

Recommendations

Recommendation 1

6.62 The Committee recommends that the Productivity Commission be asked to undertake a full examination of structural separation of Telstra.

Recommendation 2

6.66 The Committee recommends that if the Government decides to pursue operational separation of Telstra over structural separation, it should adopt as a minimum the framework and operating rules outlined by the ACCC in its proposed model.

Recommendation 3

6.95 The Committee recommends that the ACCC be given divestiture powers.

Recommendation 4

6.104 The Committee recommends that one of the full-time commissioners of the ACCC be given specific responsibility for telecommunications, and that this person also be a member of the Australian Communications and Media Authority.

Recommendation 5

6.106 The Committee recommends that funding to the ACCC for telecommunications competition issues be substantially increased as a matter of urgent priority.

Recommendation 6

6.122 The Committee recommends that section 151AJ of the *Trade Practices Act 1974* be amended by inserting an inclusive list of factors to be considered by the courts in determining whether a carrier or carriage service provider has taken advantage of its substantial degree of power in a telecommunications market.

Recommendation 7

6.138 The Committee recommends that the third objective of the access regime as set out in subsection 152AB(2) of the *Trade Practices Act 1974*—encouraging the economically efficient use of, and the economically efficient investment in infrastructure—be given primacy.

Recommendation 8

6.140 The Committee recommends that in order to clearly satisfy the Commonwealth's obligations under clause 6(4)(e) of the Competition Principles Agreement, the *Trade Practices Act 1974* be amended to include a provision that requires the owner of a facility that is used to provide a service to use all reasonable endeavours to accommodate the requirements of a person seeking access.

Recommendation 9

6.141 The Committee recommends that to clearly satisfy the Commonwealth's obligations under clause 6(4)(m) of the Competition Principles Agreement, section 152EF of the *Trade Practices Act 1974* be amended to prohibit conduct that has the effect—and not just the purpose—of preventing or hindering the fulfilment of a standard access obligation or an obligation imposed by a determination made by the ACCC under Division 8.

Recommendation 10

6.143 The Committee recommends that the Government consider expanding the class of 'core services' in relation to which the ACCC must determine model terms and conditions for access. In particular, the Committee recommends that for the purpose of improving services in regional areas, certain transmission (or backhaul) routes be specified in the regulations as 'core services' under section 152AQB of the *Trade Practices Act 1974*.

Recommendation 11

6.145 The Committee recommends that the ACCC include prohibitions on behaviour that has the purpose or effect of impeding or unreasonably delaying access in any model terms and conditions for core services—and particularly those relating to the unconditioned local loop service.

Recommendation 12

6.146 The Committee recommends that the *Trade Practices Act 1974* be amended to require the ACCC to give greater importance to model terms and conditions in arbitrations. In addition to the ACCC merely 'having regard to' model terms and conditions determinations, such determinations should apply presumptively unless the parties can show good reason to depart from them.

Recommendation 13

6.148 The Committee recommends that the ACCC be granted powers to set prices in addition to, or instead of, developing pricing principles.

Recommendation 14

6.149 The Committee recommends that subsection 152AQA(6) of the *Trade Practices Act 1974* be amended to require the ACCC to have regard to its pricing principles when it is assessing undertakings as well as in the arbitration of access disputes as is presently provided.

Recommendation 15

6.151 The Committee recommends that subsection 152AQB(6) of the *Trade Practices Act 1974* be amended to require the ACCC to have regard to any model terms and conditions when it is assessing undertakings as well as in the arbitration of access disputes as is presently provided.

Recommendation 16

6.152 The Committee recommends that further amendments be made to the undertakings scheme to prevent or discourage their use to delay access and to bring more certainty to the market. In particular, the Committee recommends the imposition of shorter target timeframes in relation to access decisions.

Recommendation 17

6.156 The Committee recommends that the present scheme of anticipatory exemptions and special undertakings remain unchanged for the time being.

