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Trade Practices Amendment  
(Telecommunications) Bill 2001

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Trade Practices Amendment (Telecommunications) Bill  
2001

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29 August 2001

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# Trade Practices Amendment (Telecommunications) Bill 2001

**Date Introduced:** 9 August 2001

**House:** House of Representatives

**Portfolio:** Communications, Information Technology and the Arts

**Commencement:** On Royal Assent

## Purpose

To amend Part XIC of the *Trade Practices Act 1974*, dealing with arbitration of disputes between carriers and access seekers over access to certain telecommunications services, to encourage parties to settle access conditions by negotiation rather than arbitration and to reduce delays in the arbitration process.

## Background

### Telecommunications access regime

Part XIC of the *Trade Practices Act 1974* (the TPA) sets out a telecommunications access regime. The aims of the regime are to promote competition in markets for telecommunications services, to promote economically efficient use of and investment in the infrastructure used to supply these services, and to achieve any-to-any connectivity.<sup>1</sup>

The *Telecommunications Act 1997* distinguishes between ‘carriers’ and ‘service providers’, who may be either ‘carriage service providers’ or ‘content service providers’. ‘**Carriers**’ are the owners of telecommunications lines and cables, satellites, mobile phone base stations or certain fixed radiocommunications links. As at March 2001 there were 54 carriers in Australia.<sup>2</sup> ‘**Carriage service providers**’ supply services such as telephone or Internet access to consumers. They use the services owned by carriers, but they may or may not themselves be carriers. There are a great many carriage service providers in Australia, including 81 telephone service providers, 50 providers of both telephone and Internet services, and 867 internet service providers.<sup>3</sup> ‘**Content service providers**’ supply content such as pay TV or online information and entertainment.

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Basically, there is no general right of access to telecommunications services. But the Australian Competition and Consumer Commission (the ACCC) has power to declare certain services to be '**declared services**'.<sup>4</sup> Once this is done, carriers and carriage service providers who provide the declared services must give other carriage service providers and content service providers access to the services.

So far, the ACCC has declared services such as local telephone carriage, analogue pay TV, STD and international telephone carriage to be 'declared services'.<sup>5</sup> This requires carriers and carriage service providers who supply these services to provide access to other service providers. However, it is the terms and conditions on which access is supplied which are contentious.

Part XIC of the TPA provides three alternative means of settling the conditions of access: agreement between the parties, offering an access undertaking, or arbitration by the ACCC. In the first instance, it is hoped that the parties will be able to agree on the terms and conditions of access to the services. However, if agreement cannot be reached, the carrier or carriage service provider may offer an '**access undertaking**'. This must be accepted by the ACCC, which means the terms and conditions must either be consistent with the model terms and conditions set out in the telecommunications access code, or be reasonable and be consistent with the standard access obligations.<sup>6</sup> If the parties cannot agree, and if no access undertaking acceptable to the ACCC is offered, the terms and conditions must be determined by the ACCC in arbitrating on an '**access dispute**'.

How successful has the telecommunications access regime been?

In June 2000, the Productivity Commission was given a reference to inquire into telecommunications-specific competition regulation. Its terms of reference included anti-competitive conduct and record-keeping rules, preselection of carriage service providers, interconnection of facilities, and number portability.<sup>7</sup> One of the key matters it was to inquire into was the access regime contained in Part XIC of the TPA.

The Productivity Commission issued its draft report in March 2001. It estimates that in a clear majority of cases (at least 80 per cent), terms and conditions for access to declared services are able to be agreed by negotiation between the parties. However, negotiations have in many cases been difficult and protracted, and resulted in delays in obtaining access to the services.<sup>8</sup>

Only four undertakings have been submitted to the ACCC, all by Telstra, and all were rejected because one or more of the conditions was considered unreasonable.<sup>9</sup> In three of these cases, the ACCC took a year and a half to consider and ultimately reject the undertakings, and in the fourth case it was rejected after 10 months.<sup>10</sup>

