

Chapter 2

The telecommunications environment

Over the last seven years of open competition the telecommunications industry has developed from monopoly to duopoly to regulated competition, but has not yet achieved fully effective competition in any market due to the continued bottleneck nature of last mile access... Unhappily over the last 7 years of supposedly open competition, a number of companies who thought they were on this ladder of opportunity found themselves on a ladder of legal process, having to rely on the access and anti-competitive behaviour powers of the ACCC to go to the next rung.¹

2.1 In 1997 major changes were made to the telecommunications regulatory regime in order to increase competition and promote economic efficiencies. However, it is apparent that open competition is yet to deliver the advantages across the board to consumers and industry participants that were envisaged.

2.2 This chapter briefly describes the current regulatory regime. It then discusses evidence the Committee received about whether there is a need for a comprehensive review of telecommunications regulation. Other issues outlined in this chapter and explored in greater detail later in the report are:

- the concept of telecommunications as an essential social service;
- the pending privatisation of Telstra;
- telecommunications services in rural and regional areas; and
- future infrastructure investment.

Regulatory overview

2.3 In previous reports, *The Australian telecommunications network*² and *Competition in broadband services*,³ the Committee has outlined the development of telecommunication policy in Australia from 1901 to the present. The Committee does not repeat those discussions here but directs readers to those earlier reports. This report summarises telecommunications policy from 1997, when the current regulatory regime was established with the passage of the *Telecommunications Act 1997* (the Telecommunications Act) and major amendments to the *Trade Practices Act 1974* (TPA).

1 ATUG, *Submission 20*, p. 29.

2 Senate Environment, Communications, Information Technology and the Arts References Committee, *The Australian telecommunications network*, August 2004.

3 Senate Environment, Communications, Information Technology and the Arts References Committee, *Competition in broadband services*, August 2004.

2.4 The key objective of the 1997 reforms was to promote open competition in telecommunications by abolishing legislative barriers to market entry and service provision. Regulatory barriers to facilities-based competition were greatly reduced. There was a greater emphasis on general competition regulation rather than industry-specific regulation.⁴

2.5 Consistent with that policy, key competition regulatory functions for the industry were vested in the Australian Competition and Consumer Commission (ACCC). There are general access and competition provisions that apply to the economy at large (Parts IIIA and IV of the TPA). However, the TPA was amended by the introduction of the telecommunications-specific access regime (Part XIC) and anti-competitive conduct provisions (Part XIB). As Telstra outlined in its submission:

From 1997, the focus shifted to the more general objective of promoting market entry and competition. The Trade Practices Act was augmented with two telecommunications-specific sections that were intended to facilitate a transition to full market competition. Part XIB of the Trade Practices Act was enacted to supplement the generic competition rules in Part IV of the Trade Practices Act that deter anticompetitive behaviour. Part XIC of the Trade Practices Act was enacted to supplement the rules in Part IIIA of the Trade Practices Act so as to provide competitors with access to key telecommunications services.⁵

The Productivity Commission in its Telecommunications Competition Regulation Report of 2001 noted that many of the differences between the general and telecommunications competition provisions in the TPA are in the threshold tests and processes:

... rather than [in] policy instruments or other aspects of policy. Small and subtle differences in process and test thresholds for competition policy can make a large difference — ‘the devil is in the detail’.⁶

2.6 However, it is apparent that those legislative changes have not achieved the desired result. As Mr Stephen Dalby from iiNet, a large national company which owns OzEmail, Chime Communications, iHug Ltd in Australia and New Zealand, and Virtual Communities and has over 700,000 customers, told the Committee:

If you were to ask me what I think about the adequacy of the current regime, I would probably characterise it as the spirit is willing but the flesh is weak. I think that the ACCC, the ACA and people in the Department of Communications are all very keen to see change. The competition policy in this country is quite clear. It is not something that has been hidden from

4 Holly Raiche, 'The Policy Context', p. 15; Alasdair Grant, 'Industry Structure and Regulatory Bodies', p. 23, *Australian Telecommunications Regulation* (3ed), Alasdair Grant (ed), UNSW Press, 2004.

5 Telstra, *Submission 25*, p. 10.

6 Productivity Commission, *Telecommunications Competition Regulation*, Report no. 16, September 2001, p. 21.

view. It is quite clear that the government is trying to encourage competition because it provides benefits to end users, but when I say ‘the flesh is weak’ the tools do not seem to be there or the tools are being challenged by the people that hopefully they are being applied against. While the spirit is strong, the outcomes have not been what we would like to have seen, certainly from our perspective.⁷

Access

2.7 Access arrangements under Part XIC of the TPA are central to telecommunications regulation in Australia in providing a mechanism by which competitors can use infrastructure controlled or supplied by another provider when duplication of infrastructure would be uneconomic. The term ‘access’ refers broadly to:

... the ability of carriers and service providers to pass and receive telecommunications traffic over each other's networks, in order to fulfil the imperative that all end-users of similar services be able to connect with one another, irrespective of the particular networks to which they are connected.⁸

2.8 Declarations of access to wholesale telecommunications services have permitted a range of carriers and carriage service providers to use Telstra’s infrastructure to provide their own retail services. This has been seen as one of the main ways of introducing competition across a range of telecommunications services and has led to associated price, variety and service quality gains to consumers.⁹ Chapter 4 discusses access issues in more detail.

Competition

2.9 Part XIB of the TPA provides mechanisms to address breaches of the telecommunications-specific ‘competition rule’. Under the rule (section 151AK), a carrier or carriage service provider must not engage in anti-competitive conduct. A carrier or carriage service provider is said to have engaged in anti-competitive conduct if it has a substantial degree of power in a telecommunications market and either:

- takes advantage of that power with the effect, or likely effect, of substantially lessening competition in that or any other telecommunications market;
- takes advantage of the power, and engages in other conduct on one or more occasions, with the combined effect, or likely combined effect, of substantially lessening competition in that or any other telecommunications market; or

7 Mr Stephen Dalby, *Committee Hansard*, 29 April 2005, p. 38.

8 Alasdair Grant, ‘Industry Structure and Regulatory Bodies’, *Australian Telecommunications Regulation* (3ed), Alasdair Grant (ed), UNSW Press, 2004, p. 89.

9 ACCC, *Submission 17*, p. 3.

- engages in conduct in contravention of sections 45, 45B, 46, 47, or 48 of the TPA where that conduct relates to a telecommunications market.

2.10 The ACCC submitted that in introducing the telecommunications-specific regime, the Government considered that total reliance on the general provisions in Parts IIIA and IV of the TPA would not achieve its objectives as, among other things:

- telecommunications is a complex, horizontally and vertically integrated industry;
- anti-competitive cross-subsidies by the incumbent from non-competitive markets to markets in which competition exists or is emerging is a particular threat to the establishment of a competitive environment;
- due to the fast pace of change in the industry and the volatile state of the industry, anti-competitive behaviour can cause particularly rapid damage to competition; and
- there is considerable scope for the incumbent to engage in anti-competitive conduct because competitors in downstream markets depend on access to networks or facilities controlled by the incumbent.¹⁰

2.11 These issues are discussed in more detail in the following chapters.

2.12 Consistent with the deregulatory approach of the 1997 legislation, industry self-regulation was also heavily promoted. Section 4 of the Telecommunications Act clearly outlines the regulatory policy: 'The Parliament intends that telecommunications be regulated in a manner that...promotes the greatest practicable use of industry self-regulation...' Part 6 of the Telecommunications Act requires and encourages industry bodies to develop voluntary and mandatory codes of practice. These codes set out rules to govern the behaviour of the telecommunications industry, covering a range of consumer, network and operational issues.¹¹ The aim of industry codes was to meet important policy objectives without imposing undue financial and administrative burdens on industry participants. Codes of practice are discussed in detail in Chapter 5.

2.13 The complexity of the telecommunications environment and the intersection of regulatory powers and problems were articulated by the ACCC:

It is important to note that competition regulatory powers are dependent on the nature of the regulatory problem that they are seeking to address. This, in turn, depends on a range of issues including the presence of market power, the existence of natural monopoly and the incentives of an incumbent firm to hinder access and restrict competition.¹²

10 ACCC, *Submission 17*, p. 3.

11 Telstra, *Submission 25*, p. 11.

12 ACCC, *Submission 17*, p. 2.

The need for a review

2.14 Mr Ewan Brown from the Small Enterprise Telecommunications Centre Ltd. (SETEL) told the Committee:

We have been watching with great hope to see competition develop in the marketplace after nearly eight years since the introduction of the [Telecommunications Act]. We had been at odds with some of the larger users in terms of the extent of competition in the marketplace and always maintained that small business and residential users in particular were still being disadvantaged by the lack of real competition, particularly in non-CBD or outer metropolitan regional areas, and the fact that we were not seeing the expected new entrants into the marketplace being able to gain a foothold and thus provide an innovative range of services. So to all intents and purposes we have been stuck with the same old recipe for a long, long time.¹³

2.15 Certainly, over the past seven years technological developments have seen a shift in the competition landscape with voice over internet protocol (VoIP), wireless local loop and fibre to the home (FttH) offering the potential for greater competition in the market and lessen the need for regulation. However, for end-users this has been more rhetoric than reality.¹⁴

2.16 Several submissions and witnesses, including telecommunications expert Mr Paul Budde, argued that a comprehensive review of the competition regime was necessary given the lack of real competition:

