

MINORITY REPORT BY THE AUSTRALIAN DEMOCRATS

Telstra (Transition to Full Private Ownership Bill 1998, and related bills

The Australian Democrats do not believe the privatisation of Telstra – Australia’s universal telecommunications service provider – is in the public interest. We have consistently argued that Telstra should remain in public ownership. The experience of the one-third sale of Telstra and evidence before the Senate Environment, Communications, IT and the Arts Legislation Committee has not let us to deviate from this position.

Recommendation 1: The remaining two-thirds of Telstra remain in public ownership.

We recall the Democrats’ minority report submitted to the Senate Environment, Recreation, Communications and the Arts Legislation Committee in May 1998, when the Committee considered the previous Telstra (Transition to Full Private Ownership) Bill 1998, prior to its defeat in the Senate in July 1998.

We believe the same issues of concern relate to this package of bills currently before the Senate and we reiterate our primary concerns raised in that report.

These concerns included:

- The timing of the presentation of the Bill before the Senate and the inadequate length of time the Committee has to consider the Bill.
- The lack of hearings held in rural and regional areas, or on other capital cities of Australia.
- The lack of any long term analysis with clear performance indicators formulated by the ACA, of Telstra’s ability to meet its obligations under the Universal Service Obligation and the Customer Service Guarantee standards
- The deviation of Telstra’s annual dividend from consolidated revenue (and hence to the benefit of all Australian) into the hands of a minority of private investors, stockbrokers and large corporations.
- A rejection of the Government’s argument that Telstra should to be sold in order to:
 - increase competition in the telecommunications sector,
 - to pay off public debt,

- fund special social programs through a ‘social bonus’ rather than properly funding programs, services and infrastructure directly through line items in the Budget.

The Australian Democrats argue that:

1. There is nothing inherently uncompetitive about Telstra being in public ownership. Efficiencies and profitability are not automatically derived from the private sector, but come from sound regulation, good policy and technological advances.
2. privatisation will reduce the net income. The sale of Telstra will lead to an increased debt burden because of the loss of revenue stream that is returned to the Commonwealth through paid dividends and annual tax returns. The amount the Government expects to receive is a one off amount from the sale of its most significant public asset. The Government will never again receive the revenue stream from Telstra which contributes significantly to consolidated revenue and provides government funding for all budget appropriations – not just the “social programs” the Howard Government deems worthy of funding.

Whilst the sale of Telstra would result in an interest saving of \$2 Billion per annum, it would also result in a loss of profits (\$1.7 billion) currently paid to the Commonwealth or retained by Telstra, and a loss of \$860 million because private shareholders would be able to claim tax rebates in respect of franking credits on Telstra dividends. Overall, this represents a loss of approximately \$560 million, rising to \$1.8 billion within three years, if Telstra’s profits continue to grow at their current rate.¹

It should be noted that the Government has consistently refused to disclose the estimated future dividend flows used to determine the future profitability of the company. This information is crucial in assisting the Parliament in determining the true value of Telstra, and the impact the loss of dividend stream will have on consolidated revenue – the very revenue the Government requires to fund social services and maintain a healthy public sector. The Government continues to maintain that it is not in the financial interests of the Commonwealth for it to disclose its estimates of expected future cash flows, both dividends and retained earnings of the company.

3. social programs should be funded from recurrent expenditure. Funding special programs from ‘left over’ revenue after debt retirement is no more than political pork barrelling, designed to secure support for government policies rather than a legitimate linkage between asset sales and levels of current expenditure. It should be recognised as such.
4. The significant undervaluing of Telstra’s shares resulted in an issue price for the instalment receipts which was well below their true value. The size of the individual windfall gains was proportionate to the number of shares purchased.

¹ J. Quiggin, *Proposed privatisation of Telstra: an assessment*, Submission to the Senate Environment, Recreation, Communications and the Arts Committee, 13 April 1998, p. 706.

Clearly the major beneficiaries from this were institutional investors and wealthy individuals who were able to subscribe for large numbers of shares. Those windfall gains should have been shared among all Australians in their capacity as owners of Telstra, not just those who were in position to purchase shares.

