

Submission to the Senate Inquiry on the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009

452 Capital is an Australian company that invests money on behalf of superannuation funds and individuals. We have approximately \$4 billion in funds under management which are invested in Australian listed shares. We have an investment in Telstra worth approximately \$330 million.

452 Capital is concerned that the proposed legislation will lead to adverse and severe implications for both our specific investment in Telstra shares and will impact more broadly on investments in Australian companies given the increased sovereign risk profile that Australian investments will undoubtedly carry.

The Federal Government has introduced legislation that proposes to significantly change the operating structure of Telstra by enforcing separation of its businesses and potential punitive divestiture of assets. These are the same assets which Telstra shareholders purchased from the Government in 1997, 1999 and 2006 in good faith that they would generate a reasonable return into the future.

To the best of our knowledge, this legislation is unprecedented in that it will allow a government minister and the ACCC to have extensive discretionary and binding powers over a particular company. From the perspective of an investor in a broad range of Australian companies, these powers create an unacceptable level of risk and uncertainty and potentially prohibit a fair result (particularly if the rules can be changed after an agreed outcome).

Most importantly 452 Capital believes:

- (i) there should be a transparent process for compensating Telstra shareholders for the forced separation and potential divestment of assets;
- (ii) that the legislation requires the Government to negotiate a fair price for the acquisition or divestiture of Telstra's assets; and,
- (iii) an independent expert report and a shareholder vote are necessary to ensure that Telstra shareholders receive fair and just compensation for the company's assets.

We believe that the extent of the proposed legislative changes is not required for the Government to achieve its National Broadband Network (NBN) vision. We note that the Government has failed to provide any evidence that the benefits of separation will outweigh the costs of separation. In fact the Labor Government in 2003 did not proceed with its proposal for structural separation because it would be too costly and too complicated. Many other OECD countries have also rejected this policy idea on the basis that the costs will outweigh the benefits.

In summary, we are concerned that the Government has chosen to implement legislation which uses threatening tactics to force Telstra to submit to the Government's demands. In fact, we believe this sets a dangerous precedent, as it reflects an increased level of sovereign risk to all investments in Australian companies when a government is allowed to legislate against a particular company on a subjective basis.