[Self-regulation] is not working properly in any case. Good things have come out of it, but in general terms it has not delivered what the government was asking for in the 1996 situation. We have seen competition going down. For example, in 1996 we had 11 telecommunications operators with \$100 million-plus revenues and we now have only four or five. So you really can see that competition has gone backwards in that respect. On the other side, prices have come down, but I do not think regulation has anything to do with it. Prices have come down in Angola, Albania and North Korea where there is absolutely no regulation, so technology is looking after that.¹⁵

2.17 Telstra, on the other hand, have argued for further deregulation, stating that after eight years of self-regulation, it was appropriate to 'revisit the regulatory framework':

13 Mr Ewan Brown, *Committee Hansard*, 11 April 2005, p. 50.

14 ATUG, *Submission 20*, p. 29.

15 Mr Paul Budde, *Committee Hansard*, 13 April 2005, p. 44.

... recognising that most markets are now subject to significant and sustainable competition; and that, as a matter of sound economic policy, regulation should only apply where there is manifest market failure.¹⁶

2.18 Telstra¹⁷ pointed to the findings of the Productivity Commission's 2001 report which recommended a review of telecommunications competition regulation within five years 'because of the rapid pace of technological and market change'.¹⁸ In particular, the Productivity Commission recommended that the anti-competitive provisions in Part XIB of the TPA should be reviewed within three to five years.¹⁹ Mr Bill Scales on behalf of Telstra also told the Committee that a review was necessary, as Part XIB was aimed only at Telstra:

Much of the current regulatory regime was drafted almost a decade ago. It was implemented in order to effect the transition from a monopoly-duopoly to competition. The intention, of course, as we all know, was that regulation would be reduced as competition developed. Unsurprisingly, as markets have matured and competition has intensified, many elements of the 1997 regime have really become outdated. Some of the regulatory measures were only ever intended as short-term measures while competition developed. A notable example of that—and we give quite a bit of detail of this in our submission—is part XIB of the Trade Practices Act. Part XIB, as you know, is primarily related to effectively addressing the abuse of market power and was really only aimed at Telstra. I do not think there is any other company in the country that has the same provision associated with it. But it was only ever intended as a transitional regulatory measure.²⁰

2.19 The CEPU also argued that the Productivity Commission's recommended proposed review of telecommunications competition regulation should be completed before Telstra is privatised. The CEPU proposed some caveats:

- The review should be expanded to encompass inter-related elements of the current regime, such as the operation of the Universal Service Obligation.
- It should build on the work done by the Australia Communications Authority (ACA) and the Australian Communications Industry Forum (ACIF) on emerging technologies and related policy issues.
- Its timeframe should be extended beyond that currently set for the DoCITA review. It should aim (following the UK model) to produce

16 Telstra, *Submission 25*, p. 18.

17 Telstra, *Submission 25*, p. 2.

18 Productivity Commission, *Telecommunications Competition Regulation*, Report No. 16, September 2001, p. xxii.

19 Productivity Commission, *Telecommunications Competition Regulation*, Report No. 16, September 2001, p. xxix.

20 Mr Bill Scales, *Committee Hansard*, 4 May 2005, p. 55.

a draft report/stage 2 document by, say, November this year with a final report by mid - 2006.

- Insofar as the recommendations of the Government's privatisation scoping study bear on matters of telecommunications policy, they should be offered as inputs into the review.
- Legislation to allow the full privatisation of Telstra should be held over until the completion of the review.²¹

2.20 The Government has acknowledged the need for a review, with the Minister stating in March 2005 that the current framework:

... was introduced in 1997 to provide access to a monopoly owned network that was rolled out long before telecommunications competition was being contemplated. ... While the framework will continue to serve us well, there are increasing calls for changes to deal with future network investments and ongoing transparency issues.

The list of organisations calling for examination of the regulatory environment include industry, regulators, rural lobby groups and ... ATUG. Each organisation has a slightly different focus. Some are concerned about the transparency and capacity of the current arrangements to deal with anti-competitive conduct. Others are more focussed on the question of regulatory certainty for major new network investments.²²

2.21 A month later, the Minister announced the release of a Department of Communications, Information Technology and the Arts (DCITA) Issues Paper on *Telecommunications Competition Regulation*. The paper sought comment from the telecommunications industry and other interested parties about whether it would be appropriate or desirable to make further changes to the telecommunications competition regime at present.²³

2.22 This inquiry into the telecommunications regulatory regime, initiated on 10 March 2005, is partly in response to the growing frustration felt by telecommunications industry participants towards a regulatory regime which is not sufficiently robust to deal with a range of problems caused by Telstra's continued market domination. The inquiry is also in response to consumer concerns that the supposed benefits of open competition have not materialised and that the range and cost of services are disappointing. In addition, with the Government planning to proceed with the full sale of Telstra, a comprehensive review is essential. The

21 CEPU, *Submission* 40, p. 9.

22 Senator the Hon Helen Coonan, Minister for Communications, Information Technology and the Arts Address to the Australian Telecommunications Users Group Conference, Sydney, Wednesday 9 March 2005, accessed on 16 April 2005, at: http://www.minister.dcita.gov.au/media/speeches/address_to_the_australian_telecommunications_users_group_conference.

23 Department of Communications, Information Technology and the Arts, *Telecommunications Competition Regulation, Issues Paper April 2005*.

Australian Telecommunications Users Group (ATUG)²⁴ pointed to the Productivity Commission's report on national competition policy, released in February 2005, which recommended that the Government bring forward the scheduled review of telecommunications regulation prior to the sale of Telstra, 'especially if it encompasses the full review of the anti-competitive conduct regime, currently scheduled for 2007'.²⁵

2.23 The need for a review prior to the sale of Telstra was seen by some witnesses, including Mr Paul Budde, as an opportunity to revisit the regulatory regime:

So a review is overdue, but at the same time we are pushed into this T3 situation that gives us an opportunity to focus on telecommunications issues at this particular point in time. So let us use that opportunity to have a really good look at those issues.²⁶

2.24 From a consumer perspective, the Australian Consumers' Association's Senior Policy Officer, Mr Charles Britton, told the Committee:

Self-regulation should not be abolished ... [I]n our view it does need a lot of tweaking, not a little bit. It is difficult to see how the current regime and the operation over the last seven-odd years has actually enhanced consumer protection materially beyond what is in the general Trade Practices Act or what has been the commonsense approach of the Telecommunications Industry Ombudsman.²⁷

Telecommunications as an essential social service

2.25 The reason for moving the telecommunications sector to open competition was to produce clear benefits for the community. Competition is a tool rather than an end in itself. As the CEPU submitted:

The active fostering of the competitive process through such measures as access regulation and price controls can, in our view, only be justified if it produces clear benefits to the community, chiefly in the form of accessibility and affordability of services. More broadly, competition policy will be beneficial if it creates a framework that encourages an efficient and timely allocation of national resources and stimulates innovation and will be detrimental if it discourages investment or produces waste.²⁸

24 ATUG, *Submission 20*, p. 37.

25 Productivity Commission, *Review of National Competition Policy Reforms*, Report No. 33, p. 247.

26 Mr Paul Budde, *Committee Hansard*, 13 April 2005, p. 44.

27 Mr Charles Britton, *Committee Hansard*, 13 April 2005, p. 60.

28 CEPU, *Submission 40*, p. 10.

2.26 In a sector driven by large profits it is easy to lose sight of the fact that telecommunications is a vital national facility, one that delivers an essential and basic service to almost every Australian.²⁹ As Mr Paul Budde stated:

It is important for our economy; it is important for our lifestyle; it is important for our kids; it is important for poor people and rich people and everybody else. There is a national interest element to it.³⁰

2.27 Ms Teresa Corbin from the Consumers Telecommunications Network told the Committee:

... we are getting a clear message that telecommunications has to be declared an essential service in some way, shape or form and that this is actually necessary and separate from the universal service obligation.³¹

2.28 Ms Corbin argued that:

In the end, access to broadband across the board for Australians does not just have a personal benefit; it has a huge social benefit as well. There are huge economic gains to be made. In Australia we used to be quite high up the table as far as people being wired, but we are creeping down further and further, and starting to really lose it as far as that is concerned.³²

2.29 A departmental representative acknowledged the social dimension of effective telecommunications:

There is a long list of reasons why in the past governments in general have discussed the importance of the telecommunications sector to the Australian economy. ... It is obviously also important socially for Australian society. Communications networks are important for allowing communications in a very wide range of social interactions.³³

2.30 Mr Paul Budde stressed that telecommunications was an essential element of good national infrastructure:

It is important for everybody to have good telecommunications access, from phoning the doctor to doing a business deal in Boston, with everything else in between. So if you do not have a good national infrastructure then you do not have a good fundamental situation for your country, so there is a national interest in making sure that we have a nationwide network that is at least on equal terms with what countries around the world that we compete with or compare ourselves with have.³⁴

29 Australian Consumers' Association, *Submission 16*, p. 2.

30 Mr Paul Budde, *Committee Hansard*, 13 April 2005, p. 53.

31 Ms Teresa Corbin, *Committee Hansard*, 13 April 2005, p. 24.

32 Ms Teresa Corbin, *Committee Hansard*, 13 April 2005, p. 31.

33 Mr Christopher Cheah, Chief General Manager Communications, DCITA, *Committee Hansard*, 20 June 2005, p. 28.

34 Mr Paul Budde, *Committee Hansard*, 13 April 2005, p. 46.

2.31 Similarly, telecommunications expert Professor Peter Gerrand told the Committee that telecommunications infrastructure was as important as road and rail infrastructure, and that the view that the development of telecommunications infrastructure could be left to private investment was an incorrect one:

