



**TRANSCRIPT  
OF PROCEEDINGS**

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**PRODUCTIVITY COMMISSION**

**INQUIRY INTO TELECOMMUNICATIONS SPECIFIC COMPETITION  
REGULATION**

**PROF M. WOODS, Presiding Commissioner  
PROF R. SNAPE, Deputy Chairman of the Commission**

**TRANSCRIPT OF PROCEEDINGS**

**AT SYDNEY ON TUESDAY, 15 AUGUST 2000, AT 9.33 AM**

**PROF WOODS:** I'd like to welcome everybody to the second day of the Sydney public hearings for the Productivity Commission Inquiry into Telecommunications Specific Competition Regulation. I'm Mike Woods, I'm the presiding commissioner for this inquiry. I'm assisted in this inquiry by Richard Snape, deputy chairman of the commission. Terms of reference for the inquiry are available at the back of the room. I'd like to remind participants that these hearings will be conducted in a reasonably informal manner but that a full transcript will be taken and made available to all interested parties. The transcript is usually available on our Web site within about three days of the hearing. At the end of our hearings for today I will provide an opportunity for any person present to make a brief oral presentation should they wish to do so.

I'd like to welcome to the hearings our first participants this morning, being Macquarie Corporate Telecommunications. Would you please identify yourselves by name and by position in the organisation.

**MR KRISHNAPILLAI:** Maha Krishnapillai, senior manager, strategy, in Macquarie Corporate.

**MR O'BRIEN:** Damien O'Brien, regulatory manager.

**MR ROBERTS:** Geoff Roberts, consultant on regulatory issues.

**PROF WOODS:** Thank you very much. Do you have an opening statement you wish to make?

**MR KRISHNAPILLAI:** Yes, I might just put a couple of things in context.

Macquarie, as the commission is aware, has already put in a full submission on this particular issue.

**PROF WOODS:** Thank you, we have it.

**MR KRISHNAPILLAI:** I thought it would be useful to put a couple of our comments, just very briefly, into some sort of context; start out by having a couple of words about the timing and nature of the review; some statements about our view of the state of competition in telecommunications and, in particular, the point, I guess, that it's not a homogenous market, and there are differing levels of competition in different sub-markets throughout the telecommunications industry; a brief comment on the adequacy of the existing legislation and a number of possible remedies that we put forward in our submission. I might also add that we intend to lodge a further submission in September, once we've finalised some further research and economic analysis that we'll be adding to that particular submission.

In terms of the timing and nature of the review, clearly our view is that the July 97 regime has been slow to deliver on a number of key areas. I think it's worthwhile to list, if you like, the achievements of that regime since July of 97. Although there

have been a number of good outcomes, I guess the deeming statement, the number of declarations in terms of access; there have been, in fact, no access undertakings. There have been no final arbitrations although there have been a number of interim arbitrations. There are in fact a very large number of unresolved arbitrations. There's also been very limited success of the Part XIB, anticompetitive behaviour regime, and I think it's important to put all these achievements, if you like, in some sort of context. So although the legislation, as such, in our view is on the right track, and heading in the right direction, there have been a number of things that could be done, could be improved, and a number of areas that I think are only just starting to come to fruition in our view.

In terms of a number of case studies we've put forward in our submission, clearly the local call market is a good example of one that Macquarie Corporate in fact referred to the Telecommunications Access Forum, the TAF, in March of 97. That process has taken over three years to come to a position where we still don't have a final arbitrated outcome in terms of local call pricing. That's indicative, I think, of the time scales involved in this process, and I think indicative of the nature of progress, and the length of way we still have to go in terms of a number of these issues.

In terms of the special nature, if you like, of telecommunications, I believe that the assessment done in 97, and it was quite a comprehensive assessment by the government, with industry, with a large range of organisations in terms of the type of legislation that was required, the factors underlying that need for industry-specific regulation are just as compelling today as they were at that time. In fact in many ways they are more so.

In many ways, given developments in overseas markets, given developments in Internet applications, given developments in convergence of broadcasting, content and applications in the telecommunications industry, there are in fact a number of new bottleneck areas that are in fact going to be opening up over the next 12 months to two years, in our view. So, it's even more imperative, I think, than before, for industry-specific regulation to continue onwards.

In terms of the state of competition, the telecommunications industry has some way to go before we believe it achieves best practice, and we put forward a couple of case studies there in terms of unconditional local loop and comparisons with overseas markets in our submission. Although a number of new entrants have been introduced to the telecommunications industry since 1997, the majority of those areas depend very heavily on continuing regulatory pressure across a series of fronts. Without arbitration rights, without preselection and scrutiny of commercial processes, it's unlikely that competitive pressure will continued to be applied.

In simple terms we are facing still a very large dominant monopoly vertically-integrated telecommunications supplier that is able to control negotiation, control commercial outcomes across all layers of the telecommunications industry. That simple fact, if you like, remains as it was three years ago in terms of the potential for

real commercial negotiation where one particular party has a great deal of the power in negotiations and other parties are simply access seekers attempting to negotiate with that vertically-integrated supplier.

In fact that vertically-integrated nature of Telstra within Australia is fairly unique. We've put forward more information there, in terms of our submission. Australia has one of the unique regulatory environments whereby a fully vertically-integrated telecommunications supplier is still very lightly regulated, in our view. The regulation, I guess, could be best characterised as ex-post regulation, in the sense that regulators only get involved once a particular piece of behaviour has already occurred. Most of the regulation in the telecommunications industry is not pre-emptive; it is not promoting of competition; it is simply responding to, if you like, influences within the industry, and Part XIB is fundamentally a backwards looking assessment of anticompetitive behaviour, and as a result has a very long lag time.

Although many in the industry would see Part XIB as being effective in a deterrent effect, and it has in fact been able to deter grossly anticompetitive behaviour, the reality is it's unlikely, and has been unable to be shown, to deter subtle forms of anticompetitive behaviour. In fact it's only been tested twice, and in our view has probably not been very successful in either case.

So, while the access features of the legislation have been quite effective, the legislation has not fully addressed the transparency of decision-making required and the management of industry information. We still do not have access, for example, to realistic interconnection pricing. Most information within this industry is still inherently retained within Telstra; for example the USO. Most information and assessments of USO costing are still done in a largely commercial in-confidence area. Most interconnection decisions are also commercial in-confidence. That is distinct from say the European example where interconnection pricing is in fact a posted pricing regime which is more common in areas where you do have a vertically-integrated and dominant telecommunications supplier.

Just briefly, a couple of the remedies that we have put forward in terms of our submission, that in general terms the legislation, in our view, has been generally effective. There are, however, a number of things that can be done to improve the efficiency and operation of that legislation. One will relate to arbitration and complaint processes. Arbitration processes have been long and drawn out and, as I said, there have been no final arbitration decisions that have been effectively introduced in the three-year period. In our view that's more to do with potentially the resourcing and expertise within the ACCC than any other issue, and we've made a recommendation that potentially outsourcing the arbitration function to professional arbitrators may well be an effective way of improving and streamlining the mediation and decision-making process in those arbitrations.

At the end of the day the appointment of staff within the ACCC has not been based on their professionalism as arbitrators; it's been for other reasons, obviously.

We're of the view that mediation and arbitration outcomes would be improved with professional expertise there.

We believe there should be a greater emphasis on incentive based regulation. In other words if, for example, certain targets or objectives were met, then regulation can be relaxed or loosened up. A good example of this, in our view, is the unconditional local loop. If, for example, Telstra was able to demonstrate that it was providing fair access to facilities and fair cost base pricing to unconditional local loop, then, and only then, should Telstra be free to compete in the unconditional local loop provision of XDSL-type services. In other words, putting some sort of targets in place as an incentive for Telstra to actually implement regulatory change prior to a lightening of the regulation.

Enhanced end-user power. One of the other recommendations we have made is that resolution of the network boundary issue could be usefully clarified to give more scope for end-users to have more control and power over choice of services across the unconditional local loop.

Giving the ACCC unambiguous powers to deliver transparent nondiscriminatory and fair access pricing so that Australia is consistent with its World Trade Organisation commitments and the practice in the EU and the US.

A number of modifications to Part XIB to make it more effective in dealing with access issues to remove ambiguities. The case study we've put forward there in terms of commercial churn is, in our view, quite critical. The commercial churn issue again, was first raised in August 97. It was not finally resolved until February 2000. That sort of time scale and responsiveness is inappropriate in an industry that's moving as quickly as telecommunications.

Reduce the ambiguity of the standard access obligations so that the ACCC can set absolute levels of performance. Although the standard access obligations in theory specify nondiscriminatory access and pricing, in reality there is no way for the ACCC to set particular levels of performance; and in our view that needs to be done.

Abolish the TAF. In our view the Telecommunications Access Forum, the TAF, has simply been a hindrance within the access regime of the telecommunications industry, although it has had some effect in flushing out and exposing some of the arguments, at an earlier stage, and the ACCC has indicated they value that in terms of access deliberations. The reality is that a consensus based decision-making body is simply a vehicle for one party to veto any access declarations. The local call decision is a good example of that. As I said, Macquarie referred that to the TAF in March 97. It took 14 months to eventually go to the ACCC, after a great deal of discussion with the TAF, and in our view without actually speeding up the process or improving the process in any particular way.

Enable effective record-keeping rules. Part of the legislation's intent was that clearly where there was a monopoly power or monopoly company, that

record-keeping rules would be important to ensure that there was a distinction between retail and wholesale elements of a vertically-integrated company. Those record-keeping rules have never really been enforced nor introduced and, in our view, although they may potentially could make a difference in the next couple of years, within the first three years of this regime they have not done so - and provide effective access to information.

That's very briefly a couple of the things that we've put in our submission. As I said, we go into that quite a deal more detail and include a number of case studies there. I think I'll leave it at that and maybe leave it open for questions.

**PROF WOODS:** Appreciate your overview of the key points and the detail that you included in the submission. We found it quite useful with level that you've gone into. Would it be reasonable to summarise your view of the market at the moment that it is still in a transition phase and that although the legislative regime came into force in 97 that there has not yet been a maturing of the market at this point? Is that part of the thrust of where you're at?

**MR KRISHNAPILLAI:** Yes. I think that's generally what we're saying. I'll go back to my earlier point that, in our view, there has not been homogenous development in the telecommunications industry. Although there are certain sectors, and clearly long-distance competition is one of them, where there has been a number of competitive outcomes and consumers have seen the benefit of that, there are in fact many other areas across the telecommunications industry where that has not occurred. So it's been very patchy. I think it's probably the best way we would describe it and, in our view, there is even more reason for the ACCC to target those areas that have exposed some sort of market failure and data access, local calls and potentially, unconditional local loop, are three of those areas that will require targeted intervention in the future.

**PROF WOODS:** Can I compare the evidence that you've provided to this inquiry with a statement from another participant who says that it's their view that the current telecommunications market in Australia is extremely competitive at all levels? There seems to be some divergence of evidence being put to us. Could you help enlighten the commission as to why others, or at least one other, that one being Telstra, may take that view?

**MR KRISHNAPILLAI:** I think it's important sometimes to go back to competitive outcomes and, although there is some basic groundwork and some basic legislative areas that are going to improve competition outcomes, I think there's a few key statistics that are quite useful when we look at how competitive the market is.

In terms of provision of local calls, Telstra has anywhere between 87 and 95 per cent of provision of local calls, clearly that is, if not massively dominant then a significant player within the industry. In our view, that then has a flow-on effect in terms of capture of customers. Most customers do tend to buy a package of services in the telecommunications industry. By one player having such a massive hold, if

you like, on one element of telecommunications that flows on through to other elements.

As I said, in terms of long-distance markets, there could be an argument that since Telstra now has probably has 50 to 60 per cent, depending on your definitions, of the long-distance market, they are no longer as dominant in that area. Clearly, other areas where there are, again, fewer competitors in our view there has been weaker competitive outcomes.

Inter-capital transmission is one certainly the ACCC is looking at at the moment and although Melbourne-Sydney, for example, could be argued to be more open to competition the actual pricing results, when compared to international results of similar volume and scale, are not what we would expect to be in a competitive market.

I think that's what flows through a lot of our submissions there is that, when you compare like with like in a competitive with a non-competitive market, Australia has not had the competitive outcomes that you would expect if you were to look at that through the eyes of a competitive marketplace. Certainly pricing is the most obvious one there and those sort of comparisons are fairly straightforward to make and we've made a couple of those in our submission; but clearly even things like service level and choices, in terms of an end customer having numbers of choices of competitors.

The mobiles market is one, for example, that some people think is highly competitive; in some ways it is, in some ways it's not. Without mobile number portability, in my view, we're not likely to get full scale competition in that area. So, that's one area that requires regulatory intervention.

As I said, I think it comes down to having a look at, in our view, international comparisons of pricing movements, of service levels and whether end customers, in fact, have choices when they are unhappy with a particular competitor.

**PROF SNAPE:** Do other countries have mobile number portability?

**MR KRISHNAPILLAI:** Some countries have introduced it very quickly; Hong Kong for example and the UK.

**PROF SNAPE:** You mean recently, do you?

**MR KRISHNAPILLAI:** Yes.

**PROF SNAPE:** You said "quickly," you mean recently.

**MR KRISHNAPILLAI:** Yes.

**PROF SNAPE:** Thank you.

**MR KRISHNAPILLAI:** Yes, recently and quickly. I think that's again a good example of something that's been stalled unnecessarily. Certainly September 2001 is a very, very, very long lead time to introduce an issue like number portability.

**PROF SNAPE:** Along this same line, you mentioned in your opening remarks that you were anticipating new bottlenecks to be occurring. Would you like to elaborate on that please?

**MR KRISHNAPILLAI:** Yes. I think that the obvious one I was referring to there was unconditional local loop access.

**PROF SNAPE:** I regard that as an old bottleneck. That's there. So we know about those ones. It's the new bottlenecks that I was interested in.

**MR KRISHNAPILLAI:** I think it's more to do with in terms of the convergence of, as I said, Internet access, Internet content, and telecommunications services. When we're looking at a company like Telstra as a vertically-integrated telecommunications company and is able to start packaging services, in terms of content and access and transport or carriage, in our view there is likely to be significant competitive issues when we start having that packaging effect producing significant barriers to entry for alternative sources of supply.

**PROF SNAPE:** You mentioned content. Is the content the real barrier that you're talking about here; or what sort of content are you talking about?

**MR KRISHNAPILLAI:** I think the real barrier is the packaging or the bundling, if you like, of various services, making it far more difficult for a competitor to be able to offer a full suite of services, or being able to gain access to that customer.

**PROF SNAPE:** So you're referring to some drawing on significant power in some basic facilities or infrastructure but then adding on new product like IP as it develops.

**MR KRISHNAPILLAI:** Absolutely, and although, as you said, ULL is in fact an old bottleneck in a way, it's expression will be, if you like, expressed in a different way in the future when it is able to bundle those services with other services.

**PROF SNAPE:** Yes, but if we were talking about packaging products together, that's something that's not confined to telecommunications and it's dealt with with general competition policy in other areas of bundling one thing and another. If we go back a number of years we can think of when the film suppliers, that is, just for taking photos, that you had to have the processing done, and in fact you bought the processing with the film and had to send it back to Kodak, typically, to have it done. That was unbundled in that way through general competition policy. They said you had to separate these things out.

Now, what's different in what you're talking about here? If you're talking about bundling a whole lot of products together and saying, "You must take all of those products", isn't that a matter for general competition policy?

**MR KRISHNAPILLAI:** I think one of the major differences is the nature of the telecommunications industry or the way the communications industry is evolving. Essentially, one of the reasons for introducing industry-specific Parts XIB and XIC legislation was the fundamental interconnectedness of the industry, the requirement, if you like, for most players in the industry to interconnect ultimately to Telstra as the dominant player. None of us can actually offer - - -

**PROF SNAPE:** That's back to the local loop again, and I say we know about the local loop and we know about that problem, as what many people perceive to be a problem. What is there, apart from the local loop, in this?

**MR KRISHNAPILLAI:** The earlier example I gave was, I guess, the content and the Internet side of content, as well.

**PROF SNAPE:** What sort of content are we talking about here? Are we talking about as Internet phases into what some people might think as broadcasting? Are we thinking of the supply of broadcasting-type content, or what are we talking about, in terms of content?

**MR KRISHNAPILLAI:** An example may well be, when you have one dominant supplier, like Telstra, for example, providing access to the Internet, and then also setting up portals or areas where, in fact, you are pushed to, in terms of gaining access to information and content on the Internet. That is an example of a bottleneck that is going to be created in the future, in terms of Telstra retaining some sort of control over customers' access to the Internet.

**PROF SNAPE:** But Telstra itself is not a content supplier, at the moment.

**MR KRISHNAPILLAI:** Through Big Pond?

**PROF SNAPE:** No, that's, I think, through - I'm trying to think, again, if this phases into broadcasting, for example, and Telstra, while it controls the cable, for example, has the cable, and is part of Foxtel, but nevertheless, it's not a content supplier, apart from that.

**MR KRISHNAPILLAI:** I think it's more, as I said, to do with the convergence of the fact that they are the access provider, as well as working with and having control over content suppliers.

**PROF SNAPE:** They work with content suppliers, but they're not a significant generator of content, as such, as I understand.

**MR KRISHNAPILLAI:** Not directly, no.

**PROF SNAPE:** No, so if we're talking about content, they can control a portal; and it's this case, if we're talking about pay TV, there's more than one portal, at the

moment. If we're talking about the Internet, there are many portals, and again, you may say, at the end of the process there's the local loop, yes, or there is the HFC cable, in which they're both involved, but there are other means of delivery as well. So they're big in portals, but they're not controlling content.

**MR KRISHNAPILLAI:** Again, getting back to my earlier comments, if you like, about the nature of the industry and where the industry is headed, the commission, the ACCC, will need to be able to respond to those potential bottlenecks, even if they aren't currently in existence. Telstra has the potential to do that, very strongly.

**PROF SNAPE:** Are you implicitly advocating some sort of merger of the provisions of the Telecommunications and Broadcasting Acts?

**MR KRISHNAPILLAI:** No, I think the ACCC will need to be very careful in terms of how it regulates access, because there is going to be, clearly, with datacasting and other areas like that, some sort of crossover in terms of potential anticompetitive behaviour within the industry. So I'm not necessarily advocating one way or the other. I think it needs to be quite clear, though, that there is a very large potential for an extremely large communications access provider to dominate a range of content, portal and other access areas.

**PROF SNAPE:** You might like to have a look at the recommendations of the broadcasting inquiry, with relationship to the cross-media rules, and how the recommendations there attempted to go into the new convergent world. There was a recommendation there of significant modification - or development, perhaps, is a better word - of those rules, I think a recommendation, which is quite relevant to what you're talking about in this case.

**MR KRISHNAPILLAI:** Yes, and as I said earlier, I think it's a case of being not a homogenous response throughout the entire industry, nor across content and telecommunications access. One area I haven't picked up on, I guess, is the difference between, say, regional service provision and metropolitan service provision. Certainly, it's an area we've put into our submission. In our view, competitive outcomes are quite different, and for quite different reasons, in those areas. Regulatory bodies and instruments need to be able to adapt and have different solutions, where there are different competitive pressures and where there are different competitive outcomes within industries.

**PROF SNAPE:** Your recommendation there was very heavy-handed, I thought, and in fact, as I read it, I thought I read "regional commissar", not "regional commissioner". You may want to contemplate, I think, a little bit more the powers which you seem to be giving to the regional commissioner in your recommendations, and just contemplate them from that other perspective.

**MR KRISHNAPILLAI:** I guess that perspective is always - - -

**PROF WOODS:** Could we explore what's underlying some of that, because you were talking about the need to fast-track declaration processes for regional facilities and infrastructure, but that suggests that there's some form of regulatory failure occurring, that is specifically regionally focused, either by type of facility or by regional area. I would like to understand what particularly you had in mind there, as separate from the general economic issue of whether, in fact, it's sufficient to be duplicating infrastructure in certain market environments. I'm just a little concerned that you may be seeing an economic outcome and wanting to apply a regulatory solution. If you could elaborate on what underlies it, so that we can understand where you're coming from.

**MR KRISHNAPILLAI:** I guess the underlying rationale behind our regional services recommendations is that, in terms of competitive outcomes in telecommunications, there are likely to be three different layers of competition in our view. The first layer will be where there is facilities competition. Basically, where there are alternative forms of infrastructure, and the government and the commission and others need to make sure that the signals are in place to encourage that, and not discourage that, effectively. In our view, that's most likely to be the more densely populated areas, and clearly we've already seen some of that in CBD areas.

The second layer of competitive outcome is where, although there's not sufficient economic incentive for there to be multiple facilities layers, there is, in fact, potential for services based competition, where consumers have a choice of company they deal with, but ultimately the underlying infrastructure is provided by maybe two or three facilities based providers.

The third layer is where the economic incentives are, in fact, even weaker than that, and facilities may in fact only be provided by one, or there might be only sufficient economic incentive to provide facilities by one player, and the government needs to have mechanisms to make sure that quality, price, service levels and access in those areas are of a sufficient quality, etcetera. Clearly, USO is the mechanism that's been designed to encourage that third layer.

In terms of regional services, clearly we would see there being minimal economic incentive to have multiple facilities layers in those areas, and I don't know too many people who are disagreeing with us on that front. Clearly, that means we're going to be relying on services based competition and a combination, or a balance, between some sort of government intervention, or government mandating, of customer service guarantees, USO and other regulatory mechanisms.

What we are saying, in terms of our regional services strategy, is that, in terms of competitive outcomes, there has certainly been minimal competition in regional areas of Australia; and certainly, in terms of very practical outcomes, there are few competitors in many areas of regional Australia, as compared to - - -

**PROF WOODS:** You're talking about service competitors?

**MR KRISHNAPILLAI:** Yes, service and/or infrastructure - certainly compared to CBD and metropolitan areas. As to whether certain areas, say, major provincial centres, do have in fact access to a number of competitors, yes, there are examples of that. We're talking in general terms about regional provision of competition.

Our recommendation, therefore, was that, in terms of the practical outcomes of competition in the last three years, there have been some good competitive outcomes, particularly in metropolitan areas. There have not been the same sort of competitive outcomes in provincial areas. Part of the way of dealing with that is to make sure that, instead of having a one-size-fits-all regulatory response, maybe the ACCC and others need some tools to be able to deal with those differences in competitive outcomes in different ways.

One explicit way of doing that is to have, as we put forward a recommendation, a regional commissioner, of some sort, who actually explicitly looks at whether in fact competitive outcomes are being delivered in those regional areas. In other words, any decision that is made under XIB or XIC has a legislative objective that says, are we in fact improving competitive outcomes in these regional areas, or are we not? All it does is explicitly say, before we make a decision on any of these issues, we have to consider whether in fact those outcomes are being met.

One practical example of that, a very practical example, is Macquarie Corporate is rolling out a data network throughout the country. The data network, obviously, in capital city and metropolitan areas, we're able to get access to exchanges, etcetera, in terms of putting in our own switches, etcetera, around the country. In terms of provincial centres, we are very limited in terms of our choices of where we're going to put them. The reality is we will have to try and co-locate with Telstra. There are no other alternatives in most provincial or regional centres. How we're going to do that, in very practical terms, we're going to have to approach Telstra - or we do approach Telstra - to negotiate an outcome.