Since the new telecommunications regime commenced in 1997, 39 disputes over terms and conditions of access to declared services have gone to arbitration before the ACCC. These tend to involve higher volume services, and larger firms seeking access.<sup>11</sup> The main

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matter in dispute is the price of access to the service.<sup>12</sup> Of these, as at March 2001 14 had been finalised by the ACCC, and 25 remained outstanding, having been active for an average of 10 months, ranging from three months to two years.<sup>13</sup> As at 30 May 2001, two months later, the backlog had been reduced to 24 disputes.<sup>14</sup>

A topical current example of the operation of the access regime is the access dispute between Telstra and AAPT and Primus over wholesale prices for access to the Telstra long-distance network. These prices have been in dispute since at least 1997, and were unable to be resolved by negotiation between the parties. In September 2000, the ACCC set prices at an average of 1.77c per minute for 1999-2000 and 1.53c per minute in 2000-2001. In May 2001, the ACCC made a provisional determination of 1.3c a minute for 2001-2002.<sup>15</sup> These prices were considerably lower than those originally proposed by Telstra, namely 2.37c a minute for 1999-2000 and 2.01c a minute for 2000-2001 respectively.

Telstra has lodged an appeal with the Australian Competition Tribunal against the ACCC's pricing determination. It is now reported to be seeking a much higher price than it originally proposed, namely, 3.61c per minute.<sup>16</sup> Telstra claims the ACCC has set the price of access too low in order to keep struggling telecommunications companies afloat and to justify the Government's competition policy.<sup>17</sup> Other carriers claim the prices Telstra is seeking are an attempt to increase its revenues. The dispute may not be resolved by the Tribunal for another year.<sup>18</sup>

### Productivity Commission recommendations

The Productivity Commission in its draft report recommended the continuance of a telecommunications-specific regulatory regime in a number of areas, including the specific access regime set out in Part XIC of the TPA. It made a number of draft recommendations for amending Part XIC including:<sup>19</sup>

- broadening the objects clause to encompass overall economic efficiency
- tightening the criteria which the ACCC must find to be satisfied before a service is declared
- removing the Minister's ability to make Ministerial pricing determinations, as this lacks accountability and transparency
- abolishing the Telecommunications Access Forum, and
- permitting class arbitration of access disputes rather than a series of bilateral dispute arbitrations.

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The Commission also considered the current procedure for determining the terms and conditions of access is too 'resource-intensive, slow and inefficient'.<sup>20</sup> Among the options considered by the Commission to improve efficiency are including in the legislation:<sup>21</sup>

- pricing principles which spell out the criteria for regulatory pricing decisions
- some form of multilateral price setting so that a group of access seekers can resolve their conflicts with an access provider simultaneously
- non-binding indicative time limits to accelerate processes, and
- a quick method for updating final determinations as costs change, so as to stop repeated cycles of burdensome process.

Since publication of the draft report, the Productivity Commission has received many submissions from carriers, lobby groups and industry commentators.<sup>22</sup> Further public hearings were held on 14 and 15 May 2001. The Commission is due to release its final report on or before 22 September 2001.

### Position of interest groups

The reaction to the Productivity Commission's draft report has been mixed. One commentator summarised it thus:<sup>23</sup>

Some submissions applaud some of the proposed reforms, others express the view that some of the proposed reforms do not go far enough, while others argue for a strengthening of the current approach.

Telstra has opposed any extension of the ACCC's powers, claiming the regulator frequently makes pricing decisions that are unduly low and 'favors competitors, rather than competition.'<sup>24</sup> Telstra was particularly opposed to any loss of appeal rights. Instead, at an industry forum held on 30 May 2001, Telstra proposed a series of concessions to speed the resolution of access disputes. These included:

- consolidating the hearing of similar cases before the ACCC
- more alternative dispute resolution
- greater transparency of agreed terms and conditions
- better case management for the ACCC, and
- pre-agreed approaches to pricing calculations.<sup>25</sup>

It has also been reported that Telstra offered to settle all 24 outstanding disputes if the Government does not increase the powers of the ACCC.<sup>26</sup>