... it is just as important to Australia to have very good national telecommunications infrastructure as it is to have very good infrastructure for roads and for rail. Yet there is a mindset in Australia, perhaps more in the business pages of newspapers than elsewhere, that we can rely on the market alone to keep rolling out good national telecommunications infrastructure. That is no more likely than it is that you can rely on the market to keep rolling out good national roads or a good national rail system. Private sector investment in these three areas, including telecommunications, will only go where there is a very strong expectation of high traffic, as can be seen in the actual investment patterns of competitors to Telstra to date.³⁵

2.32 The Australian Communications Authority (ACA) stated in its *Telecommunications Performance Report 2003-04* that in 2003–04, the Australian economy was over \$10.4 billion larger in terms of total production than it would have been without the move to a less interventionist telecommunications regulatory regime.³⁶ According to the ACA, by 2003–04 the 1997 telecommunications reforms had resulted in:

- employment of around 30,000 additional employees in the Australian economy;
- private additional real consumption benefits of nearly \$720 per household, or approximately \$5.5 billion aggregated over all households;
- benefits to small business of over \$2.1 billion; and
- the output from the telecommunications industry being around 96% greater than if the reforms had not occurred.³⁷

2.33 The ACA stated that, taking all increases together, the welfare of Australian households on average was approximately \$924 per household higher by 2003–04 than it would have been without the 1997 telecommunications reforms. This equated to a net benefit to Australian consumers of around \$7.06 billion by 2003–04.³⁸

35 Professor Peter Gerrand, *Committee Hansard*, 4 May 2005, p. 1.

36 Australian Communications Authority, *Telecommunications Performance Report 2003-04*, November 2004, p. 1.

37 Australian Communications Authority, *Telecommunications Performance Report 2003-04*, November 2004, pp 33-39.

38 Australian Communications Authority, *Telecommunications Performance Report 2003-04*, November 2004, p. 36.

2.34 In its submission to the inquiry DCITA also noted the importance of telecommunications to Australian businesses and consumers:

Telecommunications also provides a vital part of the infrastructure for all business operations both domestically focussed and export-oriented. Having access to internationally competitive telecommunications services is essential for Australian businesses to be able to compete in the global marketplace.

Sustainable competition in telecommunications also ensures benefits of service and product innovation and competition are passed on to Australian consumers. This is most directly reflected in the price of services. Since 1997 the average price of telecommunications services has decreased by 21 per cent.³⁹

2.35 Clearly, the benefits of effective telecommunications services to the Australian economy and community are substantial. During this inquiry the Committee heard many concerns that the sale of Telstra would undermine these gains. Telecommunications experts were critical that in proceeding with the sale the Government was failing to take sufficient account of the importance of regulation and competition in protecting a vital service, and was putting potential sale revenue ahead of the need to ensure a better telecommunications environment for consumers. Mr Paul Budde submitted:

The stakes are very high, and regulatory and competition factors are very low indeed on the agenda of the Prime Minister and the Treasurer. Industry Minister, Nick Minch[i]n, couldn't have been more explicit about not wanting to see any regulations that would lower the T3 share price. In any case, it has become very clear that the government's position on T3 is certainly not geared towards the best interests of the country. The only issue is money – not a better telecoms environment; not more competition; not better services to regional Australia – none of these issues, which are high on the telecommunications agendas of the governments of our trading partners.⁴⁰

2.36 ATUG also pointed to the Government's desire to maximise the share price of Telstra prior to sale as making it reluctant to tighten the regulatory framework:

We recognise that, in the run-up to the sale, the government must provide as much certainty as possible regarding the ongoing regulatory environment in order for potential investors in Telstra to value the equity that has been put on the market ... We anticipate plenty of advice coming from the financial community which would urge the government to go soft on competition so that the Telstra shares can not only 'maximise shareholder value' but also leverage Telstra's current market dominance even further, to the advantage of current and future shareholders but to the loss of the overall economy, represented through users and consumers. So we urge the

39 DCITA, *Submission 50*, p. 1.

40 Mr Paul Budde, *Submission 1*, p. 7.

committee to recommend that the government resist any temptation to maximise the sale price at the expense of competition.⁴¹

The pending sale and privatisation of Telstra

2.37 Telstra was partially privatised in 1997 with the sale of one third of the Government's equity for \$14.2 billion, primarily to institutional investors. In October 1999 a further 16.6 per cent was sold for \$16 billion. The Government has made clear its intention to sell the remaining 50.1 per cent of its equity.⁴²

2.38 The current structure of Telstra is complex,⁴³ with the corporation owning or in joint venture partnerships with a number of media interests. Telstra currently owns two of the three major fixed telecommunications networks. Telstra's ownership of the HFC network and 50% ownership of Foxtel (the remaining shares are held by News Corporation (25%) and PBL (25%)) have been argued to be impediments to competition and are seen as a likely source of discord once Telstra is fully privatised. These issues are discussed in more detail in Chapter 6.

2.39 The Australian Consumers' Association expressed concern that an influential monopoly service provider would be privately owned:

The sale will place into private hands an enormously influential player with monopoly dimensions, inherited from natural monopoly aspects of infrastructure and from the legacy of being the national service provider. Unleashing a private monopoly into an uncertain regulatory environment seems to us a dubious public service.⁴⁴

2.40 Similarly, Mr Paul Askern from the Townsville City Council told the Committee:

Once Telstra is completely privatised it has the potential to become the 'gorilla' in the marketplace. This could have a range of adverse implications for consumers, residential and commercial (ie. unfair competitive practices, using its dominant market position as a form of natural monopoly etc).⁴⁵

2.41 The Committee heard evidence that Telstra was difficult to regulate effectively, and that once privatised Telstra may seek to enhance its media assets

41 Mr Richard Thwaites, *Committee Hansard*, 11 April 2005, p. 41.

42 To date its plans have been rejected by the Senate, most recently in the Telstra (Transition to Full Private Ownership) Bill 2003 [No. 2] which was negatived by the Senate on 30 March 2004.

43 See Telstra, *Telstra Corporation Limited Legal Group Structure as at 31 December 2004*, accessed on 19 July 2005, URL: [http://www.telstra.com.au/abouttelstra/corp/docs/groupstructure 311204.pdf](http://www.telstra.com.au/abouttelstra/corp/docs/groupstructure%20311204.pdf).

44 Australian Consumers' Association, *Submission 16*, p. 1.

45 Townsville City Council, *Submission 34*, p. 2. See also Mr Paul Askern, *Committee Hansard*, 21 April 2005, p. 33.

making it an enormously influential privately owned company. Mr Paul Budde outlined in his submission:

The ACCC and the PC [Productivity Commission] have indicated that Telstra is currently too large to regulate...

Apart from all the anti-competitive aspects of such scenarios, I also would clearly like to flag the likelihood that the ability of Telstra, post-T3, to apply undue lobbying influence across its multiple media assets will undermine the democratic structure of the country and the diversity of the media. It would arguably make Telstra one of the most powerful vertically-integrated telecommunications and media companies in the world. I am not aware of any government in the western world that would allow such a concentration of communication and media power to reside in one company.⁴⁶

2.42 Similar concerns were raised by Professor Peter Gerrand:

Telstra privatised in its current form will be far too powerful to be able to be regulated effectively. It is already too powerful to be regulated effectively. The whole industry knows that. We can talk about the impact of providing operational separation to try to get at this problem. At least at the moment the government's majority ownership provides some constraint on the extent to which Telstra will lobby to look after its legitimate business interests. Once that constraint is removed, and particularly if Telstra is then free to improve its business synergies by buying first into a newspaper chain, which is pretty logical, and—only if parliament relaxes the rules for cross-media ownership—buying a television network as well, with the extra media at its disposal it will be the most powerful lobbying organisation in Australia. You do need to be aware of that looking forward.⁴⁷

2.43 The Australian Consumers' Association argued that divesting Telstra of its continued ownership of the HFC network and 50 per cent shareholding in Foxtel was essential prior to full privatisation in order to restrain the company's potentially enormous power:

In our view the requirement that Telstra to divest itself of the HFC cable network and the Foxtel service that it carries is an essential pre-requisite to privatisation, in order to curb the horizontal sprawl of the corporation into media, and the exercise of market power into both spheres in a mutually reinforcing way that will over time deliver significant monopoly benefits for the company and consequent detriment to consumers.⁴⁸

The Committee deals with this issue in greater detail in chapter 6.

46 Mr Paul Budde, *Submission 1*, p. 5.

47 Professor Peter Gerrand, *Committee Hansard*, 4 May 2005, p. 3.

48 Australian Consumers' Association, *Submission 16*, p. 11.

2.44 Many submissions raised concerns that a fully privatised Telstra would not only be more difficult to regulate but that the public interest would be diminished by Telstra's drive to maximise its economic returns:

Unfortunately the market under the current settings for regulation and ownership is not delivering fully satisfactory outcomes. Regulators have had enormous difficulty curbing Telstra while it has been in majority Government ownership. There is little reason to believe circumstances will improve by virtue of the privatisation of Telstra. This raises considerable concerns that removing the role of Government as owner will also eliminate what lingering restraint there is over pure commercial pursuit of profitability in what is an essential service for all Australians.⁴⁹

2.45 Telstra's ability to withdraw from thin markets once privatised is of most concern to those people living in regional and rural Australia:

In many respects there is a fear that either a fully privatised Telstra will exercise their commercial decision-making power and say, 'We are pulling out of this market altogether,' or there will be the same slow progress as commercial viability is assessed or someone will decide that a risk is worth taking in a particular area.⁵⁰

2.46 Mr Damian Kay, who owns a national retail telecommunications franchise company, highlighted the commercial non-viability of rural telecommunications services. Mr Kay told that Committee that due to both the size of rural markets and Telstra monopoly position he would not consider starting a business in rural areas:

I split my business up into metro, regional and pastoral. I do not go into pastoral because it is a monopoly and I do not want to play in it because it is too hard. But I will play in regional, and I call Townsville and Cairns regional.⁵¹

Telecommunication services in rural and regional areas

2.47 One of the strongest messages the Committee received during this inquiry was that services to rural and remote areas are not adequate and that there is significant concern about the possible deterioration of services once Telstra is sold.