5. The government has again shown contempt for the Parliament in appointing advisers to commence preparations for the further sale when the Bills which will permit the sale have not even passed the Senate. Should the Senate reject this legislation, the government will have wasted over \$600,000 of taxpayers' money.²

In relation to the Social Bonus, the Democrats raise the following:

- Who will manage the fund?
- What public interest tests will underpin the funds to ensure they are wisely spent and distributed?
- Why will the fund be distributed among states and territories rather than through regions, or for specific projects, identified through independent means?
- Will there be an imposed timeframe in which the fund should be exhausted? What restrictions will that impose on the roll out of infrastructure? Will this encourage unwise spending?
- Relying on Senate Estimates to question the allocation of the fund is inadequate. Parliament should be provided with ongoing reports throughout the allocation process, in the same manner that Parliament is able to scrutinise the Budget. In this way, the fund should act as if these projects or services were properly funded through line item allocations.

The Government does not have widespread support for the sale of the remaining two thirds of Telstra. The Government's decision to sell Telstra, is a reflection of the Government's ideological position that government ownership hampers industry. The Australian Democrats believe that the greatest impediment to the telecommunications industry is a dysfunctional regulatory environment.

The Australian Democrats believe it is essential for retention of the remaining two-thirds of Telstra to be in public ownership. It is only in full public ownership that Australians will receive:

- access to essential services at affordable and competitive prices
- social benefits deriving from Telstra's revenues to Government
- ongoing maintenance and extension of infrastructure to all Australians, regardless of their income levels and geographical location

² L. Patterson (Department of Finance and Administration), Evidence, Question on Notice, 24 February 1999.

Customer Service Guarantee

The Democrats welcome the Government's resolve to strengthen the Customer Service Guarantee. However, the Democrats remain concerned that the scheme has not been able to ensure the maintenance of the existing quality levels provided in legislation following the sale of the first third of Telstra. This is demonstrated by Telstra's declining performance particularly in country areas, which has occurred despite the introduction of the CSG at the beginning of 1998.

This does not instil confidence that a fully privatised Telstra will deliver high quality service in accordance with performance standards, especially for rural and remote areas. The Democrats are of the opinion that the drop in service standards reflects a change in corporate ethos from a service provider, to a shareholder / profit oriented organisation.

The Democrats have a number of concerns about the CSG scheme including the services covered, those subject to performance standards, enforcement provisions, and public information about the scheme. We believe that the CSG should contain dynamic standards which are continually reviewed to ensure that carriers are obliged to supply the highest level of service on an ongoing basis.

Recommendation 2: that the Customer Service Guarantee performance standards be the subject of constant review by the Australian Communication Authority and that the ACA be empowered to amend CSG performance standards without receiving Ministerial direction. This should occur regardless of Telstra's ownership status.

Recommendation 3: that service providers provide details of the CSG to their customers as a matter of course. Service providers should automatically pay compensation to customers in instances of CSG breaches.

Universal Service Obligation

The Australian Democrats also welcome the government announcement prior to the most recent general election that a 64kps ISDN or an equivalent digital service will be available on demand as part of the USO to 96 per cent of the Australian population and a comparable satellite service will be made available to the remaining 4 per cent. However, we recount the concerns of the Communications, Electrical and Plumbing Union that while a service can be universally available, it can still be priced out of reach of many customers.³

³ Submission No.19 (Communications, Electrical and plumbing Union), p. 12.

Recommendation 4: That the price of the 64kps ISDN or equivalent service and the comparable satellite service, supplied as a part of the USO, be capped at an affordable level.

Recommendation 5: that the definition of the standard telephone service be broadened to include mobile telephony and Internet access. This should occur regardless of Telstra's ownership status.

Recommendation 6: that regular reviews of the Universal Service Obligation be guaranteed in legislation. This should occur regardless of Telstra's ownership status.

Recommendation 7: that a permanent panel of review be established, comprising industry, consumer, legal and departmental representation.