Again, in purely - and I'm being very pragmatic here, if you like - practical terms, what incentive is there for Telstra to agree to that co-location? Virtually nil. What redress do we have if we do, in fact, then want to co-locate, or go through the expense of actually building our own, which is an alternative that's unlikely to be economically efficient in most regional areas? The reality is, we are then stymied, and we'll have to wait two to three years to have an arbitrated outcome. That's a very practical example of where there's a difference in regional areas and city areas.

**PROF SNAPE:** Have you looked at the deal that has been negotiated between Bendigo, or people within Bendigo, and AAPT; and is that an alternative path? I haven't got the details myself of that, but you may have and probably know more about it.

**MR KRISHNAPILLAI:** I think, as I said, at that third layer, that may be an alternative path for certain areas, where you can aggregate the band across an entire community sufficiently to warrant either a second or third infrastructure layer, or a second or third or fourth services based competitor. The reality is, I doubt that will

be a solution in areas much smaller than Bendigo. Bendigo is not a small regional centre, so you're really talking about, in effect, virtually a metropolitan area, in terms of population, etcetera. I don't know how much further that process can be driven down.

**PROF WOODS:** I'm just not sure why calling something regional will give it a different focus or outcome than what the ACCC and the regulatory regime currently provides. Are you just saying that it can be taken out of the queue and put through some quicker process because it's - - -

**MR KRISHNAPILLAI:** It's in explicit recognition that regional areas of Australia have not had competitive outcomes in the way that metropolitan areas have, and therefore - - -

**PROF WOODS:** Does the current queuing discriminate against resolution of regional issues?

**MR KRISHNAPILLAI:** It doesn't, in the sense that, in theory, there's no discrimination clearly between those areas. All it's saying is that maybe an explicit recognition of that competitive outcome is warranted, in order to improve outcomes in those regional areas.

**PROF SNAPE:** Yes, it will be interesting to see, as technology develops, whether in fact this sort of Bendigo solution can be adopted elsewhere, and that, of course, was not something which was generated by a regulator, as I understand it. It was, in fact, a local initiative. I'm not sure which side the initiative started from.

**MR KRISHNAPILLAI:** I guess the alternative example to that is the Northgate example, in Ballarat, where that in fact failed, that approach. So I don't know necessarily that one or two examples of - - -

**PROF SNAPE:** Or is TransACT another alternative, in the ACT, of putting in their own network, and then - - -

**MR KRISHNAPILLAI:** It's certainly as I said: there will be two or three layers of facilities infrastructures in many areas that will be economically viable, clearly.

**PROF SNAPE:** Cooma is another one, and that's a very small community, so that one will be worth watching, perhaps.

**PROF WOODS:** Basically, you're not suggesting that the current regulatory structure, or the behaviour of the ACCC, discriminates against regional, you just want to take it out of the current pile and put it into a different one.

**MR KRISHNAPILLAI:** All we're suggesting is that we can see some value in having somebody who is explicitly responsible for assessing the impact on regional areas, to make sure that access and anticompetitive behaviour is improved.

**PROF WOODS:** One of the other features, while we're looking at this regional area, is the proposal to have a voucher system for dealing with the USO. If you could elaborate a little on how you would see it working, because unless you get some sort of collective behaviour on the part of voucher holders, to coordinate their purchasing, I'm not quite sure how it would be expressed in reality, to give you a different outcome than what's currently occurring.

**PROF SNAPE:** Could I give you some hooks to hang this one on? The question of: what product; what area; how do you define it area by area; what value - that is, when the supplier has got the voucher and goes along to the government to get the money, what value is it or what value has it got, and how is this value determined area by area. So it's product, area, value; the three hooks.

**MR ROBERTS:** On the value question, you already have that problem with the existing USO levy calculation, where it goes through on very detailed sub-areas, in terms of calculating the USO cost or the net cost areas in those USO areas. So you've already got that calculation going. The problem with the existing regime is that customers don't have any choice. That is, you have a designated national or potentially lower-level designated carriers to deliver the USO, and once they're locked into that, they're the only provider who has access to those USO benefits. Therefore, they're delivering a subsidised service, a USO service, and at an advantage to any potential competitor.

What a voucher system would do would be open that up, so you may still have USO carriers, but it's available to a broader number of potential suppliers. So it's really just opening up the number of potential suppliers that can provide that USO service.

**PROF SNAPE:** If I'm living 100 kilometres west of Collarenebri, and I am wanting some services and I've got a voucher for a particular that comes within the definition that of available service for the voucher, and I go along to Telstra and say I want this service, and I go along to Optus, and I go along to Macquarie or someone else, and say I want this service, they will then say, "That voucher for when it's 100 kilometres west of Collarenebri is worth \$500 to me" - that is, to the supplier - or \$1000 or whatever. Now, it's only one of the suppliers with a network already in that area who would be able probably to supply that service for the thousand dollars, because of the economies of scale, the problems of duplicating services in areas, and so on

Have we really advanced anywhere in this, or is the fact that, once you've set a limit on the value of the voucher, which surely must occur, the government is not going to say, "Well, you chose Optus for this so the voucher has a million dollar value, because they had to bring it from a long way, where if you'd used it for Telstra it would have only been a thousand dollar value." They're not going to let you use it on Optus.

**MR O'BRIEN:** I suppose it presupposes an effective access regime pre-existing. So, therefore, whilst it might be one network - as such there, Telstra's network - it presupposes that any operator that could gather enough market support would be able to access that and provide the service at cost.

**PROF SNAPE:** Yes, but it would probably only be economical for one supplier to be in fact supplying a hundred kilometres west of Collarenebri.

**PROF WOODS:** At a facilities level.

**MR O'BRIEN:** Yes, that's right, at a facilities level.

**PROF SNAPE:** So, you're no further ahead.

**MR O'BRIEN:** I don't know if that's necessarily the case. If you look at the USO costing that the ACA has applied you'll find that they've actually used satellite costing in a lot of instances in the most remote areas, even though that's not the actual mode of delivery. So you actually have a couple of different modes of delivery. You have potentially CDMA-type delivery styles; you have microwave-type delivery styles; none of which are actually on the ground at the moment because there's no customer choice. It's going to vary from area to area, obviously, but the current approach to the USO totally excludes any of those alternative delivery mechanisms, and if you're not the designated USO provider then those delivery mechanisms will never get off the ground.

**PROF SNAPE:** So it's really opening it up to alternative delivery mechanisms for which the USO-type voucher replacement could be used?

**MR O'BRIEN:** Yes. I mean, the voucher system has been used in Sweden. I think it's been used quite extensively in Sweden in terms of providing different services, because their USO centre is on island, so the problem tends to be water coverage rather than huge distances, and they use radio solutions which are reasonably cheap to replicate and deliver along alternative delivery mechanisms; with satellite alternatives. I mean, the USO problem is not one that's going to go away or be sold in a magical way by waving a voucher. I mean, we're not that silly.

**PROF SNAPE:** What is the blockage at the moment to it being used for only one technology, which I understand you're saying is the case?

**MR O'BRIEN:** Because at the moment there's only one designated USO provider, which is Telstra, and therefore only Telstra has access to USO funding. So if you want to provide a rural service in competition to Telstra, Telstra is getting a subsidy from the rest of the industry for providing that service, or whoever the designated USO provider is - it's not just Telstra - and therefore your delivering mechanism, your technology, doesn't have access to that level of subsidy.

**PROF SNAPE:** So another way of doing it, if I understand you correctly, would be in fact to say, "This is the service we want to provide in a certain area; contract, put it out to tender for contracting by whatever service delivery mechanisms, the various - - -"

**MR O'BRIEN:** Yes, that's regional tendering. But once again, if you, say, have multiple - I mean, if you have, say, a radio-type solution which is the Telstra-type solution, which is terrestrial radio versus a satellite one, then if you put it out to tender you're saying you're going one way or another which means - - -

**PROF SNAPE:** No, tender by any means, I was saying.

**MR O'BRIEN:** But you're still excluding customer choice. I mean, why can't a customer who wants satellite, because satellite has different characteristics, who thinks that that's a perfectly adequate solution, use that as a solution, whereas another customer that wants a radio-type solution can use a different radio solution.

**MR KRISHNAPILLAI:** All we're suggesting, and you're dead right, we're not saying there's one easy answer here; all we're suggesting is that the level of choice should be driven down to a customer lever wherever possible, rather than being aggregated into necessarily a regional area, which is what tendering is going to do. There are advantages and disadvantages of doing that.

The second thing we're obviously saying is that that will improve the transparency in terms of the real cost base of providing services in those areas, and give customers that choice as to what cost benefit they're actually looking for.

**PROF WOODS:** Presumably, coming from the public purse, there's going to be a need to cap the value of the voucher, and presumably that in itself then restricts choice at the consumer end as to what technology they can access unless they're prepared to top up.

**MR KRISHNAPILLAI:** And that clearly has to be a transparent process whereas the USO at the moment is not being regarded by many people, anyway, as a transparent process as we currently see it. Certainly, no-one else in the industry sees the level of detail in the USO costing process that Telstra does, for example. So, it's going to be very difficult unless you open that process up to much higher levels of transparency to really understand whether in fact that costing model is appropriate or not. Certainly, Telstra's ambit claim of \$1.8 billion for the USO shows the inherent weakness in that process when the models can come out with such widely varying figures.

**PROF WOODS:** Is part of the incentive to break open access to those customers, so that if the USO is restricted to basic telephony, for instance, once you have access to that customer for that product you can then start selling multiple product base to them, so that you want to get access to that customer in the first instance through the USO, for the basic product and then hope to deliver - - -

**MR KRISHNAPILLAI:** That may be part of the objectives, yes. As I said, our intent there is to say that it should be opened up to greater choice at a more disaggregated level.

**PROF SNAPE:** Could I change the subject fairly dramatically, and that is to move to your comments about Australia's obligations to the WTO, or commitments to the WTO. I'd like a little bit more elaboration here. I read what you're saying about that which is in your submission on - - -

**MR KRISHNAPILLAI:** Page 11.

**PROF SNAPE:** Page 11, thank you. What you quote at the bottom of page 11 - Australia's commitment, 14 February - and what you're quoting there is, as I understand it, from the reference paper that was in fact adopted in the telecommunications negotiations, and which those who signed on to these commitments endorsed; but what you haven't quoted is a couple of footnotes. As I understand it, these footnotes set out Australia's interpretation of how it was meeting the obligations which you specify in these two paragraphs. If one - as I assume it is - takes that these footnotes as being the way that Australia says it is meeting those obligations, then we must assume since Australia's offer was accepted, that Australia is in fact meeting its obligations.

**MR ROBERTS:** No-one is suggesting that there's a technical breach of the World Trade Organisation obligations, but a plain reading of those WTO readings is that it talks about nondiscriminatory prices, it talks about posted pricing for bottleneck services, it talks about a whole range of those sorts of obligations. If you look at the way those sorts of commitments by the EU and the US have been implemented, you'll see that those are indeed what they've done; they have posted prices for key bottleneck services. For instance, for EU, interconnect PSTN long-distance interconnection-type rates, you can look them up on a Web site. That's very different to the situation in Australia.

**PROF SNAPE:** The nondiscrimination in Australia is interpreted in the standard WTO way, and the footnote 2, that I was referring to, says:

Nondiscrimination is taken to mean on a most favoured nation and national treatment basis; that is not discriminating between countries and not discriminating between your national suppliers and foreign suppliers.

That is the standard WTO meaning of nondiscrimination, and Australia has endorsed that in that footnote. The footnote goes on to say:

In the fully competitive market in Australia the rate at which interconnection is provided is determined by negotiation. Both negotiating parties have recourse to an independent arbitrator which will make a decision based on transparent criteria to ensure that rates are fair and reasonable in the circumstances.

That is as Australia interpreted that commitment, and that was, as I understand it, Australia's commitment. So while you may be saying - well, you'd be right in saying that other countries may in fact adopt different processes in meeting these obligations, it doesn't mean necessarily that what Australia has in fact said it will do under these things is in any sense in violation of the spirit or the letter of it. That would be my understanding, but I'll throw back - - -

**MR KRISHNAPILLAI:** Yes. I guess I'd question the extent to which arbitrated outcomes are particularly transparent, given the confidentiality arrangements and envelope that surrounds those arbitration outcomes.

**PROF WOODS:** It talks about transparent criteria - - -

**MR KRISHNAPILLAI:** Yes, transparent criteria.

**PROF WOODS:** - - - as a footnote, and I think those are transparent.

**MR KRISHNAPILLAI:** Well, yes, certainly the pricing principles are transparent.

**PROF WOODS:** Yes.

**PROF SNAPE:** I think that one may ask whether there could be more transparency, and whether the arbitrated prices might be disclosed, but I don't think that one would necessarily wish to make those arguments in the context of the WTO commitments. I think that this is the interpretation the Australian government has, I think, placed upon it, and that has been accepted by the other members of the WTO, as I understand it, as satisfying the terms of the agreement.

**MR ROBERTS:** Yes. Look, point taken but I mean I think it's important to look at the way other countries have interpreted that same agreement and the way it's been implemented in other countries.

**PROF WOODS:** Can I go back a page, page 10, where you are referring to the multiple provision of fibre-optic cable, between Melbourne and Sydney, in particular, which you describe as being delivered in a least efficient investment outcome. Then you say:

What has happened is that, because the entrenched operators are restricting access to underlying fibres, new entrants are forced to commit to uneconomic duplication.

Could you explain the market behaviour that's encouraging entrenched operators, in fact, not to utilise their facility and therefore to restrict revenue from their investment?

**MR ROBERTS:** I think it's more important - rather than trying to understand their motivations, what we were just trying to get at there was looking at what the actual

outcome was where the ACCC has applied very light-handed regulation in inter-capital transmission between Melbourne and Sydney. What the demonstrated outcome is is a whole lot of duplication. I mean, the basic economics of building an optic-fibre cable - the most expensive part is trenching it, putting in the cable and the least expensive part is upgrading the electronics and putting the new electronics in, to make it handle a whole lot of new capacity.

**PROF WOODS:** As we've found for the overseas cables and what's been happening there.

**MR ROBERTS:** Yes. Well, overseas cable is a little bit harder because they're a bit less accessible, you can't get to the repeaters along the way. It's even easier where you can get to the repeaters along the way. Our understanding is that, with wave division, multiplexing-type technology, basically, a single fibre can carry a vast amount of traffic.

**PROF WOODS:** You mean a single fibre in a cable, as distinct from single cable?

**MR ROBERTS:** Single fibre in a cable, yes, the single fibre in a cable. I don't know - I mean, it's lucent technology and all that sort of stuff. I don't have exact details on it but my understanding is that there are people around who say that, using wave division multiplexing, you can put the entire capacity, the entire need, down to single cable between Melbourne and Sydney.

**PROF WOODS:** Single fibre.

**MR ROBERTS:** Single fibre, that's right. What we're seeing, instead of that, is a duplication, that is, an investment, not in that wave division multiplexing technology but a whole lot of extra fibres being put in, that is, building a couple of hundred years of capacity in advance. It's really more an interesting example as to how the underlying competitive dynamic, in a very lightly-regulated market, doesn't seem to be delivering the sort of outcomes you would expect.

**PROF WOODS:** Presumably in each case the investor has done their business analysis and worked out that they too can generate sufficient revenue from the investment to make a return.

**MR ROBERTS:** There must be some underlying - I mean, there's something that's not working, is the simple point we're making, that there may be some barrier to entry, that laying the fibre is a sufficient barrier to entry for new entrants to think that they can continue to reap additional super profits.

**PROF WOODS:** It's not as if that's been a behaviour like with the HFC cable, where it occurred but then stopped; I mean we're seeing - - -

**MR ROBERTS:** No, it's ongoing, it's ongoing.

**PROF WOODS:** - - - in the daily newspapers, further expansion and roll-out of such things.

**MR ROBERTS:** Exactly.

**PROF WOODS:** So, even in today's environment, as we speak, somebody is doing a business case and identifying that they can generate sufficient revenue to - - -

**MR ROBERTS:** Yes. It's more an interesting phenomenon. I guess, in terms of understanding it, we don't have the answers but it's a pointer that there is something fundamentally wrong with the economics or the competitive dynamic that requires some sort of regulatory input. The ACCC, for instance, has gone very shy on declaring dark fibre, which, for instance, might be a possible solution.

**PROF WOODS:** Has gone shy on declaring it. Do you want to elaborate on what that means?

**MR ROBERTS:** Well, it hasn't done it.

**PROF SNAPE:** How many fibre cables are there between Melbourne and Sydney?

**MR ROBERTS:** Well, no-one knows but, such is the transparency of the arrangements; but the estimates are - I mean, I've seen estimates that there's like 20 Telstra cables and 20 Optus cables and a few PowerTel ones; so there's a lot of cables there.

**PROF WOODS:** And more coming on.

**MR ROBERTS:** Yes, there are more coming on.

**PROF SNAPE:** If that's as you just described it, there's a mystery not just between companies but within companies. Why would one company have more than one cable, if it's as you just - - -

**MR ROBERTS:** Well, they have some redundancy, that is for backup.

**PROF SNAPE:** 20.

**MR ROBERTS:** Well, it's cheaper to put in - I mean, it doesn't cost any more to put in 20 than it costs to put in one, probably, but it costs a lot to put in two lots of 20 and to keep on putting in units of 20.

**PROF SNAPE:** It's something more, is it, than when I went to the airport yesterday, it was terribly inefficient because there are a whole lot of cars with only one person in them? Do you know if you're adopting the engineering and typical - - -

**MR ROBERTS:** Yes. You'd fill all the cars up, except all the people are going to and from different destinations.

**PROF SNAPE:** They all went along the freeway together.

**MR ROBERTS:** Yes, they all went along the freeway together but there's - I mean, you don't need to have separate - it would be like if you had separate freeways, I guess, is what we're saying. We're talking about the freeways, rather than the cars.

**MR KRISHNAPILLAI:** There's always going to be a balancing act between those different requirements. I mean, how many separate freeways are you going to - - -

**PROF SNAPE:** Yes, that's my point: is it a balancing act?

**MR KRISHNAPILLAI:** We're pointing out: the balancing point is potentially not quite right. I mean, certainly, we're not suggesting everyone go in the same car but we're equally not suggesting that everyone who wants to go on the road has to build their own.

**PROF WOODS:** Given that these aren't cheap investments, presumably the investors have closely examined the business case.

**MR ROBERTS:** Look, there's no doubt about that but it may be a question of the barriers to entry or access to those fibres.

**PROF WOODS:** Under your next point, on the adequacy of existing regulation, you talk about, generally, the competition regime relying on ex-post regulation. You go on to say that the regulation that we have at the moment has clear benefits for an incumbent operator such as Telstra, allows Telstra to continue to engage in anticompetitive conduct, an attempt to stifle competition, and provides no effective incentive for Telstra to avoid this behaviour. What particular examples were you drawing on in making that point?

**MR KRISHNAPILLAI:** The general principle is clearly that any anticompetitive behaviour can continue for as long as - or until the ACCC intervenes.

**PROF WOODS:** Yes, understand that.

**MR KRISHNAPILLAI:** In terms of a number of practical examples, commercial churn, or the ability of customers to transfer between different companies, is one that the ACCC delved into in vast detail and was unable to make any real headway after three years of investigation, and had to settle out of court, as a result of the weaknesses within XIB: things like, to bring it to a very practical level, the ability of customers, in terms of provisioning new lines or new services through different companies and whether in fact they are getting different levels of service. The entire, obviously, putting a customer service guarantee into place is a recognition that the

levels of service need to be set by government rather than leaving it to a competitive marketplace.

If you really did have a competitive marketplace, you wouldn't need a customer service guarantee, clearly; because if you weren't happy with a particular supplier you'd go elsewhere, who gave you a better level of service. So there are a number of recognitions in there that show that it is not a competitive marketplace, and therefore there needs to be some sort of way for the ACCC to deal with that anticompetitive behaviour; so, provisioning times, customer transfer processes.

Again, it comes back to the view that we pointed out earlier: there is one central player in the telecommunications industry which is able to dominate across all facets of telecommunications, because they do control up to 95 per cent of a particular product, local calls, which tends to be bundled with every other telecommunications product. They also control the access technology, they have the ownership and access technology in terms of the local loop. That gives them a dominant position in terms of customer transfer processes and all the underlying operational processes that go in the telecommunications industry. If you want a new telephone line you still end up, ultimately, having to go through the Telstra wholesale area for the vast bulk of new lines. So there is that centrality to this whole process.

**PROF WOODS:** Let's pick up that particular issue because you deal with it under a heading of Enhanced End User Power. In major CBDs, buildings are being wired by a whole range of people these days, so presumably you would acknowledge competition in at least two - - -

**MR KRISHNAPILLAI:** CBD areas.

**PROF WOODS:** - - - of our major CBD areas.

**MR KRISHNAPILLAI:** Yes.

**PROF WOODS:** We're getting the odd example of some neighbourhood cabling or provincial city cabling; small scattered examples are starting emerge that are not yet widespread. Let's look at this other proposal of giving customers the ability to choose the infrastructure provider. What do you do? Do you transfer ownership of the copper pair? Does the customer purchase it from Telstra and then itself make available to - - -

**MR KRISHNAPILLAI:** I guess, to put this in some sort of context, what's important is that I think we forget sometimes that it wasn't that long ago that if you wanted a phone, or even a phone jack, in your house you had to go to Telstra. If in fact you wanted a PABX with your business you had to go to Telstra. That control of the entire network, from hardware right down, through the network, to hardware at the other end, was controlled by one player.

The border point, or the boundary point, where you have competitive source of supply, and where you have a network supplier who maybe has some sort of central control, is what we're getting at here. We've pushed that boundary point back from the hardware, from the handset, from the cabling within premises, and what we're suggesting is there may be scope to push that back further to a more centralised point. So it's all about where the boundary will be in terms of where you can have, as a customer, competitive source of supply, or choice, in choosing who maintains your wire on your premises, or maintains your wiring in certain areas; and where in fact that is beyond your control, then you'll simply have to accept that a network supplier does that for you.

**PROF WOODS:** We're now in a situation again in CBDs where for large buildings the basement is the entry point, the common point - - -

**MR KRISHNAPILLAI:** MDF.

**PROF WOODS:** - - - and somebody has done a deal with the building owner to wire up the duct and provide the network service. Putting them aside then, because there is a market emerging - so we are talking small business and we are talking residential in this context, or are you thinking only a small business where there's sufficient load, like data and things, to warrant it? Or do you envisage this extending down to residential levels?

**MR KRISHNAPILLAI:** The suggestion is purely that maybe customers need to be able to have greater choice in terms of who provides that service for them. So you could actually have a third party who manages that facility on your behalf.

**PROF WOODS:** But how, in practice, would that be achieved? Perhaps for greenfields new suburban development there may be a choice of supplier, but presumably that would be decided by the developer, rather than by the individual household. But for the vast majority of the homes already there the wires are already up. I'm just not quite sure how that works in practice. What do you envisage happening?