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An industry forum attended by representatives of all the major telecommunications carriers, leading consumer groups and the ACCC agreed on the need to expedite the process for resolving access disputes.<sup>27</sup> While all parties agree that the time taken to resolve access disputes is excessive, there is disagreement as to the cause of the delay. Telstra blames delays on the ACCC, whereas the Chair of the ACCC, Professor Allan Fels, blames the legal framework and the parties, particularly Telstra, for exploiting every legal avenue. He has stated:<sup>28</sup>

Essentially, the legal framework provides greater opportunities for Telstra, and occasionally other parties opposing Telstra, to delay decisions. The legal time is inappropriate for 'e' time, and legal processes that were established decades ago to protect the right of individuals are being used to protect the rights of a monopolist [Telstra].

Other carriage service providers have also criticised Telstra for pursuing every legal avenue and not accepting the prices determined by the ACCC.<sup>29</sup>

### The Government's response

The Government has decided to act now rather than wait for the Productivity Commission's final report to be delivered in a month's time. The Bill implements some of the Productivity Commission's draft recommendations concerning Part XIC of the TPA, but not other draft recommendations, such as those concerning the abolition of Ministerial pricing determinations and of the Telecommunications Access Forum. The amendments also reflect some of the concessions proposed by Telstra at the industry forum on 30 May 2001. The changes proposed in the Bill are designed to streamline arbitration procedures and to 'facilitate the timely resolution of telecommunications access disputes'.<sup>30</sup>

On 23 August 2001 the Bill was referred to the Senate Environment, Communications, Information Technology and the Arts Legislation Committee for inquiry. The Committee is due to report on 17 September 2001.

## Main Provisions

The Bill proposes a number of amendments which are designed, firstly, to encourage determination of terms and conditions through negotiation, and secondly, if arbitration is necessary to streamline the arbitration process and the appeal process. Some of these amendments reflect the concessions proposed by Telstra at the May 2001 industry forum. A number also reflect the draft recommendations of the Productivity Commission, although some of the proposed changes are inconsistent with the Commission's draft recommendations.

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## Amendments to encourage resolution of disputes through negotiation

The Bill makes a series of amendments designed to ‘encourage parties to resolve disputes without recourse to ACCC arbitration.’<sup>31</sup> In particular, the Government hopes that publishing pricing principles and final determinations will ‘increase the amount of relevant information to the market and facilitate commercial resolution of disputes, rather than lengthy arbitrations.’<sup>32</sup>

### Pricing principles for declared services

The Productivity Commission examined the efficiency objectives of access pricing, and recommended a series of pricing principles which in its view should be legislated for telecommunications. These are that access prices should:<sup>33</sup>

- generate revenue across a facility's regulated services as a whole that is at least sufficient to meet the efficient long-run costs of providing access to these services, including a return on investment commensurate with the risks involved
- not be so far above costs as to detract significantly from efficient use of services and investment in related markets
- encourage multi-part tariffs and allow price discrimination when it aids efficiency, and
- not allow a vertically integrated access provider to set terms and conditions that discriminate in favour of its downstream operations, unless the cost of providing access to other operators is higher.

The Bill does not propose the enactment of these principles. Instead, it proposes that the ACCC will be obliged to publish principles which will be used to guide the determination of prices for specific declared services. This accords with Telstra’s proposal at the May forum for pre-agreed approaches to pricing calculations.

At or shortly after the time services are declared to be ‘declared services’, the ACCC must also determine principles relating to the price of access to the service (**new section 152AQA**). This will apply to services which the ACCC designates as ‘declared services’ after the Bill commences, and services which have already been declared where the declaration is varied after the Bill commences (**subitem 23(1)**). The ACCC must first publish a draft determination of pricing principles and invite submissions, before making a final determination. Ministerial pricing determinations will prevail over pricing principles determined by the ACCC. The pricing principles will be relevant when the ACCC is required to arbitrate access disputes over the services.

