



**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 WEDNESDAY, 16 AUGUST 2000, AT 9.00 AM

PROF WOODS: Welcome to today's proceedings of the 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.

The terms of reference for the inquiry are available, for those who do not already have them, at the rear of the room. I would like to remind participants that these hearings will be conducted in a reasonably informal manner but that a full transcript of the proceedings will be taken and made available to all interested parties. Transcripts of proceedings will be available, within about three days of the hearing date, on our Web site.

I would like to welcome to the hearings our first participants from One.Tel. Could you please advise, for the record, your name and the position that you hold?

MS PARKER: Thank you for giving us this opportunity to address the Productivity Commission inquiry. My name is Alicia Parker and I'm corporate counsel at One.Tel.

MR WRIGHT: David Wright. I'm chief executive of the mobile networks part of One.Tel as well as a corporate counsel.

MS BERGGREN: Shanti Berggren, also corporate counsel for One.Tel.

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

MR WRIGHT: Yes, we do. I might give you just a quick run-down firstly on One.Tel. We commenced operations in 1995 and are a wholly owned Australian operation. We have over 2 million customers worldwide, and are arguably the most successful Australian telco in overseas markets. We have a wide service offering: we offer local calls, mobile, Internet, international, as well as corporate services. In this coming year we'll invest over \$A1 billion in infrastructure in Australia plus over \$500 million in spectrum. We are currently, as well as our services, building a GSM mobile network around Australia and moving to high-speed data and have just commenced rolling out a DSL operation.

Essentially our submission makes the following four main points. We believe that the framework in the current legislation is essential to the ongoing viability of competition in Australia and, in particular, for new entrants. Investment in new infrastructure in Australia is predicated on the existence of that framework and the confidence that a new investor will have in the regulatory environment. We believe that the current legislation, despite having a great framework, doesn't necessarily fulfil its full potential. We also believe that the current self-regulatory processes are not effective.

What's important about the framework is that there are still clear imbalances of power in many service offerings, not the least being local calls, but in many other areas. One.Tel's experience is that markets would be non-competitive without the threat of action under Parts XIB and XIC, and there appears to be a strong basis for the continuation, in our experience, of the current arbitration processes. We understand that these are being challenged and we would support their continuing involvement and think they perform a number of essential functions, one being, access to information which is generally held by the access provider, in many cases that being Telstra. The other is, it provides incentives where an interim determination is made for an access provider to quickly resolve issues. It also provides more time for a final decision to be the correct one and not one that's rushed into. Unfortunately though, the framework, we believe, fails to deliver all the competitive benefits that we believe Australians should be entitled to receive.

In relation to new networks and new investment. Networks cannot and will not be built without access to existing carrier's infrastructure. We think that's a clear statement. Whether it's access to operators' PSTN services and local call customers or whether it's access to mobile customers, end-to-end connectivity is essential for the ongoing viability of any telcos business. Any watering down of provisions XIB and XIC we believe would put that significant investment under threat. However, on the positive side, investment is stimulated by a confidence in the existing regime, and certainly the framework provides some level of confidence and the performance of the bodies involved in putting that framework into place is essential to improving that confidence.

We believe there is a strong potential for those competitive benefits to be lost by any movements to water down the current regime. Incumbents currently, we believe, use the regulatory inefficiencies to obtain competitive advantage with relative immunity. For example, the arbitration process, where an interim determination is not used, allows a significant delay in the determination of a final result and allows, as has been shown in a number of recent cases, for an environment to be created which is anticompetitive for some time creating things such as first-mover advantage. There are also many circumstances where there's massive duplication, inefficient duplication, of investment, and we believe that access rights will significantly reduce that inefficiency by allowing operators to use infrastructure which is already there to service customers.

In relation to self-regulation we believe that many of the self-regulatory processes are used to protect incumbents' business positions and to restrict competition. Self-regulation we believe is essential and is enormously positive where there are relative balance in bargaining powers and there's a consensus between the people involved in the self-regulation to resolve an outcome. Where that isn't the case, where part of the involvement in self-regulation by operators puts them poles apart, where they have not anywhere near the same competitive and commercial outcomes, that self-regulation struggles to produce any reasonable outcome. It also means that millions of dollars which could ultimately be provided to consumers in the forms of better services or lower prices are now being channelled

into self-regulation activities, legal activities, arbitration activities, where they could be ultimately used to better consumer services and prices.

We think there is some need to improve the current co-regulatory processes, however, we must say from the outset that we believe that both the ACCC and ACA perform an essential role and are doing an excellent job at trying to put the current framework into place and to deliver the greatest outcomes that they possibly can in doing that. However, we believe that they can do some more to correct inefficiencies in setting guidelines and using their powers when guidelines aren't followed. Quite often a self-regulation activity is set up, the industry goes away and attempts to resolve that self-regulatory activity; the ACCC and the ACA will sit on the sidelines and watch that occur, and the end result is not what anyone expected it to be at the start, or what the objectives expected it to be at the start, or it may get there but it takes a hell of a lot longer than the ACCC or the ACA setting out what they believe the guidelines should be at the start, and giving everyone parameters that they need to work in. Examples of that would be, mobile number portability.

Some of the co-regulatory processes such as the TAF we find to be totally irrelevant and have been of no value to us as an access seeker. In fact, they provide, we believe, a considerable delaying ability for those people who want to stifle access seeking.

How do we remove those inefficiencies? We believe you can improve the timeliness and effectiveness of dispute resolution. One good example of that is the current interim determination phase of the ACCC, and that's one we believe should be, not only protected, but in fact encouraged to be used more often. The ACCC and the ACA, when they involve themselves in activities, we believe, create far stronger competitive outcomes, and we believe they need to be both resourced more strongly to be involved in those processes but also given tools to make quicker outcomes to do that. In many circumstances, such as mobile number portability, there are only a handful of staff from, for example, the ACA, in something that could be quite significant to the Australia community.

We also believe that industry participants, particularly in relation to providing access under declared services, need to be able to publicly report on their performance in doing that. We believe it's a smoke and mirrors regime, where we will get industry participants trumpeting, and government trumpeting, about how well the system works, when in fact a closer look at the details behind that will show a different story.

Lastly, we believe that One.Tel is a new breed of carrier, but we're not alone, and we're certainly, over the next coming period, going to have the same circumstances that we face now shared by other carriers, as they try and build new services and new infrastructure in Australia. We'd encourage members of the panel to come and visit us and to see what we say when we say "we're a new breed of carrier". It's certainly a surprise to most people when they walk in the door and see how we operate, and see the differences between the post-deregulation type of carrier

and the following type of carrier, the new breed of carrier. That's our opening comment.

PROF WOODS: Thank you very much, and thank you for your submission, which we found extremely helpful in identifying your particular perspective.

In your overview of what your business breadth is, you talk about how you started off as a reseller of Optus's GSM, but that now you're also looking and involved in ISP, fixed-wire long distance, international voice, local call resale; building out your own GSM mobile infrastructure. That's quite a significant amount of activity that you're achieving. You're achieving that under that current regulatory regime. Does that suggest that the regime need not go any further than it currently is? I was getting some sense from your overview, and from this submission: don't go backwards; don't start deregulating or withdrawing current regulation. But I am unclear as to whether you're wanting to continue to extend the regulatory reach, as new services, new technologies, etcetera, develop.

MR WRIGHT: I guess there's two issues there. One is, as we build new businesses, we experience new areas of the market that we find the same problems, we're falling over. We're currently building a mobile network and building a DSL local loop network, and suffering the same types of issues that companies such as Optus suffered when they came in here originally. So as far as the existing regime, our existing business is based on a framework which we think is essentially a good one, and that gives us the confidence to invest.

However, what we're seeing is that there are inefficiencies which mean that it doesn't perform to its full potential; and that makes a considerable impact on our decision-making when we go into a new business, about how much we price it for, or whether we go into the business at all. When we're presented with certain types of business opportunities, such as DSL, for example, we find that you can see there that the framework says to you, "Yes, you should be able to run this business; yes, you should be able to build this business and you should be able to succeed." But what you're relying on is that the ACCC, and the industry participants, more importantly, will act in good faith to put the framework into place.

However, we haven't seen that happening, so a number of the businesses that we're trying to get in, the framework is there but we're still faced with problems that we don't think are being resolved, but could be resolved if improvements were made. We don't believe there should be significant changes to any of the regulation or any of the legislation. Our suggestions are more based on exploiting that to its full potential, than anything extra that needs to be done.

PROF WOODS: Right. So you're not envisaging that regulatory reach should continue to follow new technology that somehow is focused on the core problems, and if we could identify what those are - I mean, is the core problem access to the local loop? Is that the foundation stone of all of the other issues?

MR WRIGHT: No, not necessarily; it's certainly one of the largest and major issues, and you're always going to - - -

PROF WOODS: What would be on your list, then, of the core issues that need regulatory treatment?

MR WRIGHT: I think local loop is certainly number one on the track, and will always be either a natural or competitive monopoly. It's simply inefficient to duplicate the local infrastructure in any telcos - - -

PROF WOODS: Everywhere, or are we talking non-CBD?

MR WRIGHT: In CBD areas you will still be able to duplicate in those respects, but most carriers, because of any-to-any connectivity, they're going to have to touch areas outside of the CBD. The same argument exists in mobile, where - - -

PROF SNAPE: Could I just stop you on that for a moment. You're saying that will continue to be so; that is, despite the developments such as that which Orange is introducing, and in some areas they're wiring up with common access, unrestricted access, for example, in Cooma, which I think they may be going that way in Canberra. If those developments are spread further - will still be a problem?

MR WRIGHT: We still believe - when we say "will ever be", maybe in 20 or 30 years it won't be, but for now the overwhelming competitive advantage of having copper in the ground, to duplicate that infrastructure with any type of technology is simply inefficient, we believe. It will always be better - especially considering the current technology, such as DSL - makes copper even more valuable than it was previously. You can simply add small boxes on each end of a copper line, and suddenly have high-speed Internet, local call services.

PROF SNAPE: Thank you. Now if we could go where you were intending to go.

PROF WOODS: Actually, if I can continue the interruption for a moment, and then we'll allow you to delve down the list of key points.

With DSL, I notice interestingly there that you were talking about not offering only data service but fixed-wire voice.

MR WRIGHT: Yes.

PROF WOODS: In effect, you would take over total responsibility for that customer, including local telephony?

MR WRIGHT: Absolutely, yes.

PROF WOODS: So you would take over the total number of copper pairs entering into that household? Or, if there are, say, four or five going in on the cable, you'd

take over them all; or would you only purchase access to give you your bandwidth - - -

MR WRIGHT: Generally, you'd only be purchasing access to the two, to go in to the house. It may be, depending on whether it's a residential or a business - that would be - - -

PROF WOODS: Take either small business or residential low data - some data that you want to get into so-called high-speed Internet, and the like.

PROF SNAPE: You need two for ADSL.

PROF WOODS: Yes.

MR WRIGHT: Yes.

PROF SNAPE: But if you go beyond that, then you need more.

MR WRIGHT: That's right.

PROF WOODS: But if you're picking up two, but there may be three or more going into that premises, so Telstra would be left with at least one and would also be able to offer local voice. What's the business model that you're envisaging?

MR WRIGHT: Our business model would include us offering local, long distance, Internet, and other high-speed Internet services, to the home. In all cases our customers will be able to use it for local call services and international call services.

PROF WOODS: But be required to use it for local call?

MR WRIGHT: No. Depending on how many lines there are, they could offer local call services or obtain local call services from Telstra, or from any other number of operators who are able to get access to that copper. For us, it will certainly be part of our service offering, and we think it would be an attractive service offering when the service is already there; that the customer would pick up the - - -

PROF WOODS: You'd be bundling them into a - - -

MR WRIGHT: Absolutely, yes.

PROF WOODS: - - - group of services where the overall package was attractive.

MR WRIGHT: I think it helps to keep the price of the high-speed Internet access down, also, by having other revenue streams that are generated from the same infrastructure investment.

PROF WOODS: You would be recovering some of that from a line rental fee as well as from a usage fee?

MR WRIGHT: Well, we haven't determined what our pricing is going to be but there are - - -

PROF WOODS: No, but there would be elements that you would expect - - -

MR WRIGHT: There's elements of those, there's elements of long distance and international revenue as well that would come out of that.

PROF WOODS: You would be leasing the line to the customer's premises at the request of the customer who signed you on?

MR WRIGHT: Absolutely.

PROF WOODS: So, should they decide to sign you off, you would be terminating your lease of that line into that premise - - -

MR WRIGHT: That's right.

PROF WOODS: - - - virtually immediately?

