

Government Members' Dissenting Report

Purpose of the inquiry

From the outset, the value of an inquiry into competition in broadband services was questionable. The Senate recognised this when rejecting a similar reference on 24 June 2003. The current reference was adopted two days later with a majority of just one vote. We are left to surmise what occurred in the interim to persuade some of the independent senators to change their votes.

Of the resulting inquiry, the then Minister for Communications, Information Technology and the Arts, Senator the Hon Richard Alston said:

Today's decision to support a Senate inquiry that 100% duplicates the terms of reference of an existing, already twice-extended Senate inquiry demonstrates just how totally out of touch with reality the Labor Party has become... This latest inquiry is a gross waste of time and money and Australian taxpayers have every right to be appalled that the Senate, which obstructs every important reform that the Government brings forward, is spending its time on such a pointless exercise.¹

Even a cursory reading of the majority report would show Senator Alston's comments had proven to be remarkably prescient. The inquiry provided nothing more than a platform for yet another attempt by the Labor Opposition to turn the clock back to a time characterised by excessive government control over a distorted telecommunications market – while ignoring the evidence of significant community benefits that have flowed from competition in related infrastructure services introduced under the 1995 National Competition Policy reform package. Ironically, that reform was carried through by an ALP Federal Government, with the support of the Coalition then in Opposition and the State Governments.

Interestingly, these repetitious and trenchant inquisitions into Telstra beg the question – at least for those who remember the quality of service provided by the 100 per cent government-owned entity – if it is still poorly managed as a part-privatised company, surely privatisation is the logical answer, rather than the problem.

1 Senator the Hon Richard Alston, *Labor misuse of the Senate reaches a new low*, media release 104/3, 26 June 2003.

As the Senate's Environment, Communications, Information Technology and the Arts Legislation Committee noted in its report on the provisions of the Telstra (Transition to Full Private Ownership) Bill 2003:

Despite suggestions that there is an obvious and necessary nexus between ownership and service quality, the Committee could find no evidence that full privatisation of Telstra would impede the Government's ability to regulate the level of services provided by Telstra.²

What this inquiry has shown, clearly, is that the current non-government parties are reliant – with only lightly concealed cynicism – on the expectation that telecommunications services have been sufficiently good for sufficiently long that Australians may have forgotten how bad services were in the days of the Postmaster-General's Department and (the corporatised but not privatised) Telecom Australia.

Once stripped of its anti-Telstra ideological propaganda, the majority report actually proves that the Government in fact has in place appropriate regulatory and budgetary settings to ensure that all Australians will have equitable access to broadband services – as these services evolve. The technology is relatively new, and the challenges are – admittedly – huge in the short term, especially in the more remote areas of Australia, but every day sees a new development which justifies the Government's faith in its approach.

Competition in broadband services

Government Senators observe that there is a strange and illogical reluctance in the majority report to acknowledge the fact that Australian consumers have benefited from changes to Telstra and telecommunications since the introduction of open competition in the telecommunications market in 1997. Significantly, the Government introduced the *Telecommunications Competition Act* in 2002. The Act implemented the Government's response to the Productivity Commission's Inquiry Report on Telecommunications Competition Regulation and introduced a range of measures to enhance the level of competition and improve the investment climate in the telecommunications sector.

2 Senate Environment, Communications, Information Technology and the Arts Legislation Committee, Report on the provisions of the Telstra (Transition to Full Private Ownership) Bill 2003, October 2003, p. 35.

The process of moving from a government-owned and operated monopoly to an open competitive telecommunications market is not achieved overnight. However, the Government has been driving this process of change, which has had major benefits for Australian telecommunications users, by developing an effective regulatory regime. The Productivity Commission's Inquiry Report on Telecommunications Competition Regulation recognised that the underlying regulatory philosophy of the current telecommunications competition regime is appropriate, and that since the introduction of open competition in telecommunications the Government has made a number of amendments to the regime to ensure that it continues to operate effectively.³

In April this year the Government again asked the Productivity Commission to review national competition policy arrangements.⁴

As with telecommunications generally, the Government's policy on competition in broadband services has been to:

Make sure that people are able to get what they want and that there is maximum competition in there. That drives prices down and gets quality of services up....Maximum choice is what it is all about. At the end of the day the consumer will decide.... We think the market is the best place to decide the level of take-up, and it is pretty much sorting the players out right now.⁵