**MR KRISHNAPILLAI:** All it would be would be that our customer actually has a bit more choice in terms of who maintains or provides those services further up the network chain.

**PROF WOODS:** But does that mean that they purchase the ownership of their copper pair back from Telstra, and therefore then exercise that control? Or are you suggesting that somehow Telstra just write off the value of that investment?

**MR KRISHNAPILLAI:** Some would argue they've been doing that for 80 years, but in terms of the age of the copper network, certainly there's - and this is the same argument that we went through much earlier on, when Telstra said that they had to retain control of copper networks within property boundaries. That was a long, fought-out battle that took a long time to get through. I don't know, necessarily, that

there's an easy answer; what we're suggesting is that some more creative solutions may be appropriate when you start looking at who has control and who has ownership of those copper cables.

**PROF WOODS:** I understand the underlying point, but if, in any subsequent submission to us, you could elaborate on how there might be some practical manifestation of that, and what the implications are for the value of various organisations - particularly, obviously, Telstra on its balance sheet - that would be helpful. The principle, I think, is able to be comprehended.

**MR KRISHNAPILLAI:** Okay.

**PROF SNAPE:** Professional arbitrators - and I must say that our questioning on these, we're finding them interesting suggestions, so we're trying to tease them out rather more on a number of these points. It seemed to me that professional arbitrators are probably most suited - by that we mean a person who is a specialist in arbitration, rather than in what is being arbitrated - that is probably best where it's a zero sum gain; that it doesn't have implications beyond the parties between whom the arbitration is occurring.

You wouldn't, for example - I don't know how we keep off the labour wage area - but you wouldn't want to have a professional arbitrator sitting between the Reserve Bank and the Treasury, and setting interest rates, presumably, or someone who didn't know anything about the economics, if you like, or the full ramifications for the economy of what they're doing, because they're going to have efficiency effects as well as just distribution effects. If the matter is just a matter of distribution, it's between you and me and no-one else is being affected, then a professional arbitrator is probably the - that's their comparative advantage. But when there are efficiency effects going on, then probably you need to have specialist knowledge in the effects of what you're doing.

The problem of professional arbitrators may be that there might be quite inconsistent decisions that are having efficiency effects, or there are efficiency ramifications, "I want 10, you want one." There may be very, very significant effects upon the efficiency, the development of the industry, etcetera, etcetera, etcetera, that come from setting it as near what you want, rather than what I want.

Do you think that the professional arbitrator, which would have to have the knowledge of the efficiency effects, the industry effects - and, really, it's not just an arbitrator; you then to have a huge amount of knowledge, much of which is currently within the ACCC, or they're trying to build up.

**MR KRISHNAPILLAI:** Potentially within the ACCC - - -

**PROF SNAPE:** Yes, well, even somewhere rather than with a professional arbitrator.

**MR KRISHNAPILLAI:** Maybe I'll explain that in more detail and clarify where that's come from. Clearly, Macquarie, along with the rest of the industry, has been involved in a number of arbitrations, and continue to be so within the telecommunications industry. That's, I guess, symptomatic of the last two years in this industry; there has been a very large number of arbitrations, none of which have really come to fruition. So in a very practical sense, what we're saying is, "Let's have a look at what's actually happened in the last three years and see if there are ways to improve that." One of the observations we've made, quite clearly, is that it has taken the ACCC a very, very long time to get on top of the technical detail in terms of the telecommunications industry.

It is also, I guess, fair to say that the ACCC hasn't had a great deal of experience in arbitrating complex commercial decisions like this in the telecommunications industry, and really it could be argued that the ACCC was not set up to do so; it's not their core function. The people who are selected as commissioners, or even at the staff level, are certainly not selected as arbitrators, they are selected for a whole range of other skill sets that are more appropriate to their role and function.

So having observed all that, and having been through a number of arbitration processes with the commission, we decided to have a look at, well, is there another alternative. The alternative that we've put forward there, in our view, will improve the situation for a number of reasons: (1) you don't necessarily have to have an arbitrator, as you pointed out, who knows nothing about the industry. In fact, that may well be well be an advantage, but in many cases it will be a disadvantage. You potentially would be better off having an arbitrator who is, in fact, an expert in the industry, who does actually understand quite a deal about the telecommunications industry but who also has recognised arbitration skills. So it doesn't have to be an either/or situation.

What we're suggesting is that the delays and speed in terms of getting to a resolution of arbitrations is partially as a result of the inability of the body that is arbitrating to come to a decision effectively, and maybe part of the reason for that is that they don't have the skill set, and maybe we should have a look at having professional arbitrators to assist in that process. It's not meant to be a criticism of the ACCC. As I said, it's reasonable to say that they've been deluged with arbitrations in the last couple of years. That's not their fault and it's certainly not helping in terms of getting results. What we're suggesting is that maybe rather than criticise, if you like, the ACCC in terms of results, let's have a look at getting around that problem by improving the ability of arbitrators professionally to come to some sort of resolution.

**PROF SNAPE:** What about finding ways, in fact, of putting pressure on the parties, pressure that would apply to both of the parties symmetrically to, in fact, negotiate a solution by - - -

**MR KRISHNAPILLAI:** And maybe that's my definition of what a professional arbitrator would be able to do or bring to the party, because they would certainly need

to have some sort of professional mediation skills as well. It would bring the parties closer together and put some incentives in place to come to a closer resolution in a timely time frame.

**PROF SNAPE:** Have you given any consideration to what incentives might be put on the parties to negotiate. Flippantly, I underline flippantly, at a meeting recently I suggested we could say that both parties would go to gaol if they didn't reach a solution in three weeks.

**MR KRISHNAPILLAI:** You'd have the entire industry in gaol by now. You realise that, don't you?

**PROF SNAPE:** I suspect we wouldn't. I suspect we'd have a whole lot of negotiated agreements, but obviously that is not a - and I underline flippantly because - anyway we'll leave that on one side. But are there, in fact, mechanisms which one could, in fact, invoke to secure that? Fines, of course, are probably not appropriate because if there's a very large and wealthy party on one side and a small and fragile one on the other, then it's obvious it's not a symmetric pressure. So I'm trying to think, can you think of ways of, in fact, expediting this process by bringing the negotiations to conclusion by some sort of symmetric pressure on the parties?

**MR KRISHNAPILLAI:** I mean, that is a very common misunderstanding about the telecommunications industry that there is, in fact, any real potential for real commercial negotiation, because the reality is, where one party has something to give away and the other parties need to gain access to something, it's really very difficult for the party that - in this case Telstra, is, in effect, giving away access to its network to actually give up in terms of the negotiations. At the end of the day that's what they have to do. So there is no real commercial negotiation where both parties have something to gain in terms of a resolution. So the way - - -

**PROF SNAPE:** I'm not sure on that. I mean, in many areas there will be a gain for Telstra to be having extra facilities using their, say, local loop or the extra revenue. They get part of the revenue through the charging. They may, in fact, choose to be supplying that - want to supply that particular thing themselves or they may - other parties may - they may be prepared to let other parties pay them. If other parties can pay them more than it's worth for them to supply it themselves, then it's good business for Telstra. So there must be a whole lot of areas in which, in fact, commercial negotiation could occur. The question is: at what price?

**MR KRISHNAPILLAI:** The question is whether that, in fact, has occurred; and, I guess, the evidence is that it hasn't. So you're right, that is potentially one business model that Telstra could have pursued - - -

**PROF SNAPE:** And it has never pursued this?

**MR KRISHNAPILLAI:** As a fully vertically-integrated telecommunications company, the philosophy has been quite consistently that they will be all things to all

people and, therefore, will continue to be the retail and wholesale arm as much as they possibly can. Again, that, in my view, is a recognition of the reality of the outcome in the last couple of years. You're right; in theory, that could have been a potential outcome. I don't believe that has been the practical outcome.

**PROF WOODS:** In evidence yesterday, Telstra were outlining their development of some separation between the network, which is sort of headed by their wholesale sales arm and then their retail services. Does that give you some comfort that increasingly you will see a change in outcomes from the negotiation process?

**MR KRISHNAPILLAI:** If I had the documents with me I'd pull up the same rhetoric from three years ago because we've heard the same story for the last three and four years. To me that is not a change in philosophy whatsoever. The wholesale arm of Telstra has behaved in that way for the last three to four years and has said consistently that we are working towards separating the wholesale and actually aggressively pursuing wholesale opportunities.

Again, I'd like to point to the practical real outcomes, rather than what people necessarily say. In terms of wholesale products, for example, Telstra is being quite aggressive and quite effective, say, for example, in CDMA products, because there's an incentive there for them to start selling that product through other retail arms. They haven't been aggressive in areas like the local loop.

**PROF SNAPE:** You posed the one area in which they - one area in which they may have been doing what we're talking about at the moment was in trench digging, in NDC, isn't it?

**MR KRISHNAPILLAI:** Yes.

**PROF SNAPE:** - - - which they have hived off as a separate company or a separate arm and which, in fact, does contract with others. So that's one - it's not exactly electronics as such, but it is one area where they've gone in that area. But you're saying that there aren't any others?

**MR KRISHNAPILLAI:** Again, I mean, I point to the evidence of the number of arbitrations that are currently in existence within the ACCC and the base level of what they're actually dealing with, which is local loop access generally, or data access or those sorts of things. If, in fact, we were seeing an aggressive wholesale Telstra then we wouldn't have anywhere near that many arbitrations in place. We certainly would not have had an access undertaking posted in 1997 by Telstra which had a headline figure of 4.73 cents a minute, which after two and a half years of exhaustive assessment by the ACCC has come down to a 1.5 cents headline figure.

That is symptomatic of the approach Telstra has taken. You put in an incredibly high ambit claim; after a number of years of assessment and fine detailed assessment by the ACCC they have come to recognise that was an ambit claim and they came to a figure which was less than a third of the figure that was originally put

forward. That is symptomatic of the real outcome in terms of Telstra's approach to wholesale level; not in theory or the rhetoric that Telstra's put forward, but the real outcome.

**PROF WOODS:** Has some of that pricing change been due in part, though, to different loads going across those networks to change the pricing per minute?

**MR KRISHNAPILLAI:** If anything, it should have been even more dramatic then, if that's the reduction.

**PROF WOODS:** You mention in part that the ACCC should have power to impose an access undertaking on a major supplier of declared services and to enforce pricing under that undertaking in order to ensure that its application is nondiscriminatory. Is another way of getting to a similar thing to post the outcomes of arbitrations? I mean, recognising how few we have progressed to date but assuming that something comes out the other end of the process, that if you were posting those outcomes, is that achieving a similar sort of result?

**MR KRISHNAPILLAI:** It's certainly the outcome that most other jurisdictions throughout the world have attempted to do where you did have some sort of posted tariff pricing, particularly with bottleneck services. Australia is fairly unique in the sense that we haven't done that, and maybe that is one way of improving outcomes in terms of bottleneck pricing.

**PROF WOODS:** Do you have any preference between the two models?

**MR KRISHNAPILLAI:** I think they both have their advantages - and if you wanted to comment on that Geoff.

**MR ROBERTS:** The difference is, if you look at the current process that's going on with the unbundled local loop pricing, you see Telstra's put a price in the market, and the ACCC has come out with a discussion paper, which talks about that how they view that price might be somewhat different to the Telstra price. Now, we'd see that as a better model than going down an arbitration process and then posting that arbitration price. The problem that the ACCC has is that it doesn't have any power to enforce the outcome of that discussion paper, and in fact, it may even be risking an ADJR-type action in an arbitration or something, if it's considered that it might prejudice the issues in some way.

There are some issues there, in terms of their ability to actually go and set a price. I guess we would prefer that the ACCC could take the initiative, not on every price, not on every access price, but on key bottleneck service prices, to actually set up and enforce undertaking-type of provisions.

**MR KRISHNAPILLAI:** Because the ACCC is going to be hamstrung here, once again, in terms of unconditional local loop pricing.

**PROF WOODS:** In terms of that key point of enforcement, at the moment the arbitration process leads to an outcome, and so by posting it, you're sending signals then to all others.

**MR ROBERTS:** They're similar outcomes. It's really just a question of how it's initiated: if the ACCC has the power to initiate it, or if a dispute has to spark it off. In the case of the unbundled local loop, you have dispute.

**PROF WOODS:** The next question on that, then, is: if you are posting it, does that mean that the likely outcome for some, presumably larger end, competitors who are access seekers might be less than they would otherwise get in a confidential bilateral arbitration process?

**MR KRISHNAPILLAI:** That's always the danger with relying on arbitrated outcomes, because the unique circumstances will be different between the bilateral arrangements, so, yes, potentially.

**MR ROBERTS:** I guess the question there is: what are the efficiency considerations associated with discriminatory pricing of bottleneck services? I guess if you look at how other jurisdictions have come up with the sort of solutions they've come up with, to say that, obviously there are costs associated with nondiscriminatory pricing, but that in terms of fundamental building block, bottleneck services, the benefits of that are outweighed, the advantages that you may get through discriminatory-type pricing.

**PROF WOODS:** No, I mean presumably for economic efficiency, you want discriminatory pricing at the ultimate retail end.

**MR ROBERTS:** Absolutely.

**PROF WOODS:** But if you're locking in a common component at the bottom, in fact you're reducing your opportunity for achieving that.

**MR ROBERTS:** Yes, that's right. That's certainly a cost of having nondiscriminatory pricing, but it's a question of balance.

**PROF WOODS:** On balance, you're saying that that's a preferred course.

**MR KRISHNAPILLAI:** Yes, well that's right. Clearly, it depends how far you're up the value chain, and in terms of how close you are to the fundamental bottleneck, as to where that discriminatory pricing is. If you're the provider of a fundamental building block, a very low-level building block, then you've got no way of knowing the extent to which that discriminatory pricing at the end consumer - it might be more efficient, in any event.

**PROF WOODS:** Would you like to address that issue further in any supplementary submission - - -

**MR ROBERTS:** Yes, sure.

**PROF WOODS:** - - - that you put to us, and give some particular examples of how that may manifest itself, and what the trade-offs are?

**PROF SNAPE:** And as we said yesterday to a participant, it would be helpful if you can emphasise the efficiency versus the distributional effects of the policies.

**MR ROBERTS:** Yes.

**PROF WOODS:** You make reference to a specific vertical-integration dividend. I don't want to go into it in any particular detail; but how would you calculate such a thing and, given that it is organisationally specific at any one time, presumably it would change its value depending on legal structures of organisations, commercial realities. It's an idea, but I don't understand how - - -

**MR KRISHNAPILLAI:** It's part of, I guess, the general theme of giving the ACCC a little more latitude, in terms of how it assesses pricing. Maybe it needs to be able to take more latitude of intangibles. Traditionally, when you value most products in most businesses, you are able to value things like good will, or intangible elements. Being a vertically-integrated supplier, there is a very tangible benefit in offering a bundle of services. If that can be included as part of the potential advantage or in terms of the industry, that would be a helpful way, I think, for the ACCC to include it as part of their pricing.

**PROF WOODS:** I could imagine the length of debate on what that dividend would constitute, and the delaying processes rather than - - -

**MR ROBERTS:** Not necessarily. If you look at the existing legislation, it has a similar provision, but the counter-argument, if you like, in terms of scope and scale economies. Really, it's just saying, look, there's a counter-arguments to those, but there are costs borne by the industry generally associated with a vertically-integrated supplier, and to offset those benefits the ACCC should have the ability to pass that on.

**PROF WOODS:** Moving on to the TAF, you say it has become ineffective. You used the word "veto" earlier. Is that the core argument that - - -

**MR KRISHNAPILLAI:** I might clarify. When I say "become ineffective", I think it always has been ineffective. It has never been effective as a body. In terms of veto, yes, I think that's the reality of - - -

**PROF WOODS:** Because of the consensus approach that they achieve.

**MR KRISHNAPILLAI:** Yes. Again, rather than relying on those sort of choice of words, maybe if we just look at the actual outcomes. The TAF has never yet made a

recommendation on a service to be declared. That is a dismal failure for a self-regulatory body, to have been unable to agree on any service, even ones that, in our view, were as self-evident, say, something like local calls, which clearly was going to be declared by the ACCC to any impartial observer of the industry.

The reality is - again getting back to the incentive discussion we had earlier - there is no incentive for Telstra to accept, through the TAF processes, that these things are inevitable. They will delay that process, and use it as simply a vehicle to delay the process until it is then ultimately referred to the ACCC. As I said, getting back to what's actually happened, in a practical sense rather than rhetoric, is that has been used as a very effective vehicle to delay any declaration decision. So the local call decision - as I said, we referred that to the TAF in March of 97. The final decision by the ACCC was July of 1999, and we've yet to see a final decision, in terms of local call pricing.

That's over three years, and a good third of that delay timetable was when it was sitting around the TAF being bounced around by members of the industry, who were simply arguing the case amongst themselves - and fairly futile arguments, I must say, having been involved in them. We were never going to come to an agreement, clearly. We all knew that. We were just going through the motions before it was then kicked off to the ACCC. Why don't we eliminate that superfluous step and go straight to the ACCC, or put some incentives in place for a body like the TAF to actually come to some agreement?

**PROF WOODS:** Is ACIF demonstrating different outcomes?

**MR KRISHNAPILLAI:** ACIF demonstrates quite different outcomes, mainly because, I think, of the commercial incentives that are there. There are many ACIF issues. As an example, technical standards. In fact, as an industry, there is a good reason for us to have common uniform standards, say on fax machines or whatever the case may be, because it helps us as an industry in terms of selling and managing our operational processes, etcetera. There is commercial incentive for us to work together and get to an operational code, where we have uniform processes, uniform protocols where you interconnect with each other, all those sorts of things.

When we come down to commercial issues - like access, and access pricing - there's actually very little incentive to have a uniform, industry-wide approach to that. So they're two very, very different areas, and ACIF, as I said, has been successful, in my view, because they're not commercial, or pure commercial issues. They are operational, or consumer, or technical issues.

**PROF WOODS:** Just tidy-up one from me. Record-keeping rules, you talk about, "have not been enforced due to apparent legal impediments". Can you elaborate what you mean there?

**MR ROBERTS:** My understanding of the record-keeping rules - and I haven't been part of the process - for some time associated - but just discussing with the

participants, apparently agreement has been reached in terms of the nature and form of the record-keeping rules, but it's gone off to some legal process, in terms of drafting some regulation or requirement or something - - -

**PROF WOODS:** We'll chase that up.

**MR ROBERTS:** - - - and it just stalled, it just stopped dead for about 15 months.

**MR KRISHNAPILLAI:** I think what's important there is, whatever the reason, it's three and a half years since we've had the introduction of the legislation and yet we've not seen any end result. So for three and a half years we've had no outcome. Either way, something is not right.

**PROF WOODS:** Is there anything you want to raise with us that we haven't already explored?

**MR KRISHNAPILLAI:** No, I think that's probably fine.

**PROF WOODS:** We much appreciate the evidence you've presented and the thoughtful manner in which you've explored a range of ideas. If you could tease some of those out for us a little further in a subsequent submission, we would be very grateful. Thank you very much.

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**PROF WOODS:** If I can call forth our next participant from the Consumers Telecommunications Network. Could you, please, identify yourself by name and your position in the organisation?

**MS CAMPBELL:** Thank you. My name is Helen Campbell, and I'm the executive officer of the Consumers Telecommunications Network.

**PROF WOODS:** Thank you. We have your submission before us, but do you have any opening comments you wish to make?

**MS CAMPBELL:** In many respects there were aspects of the commission's discussion paper that we did not feel in a position we could address in any detail.

**PROF WOODS:** That's fine.

**MS CAMPBELL:** The nature of many of the commercial arrangements referred to are of a confidential basis and, therefore, as consumers, it's often not clear to us what the issues are that have been negotiated and how the particular outcomes have been determined. In relation to that, we have made some recommendations in our submission to the inquiry, about ways in which the ACCC's procedures might become more transparent or more inclusive of consumer perspectives.

**PROF WOODS:** Are there other further comments you wish to make?

**MS CAMPBELL:** One other thing I might draw your attention to is, if you look at the legislative arrangements, there's a great reliance on the concept of the long-term interests of end-users. We're not sure that this concept has really been clearly defined, and certainly in the ACCC's approach to many of those decisions there has been a tendency to make a decision about what is said to be in the long-term interests of end-users, without actually consulting end-users about what their own best interests might be. I think the application of that principle could be developed in a more inclusive manner.

**PROF WOODS:** Have you put forward or at least started to formulate, yourselves, how you would define the long-term interests of end-users?

**MS CAMPBELL:** Well, yes, I think in a general sense we can be pretty clear about what we believe our long-term interests are, and they are about choice and about quality and about price. How you get the right combination of those three things in the market, I think, is something that we can say, in a general sense, we're all heading in the right direction - but when you get down to more specific policy initiatives you can sometimes find that there are divergences.

**PROF WOODS:** But have you submitted a set of guidelines or advice to the ACCC in that respect, to help them in their deliberations?

**MS CAMPBELL:** No, that's true. We have never been invited to do so, and I haven't provided unsolicited advice to the ACCC; that's true.

**PROF WOODS:** I'm sure they'd welcome it. I notice that - and I separately visited ACIF and had some very useful discussions with them, and they were describing to us the role of the various parties, including the consumer representation. On there you feel that it is a very inclusive and fairly transparent process?

**MS CAMPBELL:** The ACIF processes for the making of codes of practice and technical standards are very open and very inclusive, operate on a consensus model and do so very successfully. Our concerns the other end of the process: having got those words agreed to and on a piece of paper, how then do we encourage the industry to then voluntarily comply, which is the essence of the underpinning of the ACIF processes? We do have concerns about the rate of sign-on to codes of practices being very low. That is why we've got a readiness to come to the table and agree about what those codes of practice should be. There isn't the follow-up, where they say, "Yes, and now I agree that my company will abide by these codes." That part of it, the implementation part, really is struggling at this stage, I think.

**PROF WOODS:** Is that limited to any particular areas you would like to draw to our attention or is that a general observation?

**MS CAMPBELL:** What we have found is that some areas get more ready acceptance and implementation than others, and, noticeably, where these are operational or network matters, it seems to be easier to reach agreement and easier to get the whole of industry complying. That's been less the case in relation to consumer protection codes.

**PROF SNAPE:** Have you given any thought, as an organisation, to the implications of technological convergence?

**MS CAMPBELL:** Yes, we have. Our own charter for ourselves puts us in the box labelled telecommunications and we often, in terms of our own internal policy development processes, query what that boundary might be and what things might or might not be included. While we might take on looking at a wider range of communication devices, not all of them meet the definition of "telecommunications". For example, we might acquire a more close interest in the application of set-top

boxes in our homes, which would deliver entertainment, which is a one-way process essentially, as well as providing some two-way processes.

We've not wanted to get into the area of content regulation. We do still see, despite the developments in technology, a distinction in the ways in which content and carriage are regulated, and we feel that that's appropriate for our organisation.