MR WRIGHT: One of the differences with DSL, as opposed to other local loop competitive technologies is that it's very simple then for a customer to just pull the plug out. They ring Telstra and say, "We want to go to Telstra now," or, "We want to go to Optus now," or whoever it might be, and the switching of those customers is very fast - there's no major technical improvements or enhancements that need to be made to their line, there's no major changes or engineering changes that need to be made to swap them over; it's simply a matter of, at the exchange, now, plugging them in to the Optus board as opposed to the One.Tel board or the Telstra board, it's very quick - - -

PROF WOODS: Except that in all cases the churn has to be conducted by Telstra, who would be the sort of pivot point. Is there any potential for delay or for who picks up whose bills and those issues?

MR WRIGHT: In every circumstance we've had churn processes, local number portability. There have been significant delays, and where it's in one provider's commercial interest to promote that delay or certainly not move fast, well, we've seen that that has happened. That may happen in the future. However, there is potential for that to not be quite as much of a concern, because, if the regime for access to local loop works in the way it should, then Optus and us and other providers of local services will all be at the Telstra exchange; and so an Optus person could go and change it from One.Tel to Optus, you know, the access provider could do that, or One.Tel could do it. There would be more parties involved in that process than there currently are. Currently, you're right, it would be Telstra.

PROF WOODS: In terms of access to exchanges, is that, in itself, a matter of some concern for you, whether you are getting good access or whether you are needing to bill facilities some way away and wire them back in.

MR WRIGHT: I think one of the things we have to predicate our statements on is that we currently have an arbitration proceeding with Telstra over access and so we don't want to jeopardise that by making statements about it. But, as a clear general statement, there are two essential aspects of running a local business: one is access to the exchange and the copper; and the other is the pricing that we provide it in. We believe every new entrant into the local call market currently to provide these services has had trouble on both those fronts.

PROF WOODS: We've dealt with the physical access site, I was just about to get onto pricing, because your business plan here, during this year, you're planning to roll out your DSL service. That assumes that you can come to some agreement on pricing.

MR WRIGHT: Yes.

PROF WOODS: Is that a good assumption?

MR WRIGHT: Yes, it is.

PROF WOODS: That's heartening.

MR WRIGHT: Yes. The framework should - - -

PROF SNAPE: Is your answer that it was a good assumption or is that there is going to be a conclusion?

MR WRIGHT: Well, we, as I said, have got an arbitration currently. We are confident that that will resolve the pricing position that currently we haven't been able to resolve, and that's why we're in arbitration. We're confident that it will. It's a matter of time for us. We think, ultimately, a process through arbitration at the ACCC will generally come out with a reasonable outcome, but it's the time that it takes to get there that is a concern to us.

PROF WOODS: How can you shorten that time?

MR WRIGHT: As I said, some of the mechanisms are there but just need to be used more often, such as the interim determination phase. The ACCC, as you may know, recently came out with some guideline pricing that they think that access to the service should be provided at. That sort of activity, we believe, considerably stimulates the outcome because then it provides an incentive for Telstra to, in this case, be involved in that determination as quickly as possible. They then want to resolve the final price without the interim determinations working.

We have no access to Telstra's information about their pricing, there is no incentive for them to resolve it quickly, and so we're left in a position of having to obtain access where it's not, in this case, in the access provider's commercial interest to provide it. It's a recipe for a slow resolution.

PROF WOODS: I'd like to explore the questions of time and what that means to business cases and the costing exercise in a minute but perhaps if we do let you finish. Go back four steps, we were discussing what is the essence of the industry that requires particular regulatory scrutiny. We got to the local loop.

MR WRIGHT: I think the local loop is one component which, by itself, is important. The other general point is, where we require either access for any-to-any connectivity, and that might be to mobile services or it might be to anyone's fixed-line services - and what we see in our operations in the mobile business is that it can be just as hard to get access to Telstra for local calls as it is to get access to other incumbents' networks for mobile services. It's in everyone's interest that things such as mobile number portability work effectively for competition, or we can get access to towers and exchanges to get to other mobile customers or to reduce inefficient roll-out of infrastructure.

The regime is quite clear about that. There's a facilities access regime designed to achieve those exact outcomes. There's an access regime, in itself, designed to achieve those outcomes. Yet, even though you haven't got one major dominant player, you still end up falling over exactly the same problems.

PROF WOODS: We've got three major dominant players instead.

MR WRIGHT: That's right.

PROF SNAPE: But that is a bit of a puzzle, I think, when you've got three. I mean, in many industries, if you've got three, that is regarded as sufficiently more than two to result in competitive behaviour. You're saying that that is not so? Is it your view that they are operating as an oligopoly, or what?

PROF WOODS: There's a couple of points, I guess. One is, on the first point: the telecommunications market, in many ways, is a little different to other markets, in that you're entirely reliant on other participants in the market to produce your ultimate service to the customers. If I sell you a mobile service, you expect that you can call Optus, you expect that you can call Vodafone, you expect you can call other places. In other markets, the level of interconnectedness of participants is nowhere near the same.

PROF SNAPE: But those three have already got the interconnectedness amongst themselves.

MR WRIGHT: Absolutely.

PROF SNAPE: So you only need to, in fact, interconnect with one to be able to interconnect with all of them. Correct?

MR WRIGHT: Not necessarily, because the one that we interconnect doesn't have to, and quite often won't, provide interconnectedness to the other one. So if I'm calling an Optus customer but I have interconnect with Telstra, then how do I get to that Optus customer?

PROF SNAPE: Optus has interconnection agreements with Telstra - - -

MR WRIGHT: Yes.

PROF SNAPE: - - - and I find it difficult to see, and perhaps you can explain why, with them already having that arrangement of interconnectedness, they wouldn't be prepared to interconnect your calls which you've got an agreement with them through. Why would they not be prepared to do that?

MS PARKER: That would be a matter for commercial negotiation and it would be up to one of the particular carriers to determine whether or not they were going to accept that. At the end of the day, as a carrier, our objective has to be for us to connect with each individual other carrier in the marketplace.

PROF SNAPE: If I've got it right, you have an agreement with Optus, for example - - -

MR WRIGHT: Yes.

PROF SNAPE: - - - and I'm trying to find out why it would not be in Optus's interest then simply to use their interconnect agreement with Telstra, to interconnect you through to Telstra. I see it can be a matter of commercial negotiation. What I'm trying to see is why would they not want to do that. I can't see, on the face of it, the case why they wouldn't.

MR WRIGHT: I think in many cases they do, and in fact we have interconnect with Optus, we have it with Telstra, and Optus provides to us interconnection with other carriers through that.

PROF SNAPE: So why is it a problem?

MR WRIGHT: Then there are - when you go - - -

PROF SNAPE: If I could make - - -

MR WRIGHT: Yes.

PROF SNAPE: To say that it's a matter of commercial negotiation does not mean that there necessarily should be a regulator involved. The selling of ice cream through to a retailer is a matter of commercial negotiation.

MR WRIGHT: Yes.

PROF SNAPE: We don't say therefore there has to be a regulator. I have yet to see the problem.

MR WRIGHT: I think what we would say is that without the current regulatory environment we would not have that access that we currently have.

PROF SNAPE: I come back to my point before. Usually if there are three in other industries, three is sufficient. It's taken as sufficient. Two may not be, but three are generally; there will be enough incentive for one of them to break ranks from an agreement in order for it to be done commercially as a matter of normal commercial negotiation. So why is three not enough in this case?

MR WRIGHT: We can use some examples. Three examples would be mobile number portability, roaming, facilities access. These are areas where One.Tel and other carriers need to go to the three current incumbents to resolve a commercial outcome. In the issue of mobile number portability, if you take the position of those carriers, none of them want to allow new entrants to obtain their customers. It's not in their interest to do it. They don't need to act together to do that and we're not indicating that they would. However, unless they agree - all three agree - the ultimate result will not be one that's delivered. So it's not necessarily the same as a pure oligopoly where you're talking about people acting always in concert, that's not the case, but in many cases you need to resolve an outcome where all three won't agree, and all three must agree for it to happen.

PROF SNAPE: Let us take that case, and let us suppose that the three work out number portability amongst each other, for commercial reasons. For them to deny that to any other entrant would, I'd have thought, be a matter for other parts of the Trade Practices Act besides XIB and XIC.

MR WRIGHT: If they were to do that.

PROF SNAPE: If they were to do it. That sort of action is not telecom specific; that sort of action is a general competition question.

MR WRIGHT: That action in itself is, but I think that makes an assumption that's not necessarily the case in the Australian market. Those operators have been operating together for some time, but there was no movement for mobile number portability until government intervention. When government intervention came in then the movement is to create mobile number portability in a particular way. So we haven't seen the incentive and in fact I don't believe - and we certainly as One.Tel don't believe - that there is necessarily an incentive for the three to offer mobile

number portability. Their markets perform very well and each mobile heart of their business are extraordinarily profitable parts of their business in their current right, and they would like to protect that current business; existing customers are extremely valuable.

So, yes, in some markets where it's supply of services you'll say three dominant players makes a market competitive, but in many circumstances that doesn't get over the situation of needing to have regulatory involvement to promote a consumer outcome, whether that's mobile number portability or facilities access or roaming, or whatever it might be. These things are areas where there is a consumer benefit and a competition benefit which doesn't have the same commercial interest for the three incumbents to put those things into place.

PROF WOODS: We're discussing, in part, the question of incentives upon those three and you're saying in summary that they each have a market share that generates a profit stream and that there aren't the incentives there; but for there to be regulatory intervention suggests that there's some public benefit to come out of that intervention, given that all interventions have some distortion in costs. You can go back to the question of what is the core of what is needed in the public interest, and perhaps it's any-to-any connectivity but for basic voice services, for instance; and therefore if you had an open access price based regime for the local loop, then provided there was connectivity to that, that would meet that particular requirement. What you're now talking about is further services in the market, whether it be mobile phones or wireless data transfer to laptops, or whatever other; clearly, any-to-any connectivity is desirable there but is it so essential, in the public interest, that it warrants this, as we were discussing before, sort of ongoing broadening of the reach and regulation?

MR WRIGHT: We believe it is absolutely essential. A service can't be provided, we believe, in a (indistinct) and when I say a service, there are many services that aren't affected in this way. But, where you're providing general consumer services, whether that's mobile phones or local calls or Internet services, you need to be able to get connectivity to all operators, and the two major things, I think, where consumers benefit is that a new entrant coming in is clearly seen as providing competitive benefits in terms of pricing and overall services; so they need to get into a market. When they enter into a market all the customers, or in many cases, the B party of any call or phone number, is in someone else's network.

To provide a service which is only provided within their own network, or their own connective network, really doesn't provide a competitive outcome for consumers. So you need to be able to be in a position where you can stimulate new investment, new services, new competitors coming in, by allowing them the certainty of knowing that they can still get to the other customers on a reasonable basis. That isn't always the case. In some cases, of course, when we're talking about widening the areas, there are certain areas of competition markets, as there are in other markets, where regulation isn't necessary. There are incentives for all parties to competitively tender for that work and to provide the services.

High-speed data transmission in between the cities of Sydney and Melbourne is one example, where not only can we go to Telstra, we can go to any number of participants to obtain those services. Telstra competes aggressively and strongly and do an excellent job at fighting for that market, but they're fighting on a level playing field with other people. That isn't going to always be the case.

We, as an access provider, would also have obligations to any other new person to get to One.Tel's customers. If they ultimately want to provide a mobile service, or a local call service we need to have the same discipline as anyone else does, not to be able to prevent a competitor's customers from getting to our customers. It's the interconnectivity of a telecommunications market in some of these major areas which sets it apart from other markets. I'm not saying it's the only market that has that level of interconnectivity, but it's certainly a basic key plank of the entire market. It doesn't work like a building market or a produce market, or other ones where you've got different suppliers, of which two or three suppliers will then - you can have another supplier comes on - they're still on a relatively equal playing field. They certainly don't need the other competitors to run their business. Those other competitors may act anticompetitively in relation to their customers, but not in relation to themselves.

We need Telstra, Optus and Vodafone to run our business, and that's the difference.

PROF WOODS: Interestingly, you identified Telstra and Optus as two that you have interconnect with.

MR WRIGHT: That's right.

PROF WOODS: You left out the third. Was that deliberate?

MR WRIGHT: We don't have interconnection with Vodafone.

PROF WOODS: You've not sought it, or you've sought it and not achieved it?

MR WRIGHT: I think there's two things. Once you know that you can get interconnection with someone, if you can reach a commercial outcome, I don't think we use - and certainly it's our key incentive is to come to a commercial outcome, not to use regulation to get to the outcome we want. So where's there a framework which allows us a guaranteed access to another party, then we'll come at what is the best commercial outcome to get to that other party, knowing that we can always rely on it if we can't. So currently we don't need interconnection with Vodafone to get to Vodafone because another party will get us there. But we only are in that position because we know if we needed to get to Vodafone, if we couldn't reach a commercial arrangement with any of the other players, we could use the regime to get access to Vodafone customers, as an example.

