies together with the Australian business community and other sectors such as arts and education, to make best use of the forum provided by IOR-ARC.

7. Conclusion

Telstra supports the conceptual basis of the Committee's inquiry, namely that there exists a distinct Indian Ocean rim region which deserves to be examined from a strategic and trade perspective. While the Indian Ocean rim region is not as high a priority for most Australian businesses as the Northern Asia / Pacific Rim region, Telstra International has noted in its day-to-day business of supplying managed telecommunications services and capacity to customers that major Indian Ocean rim countries are interconnecting increasingly with other developing countries in the Northern Asia / Pacific Rim region in a complex web of trading relationships. It should be Australia's strategic and commercial aim to be an integral part of that wide trading arc from Africa and the Indian subcontinent through to Northern Asia and the Pacific Rim, to be a hub rather than a spur.