Recommendation 18

6.169 The Committee recommends that Telstra be required to divest its shareholding in Foxtel.

Recommendation 19

6.170 The Committee recommends that:

- (i)** if Telstra is fully privatised, it be a condition of the sale that Telstra be required to divest its HFC network; and
- (ii)** if Telstra remains in public hands, the Government direct the Australian Competition and Consumer Commission to provide further advice on its recommendations in its report *Emerging Structures in the Communications Sector* that Telstra be required to divest itself of its HFC network.

Recommendation 20

6.174 The Government should undertake a mapping exercise of optic fibre networks in Australia. Particular consideration should be given to mapping of 'dark' fibre and infrastructure owned by government authorities, local councils and utilities.

Recommendation 21

6.180 The Committee recommends that the Government review the basis of funding for the Universal Service Obligation prior to setting the subsidies for the next three year cycle to commence from 2007-08.

Recommendation 22

6.185 The Committee recommends that the Government carry out a cost analysis of the Higher Bandwidth Incentive Scheme (HiBIS) immediately to ascertain how equitable universal broadband access can be ultimately provided.

Recommendation 23

6.194 The Committee recommends that funding of the Higher Bandwidth Incentive Scheme (HiBIS) be broadened according to the following provider subsidy principles:

- a higher subsidy for a broadband service that creates suitable and sufficient infrastructure for use by multiple consumers (taking into account immediate and

future needs of consumers in an area), such as those using ADSL via cable or wireless; and

- the existing level of subsidy for a broadband service delivered to individual consumers via satellite where other means such as ADSL and CDMA can not be utilised.

Recommendation 24

6.197 The Committee recommends that the ACCC examine the availability of access to, and cost of, backhaul services for carriers building or proposing to build new broadband infrastructure in regional Australia.

Recommendation 25

6.199 The Committee recommends that the Government consider simplifying the HiBIS application requirements in order to give regional broadband service providers more realistic opportunities to apply.

Recommendation 26

6.201 The Committee recommends that the Department of Communications, Information Technology and the Arts streamline the processing of applications from broadband service providers for registration with the HiBIS.

Recommendation 27

6.204 The Committee recommends that the Government fund local governments to develop business models that focus on delivering affordable local broadband services to regional and remote Australians.

Recommendation 28

6.207 The Committee recommends that the Government provide funding to ensure that deaf and hearing and speech impaired people have equal access to a suitable broadband service through HiBIS and through an independent disabilities equipment program.

Recommendation 29

6.209 The Committee recommends that the Government fulfil its promise to implement all 39 recommendations of the Estens Report. The Committee further recommends that an independent audit of the Government's implementation of the Estens Report recommendations be conducted prior to the introduction of legislation providing for the further sale of Telstra.

Recommendation 30

6.211 The Committee recommends that the Australian Communications and Media Authority give immediate and urgent consideration to adopting the recommendations in the ACA research report *Consumer Driven Communications: Strategies for Better Representation* so that the rights of consumers are better protected, as previously recommended by the Committee.

Recommendation 31

6.213 The Committee recommends that Part 6 of the *Telecommunications Act 1997* be amended to require the ACMA to enforce the development of codes within set time-frames.

Recommendation 32

6.217 The Committee recommends that the *Telecommunications Act 1997* be amended by inserting a new section 120A that requires annual reporting by suppliers or industry associations of compliance with industry codes and, where the ACMA considers that monitoring is not providing adequate or accurate data, monitoring by the ACMA.

Recommendation 33

6.221 The Committee recommends that the *Telecommunications (Consumer Protection and Service Standards Act 1997* be amended in order to establish a single Communications Industry Ombudsman.

Recommendation 34

6.227 The Committee recommends that all carriage service providers make available a Basic Residential Package to households who want only a clear, cost-based package of local access services.

Recommendation 35

6.230 The Committee recommends that the Government give urgent consideration to the recommendations of the National Emergency Communications Working Group, particularly in regard to new technologies such as VoIP.