PROF WOODS: You don't have a direct commercial relationship with Vodafone, though?

MR WRIGHT: We have direct commercial arrangement, but we don't have an interconnect arrangement with them, no.

PROF WOODS: An interconnect with them?

MR WRIGHT: No. We ultimately will have because it will be in our commercial interest to do that; or we may do that if the other operators decide that they're not going to allow interconnect with Vodafone for us; they're not going to pass our traffic on to Vodafone, so we're left in limbo. Then we would use the regime to ensure any-to-any connectivity for our customers.

PROF SNAPE: I suppose we don't really know the counter-factual. As you were saying, you've got the regulations in the background.

MR WRIGHT: Sorry, I didn't understand.

PROF SNAPE: As you say, your commercial negotiations are undertaken with the regulations in the background.

MR WRIGHT: That's right.

PROF SNAPE: We don't really know how the commercial negotiations would go without the regulations in the background.

MR WRIGHT: In many respects I think you're right. We're in an environment where we've entered into this business on the basis of that environment being there. If that environment wasn't there it's not say that some of these things wouldn't happen; they may.

PROF SNAPE: So we don't really know whether the regulation is essential, because we don't know what would happen without it.

MR WRIGHT: In that respect I wouldn't entirely agree, because we have negotiations with the other carriers to achieve a commercial outcome in every circumstance. We don't, as a matter of course, use regulation as a way of resolving our issues. So we fully expand our commercial negotiations well before we ever revert to using the regulation or calling the ACCC, or doing any of those types of external pressures to resolve an issue; and we commonly find that those negotiations fail. So we know that they fail, even in an environment where the regulation is there as a base case. We don't believe that removing it is in any way going to improve that, and we can't see how, logically, that could involve a better situation than currently is the case.

PROF SNAPE: I suppose lots of commercial negotiations fail, and that's part of commercial negotiations; sometimes they succeed and sometimes they don't.

MR WRIGHT: Yes.

PROF SNAPE: But I wonder if we can go past the interconnect on the mobile. We, I think, have now got local loop and interconnect on mobile.

MR WRIGHT: Yes.

PROF SNAPE: We've got towers hovering in the background.

MR WRIGHT: Yes.

PROF SNAPE: Can we leave the towers for the moment and return to them.

MR WRIGHT: Okay.

PROF SNAPE: Are there other areas?

MR WRIGHT: I think when we talk about interconnection we're not restricting it to mobile; I just used that as an example. When we are obtaining access to Telstra's customers, whether they be mobile customers or Internet customers, we need to have access to their network. In simple terms, we need a big pipe in between us and them which allows our two networks to communicate with each other. The capacity that is on that transmission pipe is essential. If there's not enough capacity, then we simply can't communicate efficiently to Telstra. So there are a number of steps in the access chain: there's access to end customers, there's access to the whole of Telstra as a big bowl, or the whole of Optus, or the whole of Vodafone, or the whole One.Tel. So access is more a general thing than just access for mobile.

What we meant in mobile was to explain that the market can work inefficiently with a small number of players, and you can still end up with anticompetitive outcome. I don't think this or any other forum really should be a forum which is concentrating only on Telstra's market power, because in many respects Telstra is an aggressive and good faith competitor, and one that we compete aggressively with, and we buy a lot of services from them. We have the same sort of problems in any area where there's a competitive disincentive to allowing the regime to work; and we just mention mobile as one example of that.

PROF SNAPE: We're trying, I think, to find the areas where this industry is different from other industries, and therefore may need, as you have argued, industry-specific regulation; so we're looking for distinctive features. The local loop thing, the natural monopoly, is one. Of course there are other natural monopolies around, as well, but we might return to that.

MR WRIGHT: Yes.

PROF SNAPE: If we can go ahead with that in mind, that we're trying to look for distinctive features for this industry.

MR WRIGHT: Another one, of course, we mentioned a couple of times is any-to-any connectivity, and the reliance on individual participants within that market, to provide the basic service that you're offering to your customer.

PROF WOODS: But there's this point of what constitutes the basic service that is integral to that, because a little while ago - and I tend to agree with you that high-speed broadband data delivery need not be in that category. You have a large corporate who has either the need to interconnect to several other large corporates, because they're in the financial world, or produce motor vehicles, or do whatever they do; but we don't need regulation to allow them to achieve what they want to achieve. Somebody will go and build a bit of fibre that connects them to wherever they need to; and if you can do it through a broader network, and have several players each; you know, somebody might have a microwave service that sends it up and down the main spine, and others then have wire services that send it to the various locations; that's a marketplace activity that I don't see that you need regulation.

Clearly, it's more desirable for a new entrant to be able to get into that network, but that can be the outcome of some commercial negotiations; and if you've got a particular advantage that you can bring to the party, then it's in the interests of both parties, or multilateral groups, to achieve that outcome. I can't envisage why we need regulation to control that. There is an any-to-any connectivity nature of part of it, but it can live in the commercial world.

Bringing it back down then, picking up your word, what's the basic services that, in the public interest, require regulatory intervention?

MR WRIGHT: I think there's two sides to it. In terms of basic services, local call services, Internet services and mobile services are probably the three that have the most effect on the community in a wider nature. They're the main three forms of telecommunications communication that Australians are involved in currently. So in each of those services they have a unique importance to Australian consumers. Of course there's a lot of overlap. There are now a lot of people who buy mobile services instead of having a local call service, and they have Internet services on their mobile instead of buying an Internet service; there's a lot of crossover there, more and more as we converge. However, those are the three main areas which we think are the basic services that need to be provided to people.

But on the other side of what's the benefit to consumers, where the government wishes to promote a new form of technology, whether that's high-speed data or whether that's access for regional and rural areas, or whatever, sometimes there needs to be regulatory activity to promote that overall outcome. When we talked about the difference between Sydney to Melbourne high-speed data and mobile services, one of the key criteria is we don't rely on any one or combination of carriers to get between Sydney and Melbourne; we have 12 or 13 people who can do it. We have, also, in our circumstances, potentially enough traffic to be able to support some of our own infrastructure leading over that. We don't rely on it for any-to-any connectivity.

That's not the case with those other services - mobile, local calls, Internet - where we are going to be reliant on a number of players; and they're not always the same. Vodafone and Optus - certainly at this stage Optus are involved, but not in the same way; but not so much involved in Internet services. Local calls, clearly Telstra is the main game; mobile, there's three. It's not the same in each of the provision of those services, but the importance of each of those are not equally significant, but certainly those three are, in our view, far more significant than other markets or other basic services. We consider them to be a basic entitlement, that Australians should be able to get mobile services, they should be able to get Internet services, and they should be able to get local call services, anywhere.

PROF WOODS: Internet services, there is a very active market at the retail end.

MR WRIGHT: Absolutely, yes.

PROF WOODS: And, provided, again, that they have access basically to the local loop, that meets their needs. Enhancements is the next issue, and you can be talking DSL or you can be talking fibre optic to the kerb, or other things. But we're in fact seeing how the demand for high-speed Internet is encouraging some providers in some areas to in fact roll out their own networks. CBD has been the first example but we're now starting to see, with TransACT in the ACT, and some other areas, where others can perceive an opportunity to roll out some fibre optic, either to the kerb or to a node serving 30, 50 houses or whatever, to be able to provide that.

So there's a marketplace there, provided again, ultimately, that they can get access to that final copper pair getting into the house, which the ULL should be able to resolve for you, I can't see why Internet needs to be included in that regulatory environment, of its own accord. It's only there because it needs access to network. If you've dealt with local call, in effect, you've dealt with Internet.

MR WRIGHT: I think that's correct. I think what I was mentioning was the basic customer end service that they receive is essential, not the services that require regulatory intervention. I think you're right. Once you resolve local calls and the access to the CAN, customer access network, you resolve the majority of problems that you would have to face in Internet. But there's a clear distinguishment between the retail level and the wholesale level of competition.

In many areas there is an enormous amount of retail competition. Even in mobiles there's far more retail competition. How many resellers are there out there? We're one of them, as well as being our own. We have many competitors and - - -

PROF WOODS: In fact, a number start as resellers before they build up their customer base and therefore afford to go and - - -

MR WRIGHT: Us and Hutch-Orange are two good examples of that.

PROF WOODS: Exactly.

MR WRIGHT: It does promote infrastructure investment and infrastructure competition. Clearly, at some stage it's going to be better for you, whether it's by improvements in technology or purely by mass, critical mass, to build some of your own infrastructure, and that's what we want; we want people investing in infrastructure.

PROF WOODS: But that can be a commercial decision.

MR WRIGHT: Absolutely.

PROF WOODS: So let's take Internet off the regulatory musts at the moment.

MR WRIGHT: Okay.

PROF WOODS: That then gets us back to two, mobile and local call. Again, if you had the core of open access at an appropriate price, and we'll get into pricing in a minute, for the local loop, then, given that at least up till the last couple of years - and this is where it may fall over - provided you could get into that, you could build a mobile network and largely be able to terminate calls if you could get to the wire line service, in which case you could have multiple mobile providers who could all terminate at least onto a wire line, if you'd had that open access regime. Then it might be commercially of interest to each of them then to interconnect with each other.

I guess, where that starts to fall down is where you have a larger and larger proportion of terminations on mobiles, it starts to cause difficulty in terms of 'for new entrants'.

MR WRIGHT: That's right.

PROF WOODS: Is that the nub of the problem?

MR WRIGHT: Yes. I think what will happen also, and it's something that we firmly believe and is demonstrated in other markets around the world, is that mobile becomes increasingly significant for the end result of terminating to customers. I think in Australia we're running somewhere between 15 to 20 per cent of all calls are mobile, in Japan it's around 70 per cent and in Scandinavia it's around 80 per cent.

PROF SNAPE: This is initiating mobile?

MR WRIGHT: This is making initiating call, where you could either make the call on a wire line or a mobile call service - so become more significant.

PROF SNAPE: This is initiating at an mobile?

MR WRIGHT: Yes.

PROF SNAPE: Yes. What's the percentage of terminating on mobile?

MR WRIGHT: Not sure.

PROF WOODS: On that basis, there is some argument then that the connectivity to mobile is more than just a matter of being able to reach commercial negotiations?

MR WRIGHT: Absolutely. I think, you know, it's one of those circumstances, as we said, where every participant would prefer to reach a commercial negotiation in doing it; it's just much faster - it should be much faster. But the ultimate result of whether you want to offer the business is: what level of certainty do I have, when I invest in this business, that I am going to be able to offer a business that provides the service that my customers want? My confidence is gained by my view on whether I can reach a commercial negotiation with a particular party and my view on what happens if I can't.

What we have is a regime that says, and promotes, "You should be going out and trying to reach a commercial negotiation, but if you don't, certain basic level of services you will get access to, you will get access to deliver any-to-any connectivity, you will get access to customers to deliver your phone calls, whether they be mobile or local." So then you can make an investment decision.

The pricing then becomes another issue, where you can make somewhat of a punt on whether the regime will ultimately deliver a fair price or not and what the cost benefit of doing that is. If you think that the regime may take two years to resolve a fair price, then you may accept a lesser price earlier than that or one that you don't think is fair, so that you continue to run your business, on the assumption that the price will eventually come down to a reasonable price. We think that process is now happening.

I think it's clear, also understand, that there has only really been a couple of years of the regime being in place. If we look at the state of the telecommunications market in 1997 and the state of it now, they're very, very different animals, and yet for a lot of the time the same players have been there. Right now - if we look in another five years, we'll see something considerably different again. It may be that there are far more commercial incentives to reach commercial negotiations. Certainly in some of the cases where we're competing there will be more wholesale competition for things like mobile services. It may be that some of the problems we face now, such as gaining access to roaming services, may not be anywhere near as significant in four or five years' time as they are now. It's a market which is still very immature.

PROF WOODS: Because there would be larger numbers of part players?

MR WRIGHT: It depends on how the market evolves. It's never going to be economically efficient for six carriers to all build a mobile tower beside each other in

a country area, or whatever it is. It makes no sense to us, it makes no sense to community, and I can understand, being a community person myself, that I would be quite annoyed about it - - -

PROF WOODS: Another six towers, yes.

MR WRIGHT: So there needs to be some government pressure on ensuring that that doesn't happen, and it doesn't need to happen.

PROF WOODS: That can be a planning control issue.

MR WRIGHT: Sometimes it can be a planning control issue but I think, really, if we all want it to happen, the people who can control that, first off, are the carriers themselves. Putting the discipline on the carriers is really where the problem will ultimately be resolved or not resolved or siphoned.