The ACCC already conducts public consultation on methods of pricing, and publishes pricing principles relating to specific services, access to which is being arbitrated.<sup>34</sup> The amendments will formalise existing administrative processes, by making consultation and the publication of pricing principles mandatory.<sup>35</sup> Pricing principles will be available to

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guide parties during negotiations, by indicating the considerations the ACCC will take into account if negotiations break down and the matter proceeds to arbitration.

### Timely manner of resolving access conditions

Where parties are negotiating conditions of access, the ACCC may, if requested to by either party, give directions as to how negotiations are to be conducted, or may, if requested to by both parties, attend negotiations and act as a mediator. **New section 152BBD** requires the ACCC to consider the desirability of resolving access conditions ‘in a timely manner’ when exercising those powers.

Similarly, when the ACCC is exercising its powers of arbitration to resolve access disputes, it must consider the desirability of resolving such disputes ‘in a timely manner’. This includes using ‘alternative dispute resolution methods such as mediation and conciliation’ (**new section 152CLA**).

There is no obligation contained in either of these provisions to use alternative dispute resolution methods. Neither is there any indication of what time periods will be considered ‘timely’. The Bill does not prescribe time limits, even non-binding ones, for particular stages of dispute resolution. The provisions are merely hortative. The provisions may be seen as a step towards greater use of alternative dispute resolution, as proposed by Telstra at the May forum, although they fall short of establishing a case management system to make the ACCC arbitration process more efficient.

### Power to publish determinations

Although arbitration hearings are held in private,<sup>36</sup> **new section 152CRA** proposes to give the ACCC power to publish its interim or final determinations, either in whole or in part, after consulting with the parties and giving them an opportunity to request that any part of the determination not be made public. This will apply to determinations made after the Bill commences (**subitem 23(3)**). This may be a reflection of Telstra’s proposal at the May forum for greater transparency of agreed terms and conditions.

### Backdating final determinations

The ACCC already has power to issue final determinations backdated to the day the access dispute was first referred to the ACCC for arbitration.<sup>37</sup> The Productivity Commission considered the existing backdating provision ‘has an unwarranted discretionary element’, in that the ACCC can choose whether or not to backdate, which (if any) elements of a final determination to backdate, and what time to backdate from. As no criteria are specified on which these discretionary decisions are to be made, this ‘increases uncertainty for all parties’ and may encourage the ACCC not to make decisions which will lead to business failure of a newer telecommunications company.<sup>38</sup> The Commission recommended mandatory backdating of prices, to be consistent with competitive neutrality principles. It also recommended publishing a method for calculating backpayments, including payment of interest, and the time from which backdating should occur.

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The Bill implements none of these recommendations. Instead, **item 16** proposes to permit the ACCC to backdate determinations beyond the arbitration process, to the date the parties first commenced negotiations over the terms and conditions of access to the declared services. This will only apply to access disputes referred to the ACCC for arbitration after the Bill commences (**subitem 23(2)**), and determinations will not be able to be backdated prior to the date on which the Bill commences (**item 24**). This may have the effect of encouraging settlement of terms and conditions via negotiation, and discouraging setting of high prices for use of services, as the ACCC can backdate its ultimate pricing determination.

### Amendments to streamline the arbitration process and minimise delays

The Bill also makes a number of amendments to the process of resolving access disputes by arbitration. Some of these were recommended by the Productivity Commission.

#### ACCC power to prevent unilateral withdrawal from arbitration

Currently, the party who notified an access dispute to the ACCC for arbitration may withdraw the dispute at any time prior to final determination. In addition, if a carrier or provider notified the dispute, a person seeking access to the services may withdraw the dispute after the draft determination but prior to the final determination.<sup>39</sup> **Item 4** repeals these provisions and instead proposes that only the party who notified the dispute may withdraw it from the arbitration process, and then only with either the consent of the other party or the consent of the ACCC. This adopts draft recommendation 9.6 of the Productivity Commission. The amendment is designed to prevent strategic abuse of the notification and withdrawal provisions to either prolong disputes and delay access to declared services, or to gain price advantages.<sup>40</sup>

#### ACCC power to make interim determinations even where an access seeker objects

The ACCC has power to make interim determinations on access disputes. However, it is currently not permitted to make interim determinations if the person seeking access objects to it within a specified period. **Item 5** proposes the repeal of this restriction, in line with the Productivity Commission's draft recommendation 9.5. The Commission was concerned that the veto power which currently exists results in risk reduction for access seekers but not for carriers or service providers, and is thus inequitable.<sup>41</sup> **Item 6** is consequential upon this repeal.