2.48 The Government has stated that Telstra's sale will be contingent on adequate telecommunication service levels in rural and regional Australia and appropriate market conditions. On 16 August 2002 the then Minister for Communications, Information Technology and the Arts, Senator Richard Alston, established the Regional Telecommunications Inquiry, chaired by Mr Dick Estens, to assess the adequacy of telecommunications services in regional, rural and remote Australia. The 39 recommendations of this inquiry, outlined in its report, *Connecting Regional*

49 Australian Consumers' Association, *Submission 16*, p. 1.

50 Mr Ewan Brown, SETEL, *Committee Hansard*, 11 April 2005, p. 51.

51 Mr Damian Kay, *Committee Hansard*, 21 April 2005, p. 28.

Australia (the Estens Report), are the benchmark by which the Government would measure the adequacy of regional services.

2.49 The inquiry examined three key areas of concern: mobile phone coverage, Internet reliability and fixed telephone service issues. While the Estens Report generally found these services to be adequate, it identified concerns about the availability and affordability of mobile services; the speed of internet access; and the reliability of the standard service.⁵²

2.50 On 2 March 2005 the current Minister, Senator the Hon Helen Coonan, stated that 21 of the 39 Estens Report recommendations had been implemented.⁵³ Approximately two months later departmental representatives gave the Committee a revised figure of 29 implemented recommendations, and provided the Committee with an update on those outstanding:

Two of the remaining 10 relate to implementing a local presence plan on Telstra and about five relate to passage of legislation through the parliament relating to regular reviews. Three others are more policy related issues. One of those relates to the issue around online access centres. That recommendation is that the states and the Commonwealth have formed a committee which is reviewing online access centres, and they are due to make a report by the end of this month. In relation to the network reliability framework, which is another outstanding recommendation, we are currently working with Telstra and the ACA to look at what the response is to a review that has been undertaken by the ACA, and we are expecting that that should be completed by the end of this month. The final outstanding recommendation relates to network extension and trenching, on which we have provided some advice to our minister. We are waiting to hear back on that advice.⁵⁴

2.51 However, the National Farmers' Federation (NFF) put forward a more conservative estimate. Mr Mark Needham listed several outstanding recommendations that he said required attention. The NFF considered that telecommunications service levels and levels of service in rural and regional areas should be equivalent to those in urban Australia before considering the further sale of Telstra.⁵⁵

Recommendations that NFF considers require further work include recommendation 2.2 on the universal service obligation review; recommendation 2.6, on the consideration of network extension and

52 Regional Telecommunications Inquiry, *Connecting Regional Australia*, November 2002.

53 Senator the Hon Helen Coonan, Minister for Communications, Information Technology and the Arts, *Bolstering Telecommunications Services in the Bush*, Media release, 2 March 2005, http://www.minister.dcita.gov.au/media/media_releases/bolstering_telecommunications_services_in_the_bush (accessed 9 June 2005).

54 Ms Caroline McNally, General Manager Regional Communications Policy, DCITA, *Committee Hansard*, 20 June 2005, p. 26.

55 Mr Mark Needham, *Committee Hansard*, 11 April 2005, p. 4.

trenching costs; an important one is recommendation 2.10, on the Network Reliability Framework; a series of recommendations relating to pay phones and another on online access centres; service compliance and performance data analysis by the ACA; and recommendation 7.3, on clarity and certainty about regulatory enforcement. Also, there are recommendations that are subject to another inquiry: recommendation series 8 on telecommunications for Telstra local presence plans; series 9 recommendations on future-proofing and regular reviews; and some series 5 recommendations relating to remote Indigenous community services. You can tell by that list of issues that there are still a range of matters that need to be progressed in a timely manner.⁵⁶

2.52 The main areas of discrepancy between DCITA's list of outstanding recommendations and that of the NFF are: recommendation 2.2 on the Universal Service Obligation review; a series of recommendations that deal with improving payphone access and services; and some recommendations relating to legislated consumer safeguards. The NFF suggests these areas require considerable further work.

2.53 On 16 June 2005, NFF President Mr Peter Corish reiterated his organisation's dissatisfaction with the Government's progress in enhancing services to rural and regional areas:

Unfortunately, when it comes to basic telephone service improvements in the bush, the Federal Government is yet to deliver.⁵⁷

2.54 The Committee notes that the Telecommunications Legislation Amendment (Regular Reviews and Other Measures) Bill 2005 responds to recommendations of the Estens Report relating to:

- the need for Telstra to maintain a local presence in regional, rural and remote parts of Australia; and
- regular independent reviews into the adequacy of telecommunications in regional, rural and remote parts of Australia.

2.55 The bill was examined by the Senate Environment, Communications, Information Technology and the Arts Legislation Committee, which recommended various amendments.⁵⁸ The bill was passed with amendments in the Senate on 23 June 2005, many of which reflected the Committee's recommendations.⁵⁹ However, the House of Representatives had already risen for the winter recess and were unable to

56 Mr Mark Needham, *Committee Hansard*, 11 April 2005, p. 2.

57 Mr Peter Corish, *Still Too Many Gaps In Rural Telecommunications*, Media Release, 16 June 2005, <http://www.nff.org.au/pages/nr05/082.html> (accessed 21 June 2005).

58 Senate Environment, Communications, Information Technology and the Arts Legislation Committee, *Provisions of the Telecommunications Legislation Amendment (Regular Reviews and Other Measures) Bill 2005*, May 2005.

59 The Government majority report made six recommendations for amendment, five of which were supported by Opposition senators, who called for another two changes.

deal with the amended bill. The Committee notes, however, that even in its amended form, the bill falls short of satisfying the recommendations of the Estens Report relating to regular reviews and future proofing.⁶⁰

2.56 During this inquiry the Committee travelled to several regional centres. It was in regional Australia that concerns over the future of telecommunications services were most intense. While there were concerns about telecommunications services across the board, three key themes emerged:

- the poor quality or lack of services;
- the need for high-speed reliable broadband services; and
- future rural and regional services after Telstra is privatised.

2.57 These three themes are discussed below and are also canvassed later in this report. For people living in regional and rural Australia, debates over regulatory certainty to shore up the share price of Telstra are secondary to people's ability to produce livelihoods and support their chosen lifestyle. As the Committee heard:

Remember that there are people involved in this decision—people's livelihoods and lifestyles are at stake here.⁶¹

Poor quality of telecommunications services

2.58 The Committee was frequently told about the inadequate level of telecommunications services in rural and regional Australia. Mr Michael Davis drove 500 kilometres to Dubbo to outline his concerns to the Committee:

The government promised a 19.2 kilobit service on a dial-up. We still cannot get 19.2 on a dial-up. We can only get 10 or 11. I think that is approximately what they believe we have got. We have lost voice quality. We have unreliable connections, where the people on the other end think they have faxed, and the fax doesn't come through. If we go to dial up someone and then want to send a fax, we have to hang up because we have to put the prefix number 12622 on every fax we send.⁶²

2.59 Mrs Tess Le Lievre who lives on a property near Bourke in western New South Wales described the problems in her area:

To send faxes people end up going to our neighbour, Liz Murray, who has a satellite. The couple we had living in the cottage would go to put a fax through, they would dial the number, one page would go through and then it would cut out. Then they would have to dial again. That was how they sent faxes. If they had a lot of big, important faxes, they used to go up to our neighbour to get them through. When talking to them on the phone,

60 The additional comments by ALP Senators in the report highlight these concerns (pp 27-30).

61 Mr Joe Knagge, KNet Technology Pty Ltd, *Committee Hansard*, 14 April 2005, p. 15.

62 Mr Michael Davis, *Committee Hansard*, 14 April 2005, p. 54.

which is on the other side of the river, it was as though we were talking to somebody in England years ago, and there was also a terrible noise.⁶³

2.60 Similarly, the Mayor of the Narromine Shire Council told the Committee:

Every three months we send our stuff to our accountant. It takes me over half an hour to email my little bit of info to the accountant, yet it takes a few seconds at the ADSL in Narromine and I suppose it takes even less on broadband; I do not know. I punch it in and go and make a cup of tea and have a sandwich and come back 20 minutes later and it is still whirring away, sending the email. That is the level of service we have.⁶⁴

2.61 In Western Australia, the Committee was told of internet speeds of 9.6kbs:

There are particular councils across the state—and the one I refer to is in the Great Southern region—which have described to me access to some of these telecommunication services; for example access to internet at speed which are inadequate for their purposes. They tell me they are achieving practical speed in some of their offices of around about 9.6.⁶⁵

2.62 Mr Christopher Hill on behalf of the Western Australian Local Government Association argued:

... in the vast majority of cases, if you look at the dial-up speeds achieved from rural areas, it is extremely rare to achieve 28k on the back channel. It is seeing perhaps 24 or 19.2 kilobits per second as the back channel, and 40 kilobits per second or 33.6 on the forward channel.⁶⁶

2.63 For many in regional Australia the only service available is dial-up, which the Committee was told was both inefficient and costly due to the large drop-out rate of the service.