PROF WOODS: Can I just sidetrack you on the towers, just to get rid of one small issue?

MR WRIGHT: Yes.

PROF WOODS: That's that you raised an example of having to pay a large amount to another if they said that their tower was structurally insufficient to cope with your new equipment and that you not only had to build a new tower but also pay them an amount to have access to the tower that you've built.

MR WRIGHT: Yes.

PROF WOODS: Is that a 'happened once' circumstance or is that a 'you're faced with 10 of these a year' type issue?

MR WRIGHT: No. I mean, it's far more significant than that. There would be definitely in the hundreds, or certainly over a hundred for us, in this year, where we'd have exactly that circumstance. But ultimately our decision may be then, it's not commercially viable for us to be involved in that process. So ultimately we build our own facility, because we think, "Well, if we build our own facility we're paying the same amount, and yet other carriers could come on and we could make revenue out of that ourselves." So that becomes a community issue, where you're weighing up the community issue versus the delay or the problems involving another carrier. These time issues are quite significant obviously for the investment that we're talking about. Getting the service out and offering it to consumers as early as possible is quite important.

But co-location in itself won't stop additional towers being built. As more capacity is needed, more customers use mobile services, you're going to need more facilities to do that. Also, the networks are not the same. Telstra, Optus and Vodafone predominantly run 900 GSM networks. They require significantly less

base stations to offer the service than an 1800 network does; and significantly less again than a 3G operator will have to build; simply because of the function of the technology, they need to build more. So you won't solve all of the problems, but certainly you can understand that were that a more commercially sensible way to go, you wouldn't be building one 100 metres away, or 50 metres away; you'd say, "Okay, let's go on the one tower, the one facility, together." But often the commercial reality of that is that it makes absolutely no sense.

PROF SNAPE: Isn't there an opportunity here for a tower builder and a tower owner? I mean, what you described in here seemed to be quite easily solved in one sense, of in fact setting up an independent enterprise as tower builder and tower owner; and of course to some extent that's already done a great deal, where you've got the facilities on buildings that exist already, and the tower has already been built, it's a building.

MR WRIGHT: That's right.

PROF SNAPE: So why isn't there a market out there or why isn't someone out there building towers commercially, and then leasing them out to whoever?

MR WRIGHT: There are; and in fact one of the most significant things that has happened over the last 12 months is the entry of a couple of people who are exactly in that business. They make it far, far easier. That won't have - - -

PROF SNAPE: It looks like a market solution to me, that didn't require regulation.

MR WRIGHT: Ultimately, I think that where - there are two aspects to it. One is, that will not still solve many issues of building towers. Whether it's a commercial company or it's another carrier building a tower, they're still going to have problems building new facilities in community areas - - -

PROF SNAPE: Yes, but that's a planning issue, isn't it?

MR WRIGHT: It is.

PROF SNAPE: A council issue or whoever has control over the use of land. That's, in a sense, already solved, isn't it?

MR WRIGHT: No, I don't believe so.

PROF SNAPE: Let me put it: the regulatory apparatus is already there - - -

MR WRIGHT: That's right.

PROF SNAPE: - - - to deal with it, and it doesn't need a new form of regulation.

MR WRIGHT: No. I think, as you said, the regulatory framework in relation to facilities access is also there, and also provides the base case that should work. I think what happens is, once again, with the inefficiencies it's very easy to make it not work by putting operational processes in there that stifle that.

However, I think, from our perspective, in four or five years' time the facilities access part of it will be somewhat less significant than it currently is, because of the entrance of new operators into the market for building towers and tower facilities. But currently that is still not going to solve that in some areas, if you already have a facility there, a new commercial operator is not necessarily going to desire to build the tower in that area; but even if they did, from a planning perspective, the planners will say, "Look, you guys should all go on the tower that's currently there," that's owned by a carrier, it's not owned by a corporate company; and you end up with exactly the same problems.

I think to say that that is a market solution which will solve the problem, not in the next four to five years - will it ultimately solve the problem? We certainly hope so, and we're very, very encouraged by those people coming in.

PROF SNAPE: But an introduction of regulation also has its costs. We're here talking about that a market solution may take some time to work itself out; yes, of course. But an introduction of regulation also has costs, the extension of it, etcetera; and it was a point made in a submission yesterday by the IPA - I'm not sure if you heard it or saw it - which was pointing out the flip side this; that is that there are problems associated with introducing more and more regulation; partly in terms of the institutions that come with that and the way it then will operate, and what incentives do they have to function.

So it's not a matter of comparing an inefficient market with a perfect set of regulations, and if we try to make it perfect we'll just introduce more and more and more regulations, trying to patch up everything else. It's trying to compare - as this submission was pointing out - the benefits of the regulation with the costs of the regulation, and the market failing. There is very much an inclination to say, "Here is a problem, let's regulate to fix it." I think that that does occur a little bit in your submission, where you talk about the potential benefits of it, but really don't consider whether there may be costs associated with that. I think it was on the towers, for example, that was one example of that.

MR WRIGHT: I think it's certainly a comment that we support. If the cost of regulation exceeds the benefits, then clearly it shouldn't be put into place. What we're suggesting in the way of changes is nothing revolutionary at all. We're suggesting very, very minor massaging of the current framework. What we're saying is that in many respects some of the activities that the current bodies are undertaking may eventually move away, and they don't need to. They should only be concentrating on those areas where there's an inefficiency, not on those where there isn't. So if they were to be spending time on things like - use the same example -

inter-city transmission, the costs of regulation would far exceed any benefits and shouldn't be done.

We believe that the cost of improving, very slightly, the current regime, in these particular areas, should be able to be done in a way where the benefits far and wide exceed that cost. But if ultimately that's determined not to be the case, then it shouldn't be done.

PROF SNAPE: Where do you see that the existing regulation should be wound back?

MR WRIGHT: I don't believe that the regulation itself should be wound back. The regulation itself, if it's just sitting there as a piece of paper, it doesn't cost money after it's already there. I think the majority of the cost comes in enforcing compliance with that regulation, and enforcing some form of maintenance of that regulation.

PROF SNAPE: I'm trying to pick up the point you just made, that of course then, when they've done their job, they are wound back. Presumably, one wants to get rid of them because one could use them mischievously. There's always the potential for using them mischievously, after they've done their job, after their main job. Is there anything in the form of regulation, at this stage, which you think should be wound back for that sort of reason? Or are you still in the phase of adding wrinkles to it?

PROF WOODS: I think, though - if I can just add to that - it's not only mischievous use, but just the very existence of it as a fall-back can distort behaviour, both aspects.

MR WRIGHT: I think that's right, and I think it does distort behaviour, and it does that on purpose. Where there's a benefit for it do it, then that's good; where its behaviour is being distorted in a way that doesn't produce any benefits to consumers, then that's bad; and where agencies who have this regime in place are spending time on things that they don't need to be involved in, or aren't generating any positive responses for consumers, then certainly they should be doing that.

We don't believe there are any areas of the regulations or legislation, that we're aware of, that would need to be wound back. However, it's a matter of using those regulations in the areas that are important at the time. So, for example, in mobile number portability, right now that's an important area that needs to be resolved. Once it's resolved, we'd expect that the activity would be wound back in that area, if we felt that the framework was then in place. So the framework is in place, then move on.

It may be that in some markets, such as Internet at the retail level, there's already a large amount of competition there. I can't see, to us, where there would need to be involvement by competition authorities at the retail level, unless there were some vertical-integration issues; so, unless something new came up, or some use came up. Just because people are looking at particular issues now doesn't mean

they should continue to push those or monitor them in a strong way going on. I think government can be, and is, far more flexible about spending time only on the matters that are important, and then dropping them when they it's no longer necessary for them to be involved.

PROF SNAPE: You don't have anything on your list at the moment, then?

MR WRIGHT: No, not at all. The legislation has only really been in effective use since late 1997. The market is only now starting to really benefit from that. I think you'll see local call prices have only really changed in the last 12 months. Mobile prices have only really changed - starting to change now. So the end result of benefit is only now happening. So we're starting to see the product of all the work that went into the previous legislation. I think it's way, way too early to start taking some of that away.

PROF SNAPE: As you said before, there was significant competition on the trunk routes.

MR WRIGHT: Yes.

PROF SNAPE: Have wholesale prices been coming down on that?

MR WRIGHT: Enormously.

PROF SNAPE: Can you give us some examples, please?

MR WRIGHT: Over the last three years the price between Sydney and Melbourne would be a tenfold decrease in the wholesale price.

PROF WOODS: If we went back to say 97 or early 98, what sort of prices would you be looking at?

MR WRIGHT: I wouldn't know the figures off the top of my head. I think the problem is that any pricing determination now is based on a factor of capacity versus price and your price reduces as your capacity goes up. We, as a business, are now using a hell of a lot more capacity in Sydney and Melbourne than we were in 1997. Our customers are now some six or seven times the number that they were, in fact even more, since they were in 1997.

PROF WOODS: So you go to the marketplace with a bigger volume and so some of what you are seeing, by way of price decrease, might reflect your increased bargaining power but are you saying that the underlying price, even so, is also falling significantly?

MR WRIGHT: Absolutely. I think every provider of the wholesale services sees a bigger market. They see the justification for them to build infrastructure, whether that's fibre or satellite or whatever it might be, and their market is bigger and they

need to come into that market, then they need to compete for customers who are already somebody else's customers. So competition creates a reduction in itself, multiple infrastructure creates a reduction in itself, and the massive increase in the requirement for capacity creates the demand to make that all happen. We're only seeing the very, very tip of the iceberg for that. The building of 3G networks if you like.

PROF WOODS: That's an interesting point because we've had other evidence that, in fact, with new developments you could accommodate all of the current demand on either a single or small number of fibres in themselves and yet we've got, not only multiple fibres in a cable, but we've got multiple suppliers of cable. As we speak, there are others busy putting quill pen to paper creating businesses cases and are prepared to go dig a trench.

PROF SNAPE: And microwave as well.

MR WRIGHT: Microwave and satellite and other things.

PROF WOODS: Your phrase, and I wrote it down out of interest, "massive duplication of investment". What's causing that behaviour and why are new investors seeing that there is still significant potential return?

MR WRIGHT: I think there's two edges to that. In the areas of strong competition and growth and where it's commercially viable to invest that infrastructure, every couple of years we hear something in the paper saying, "The capacity that we have now between here and London" - or here and San Francisco - "is more than we'll ever need," or, "it will keep all the communications in Australia satisfied for the next five or six years," and then within a year we find that it's running short and they're building more and more capacity to keep up with that.

PROF WOODS: Or improving the software at either end of the physical capacity to get more down it.

MR WRIGHT: Absolutely. It's a combination of both. I think we find now that, in relation to the optical fibre capacity, the first level of optical fibre needs significant technology advancements to improve the capacity that it can have over the existing fibre or replacing that fibre. New fibre going in the same hole in the ground with the same physical dimensions significantly less, in fact, infrastructure cost, carries considerably more traffic. But every year we hear it, that we've got enough; we don't, and we're continually seeing demand.

From our business, we believe that our demand for bandwidth capacity will still continue to grow exponentially for the near future and we don't believe that other carriers are going to be in a considerably different position to that. 3G technology immediately raises considerably your demand for bandwidth. High-speed Internet access: while now you can get from the last mile through high speed you still need to build all the capacity from exchanges, from cities, from everywhere, and that

demand, we believe, is considerably growing. Southern Cross, for example, being put into Australia was, at the time of being built, a panacea, it was going to be so huge that it would cover all requirements, and yet now there are more and more people investing in similar or similar size infrastructure. We continue to see that.

When I talked about massive duplication of infrastructure sometimes, because of the regulatory regime, there is inefficient duplication of infrastructure. The one example is, if we build a tower right next to another tower and yet we're servicing maybe 1000 customers; 1000 customers can easily be serviced by the first tower, that you don't need two. You're building it because there's no declared roaming service, you've got no certainty about roaming, and you've got trouble with accessing the towers. So, as a result, there's duplication of infrastructure as well. That's on the negative side. The massive duplication of infrastructure on things like high-speed bandwidth I think is only positive because the demand is there, it's not like you can service everything with the existing infrastructure; you can't. Additional infrastructure is being built to service the increase in demand.

PROF WOODS: In an absolute sense that there's sufficient demand now and into the foreseeable future to pick up the capacity that's being put in.

MR WRIGHT: Yes. Definitely.

PROF WOODS: That's a different perspective to some of our participants; but that's the benefit of a hearing, isn't it?

PROF SNAPE: Can I shift it so Mike can get ready for his next arrows? Some large media companies have invested significantly in One.Tel.

