

Australian Shareholders' Association Submission

Senate Environment Communications and the Arts Legislation Committee:

Inquiry into the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009

The ASA welcomes this opportunity to contribute to the Senate Environment, Communications and the Arts Committee Inquiry into the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009.

The Australian Shareholders' Association (ASA) is a not-for-profit organisation formed to represent, protect and promote the interests of investors in shares, managed investments, superannuation and other financial investments.

Submission

Destruction of value for Telstra shareholders

If the forced structural separation of Telstra goes ahead as proposed by the Government, Telstra shareholders are likely to see significant destruction in the value of their investment.

Telstra was privatised in three stages T1 (1997), T2 (1999) and T3 (2006). T1 and T2 combined privatised 49% of Government ownership. T3 reduced that stake to 17% which was subsequently placed in the Future Fund. In all three public offers Telstra was marketed as a strong investment on the basis of its large size and its position as the Australia's only integrated telecommunications company. The same assets that the Government as now insisting Telstra divest were promoted strongly as reasons for investment in the company.

At the time of the T1 offer the public offer document stated the following about Telstra:

*"Telstra has a proud history, from its birth as a provider of basic telephone lines across a far-flung continent to its present rank as a globally-orientated marketer of fixed and mobile telephone services, advanced Internet, data and directory services and, through FOXTEL, pay television."*¹

*"Once a monopoly supplier of essential services, Telstra now competes with all comers in one of the most open and sophisticated telecommunications markets in the world."*²

At the time of the T2 offer the prospectus stated the following with regard to the nature of Telstra:

*"Telstra's vision is to enhance its position as the leading full-service, telecommunications and information services company in Australia and to expand its presence internationally."*³

*"As well as the basic telephony network the Company has a variety of other delivery platforms, such as: ... a hybrid fibre co-axial cable broadband network that runs past 2.5 million homes;"*⁴

At the time of the T3 offer, only three years ago similar statements were made about the nature of the business in the following terms:

*"It is an opportunity Australians to invest in Australia's leading and only truly integrated telecommunications company..."*⁵

*"One of Telstra's strengths in providing integrated telecommunications services is its extensive geographical coverage through both its fixed and mobile infrastructure"*⁶

*"Telstra is Australia's leading full service wholesaler of telecommunications solutions and network capacity..."*⁷

*"Telstra owns 50% of FOXTEL... Telstra is the exclusive long term supplier of cable distribution services for FOXTEL'S cable subscription television services in Telstra's cabled areas and also receives a share of FOXTEL'S cable subscription revenue."*⁸

If anything, the reliance upon the current structure of Telstra in the marketing of T3 offer and the strength of its integrated model was even stronger than in the earlier offers.

Investors in each offer could only believe that they were paying for a company with a highly integrated business model that in fact was a large part of its attraction and worth. It was clear from the offer documents that a substantial advantage of the company was its ownership of structural telecommunications assets and the ownership of both wholesale and retail telecommunications businesses.

The Government owes Telstra shareholders, and it is incumbent on the Government to ensure that it does not disadvantage Telstra shareholders in its pursuit of its public policy agenda on telecommunications competition.

The Government ultimatum places Telstra in a situation where it must separate its wholesale and retail business. Obtaining full value for those assets in the situation of a forced sale will be difficult. Further it will not be possible to obtain the value paid by Telstra shareholders, as that price was dependent on the integration of the wholesale and retail assets within one business. Telstra has invested shareholders' funds heavily in those businesses and the future return on investment to shareholders will be lost if the Bill is passed in its current form.

It is extremely concerning that the Government has so little regard for the rights of the 1.4 million shareholders who own shares in Telstra and the many others whose superannuation and other indirect investments own Telstra shares.

Implications for investment generally

The ASA is concerned not just about the value destroying nature of the proposal for Telstra shareholders, but also about the implications for investment generally. International investors in particular will consider Australia to have a much higher level of sovereign risk if this Bill is passed and the Government allowed to impose its will on a private company.

Investors, both small and large will consider that the level of risk of Government or regulator intervention when investing in highly regulated industries is increased by this decision. In addition the decision is likely to impact the confidence the market will have in future privatisations.

Conclusion

There is no certainty that the structural changes to Telstra will actually deliver better, more competitive outcomes for consumers. The ASA would urge the Committee to consider this Bill very carefully and to recommend either that it is substantially changed or not proceeded with at all.

Individual Senators considering this submission are urged not to pass the Bill unless it is significantly amended to ensure that the concerns with regard to loss of value for individual Telstra shareholders and the negative impacts for investment generally are addressed.

Endnotes

¹ T1 Share Offer, Public Offer Document, Letter from the Telstra Chairman, p. 5

² Ibid.

³ T2 Share Offer, Public Offer Document, Telstra Overview, p. 14

⁴ Ibid., p. 13

⁵ T3 Prospectus, Letter from the Telstra Chairman, p. 5

⁶ T3 Prospectus, Overview of Telstra, p. 27

⁷ Ibid., p. 39

⁸ Ibid., p. 39