... they suffer multiple drop-outs using dial-up. I go through it in my own home. One of the last things I ever want to do is get onto the computer when I go home, but I do do it at times. You are not aware of those drop-outs. The machine will basically drop out, redial and reconnect—it is seamless in a way until you get your account.⁶⁷

2.64 Mr Caldbeck from the Dubbo City Development Corporation told the Committee that ISDN was too expensive for many families:

I can tell you that one particular client, a family, would wait until Saturday and then the whole family would do half an hour of internet. Basically it is a case of 'do not touch the internet' for the rest of the week because of the

63 Mrs Tess Le Lievre, *Committee Hansard*, 14 April 2005, p. 49.

64 Mr Robert Barnett, *Committee Hansard*, 14 April 2005, p. 35.

65 Mr Alden Lee, WALGA, *Committee Hansard*, 29 April 2005, p. 3.

66 Mr Christopher Hill, *Committee Hansard*, 29 April 2005, p. 4.

67 Mr Jeffery Caldbeck, *Committee Hansard*, 14 April 2005, p. 5.

high charges because they are on ISDN. As such, they sort of splurge on Saturday and that is it.⁶⁸

2.65 The Committee heard repeatedly that people in the bush were entitled to the same access to reliable, equitable telecommunications services as urban users.⁶⁹ Mr Mark Needham on behalf of the NFF told the Committee:

... services in rural and regional Australia need to be adequate from the perspective that what services can be and are delivered in metropolitan areas also need to be delivered in rural and regional areas on the same basis—that is, the same price, the same parameters relating to service quality, the same parameters relating to installation and restoration et cetera.⁷⁰

2.66 The NFF's submission stated:

This equitable service requirement should not be reliant on the actions of any particular provider. It is the responsibility of Government to implement appropriate legislative and regulatory mechanisms to guarantee ongoing equitable telecommunications services and service quality for all Australians in an appropriate competitive environment.

Farmers and communities in rural Australia do not receive the same level of telecommunications service or services as urban Australians. NFF acknowledges that significant progress continues to be made to rectify these inequities; however the opportunity exists to provide greater equity and certainty to the marketplace and consumers.⁷¹

2.67 Similarly, the Committee heard from Mr Alden Lee, a program manager for the Western Australian Local Government Association, who argued that the same level of service should be available regardless of geographic location and that this requires legislative mechanisms:

We consider the telecommunications regulatory regime is an enabling mechanism only and a control factor towards delivering affordable access to advanced telecommunication services, proportionate with the ongoing needs of the Australian populous, irrespective of location.⁷²

2.68 Mr Knagge from KNet Technologies argued:

68 Mr Jeffery Caldbeck, *Committee Hansard*, 14 April 2005, p. 5.

69 Ms Liz Murray, *Submission 29*. See also: Consumers' Telecommunications Network, *Submission 30*, p. 3; Meridian Connections Pty Ltd, *Submission 41*, p. 23; Mr Michael Davis, *Submission 43*; Australian Consumers' Association, *Submission 16*, p. 15, Mr Alden Ping Kit Lee, Program Manager, Western Australian Local Government Association, *Committee Hansard*, Perth, 29 April 2005, p. 2.

70 Mr Mark Needham, *Committee Hansard*, 11 April 2005, p. 11.

71 NFF, *Submission 15*, p. 2.

72 Mr Alden Lee, *Committee Hansard*, 29 April 2005, p. 1.

While we are seeing the roll-out of ADSL services, say, in country towns and regional centres such as Dubbo, in capital cities like Adelaide, Melbourne and Sydney they are talking about ADSL2 and ADSL2+—speeds 10 times faster than ADSL.⁷³

2.69 However, the Committee heard from the Liberal Party MP for Herbert, Mr Peter Lindsay, who argued that the cost of technology roll-out to more remote regions of Australia was a significant inhibiting factor to equity of services. Nonetheless, he argued that the sale of Telstra could provide the necessary funds to implement better regional and rural services:

Telstra should not have one hand tied behind its back when it operates in one of the most globally competitive industries ... in the demand for more and more technology and the availability of technology, meeting those demands is capital intensive. If we want to see those services rolled out as quickly as possible, the service providers, and particularly Telstra, need the capital. Where are they going to get the capital from? It is not going to come from the government, because as soon as Telstra say: 'We want to do a whole lot more. Please give us some money,' the constituents say, 'No, we want that money spent on health, not on Telstra.' So the only way Telstra are going to have access to that lick of capital they need to really roll out the services is to go to the open market.⁷⁴

2.70 The Committee notes that some people in regional and rural Australia considered that higher costs for some services or a slightly lower level of service were understandable. As the Orana Development and Employment Council submitted:

It is unreasonable to expect the same level of service in remote areas of NSW as is available in George Street, Sydney. It is also unreasonable to expect the cost to be at the same pricing level. People make choices to live in these areas. However, in this age of modern technology it is reasonable to expect a reasonable service at a reasonable price.⁷⁵

2.71 The poor quality or lack of services in regional and rural Australia is having a detrimental effect on regional and rural communities. The Committee was told that rural communities were finding it increasingly difficult to attract and keep people:

We have large areas out here. A lot of areas are depopulating. We are finding it hard to attract and retain youth in our regions. Regional people need e-options more than people in metropolitan areas do. We need to be able to access our banking because we cannot just go down the road. There is no bank there and sometimes there is not even an ATM. We need to be

73 Mr Joe Knagge, *Committee Hansard*, 14 April 2005, p. 10.

74 Mr Peter Lindsay MP, *Committee Hansard*, 21 April 2005, p. 3.

75 Orana Development and Employment Council, *Submission 8A*, p. 1.

able use those options because it might be a couple of hours drive to a bank. The bank is not just down at our corner mall.⁷⁶

2.72 Similarly, the Mayor of Narromine Shire Council asked:

How do you attract to or retain young people in small western towns when all their peers have access to these services that they do not have access to? Their curiosity is enough for them to say, ‘Gee, I want to try this out.’ They go to the bigger towns and the cities, they find the services that we do not have are there and they do not come back. The danger of that is that the desert will be deserted: it will be deserted of people. Our towns are ageing. Our populations in many of these western towns are diminishing.⁷⁷

2.73 For small communities the inability to run and expand businesses is devastating:

It is incredibly damaging because very good reactive and innovative companies located in the country regions of Australia are being forced to either go to Sydney or give up and not expand because Telstra is delivering neither reliability nor value and is cost prohibitive in its delivery of communications. ... It also drives the confidence out of a community.⁷⁸

2.74 In Dubbo the Committee heard several small regional telecommunication businesses argue that in order to remain viable they need access to the same technology as metropolitan areas enjoy, or they would have to consider relocating their businesses. Mr Joe Knagge from KNet Technologies, an IT company with offices in Dubbo and Orange, stated:

I can see that, in five to 10 years, if I do not have access to the very latest technology, then I will no longer be able to compete in the marketplace I play in, which includes the Sydney market, and I will need to move my business to Sydney. I just do not want to do that. I have always lived in regional Australia. I love regional Australia and so do all of our staff. I do not want to be faced with a move to the city, and that is why I am here today.⁷⁹

2.75 Ms Juliet Duffy from the Orana Regional Development Board supported these views:

Communications is the basis of any business and I definitely think it has a severe impact on the economic development out here. It has an impact on us trying to attract industries out here and it has an impact on us trying to get people to relocate. Those services are not available. They look at that in

76 Ms Juliet Duffy, Orana Regional Development Board, *Committee Hansard*, 14 April 2005, p. 41.

77 Mr Robert Barnett, *Committee Hansard*, 14 April 2005, p. 32.

78 Mr Arthur Hissey, *Committee Hansard*, 14 April 2004, p. 22.

79 Mr Joe Knagge, *Committee Hansard*, 14 April 2005, p. 10.

relation to education and setting up home businesses and e-things as well. It really does affect us.⁸⁰

2.76 Another witness in Dubbo described one example where relocation had occurred:

It was a home based business that really needed fairly substantial bandwidth to operate. Because of the inability for ADSL services to be provided, this family—both husband and wife worked in the business—relocated to Wollongong. It was not only because of the inability to access broadband services—but it was a contributing factor—that the two of them made the decision to actually relocate to Wollongong and set up there in a suburb where they received broadband.⁸¹

The need for high speed telecommunications

2.77 As Australia increasingly competes in international markets the need for reliable high-speed telecommunications is vital. In regional areas, access to high speed broadband services has had a positive impact on business exporters:

... we are well aware of the issues with exporters or potential exporters needing access to not only the Australian market but also to the world market as such. ... One example is the mining community in Lightning Ridge. ... Without the broadband widths and service delivery there, a lot of the miners would not have the opportunity to promote and market their products on the web. Obviously there is a need to provide written statements or statements that indicate the value of the gems that they are selling et cetera, and that all takes bandwidth. It tends to muzzle their operations as such. Whilst Lightning Ridge does have ADSL, there is a limit to that, as you are aware.