MR WRIGHT: Yes.

PROF SNAPE: In what ways is there convergence in businesses, in the media business and One.Tel?

MR WRIGHT: We think that the ultimate service that's presented to customers, the communication service, is changing quite rapidly. A couple of years ago you'd pick up the phone and the majority of communications were simple voice communications. Now you have some levels of data, and some levels of content services, and media, but you have intelligent services like voicemail and other things which enrich the communication that you have. We're moving very quickly to an industry where you're communicating not only voice, you're communicating content and news, transactions, and all other types of forms of communications, and media is just one form of communication, but they're coming together.

We believe that there is a considerable trend towards convergence between telecommunications companies and media companies. We encourage that and we think that it produces a product to the customer which is better for them at the end of the day, a more enriched service. They can get far more out of their mobile phone

now than they could a year ago. The number of services now offered - on our service we offer some 60 services on our current mobile phones, everything from news to sports results to other things, and they're content delivered. It's a media service as much as it is anything else, but they're being provided over a telecommunications backbone.

PROF SNAPE: So content suppliers become very important in this converging environment, as far as what were telco companies are concerned, and so you start then to be looking at the broadcasting legislation as well as the telecoms legislation.

MR WRIGHT: Yes. I think that will become a very difficult issue and something that needs to be resolved. There is currently, as you've alluded to, there's the broadcasting legislation, there's media legislation, there's telcos legislation, and yet ultimately they are going to be services which involve all three of those things in one service.

PROF SNAPE: We have a submission from Austar, which is later in the morning, which addresses this, but I think it's really the first submission that we've got that has addressed that almost at all, but it was something that we were quite conscious of in a report that we did on broadcasting recently. Would you like to share any thoughts that you may have on this with us?

MR WRIGHT: We really, at this stage, haven't been involved in reviewing the broadcasting legislation, and the effect that that currently has on us, in significant detail. The current regime allows us to provide the services that we're currently providing or intending to provide in the short-term future. However, it's becoming increasingly important to us in things such as the provision of DSL services, where you have the potential to offer video on demand or live-streaming audio, combined with Internet, combined with other things, mean it is something that's significantly on our radar now. We believe that in many respects there is the potential, as there is now, for regulation to in some respects restrict the ability to offer services that we might otherwise want to offer, but we haven't really got any comments on what we think should be highlight areas.

PROF SNAPE: On the one hand it has got implications for the regulations as to whether there should be convergence of regulations, and on the other hand it's got implications for competition because we've got a converging environment, and therefore new sources of competition for traditional telcos on the one hand, and on the other hand for traditional media.

MR WRIGHT: Yes.

PROF SNAPE: Certainly, in our broadcasting report which tried to look quite a long way ahead - of course, have to - I think we'd also have to do so in this in thinking of a regulatory framework, which in fact will be relevant in this converging environment. As I said, very few of the participants so far in this inquiry have given us the benefit of any thoughts that they may have of this. So we would appreciate it

if you could in fact throw your minds ahead, particularly in your case, with the investments; the very large investments - two very large media players in this - if you could throw yourself ahead and give us the benefit of your thoughts, both, as I say, with respect to the regulations, but also with the competitive environment, if you could help us with that please.

MR WRIGHT: I think a couple of points. Our final submission, having regard to that, we will address in more detail those aspect of it if we think that it would be of assistance.

PROF SNAPE: If you can give us an interim to that, too, because we would appreciate it before our draft report rather than after. I don't want it after it.

MR WRIGHT: I think, clearly, there are a couple of areas that we think are of concern. Right now we have a rapid convergence of technology and service, but we're not necessarily seeing a convergence of regulation behind that to cope with the same aspects, and we would be submitting that there needs to be significant, at the first glance, involvement of both the ABA and ACA and the ACCC together to determine where there's both regulatory overlap, and where there's inefficiencies caused by having separate forms of legislation.

That happened to a limited extent in the 1997 applications where there were some parts of the Telecommunications Act which referred to broadcasting as well as obviously for telcos. But we think that will need to go considerably further to get aside from technical review of what the technology is, and start to look at regulating the consumer benefit of the end, of what they're getting, or the consumer service at the end and saying, "How is this provided?" It seems fanciful that you can not watch - you can sit with a TV which is getting DSL on one side but you can't watch TV. Why can't I watch TV? It's nothing to do with the competition; it's nothing to do with technology; it's regulation that's preventing you from watching that TV.

PROF SNAPE: It's precisely that, but also I think beyond that we need to know what it means for the state of competition because if we're looking at the telecommunication-specific competition regulation, then, of course, the competition aspect may be significantly changed by this convergence, and that competition-specific regulation may be more or less relevant in the future.

MR WRIGHT: I think from competition perspective it has the capacity to do two things. It has the capacity to stifle competition, where current telecommunications operators have some control over the content or some key access that other people don't have. Clearly, looking at our shareholders, we have a strong access to content. It would be considerably inefficient for competition if we were to come to some arrangement that didn't allow our competitors in the telecommunications market to get that same level of access; and it's certainly not our intention. So it could stifle competition if in fact it becomes another way of preserving market power in a small number.

PROF SNAPE: Precisely.

MR WRIGHT: On the other side, it can promote an enormous amount of competition if it's freely able to be used, because suddenly you have, as well as a substitution between newspapers and Internet and TV - and so people can choose between how they want to get today's sports results or today's news - it also creates opportunities for entrants to come in on the basis of them being a news supplier of telecommunications service; provide virtual newspapers; to do those types of services; which currently we don't have, and may not have if the regulation doesn't allow some flexibility in providing those services. So I think very much the regulation is going to help to shape which way that goes.

PROF SNAPE: That's a very helpful start. If you could in fact develop it at some length, if you're able to. You might like to have a look at the broadcasting report if you haven't, because it does allude to some of these things.

MR WRIGHT: Yes, okay.

PROF WOODS: In fact, with DSL, will you be putting a box in the home, apart from the telephony service sitting, to some extent, by itself - although, if you do that through IP, then may it will all go through the one box. But technically would there be anything that would prevent you from picking up the free-to-air TV signals and sending them into the home via the box that you would have at the end of the DSL service?

MR WRIGHT: To the customer, key consumer? No. On a technical basis, probably yes, because when you're broadcasting - - -

PROF WOODS: Sorry - I've got lost.

MR WRIGHT: When you're broadcasting a TV station live, it comes out and it's collected by a receiver and you receive that. This would simply be another method of delivering that service.

PROF WOODS: You could put up an antenna somewhere else, pick up the free-to-air services of all the channels; but could you then send them down through your local loop that you've leased into a box in the home, that they could then just plug the TV directly into?

MR WRIGHT: There are two issues, I think. One is, first, you wouldn't need to pick it up as a reception, it would be sent to you in a digital form or broadcast through the IP network.

PROF WOODS: How ever, yes.

MR WRIGHT: But in relation to getting to the end customer, there are some limitations, depending on the speed of the service that's offered, about how much of

the service can be watched in a live environment. There are technologies that allow you to cache very large amounts of services, and it will appear to a customer as if they're receiving a live broadcast, but in fact it may be delayed. It could be delayed in the milliseconds, not in a noticeable way - - -

PROF SNAPE: But you'd be able to get a live standard definition digital signal - - -

MR WRIGHT: Yes.

PROF SNAPE: - - - on a DSL within 300 metres or so of the efficient part of the DSL.

MR WRIGHT: You could certainly do that, and you can watch episodes now on things. It does require, though, a significant amount of bandwidth to be able to deliver live television.

PROF SNAPE: Yes, but there would be enough bandwidth on DSL, I think, to do a standard definition television set.

MR WRIGHT: It's not a matter of delivering an individual program. A TV station has a considerable advantage in being able to just broadcast stream that's not held anywhere. It goes out, it's picked up, it's used, it goes away through an IP network that needs to be transported through the IP network. An IP network slows down when it gets a lot of capacity or it speeds up when it's open to its full potential. That provides some technical issues in relation to providing live television because you can't slow it down or speed it up and you can't necessarily cache a week's worth of television, the memory capacity would be impossible. So for smaller broadcasts, an hour, two hours, and DSL customers would not see the difference.

PROF WOODS: In fact, they may get better reception from DSL than from their rabbit's ears.

MR WRIGHT: Well, not only better reception but better services, it's a bundled service. You can have all sorts of interactivity delivered on that same stream. It could become very similar in performance to digital TV stream as opposed to a normal broadcast stream. So because of the IP you have the flexibility to do whatever you like with that service that comes along to provide all sorts of interactivity. So the customer experience may very well be much better than it currently is but, as I said, I think it's a long way off that being a substitute for a broadcast TV station. There are significant other advantages that a TV station will have, but it's a matter of substitute ability. What is it that you're watching? You're watching movies, you're watching the news. Those sorts of things would be very easily able to be provided live to the customer using DSL.

PROF WOODS: Is this in your thinking, in your business plan?

MR WRIGHT: Not at this stage, no.

PROF SNAPE: Not in your shareholders either?

MR WRIGHT: I can't comment for them.

PROF WOODS: Time is something that you refer to variously throughout your submission. You talk about terms of the times and costs to effect significant changes, issues that many new entrants face, in particular, timing of access. A bit further on you give us examples of facing delays with one carrier of up to eight months for a single application. Yes, we understand the point but what we would appreciate is some hard data on time means money. How significant is the impact of delay on business innovation, profitability, development of markets? So to the extent that not only elaborate now but if you could give thought to further material to us to just say, "Well, look we had this business case. The fact that it was going to take six, eight months to actually get through the commercial process and then with a possible consequential regulatory process that we had to abandon this, or that it cost us X."

MR WRIGHT: I think there are two aspects to look at. One is the actual cost of the delay, and that might be in not obtaining revenue from customers you might otherwise or obtaining less revenue from those customers than you might think is reasonable.

PROF WOODS: Plus the cost of capital that's sitting there?

MR WRIGHT: Absolutely the cost of capital that falls behind that. So if we take, for example, mobile number portability. We may get access to an extra 100,000 customers because it's a significant issue for customers when they change service providers, they want to keep their number. 100,000 customers, a customer is worth to you somewhere between 500 and a 1000 dollars per annum. Six months of that is clearly a hell of a lot of money. So that's the delay in just cost, not taking into account the cost of capital of having the network out there that's not generating as much revenue as you might otherwise do and some of the pricing, if it's a pricing issue not an access issue.

The second issue is first-mover advantage and the cost of that. We see that in the ULL circumstance where delay in obtaining access will mean that Telstra, in this case, is able to launch their network considerably earlier than anyone else and certainly in a wide-scale format. The cost of that is much harder to determine of what that might be, but clearly - - -

PROF SNAPE: Customer capture at the front end.

MR WRIGHT: - - - is enormously valuable. Not only are they customers that now are not contestable customers for you, at least if they're on a contract for some period or they're not available for some time, but it also creates a momentum in terms of other services, like content provision and all these other things because you're already there.

PROF SNAPE: Plus brand recognition.

MR WRIGHT: Brand recognition. All those things are - - -

PROF WOODS: They're the sorts of things we'd like you to elaborate for us to just expand on that many-faceted nature of it.

MR WRIGHT: I'll give you an example of a situation we had where we were seeking access to transmission capacity. A delay in doing that - we came to a commercial resolution so I'm just using this example: but a delay in doing that would have meant that we weren't able to add new local call customers - and you would see from our marketing that we aggressively chase local call customers - because we simply don't have the capacity to service those local call customers. That's a direct cost because we show our subscriber acquisition rate and a company, like One.Tel - as I said we're not alone, there are many other companies that acquire customers very quickly. And that is our business our business is not holes in the ground, or cable, or anything like that; it's customers. They are by far the most valuable asset that we have. Obtaining those is worth a lot of money to us; and conversely another company losing those customers is worth a lot of money to them.

In relation to mobile number portability, not only do we benefit from it but a company that loses those loses an enormously valuable customer, because in the mobile circumstance once you've acquired the customer and you've spent all the up front costs - normally in the form of handsets and these sort of things - the ongoing value of that customer is very, very high because they generate revenue for you and you're not having to spend a large amount in retaining them.

So that's the two areas, and I think we can certainly expand more in our submissions on the individual costs of that, but they're some examples of how the costs can be and how very, very significant they can be.

In mobile number portability, for example, if we were able to obtain, you know, 500,000 customers from other competitors - by no means an aggressive target and certainly we have made no bones about the fact that we will go after every customer - that's \$500 million in a year of value that that's spread around the current incumbents, or \$500 million for us in revenue.

PROF SNAPE: 1000 per customer?