**PROF SNAPE:** Nevertheless, on the carriage side of it, the convergence with Internet, etcetera, and Internet converging to broadcasting, etcetera - - -

**MS CAMPBELL:** Well, that's right. As I said, to the extent that those things might lead us into a world where a device was doing more than one thing, and one of those things was perhaps an entertainment or a broadcasting application and the other things were the two-way communication, which is the distinctive feature of a telecommunications device, that's certainly something that we would be involved in. We are engaged in matters concerning carriage of Internet services, for example.

**PROF SNAPE:** Probably where you're sitting, or standing, is looking at how it's moving from the telecoms across towards the broadcasting. What I was thinking of was, from the broadcasting side, how that is moving across into the telecoms side of things.

**MS CAMPBELL:** Well, yes. Which direction it came from wouldn't have an impact on whether we were engaged with it or not.

**PROF SNAPE:** I notice that amongst other groups that you represent are the indigenous groups.

**MS CAMPBELL:** Yes.

**PROF SNAPE:** You, I think, may be interested, you may have already noticed, that in the broadcasting report which the commission recently undertook and reported on, there's a substantial section there on indigenous broadcasting, in recommendations there, which in fact might have implications for your organisation as well.

**MS CAMPBELL:** That's certainly something that I might take your advice and have a read of. I'm not familiar with it at the moment. The main message we get from, particularly, remote Aboriginal communities who are associated with us, is that they urgently need improved provision of payphones.

**PROF SNAPE:** Yes. It may be that payphones can perhaps be provided in a variety of ways.

**MS CAMPBELL:** Yes, I don't know if we can combine it with broadcasting, though.

**PROF SNAPE:** It's the nature of the payphone that I'm talking about, not necessarily a fixed-point phone.

**MS CAMPBELL:** Indeed. I mean, one of the suggestions we've made in relation to communities which move on a seasonal basis is that a solar-powered satellite-operated payphone may be a useful item for them to take with them as they go around. But, in a practical sense, it is about getting the basic ability to talk to each other provided reliably to people in remote areas, who often have extreme weather conditions to deal with. We don't feel that, in many respects, enough attention is being given to really meeting the requirements of the universal service obligation for some of those communities.

It is terrific and it's exciting and it's wonderful to think about how remote Aboriginal communities might take on broadcasting and might be able to use these sorts of facilities to provide better education and health services in remote areas and so on, but we can't overlook the fact that quite a lot of Australians have very inadequate access to ordinary telephone.

**PROF SNAPE:** Our point there is that once you're talking about something which is potentially interactive, coming down from a broadcast, then of course the phone at the other end is where the interaction is going to occur. There are a lot of, I think, relationships here which probably could be quite exciting, in fact, through the convergence of the technologies; and I think there may be some ideas in that broadcasting report which you may wish to take on board.

**MS CAMPBELL:** Yes, I'll have a look at it.

**PROF WOODS:** You suggest in part that the reach of telecommunications regulations should extend into customer premises equipment. I mean, that's chasing down, not only through the local loop but into the house, and into what's happening at the other end of the line, in terms of whether it's a fax machine or a modem, or something.

**MS CAMPBELL:** Yes.

**PROF WOODS:** Why is it necessary to extend telecom regulation down into what is a choice by consumers as to how they'll utilise the facility, and through quite an active market in choice of product?

**MS CAMPBELL:** What we need is the convenience of a one-stop shop. We're busy people. On the whole, our telephones aren't very interesting, but they're very annoying when they're out of order. The first thing that happens when your phone is out of order in your house, is you have this conversation with a technician, who says, "Well, is it the handset or the line?" and you go, "What can I tell you? I'm the consumer. It doesn't work, that's what I can tell you. It doesn't work." They'll say, "Well, we can send somebody out to check the line, but you know what? If we get

there and we find it's actually the handset that's out of order, it'll cost you \$150 for the call-out and you'll still have a non-operational phone."

The customer is not a fault detective; the customer is not in a position to verify what bit it is, okay? Perhaps I proceed with getting my fault repaired but I'm not satisfied with the quality or the timing or whatever, so I might go along to the Telecommunications Industry Ombudsman, which is the complaint handling authority for the industry. "Well," says the ombudsman, "you can come in the door if it's the line but not if it's the handset." Where do I go if it's the handset? Well, we've got a federal jurisdiction over telecommunications, the bits you plug in there; you could try your state Department of Fair Trading, and you'll find that at state level the knowledge of, and understanding of, telecommunications products for the home consumer is not good because they're not in the business of doing telecommunications things. It's only recently that the disconnect between the line and the instrument has emerged, so you don't have other places set up in such a way that they can cope with it.

So the consumer is left in the awkward position of being the amateur fault detective, and then finding that an incorrect guess about at what point the fault occurs can be expensive and cannot lead to the resolution of your concern. What we're saying is it would actually be efficient to have one place that the customer could go to, to deal with the thing that is normally referred to as the phone, regardless of what kind of thing - you know, you've brought the plug into it at your end - but you know that you've got a regulatory regime that actually covers all of those things. The customer is not in a position to be able to understand and actively pursue differences of remedies, depending on at what point, for example, a fault has occurred.

**PROF WOODS:** I guess, increasingly though, as there is greater service opportunity that one can get from access to the local loop, that you're going to be looking at faxes, you're going to be looking at modems, you're going to be looking at boxes that then allow you to do videostreaming, and the like.

**MS CAMPBELL:** Yes.

**PROF WOODS:** That seems to me to be a range of product that, in another respect, isn't a lot different from products that you plug into an electricity outlet, whether it's for television or for other things. Maybe this is a consequence of diversification of service delivery.

**MS CAMPBELL:** It may well be a consequence of diversification but it is not convenient for consumers. A particular recent example was the introduction of CDMA. Certain CDMA handsets were promoted as having the capacity to switch between analog and CDMA; in fact it didn't work. Customers, particularly those in regional areas, who live a great distance from commercial centres, reported to us multiple trips back and forth; take the handset back to the shop. "No," says the shop, "it's a perfectly functioning handset. It's the network that's got the problem." Take the handset home again, ring up Telstra, "No, the network is fine. It's the handset

that's got the problem." It's this kind of thing which is why we say it would be in our interests, and be efficient, to provide a unitary system that actually covered both the equipment and the network.

Interactive voice response is another example; it's not covered by anything. Is it in the equipment? Is it in the network? Everywhere we go and ask, they say, "It's not our department." As far as I know there's no regulatory coverage of interactive voice response services, at all.

**PROF WOODS:** You say, in part, that you'd like the ability to choose from a range of carriers, rather than have the carriers own geographically defined market segments. I'm not sure that they own geographically defined market segments.

**MS CAMPBELL:** No, that's right.

**PROF WOODS:** In the current arrangements people can put up networks if they wish.

**MS CAMPBELL:** Yes.

**PROF WOODS:** So what we're seeing is an expression of potential carriers making market judgments as to where and when they invest.

**MS CAMPBELL:** That's right, yes. And also looking at things like the development of tendering for the universal service provision in geographically defined areas. We would see that that might be a situation which might emerge, which would not be - - -

**PROF WOODS:** That still just swaps one carrier for another, though. I'm not sure that it gives you - - -

**MS CAMPBELL:** That's right. It doesn't give you competition.

**PROF WOODS:** It doesn't head you down that particular line that you are wanting to pursue there of - - -

**MS CAMPBELL:** If I'm in this market I have this carrier; if I go to a different geographical area I'll have another carrier; but in the end I'm still not getting a choice of carriers wherever I am, yes.

**PROF WOODS:** Whereas in CBD markets, increasingly we are seeing a range of multiple providers.

**MS CAMPBELL:** That's right. Although, as I put in the submission, the physical infrastructure based competition has really been very limited as far as residential consumers go. There aren't very many directly connected C and W Optus customers, and there's not likely to be a huge increase in that infrastructure duplication. We do hear - there's a kind of, sort of, background noise of cargo cult in the industry, and

we're always hearing about the new next best technology which is going to arrive and provide something; a new alternative that's going to be different and provide better facilities in some ways. But in the end, in fact, the twisted copper pair has been remarkably enduring.

**PROF WOODS:** Hopefully.

**MS CAMPBELL:** It's pretty good, and it's getting better in terms of what the technology has developed for what can be put down your existing line; and it certainly seems to us to be the way that it's going, rather than a big roll-out of, say, wireless in the local loop, or some other technology such as - - -

**PROF WOODS:** Presumably, the customer's basic concern is access to a range of services, and is to a degree a bit neutral about who is the owner of a particular facility through which that is carried.

**MS CAMPBELL:** Yes.

**PROF WOODS:** Provided you can resolve access pricing, maybe that's better than pursuing some very inefficient duplication in a lot of markets, of particular carrier service providers.

**MS CAMPBELL:** I think that that's absolutely right. In many respects the consumer is going to be completely indifferent to the brand of the thing. They are going to care about the quality and reliability of it and, to some extent also, the technology. People in Australia, for example, have great concerns about digital mobile electromagnetic emissions; and if you said, "What we're providing in your area now is it has to be this one," because that's the one that won the tender, for example, there would be some people who would have concerns about that. So it is also about providing people choices of the delivery technology in that way.

**PROF WOODS:** Although you did pursue the suggestion of consumers acquiring and maintaining their own access facilities if they so wish. How would, in practice, you see that occurring, that each individual household would own the line back to the telegraph pole?

**MS CAMPBELL:** Yes, it's got some real problems in terms of - well, you can get to your own boundary all right, you can control your own land, but then, after that, if you're going to have to be looking at what goes down the street and so on. We haven't got an articulated position that says, "This is what we think is the answer." I mean, we raise that as one of the things that we contemplate. It's particularly relevant if you look at some of the people in rural areas, where the house is actually a very long distance from the boundary of their property, and where there has been years of less than entirely satisfactory provision of service by Telstra. Many people are feeling, if they could just actually have control of that themselves, they would be better off.

How that would efficiently translate to a residential application in a built-up urban area - I don't know that we could actually get something that would improve the situation, in terms of the other needs of digging up - what's involved in digging up a street, you know. You wouldn't want everybody having a go individually at it, would you?

**PROF SNAPE:** Could I refer you to recommendation 5, which you have, which is:

More comprehensive and publicly accessible mechanism for measuring and reporting on the price and service variety and quality impacts of competition in telecommunications should be developed

etcetera.

I should say that the Productivity Commission itself has published a number of reports of international benchmarking, etcetera, of late, in the last few years, which have been, I think, going some of the way along this line. Some of those would show just how difficult it is, in fact, to be making international comparisons, etcetera.

**MS CAMPBELL:** Yes. I'm not sure that we would find international comparisons particularly useful for - - -

**PROF SNAPE:** Well, I mean, it may show what's feasible rather than what is - if you're making international comparisons of prices, etcetera, you get an idea of what's feasible rather than what you just might like in a vacuum.

**MS CAMPBELL:** Yes, but I can't ring up Vodafone today and say, "Can I have the price that's available in Israel?"

**PROF SNAPE:** No, quite so, but you can in fact, as an organisation, say, "The evidence is here that the Australian industry is not performing in these areas," and you can then base the organisation's position on substantial evidence. That, in the longer term, might be much more use than trying to get the price that's in Israel. The Australian Consumers Association does some of this too, I think - - -

**MS CAMPBELL:** Yes.

**PROF SNAPE:** - - - but I would have thought that this might be a role for your own organisation. You receive some funding?

**MS CAMPBELL:** We're funded by the Department of Communications, through the licence fees.

**PROF SNAPE:** So you're receiving government funding. I would have thought that what you're saying here is, or what you're calling for here is, in fact what, in part, your own organisation might do.

**MS CAMPBELL:** Well, first of all, to say - we do have doubts about the validity of international comparisons because we recognise that the Australian continent has some unique - - -

**PROF SNAPE:** If I may say, this is precisely what the Productivity Commission reports have been examining.

**MS CAMPBELL:** Indeed.

**PROF SNAPE:** So, that's a very useful input into anything that you wish to do on this. I mean, the work that has been done by the group on these international comparisons, etcetera, is leading edge on a world scale. If you want the best comparisons that have been done in a certain areas, with the best methodologies, then it's been published by the commission, it is available in a number of areas.

**MS CAMPBELL:** Absolutely. This recommendation actually relates to: how can we help consumers make informed choices today, in the Australian market? So this is information which would enable us to compare the pricing offerings of the different carriers, to look at what the quality differences are; to be able to shop more wisely in Australia today. It is a very valid point: why don't we do it? One of the reasons that we don't do it is that we have been threatened with legal proceedings against us whenever we have attempted it. So we are not in a very strong position to do that.

**PROF WOODS:** By a particular carrier or - - -

**MS CAMPBELL:** Yes.

**PROF WOODS:** By a particular carrier?

**MS CAMPBELL:** By a particular carrier, yes. We're not in the same position as a regulator, in terms of how we could be protected from that kind of risk.

**PROF SNAPE:** I think that ACA - in this case the Consumers Association, not the other one - - -

**MS CAMPBELL:** Yes.

**PROF SNAPE:** - - - I'm sure, also have experienced similar threats, and I don't mean just in telecommunications, I mean in other areas of their - - -

**MS CAMPBELL:** I'm sure that that's the case but - - -

**PROF SNAPE:** They manage to get around that, one way or another.

**MS CAMPBELL:** Look, the recommendation is that the regulator provide consumers with comparable information about price and quality of telecommunication services. That is not something that's easy for a consumer, either individually or as a consumer group, to do; and our recommendation is that that be taken on as part of the regulator's role. Of course, the Communications Authority has reporting obligations under section 105 of the Telecommunications Act, and that goes part of the way towards providing us with a picture of some features of some carriers, but we would actually like to be able to get access to more transparent, directly comparable information. Of course, the Communications Authority doesn't touch on the matter of price.

**PROF WOODS:** You make a point of some concern as to what effect unbundling the local loop might have on the transmission of 000 calls.

**MS CAMPBELL:** Yes. I use that as an example of the way in which, for consumers, quality is important as well as price. You could get an unbundled local loop which produced very much cheaper phone calls but we haven't, at this stage, been able to get an assurance like - would it, nonetheless, provide us with the kind of quality we need to ensure that a 000 call will be transmitted, in the light of what those new changes might be?

It's those kinds of issues that - well, I won't go into the detail of what's required in terms of 000 at the moment but - - -

**PROF WOODS:** You need battery backup and - - -

**MS CAMPBELL:** That's right.

**PROF WOODS:** Yes.

**MS CAMPBELL:** You need a redundancy system.

**PROF WOODS:** Yes.

**MS CAMPBELL:** It's an example of, we say - price is not - the consumer isn't just automatically going to always just want the cheap one, we also want things that will have certain functionality requirements for us.

**PROF WOODS:** But is there any suggestion that that wouldn't be provided under this arrangement, or are you just seeking confirmation and clarification?

**MS CAMPBELL:** Well, as far as we can gather, nobody has actually thought about it yet, which is somewhat alarming.

**PROF WOODS:** We were having discussions with an alternate network provider, and they were very aware of the need, if they were going to provide telephony, that they had all their redundancy, battery backup and the like, for the very reason of the

telephone being the communication of last resort in an emergency. So, I mean, there is an awareness in the industry of that requirement.

**MS CAMPBELL:** Right. It wasn't apparent at the Emergency Services Advisory Committee.

**PROF WOODS:** Thank you.

**PROF SNAPE:** You make mention of the ACCC being disappointing in its lack of activity on price control - there may be constitutional problems there - and truth in advertising.

**MS CAMPBELL:** Well, what I was referring to with price control is the current price-capping arrangements. If there is a constitutional problem, then it's been persisting for some time.

**PROF SNAPE:** No, price-capping I take - - -

**MS CAMPBELL:** Yes. I mean, we have concerns because we would like to see, as the market becomes more competitive, an increase in that proportion of our phone bill which is discretionary, and a decrease in that proportion of the phone bill which is fixed. So, that is, we would like to have no line rental. If there is a component of our bill which is line rental we'd like that to be the smallest possible component of our bill; so that I am making choices about the amount of my telecommunications spend, rather than having an inevitable amount that's going to have to be on every bill.

Of course, line rental is one of the components in the basket that's used for price-capping purposes, and while in the more competitive areas per call prices have been able to drop, that means that the basket price overall has retained its meeting its obligations in terms of what it has to provide; but it has enabled - and the ACCC has allowed, and even approved - an increase in the fixed component of the bill; that is the line rental amount. We were very concerned about that, and we're also very concerned that we weren't consulted and, as far as we know, there was no consumer consultation about that, and it is disappointing. It is disappointing. It's the opposite of what we thought an increase in the competitive market and what a competition regulator would be doing for consumers.

**PROF WOODS:** Have you done the analysis to work out whether line rental is in fact covering the cost of line provision, because my understanding is in fact that line rentals may be significantly under the cost of line provision?

**MS CAMPBELL:** I have heard many things about this debate, and I certainly don't believe the consumer is in a position to sort out what the truth is. I don't know if anybody knows. If anybody knows it's Telstra. There is, of course, the argument that line rentals have been kept artificially low and that this has been cross-subsidised by putting that price on to the local call cost. Of course, if your competitors are going to

come and take your local calls away, then you're going to have to put up your line rental to cover it. From the consumers' perspective, we look at Telstra's profit margins and we look at Telstra's share price; and you know what, we don't think they've got a problem with money. We don't think we need to pay more to help Telstra out.

**PROF WOODS:** Do you have other - - -

**PROF SNAPE:** No.

**PROF WOODS:** Were there other matters that you'd like to raise with us?

**MS CAMPBELL:** I've made some comments about preselection and override and number portability.

**PROF WOODS:** Yes, I've read those, thank you; they were quite helpful.

**MS CAMPBELL:** You know I hope - is there something you want to pursue further? You know, you could be - - -

**PROF WOODS:** I mean, we have read, and you've spelt out, your particular recommendation on that, so I think - - -

**MS CAMPBELL:** It is the essential underpinning of getting a genuinely competitive consumer market, you know, just to be able to do that shopping around easily - you know, we haven't got there yet.

**PROF SNAPE:** You do attach a high value to preselection as such. Have you done research amongst your consumers on this?

**MS CAMPBELL:** No, we're not a research organisation.

**PROF SNAPE:** How do you get the information from the consumers? You're representing consumers.

**MS CAMPBELL:** That's right.

**PROF SNAPE:** Let me just say I'm one consumer and I have preselected something, and for an override to make international calls I only have to dial four numbers, as against my son, who's in England, when he has to dial back the other way, and does the same thing, and it seems to me he dials about 12 numbers before he gets to dialling anything that's - - -

**MS CAMPBELL:** Yes.

**PROF SNAPE:** So I wouldn't have thought that dialling four numbers, so that you can in fact shop around, or in fact switch at any point of time, to go from one supplier to another, was a very big burden for a consumer. I was wondering what evidence that you had from your members, the consumers, whether they find that preselection is such a big deal as compared with dialling four numbers.

**MS CAMPBELL:** It varies depending on household composition, so that the more people there are in the household, and the more different kinds of people there are in the household, the more important it is for the householder who's in charge of the bill making that decision, to be able to use preselect because they may find that other household members are not so good at remembering to do that override. This particularly applies where you have frail, elderly members of your household, where you have young members of your household, and, as I said, basically the larger household; because the smaller household the easier it is. If you're a one-person household, as you say, it's no big drama to dial the four numbers. So what we're looking at is a range of responses depending on the household size and composition. For that reason there's certainly a significant demand for preselect.

It could be that we could achieve this by having smarter customer premises equipment so that in fact you can put in your override codes at the customer premises equipment end, and that might mean, if there was a network difficulty with providing preselect, that would give you the same effect at the consumer end. That's not currently widely available in terms of the sort of phones that consumers are using at home at the moment, but it's a possible way forward. I think the essence of what we've got to say is we get very concerned about where neither is available; and often that information is not clear to the customer up front, and I think that's a concern.

**PROF WOODS:** Thank you very much.

**PROF SNAPE:** Thank you very much.

**MS CAMPBELL:** Thank you.

**PROF WOODS:** Appreciate your time.

If I can invite our next participant, the Australian Telecommunications Users Group, could you please identify yourself by name and by position in the organisation.

**MR HORSLEY:** My name is Allan Horsley and I'm managing director of the Australian Telecommunications Users Group.

**PROF WOODS:** Welcome to the inquiry, and thank you again for your assistance to the commission in its deliberations. We have received your submission and had the opportunity to go through it, and thank you for providing it. Do you have an opening comment you wish to make.

**MR HORSLEY:** Chairman, I thought there were a few comments worth making to put in context the ATUG position with regard to development of competition in the telecommunications industry. Our aim in life, quite frankly, having some understanding of what the telecommunications industry can do for the economy, is to encourage the further development of the industry, particularly to promote constructive interaction between players, which is a task of some significance; to focus on industry growth as a means of delivering benefit to end-users - clearly the objective of the Telecommunications Act - but also to promote growth as a means by which the players in the industry will get reasonable commercial return on their investments; a characteristic often forgotten.

We also think that there should be some effort made to focus the energies of the industry on creating opportunity and not preventing others from developing their businesses, and one could make some observations about that latter being the case in the past. Therefore, while it might seem a lofty objective, ATUG seeks to promote a

level of trust and mutual confidence across the industry to enable the development that's possible to take place at reasonable speed. We are particularly concerned at the delay in the development of the industry. I guess while putting some substance to that desire that we do promote mutual confidence and trust, I'd like to example something that recently happened at ACIF in the development of equivalent arrangements for mobile number portability where the discussions commenced on the basis of requiring carriers to test the capability of their networks to meet the equivalence criteria.

Commonsense prevailed after some couple of discussions, where people accepted that if carriers were prepared to certify the design capability and therefore the expected performance criteria, that would be accepted across the industry and one would only bother to investigate and test if there was a problem. That really brought everybody on side very quickly, but it required that concept of trust, that people would certify their capabilities.

It seems to me that style of approach is, I think, something that this industry desperately needs and we are looking to your commission's processes now to try and lift the interaction techniques of the industry to a higher level.

I suppose, just a couple of other points that I think worth emphasising. The communications industry basically provides a platform on which other people undertake valuable activities, an important characteristic of this industry. That will only come about if we have any-to-any connectivity, and it will only come about if the competitors in the retail marketplace, behind the scenes, agree to cooperate so that they can deliver to the customer expectations; that is, that there is a high level of interdependence and, given that circumstance, there is a need for what we would like to describe as management of the industry, which might be a better term than "regulation", in that it tends to indicate a positive developmental attitude, whereas "regulation" conjures up - certainly in some people's minds - a fairly negative, big brother, baseball bat approach to life.

Perhaps if I leave our comments in that regard. We are very anxious to see the industry develop further, we think that it's of benefit to end-users, to the carriers and to the national economy, but we certainly see that there's a need to develop some enhancement to the legislative framework, which brings about more rapid outcomes.

**PROF WOODS:** Thank you very much. Perhaps if we can explore some of the particular matters that you've raised in your submission. I notice what first attracted my eye on your first page is a statement that "Telstra was dominant"; the implication being, now no longer is?

**MR HORSLEY:** Well, I think what we're saying there is, in the supply of the fixed network services, there are now a number of providers, certainly to business customers, perhaps not so much to residential customers, but a business in the CBDs of the capital cities arguably has access to four or five or six different suppliers. The smart business will in fact take access to more than one of those suppliers, for

reliability or redundancy reasons. So I think, in some fields, Telstra can be said to have been dominant, but certainly in the access network across residential Australia one would argue that Telstra is still dominant.