Mr Colin Lyons from the Department of Communications, Information Technology and the Arts told the Committee that sustainable broadband competition was reliant upon a regulatory policy which did not distort the market:

I think the general policy of the government is to make sure there are the right regulatory settings to allow sustainable broadband competition rather than to distort the market. So the general philosophy, I think, is to have sustainable competition and make sure that the ACCC has a range of very strong regulatory powers—which it has—to intervene if there is anti-competitive conduct.⁶

3 Senator the Hon Ian Campbell, *Senate Hansard*, 14 November 2002, p.6329.

4 Productivity Commission, *Review of National Competition Policy Arrangements*, Circular 27 April 2004.

5 Senator the Hon Richard Alston, Question on Notice, *Senate Hansard*, 16 June 2003, p.11378.

6 Mr Colin Lyons, Department of Communications, Information Technology and the Arts, *Committee Hansard*, Canberra, 10 March 2004, p.33.

The Government members of this Committee have taken the opportunity during the course of this inquiry to carefully observe market competition in broadband services. We do not agree with claims that due to Telstra's incumbency, competition in this sector is limited. Australia has seen dramatic reductions in the cost of broadband services over the past six months. Broadband is now available for as little as \$19.95 per month,⁷ and a wide range of ISPs now offer a suite of services and prices allowing consumers a range of choices. The reduction in cost has seen a corresponding increase in the number of people connecting to, or switching from dial-up to, broadband services. Telstra claimed:

Telstra's target to connect one million Australians to broadband will be reached six months sooner than expected, with recent discounts sparking a dramatic increase in demand.

"Telstra has signed its 750,000th broadband customer this week, following a 46 per cent surge in demand in just five months," Mr Bruce Akhurst, Group Managing Director, Telstra Wholesale, Broadband & Media, said today.

"Telstra will beat its target of one million broadband customers by the end of next year. We are now on track to achieve that six months early, by the end of June 2005," he said.

"By dropping broadband prices, Telstra set off an avalanche of customer demand. We have been setting and then breaking records ever since".⁸

Similarly Optus reported that:

OptusNet broadband customer base had expanded to 185,000 - marking a 36,000 increase in subscriber numbers since 31 March 2004. OptusNet Cable customers now total 162,000 and OptusNet DSL customers total 23,000. Scott Lorson, Acting Managing Director of Consumer and Multimedia said Optus has experienced unprecedented call volumes and sales in response to its broadband campaigns.

"We are pleased to have reached this significant milestone in such a short timeframe and we expect the momentum to continue. Optus is playing a

7 TPG media advertisement. URL: www.tpg.com.au

8 Telstra, *Cheaper prices send broadband numbers soaring*, media release, 11 June 2004, URL: http://www.telstra.com.au/communications/media/mediareleases_article.cfm?ObjectID=31894

major role in the expansion of the broadband market in Australia by increasing the level of competition," Mr Lorson said.⁹

The majority report has challenged Telstra's decision to lower broadband prices in February. The Government does not support Telstra, or any other carrier, misusing market power; however, the process of price reduction and competition within the sector has clearly stimulated broadband uptake. Government Senators believe that this is evidence that the current level of regulation and competition is driving the market in a positive direction.

Divestiture of Telstra's Foxtel stake and HFC network

The majority report notes favourably that ACCC has called for serious consideration to be given to Telstra's divestiture of both its share in Foxtel and its HFC network. This hardly comes as a surprise given the Labor Party's – so far – declared position on Telstra's holding of Foxtel shares. However, Government Senators note that the ACCC had arrived at its view on the basis of a concern for a perceived conflict of interest on the part of Telstra, rather than from: (1) any behavioural evidence of a conflict of interest by Telstra; and/or (2) firm knowledge of real community benefits that would flow from such a divestiture. We further note that no witness has at any stage of the inquiry offered the Committee any evidence that the proposed divestiture would not simply result in other players in the broadband market being able to take over the market to the disadvantage of Telstra, and the Australian people.