#### Power to convene single member ACCC panels for arbitration

Currently, each arbitration must be conducted by at least two members of the ACCC.<sup>42</sup> **Item 8** proposes to reduce this to at least one member of the ACCC. This amendment will have obvious cost-cutting and efficiency advantages. **Items 9, 10 and 11** make consequential amendments to other provisions, to provide for the option to convene either a single member or a multi-member ACCC panel for arbitration.

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### Using information from one arbitration in another arbitration

**New section 152DBA** gives the ACCC power to use information obtained in one arbitration in other arbitrations before it. This will only be allowed where the Chairperson of the ACCC thinks it would be 'likely to result in the current arbitration being conducted in a more efficient and timely manner.' Before using the information, the ACCC must first give the person who submitted it an opportunity to be heard on why any parts should not be released. This applies both to existing and new access disputes (**subitem 23(4)**). This adopts draft recommendation 9.8 of the Productivity Commission.<sup>43</sup>

### Multilateral arbitration hearings

**New section 152DMA** gives the ACCC a novel power to conduct joint arbitration hearings where more than one access dispute involves the same matter or matters, and the Chairperson of the ACCC thinks it would be likely to result in the disputes being resolved 'in a more efficient and timely manner.' The Chairperson of the ACCC has the power to give directions to the member of the ACCC conducting the joint arbitration hearing, which would include directions to separate the proceedings back into their separate disputes.<sup>44</sup> This accords with Telstra's proposal at the May forum for consolidation of the hearing of similar cases before the ACCC. This power will apply both to existing and new access disputes (**subitem 23(4)**).

The Productivity Commission, in draft recommendation 9.7, recommended voluntary joint arbitration proceedings only where this was proposed by a group of access seekers. This had also been advocated by a number of telecommunications companies, including One.Tel, Hutchison and AAPT.<sup>45</sup> In contrast, the Bill adopts a model whereby joint arbitration is imposed by the Chairperson of the ACCC. The Productivity Commission was concerned that where multilateral arbitrations are imposed, this may in fact cause further delay and complicate negotiations, by introducing additional rivalries to that existing between the carrier and the access seeker.<sup>46</sup>

### Amendments to the review of arbitration determinations

The Bill also proposes two amendments to the review process – restricting the merits review by the Australian Competition Tribunal to the evidence which was before the ACCC, and removing the Federal Court's power to stay the implementation of a Tribunal decision pending determination of the proceeding in the Federal Court.

### Restriction on fresh evidence during tribunal review

Currently, a party can apply to the Australian Competition Tribunal for review, once the ACCC has made a final determination on arbitration.<sup>47</sup> Review is a re-arbitration of the access dispute, and the Tribunal has all the powers of the ACCC. **New section 152DOA** proposes to restrict the powers of the Tribunal, so that it may only consider evidence, information or documents that were either given to the ACCC or referred to by the ACCC

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in its reasons for making the final determination. **Items 17 and 18** are consequential on this change.

This change will apply to applications for review which are made after the Bill commences (**subitem 23(5)**). It will not apply to the review of wholesale fees for access to Telstra's long-distance network, which is currently pending before the ACCC. However, if the Bill is passed, the change will apply to any review of the ACCC's forthcoming decisions on access to Telstra's local call network or mobile phone pricing.