**PROF WOODS:** On that page, also, you refer to those who "seek to thwart progress or the prompt development of an effective competitive marketplace". What sorts of things did you have in mind in that statement, in the bottom paragraph of that page?

**MR HORSLEY:** I suppose my experience is largely at activities of ACIF, as a participant, perhaps in activities of the ACA and the ACCC as an observer, but there has been a series of examples of where dominant significant carriers come along to these forums with an apparent expressed desire to delay outcomes, and probably the most obvious example this year has been representatives of carriers who come along to these forums unable to agree at the forum, having to take back - claiming having to take back - to their office a proposal and get it endorsed before they can agree.

So people are coming to industry forums, not empowered to do the task which is expected of them. As a consequence, delay occurs, frustration rises to a high level. It seems to me, seems to us, that they are attitudes which need to be overcome fairly rapidly, that people come committed to resolve issues, to accept tolerable outcomes, I think I've made the point, to accept an outcome which is, for example, 90 per cent right and get on with the game, rather than sit round for months and months and argue for 100 per cent outcome.

**PROF WOODS:** I noticed, in that respect, your heartfelt comment at the end of that particular section, where you talk about "efforts being made to enhance the working arrangements of industry, to bring about reasonable outcomes in acceptable time frames". I think we'd all sign up to that. The dilemma is: what are the regulatory or indeed, perhaps, commercial non-regulatory incentives that can generate those particular responses? I guess that's part of the challenge.

**MR HORSLEY:** It certainly is. I think the concern we have is that many industry players have failed to realise that offering their network at a wholesale level, for others, is a means to earn revenue. What seems to happen is strategic decisions are made inside the carrier that we will not wholesale that product, or we will have a difficult process in that regard because we're in fact protecting retail marketplaces.

**PROF WOODS:** Is the duplication or multiplication of the intercity trunks of fibre optics an example of that, not wholesaling their capacity?

**MR HORSLEY:** Well, I think most people would say that was the case, given the enormous spare capacity that's available. One wonders why a carrier wouldn't offer a spare dark fibre to another carrier, on the basis that they got a reasonable return on their investment. I think there is protection of retail markets, and that seems to dominate the situation.

If you look at an example in Holland, the predominant carrier in the mobile field, KPN, had two options: one to join in the mobile number portability business or fight it. They chose to join and promote mobile portability. They became the transit switch for the other half a dozen carriers. Somehow they managed to negotiate a price for transit switching which satisfied their business, in that they got a reasonable commercial return on investment. The price was attractive to the half a dozen other mobile suppliers, in the sense that it was low enough not to prompt them to build infrastructure; so we have this amazing harmonious operation in Holland, with the mobile carriers, with KPN as a retail provider but as a transit switching provider to the others.

I guess what that says is, if there is realisation that you can obtain reasonable commercial returns from a wholesale activity, then you will minimise replication of infrastructure. My guess is that there will always, to a degree, be replication of infrastructure but, overall, the end-user is on about service. The best example of that, I think, was the historic experience of Optus reselling Telstra analog mobile services. If you spoke to Optus customers, they thought Optus had a network. Optus didn't have a network at all, it had a billing system, but it had some good customer service and so it attracted customers to that network; and that's been repeated with Optus also reselling CDMA.

So there are some examples of where it has happened, perhaps examples where other parts of business were not under threat, but where there has been a perception of threat, then the wholesale activity has not grown to the extent that most of us would hope that it would grow.

**PROF SNAPE:** Could I pursue that a little bit more? It seems to me that what you're saying - for example, on the Sydney-Melbourne cables, which may be an example of what you're talking about - is that there are only two possibilities. One is that firms are behaving in a way to exclude - if you like, they're behaving rationally in not giving access, because they make the judgment that that will increase their profits, not allowing access - - -

**MR HORSLEY:** By protecting other markets.

**PROF SNAPE:** - - - by protecting other markets, and that they're behaving rationally by not allowing access; or, alternatively, that, as far as their profits and their shareholders are concerned, they're wrong. They can be either right or wrong, and that seems to exhaust the total range of possibilities.

Are you arguing, with your knowledge of this industry, that a decision such as this one is that those who are able to make these decisions are acting correctly in the interests of their shareholders or incorrectly?

**MR HORSLEY:** My understanding, and perhaps I'm biased, is that they're not acting in the best interests of their shareholders

**PROF SNAPE:** Why not?

**MR HORSLEY:** Because they're protecting other marketplaces, which they see of value, but have not, I don't think, in depth, analysed the business that they can generate from the wholesale marketplace in growing the overall pie - I think your suggestion really says that the pie is static and it's a matter of how it's carved up.

**PROF SNAPE:** No, I'm not even suggesting that. I'm saying that - I mean, as one perceives this as a business play, and you've got two choices: one is, you're going to allow access or you're not going to allow access. Then, if you're going to allow access you can go into the terms of the access. But there would be some terms of - okay, you get the best terms to do it.

**MR HORSLEY:** Yes.

**PROF SNAPE:** I think what you're saying is, to put it at its bluntest, that the firms are being run inefficiently.

**MR HORSLEY:** In an overall sense, yes.

**PROF SNAPE:** And that their shareholders should take them to task.

**MR HORSLEY:** Yes.

**PROF SNAPE:** Why aren't they?

**MR HORSLEY:** I suspect their shareholders don't understand the complexity of the business. If you want a worse example, an example which has existed for the last 10 or 15 years, is the proliferation of microwave links around the CBDs of Melbourne and Sydney, as examples. All these dishes on the tops of buildings are all there because the carriers will not provide services in the fixed network, at prices which are reasonable. So people go and build their own radio links because they can demonstrate - - -

**PROF SNAPE:** Hold on; let's leave reasonable as - I mean, we're trying here to say that, from the carriers' point of view, who are not offering the access, they in fact could get more to their bottom line from giving access, than not giving access.

**MR HORSLEY:** Yes, because the consequence of doing that would be to grow the market.

**PROF SNAPE:** So you're then going on to say, perhaps, that the ACCC, or the regulator, can be a better judge of what is in the carriers' own interests than the carriers themselves?

**MR HORSLEY:** I think there are circumstances where the regulator, somebody outside, can look in and made a better judgment; a more dispassionate and more global judgment, than some of the sector judgments that are made inside the carriers today.

**PROF SNAPE:** Perhaps they should be appointed to the boards.

**MR HORSLEY:** One might agree that that would be an improvement to some of the boards.

**PROF SNAPE:** I'm just trying to really make clear what is being said here, and it is a very, very powerful statement that you are making. You are saying that the carriers, that the people to whom you are referring, are not in fact pursuing the best policies in the interests of their own shareholders.

**MR HORSLEY:** Yes, that would be our view.

**PROF SNAPE:** Thank you.

**PROF WOODS:** On working relationships, you talk about ACIF, and that the relationships have taken time, and even today are not fully mature - which sort of is a semi-positive statement, I guess, that something is happening within ACIF, and that it's working to a level. Would you come to the same view with regard to the TAF?

**MR HORSLEY:** ATUG, because of what it is, is not able to be a member of the TAF, and therefore our understanding of activities of the TAF is second-hand - - -

**PROF WOODS:** One removed, okay.

**MR HORSLEY:** One removed. But in its career, as I understand it, the TAF has produced one agreed document; that is, the initial access code, which was a development of the document that previously existed between Telstra and Optus. All other submissions to the TAF have been vetoed - and that might say something about the governance arrangements of the TAF - and as a consequence, pros and cons papers have been submitted to the ACCC, and the ACCC have had to resolve it. Now, I think that's a particularly sad circumstance, and the positive thing that you say about ACIF is that it solved its own problems. It has had to learn the people that participate in ACIF activities have had to learn to deal with each other.

That point I made earlier, about what happened in mobile number portability, is an example about people who were in a position of opposition, perhaps, certainly having fairly strong different views, were able to come to an agreed outcome, perhaps because the environment of ACIF is less formal; perhaps as the commercial imperatives of ACIF aren't quite what they are at the TAF.

I think it is disappointing that we have not been able to inculcate into the industry the concept of accepting tolerable negotiated commercial outcomes, but

rather, that we all rush off to an adversarial environment, which at stage one is the ACCC arbitration process; and stage two is the courts. I just think that has become soul destroying in the industry.

**PROF SNAPE:** Perhaps we could go back to page 2, then, along those lines. You then talk about two processes which you say have been under-utilised, the access undertaking path and the interim determination. Could you tell us why you think that those - you're challenging us to say why these are being under-utilised. Could I ask you to tell us why you think they're being under-utilised?

**MR HORSLEY:** I'm at a loss to know why the access undertaking path is under-utilised. It seems to us, looking back in the creation of the legislation, and then the outworking over three years, that the access undertaking path gave a carrier an opportunity to put together a package and commit to that package of terms and conditions and service description.

I suppose the reason that perhaps it's not pursued - and it is in fact - I mean, Telstra has expressed, formerly, serious doubts about the access undertaking path, without certainly explaining to us why that is the case. I can only imagine that it is because the workings behind the access undertaking would then be subject to scrutiny; because the access undertaking requires ACCC approval; and I think it's becoming increasingly obvious that Telstra has lost confidence in the ACCC, and yet puts Telstra out in left field seriously. So I can only assume that that is what is behind it.

The interim determination process, again, is a mystery because it would provide a very quick resolution. The ACCC seem to have been more concerned about doing the things thoroughly, 110 per cent, so that their judgments would withstand an appeal; yet the industry has been pressing - a wide variety of people have been pressing to adopt the interim decision approach. You might argue there hasn't been that long a period for that to be used, but nevertheless it's there. I guess, Richard, one would depend upon advice in one case from Telstra, on why they don't use the access undertaking; and from the ACCC, on why they don't use interim determination. I mean, it would be useful to draw that out so that perhaps finetuning could take place, which would enable both of those processes to take a higher profile; because both of them, if they worked, would deliver far more effective and timely outcomes.

**PROF SNAPE:** Thank you.

**PROF WOODS:** You make reference on page 3 under your heading, Purpose of Legislative Arrangements, for the need for what you describe as, "further regulatory support." Is that in terms of the administration of the regulations as they currently stand or in terms of amendments of the regulations themselves?

**MR HORSLEY:** I think we can see that there's perhaps room for some finetuning, but the point of saying what is there is to emphasise that, at this time, given the circumstances that are in the industry, we see that there is benefit, there is a need, to

have the types of processes, the types of arrangements, that are addressed in XIB and XIC to be there. The state of maturity in the industry, the size in balance and, I think what we would perceive is, a growing number of small players and therefore, arguably, the imbalance increasing as more and more new people come into the marketplace, seems to us therefore to say, that there needs to be some oversighting, overarching, framework which, in the one sense, encourages negotiated commercial outcomes but, in the second sense that, if they fail - and we see it important that they be promoted - then there's a safety net situation which can resolve the problem and allow the industry to move forward.

I suppose one point that we would make is that, we have a positive view about the Telecommunications Act having a very clear object, that is, that it's to create a framework which is in the long-term interests of end-users. We would think one enhancement to the TPA would be an object which outlines the purpose, in a process sense, of the TPA of emphasising that the TPA is there as a safety net to set a framework, there as a safety net, but there to encourage commercially negotiated outcomes.

I suppose you might say we're naive, but we feel that objects of acts are important, as well as the mechanisms, that explanatory statements, second reading speeches, are equally important; and so that, given that this process is likely to result in some amendments, that as part of that some very clear government public policy objectives should form part of the amended legislation to set an atmosphere which one would then hope would be picked up by the industry and allow it to move forward. In saying that, we see that has a potential to be more effective than large numbers of detailed rules because I think one of the things that we've learned in recent times is that regulatory gaming, as we say here, has become an art form, and people can play incredible games with words and lose sight of the objective of the legislation.

**PROF WOODS:** Presumably that's with intent, and I understand the direction of your thinking, but I'm not sure that if they're currently displaying that intent with the rules as they are, that by encouraging them to be more cooperative will necessarily change the intent of their behaviour. But one can hope.

**MR HORSLEY:** I think what we're trying to do is not to get into an environment of incredibly detailed legislation but try and lift the game, lift the attitude, and try and make sure that certain styles of behaviour are not on - in simple terms, are not on; that we get on with the game. I mean, we have been exceedingly critical of the past CEO of Telstra for creating an environment of minimising loss of market share, which was sent through that organisation over a period of a few years, which created an incredibly negative attitude, unnecessarily so. An attitude of growing the business, of beating the competitor, would have produced an entirely different outcome. I think we are still seeing a continuation of that minimised loss of market share which is a stupid, non-productive attitude, which certainly does not deliver benefit to the shareholders of the company.

**PROF WOODS:** Thank you. Other matters?

**PROF SNAPE:** No, I think that's enough from me.

**PROF WOODS:** Are there are other matters that you wish to raise with us?

**MR HORSLEY:** No, I think as I said to you separately, we are likely to put in an extra submission given the time frames of the process.

**PROF WOODS:** Yes. We'd be very grateful for that and thank you again for your hospitality in a previous visit to you. We have appreciated the time that you make available to the commission in its deliberations.

**MR HORSLEY:** We're very anxious to see some positive outcomes.

**PROF WOODS:** Thank you very much. We'll take a break and resume at 2 o'clock.

(Luncheon adjournment)

**PROF WOODS:** The next participant at our hearing today is Davnet. Could you please identify yourself by name and by your position in the organisation?

**MR BRENDISH:** Sure. My name is Craig Brendish, and my position is manager of carrier and regulatory relations for Davnet Telecommunications Pty Ltd.

**PROF WOODS:** Thank you very much. We have a submission comprising opening remarks and a case study, and also you've kindly provided a series of points to us, which we will all incorporate as one single submission. Do you have opening comments that you wish to make?

**MR BRENDISH:** I might, if I could, just run briefly through my opening remarks without going through them word by word. I'd like to focus the time today on discussion if we could; I guess that's probably the most useful element.

Just generally, Davnet, perhaps like most commercial market participants, absolutely prefers market-related outcomes to regulation; it's a key principle. Davnet will only resort to seeking regulatory recourse when market power restricts the availability of market orientated or market outcomes.

In terms of the telecommunications-specific legislation in the Trade Practices Act, the competition-type legislation, which for the time being will be my focus today - Davnet will provide a more comprehensive submission on the other competition elements in the Telco Act and other arrangements in due course.

I suppose the underlying principle for us is that if there's no structural separation or Part III regulation of incumbents, or incumbents' bottleneck services,

which are then integrated into their downstream operations, there should be specific regulation of that bottleneck, and of the capability of incumbents to leverage that bottleneck into downstream markets. Obviously therefore we support the current industry-specific regulation because there is no structural separation of Telstra or indeed other incumbents, so that's one of our fundamental premises.

That regulation, we think, should be strong on conduct as well, because it's the

conduct which is the expression of the market power misuse; it's a leverage of market power into downstream markets. Hence, we're advocates of conduct-specific regulation in terms of Part XIB or enhancements thereto.

In terms of competition, the state of competition in telecommunications right now and over the last recent period, we don't believe that competition, as such, is effective or indeed sustainable. Just quickly, the reasons behind that are that, in terms of retail competition and headline measures like the number of long distance carriers, the number of licensees, the number of ISPs, to us this is a superficial measure of competition. This is retail downstream competition, which is very much at risk or vulnerable to upstream misuse of market power by Telstra, and increasingly a significant one also, other incumbents, namely, Cable and Wireless Optus and Vodafone.

Where competition is apparently emerging in wholesale, in terms of network contestability, we don't believe that is strong right now. There's no national network operator competitor to Telstra. Optus has some limited duplication, on a national basis, of Telstra's network, and there has been some duplication since 1997 of some of the thicker inter capital and some of the more lucrative CBD access markets. Once again, we think that either this duplication is irrational, given the excess capacity in incumbents networks and their ability to react to that new entry. Also, in CBD markets it tends to be niche competition; consumers and access seekers still rely on end-to-end services. The CBD competition, there's only one end, or one part of it, end-to-end service. Indeed, new entrants in the CBD access market tend to be vertically integrated, restrict the supply, in any event, of their fibre loops; especially to access seekers who compete with these new entrants in downstream markets, like Davnet, as an access seeker, using an alternative to Telstra or Optus in the local loop in the CBD of Sydney, Melbourne or Brisbane.

Just in terms of some of the analytical, if you like, folklore; I tend to put it down to in terms of the some of the analysis that's been discussed, and indeed has entered the conventional wisdom of debate with regard to technology. In my view, technology can indeed fragment market power, but what's forgotten, and perhaps conveniently forgotten, is that it can also concentrate and intensify market power. The classic example is the role that technology has played in the XDSL modem capability on Telstra's local loop. New technology has actually intensified Telstra's market power, not reduced it.

In those cases therefore, I would put it up for discussion that regulation should be proactive, it should be intensified, not relaxed in those cases; because in those markets, market power exercises in the origins or genesis of these markets, if it's not nipped in the bud, so to speak, from the start, it will destroy any sustainable competition in the future in downstreams or even in the same markets. It will skew the market straightaway. It will give Telstra a definite first-mover advantage. We're already seeing that with Telstra's deployment of ADSL over copper loop, and it's attempt to deny, delay, that access to competitors. I've presented a case study in the

notes which elaborates somewhat on that view. That's where I'd like to end it for the time being.

**PROF WOODS:** Thank you. In your submission you give an outline of the Davnet carrier business, and you talk about broadband solutions provider and make reference to Sydney, Melbourne and Brisbane as you did in your opening comments. Could you just expand a little on what the business strategy of Davnet is, so that will help us understand the particular perspective of your organisation?

**MR BRENDISH:** Sure. I suppose the core business of Davnet, at least Davnet Telecommunications in Australia - Davnet Limited, which is the parent company, has a number of other business in Australia, and indeed increasingly offshore - the Davnet Telecommunications business in Australia is essentially, right now, a end-to-end data network provider. The core business that Davnet is engaged in is wiring CBD buildings with broadband and then intelligent services on top of that, or content services on the top of that.

So the idea is to agree with a building owner, building manager, to locate Davnet Telecommunications facilities within the building, and then connect customers of each floor of that building, via a single wall socket, an RJ45 wall socket - per se their LAN - to data services, like Internet or interstate transmission, any type of data transmission. The idea going forward would be to roll out applications, or indeed more applications, in content over that network to corporate clients in key, prime, CBD buildings in the key capital cities in Australia.

**PROF WOODS:** So, in essence, you're the backbone facilities provider in buildings down to basement level, and then you connect with whatever passing cable - - -

**MR BRENDISH:** That's right. We then use our own fibre, others' fibre - - -

**PROF WOODS:** So are you doing city rings or - - -

**MR BRENDISH:** We have a limited roll-out in Perth, and we use fibre facilities of other carriers, as well. Our main reliance though, at present, still is on Telstra copper network in the CBDs. That's still our major access transmission - - -

**PROF WOODS:** Increasingly you're putting in spines where you get an agreement with a building owner?

**MR BRENDISH:** Yes, that's the first-mover advantage. We can get in with the building owner and wire buildings. It's not a unique advantage, it's just a first-mover advantage; so that's the business case.

**PROF SNAPE:** ISP as well?

**MR BRENDISH:** Yes. Davnet is an ISP systems integrator; and also, later on this year, we're launching our own carrier grade voice network as well over our IP

backbone. So it will be voice over IP on the Davnet network, and that will be interconnected with the Telstra PSTN. So we're actually, if you like, a reverse entry. We're a mature data carrier, now we're going to supply voices and add-on to our corporate customers.

**PROF WOODS:** So you'll be originating voice but not terminating voice?

**MR BRENDISH:** No, we'll be terminating voice; we'll be acting like any other carrier. We'll be originating voice, either on our network or the Telstra network through preselection on Telstra origination.

**PROF WOODS:** But on IP for you?

**MR BRENDISH:** On IP backbone, yes. The network is essentially, when a voice call comes in from the Telstra PSTN, it's put onto the Davnet Cisco-powered IP backbone, and to all intents and purposes, to the presenting carrier, it's carrier grade SS7 voice. We've completed testing with Telstra on the interconnection, and we're proceeding to condition - or Telstra is proceeding to condition its exchanges for the 1464 preselection for Davnet.

**PROF WOODS:** So there's an example of the marketplace resolving issues of interconnect and sorting out price?

**MR BRENDISH:** We're still in negotiations so I wouldn't like to pre-empt anything. I think the only reason we're having negotiations is because there is a regulatory backdrop, not because - other reasons.

**PROF WOODS:** Could you enlarge on that?

**MR BRENDISH:** I suppose, from my experience, there doesn't seem to be a commercial incentive for the incumbent to negotiate. It's a sub-set of that argument, if you like.

**PROF WOODS:** If there were to be a breakdown - you're suggesting not at this stage - but if there were, then you would go through an arbitration process. Would that be the next step?

**MR BRENDISH:** We'd explore all obvious outcomes, yes. We'd make recourse to arbitration if we needed to, but hopefully not.

**PROF SNAPE:** I thought you said you were only negotiating because of the regulatory backdrop. That's what I didn't understand.

**PROF WOODS:** Or that you're negotiating with the benefit of the regulatory backdrop.

**PROF SNAPE:** You would be negotiating anyway if there weren't regulations, wouldn't you?

**MR BRENDISH:** I think what I meant was that Telstra may be negotiating only because of the regulatory consequences of not negotiating.

**PROF SNAPE:** Right.

**MR BRENDISH:** Not so much us. We'd be negotiating regardless, yes; we need it from a customer point of view.

**PROF SNAPE:** So you wouldn't have seen it that it was just in Telstra's commercial interest to negotiate with you?

**MR BRENDISH:** Well, possibly yes, but from my experience, in terms of small networks versus large networks, Telstra, I would think, perceives that the value of interconnecting with us is less than the value that we may have interconnecting with them.

**PROF SNAPE:** Yes, I can see that that asymmetry - that there may be a range in the prices.

**MR BRENDISH:** Sure.

**PROF SNAPE:** But, nevertheless, to say that there would be no price at which there was some value to Telstra to give you access is a strong statement.

**MR BRENDISH:** I'm not sure if I said that, and I think I'm only speculating on Telstra's motives.

**PROF SNAPE:** No, I know you didn't say it, I'm just trying to draw out the implications of saying they're only negotiating because there's a regulatory backdrop.

**PROF WOODS:** On this question of competition, we had evidence from Telstra that said that the current telecommunications market in Australia is extremely competitive at all levels; and yet you're saying effective competition is not flourishing in Australian telecommunications. Do you want to comment on that difference of perspective?

**MR BRENDISH:** I think in my opening remarks I touched on it, perhaps, just quickly. To me, it comes down to a definition of markets themselves. This is one of Davnet's issues: that there seems to be a superficial appreciation or judgment on the number of carriers, or the number of long distance suppliers, or, in the retail market, the number of ISPs; and it means there's many suppliers, there's a lot of carriers, because the ACCC has licensed 40-odd carriers, therefore there's potentially a lot of competition. Potentially there might be, but there isn't, that's the point, because the

market power in this industry resides in the upstream wholesale market, where there is no or little competition, hence the need for regulation.