MR WRIGHT: \$1000 per customer. I mean, ranges for customers range from, you know, sort of 7 or 8 hundred dollars to \$1000 on average for a customer to some of the market valuations that have been put on, new acquisitions such as, Vodafone Air Touch, which are well, well in excess in that in value in customer. I think that some of those are sort of sky rocket-type figures, but it does give you an idea of how valuable those customers are and the cost of a first-mover advantage, and the cost just purely in revenue of delay.

PROF WOODS: That would be very helpful.

PROF SNAPE: On page 11, you make a recommendation that we do something, that is, to seek to have our terms of reference altered to encompass the structural separation of Telstra.

MR WRIGHT: Yes.

PROF SNAPE: Thank you for the advice. You also there mention ring fencing.

MR WRIGHT: Yes.

PROF SNAPE: If we may leave the structural separation on one side and if you could elaborate by what you mean by ring fencing in this case.

MR WRIGHT: Our experience is that there has been some significant improvement by Telstra in creating a wholesale organisation separate to a retail organisation. We think that's still nowhere near there and the conflict still exists constantly. The absence of ring fencing means that there's no real transparency into the performance of doing that. There are a number of obligations in the legislation which deal with equivalence of service and access obligations in which the access seeker is supposed to supply the services to a competitor of itself on the same terms generally as they provide to themselves. We don't believe that that happens.

PROF SNAPE: Telstra, in their remarks to us here on the first day, foreshadowed that they were, in fact, going to ring fence much more and separate. I'm not sure if you heard those remarks.

MR WRIGHT: I'm aware of that, yes.

PROF SNAPE: Yes, but a number of participants following said that, well, they've heard all that before with some degree of scepticism. Have you been able to look at those remarks efficiently to be able - that is Telstra's remarks - to comment?

MR WRIGHT: No, I haven't looked at them in any great detail. I think we approach it with a high level of cynicism. We have heard it a number of times before. We have heard numbers of statements about the strategic movement to incorporate that type of activity, but we haven't seen that happen in the past and we can't see any significant changes or any suggestions in an actual measurable position which are going to indicate that that's going to happen.

What we say, I guess, in real terms is, "Fantastic, if Telstra are going to do that." It shouldn't need to involve anyone pushing that process along, if they were going to do it. But how do we know and what's the transparency, what's the performance, where are they going to need to report on that they've actually achieved

that goal or not? It's one of those things, it's very easy to say you're going to do it, but what happens later on?

PROF SNAPE: Short of structural separation, what would satisfy you in this regard?

MR WRIGHT: I think to say "short of structural separation" is taking out a large part of what would satisfy us, but a level of transparency in the provision of especially declared services, or services where there is some other community interest in the provision of that service of an equivalent basis, that Telstra make that information publicly available, make their performance publicly available: How long do they take to provide these services? On what terms do they provide them to other people, as opposed to themselves?

Now, you've got issues of commercial confidence but it's not generally so prevalent in areas of declared services. Telstra, I would assume, in provision of things such as local call pricing, there's very little difference in the wholesale price that they would provide to us as opposed to anyone else. It's not something that we wouldn't be happy to have that sort of performance disclosed.

PROF SNAPE: You'd be happy to have the details of your own contracts disclosed?

MR WRIGHT: In some respects. In respect of the provision of that access service, you're creating a performance of an environment - - -

PROF WOODS: And the price.

MR WRIGHT: You're saying, "This is - Telstra" - and it may not even need to be public, the actual price; it may be that that information is disclosed, whether it's the ACA or the ACCC or whatever the body might be, and they determine that the price - that there was equivalence of service on a number of tests. So it doesn't need to be public but that might be one way of doing it.

PROF WOODS: Given that there are two parties to every agreement, Telstra and somebody else, why can't the rest of you collectively go to the ACCC and say, "Well, this is what Telstra is charging us and here's the interconnect timing and here's the time for correction of faults and things," and so everyone else go in there and pool that information?

MR WRIGHT: I think you'll find that, given the number of arbitration proceedings that are currently occurring, that does happen. We do go to the ACCC saying, "This is the price we pay, this is - - -"

PROF WOODS: Yes, but you're doing it in an arbitration sense. Can't you just do it voluntarily, pre-arbitration? Would that not be of any benefit?

MR WRIGHT: What is it currently promoting? It doesn't promote any change of activity from Telstra.

PROF WOODS: It would create greater transparency, at least in the marketplace if not in public.

MR WRIGHT: It would, and I guess my concern is that that already does happen, we already provide that sort of information, and yet it doesn't resolve the overall issue, it doesn't change the performance. We still don't know what is being provided to Optus or Vodafone, and we don't necessarily need to know. All we need to know is - - -

PROF SNAPE: Would you favour the publication of all the arbitrations, the details?

MR WRIGHT: I'm not sure that that necessarily needs to be, in some respects. I think you can remove some of the commercially sensitive parts of it but still publicise the overall response and the overall issues going forward. So, for example, if an arbitration resolved that, "This was the type of costing model that needed to be used," or, "These were reasonable time frames that a service needed to be provided" - that's, I think, in the public interest, that that information is disclosed. If you're saying that during the arbitration process the two parties commercially agreed, outside of the arbitration process, on something separate, then it becomes, I guess, difficult to disclose some of that information.

I think there are certainly going to be some areas where there is an aspect of confidentiality that every business would be happier wasn't disclosed in the public arena, yet is transparent to the regulators in that arena.

PROF SNAPE: So you're saying that if in fact the full details of an arbitration were to be disclosed, you'd be less inclined to go to arbitration?

MR WRIGHT: In some respects, yes. I don't think that's in the majority of cases, though. I mean, we're not a regular arbitration seeker. We see that as a failure when we get there but sometimes a necessary evil. There are some aspects of our pricing that, you know, we would be uncomfortable - that that was necessarily able to be negotiated. It really depends on the market itself and what services there are. If it's in the public interest that those are, because it's a non-competitive market, then we'd be more inclined to allow that to be done.

I certainly think that opportunities should be given to both parties to make that information public, so that they can elect to publicly make it available. Certainly, the results of those are passed around internally within government anyway.

PROF WOODS: I guess that touches on some of my questioning as to comments you made in your submission about transparency of the incumbent's costs. You talk about "extremely expensive and sometimes impossible for the ACCC and/or new

entrants to challenge anticompetitive pricing or conduct". When you look at who some of the non-Telstra players are, they're able to draw on parent bodies that have a very large amount of information on what it costs to put trenches in ground and connect households with copper pairs and the like, because they're doing it in a multiplicity of places, and, sure, you have to then allow for density effects and topography effects and all the rest of it but that's still not beyond man or woman to do these things.

MR WRIGHT: Yes.

PROF WOODS: I'm just wondering why it still generates such extensive debate and that it would cause you, for one, to talk about how it's so extremely expensive and sometimes impossible to discover this information.

MR WRIGHT: I think when you're presented with a circumstance of - we'll use Telstra as an example again. As I said, we have quite good relationships with them generally, but if they were to offer a wholesale price for something which we ultimately challenged, that wholesale price, we have information on what we believe that wholesale price should be. You're right, we can determine a lot of those things - not all but a lot of them - but we still don't have information on how they arrived at their price and whether that's reasonable or not. The determination of the arbitration proceedings is often not what it would be a reasonable price for me to provide that service but what's a reasonable price for Telstra to provide that service in that case; and that's information that they have that we don't have.

PROF WOODS: How much is there a behaviour-dependent from one organisation versus a generic model assessment?

MR WRIGHT: I think there are quite a number of factors that are built into a pricing of your own service. We'll take the copper wire, for example. Not only is the cost of providing that copper wire one thing that we can all determine - to some extent it's sunk already for Telstra, so they take in the level of the sunk nature of that, they take in the level of the maintenance of their network, they take in the level of the cost of improvements or enhancements that are necessary to be made. All those things are things we can speculate on and in some cases we can come to what we believe to be a pretty good and accurate price, but it still doesn't get us to the end result; and that is, getting that sort of price, or a similar price, from Telstra. It still needs to be determined whether that is a correct price in their environment as well. That's information that they have that we don't have.

PROF SNAPE: What do you mean by "correct price"?

MR WRIGHT: Well, I guess that's a glossing of it. What we would say is a fair price - - -

PROF SNAPE: You're using the word "reasonable" and now you've got "fair".

MR WRIGHT: Yes.

PROF SNAPE: You've got "reasonable", "correct", "fair".

MR WRIGHT: Any price, we believe, in the long run, incremental-costs modelling for pricing - and we believe in a good faith assessment on that model should result in a price which balances the interests of both the access provider and the access seeker. So when we're talking about it we're talking in a price.

Behind that, there's a lot of data that you need to gather to create that price, at the end. When we talk about correct or fair or reasonable prices we're talking about a price that is independently verifiable using that type of model as being a balance of both people's interests. I mean, we're in a commercial business and we would determine that it's better for us to get some of those services at as low a price as possible but that's an issue which is, to some extent, outside of any regulatory or other involvement. Regulatory involvement is only to provide fair and reasonable access

PROF SNAPE: You said "balance both persons' interests", but you didn't say, and in the interests of the community generally.

MR WRIGHT: That's my slip. Clearly, from a regulatory point of view, that should be, we believe, the number one priority. In cases, such as mobile number portability, we say, "Don't think about One.Tel, don't think about AAPT or Hutch or Telstra or Optus or Vodafone. Think about what the community interest should be for that and create objectives based around that as a first priority." In any form it's the same. So where something may be not in our interests, but it is in the community interest for it to follow a certain path, we'd support government in following that. It might not be the best outcome for us, but ultimately we believe it will be.

PROF WOODS: Just one, briefly; you have a two-liner that says "abolish the TAF".

MR WRIGHT: Yes.

PROF WOODS: You didn't even propose a replacement or an alternative, you just think it could disappear.

MR WRIGHT: We don't see where it adds any value to us. I guess this is perhaps, from our experience - - -

PROF WOODS: To the community interest, given your previous answer?

MR WRIGHT: But what does - I guess I don't want to throw questions back - but I'm not aware of an area where the TAF has added considerably to any community interest. When we talk about areas of regulation which are costly and expensive, and don't achieve objectives, that's our main example of one, where we say we don't need

the involvement there to get an overall outcome; if it's access to a service, we can determine whether the service is in the public interest that access be provided to that service, and the regime is there to do that; and the regime is there also to - if it's used properly - the regime is there to provide the terms of that access. The TAF doesn't, we believe, add anything to it.

But we do believe that it adds a significant delay and a significant regulatory cost; and we talk about the cost of that in terms of cost to us, plus first-mover advantage. We see the TAF as only performing a delaying function, not performing a positive function.

PROF WOODS: And that the ACCC can initiate inquiries, etcetera - - -

MR WRIGHT: Absolutely.

PROF WOODS: - - - and so you don't need the TAF.

MR WRIGHT: Absolutely, yes.

PROF WOODS: You make one brief point about some ambiguities about the roles and powers of each of the regulators. We've not heard, from other participants, any significant complaint about ambiguity between the ACA and the ACCC. They have all, I think, to reasonably reflect their views, have said, they can distinguish between the two, and that the two have complementary roles but not overlapping roles. Is there anything behind your statement there that we need to be aware of?

MR WRIGHT: I think it's not one of the more significant comments that we're making. I think it's more a matter of improving the clarity than changing necessarily the roles themselves. In examples such as mobile number portability you have the ACA involved and working quite hard in creating a structure which technically works; the ACCC is involved in seeing the competition aspects of them; but they're not separate items. So there's clearly a continual overlap of one thing creating, technically, perhaps a positive solution, so it's the easiest and fastest way of doing it, but that might create a significant anticompetitive effect.

MS PARKER: I would say it's not necessarily the roles between the bodies themselves, but it's defining their roles more clearly in the self-regulatory processes we'd like to see. We find at the moment that can be ambiguous, in that sometimes the bodies may not take as proactive a role as we would like to see.

MR WRIGHT: I think self-regulatory activity, we believe, will effectively work, as we said, where the interest of all the participants are the same. Where they're not, the regulatory body, we believe, has a role in setting out the guidelines and its expectations of where that's going to be; and making it very clear that there are some minimum parameters that would be acceptable to them. I guess that's really more the case of their role within some of those forums is sometimes unclear. People can

attend but is their role simply as a passive observer, as it is in some cases? Or is it as a driver of the change, as it is in some other cases.

I think, depending on the circumstance, that role needs to be more clear. So in a circumstance where there's clear imbalance of power, there's clear imbalance of incentive - mobile number portability, a good example - you require a significant amount of intervention. In other areas, where it's agreeing on a standard to use for communication, the access is already there, it's in everyone's interest to quickly resolve something. Then it's an area where everyone is going to work together on it, and there needs to be far less involvement of some of the regulatory bodies, and that sort of thing, because they don't need to clean up any inefficiencies; they don't need to balance any imbalances in market or bargaining power. That's something that other people can resolve.