The new generations of technology are obviously of paramount importance to people who wish to market and promote their product on the web.⁸²

2.78 Similarly, in north Queensland the Committee was told of the growing reliance of regional businesses upon international markets and e-commerce via the internet:

We will find it very difficult to compete as a region with other regions that have those services. Communications technology is absolutely crucial to all businesses—to sales, to marketing, to interaction, to ordering. With e-commerce, your businesses are almost integrated, and our council is no different. Our suppliers are on an e-commerce basis, as are our purchasers, and we get all our financial transactions off an electronic bank statement. If you do not have the bandwidth that can support that sort of environment,

80 Ms Juliet Duffy, *Committee Hansard*, 14 April 2005, p. 43.

81 Mr Jeffery Caldbeck, Dubbo City Development Corporation Ltd, *Committee Hansard*, 14 April 2004, p. 4.

82 Mr Jeffery Caldbeck, *Committee Hansard*, 14 April 2005, p. 2.

people just do not want to deal with you in this modern age. It is just too hard and too expensive.⁸³

2.79 Agribusiness is another area which has become highly technological and where producers deal directly with customers in overseas markets. As Ms Juliet Duffy from the Orana Regional Development Board told the Committee:

The biggest part of industry out here is agriculture, and agriculture is increasingly dependent on the global economy. ... That is really important on a national scale, because agriculture is part of a global trend. We all know that in about 50 years the leading economies will be America, China and India. Australia will be a supplier nation. We rely heavily on agriculture and we really need to support the agricultural industry.⁸⁴

2.80 Yet for many businesses in regional and rural Australia, telecommunications services are unreliable or non-existent. Mr Robert Barnett, the Mayor of Narromine Shire Council in western New South Wales, described the difficulty of running a rural business without access to broadband. Mr Barnett said that he drove 30 kilometres from his property each evening to get a broadband connection:

I am a wheat farmer and I am a cattle producer. In the wheat industry now, every day when wheat is delivered we download those loads and we try to market it. I cannot do that at home. I do a day's work and come home at night, then I go into town to my daughter's place to access the information, because I can do there in 10 minutes what I cannot do in an hour at home. The National Livestock Identification System is coming online in the cattle industry as of 1 July. We will be required to record through the internet the movements of these cattle but we do not have the infrastructure to do it, so we are really getting in a bind.⁸⁵

2.81 Similarly, in Western Australia Mr Gary Chappell from the Peel Development Commission told the Committee about the reliance by dairy farmers on access to the internet:

When I was at Waroona, a farmer gave me an example. He has little electronic readers and the cows have things on their ears. He downloads information off the internet to upgrade his software—to do all those sorts of things—and to enter statistical information, but he is on dial-up so he sits there and if it does not go through the scanner, I suppose, he is missing one somewhere and he will go hunting for it. The technology is there in the farming sector as well as in all the other sectors.⁸⁶

2.82 Mr Barnett, Mayor of Narromine Shire Council, also noted that the internet was becoming more important for people in rural Australia, not only for

83 Mr Paul Askern, Townsville City Council, *Committee Hansard*, 21 April 2005, p. 38.

84 Ms Juliet Duffy, *Committee Hansard*, 14 April 2005, p. 39.

85 Mr Robert Barnett, *Committee Hansard*, 14 April 2005, p. 28.

86 Mr Gary Chappell, *Committee Hansard*, 29 April 2005, p. 70.

communication but because it had become a primary information source for farmers and other business people:

The internet is now where business is done, and our services in this area are less than adequate. The township of Narromine only received ADSL services at the beginning of 2004. This has been a positive step. But, as I am sure you all know, ADSL is only available to those premises that are within 3.5 kilometres of the exchange. Out here in the bush that restriction alone excludes more than half of our shire's population. In many cases even those inside this area find that the service is unavailable due to the age of the copper cabling that exists in areas of our towns. Farmers that have to use dial-up services are also totally frustrated with the enormous amount of time it takes just to connect to the internet, let alone to try to download information. This, I would like to emphasise, is probably the worst problem we are facing—the slowness and inefficiency of the internet.⁸⁷

2.83 Mr Mark Needham from the NFF also made this point:

Rural and regional people—farmers in particular, small businesses, family farms et cetera—do have a requirement for a range of services. The main characteristic they want is quality—a reliable and affordable service. From a bandwidth perspective, it does vary depending on the activities of the particular farming enterprise, whether it is a large farming business or a family farm, with the family oriented activities that go on as well. In relation to high bandwidth, we have made it clear that 256K is certainly our minimum. ... Again, it comes back to the services that, in general, are required in metropolitan areas are available in rural and regional areas on an equivalent or a similar availability, that they are on a par.⁸⁸

2.84 One business operator stated:

Internet access, can be essential for businesses located in country towns to compete with those businesses located in capital cities and competing in the same marketplace. ... Our business is now dependent on access to information, ordering of products, communication with suppliers and customers, and all forms of electronic commerce, to conduct our day to day activities. It is essential that we remain as effective as our competitors in these activities and to achieve this we require data access speeds equivalent to, or close to, our competitors.⁸⁹

2.85 Several witnesses noted that as the cost of traditional forms of telecommunications such as international telephony was prohibitive, new technologies would provide significant benefits for small businesses wanting to access export markets:

87 Mr Robert Barnett, *Committee Hansard*, 14 April 2005, p. 28.

88 Mr Mark Needham, *Committee Hansard*, 11 April 2005, p. 12.

89 KNET Technology Pty Ltd, *Submission 10*, p. 1.

If you said to someone at Lake Cargelligo who makes hospital beds that they need to be able to ring Hong Kong, they will say: 'The cost to ring Sydney is bad enough. I'm not going to ring Hong Kong.' So email and internet services become so critical because of the high cost of offshore phone calls. But the introduction of technology such as VOIP would provide a whole new service for those people, which would be quite remarkable if it can happen.⁹⁰

2.86 In Perth the Committee was told:

... we have a lot of people who work from home. We have a lot of alternative lifestyle people, particularly in the northern part of Peel. We have people that work in the metropolitan area but live outside because they want that rural type of lifestyle. They are happy to live out there, but they need to have the same sorts of services that they would have if they were in the city, because they work for big businesses and they want access to email and they want to be able to download files. All those sorts of things are very important to them.⁹¹

2.87 As rural industries become more technologically complex, those who operate in these industries can no longer survive without access to high-speed telecommunications services. However, as discussed in Chapter 5, the cost of broadband services for rural customers is still prohibitive.⁹²

2.88 Despite the importance of broadband services for the economy, Australia's take up of broadband services is slow compared to other OECD countries, and Australia's OECD ranking is in decline. The latest OECD figures for December 2004 show that Australia is now ranked 21st in broadband subscribers per 100 inhabitants, down from 18th in 2001.⁹³ The Committee also notes that Australia's accepted internet access and download speed of 256 kbps is low compared with international standards.

2.89 However, from this extremely low base the March 2005 ACCC Broadband figures showed that broadband take-up has risen significantly—up 1,839,700:

- Broadband take-up has increased by 1,010,400 or 121.8 per cent, from the March 2004 figure of 829,300.
- The take-up of ADSL services is now at 1,298,100.

90 Mr Jeffery Caldbeck, *Committee Hansard*, 14 April 2004, p. 7.

91 Mr Gary Chappell, Peel Development Commission, *Committee Hansard*, 29 April 2005, p. 66.

92 Mr Michael Davis, *Committee Hansard*, 14 April 2004, p. 54.

93 Organisation for Economic Co-operation and Development, *OECD Broadband Statistic*, December 2004, accessed on 29 June 2005: http://www.oecd.org/document/60/0,2340,en_2825_495656_2496764_1_1_1_1,00.html. The OECD broadband penetration rate in 2004 was 10.2 subscribers per 100 inhabitants: Australia's rate was 7.7 per 100 inhabitants, compared with Korea (the highest at 24.9), Canada (17.8), the USA (12.8) and the UK (10.5).

- Total quarterly growth in broadband was at 18.8 per cent for the March 2005 quarter.⁹⁴

2.90 The need for mobile phone coverage to maintain a business was also an issue. The Mayor of Narromine, NSW, told the Committee:

The use of mobile phones is now a communications norm, yet our shire does not have full service coverage. This is a significant disadvantage to people on the land who cannot receive adequate, cost-effective phone services while working their properties. Those with whom we do business on a daily basis expect to be able to make contact with us as and when required. This is something city people take for granted until they travel west and are suddenly isolated because they cannot use their mobile phones.⁹⁵

2.91 Similarly, in a submission from the Orana Development and Employment Council, Mr Warren explained that in an attempt to stay in contact:

... I take three mobiles, Telstra digital, Telstra CDMA and Optus Digital and program them to forward to each other in the hope one will be in range when I am at the 750 acre property.⁹⁶

2.92 The Committee accepts that once a business case is established, Telstra or any other telecommunications carrier may seek to develop the necessary infrastructure to deliver services to regional and rural Australia. However, the Committee is concerned about the future deployment of telecommunications infrastructure and services in regional and rural Australia if a business case for the deployment of services cannot be readily made. As discussed above, telecommunications is a vital service with significant social and economic benefits to the community, and decisions based purely on business considerations will not necessarily promote the public good.

Future services to rural and regional areas

It is obvious that no-one, or very few people, in the bush want to see Telstra sold. I made the point earlier: why is that when it is so dismal now? It is because they fear it will be even worse.⁹⁷

2.93 The Committee heard of the high level of fear in regional and rural Australia about the upcoming sale of Telstra. Central to those apprehensions was that in the debate leading up to the sale, the concerns of those most affected are not heard, and that once Telstra is privatised the regulatory regime will no longer be able to compel a

94 ACCC, *Snapshot Of Broadband Deployment As At 31 March 2005*, accessed 29 June 2005; [http://www.accc.gov.au/content/item.phtml?itemId=611699&nodeId=file42c0bdf86730a&fn=Snapshot%20of%20broadband%20deployment%20\(31%20Mar%202005\).pdf](http://www.accc.gov.au/content/item.phtml?itemId=611699&nodeId=file42c0bdf86730a&fn=Snapshot%20of%20broadband%20deployment%20(31%20Mar%202005).pdf).