**PROF WOODS:** You refer to Telstra, and most probably other incumbents' rents on service to access seekers, being super profitable. Are you able to give some figures, either today or in a subsequent submission to us, that underpins that particular paragraph, which is on page 2 of your comments?

**MR BRENDISH:** Yes, I'd be able to supply figures, sure.

**PROF WOODS:** To the extent that they didn't have commercial in-confidence on them, it would be helpful, although if you need to resort to that we reluctantly will follow.

**MR BRENDISH:** Sure, I can - - -

**PROF WOODS:** But the more you can put in the public domain that supports that statement, that refers case studies.

**MR BRENDISH:** Yes, I understand, sure.

**PROF SNAPE:** Can I refer to the same paragraph, the same dot point on page 2; where you say, "There's been no significant reduction in Telstra's transmission prices and only limited reductions in Optus prices." Are you implying there that there is some sort of collusion or absence of competition between the two?

**MR BRENDISH:** Yes, simply, an absence of competition.

**PROF SNAPE:** Do you have evidence?

**MR BRENDISH:** Yes.

**PROF SNAPE:** Again, can you, maybe in a subsequent - - -

**MR BRENDISH:** Sure. Just for background, I've submitted something similar to the various ACCC inquiries into intercity transmission, on behalf of Global One; and also to the ACCC in its considerations of the Optus-AAPT attempted merger. So I'm happy to - in a sense that I can provide it without any sensitivity to any confidentiality.

**PROF WOODS:** Thank you, it would be very helpful. At the bottom of that page you make the statement, "The new access entrants are also usually vertically integrated and hence, in any event, restrict their supply of network services to access seekers which compete downstream." There seems to be an air of inevitability about that statement. Is that a comprehensive statement of the nature of the market, or is that a sort of resigned reflection on the behaviour of some? Just where does it stand?

**PROF SNAPE:** Is the emphasis on the word "hence"?

**PROF WOODS:** Yes, exactly.

**MR BRENDISH:** Sure. I think it's more couched in the terms - again, the ACCC or commentators think, "Look, we might have had competition in transmission," or "Look, but isn't the CBD a great example of competition? There's build-out, there's alternative access seekers; it's all happening in CBDs." To some extent it is, but in terms of getting equal access to a piece of infrastructure to put your own services over, without any conditions, it's just not happening; either from new entrants - I think most of the new entrants that I'm aware of come into a market as wholesale suppliers, and then eventually realise that there's good money to be made in retail and then move into retail markets; then start restricting the supply of wholesale services. To some ways, that's okay, but as an alternative to having equal access to bottleneck inputs of encumbrance, it's not really a perfect - not really a commercial substitute. It is a substitute to some extent because it's better than nothing.

**PROF WOODS:** Isn't there an example in the marketplace of in fact the reverse, where a company will come in, get in at the retail end, picking up wholesale services, building a customer base, and then putting in physical investment in a reverse sense? I don't want to speak on behalf of any company, but my recollection of the behaviour of Orange, for example, as gone in the reverse.

**PROF SNAPE:** I think some people suggest that that was the normal way of entry, in fact.

**MR BRENDISH:** Sure; I'm just speaking from my experience.

**PROF WOODS:** Yes, all right.

**MR BRENDISH:** I can only comment from afar on the mobile case. The only experience I've had with mobile is trying to buy termination from the incumbents. You tend to find you can get it cheaper if you're a corporate, and that's the squeezing behaviour. I suspect that Orange has also had some assistance in the fact that, as I understand, the government has restricted the incumbents bidding for certain spectrum in certain cities, which may have helped its business case somewhat. But, yes, I mean, there is definitely a mentality where you might resale a carrier service, build a customer base, then have less risk to migrate those customers on to your own network. It's entirely a good business deal.

**PROF WOODS:** Thank you. Anything else on that page?

**PROF SNAPE:** No, it's okay.

**PROF WOODS:** On page 3, your second-last point, you talk about, "Imperative that regulations should occur from the outset, and should be more intense in dynamic markets." It suggests, in a sense, of having regulation pursue innovation to keep

encompassing whatever extension of the ripple effects might be occurring. I don't see where that leads us in the end, particularly as your perspective - I mean, I was quite attracted to your reference to regulatory outcomes as being "uncertain, resource intensive, require commercial disclosures, and tend to be blunt". I thought that was quite a neat little summary. But here I find that you're in fact suggesting regulatory extension down whatever growth markets occur. There seems to be a tension between those two perspectives.

**MR BRENDISH:** Yes, I understand what you're getting at. If you look at the reference at the start, Davnet only prefers regulation when there's no other outcome available in terms of market failure; and, in the same context, that where technology intensifies existing market power, it actually makes it more intense, more stronger. Therefore if there's a case for regulating market power normally, there's a greater case for doing it when it's intensified. When markets are moving so quickly - the CEO of Telstra is often quoted talking of Internet time in a matter of months and days - from my understanding, if high-growth markets are skewed right from the start, then the effects are going to be very hard to unwind down the track, and the market power conduct issues are going to be more damaging if regulation doesn't occur from the outset.

So, again, regulation is only a recourse to where markets fail due to market power, in this context. That's a sort of balance to any apparent tension between regulation and - regulation is a reaction to, or a stick and a carrot, to market power, but market outcomes are preferred.

**PROF SNAPE:** We're endeavouring to seek, and I would imagine to try and understand, where the bottlenecks are, where the market failures are, if you like. Are they all associated with the local loop?

**MR BRENDISH:** From my experience in current telecommunication, I think most of them are.

**PROF WOODS:** How far back do you define the local loop? The local loop is presumably not just the copper pair going from the last point to the house or business, but presumably it also encompasses the exchange and some - - -

**MR BRENDISH:** Yes. I think anywhere where the economics, the natural economics, suggest that only one carrier, or one provider, is efficient in supplying - - -

**PROF WOODS:** Back to the natural monopoly argument.

**MR BRENDISH:** Yes, that type of argument.

**PROF SNAPE:** Then do we define that in a regional way - I'm not sure if you were here for all of this morning - - -

**MR BRENDISH:** No, I wasn't.

**PROF SNAPE:** - - - but in a regional manner, as well? So that we say that Mildura may only support one network within - or a supplier there - so that needs regulation?

**PROF WOODS:** Not the CBD of Sydney, is a contrary example.

**MR BRENDISH:** Yes, sure. I think, again, on the face of it, if you believe that costs are dependent on density and distance, that regional areas can really only support one carrier. Where there's been alternative carrier roll-out, again, I think that either Telstra has neglected those areas, not created an opportunity for a company to get in there and strike up some loyalty with the local community - perhaps in some ways as the - - -

**PROF WOODS:** Is there an example of that?

**MR BRENDISH:** I'm not aware of too many, but I believe there are cases of where there's been selected regional roll-outs of fibre or pay TV infrastructure. I suppose in similar ways that you get these community banks rolling out, where the banks are seen to have neglected their - - -

**PROF WOODS:** If on reflection you were able to find some examples of that, that would help in coming forward with any further submissions.

**MR BRENDISH:** Sure. Again, I would have to say though that even that case, that I believe it's more a fact that the incumbent, or the universal provider, doesn't believe that to be valuable business; therefore it allows that competition in, or that contestability, because rationally, if the network has excess capacity and the natural economics suggest only one provider, why should two appear? There seems to be something wrong.

**PROF WOODS:** How does that explain the multiple provision of trunks, which presumably you're actually a user of. I mean, are you, as Davnet, enjoying the multiplication of fibre-optic trunks between capital cities - - -

**MR BRENDISH:** Absolutely.

**PROF WOODS:** - - - because you would need it to - - -

**MR BRENDISH:** Sure. We're a national network so we need - - -

**PROF WOODS:** Yes.

**MR BRENDISH:** Yes. But, I mean - - -

**PROF WOODS:** Is it driving the price down?

**MR BRENDISH:** No.

**PROF WOODS:** So everyone is pricing similarly, even though there is now multiple provision?

**MR BRENDISH:** The thing you have to understand is that, firstly, I don't believe the prices are coming down; especially if you look at how much costs are coming down, hence margins are going up through wholesale providers. Access seekers generally buy end-to-end services, so, say, if a PowerTel or a Macrocom had an attractive bypass opportunity for Sydney-Melbourne pricing; and we have customers in the Sydney region, in the CBD, or Melbourne CBD; if that customer, though, is not on the PowerTel or Macrocom access network at either ends, we have to rely on Telstra or Optus or someone else - it's an off-Net customer for access - the savings then start disappearing out the window; and to some extent the same with Optus; that where it does actually duplicate and compete with Telstra, or provides a contestable transmission service, if it can't originate or terminate the calls on its own network and it has to use Telstra - and Telstra is probably aware of the fact, it knows Optus can't use anybody else - then the pricing starts to become a little bit unattractive compared to an end-to-end Telstra price; although, I suppose, even in that case, Telstra's pricing seems to be still high. But that's the sort of scenario we're getting at. We need to junct networks; it's not an end-to-end replication.

**PROF WOODS:** So is this getting back to the origination-termination local loop issue again then? That if that was a open-access, low-price facility - - -

**MR BRENDISH:** Absolutely. Yes.

**PROF WOODS:** - - - then, in your view, you could then more readily trade between the various competing access providers for your interstate transmission?

**MR BRENDISH:** Yes. I think that the problem is, it's equal access - whether it be available from the marketplace or via regulation- isn't available, so you get these sort of skewed outcomes.

**PROF WOODS:** Is this explaining why there is - well, it doesn't actually explain why there is so much fibre being laid between the main cities. Presumably they've still got to have origination and termination at each end of their pipeline.

**MR BRENDISH:** For sure. They might be able to - new technology might - new transmission technology might give them - charging a similar price or 20 per cent lower than the incumbents - but their costs are much lower so they can then make a go of it.

But the thing with that, though, the other point is that, again, in a rational sense, if you've got a two-incumbent network - and three if you include the mobile network - three national networks, all rolled out in a protected period, 1992 to 1997 - so not

subject to equal access - they had effectively an access holiday to wear the risk of rolling out national networks - - -

**PROF WOODS:** Build a customer base, yes.

**MR BRENDISH:** Take all the corporate customers, have all the infrastructure, not be subject to the state environmental restrictions, and then you've got three national networks with enormous excess capacity. A rational person would not expect to see more network roll-out on the basis we had, after equal access was supposed to be available to those networks. To me it's not a rational response.

**PROF WOODS:** But it is an actual response?

**MR BRENDISH:** It is an actual response but in my view it's not a rational response; therefore it's a risky approach. The incumbent networks can use their excess capacity to reprice their capacity in the face of new entry.

**PROF WOODS:** Presumably somebody is actually making business decisions and investing very large sums of money.

**MR BRENDISH:** Absolutely; and probably lobbying the regulator to wind back regulation because they want to have some of these rents. But that, as a long-term interest in user focus, it's a waste of national resources. It's just duplication of investment and infrastructure, when rationally it shouldn't occur.

**PROF SNAPE:** Was it a rational response of the owners of the existing lines, not to give access at some price?

**MR BRENDISH:** In my view, the owners, I think, get away with it as long as they can.

**PROF SNAPE:** No, that wasn't quite what I asked.

**MR BRENDISH:** Sure.

**PROF SNAPE:** I asked if their apparent refusal to grant access was a rational policy from their own interests?

**MR BRENDISH:** If they have short-term goals, like most CEOs tend to have, because that's where they get their bonuses from, yes, it is a rational response. In the medium term it's not, because it just encourages bypass investment, although that bypass investment is again subject to risk. So again they could say, "Even if we get bypass investment, bypassing our local loop or transmission service, we as the incumbents have all the incumbent advantages, and we've leveraged most of them because there's no equal access or regulation of our conduct, so we can respond to those new entrants when see fit to." That's the risk of new entry, in terms of - - -

**PROF SNAPE:** Even in the short term, presumably, they could have generated the revenue from granting that access, which would have been above their costs, particularly their short-term costs.

**MR BRENDISH:** Sure, okay. I think their view might be that they would believe there's more margin in restricting new entrants into their retail markets, so they're retail-centric to start with. They know that there is no wholesale competition, and where it does emerge, in terms of infrastructure, it will take time for it, for starters, to be built. Even when it's built, it's subject to risk, because their networks, the incumbent networks, have excess capacity, and they've leveraged that excess capacity and all the other incumbent advantages into that network, into their customer base.

**PROF SNAPE:** So you're really saying that any additional business that it might have generated would not have compensated for the competitive effect on their existing revenues?

**MR BRENDISH:** Strategically, I think that it may provide them with incremental revenue, where the network isn't being used; but I think the risk for them is that they might dilute their market power advantages by encouraging resale of their network to access seekers. I think, in some cases, though, that Optus may have recognised this risk, though, and has started to sell - at least to one customer in particular, AAPT - large wholesale capacity on their network. This places more risk on you wholesale infrastructure entrants, because the biggest wholesale customer, AAPT, is now signed up long term with Cable and Wireless Optus. This is, in my view, an example of the incumbents then saying, "Okay, when we're ready to react, we react, and we'll put at risk any sort of bypass transmission infrastructure, anyway, by signing up the key customers."

**PROF SNAPE:** Your last dot point, you talk about the myth of the dampening effect on provider investment. I guess it's very difficult to see what the counter-factual would be, what would have happened, in the absence of it. Telstra argue that it does in fact dampen investment, and so I assume what you are saying is the myth.

**MR BRENDISH:** It's a fact, isn't it? It's a matter of fact.

**PROF SNAPE:** If there are facts, do we have the facts?

**MR BRENDISH:** Sure. I can get Telstra's annual report and show you their cap ex, it hasn't changed. It's probably increased since deregulation; mobile networks, access transmission networks, ADSL roll-outs - - -

**PROF SNAPE:** Yes, but all of that, of course, could be said as that's in a time of very rapid technological development, and that they - it could be argued, perhaps, that there would have been more of it at this time but for the regulation. As I say, that's the problem of specifying the counter-factual. At the moment, we're just having an assertion on one side and an assertion on the other side.

**MR BRENDISH:** Yes, I understand. My view is just coming from - in specific markets where declarations applied - and Telstra has always, at ACCC hearings or public inquires, said, "Look, don't do it, because it will dampen investment." For an example: Telstra had an investment strategy going ahead, and then the service was declared or deemed, or subject, to declaration; Telstra's investment plans don't change. Therefore, in my view, that's reasonable, to suggest that what they're saying is not true.

I take the point that you could argue, other things not being equal, it could be an example of something of something else. You would get into this argument. I'm just looking at my experience, that local loop markets, ADSL deployment, upgrade of copper; this is the most - or it should be the most - regulated service, and it's the honey pot of Telstra's market power. But it's investing heavily in its local loop, rather than winding it down or stopping investment because the ACCC has declared the local loop.

**PROF WOODS:** Just before we move on to your case study, I'm still struggling with the challenge of where you see regulation should have a boundary, and at what point you would point to objective indicators that suggest that the market is operating in such a way that we can start to wind back regulation, given your fairly neat summary of some of its shortcomings.

**MR BRENDISH:** I suppose economists, and even trade practice lawyers, know what the definition of effective competition is, or sustainable competition, which is probably the same thing. I think there are measures out there for it, but it's not headline measures, like the number of carriers that have got a carrier licence; or it's not the number of mums' and dads' ISPs. We can develop and do proper investigations of markets, and understand where sustainable competition - where independent companies with large market shares can't act independently of the marketplace.

**PROF WOODS:** But in those cases we can rely on the generic regulations; we don't need to go telco specific. Following that through, I'm just wondering what's the essence, if any, of telecommunication-specific regulation that you would require? We can satisfy those other tests through the generic regulation.

**MR BRENDISH:** I think, again, getting back to what I said in my opening remarks - at least what I wrote in my opening remarks - that general competition regulation relates to structurally separate entities. Telstra isn't structurally separate, therefore we need specific regulation. The competition principles and the economic principles are the same for specifically-regulated non-separate, vertically integrated companies which leverage their bottlenecks versus Part IIIA companies. It's the same principles, they're economic principles. They apply equally to Telstra as they might apply to Energy Australia, but each operate in a different structural environment because of legislation.

**PROF WOODS:** PAPL, I read your case study with interest. Is that now not an option or not available, or not in use?

**MR BRENDISH:** As far as I know, if you don't ask too loudly, you don't make a noise about it, you might still get it, and I think - - -

**PROF WOODS:** What does that provide you with, if you could turn it into something I can comprehend more readily?

**MR BRENDISH:** It's a leased copper pair from your site, running through a Telstra exchange, through to your customer site. At the Telstra exchange it's got to be looped - connected, if you like - on the MDF, the exchange. So it comes in and it's attached to one side of a frame, and it's jumpered across to the other side of the frame; the other side goes out to the customer premises and the originating side comes out to the service provider; so it's a leased copper service.

**PROF SNAPE:** One to one?

**PROF WOODS:** Does that mean continual - just a fixed line to that - - -

**MR BRENDISH:** Just a bit of copper, to one pair.

**PROF WOODS:** To one customer?

**MR BRENDISH:** Yes.

**PROF WOODS:** Using one of the several copper pairs that are in any one link to a customer site?

**MR BRENDISH:** As I understand it, yes. The PAPL actually uses, from my memory - and I could be wrong on this - two copper pairs, because it's providing this HDSL - for HDSL it needs two copper pairs. The PAPL itself is just a leased bit of copper, either two-wire copper or four-wire copper.

**PROF WOODS:** And that would be several of the multiple pairs of copper that Telstra would have strung up.

**MR BRENDISH:** As I understand it, yes, as in the ground.

**PROF WOODS:** You're saying that, although it's not advertised in the market place, it can be negotiated?

**MR BRENDISH:** I haven't checked recently, but it was, until recently, a retail service.

**PROF WOODS:** Are we talking months or - - -

**MR BRENDISH:** The current issues about PAPL, I'm not sure where they stand, hence the uncertainty of the risks of using it. It started out as being offered as a standard retail service from Telstra as part of their SFOA offer, which is their standard offer, their standard terms under the Telco Act; they have to produce SFOA terms for their retail products. So it's just a standard bit of copper that access seekers, customers, end-users, could buy, ever since - who knows - 10, 15 years ago.

**PROF WOODS:** Has it been extensively taken up, or has there been a pricing on it that's prohibited that?

**MR BRENDISH:** I don't think it was extensively taken up.

**PROF WOODS:** Because there wasn't the product?

**MR BRENDISH:** There wasn't much use for it. I think it was originally intended to be used for telemetry services, for alarm systems, low-speed data. Now, service providers and their access seekers, due to their innovation in the rents being applied to the Telstra functional equivalent services, have started to use the leased copper pairs to provide XDSL technology over it, because it was a very good, robust solution. It gave service providers quality control over the service. It was just a very good, very robust solution, and very cheap. That's when the issue started becoming an issue.

**PROF WOODS:** Because in a sense, it was (a) redundant from Telstra's point of view, and it wasn't competing against their - - -

**MR BRENDISH:** It was in cheap in the sense versus the fully-managed Telstra equivalent service, the megalink service, which, in my view, had significant legacy rents, and probably still has, applied to it.

**PROF WOODS:** Anything else that you wish to bring before the commission?

**MR BRENDISH:** Not at this time. I would like to, probably in the near future, make a submission, a more comprehensive one, on the other aspects of the legislation dealing with competition, mainly the Telco Act.

**PROF WOODS:** That would be useful, but if I can also reinforce our interest in getting some hard data on what's happening in the marketplace as you have come across it. That would be very interesting.

**MR BRENDISH:** Sure.

**PROF WOODS:** Particularly also, further reflections on this progressive roll-outs of cable, and some of the costings relating to using alternatives who may not have end-to-end connectivity, and the like. That would be very helpful to us.

**PROF SNAPE:** If I could just add to that. In your third dot point, on the front page, as you've got it here, the interaction between IIIA and the specific telecoms; it's not altogether clear to me as it was written, and if that could be elaborated.

**MR BRENDISH:** Yes.

**PROF SNAPE:** Also, the point that we were discussing before, about where are the bottlenecks and market failures? Are they all related to the local loop? Thanks very much.

**MR BRENDISH:** Fine, thanks for your time.

**PROF WOODS:** Thank you.

Our next participant in the inquiry is from the Institute of Public Affairs. Welcome; if you could, please, for the record, state your name and the position you hold.

**MR HOGGETT:** Jim Hoggett, and I'm director of economic policy at the institute.

**PROF WOODS:** Thank you very much, and thank you for your submission, which we have now had the opportunity of reading through. Would you like to make some introductory comments?

**MR HOGGETT:** Yes, I would. Thanks for the invitation to appear, or the opportunity to appear. We have made a submission. I apologise for it being somewhat late. Our submission doesn't cover all aspects of the inquiry and we do welcome the opportunity to make further submissions later. You will probably have observed that our submission comes from a somewhat different perspective from several of the others, and particularly from those who have been presenting in the last two days. It's with some diffidence we make the submission, given the complexity of the subject, but hopefully it is disinterested, in the proper sense of that word; although, of course, we're all customers of this industry in one way or another.

It seems to us that the main subject of the review was to be the efficiency of the regulations in the sense of their design, and perhaps the efficiency of the regulation process in the sense of the implementation. There was, and has been in the last couple of days, quite a lot of concern about the efficiency, both of design and implementation. Underlying the inquiry, I suppose, is the concern about the efficiency of this industry which is, or looks to be, the prime sector of the 21st Century. We're all looking ahead and seeing this industry becoming more and more important, and looming larger and larger in our various economies, particularly the developed economies.

The regulation in normal cases, and in this, arises from market imperfections. One of the risks is that people get comfortable with the regulation, and I've observed in the last two days that much of the concern of participants has been with, "Well, the

regulation doesn't quite do what we want it to do, and we'd like a little more of it, please." So people do get comfortable with regulation. We believe that regulation should be applied to major and preventable problems.

This is an imperfect and the major imperfection that everyone seems to have identified is Telstra's market power. That's derived, it seems, mainly from the cost of

anybody else duplicating particularly the local loop. We'd argue that the market imperfection doesn't arise from Telstra's size per se, because there are many big players in this market, and there are new entrants all the time. Nor do we think they've got tremendous first-mover advantage in terms of innovation; Telstra is not a Microsoft.

We considered the question of how much specific regulation of competition was required for this industry, and that's quite difficult because the general provisions of Part IV and Part IIIA of the Trade Practices Act haven't been used in the current environment. We've only had the more detailed specific regulation in play. What we do know is both of those existing parts are actively used for other industries, and particularly Part IV is quite a potent instrument.

What we also know, from what's been said in recent days, and probably from previous behaviour, is that those provisions would be in play if Parts XIB and XIC were not there, so that if we were to consider repeal of XIB and XIC, it wouldn't be deregulation in full or anything like it; there would be quite a lot of support still there.

Our broad judgment is, and it's included in our submission, that the competition, the competitors and the market have developed to the point where XIB and XIC could go. There's almost an Augustinian question here of, "Oh Lord, make me pure but not yet." I've detected quite a lot of that in the last couple of days; people don't feel ready for a less heavy-handed and detailed regime. It is a broad judgment, and I think in the end that's the sort of judgment the commission will be making, obviously with a huge amount of detailed supporting facts.