So it's a matter of determining in each of those forums, what's the appropriate level of involvement, and the role that the operator should play in those.

PROF WOODS: Any other matters that you want to raise with us?

MR WRIGHT: No, I think, as you said, our overall response is clearly that we think the framework is essential; it's essential to our forward investment; it's essential to our current investment. We think that little needs to be done to create some of the improvements that we're suggesting may involve large-scale competitive benefit; and they're more in an operational sense. We think that the ACCC and the ACA perform an excellent role in doing that, and they certainly - where given the tools and given the impetus to do things - generally arrive at an excellent outcome. It's more a case of us saying we think the framework itself is a good one and should be preserved; and we think that any change now is a little too early to determine, given the current state of competition is only really now changing.

The final, I guess, is that in telcos it's always, "I think I'll watch this space." We're moving so fast in the area of convergence, as we mentioned before, that you can't wait every three years or every two years to involve some of the major things that are happening on a more regular basis, because you already have entrenched either significant investment cost in an area that you shouldn't have, or you've entrenched some additional market power that's created by an inefficiency. So some of those areas need to be watched very closely.

PROF WOODS: Thank you very much; we appreciate it.

PROF WOODS: Our next participant is Austar. Could you please identify yourself and the capacity in which you come forward?

MS WILDE: I'm Anne Wilde, corporate counsel for Austar United Communications Ltd.

PROF WOODS: Thank you very much. We've received your submission and we've now had an opportunity to read through it and it prompts some questions that we'd like to explore with you. But do you have an opening statement you wish to make?

MS WILDE: I think that, in terms of, not a specific opening statement just more so that we do believe that there is a need for, at this stage, a continuation of a form of specific industry competition regulation but we think that that wouldn't necessarily need to continue indefinitely into the future. It's more so just something that we perceive as being needed while you've still got someone of the size of Telstra in the market with such a huge degree of control over both infrastructure and service provision. So once, and if, the market evens out somewhat then we think we could probably set away from that and it should then just be regulated on a more general basis as with other industries and services.

PROF WOODS: In that respect, do you foresee a time when Telstra won't have this control over the natural monopoly aspects of their network? In your perspective of the industry, is there sufficient duplication or multiplication, in fact in some cases, of infrastructure, diversity of technology, that is breaking down Telstra's?

MS WILDE: I think that that almost begs the question of, what is the industry?

PROF WOODS: That's a very good place to start.

MS WILDE: There's this traditional concept of the telecommunications industry, which I think there was a few years ago, but as we move more into the convergent service world to try and delineate between different types of services is, I think, going to become continually harder. I think it's very difficult to predict the way things will evolve and where things will go in the future but the indications seem to be, at present, that there will start to be a diversification of networks owned by other operators in addition to Telstra which should reduce, at some point in time, their dominance in the market.

PROF WOODS: Austar is in a very good position to be able to assist the commission in understanding those issues in particular. Do you see, in effect, some separation between facilities providing access between content providers and end recipients - and the content provider might in fact be another person wanting speak to them or it might be a broadcasting company wanting to deliver video or any sorts of things - versus the content providers as a separate industry? Is there some separation or, in fact, is there convergence there as well, where the content owners are wanting to also own the facilities but allow additional usage of those facilities?

MS WILDE: I don't know that I'm in a position to give you a concrete answer on that issue. I think the observation would be that there's a blend of the two. That there is certainly a movement towards some content providers looking to also have the infrastructure ownership and vice versa, but I think that there will always be a blend of both: both content providers who are just pure content providers and infrastructure owners who are pure infrastructure owners and parties who have a foot in both camps. I think that there's room for all of those different forms of operators.

PROF SNAPE: You don't see the dynamics of it being, that with the convergence you could get such advantages across linking into what are currently different areas, that content becomes king?

MS WILDE: There's not much point in owning infrastructure unless you've got something to sell, unless you've got a service to provide to the consumer at the end of the day. But similarly, there's not much point in having content unless you've got some method of delivering it to your consumer. So apart from making those observations I don't think I'd like to make a predication about which way things will go in the future because I think the way that the content is evolving it's going to be incredibly dependent upon technology to actually get it to the end consumer.

PROF WOODS: Industry development plans. You use the phrase, "industry development plan requirement is challenging." Do you want to elaborate on that for us?

MS WILDE: We had a situation where Austar had rolled out its pay TV business across rural and regional Australia and we had invested, back in 1997, still substantial amounts of money - I couldn't remember what number it would be around but say 3 or 4 hundred million dollars, something in that vicinity - and we were called upon when we got our carrier license for our Darwin cable network which services

only, at that stage, 20,000 in I think a total market of around 30,000 homes. We had to put in place an industry development plan. We we're getting measured by the same requirements that your Optuses and your Telstras and your much larger players were getting measured by.

Frankly, it was very, very difficult to try and fit those requirements where the carrier obligations related only to our carrier network, and yet we had the rest of our business that we didn't wish to get tied up into the telecommunications regulation regime because it was already getting regulated separately under the broadcasting area, to try and blend the overall activity of the business so that we could come up with something that frankly could satisfy the requirements but at the same time didn't create too much of an imposition on the rest of the business. That didn't seem to be just when we only had a carrier licence because of the 30,000 homes passed up in the Northern Territory.

PROF SNAPE: What was dependent upon the industry development plan you were saying you were being measured by; who was doing the measurement; and what was the consequence of the measurement?

MS WILDE: I guess what I'm saying there is, we had to have an industry development plan in order to get a carrier licence. To get the industry development plan we had to show a sufficient amount of activity in terms of developing Australian industry, and yet because we had the carrier licence sitting in a subsidiary relating only to the Darwin cable network we weren't able to - although we ended up doing this, pooling across the investments that had been made across the rest of the business in relation to the investments that we'd made for the purposes of rolling out the business in Australia and thus being able to show that we had been making levels of investment and utilising Australian contractors, etcetera.

PROF SNAPE: Who was, in fact, saying to you, "You're not going to get a carrier licence unless you have" - and then we come to the measurement? What's the story?

MS WILDE: We went through a three-way process, firstly with the Australian Communications Authority, then the Department of, as it then was, Industry Science and I think it was Technology or Tourism at that stage, and then we actually also ended up getting the Attorney-General's Department involved in relation to the grade of our licence because we were different and because we didn't clearly fall within the existing categories. But we got there at the end of the day but it did take a considerable amount of time and effort.

PROF SNAPE: It was clear that there were defined criteria that you had to meet?

MS WILDE: Yes. Then over and above that we simply hadn't undertaken some of the forms of activities that we were expected to have undertaken and we were able to, however, demonstrate sufficiently across the rest of our business in proposed activities in order to satisfy that criteria and get it through at the end of the day. It's not fair to not say that a lot of this was of our doing because we didn't want the

ownership of a carrier licence to impact on the rest of our company where it was only related to a 30,000 home-pass network. It didn't seem to us to be just to have that within our organisation and thus open ourselves up across the board to telecommunications regulations when in fact we were a broadcaster. We weren't providing any telecommunications services, and that network was not configured for any voice or data services; it was purely a one-way video network.

PROF SNAPE: As far as you are concerned, the requirements of an IDP had teeth then?

MS WILDE: Yes.

PROF WOODS: Now, of course, you are venturing into a range of areas that extend beyond pay TV, looking at IP and other areas, so that does bring you within the telecommunications services. Access requirements: I take it from your submission that, with the dominance of Telstra, your main thrust is to say there should be some form of regulation to counterbalance their power so that you can get access into their network, but if you make investment decisions about particular aspects of facilities infrastructure yourself, somehow that should be protected from others having access to it, unless you commercially so decide to negotiate. Is that the direction of your submission?

MS WILDE: It's along those lines, in the sense that what we're trying to identify is the distinction between an incumbent provider like Telstra, who has got the network there, it's been there for a long time and they've got the lines effectively going into every home and business in Australia already, so they've got all the sunk costs, they're there - now, if they were to go out and put in place new technologies, I think that you might wish to rethink the application of the regime to those new technologies. However, that has got to be done in the context of where they are already such a dominant provider in the market.

PROF WOODS: So if they came up with DSL it would be all right for them to maintain some sort of exclusivity of that for their own benefit?

MS WILDE: I don't know that I'm going that far, to say that, because I think Telstra is such a dominant provider across all services and all markets that I think they do have to be treated differently. I don't think I'd go to that extent but I think certainly - - -

PROF SNAPE: No holidays for Telstra.

MS WILDE: Pardon?

PROF SNAPE: No access holidays for Telstra.

MS WILDE: Not necessarily but I think there needs to be, at this - but it's all a continuum, it's point-in-time analyses. I don't think you can make assumptions as to

how things are going to be - or too many assumptions as to how things are going to be in a few years' time, because things are moving very quickly. But I think there does need to be an acknowledgment that they are a big incumbent, they're dominant - - -

PROF WOODS: I'm just trying to explore what the boundaries of that would be. You've identified connection to individual households through the fixed wire. If, for instance, industry trends and consumer preferences are that for IP services they want to have wireless access to their laptops, then there are at least three major players in the marketplace who have got fairly extensive mobile coverage, but there are three of them rather than one, for historical incumbency reasons. Is it appropriate that they can have some access holidays to their networks as such if there is some sudden expansion or technological capacity to have IP service to laptops, on a wireless basis?

MS WILDE: I think it may well be appropriate. However, to counterbalance that, they've all been, I think, in operation now for a period of time and perhaps that area of mobile services has reached a degree of maturity, certainly not the degree of maturity that we've got with the fixed-line phone network, such that an access holiday wouldn't be fair or appropriate in terms of allowing other parties to have access.

PROF SNAPE: Could I pick up that fairness point, because fairness comes up a great deal in your submission, the word "fairness"? Let's go back to that example of Telstra and DSL that we had just a moment ago. Let's suppose you don't have an access holiday for Telstra but you do for everyone else. That may mean, it could mean, that Telstra says, "Okay, we're not going to invest in this." It could mean that there may be some other development that they were contemplating, and if you're not giving them an access holiday on that, they say, "Bad luck, we're not investing then." So it's not just a matter of fairness, it can be whether in fact the community gets a particular investment or not.

I think that through your paper there is a lot of fairness mentioned but rather not so much emphasis on what's efficient or what is desirable from a community perspective. It may be that, by treating Telstra differently from others, you just don't get certain things invested, at all.

MS WILDE: Agreed, and I think we had tried to address in the submission - I'm sorry if it's not clear - that people rolling out new products and services do need to be appropriately incented in order to make that investment.

PROF SNAPE: Including Telstra?

MS WILDE: Including Telstra but in the Telstra situation it's also got to be done in the context of the fact that they are, as I said before, the dominant provider in so many other areas. They just are different from the others. Now, the degree to which they're different, I think, has to be evaluated in relation to what's being proposed at the appropriate time.

PROF SNAPE: I assume, leaving fairness on one side, what you'd be looking at there is: because they're so dominant in other parts, it's a question of which they can lever their advantages of being dominant in other parts, through this, and therefore exerting a monopoly power which may not be in the community's - it may not be desirable for efficiency purposes.

MS WILDE: Yes.

PROF WOODS: Yes. You refer to the public interest in not having unnecessary duplication of infrastructure. Is that some of the core of the criteria that you would be using to look at how to decide what parts of Telstra do need to be subject to regulation and which ones don't? I'm just trying to find out what are the criteria that would help us.

MS WILDE: Yes, we raised the Telstra point in the submission but I don't want to be constantly pointing the finger at them. They're more just the example of the person who is currently the incumbent monopoly, or ex-monopoly incumbent, provider who has got the established networks. It may well be in the future that there are other parties who are in a similar position, where the similar consideration needs to be given.

In terms of the provision of access and the roll-out of infrastructure, I think that, yes, criteria of public interest in ensuring that there is not an over-duplication, particularly with proliferation of towers or that sort of thing, is definitely a criteria that should need to be addressed.

PROF SNAPE: What about Austar's pay TV network throughout the country? I don't mean the cable, I mean the rest of it. Should that be declared?

MS WILDE: Obviously from our perspective we think the answer should be no. We've got some severe capacity limitations in relation to the technologies that we're using, so I think you need to differentiate between the technologies, which I think is actually what the ACCC has done to date, in terms of having the analog cable declaration in place. Just to say our pay TV services - we've got the satellite platform and that has got severe capacity limitations and restrictions, and I think that's what we're trying to highlight in terms of some of the criteria that we've put in the submission; that it may well be appropriate that some form of access be declared to be given.