### No power to stay decisions

A person affected by a decision of the Australian Competition Tribunal on review may apply to the Federal Court for judicial review of the decision.<sup>48</sup> This review does not consider whether the Tribunal made the correct decision on the merits of the case. Rather, it involves ascertaining whether proper procedures have been followed by the Tribunal, including consideration of all relevant matters and not matters which are not relevant to the Tribunal's task, giving proper weight to evidence and allowing all parties adequate opportunity to present their case.

A party can also appeal to the Federal Court on a question of law from a decision of the Australian Competition Tribunal.<sup>49</sup> This involves ascertaining whether the law was correctly identified, interpreted and applied, and differs from judicial review proceedings.

Currently, the Federal Court has power to stay the operation of the Tribunal's decision until it has finalised either the judicial review application or appeal on a question of law.<sup>50</sup> **New sections 152DPA and 152DR** will remove this power, and prohibit the Federal Court from staying a decision pending finalisation of the appeal. This will mean that the Tribunal's decision will take effect immediately on being made, unless and until it is overturned by the Federal Court. These changes will apply to appeals and applications for review which are made to the Federal Court after the Bill commences (**subitems 23(6) and (7)**).

## Concluding Comments

### Changes to negotiation process

In general, it appears the proposed amendments will go some way towards streamlining the process for negotiation of terms and conditions of access to declared services. The publication of pricing principles soon after a service is designated a 'declared service', and the publication of ACCC determinations will assist negotiating parties to agree on terms and conditions by providing a relevant reference point. The ACCC's power to backdate determinations to the date negotiations first commenced may also provide an additional incentive for parties to set reasonable prices and access conditions in advance, so as not to incur substantial retrospective liabilities.

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## Changes to arbitration process

The amendments to the arbitration process also have the potential to increase the speed with which disputes are resolved, particularly the powers to use information provided in one arbitration during arbitration of other similar matters, the power to convene single member panels for arbitration, and the ability to conduct multilateral arbitrations where access disputes involve similar issues.

## Changes to appeal process

Commentary has centred around changes to the right to appeal from final determinations of the ACCC to the Australian Competition Tribunal. Although at one stage Senator Alston, the Minister for Communications, Information Technology and the Arts, was quoted to be considering abolishing the right of appeal to the Australian Competition Tribunal, this avenue has not been pursued.<sup>51</sup> The Bill merely restricts the evidence to that before the ACCC. It also removes the Federal Court's power to stay the Tribunal's decision pending resolution of any appeal or judicial review proceedings.

Some of Telstra's competitors support moves to limit evidence on review to that available in the original process before the ACCC. Louise Sexton from Hutchison Telecom has stated 'We think a full review on the merits is only appropriate if the same evidence which was before the ACCC goes before the review panel',<sup>52</sup> contrary to the current process before the Tribunal.

In contrast, Telstra contends that limiting the evidence available on appeal will force parties to put all potentially relevant evidence on the record during the initial arbitration before the ACCC, thereby further lengthening that process.<sup>53</sup>

These changes will be too late to apply to the existing interconnection appeal before the Australian Competition Tribunal, but will apply to any appeals taken from determinations yet to be released by the ACCC. Final determinations are currently pending before the ACCC on matters such as resale of Telstra local calls, mobile phone pricing and unrestricted access to Telstra's local networks.<sup>54</sup>

## Do the changes go far enough?

The Australian Labor Party has indicated its support for the amendments proposed in the Bill, while expressing regret that additional industry reforms recommended by the Productivity Commission have not to date been adopted.<sup>55</sup> Labor also supports further changes to the merits review and appeal process, although it has not specified what form these changes may take.