Views amongst participants already differ, including our own of course, about how far you can go to lift regulation. People are perhaps pointing in the same direction of deregulation but some of them are still walking backwards, and I think that's where we are: everybody wants less regulation, but at the same time everybody wants a bit more for themselves.

How hard does the government try to get it right and how specific does it get? What are the risks that they can get it wrong? And what are the risks if they step back? Those seem to us to be questions that need to be answered, and ones we've tried to address ourselves in our submission. We don't think the government should try too hard, as a general point, to get everything right because that implies a high level of intervention. The risks that they will get it wrong are quite high going ahead, because of the way in which this industry develops, and is developing so rapidly; and the time frame for reviews of this kind.

I had some involvement in pay television, working for Galaxy media, which you might regard as a sunk cost of this industry. At the time, we had four transmission media; we had two sets of cables; we had microwave transmission; and we had satellite transmission via the Optus satellite; and tremendous overlap in coverage, of course. There were a lot of cries of waste, and I've heard them again

today, "There's a lot of waste. The cable was duplicated, what a waste. The microwave wasn't really terribly good technology for video transmission. Why did we bother?" We complained at the time, too, I might say, about this duplication. But the government decided to - pardon?

**PROF WOODS:** To whom?

**MR HOGGETT:** We complained to the government, principally, to the policy-makers in the Department of Communications about the way in which the government had permitted two cables to be run out; but the government decided to stand back. If you ask yourself, "What happened?" well, some waste perhaps did happen. Some waste perhaps is happening, but it does tend to sort itself out. The cables are in use, albeit with some excess capacity; the satellite is in use, particularly over the regional areas of Australia; the microwave capacity, a lot of it, has been sold to Austar, who is our regional satellite provider of pay television. They're proposing, and indeed, I think, using it, to transmit data. So even the microwave system, which was much maligned at the time, is proving valuable in a variety of uses.

So these processes, as industries grow, do produce some waste, and I suppose one of the questions we're asking is, what's an acceptable level of waste? I don't think you can measure that in a fast-changing industry; you can't measure it easily. People will attempt to do things that rational outsiders would say, "Well, you can't both succeed." But do you want to stop one of them trying? Isn't it a legitimate part of the process that they be permitted to try, even though they may end up the victims of the process?

The risk, of course, if the government steps back, is that Telstra will use its market power. I wonder whether this is a problem in this industry, however, that's any greater than it is in some other industries; and I must say the conclusion we reached was that the powers within Part IV could cover Telstra's use of market power or abuse of market power. There is always pressure, too, on regulators to favour consumers.

**PROF SNAPE:** Is that just Part IV or IIIA, as well?

**MR HOGGETT:** IIIA as well, yes. There are really, I suppose, other provisions of the act as a whole that would come into play, principally Parts IV and IIIA.

**PROF SNAPE:** If we can explore that for a little while.

**MR HOGGETT:** Yes. There is always pressure on regulators to favour consumers, and that's part of their accredited role. There is always pressure to lower prices. I've had some difficulty sorting out in my own mind, I have to admit, what is the best price, because on one side we see pressure for Telstra to reduce its prices to world best, which may not reflect the cost of what they've been doing, or may not reflect all of those costs; on the other hand, we've had a clear indication that, in some areas of the network, there is very considerable access capacity, which would, in

normal circumstances, indicate that prices would drop very severely, well below cost, to a point where one or another competitor was driven out.

That's not happening, but I wonder whether part of the reason why people are complaining about the prices Telstra are offering being too high is perhaps partly the result of the cost based calculations that the regulation enjoins on them; and maybe the regulation protects higher prices as much as delivers lower prices, I'm not sure.

**PROF WOODS:** It may also be a feature of the particular industry, with the any-to-any connectivity.

**MR HOGGETT:** There could be a variety of reasons for this. I just think that we haven't got to the bottom of that question, of why this huge excess capacity across the centre of the network hasn't resulted in some drop in prices there, at least below the level that they are.

Of course, more regulation can mean more cost directly. It can mean delays, and people have complained extensively about delays, and we think that this part of the regulatory process, the implementation, does deserve examination. I can understand people's frustrations about the lack of interim and final determinations in matters of arbitration, but you can see a process getting completely bogged down.

Why don't they make interim determinations? Possibly because officials are driven by very different motivations from the people who are coming to them for decisions. The people who are coming to them for decisions are risk takers. Officials, naturally, are risk averse; they have to be. They have to ensure that what they do will withstand both parliamentary scrutiny and legal attack. I think that's just a natural effect of regulation. So if you complain about the slowness of the process, you've got two alternatives: get rid of the process and just go on with life; or perhaps put it up with it. There are limits to the resources that can be applied.

Final determinations; why wouldn't they make final determinations? If you're risk averse, and the interim determination isn't challengeable, why would make a final determination? Also, what sort of priority does this get in a very busy organisation, such as the ACCC? I think those processes deserve examination in themselves. They're not part of the industry but they are part of what the industry deals with, and some examination of the government processes would, I think, be worthwhile. We've heard people say here, "Well, arbitration is available in the last resort," which often turns out to be the case; we go to arbitration. It's quite clear that arbitration is now part of the commercial process. You can grumble about it but everybody wants to use it.

Another thing we're conscious of is the timing of reviews of this kind. This review will report next year, the middle of next year. The government will consider it, perhaps taking six months. Any change to regulations will take another, possibly, six to 12 months; so we're talking perhaps two years before we see action on this report. Naturally, there is always four or five years between the next major review.

We're really talking about making regulations, perhaps, for the four years from two years out. This is a very fast moving industry. What you would imply from that, I think, is that such regulation as you do recommend ought to be really essential, and that - - -

**PROF WOODS:** And robust.

**MR HOGGETT:** And very robust; and that any temptation to go into very detailed regulation needs to be examined very, very carefully.

In the end, there is a risk in deregulation, but we would advocate taking a deep breath and doing it. If some specific regulation is required we would need, I think, to examine very closely what we're talking about here. What is the precise nature of the monopoly power? I've noticed the commissioners circling around that issue in the last two days. How substantial is it and where does it lie? And perhaps restrict any specific access regulation, if there is to be any, very closely to that monopoly power.

There are some interesting tensions in all of this, I suppose, just a final in-parenthesis remark. There has been strong criticism among a lot of the access seekers about the duplication of the networks and the cost of that. It is ironic, I suppose, that if we had a single network, which might, on the backbone, accommodate all of the messages that require to go down it, that would in fact perpetuate market power, because there would be one owner. Structural separation isn't the subject of your review, I know, but there is an issue there. Like telecommunications, everything is connected to everything else.

**PROF WOODS:** It's part of the heart of it.

**MR HOGGETT:** Yes, and that was all for me.

**PROF WOODS:** Thank you very much. You've raised some very interesting issues. Our questioning may jump around a little, given the sort of diverse nature of matters you've raised, but I'm sure you can follow along with us. First off, in terms of your cover letter to us: yes, you do have an assurance that we will accept subsequent supplementary submissions; it's a normal part of our process. We look forward to further contributions from you, and from all others who are able to inform the commission in the conduct of this inquiry, so we encourage that.

You made a reference to the question of what constitutes an acceptable level of waste. I take it there that that would tie up with your reflections in your submission that the level of duplication of over-investment may reflect the expectation of the competing firms, that they will all be successful, which is collectively irrational but, in your view, quite normal behaviour in fast growing industries. I take it that's the tie-up that you were drawing on?

**MR HOGGETT:** Yes.

**PROF WOODS:** Thank you for your observations in relation to a past life of another industry, because that gives another dimension to that particular issue.

**MR HOGGETT:** Perhaps I could just say, there is enormous waste in our economy. If we functioned in a micro-economically perfect fashion that waste would be short-lived and would be quite small. We have a very imperfect economy, as everybody does. I don't think we've ever measured the dead weight losses that occur from bad investment decisions.

**PROF WOODS:** But we won't try and centrally plan it to avoid that waste?

**MR HOGGETT:** No, absolutely not.

**PROF WOODS:** I thought not.

**MR HOGGETT:** I think there's an acceptable level of waste.

**PROF SNAPE:** I'm not quite sure what you meant is a perfect micro-economic plan.

**PROF WOODS:** That's why I thought I would provide the contrast.

**PROF SNAPE:** Too many Minties in that jar.

**PROF WOODS:** Your reference to circling around the issue, I trust at some point we'll actually thrust to the centre, and hopefully we're progressively so doing. You made an observation on regulation, that they apply standard rules to diverse transactions. Perhaps the observation could be extended to saying they often also produce standard outcomes, and that's something that we're also grappling with; particularly if part of the core of the issue, as people have put to us, is the unbundled local loop. People are calling not only for standard rules for access, but a standard outcome, ie, a common price for what they consider an essential building block.

**MR HOGGETT:** The common revealed price?

**PROF WOODS:** Absolutely. Well, if it's not revealed we have no assurance that it's common. That seems to be some of the nature of this particular industry, and I'm just wondering, your proposal, that you could remove XIC from the statute book, would IIIA, in its current form, be sufficient to deal with the access issues of telecommunications, some of which are this local loop issue, and the any-to-any connectivity nature of telecommunications?

**MR HOGGETT:** I think it's worth recalling that Part III was only inserted in the act in 1995, so it's a relatively recent provision of the act, and I think was a result of the Hilmer Inquiry that it was put in place. It hasn't had a great deal of testing, but if you examine its content, it seems to us to duplicate at least the principal requirements of XIC. It obviously wouldn't do everything that XIC does, but it does provide for

access declaration, it provides for registered contracts, it provides for access undertakings; it has guidelines incorporated in it, which were the competition principles, which I think was the complaint some people had about the lack of guidance in the existing legislation. People can apply to have a service declared, persons can apply; the minister can declare a service; there are provisions for revocation and review for dispute resolution, for determination by the commission; and there are a series of matters the commission must take into account, and there are extensive powers and penalties for hindering access.

There seem to us to be, in that generic provision, on the face of it - and I have to say, we haven't had time to examine this in the detail that we would have liked - sufficient range of powers to do, not what XIC does but to do a sufficient job.

**PROF SNAPE:** If you are considering that more - and it would be useful, I think, for our considerations, for you to do so - you may give some thought, also, to network effects; as to whether in fact you feel that, as written, it would encompass network effects. Also, of course, as I mentioned yesterday, IIIA is to be reviewed by someone in the next little while, so there is obviously an overlap of consideration, at least, in these matters.

**MR HOGGETT:** Which could be unhelpful.

**PROF SNAPE:** Could be unhelpful or helpful?

**MR HOGGETT:** Given timing, it could be unhelpful; depending on the timing of the review.

**PROF SNAPE:** Exactly.

**MR HOGGETT:** Yes.

**PROF WOODS:** But certainly if you could pursue that a bit further - - -

**MR HOGGETT:** I'll do that.

**PROF WOODS:** - - - and give us a supplementary submission, that would help.

**PROF SNAPE:** I mean, as you were saying, it might be unhelpful. I think if you are thinking about it, it might be useful to think in terms of helpful rather than unhelpful.

**MR HOGGETT:** Yes, of course.

**PROF SNAPE:** Not helpful to us, I mean - - -

**MR HOGGETT:** No, I understand; helpful to the whole cause, yes.

**PROF SNAPE:** It was IIIA that I was going to ask upon mainly, but I think that we've got that there.

**PROF WOODS:** If I could?

**PROF SNAPE:** Yes.

**PROF WOODS:** You talk through a number of issues relating to the reporting requirements, and you reflect on the information gathering, of officials having certain tendencies. The question basically is: if there isn't a level of information available, is that going to slow down the consideration of particular issues as they arise? I mean, if, upon the identification of a particular matter that warrants investigation under the regulations, there has to be a new process of discovery of basic data, isn't that going to be an inefficient process in its own right?

**MR HOGGETT:** I think I had two things in mind here. One was that the detail of the regulation, in a sense, gives rise to extremely detailed information gathering, and, to some degree, hand in hand with deregulation, they ought to go lower requirements for information, simply because there wouldn't be so many engagements between the regulatory authority and the industry. But perhaps more fundamentally - this is something that I've observed over my career, in a couple of very highly regulated industries - is that there's quite a strong propensity, in bodies that are continuously engaged with industry, such as the commission, to ask for more and more information.

**PROF SNAPE:** That's the ACCC.

**MR HOGGETT:** ACCC, yes.

**PROF SNAPE:** Not this commission.

**MR HOGGETT:** No, no. I was very careful about commissions that are continuously engaged, or bodies that are continuously engaged.

**PROF SNAPE:** With all due respect to the ACCC.

**MR HOGGETT:** With all due respect to the ACCC, who have an extremely difficult task to do, but they are risk averse people; they will seek information to the nth degree, and they will repeat requests for information at regular intervals; and they will cut it lots of different ways. I saw this very clearly when working in pay television, when Galaxy was almost at the point of death. We were still being asked for huge amounts of information about cross-cutting our accounts, as it were.

I guess I've put that in there as something that needs to be taken account of, because the collection of that information is cost-free to the regulator, but very costly to the industry, or can be very costly to the industry. I think, as part of the processes, we need to look at that question and really ask ourselves how much information is

required. We've heard complaints from a number of firms, in recent days, about the slowness of the process, and it's slow partly because of information gathering. The more regulation you have, the more information will be required. There is a behavioural thing in there that I think we need to understand.

**PROF WOODS:** I'm just wondering how much of this is a generic, or in-principle, view that you're expressing, as distinct from one that relates to the specific matters under inquiry at the moment. For instance, you refer to record keeping, but as yet there is no requirement for record keeping. There is a negotiation on what it constitutes, but my understanding is that it's not actually in practice.

**MR HOGGETT:** Yes.

**PROF WOODS:** I'm just not quite sure if this view is drawn on an understanding of behaviours in this particular instance, or represents a more in-principle view of the institute.

**MR HOGGETT:** I think it's both; it is certainly strongly generic, and I think it's a matter that requires and deserves examination. But I think record keeping, I did observe with some interest that nobody had been able to agree on that, which I think perhaps reinforces the point that I'm making. Provision of information at the sort of detail level you had with this specific form of regulation can be very, very detailed. You can cut right down to very detailed levels of costs and attributions. I think that's about all I can say at this stage.

**PROF WOODS:** Clearly, the greater the reach of regulation, then there's a natural conclusion to draw about the greater the amount of data; and so you can attack it from an in-principle position of: if you reduce regulation you're going to reduce data requirements. But in terms of the regulation that you have before you at any one time, if there are then complaints about the slowness of administration of the regulation, that that's a consequence of the unavailability or the imperfect understanding of data, then in fact you'd want systems that allow you to have current data that is relevant to the administration of the regulation in question. I don't think you can go two ways at once.

**MR HOGGETT:** Understood. I actually want to open the question up because I think what surprised me about the presentations of the last few days was that nobody did mention that problem, the provision of information.

**PROF WOODS:** No; it's not one that has arisen as such in this forum, but I would be quite confident that it's an issue that each of them is aware of; it just hadn't quite got to their priority list to raise today. Do you have other matters - - -

**PROF SNAPE:** Could I just ask you about the history a little bit more, and Galaxy, as a matter of interest. When you said that the technology is now being used by Austar, is that the actual equipment that was used by Galaxy, that they've bought up second-hand or whatever, or what is the arrangement?

**MR HOGGETT:** I don't have the full story on that. It's certainly the spectrum, which is the really valuable part of it all; or potentially really valuable part of it.

**PROF SNAPE:** It is the same spectrum that was being used by Galaxy?

**MR HOGGETT:** That's right, it's the microwave spectrum. This is something that I discussed with one of my ex-colleagues in the last little while, so it's probably worth exploring that a bit more factually because I don't have the full detail on that.

**PROF SNAPE:** Just a matter of interest that had been referred to.

**PROF WOODS:** Regulation can be for several reasons, to overcome imperfect market characteristics. There can also be a role put forward by governments for regulation on social grounds. Do you see any relevance of that in this particular industry?

**MR HOGGETT:** We didn't really address that at all, things like the universal service obligations, and we only in passing referred to the price on access rule concerning local calls and the timing of local calls; so we're a bit uncertain about how wide to go here. Obviously, all of these things link very strongly with each other. If you oblige one player, one principal player, to provide services that it wouldn't necessarily provide, independently, then clearly there has to be direction in those circumstances. There has to be direction of that player and, as in this case, compensation of that player for some of these things.

We didn't ask ourselves, certainly not in any detail, whether those obligations would be met in conditions where the regulation didn't exist. We suspect that in terms of local calls, for example, if you were to open that market you might find that for most people - perhaps for the vast majority of people - they would get the service that they wanted, they would get it at a price that they could pay. Now, obviously, some people, particularly businesses, might pay an awful lot more, because currently they can put messages down the line untimed for very long periods of time. But that might be not a bad outcome.

For the people, for example, who use the telephone for emergency or other purposes, and really can't afford what a local call would cost, then there can be other means of providing for those people that wouldn't impinge so dramatically across the whole market. So these things all do interlink, but we deliberately didn't try to discuss them.

**PROF SNAPE:** Earlier in the day you heard some discussion of a voucher system for the USO, as building into the USOs, and if you do have thoughts in contemplating those social objectives, as to how they may be most efficiently met if they are continuing, then we'd be interested. I think probably, also, if you do address the untimed local call - I'm not sure whether it's not within our terms of reference, I think.

**PROF WOODS:** Not centrally, no.

**PROF SNAPE:** No, not centrally, but, I mean, again, one is think of network effects there. If one is trying to build up a network, say, on the Internet, then of course the cost of calls is a very important element in the networking economies that one can get.

**MR HOGGETT:** It's difficult just to consider competition policy on its own, I think, because these things are bound to impinge on the competitive capacity of the players. If you alter the conditions under which they compete, and their other obligations remain the same, then you may be doing them an injustice.

**PROF WOODS:** Any other matters there?

**PROF SNAPE:** No. I found it a very interesting submission, and, as you said, taking it combined from many others, which doesn't surprise us that much.

**PROF WOODS:** Certainly grateful for the views, and to have them on the record so that we can draw on them as need be; but we also encourage you to remain forthcoming in further submissions to us. If you could do that in a timely way, in the sense that we'd like to draw a line - it might not be the final line - but a line by end of September, so that we can then ensure that we've had time to contemplate all people's views before we put out a draft report.

**MR HOGGETT:** Yes, thank you.

**PROF WOODS:** If you'd keep that in mind, thank you very much.

**MR HOGGETT:** We will.

**PROF WOODS:** FlowCom and, I think, Macrocom, are you speaking on behalf of?

**MR BLUNDELL:** Macrocom is part of FlowCom.

**PROF WOODS:** If you could please give your names and the positions that you hold.

**MR BLUNDELL:** My name is Barney Blundell. I'm the managing director of Macrocom, which is a subsidiary company of FlowCom, and actually the carrier portion of FlowCom.

**PROF WOODS:** Yes, I see that there.

**MR BLUNDELL:** We're a wholesale carrier. I've been in the industry for 40 years, fighting the deregulatory fight, you might say. I started at AAP and I had 12 years on the board of ATUG, as well. Julie is our legal and regulatory - - -

**PROF SNAPE:** We need the voices, actually.

**PROF WOODS:** Yes, if you could - your name - - -

**MS STONE:** My name is Julie Stone. I'm regulatory affairs for FlowCom. Possibly because FlowCom is a relative newcomer to the market, I'll just explain a little bit about what FlowCom does.

**PROF WOODS:** Please, thank you.

**MS STONE:** FlowCom, as I said, is a relative newcomer to the telecommunications market in Australia. However, through its subsidiary, Macrocom, it has been active in the industry since 1998, and many of its key personnel have been kept participants in the deregulatory work that has been done.

FlowCom is a vertically integrated, facilities based telecommunications group, with three operating divisions: Macrocom, which is our licensed carrier and operates on its own infrastructure; FlowCommunications, which is a carriage service provider of high-speed Internet data and multimedia services; and Transaction Network Services Australia, which is a joint venture between FlowCommunications and PSI Net Solutions; that's an applications provider of EFTPOS and transaction services.

FlowCom currently targets three distinct areas of the telecommunications market, which are: bulk switch broadband services; high-speed Internet packet switch data and IP carriage services; and end-user applications. As I said, we've been operational since 1998, and our network currently stretches through Sydney, Melbourne and Brisbane, with points of presence in regional centres and plans for expansion to more than 30 locations by the end of 2000.

I would just like to make one note in our submission that I've referred to a couple of times: Part III of the TPA, that should actually be Part IIIA of the TPA.

**PROF WOODS:** Yes, that's fine. In most cases you've got IIIA; there are a couple. Thank you, we'll take that as read.

**MS STONE:** Just as a general statement, as per the summary in our submission, FlowCom would recommend that the current telecommunications-specific regulatory regime be strengthened, and that processes be improved to ensure faster resolution of disputes and improved time to market, which we see as critical.

**PROF WOODS:** Any other introductory comments?

**MR BLUNDELL:** No, Julie's the legal person, she'll comment on most of that. I guess I can point mainly to history and where we've been, and where we're coming to at the moment. It's interesting that this should occur just three years after the opening of telecommunications, and hopefully it will be for the better.

**PROF WOODS:** Thank you very much. I notice in one part, under barriers to competition, you draw our attention to the oversupply of bandwidth in Australia, and particularly the high demand routes, the intra and inter-capital routes, which have excess capacity. Would you then, parentheses, say, which is not necessarily available to end customers? Presumably in your business you require access to intercity trunks for any purposes?

**MR BLUNDELL:** We require access, and we built that access more out of frustration from the amount of supply and the price of supply by the two incumbents. We've put up microwave networks. People thought we were quite mad to be doing that, when there was so much fibre in the ground, and yet people are still putting fibre in the ground. I guess we have many years of Telstra and Optus charging around \$200,000 per annum for a Sydney-Melbourne two megabit per second circuit. We immediately reduced that by half when we came in, and it's now down to about a third, and suddenly Telstra and Optus can match those prices. We have dragged those prices down albeit we are still small. We don't know why they followed us down, but they did. I guess it's somewhat akin to the present airline situation.

**PROF WOODS:** If we could just follow those figures, because that's helpful to us; so you're saying, what, pre or mid 90s, the price was - - -

**MR BLUNDELL:** Yes, mid 90s. From the early 90s, right through, really, till we brought up our network in September 98, the price of, what they call, megalinks between Sydney and Melbourne and Sydney-Brisbane, were round about the 200,000 mark; 206,000 from Telstra, 196 from Optus.

**PROF WOODS:** Per annum?

**MR BLUNDELL:** Per annum.

**PROF WOODS:** Very similar pricing.

**MR BLUNDELL:** Very similar pricing. There were only two suppliers, and they were the two suppliers.

**PROF WOODS:** Both of them with excess capacity?

**MR BLUNDELL:** Both with excess capacity. Frankly, at any time - - -

**PROF WOODS:** Was that significant excess capacity in your view?

**MR BLUNDELL:** - - - Telstra could have sold off capacity to anyone.

**PROF WOODS:** In your view, significant excess capacity, in both cases?

**MR BLUNDELL:** Yes. Optus have just increased their capacity by changing their multiplexes to wave division multiplexes on their network. They've really both got pretty much infinite capacity, but there's only capacity if you'll sell it at a reasonable price.