95 Mr Robert Barnett, *Committee Hansard*, 14 April 2005, p. 27.

96 Orana Development and Employment Council, *Submission 8A*, p. 1.

97 Mr Robert Barnett, *Committee Hansard*, 14 April 2005, p. 34.

private company to service small rural populations where there is little or no profit to be made. The Mayor of Narromine, Mr Robert Barnett, told the Committee:

Our concern is that, if the government cannot deliver adequate telecommunications services to country people under the current regime and as a major shareholder, what chance have country people of receiving ongoing quality telecommunications services under a fully privatised Telstra? The government has recently stated in a letter to council dated 22 March 2005 that it believes that ‘in a modern telecommunications environment, it is a combination of competition and regulation that delivers people lower prices and new services’.

It is statements like that which cause country people to worry. Which privately owned company, you would have to ask, would invest in the necessary infrastructure, either now or in the future as new technology emerges, to service a small population of people in the bush? ... It is our belief and the belief of many others that a fully privatised Telstra, without an appropriate regulatory regime, would focus even more strongly on the lucrative high-population density market and that regional people would lose the weapon of political pressure to lobby for adequate services.⁹⁸

2.94 The Committee heard concerns that a privatised Telstra could no longer be compelled to provide unprofitable services to rural areas:

How do you force a private company to put in services where they cannot hope to make any money? You are not coming to my company and telling me to go out and sell a computer at 50 per cent below my cost. I am not going to do it—I would have to shut the doors. I do not believe that any government organisation can do it to any great extent to any private company. I believe that Telstra and their staff are dedicated at the moment because they still are offering a public service and they still are public servants. I believe that it is in the interests of business in regional Australia that that is how it remains.⁹⁹

2.95 Mr Paul Askern from the Townsville City Council also expressed concern about the privatisation of Telstra and the possibility that regional telecommunications services will fall behind capital cities:

We needed assurances that Townsville would not be disadvantaged in the future with regard to the standard of services and the roll-out of new technology compared to the rest of Australia, particularly the capitals. The potential sale of the government’s remaining stake in Telstra was of grave concern without some form of checks and balances or regulatory regime.¹⁰⁰

98 Mr Robert Barnett, *Committee Hansard*, 14 April 2005, p. 28.

99 Mr Joe Knagge, *Committee Hansard*, 14 April 2005, p. 12.

100 Mr Paul Askern, *Committee Hansard*, 21 April 2005, p. 33.

2.96 The Townsville Chamber of Commerce welcomed the sale of Telstra provided that legislation ensures that the privatised company would not be so powerful as to ride over the top of competitors:

If the safeguards are not drafted very well, they will have a significant impact on the other telco businesses, and in particular on the emergence of the local telcos.¹⁰¹

2.97 Many people in rural Australia view the sale of Telstra as the Government giving up its obligation to ensure communications services for all Australians.

I see that this is very disadvantageous to all of us. I feel that it is the government who has to dictate the outcomes for these. Telstra will not do it. If Telstra becomes fully privatised it will only look at its bottom line. I know that, where I live, we are not viable as far as our phone connection is concerned. ... Yet it seems to me that we have lost sight of communication contact for us in the bush as being a responsibility of the government.¹⁰²

2.98 The CEPU argued that it remained 'firmly opposed' to privatisation of Telstra as its sale would mean a decrease of services to people living in regional and rural Australia:

No persuasive arguments have been advanced to show that full privatisation will produce public benefits. On the other hand, it involves clear risks. While the government remains the majority shareholder of Telstra, it can exert leverage over the company over and above that provided by regulation. The community understands this well, especially those living in regional and rural areas. Majority public ownership also guarantees that the company remains predominantly in Australian hands.¹⁰³

2.99 The Committee endorses the argument of the Australian Consumers' Association that:

... rural and regional telecommunications policy must find a horizon beyond the next round of privatisation. We regard it as an enduring necessity to ensure that consumers in regional areas can plug in to the communications advantages of today and the network necessities of tomorrow and the days that follow.¹⁰⁴

2.100 The Australian Consumers' Association also argued that in order to ensure the supply of services in rural and regional centres, the Government should establish a statutory body to oversee the supply of telecommunications services because of 'the constant risk, perhaps certainty, of market failure in some regional areas':

101 Mr John Bearne, *Committee Hansard*, 21 April 2005, p. 53.

102 Mr Michael Davis, *Committee Hansard*, 14 April 2005, p. 54.

103 CEPU, *Submission 40*, p. 3.

104 Australian Consumers' Association, *Submission 16*, p. 15.

Australia requires a statutory body to oversee and in the final case supply telecommunications services to regional and rural consumers appropriately comparable to urban services on a sustainable basis. This requirement will become more urgent when Telstra is finally and fully privatised.¹⁰⁵

2.101 The Committee favourable notes the views expressed by the Hon John Anderson at the recent National Party Conference in Gunnedah, New South Wales on 17 June 2005:

We cannot leave this future in the hands of one monopoly provider that can manipulate the market and roll out services in accordance with its interests rather than the interests of regional Australia. ... We need real competition in telecommunications, where every provider in the market operates its wholesale arm in genuine separation from its retail arm. Real competition also requires that the competition regime is backed up by a strong regulatory regime so that competition rules can be enforced. ...

So The Nationals need to secure three core outcomes from the current telecommunications debate:

- The genuine and robust operational separation of Telstra's wholesale and retail arms, and the similar separation of all carriers and providers in the market.
- A strengthened regulatory regime, so that both the telecommunications industry regulator and the ACCC as the broader competition regulator have the power to enforce competition properly; and
- The security of knowing that future governments will continue to fund the provision of services in non-commercial markets.

Our responsibility, though, is to the national interest and the interests of regional Australia - and we will only serve their interests if we can create a 21st telecommunications system for Australia.¹⁰⁶

Future investment in the telecommunications network

2.102 The Committee was told that during the 1980s under full government ownership of Telstra, 70 to 80 per cent of the annual surplus was reinvested in the network.¹⁰⁷ Since that time the level of capital investment by Telstra appears to have been in long-term decline. The forthcoming sale of Telstra has done little to reverse this process.

2.103 The ACCC noted that:

To date, neither Telstra nor any other party has indicated to the ACCC that it has firm intentions in relation to investment in technologies such as fibre-

105 Australian Consumers' Association, *Submission 16*, p. 15.

106 The Hon. John Anderson MP, Deputy Prime Minister, NSW Nationals Conference Speech, Gunnedah, 17 June 2005, accessed 28 June 2005: http://www.ministers.dotars.gov.au/ja/speeches/2005/AS11_2005.htm.

107 Professor Peter Gerrand, *Committee Hansard*, Melbourne, 4 May 2005, pp 4-5.

to-the-home. Indeed, Telstra admits it actually has no current plans for any significant investment in fibre-to-the-home and claims the existing copper network has another 15-20 years of useful life in front of it.¹⁰⁸

2.104 The ACCC's *Telecommunications Infrastructure in Australia 2004* report, released in June 2005, found that:

During 2003-04, carriers invested around \$872.1 million in local access network infrastructure. Approximately one fifth of this investment was undertaken by carriers other than Telstra.

Telstra and other carriers have planned modest levels of investment in local access network infrastructure for 2004-05. While some of this investment involves asset replacement and upgrade, there are plans to expand copper, optical fibre and satellite networks.¹⁰⁹

2.105 The report set out the level of investment in the local access network as follows:

Table 1: Investment in local access networks 2003-04

Network type	Total (\$m)
Copper	600.8
Optical fibre	127.1
HFC	35.9
Microwave, LMDS, MMDS and fixed wireless	37.6
ISM spread and modified spread spectrum -Satellite	70.7
<u>Total</u>	<u>872.1</u>

† Investment in USD was converted to AUD using an average exchange rate for 2003-04 (\$AUD = \$0.7140 USD).¹¹⁰

2.106 The ACCC also sought information about the level of investment planned for 2004-05. Both Telstra and other carriers planned to undertake modest levels of investment in their copper, optical fibre and satellite networks. The ACCC noted that while this involves network expansion and deployment, no large scale deployment appeared to be planned and the level of investment in local access networks was about 50 per cent lower than in 2001-02. The Committee is concerned that most of the investment is in old technology copper rather than optical fibre.

108 ACCC, *Submission 17*, p. 8, referring to Mr Bill Scales's evidence to the Environment, Communications, Information Technology and the Arts Legislation Committee, *Additional Estimates Hansard*, 14 February 2005, p. 114.

109 ACCC, *Telecommunications Infrastructure in Australia 2004*, June 2005, p. 23.

110 ACCC, *Telecommunications Infrastructure in Australia 2004*, June 2005, Table 8, p. 23, accessed 29 June 2005 at: [http://www.accc.gov.au/content/item.phtml?itemId=610432&nodeId=file42ae708289350&fn=Telecommunications%20infrastructure%20in%20Australia%202004%20\(released%20Jun%2005\).pdf](http://www.accc.gov.au/content/item.phtml?itemId=610432&nodeId=file42ae708289350&fn=Telecommunications%20infrastructure%20in%20Australia%202004%20(released%20Jun%2005).pdf).

2.107 The report also found that during 2003-04, \$142.3 million was invested in xDSL infrastructure.¹¹¹ However, not all carriers provided information about their investment in ISDN and xDSL. With respect to xDSL infrastructure, the carriers who did provide information valued their total investment at \$772.7 million. The ACCC noted that the level of investment in xDSL networks was about the same as in 2001-02.¹¹²

2.108 During 2003-04, carriers invested \$348.7 million in transmission infrastructure, as outlined in Table 2. Not all carriers were able to disaggregate their investment in transmission infrastructure from the investment in local access network infrastructure. Where the investment covered both transmission and local access network infrastructure, this is presented in Table 1.