It is doubtful whether the amendments proposed in the present Bill are sufficient to achieve the necessary efficiency in the determination of access terms and conditions for

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essential telecommunications services. For example, the changes stop short of imposing binding time limits on disputes, or increasing the resources of the ACCC including appointing specialist arbitrators such as retired judges to assist the ACCC.<sup>56</sup> Although the changes will go some way towards improving the efficiency of the system, it is likely that the process will remain frustratingly time-consuming and resource-intensive. The Government has expressly left open the option of making further amendments after the Productivity Commission releases its final report in September 2001.<sup>57</sup>

## Endnotes

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- 1 Section 152AB of the TPA. ‘**Any-to-any connectivity**’ means that users of a particular service (such as mobile telephones) can communicate with any other user, even if the other user has a different supplier or is connected to a different network.
- 2 Productivity Commission, *Telecommunications Competition Regulation Draft Report*, March 2001, p. 3.5.
- 3 Productivity Commission, *Telecommunications Competition Regulation Draft Report*, March 2001, p. 3.5.
- 4 Section 152AL of the TPA.
- 5 For a complete list of *declared services*, see Russell Miller, *Miller’s Annotated Trade Practices Act* (2001, 22<sup>nd</sup> ed), p. 924.
- 6 Section 152BV of the TPA.
- 7 The complete terms of reference may be found at <http://www.pc.gov.au/inquiry/telecommunications/tor.html> (accessed 27 August 2001).
- 8 Productivity Commission, *Telecommunications Competition Regulation Draft Report*, March 2001, p. 7.8.
- 9 Productivity Commission, *Telecommunications Competition Regulation Draft Report*, March 2001, p. 7.23.
- 10 Productivity Commission, *Telecommunications Competition Regulation Draft Report*, March 2001, p. 7.25.
- 11 Productivity Commission, *Telecommunications Competition Regulation Draft Report*, March 2001, pp. 7.8–7.9.
- 12 Productivity Commission, *Telecommunications Competition Regulation Draft Report*, March 2001, p. 7.28.
- 13 A complete list of the status of arbitrations and the time taken to finalise access disputes may be found in Productivity Commission, *Telecommunications Competition Regulation Draft Report*, March 2001, pp. 7.29–7.30.
- 14 Annabel Crabb, ‘Canberra, Telstra on collision course’, *The Age*, 30 May 2001.

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- 15 'Telstra row dragging on: Minister', *The Canberra Times*, 31 July 2001.
- 16 Aaron Patrick, 'Telstra curbed on price appeals', *Financial Review*, 9 August 2001. This represents a base rate of 2.1c per minute, plus a potential surcharge of 1.51c, depending on the outcome of a secondary pricing dispute currently before the ACCC: Aaron Patrick, 'What price access?' *Financial Review*, 30 July 2001.
- 17 Cythia Banham, 'Telecom law debate fixes on the right of appeal', *Sydney Morning Herald*, 4 August 2001.
- 18 'Telstra row dragging on: Minister', *The Canberra Times*, 31 July 2001. See also Aaron Patrick, 'Telstra curbed on price appeals', *Financial Review*, 9 August 2001.
- 19 A complete list of draft recommendations can be found at Productivity Commission, *Telecommunications Competition Regulation Draft Report*, March 2001, p. xxxiii-xxxvii.
- 20 Productivity Commission, *Telecommunications Competition Regulation Draft Report*, March 2001, p. xxviii.
- 21 Productivity Commission, *Telecommunications Competition Regulation Draft Report*, March 2001, p. xxix.
- 22 See Productivity Commission, *Current Projects: Telecommunications Competition Regulation Public Inquiry*, <http://www.pc.gov.au/inquiry/telecommunications/index.html> (accessed 27 August 2001).
- 23 Daniel Abrahams, 'The Productivity Commission's review of telecommunications specific competition regulation', (2001) 4(10) *TeleMedia* 125.
- 24 Annabel Crabb, 'Canberra, Telstra on collision course', *The Age*, 30 May 2001.
- 25 Cynthia Banham, 'Alston changes tack on access regulation', *Sydney Morning Herald*, 31 May 2001, Annabel Crabb, 'Telstra changes stance on disputes', *The Age*, 31 May 2001.
- 26 Annabel Crabb, 'Telstra changes stance on disputes', *The Age*, 31 May 2001
- 27 Jason Koutsoukis, 'Telcos agree on the need for law reform', *Financial Review*, 31 May 2001, Annabel Crabb, 'Telstra changes stance on disputes', *The Age*, 31 May 2001.
- 28 Adele Ferguson, 'Dial T for tyrant', *Business Review Weekly*, 8 June 2001.
- 29 See Cynthia Banham, 'Telecom law debate fixes on the right of appeal', *Sydney Morning Herald*, 4 August 2001, 'Telstra row dragging on: Minister', *The Canberra Times*, 31 July 2001.
- 30 The Hon Peter McGauran, Minister for the Arts and the Centenary of Federation, second reading speech on the Trade Practices Amendment (Telecommunications) Bill 2001, House of Representatives, *Hansard*, p. 29555, 9 August 2001.
- 31 The Hon Peter McGauran, Minister for the Arts and the Centenary of Federation, second reading speech on the Trade Practices Amendment (Telecommunications) Bill 2001, House of Representatives, *Hansard*, p. 29555, 9 August 2001.