Government Senators note that the Government will continue to refine the regulatory regime to ensure that no one sector of the community is disadvantaged. As Senator Alston as Minister for Communications, Information Technology and the Arts pointed out in 2002:

We know that Telstra is in both of those networks. I have made it plain that, if there is any indication that Telstra is running dead on DSL, we would take a very dim view. That is one thing; it is another thing to say that simply because they are in Foxtel and there is a possibility that they might act in a way that you disapprove of that would then justify a policy decision to excise them, presumably against their wishes and against the wishes of the shareholders in Telstra, not to mention the shareholders in the Foxtel consortium. That would be a very big step.¹⁰

9 Optus, *Optus reveals new plans as broadband number accelerate*, media release, 4 July 2004, URL: http://www.optus.com.au/Vign/ViewMgmt/display/0,2627,1031_36907-3_31346--View_303,FF.html

10 Senator the Hon Richard Alston, *Telecommunications Competition Bill 2002, Senate Hansard*, 19 December 2002, p.7376.

The new Minister for Communications, Information Technology and the Arts, Senator the Hon Helen Coonan, reinforced this position and rejected calls by the ACCC to compel Telstra to sell its 50 percent share in Foxtel.¹¹

Conclusion

The Government's National Broadband Strategy seeks to make Australia a world leader in the availability and effective use of broadband, to deliver enhanced outcomes in health, education, community, commerce, and government and to capture the economic and social benefits of broadband connectivity.¹² Under this strategy the Howard Government, in partnership with State and Territory Governments, has invested \$142.8 million on a range of programs directed specifically at supporting both competition and the uptake of broadband service. As Communications Minister Senator Coonan has said:

Take-up is also being fostered by the Australian Government under the National Broadband Strategy, which includes significant targeted funding programs including the \$107.8 million Higher Bandwidth Incentive Scheme (HiBIS) and the \$23.7 million Coordinated Communications Infrastructure Fund. With the first registrations of ISPs under HiBIS, we can expect the uptake of broadband in regional and rural Australia to increase markedly. The use of broadband across the economy has great potential to increase the productivity of Australian business and to improve the delivery of essential services such as health and education.

More importantly for the economy - the strongest take-up is being seen in the small business sector. In the latest Pacific Internet Broadband Barometer released last week, ACNielsen Consult reported that of those small businesses with an Internet connection, more than 52% are on broadband connections. This has more than doubled from 23% two years ago.¹³

The move to a fully competitive telecommunications market will continue to occur in stages. The Government will continue to support the market's move towards greater competition through a light touch regulatory regime, which aims at allowing market forces to flourish, rather than being crushed under the dead weight of some utopian central planning model as proposed in the majority report.

11 *The Australian*, 26 July 2004, *No case for Foxtel sale*.

12 National Office for the Information Economy, *Australia's National Broadband Strategy*, 2004.

13 Senator the Hon Helen Coonan, *Broadband take-up climbs*, media release 117/04, 27 July 2004.

The recently released reports on broadband deployment confirm that broadband take-up is growing strongly and that this Government is supporting and encouraging competition in the supply of telecommunications in an appropriate and effective manner. ACCC Commissioner, Mr Ed Willett, issued an update of the ACCC's Snapshot of broadband deployment on 26 July 2004:

The report shows that as at the end of March 2004, there were 829,300 broadband services connected across Australia, an increase of 130,600 since December 2003. This is the largest quarterly increase since the ACCC began collecting broadband statistics in 2001. Growth in broadband services increased to 18.7 per cent for the March 2004 quarter, reversing the downward trend in growth rates seen over the last three quarters of 2003.¹⁴

This Committee – the Senate Environment, Communication, Information Technology and the Arts Reference Committee – has undertaken a number of inquiries to examine the Australian telecommunications sector over the past few years. All, including this one, seemed to follow the same script – highly critical and politically motivated attempts to discredit Telstra. The following – unchallenged – observation made during the course of this inquiry seems to provide a good summing-up of these exercises :

This is the fourth or fifth telecommunications inquiry I have been on since joining this committee three years ago. In just about every one of them I get the impression the inquiry is a matter of Telstra versus the rest of the world.¹⁵

Government Senators believe that Australian consumers recognise that - while Telstra services are not perfect - they continue to be improved, and that the Government has in place a regulatory regime that will assist Telstra and the telecommunications industry to bring state-of-the-art and affordable broadband services to ordinary Australian businesses and households.

Government Senators consider that, based on the evidence provided to the inquiry, the majority report's recommendations are a contrived solution in search of a problem, and dissent from them in their entirety.

14 Mr Ed Willett, Commissioner ACCC, *New networks and services important for telecommunications competition: ACCC*, media release 138/04, 26 July 2004.

15 Senator Tsebin Tchen, *Committee Hansard*, Ballarat, 5 February 2004, p.72.

Senator John Tierney
Senator for NSW

Senator Tsebin Tchen
Senator for Victoria