This panel would report to the Australian Communications Authority on the working of the universal service obligation and the customer service guarantee and standards. This would enable longitudinal studies of systemic failures in telecommunications service provision by Telstra and other service providers. It would also make recommendations to the ACA on the need to upgrade the USO and CSG as technological changes and the passage of time require.

Costing Compliance with the USO

Whilst we are concerned to ensure that Telstra is being adequately compensated for provided the USO, we also believe that it must be forced to fully disclose the basis upon which it arrives at its USO cost claim. We do not support a cap on the USO cost claim and don't necessarily think that tendering out the USO is a complete answer to the problem, although we support that process.

Given that the non-Telstra carriers are obliged to build a component into their charges for payment of the USO levy, we believe that they have the right to fully scrutinise Telstra's cost claim as soon as that claim is lodged. We also believe that they should be given access to assumptions used by Telstra in making its calculations, such as the weighted average cost of capital.

Ministerial Power of Direction

Section 9 of the *Telstra Corporation Act 1991* currently provides the Minister for the Communications, Information Technology and the Arts with a very wide power to

make directions to Telstra in respect of any matter provided the direction is in the public interest.

The effect of the proposed new power of direction, which will come into effect on the repeal of the existing power, is to allow the Minister to direct Telstra to take specific action to ensure that it complies with the law. This is clearly a watered down power of direction designed to appease those who are concerned at the abolition of the existing power. The Department of Communications, Information Technology and the Arts was unable to give even just one example of a circumstance in which this new power of direction could usefully be exercised.⁴

It is true that the existing power has not formally been used by the Minister but clearly, its existence has meant that Telstra has been much more attentive to statements of concern by the Minister than had the power not existed.

The majority report comments that ‘the more general power is inappropriate in a competitive private telecommunications market.’ Telstra is and should continue to be subject to regulation which is not necessarily imposed on the other carriers, for example, the price cap regime and the requirement that 2 of Telstra’s directors have knowledge of or experience in the communications needs of regional areas. If, as is argued, the Ministerial power of direction is inappropriate for a privately owned Telstra, then it would be logical for the Telstra-specific price cap regime to be abolished too. The Democrats support neither the removal of the Minister’s power to direct nor the abolition of the price cap.

Recommendation 8: that the current wide ranging Ministerial power of direction contained in section 9 of the *Telstra Corporation Act 1991* be retained.

Inquiry Process

The inquiry – to determine whether more than a total of 49.9% of Telstra is to be privatised – is triggered when the Parliament agrees to sell the next 16.6% of Telstra.

The Australian Democrats are very concerned that in its present form the legislation will permit the remaining 50.1% of Telstra to be sold, without further reference to the Parliament after an inquiry which requires no public involvement whatsoever. As the legislation presently reads, the only aspects of the process which will be able to be scrutinised by the public are the assessment criteria which will be disclosed in regulations and the final inquiry certificate. There is no requirement that public

⁴ R. Buettel (Dept of Communications, Information Technology and the Arts), Evidence 16 February 1999 p. 23.

submissions be called for or that public hearings be held and very significantly there is no requirement that the inquiry's report be tabled in the Parliament.

The Australian public must be given the opportunity to take part in the inquiry process and they must be allowed to scrutinise and debate the contents of the final report. This desire was echoed by the Australian Telecommunications Users Group, Consumers' Telecommunications Network and the National Farmers' Federation.⁵

There are a number of other issues in relation to the inquiry process the Democrats have concerns about. These include:

- Who is to determine the performance criteria, and how?
- Who is to undertake the inquiry? Will it be one person appointed by the Minister, or a panel of persons? What qualifications will they have?
- What historical timeframe will the inquiry investigate Telstra's performance?
- At what level, if less than 100 percent compliance, will the inquiry accept as a satisfactory level of Telstra's performance for the sale of the remaining 50.1 percent to progress?

Generally, the Democrats believe that the performance of Telstra is only one factor to be taken into account in considering full privatisation and parliament should determine, by separate legislation, each proposed tranche of the sale.

Recommendation 9: Any inquiry into Telstra's performance must be a public process which must include the calling of submissions from the public, the conduct of public hearing and the tabling of the inquiry's report before the Parliament.