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- 32 The Hon Peter McGauran, Minister for the Arts and the Centenary of Federation, second reading speech on the Trade Practices Amendment (Telecommunications) Bill 2001, House of Representatives, *Hansard*, p. 29555, 9 August 2001.
- 33 See Productivity Commission, *Telecommunications Competition Regulation Draft Report*, March 2001, pp. 10.23-10.24.
- 34 So far it has published a pricing guidelines for the GSM Termination Service (July 2001), PSTN access services provided by non-dominant or smaller fixed networks (March 2001), unconditioned local loop services (ULLS) (August 2000), Local Carriage Service (November 2000), and Mobile Termination Services (December 1999). These may be found at <http://www.accc.gov.au/telco/fs-telecom.htm> (accessed 23 August 2001).
- 35 See *Explanatory Memorandum*, p. 17.
- 36 Section 152CZ of the TPA.
- 37 Subsection 152DNA(2) of the TPA.
- 38 See Productivity Commission, *Telecommunications Competition Regulation Draft Report*, March 2001, pp. 9.45.
- 39 Subsection 152CN(1) of the TPA.
- 40 For more details about the potential abuses this amendment is designed to avoid, see Productivity Commission, *Telecommunications Competition Regulation Draft Report*, March 2001, pp. 9.20-9.21.
- 41 See Productivity Commission, *Telecommunications Competition Regulation Draft Report*, March 2001, pp. 9.19-9.20.
- 42 Section 152CV of the TPA.
- 43 See Productivity Commission, *Telecommunications Competition Regulation Draft Report*, March 2001, p. 9.33.
- 44 *Explanatory Memorandum*, p. 21.
- 45 See Productivity Commission, *Telecommunications Competition Regulation Draft Report*, March 2001, p. 9.28.
- 46 See Productivity Commission, *Telecommunications Competition Regulation Draft Report*, March 2001, p. 9.26.
- 47 Section 152DO of the TPA.
- 48 Either under the *Administrative Decisions (Judicial Review) Act 1977* or section 39B of the *Judiciary Act 1903*.
- 49 Section 152DQ of the TPA.
- 50 Under paragraphs 15(1)(a) and (b) of the *Administrative Decisions (Judicial Review) Act 1977* and subsection 152DR(2) of the TPA.
- 51 Cynthia Banham, 'Alston changes tack on access regulation', *Sydney Morning Herald*, 31 May 2001.

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- 52 Aaron Patrick, 'What price access?' *Financial Review*, 30 July 2001.
- 53 Aaron Patrick, 'What price access?' *Financial Review*, 30 July 2001.
- 54 Aaron Patrick, 'What price access?' *Financial Review*, 30 July 2001.
- 55 Stephen Smith, 'Telecommunications Needs More Competition', *Media Statement*, 9 August 2001.
- 56 The latter was suggested by Senator Alston in a Doorstop interview on 10 April 2001. See also Adele Ferguson, 'Dial T for tyrant', *Business Review Weekly*, 8 June 2001.
- 57 The Hon Peter McGauran, Minister for the Arts and the Centenary of Federation, second reading speech on the Trade Practices Amendment (Telecommunications) Bill 2001, House of Representatives, *Hansard*, p. 29555, 9 August 2001.

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