**PROF WOODS:** So we had 206 and 196 thousand up till mid 98?

**MR BLUNDELL:** Yes; and then, shortly after, Telstra went down to 133,000 for other carriers, but they had to - - -

**PROF WOODS:** Non-Optus carriers or non-flow - - -

**MR BLUNDELL:** Non-Optus carriers, they had to - new carriers and service providers - but they had to sink a number of million minutes of local traffic with Telstra to qualify for that, to get that price.

**PROF WOODS:** Bulk purchase?

**MR BLUNDELL:** Yes, it was bulk purchase, on the assumption that you were actually sinking traffic in their local networks, as well.

**PROF WOODS:** Was it a take or pay?

**MR BLUNDELL:** It was take, yes.

**PROF WOODS:** So if you didn't utilise it fully, you still had to pay?

**MR BLUNDELL:** If you didn't utilise it fully, you went back to the 200,000 mark at the end of the period. We came into the market at about 100,000 and we've subsequently - - -

**PROF WOODS:** And you were offering that as an open access to others who wished to utilise it?

**MR BLUNDELL:** Absolutely.

**PROF SNAPE:** With nothing tied in like the Optus?

**MR BLUNDELL:** No precursors at all, we offer open access.

**PROF WOODS:** You still then had determined - or they had determine - I mean, they might use you for getting between the two cities, but presumably the still have to - - -

**MR BLUNDELL:** They still have to lodge their traffic - - -

**PROF WOODS:** - - - originate and terminate - - -

**MR BLUNDELL:** Yes, the local network was till a monopoly. We were able to get them from our - we have hub points at each city, and several of them in the bigger cities; and we use microwave and some of our own fibre around the CBD areas to lodge traffic, the bulk traffic. But, in the end, they then have to have the switches, the billing systems, and lodge their traffic with Telstra; and have done, lodged their traffic with Telstra, to actually move telephone traffic and data traffic.

**PROF WOODS:** Is that an impediment to them coming on to your system?

**MR BLUNDELL:** If those services are bundled by Telstra, yes, it is an impediment for them to come on to us. The other impediment was bundling of all states, for example, "We'll supply you all states for this price," whereas we were only up between Sydney and Melbourne in the early stages. Again, it's very akin to the airline situation today.

We've picked up most of the new carriers on our network. People are now finding communications of such import to their business that they need two carriers. They need alternate infrastructure because they can't afford to have a major failure like we had recently between Sydney and Melbourne, when the two Optus cables were cut at the same time. People are tending to go for at least two carriers, and we're picking up a portion of the business, which is enough to keep us going quite nicely.

**PROF SNAPE:** You're using a wireless technology?

**MR BLUNDELL:** Yes, we're using trunk microwave equipment.

**PROF SNAPE:** That is able to carry as much, carry as effectively, at the same quality as the - - -

**MR BLUNDELL:** Yes, our quality is every bit as good as the fibre. You can't carry as much, because in the end, you use a channel for each 155 million bit per second carriers, and we have some four carriers between Sydney and Melbourne at the moment. We're just about to put up another four. But in the end you'll always get more on fibre than microwave.

**PROF SNAPE:** Yes, I didn't mean - I meant the same qualities really.

**MR BLUNDELL:** Yes, same quality, yes. Microwave went into disrepute some years ago with the analog microwave due to atmospheric and that, but with the new digital microwaves and if you engineer it conservatively you'll perform every bit as good as fibre.

**PROF WOODS:** So we were then in a state, during the 98 period, of three main carriers, being yourself and the two fibre optics.

**MR BLUNDELL:** Yes.

**PROF WOODS:** Did that drive prices down further? I mean, did that create a competitive market that others - - -

**MR BLUNDELL:** Yes. The other two came down, followed us down. Some of the people that we sold to resold our services as well.

**PROF WOODS:** So you were selling wholesale bulk as well as individual channels?

**MR BLUNDELL:** Yes. One of the other larger carriers was buying off us and reselling our capacity as well. So, you know, our prices vary on two factors: the amount of capacity you take up on one arm; and on the other arm is the length of contract. So if you get down to the bottom right-hand corner it can get very low in price. I believe we're still very close to the market leader there, though PowerTel has come in recently and come in with some very, very low prices.

**PROF SNAPE:** Are you the only wireless one in that trunk root?

**MR BLUNDELL:** No, Soul Pattinson have put up - they've put up Sydney, or they're in the process of putting up Sydney-Brisbane and they say they're going down to Melbourne as well, but I guess we're the only ones that have got a complete network at the moment, yes.

**PROF WOODS:** You were saying that you're about to duplicate your system, that you'll go from four to eight channels.

**MR BLUNDELL:** Yes, Sydney-Melbourne, yes.

**PROF WOODS:** So clearly you see that there is a business case that warrants the investment and that it's a sustainable - - -

**MR BLUNDELL:** Yes, well, the microwave is quite different from the fibre. When you commit to putting a fibre down between Sydney and Melbourne you've got to commit to the route and where you're going. With the microwave you're on the top of hills as you go down and you can access any point in any of the towns that you can reach with an offshoot on the microwave. So you have speed to market and flexibility with the microwave and we see it as - in the end if the amount of capacity keeps rising dramatically that people require, we see microwave as backup and regional; and that's our thrust at the moment, is enter all the regional markets.

**PROF SNAPE:** You're not contemplating, in having got this microwave technology there and going and competing, it's not then economical for you to say to Telstra or

Optus, "Okay, we're thinking of putting up another capacity in microwave. Alternatively we can run a lot of our straight-through traffic down your fibre. What price can you give us?"

**MR BLUNDELL:** Been there, done that.

**PROF WOODS:** And successfully?

**MR BLUNDELL:** No. They seem to have a different price for us than they have for others.

**PROF SNAPE:** So even though they can see very clearly the alternative is that you'll put up more capacity, which could have been running down their fibres, and so you've got credibility and everything, you still can't get a price from them which would be cheaper than putting up additional capacity?

**MR BLUNDELL:** No.

**PROF WOODS:** And you've pursued this?

**MR BLUNDELL:** Vigorously. Vigorously. I mean, we'll end up buying to Perth for sure. We're not about to put microwave across to Perth in the short-term anyway, but we have designed - we've finished our - - -

**PROF WOODS:** Is that purely because that gives you a greater network making you attractive to customers?

**MR BLUNDELL:** Yes, it's such a long hop for the amount of traffic. You've got to have a lot of traffic on that many hops to make it a viable proposition. To put up microwave all the way across to Perth you would have to put a very large one and get a lot of traffic to make it viable. We're going to Tasmania. We've finished our design for Tasmania. That'll be up by the first quarter next year.

**PROF WOODS:** You can't put the towers on the wave tops but - - -

**MR BLUNDELL:** We hop to King Island and then across King Island and then - - -

**PROF WOODS:** It's getting late in the afternoon.

**PROF SNAPE:** You're able to island hop across to there?

**MR BLUNDELL:** Yes. It's a fairly big engineering challenge that we're doing to get across to there but, yes, we're going to Tasmania and we're going to Adelaide again by the end of the first quarter next year. Then we're going out to a whole lot of regional - - -

**PROF WOODS:** This is despite the fact that there's fibre already in the ground to Adelaide?

**MR BLUNDELL:** Yes.

**PROF WOODS:** You'll still put up towers; and those who own the fibre understand the trade-off that's being made between them having that business and you duplicating capacity?

**MR BLUNDELL:** Yes.

**PROF SNAPE:** Do you know enough about Optus's and Telstra's structures to judge whether that - would you judge that to be the best response from their point of view not to be giving you that capacity, not to deal with you?

**MR BLUNDELL:** If I was Telstra I'd have bought our total capacity on day one and sent me out to the golf course, because, you know, in terms of our capacity compared to their capacity.

**PROF SNAPE:** Well, I guess we'd all like to be bought out.

**MR BLUNDELL:** Yes.

**PROF SNAPE:** Go to the south of France or somewhere, but that aside, would it seem to be a rational strategy or the best strategy from their point of view not to deal with you?

**MR BLUNDELL:** Who can tell? I mean, I could say things but - - -

**PROF SNAPE:** No, I don't wish to push you. It's just that when you hit - you know, you've tried and you've failed, you wonder why, and that's just what I was trying to - - -

**PROF WOODS:** Particularly in your instance when you're then going to put up an alternative.

**MR BLUNDELL:** Frankly, by when of the players I got asked, "How do we keep you from building this microwave to Melbourne?" and I said, "Supply me with capacity at the right price and I won't build it." They said, "But you'll only go out and resell our capacity." Well, of course, I'm in business. Same thing with Sydney-Brisbane, it just hasn't occurred. But on the other hand, we cover a lot of areas. As I said, with microwave we have a lot of advantages over fibre because if you want to get to a hospital or something in a particular location we can hit it. Whereas with fibre you've got to dig that extra couple of miles to get there.

**PROF SNAPE:** I can see that and that's why I asked you about the through traffic rather than what you might be picking up.

**PROF WOODS:** On this regional one, because you mentioned - and I just can't quite put my finger on it at the moment - the various regional points of presence. Is that targeting sort of higher volume - albeit, it's still small relative to sort of your major customers - but higher volume regional individual customers rather than connecting into the CAN of regional centres?

**MR BLUNDELL:** No. We put up a point of presence site and then we take others - Macrocom takes others to that point of presence where they then generate regional services. One of those others is FlowCommunications but we have several other people who have said, "Look, we'll go with you guys," mainly - - -

**PROF WOODS:** So they're collecting traffic through Telstra's - - -

**MR BLUNDELL:** That's right.

**PROF WOODS:** - - - local loops in the regional - - -

**MR BLUNDELL:** And/or radio.

**PROF WOODS:** Yes. So they're utilising either their own or somebody else's, presumably predominantly Telstra's, origination services to collect the traffic, but then they switch it across to your microwave; although, as you pointed out, you might have instances of particular relationships if they're a big enough organisation, as a hospital or a university campus or a defence establishment?

**MR BLUNDELL:** Yes. I mean, a dollar's a dollar for these people. Obviously if Telstra and Optus cut their prices far enough they'll probably use them, but they have a propensity to go with us because we're interested in their expansion not in stopping them.

**PROF WOODS:** Because that's all traffic for you?

**MR BLUNDELL:** Yes, it's all traffic for us. So however we can encourage them in going to these locations helps us, helps them.

**PROF WOODS:** So you've got a business model that says you've got capacity, some of it's underutilised, who can I see it to at a right price?

**MR BLUNDELL:** We don't go anywhere until we've got a customer. I mean, I'm in business to make money so we don't go and frantically build out everywhere just for the sake of building out. I mean, some places - - -

**PROF WOODS:** No, but if you have excess capacity on something that's already justified for another reason, your business model is to then try and utilise that capacity and set your price to meet that need where it's appropriate?

**MR BLUNDELL:** Yes.

**PROF SNAPE:** Perhaps, if you could turn to Part IIIA, which is on your page 3 we're talking about. You're saying that there's no evidence that access declarations under this part will work - and of course there have been very few access declarations under there - - -

**MS STONE:** As I understand.

**PROF SNAPE:** - - - and, in part, because of XIC. If there had been no XIC there would probably have been applications under IIIA.

**MS STONE:** Possibly.

**PROF SNAPE:** Have you given any thought to whether IIIA would suffice if XIC wasn't there, and what amendments there might be necessary to IIIA to make IIIA suffice in the absence of XIC?

**MS STONE:** I think one of the areas that we would look at there is one of the conditions under Part XLIVH subsection (4), it has to be uneconomical to duplicate.

**PROF SNAPE:** Yes, right.

**MS STONE:** Under that, we would see, as AAPT mentioned yesterday, that termination in this case is still fairly critical. While you can build an infrastructure or have customers originating calls on your network, you can't control how those calls are terminated, and therefore a lot of control still rests with the terminating carrier. In addition, my understanding is that Part IIIA still calls for a ministerial decision, whereas Part XIC does not. It is this lack of political intervention under Part XIC, especially where the government has 50 per cent ownership of the incumbent, which would cause difficulties under Part IIIA.

**PROF SNAPE:** As I was just saying, that's an angle that hasn't been brought to our attention before. Thank you.

**PROF WOODS:** In the XIC you classify disputes as general access disputes and individual disputes, and you're looking for transparency of disputes. I assume transparency of outcomes from arbitration is what you're meaning there, in particular.

**MS STONE:** Yes.

**PROF WOODS:** What's the likely behavioural response by organisations if there is a process of publicising the outcome of arbitration? In one case, if you're the access

provider and you knew that the outcome was to be published, would that cause you to be even more vigilant in trying to get a higher price? Might there be a perverse response to having them published?

**MS STONE:** I'm not sure. I would suggest that it may increase the trust aspect if there was a more transparent process.

**PROF WOODS:** Is trust lacking in the industry?

**MS STONE:** Just a tad.

**PROF WOODS:** Sorry, continue on.

**MS STONE:** I would see that could be one outcome. No, I don't see that it would cause an access provider to increase their shown prices, if they are more open to an industry-wide investigation, rather than - - -

**PROF WOODS:** Right. Let's take another case where currently they're going through an arbitration on a bilateral basis. If they were going through an arbitration process with a reasonably large access seeker, they may settle at one price; but if then a smaller access seeker came along, and was also bilateral and confidential, they might result in a higher price.

**MS STONE:** A different price.

**PROF WOODS:** Yes, it's possible. In which case, would the consequence of publication mean that the access provider would be willing only to settle through arbitration at one standard price that might disadvantage the larger access seeker?

**MS STONE:** It's possible - and I don't know enough about this to know if my following statement is going to be correct or not.

**PROF WOODS:** We'll accept it with a caveat.

**PROF SNAPE:** My comment was, we'd better look at the act.

**MS STONE:** If the arbitration sets the basic price, then is there anything to stop the access provider providing a lower price to the larger access seeker?

**PROF WOODS:** In a commercial - yes.

**MS STONE:** Again, is that misuse of market power by the larger access seeker?

**PROF WOODS:** Okay. I think that gives us a view.

**MS STONE:** Barney?

**MR BLUNDELL:** I think the major point here is to speed up the competitive processes, as I see it. If everybody, individually, has individual arbitration, it slows everything down - - -

**PROF WOODS:** Once it's published you'd only have one, wouldn't you?

**MR BLUNDELL:** That's right, and that's it. I mean, we've seen a lot of people in the industry over the years win the battle and lose the war. Essentially, any slowing of any resolutions always benefit the incumbent because they maintain their original position. I think that as far as we're concerned speed is the essence, not necessarily - - -

**PROF WOODS:** You make that point in relation to the second, in terms of individual disputes - - -

**MR BLUNDELL:** Yes.

**PROF WOODS:** - - - about strengthening and engendering faster resolution of disputes. Do you have particular things in mind? You talk about the use of hearings as well as submissions. Is that the only way in which we could achieve that?

**MR BLUNDELL:** I personally like the OFTEL model, where the OFTEL just works it out and directs people. We thought that going to the ACCC was a weakening, in the first place, of the regulatory situation. Now, if we were to go back the Trade Practices Act, I believe it's weakening it further, to the extent where we're back into the New Zealand camp. We completely agree with Optus's statements yesterday, that the New Zealand situation has taken 10 years to get where Ireland got in two; and I thought that was a very succinct statement that they made. I just believe that I'd prefer a benign dictator than anything else right at this moment.

**PROF WOODS:** How would you be confident that there wouldn't be regulatory error in such a process?

**MR BLUNDELL:** I have no doubt that there will be regulatory error; but is the regulatory error as bad as seeing companies go to the wall because they're being eaten up with legal costs and delays? They've got capital sitting there that can't be utilised because they can't get their network going because of regulatory - I'm sure people would put up with the odd error by the regulator, providing you were seen to be an even-handed referee. No-one ever likes all the decisions of the referee.

**PROF WOODS:** I mean, you do explicitly there raise the question of the cost of capital. It would be useful if, in any further deliberations, you were to reflect on that issue, and if you could draw on any case studies where the cost of delay, given the capital-intensive nature of the industry, was significant; that would help us understand the question relating to timeliness of decision-making, because that's an inherent characteristic of whatever regulatory regime you go down.

**MR BLUNDELL:** Yes.

**PROF WOODS:** Some are capable of more timely determination than others.

**MR BLUNDELL:** Okay, we can look at that.

**PROF WOODS:** The greater we understand the cost, that would be helpful to us. Number portability, I understood that point. You mentioned ACIF and the TAF. You mentioned it in the context of public awareness but presumably you attend various of the ACIF?

**MS STONE:** Yes.

**PROF WOODS:** In fact you'd be eligible, as a carrier, to be on TAF as well?

**MS STONE:** Yes.

**MR BLUNDELL:** Yes.

**PROF WOODS:** No doubt you duly are, and duly have contributed to the many outcomes of the TAF.

**MS STONE:** We've actually just recently joined TAF.

**PROF WOODS:** Do you have any view on either the TAF or ACIF?

**MS STONE:** My point with number portability - well, my point, using number portability as an example, is that the multilateral discussions with ACIF and within the TAF forums can sometimes take a long time to occur. As I said, with number portability, the discussions within ACIF, I think, started in about 1995, or in the precursor days, it started in about 1995. Certainly, for free phone and local rate, I still - perhaps not within the ACIF forum because free phone local rate is outside that forum - but certainly with local number portability those discussions are still ongoing with local number portability.

**PROF WOODS:** Constructively, and therefore it's all put it?

**MS STONE:** I think actually they're about to reopened with local number portability; at times constructively; at times can be used a delaying mechanism.

**PROF WOODS:** By particular operators?

**MS STONE:** By anybody who wants to.

**PROF WOODS:** There are different incentives on different participants?

**MR BLUNDELL:** Macrocom hasn't had much need to be in the TAF. Because we have our own infrastructure everywhere we really haven't been too concerned about the interconnection with Telstra, which seems to be the major part of the discussions.

**PROF WOODS:** Other than that your users need it.

**MR BLUNDELL:** Other than our users and, of course, since we've now joined with Flow to become FlowCom, the interest in TAF has become much closer now.

**PROF WOODS:** Are there other matters that you wish to raise with us?

**MS STONE:** I don't think so.

**PROF WOODS:** I must say I find your market experience information quite useful and valuable, and to the extent that you'd like to document that further - - -

**MR BLUNDELL:** I could really only say that I've been pushing regulation since 1970, which seems an awful long time ago, when it was the post office, and then Telecom and then Telstra; and there have been some fairly dirty tricks played over the years and I'm not a believer that leopards change their spots, and I see no evidence that those spots are changing this time.

**PROF SNAPE:** Can I just ask one question. Are you getting involved in the transmission with broadcasters at all?

**MR BLUNDELL:** We have tenders in to all the broadcasters, yes.

**PROF SNAPE:** To carry what?

**MR BLUNDELL:** To carry digital television traffic.

**PROF SNAPE:** So you would be a multiplexer or what?

**MR BLUNDELL:** Yes, we could multiplex it and carry it to their transmission sites. We have - - -

**PROF SNAPE:** So it would be carrying it to their own transmission sites.

**MR BLUNDELL:** Yes. Or if they use someone else for a transmission site. I mean WIN and Southern Cross have just announced that they're going with NTL; that NTL have set up a communications carrier.

**PROF SNAPE:** Yes.

**MR BLUNDELL:** We were rather hopeful of getting that job but we didn't; but we're still talking to several others. The regional television stations transmit from a very large number of locations and that fits our business quite nicely.

**PROF SNAPE:** So the convergence of technologies is meaning that you're into the broadcasting market or you will be hoping to be in the broadcasting market as well as the telephony market?

**MR BLUNDELL:** As far as the carriage of data is concerned. I mean, digital television is digital data.

**PROF WOODS:** Yes, data is data is data.

**MR BLUNDELL:** Albeit fairly large lumps of it; and high priority data, you can't afford to delay a scan on picture, it's got to go straight through.

**PROF SNAPE:** Are you being affected at all by the Broadcasting Act then, or the regulations affecting broadcasting?

**MR BLUNDELL:** No, only the government delay in deciding what they are actually going to do. Once they decide what to do we're not affected at all.

**PROF WOODS:** So you're just merely a conduit to which the signal travels?

**MR BLUNDELL:** Merely a conduit.

**PROF WOODS:** Yes, which is what so much of the telecom market is sort of becoming at the facilities end.

**MR BLUNDELL:** We're the transport layer. There are a lot of other layers below that.

**PROF WOODS:** Yes, I understand that.

**MR BLUNDELL:** And frankly that is where most of the money is; made in the lower layers. Macrocom is a small business, personnel wise; it's a fairly large business as far as capital is concerned. But as far as numbers of people to run it I don't have any billing systems; I don't have any switching systems; it makes it fairly straightforward as far as our particular business is concerned, but it gets a lot more - - -

**PROF WOODS:** You don't have a retail business; presumably you've got a wholesale one.

**MR BLUNDELL:** That's right. It gets a lot more complex once it gets down into the Flow area, where - - -

**MS STONE:** FlowCommunications, on the other hand, has all of those systems.

**MR BLUNDELL:** Yes, that's right.

**PROF SNAPE:** And you have as much spectrum as you want?

**MR BLUNDELL:** You've never got as much spectrum as you want. The fortunate thing about microwave is that if you can't get spectrum on that hill you can over to another hill and get it. You can reuse the microwave spectrum as long as you're a reasonable distance away from the last user of it. So in theory it's infinite. If I want to put another set of paths to Melbourne I might have to put another three or four links in and go across the mountains and go around by a circuitous path, but generally you can get enough frequencies to get you where you want to go. The frequencies are becoming very tight in the cities.

A lot of people are using microwave now in the cities and that's very tight and you can't always get the band that you want once you get up in to the higher frequency bands where you start to get rain affected and get outages when you get heavy rain. The band we've got for our trunk communications isn't affected by rain; it's a lower band, but if I wanted to do 40 links out to Parramatta I'd have difficulty getting the frequencies.

**PROF SNAPE:** But these are not being auctioned - the frequencies that you're interested in aren't part of the - - -

**MR BLUNDELL:** It's not practical to auction those because it's not point to multi-point; you're not covering a whole area, you're only covering between two points. You can go around here and cover between - with the same frequency band.

**PROF SNAPE:** So it's very specific?

**MR BLUNDELL:** It's very specific, yes.

**PROF SNAPE:** Specific, yes. Okay.

**MR BLUNDELL:** It's like shining a torch beam, only narrower.

**PROF WOODS:** Thank you. Anything else that you wish to say to us.

**MR BLUNDELL:** No, I don't think so.

**MS STONE:** No thank you.

**PROF WOODS:** Are there any persons present who wish to make a statement to this inquiry this afternoon? That being the case we will resume at 9 o'clock tomorrow morning. Thank you all.

AT 4.23 PM THE INQUIRY WAS ADJOURNED UNTIL  
WEDNESDAY, 16 AUGUST 2000

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