Regulatory and Competition Issues

Telecommunications commentator, Mr Stewart Fist opposes the 'en bloc' privatisation and say that this would further entrench Telstra's market dominance. He argues that the only way to implement competition is to divest Telstra of the local loop – the network infrastructure between a customer's premises and the local exchange. Mr Fist says:

Telecommunications is not a standard production industry which can be left to its own devices or regulated by simple means. It involves interconnection of all players and so competitors must also be collaborators and have a high

⁵ A. Horsley (Australian Telecommunications Users Group Ltd), Evidence 3 February 1999, p. 6; Submission No. 12 (Consumers' Telecommunications Network), p14; W. Craik (National Farmers' Federation), Evidence 3 February 1999, p. 33.

dependency on each other. In such circumstances the incumbent player with control over the key monopoly elements will always dominate.

There is no evidence to suggest that Telstra's market position is likely to decrease in the near future. Should any more of Telstra be privatised, market share and competition issues require careful analysis and consideration.

Other issues relate to local call costing, disclosure provisions, and other anti-competitive measures.

Recommendation 10: that any proposal for the further sale of any part of Telstra, regardless of the outcome of an inquiry, be the subject of legislation to be passed by the Parliament.

Conclusion

The Australian Democrats oppose the sale of the remaining two thirds of Telstra. The Democrats believe that government has a significant role to play in the supply of telecommunications infrastructure because it is an essential service. We do not see government ownership (or part ownership) and regulation of a telecommunications company as incompatible or illogical. The Parliament is the maker of the laws and regulations under which the company operates not the Government of the day. To suggest otherwise underplays the power and role of the Parliament. It assumes the Government has a direct role in regulation and control, rather than the public sector.

The Democrats oppose the sale of the remaining two thirds of Telstra because:

- it is policy driven by ideology rather than sound public sector outcomes.
- it will have negative consequences for public sector debt. The sale means that only wealthy Australians and large businesses will enjoy sharing in Telstra's profits, to the detriment of programs requiring funding through recurrent expenditure.
- linking the proceeds of the sale of Telstra to the retirement of debt and a 'social bonus' is no more than political pork barrelling designed to secure support for the Government and its policies rather than a legitimate linkage between the sale and levels of current expenditure. The question of whether the retirement of debt and the funding of social programs are desirable is independent of the sale of Telstra, and should remain so.
- The one-third sale of Telstra resulted in substantial job losses and reduction of services, particularly in rural areas.

The Democrats believe that customer service guarantees should be strengthened including those which relate to the:

- universal service obligation (including legislative reviews);
- empowerment of the ACA to make and enforce codes and standards;
- empowerment of the ACA to determine the definition of the standard telephone service, and amend it as required;
- placement in legislation, the requirement that every customer must be informed of their entitlements under the CSG, prices, terms, conditions and performance conditions.
- protection and expansion of untimed local calls
- provision of payphones and free directory assistance
- universal service obligation waiver provisions and appropriate sanctions
- building into the CSG performance monitoring criteria for all telecommunications service providers. It has to relate to more than connections and faults
- reviews of expenditure of telecommunications carriers on capital equipment

The Democrats make the following recommendations:

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Recommendation 2: that the Customer Service Guarantee performance standards be the subject of constant review by the Australian Communication Authority and that the ACA be empowered to amend CSG performance standards without receiving Ministerial direction. This should occur regardless of Telstra's ownership status.

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Recommendation 7: that a permanent panel of review be established, comprising industry, consumer, legal and departmental representation to conduct regular reviews of the USO.

Recommendation 8: that the current wide ranging Ministerial power of direction contained in section 9 of the *Telstra Corporation Act 1991* be retained.

Recommendation 9: Any inquiry into Telstra's performance must be a public process which must include the calling of submissions from the public, the conduct of public hearing and the tabling of the inquiry's report before the Parliament.

Recommendation 10: that any proposal for the further sale of any part of Telstra, regardless of the outcome of an inquiry, be the subject of legislation to be passed by the Parliament.

Senator Lyn Allison