Table 2: Investment in transmission routes 2003-04¹¹³

Network type	Total (\$m)
Optical fibre	222.2†
Microwave	61.1†
Satellite	65.4†
Total	348.7†

† Investment by some carriers is aggregated with local access network investment, presented in Table 1.

2.109 The ACCC noted that the level of investment in transmission networks was about 50 per cent lower than in 2001-02.

2.110 During 2003-04, mobile carriers invested \$1.1 billion in their GSM, CDMA and W-CDMA networks and all had plans for significant network expansion or upgrade beyond this period. The ACCC notes that the level of investment in mobile networks is about 70 per cent higher than the level for 2001-02. Approximately 25 per cent of investment in 2003-04 was in 3G mobile networks.¹¹⁴

2.111 Mr Steve Wright, Director, Stakeholder Relations for Hutchison Telecommunications (Australia) Ltd, told the Committee that the mobile market in Australia was very competitive.¹¹⁵ The Committee notes that in the markets where there is competition—for example, in the mobile market—there is a higher level of infrastructure investment.

2.112 *The Telecommunications Carrier Industry Development Plans Progress Report 2003-04*, based on data received directly from licensed carriers as part of their

111 xDSL is a term used to describe various forms of digital subscriber line technologies that can provide very high speed service using existing copper lines.

112 ACCC, *Telecommunications Infrastructure in Australia 2004*, June 2005, p. 39.

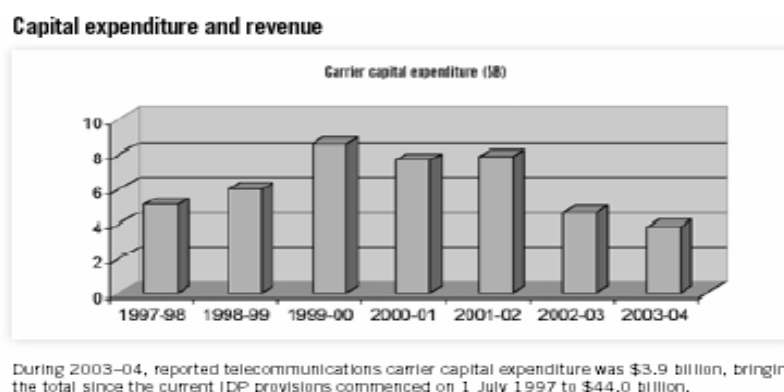
113 ACCC, *Telecommunications Infrastructure in Australia 2004*, June 2005, Table 24, p. 49.

114 ACCC, *Telecommunications Infrastructure in Australia 2004*, June 2005, p. 58.

115 Mr Steve Wright, *Committee Hansard*, 14 April 2005, p. 68.

reporting obligations under the Telecommunications Act, reported that \$3.9 billion of capital investment in network facilities was spent during 2003-04, bringing the total in the seven years since the current Industry Development Plan provisions commenced to \$44.0 billion.¹¹⁶ However, the overall level of capital investment in network facilities is in clear decline.

Figure 1: Capital investment in network facilities 1997/98 – 2003/04¹¹⁷



2.113 Telstra provided the Committee with an outline of its capital expenditure from 1998 to 2004. The table shows a decline in Capital Expenditure (capex) from a high in 2000 of \$4,051 million to \$2,918 million in 2004.

Table 3: Telstra Capital Expenditure¹¹⁸

Year Ended 30 June (\$M)	2004	2003	2002	2001	2000	1999	1998
Switching	298	376	661	735	647	626	756
Transmission	378	378	416	429	693	602	584
Customer access	844	959	929	1,004	1,315	898	778
Mobile telecommunications networks	416	449	255	390	628	616	340
International telecommunications infrastructure	192	193	233	172	125	138	143
Capitalised software	452	583	559	737	599	502	237
Other	507	426	553	677	722	926	986
Operating capital expenditure	3,087	3,364	3,606	4,144	4,729	4,308	3,824
Less Non Domestic Capex spend	169	187	172	93	70	70	70
Core Domestic Operating Capex (incl Cap Interest)	2,918	3,177	3,434	4,051	4,659	4,238	3,754

116 DCITA, *The Telecommunications Carrier Industry Development Plans Progress Report 2003-04*, p. 6.

117 DCITA, *The Telecommunications Carrier Industry Development Plans Progress Report 2003-04*, p. 8.

118 Telstra, *Submission 25d*, p. 1.

2.114 The Committee is concerned that the level of capital investment in network infrastructure and the quality of the network are in decline. The Committee acknowledges that many carriers invested heavily in the last decade and are yet to see a return on that investment. However, Telstra's decline in network investment is to be criticised in light of its monopoly ownership of an established network and its high annual profits.

2.115 The Committee heard an assessment that the Government had not used its ownership of Telstra wisely as it has not reinvested the revenue Telstra provided back into the network. Further, Professor Peter Gerrand cautioned that in selling its remaining share in Telstra the Government will lose \$2 billion per year in revenue and its ability to reinvest in telecommunications infrastructure:

The pressures on Telstra are such that, as you know, it is delivering 80 per cent of its profit each year to its shareholders. The shareholders benefit, but the customers do not. The government at the moment gets somewhat more than \$2 billion per year in dividends from Telstra. There is a potential mechanism there for reinvestment of that \$2 billion a year back into telecommunications. I do not see it happening at the moment. It would be possible to use the money from the sale of the final 51 per cent of Telstra as part of a fund and to earmark that fund for continual reinvestment in telecommunications. Unless that happens, Australia has lost that natural mechanism for reinvestment in very important national telecommunications infrastructure.¹¹⁹

2.116 In March 2005, the Page Research Centre released a report titled *Future-Proofing Telecommunications in Non-Metropolitan Australia*¹²⁰ in which the Centre argued that the roll out of an optic fibre network was a viable option. Boulderstone Hornibrook produced preliminary costing of \$7 billion to roll out the infrastructure, with a view to project completion in five years. This figure is in stark contrast to the \$30 billion over 20 years argued by Telstra. The Committee heard from Professor Gerrand that, assuming that the figure lay somewhere between these two, an optic fibre roll-out was possible over a 10 year period:

There is good reason for thinking that the construction engineers are perhaps underestimating the cost and that Telstra is overestimating the cost. I think a safer estimate would be about the \$20 billion figure, which basically would be achieved by the federal government reinvesting that \$2 billion a year over 10 years. So it is not a figure to appal one; it is really quite a reasonable figure in the context of the overall revenue stream from organisations like Telstra and the normal reinvestment levels.¹²¹

119 Professor Peter Gerrand, *Committee Hansard*, 4 May 2005, p. 2.

120 Page Research Centre, *Future-Proofing Telecommunications in Non-Metropolitan Australia*, March 2005.

121 Professor Peter Gerrand, *Committee Hansard*, 4 May 2005, p. 5.

2.117 The complex issue of infrastructure investment is discussed in more detail in Chapter 4. However, in Melbourne the Committee heard from Mr Paul Fearon, Chief Executive Officer with the Essential Services Commission. Mr Fearon outlined a range of initiatives which monitor the adequacy of infrastructure investment in the energy sector:

We have ... comprehensive auditing and performance monitoring framework. We send out technical auditors to see that the various codes and procedures are being complied with, we have performance reporting, and we put out a comprehensive performance report once a year, which is quite detailed. It goes to issues of performance down to an individual level, and that would be measuring minutes off supply, interruptions and a range of other service parameters.

Ultimately, accountability for the delivery of infrastructure is probably the biggest challenge we have. In addition to the performance reporting, we need to rely on the incentives and rewards that I mentioned previously, which revolve around S factors and the payment of GSLs. Basically that means the business has quite a level of discretion within the periods on how much it spends and where it spends, but at the end of the day if it does not deliver the performance it is going to get penalised... and businesses put the investment in to avoid having to make explicit payments to customers. So that has been a very valuable mechanism to ensure that accountability.¹²²

Conclusion

2.118 The Committee has heard significant evidence throughout this inquiry which questions the effectiveness of the current telecommunications regulatory regime to deal with structural issues within the industry. As one witness submitted:

Based on numerous reports from the ACCC, PC, [ACA], OECD, other Senate Inquiries – and basically everybody else in this country with the exception of Telstra and the government – it is a clear that we have reached the end of the road in relation to the current self-regulatory environment.¹²³

2.119 If indeed we have reached the end of the road in relation to the current self-regulatory environment, what alternatives are open to Government, industry players and the wider community?

2.120 The Committee acknowledges the point made by Mr Bill Scales, Group Managing Director, Corporate and Human Relations in Telstra, that competition in sectors of the telecommunications market has increased since 1997:

... the Australian telecommunications market is now highly competitive. We have been monitoring many of the submissions that have been put to you. You would be surprised, if you looked at only those submissions, to think that we actually do have a highly competitive telecommunications

122 Mr Paul Fearon, *Committee Hansard*, 4 May 2005, p. 42.

123 Mr Paul Budde, *Submission 1*, p. 1.

market because that does not come through in many of the submissions you have.¹²⁴

2.121 However, if the market incumbent is still able to secure such a large proportion of the sector's profits, questions clearly still need to be asked about the effectiveness of the current regulatory regime. As Mr Errol Shaw from PowerTel noted:

After 13 years of deregulation and 'competition', I think Telstra take[s] home 90 per cent plus of the sector's profit from 70 per cent of the sector's revenue base. I guess in industry you are after profits more than revenue, so after 13 years Telstra has 90 per cent of the profit base.¹²⁵

2.122 The issue of competition in the telecommunications sector is discussed in the next chapter.

124 Mr Bill Scales, *Committee Hansard*, 4 May 2005, p. 56.

125 Mr Errol Shaw, *Committee Hansard*, 11 April 2005, p. 19.