What that may or may not be, I think, is a very complex question because of all the component parts of that network and the capacity restrictions and the operational restrictions that apply in relation to the network

PROF SNAPE: Your satellite is part of it but, as I understand it, in much of the country, the regional cities, you bring the satellite down and then you distribute it by microwave.

MS WILDE: That's got an even further limited capacity; it's only got 19 channels.

PROF SNAPE: So you're using it all and there's no space for anyone else. That's very comfortable.

The paragraph on page 3 where you're talking about access being given and you go through a number of criteria there, you say:

When access is to be given under an artificial access regime, it should only be required to be given where there has been full consideration of full criteria, including the following: the owner does not want to use those services or networks for their own purposes.

If that is really so, literally so, for their own purposes, and thinking of that is fairly general, I wonder why access is even necessary, if that criterion is met - - -

MS WILDE: Exactly.

PROF SNAPE: - - - why any declaration is necessary. If they don't want to use it, if it's for their own purposes, including, if you like, the purposes of keeping out competitors, then it doesn't need declaration at all.

MS WILDE: Agreed.

PROF SNAPE: Okay. So in that case, if that criterion is met, we don't need the access regime anyway.

MS WILDE: I think that's part of the - that's sort of why we put it on the table as something that needs to be considered when looking at whether or not something should be declared within the regime.

PROF SNAPE: So does it have to pass all of these tests that you've got listed here?

MS WILDE: I don't know that we want to say "tests", we're just saying "consideration of criteria". I don't think we're trying to put down - when we put this together it was really with a view to suggesting criteria that needs to be considered because it's relevant to the consideration, without trying to put forward a specific legislative set of criteria or tests.

PROF SNAPE: So it's not as if you have to tick each one of these as you go down, because - - -

MS WILDE: No. No, there are things to be considered.

PROF SNAPE: Okay. "The network is of a certain age and key components of the network are of a certain age"; what do we mean by "certain age"?

MS WILDE: I guess it's this concept of old and new, ie, has there been an adequate period of time for a return or is it just being rolled out such that there should be this sort of first-mover component where they get a chance to get a reasonable return on the investment that's been made in the roll-out. So, that sort of concept.

PROF SNAPE: Okay. Then we go down further and we've got, "That compensates for the loss of opportunity to the owner's market"; that seems to be going towards that efficient component pricing model of saying that you should be able to make up your lost profits, the profits that you're going to lose, by granting access to someone else, that the price should in fact include any foregone profits that you're making by giving access to someone else.

MS WILDE: I'm not an economist and I can't come back with, sort of, a considered and informed response from that perspective.

PROF SNAPE: I'm sorry. It was the Privy Council that made a decision on this one.

MS WILDE: I think what we're trying to say there is, where someone has gone and made the investment and rolled out the service, that there has to be a recognition of that in any price that may then be charged to a third party who is then given access.

PROF SNAPE: Okay. I don't wish to push you too much on that one but it did seem to be - if you were in fact giving anything like a tick to all of these, I think, first of all, you'd hardly ever do it, and, secondly, you'd give the opportunity for what - in an Australian context anyway - would be regarded as a very high price to be charged, if the criteria were all met.

MS WILDE: It may be appropriate in some circumstances that there should be a very high price charged.

PROF SNAPE: I wasn't meaning to judge it, just to point it out.

MS WILDE: No, but, I mean, I think that's exactly what we thought when we put that criteria down. That was not an accidental type of conclusion to arrive at. It may well be appropriate for a very high price to be charged.

PROF WOODS: In that that would be in the long-term interests of end-users, that there be such a high price?

MS WILDE: Potentially, in the context of incenting to have the investment made, to roll the product down in the first place.

PROF WOODS: You make some reflections on the TAF potentially limiting how industry must shape itself. Do you want to expand on that a little for me?

MS WILDE: I guess all I meant there is you've got this sort of concept of a TAF, and I'm just wondering why it can't be that the industry body that's the appropriate industry body for a particular service can't be the "TAF" for a particular service, why it has to be the one each time around that has to deal with the issue. I think that there, within the existing framework with the industry consultation role, would definitely need to be some sort of formality as to how that industry consultation is undertaken, but I don't know that you have to say, "This body here is the body that will always be the body that considers certain services," because I don't know that it's necessarily always going to be the one that's got the requisite expertise.

PROF WOODS: On the question of convergence in your section on other legislation I notice you propose repealing various parts of the Broadcasting Services Act. Do you see that as a general direction, that broadcasting, in at least a legislative and regulatory framework, should merge towards the telecommunications framework rather than vice versa?

MS WILDE: I think the telecommunications framework is far more extensive, and those particular sections - subsections (100)(iii), (iv), (v) and (vi) - actually require the ABA to impose licence conditions on broadcasters to give access. What you've got is three paragraphs being administered by the Broadcasting Authority when you've actually got an entire regime administered by the ACCC, set up in other legislation, which, frankly, would appear to be the correct place for it to sit; and it's made those provisions obsolete. That's simply the point.

Now, to go to your more general question as to which way things should go in the future, it doesn't seem to be unreasonable to have the distinction between the regulation of content and the regulation of infrastructure and the services for the provision of content. That is the framework that is currently in place on the telecommunications side and reflected, to a degree, in both the radio communications legislation and the broadcasting services legislation. So I think that we're actually going down that path already, but there are some anomalies that, if we continue to go down that path, we should tidy up.

PROF SNAPE: I guess, within the broadcasting services too, we have a distinction between the regulation of content and the regulation of the platforms for its dissemination. I was wondering whether you might wish to give some more thought or explain some more how you would see this convergence developing and how Austar would be participating in this. Not the regulatory convergence but much more, perhaps - - -

MS WILDE: The service?

PROF SNAPE: - - - the services and therefore the competition.

MS WILDE: Yes.

PROF SNAPE: You, for example, as a telecoms service provider, perhaps, developing through your pay TV infrastructure, for example.

MS WILDE: Yes. I think that's a very difficult question. Fundamentally, I think where we would perceive things going is to start to have common content across different delivery platforms; ie, the content - which is where I think everything is going - the content can be accessed through pay TV, the Internet, over your mobile phone, or wireless technologies - all of the content currently accessible in those areas will be accessible through the other technologies. In that sense, that's where, I think, the convergence comes through, in terms of the consumer being able to access the same, fundamentally the same, concept. I mean, it's got to be tailored for each of the capabilities of different technologies but being able to access the same sort of content through the different mediums.

PROF SNAPE: At the moment if one is looking at interactive television and the primary mode that you have of pay TV, that is, through wireless rather than what you've got in Darwin - - -

MS WILDE: Yes.

PROF SNAPE: Thinking about your wireless pay TV systems, for interactive services, which you've started to undertake, you're relying on other carriers for your return path.

MS WILDE: Yes.

PROF SNAPE: Is that comfortable?

MS WILDE: Comfortable? I guess the answer to that is it's just part of the commercial necessities in order to be able to provide the services. It depends upon the terms upon which you're able to get that. I mean, I think obviously there's a preference, as with everything, that if you've got it within your own direct control, then you're more readily able to make certain guarantees to the consumer as to the quality of the service, but, you know, to move from being a broadcaster to owning and controlling and operating a complete end-to-end network is a big leap, it's a big change.

So, is it comfortable? I think it's just part of the means of getting the service out to the consumer and it's part of the structuring and maybe it's part of the fact that businesses, as I said, will need to make a choice as to whether or not they're a content provider, an infrastructure owner or a bit of both, at the end of the day, or just a deliverer.

PROF SNAPE: You don't see that as a drive at all towards integrated companies?

MS WILDE: I think there will probably be, yes, a push towards having integrated companies, where you've got an interest in content and an interest in the networks.

PROF SNAPE: That then, in turn, may have strong competition implications.

MS WILDE: Indeed, because it all comes down to how you frame the assessment of competition. It goes back to this concept of industry, which I think might be getting a little bit out of date.

PROF SNAPE: So how would you, in fact, tend to define the telecommunications market?

MS WILDE: I'm not even going to attempt to do that. I think the only observation to make there is that I don't think that it serves anybody's purpose to have a predetermined concept of what that is. I think it's got to be determined at the appropriate time, having regard to the developments in the market, both taking place and that are likely to take place, because things are changing very quickly. I'll just make an observation: we have experienced extreme frustration at Austar with the ACCC's continuing analysis that the pay TV market is separate to the free-to-air market, whereas, in our actual day-to-day commercial experience, that is not the case. I think there just needs to be a bit more fluidity there perhaps in the future, where we start to get into a more convergent environment.

PROF SNAPE: Which might lead you to the same cross-media rules for pay TV as for free-to-air, which you may not be so keen upon.

MS WILDE: I don't think we think there should be any cross-media rules at all, but I am not here to talk about that and haven't given consideration to it.

PROF SNAPE: No. I am simply pointing out that once one tends to drop that sort of distinction, one immediately runs into another set of regulations.

MS WILDE: As a general observation, I think there's too much regulation, there's too much. You know, we've got to wade through pages and pages of codes, of acts, of determinations. We get regulated by the ABA, the ACA, the ACCC. It's just getting very difficult to do your business, and it would be very nice to actually take some of the layers off.

PROF SNAPE: If one is looking towards a convergent environment and one is looking to some, therefore, first of all, a set of regulations that doesn't get in the way of that convergence - that is, if it shouldn't get in the way of it - and then to be thinking about some sort of generic regulation, remembering also that someone will soon be reviewing Part IIIA of the Trade Practices Act as well, I was wondering whether you might wish, in a subsequent submission, to throw your mind into that general framework of regulation and where the regulation might be generic rather than specific; how one can get away from the sort of problems that you're alluding to and that obstruct you.

MS WILDE: I think we'll take that away and consider if we wish to address that further.

PROF SNAPE: We'd be very grateful if you could, because you're one of the few companies that are sitting on that boundary at the moment.

MS WILDE: It's a very complex area. It does need some consideration. I think our initial thought would be: less is best. Just because we're going into new fields and providing new products doesn't mean we have to have another 200 pages of legislation thrown at us to comply with.

PROF SNAPE: No, but you have pointed out some problems that you see should be regulated, and - - -

MS WILDE: And there is existing framework within which to do that.

PROF SNAPE: The question is whether we have the best framework to do that, whether it in fact should be industry-specific or whether one should be going on a more generic basis. If we are doing industry-specific, then we immediately run up against the question that you were just alluding to: what is the industry? What is the market? What is the telecommunications industry?

So, I mean, you're right there, you're being affected. We're trying to look into the future, not to say what technologies are going to be dominant or where, of course, we can't do that, no-one can do that, but in fact to think of a framework which will suit the future and with a whole range of possible developments in the future.

MS WILDE: I think our response to that is as I think we've put in the submission, namely, that we wouldn't see a need to change the existing framework at this point in time but it might be appropriate for it to be reviewed periodically - I'm not even going to say what sort of periods might be appropriate - in order to see if there need to be some changes. I don't think that we could, or would wish to, contribute further to that at this stage, because I think it's a little bit too speculative.

PROF SNAPE: Yes, but, as a couple of participants have pointed out, this review won't be reporting until the middle of next year. The government typically takes a while to consider it. If there's any legislation, then that will take a while further. So we may not be talking about specific outcomes from this until 2002, and, the rate at which things are changing, it might be out of date by then if we are not thinking ahead. We need, in fact, to be thinking of frameworks that will last into the future; so we'd be grateful for any help on that.

MS WILDE: We'll go away and give that some further consideration. However, I think I would just repeat that at this point we would continue with, yes, let's have industry-specific regulation as currently provided, for continuing forward for a period of time until an assessment is made that there's a sufficient maturity amongst the participants, such that it may then fold into a more generic, across-the-board regulation.

PROF SNAPE: You'd be aware that in the broadcasting report we did try to look to the future and we'll be trying to do the same thing here.

MS WILDE: Yes.

PROF WOODS: Any further comments you wish to make?

MS WILDE: I don't think so. Actually, I will just make one; this access to facilities issue - and this may well be purely because our experience has been different to everyone else - we've had no difficulty getting on to anybody's tower at any point in time. It was all happily done by one engineer chatting to another, and we just get the deal done; and all of a sudden this framework comes and gets thrown on top of what appeared to be, from our perspective, in any event, a relatively happy commercial environment. I don't quite understand what purpose it serves at all, if any.

PROF SNAPE: Where did you use towers?

MS WILDE: We use them across our entire LMDS wireless network, and we own them; we give people access.

PROF SNAPE: Yes, but most of those are regional and rural, aren't they? It's not the capital cities?

PROF WOODS: Not the main - - -

MS WILDE: Exactly.

PROF WOODS: Thank you very much.

MS WILDE: Thank you.

PROF WOODS: PowerTel are with us. Thank you very much. Our next participants are PowerTel. If you could please identify yourselves by name, and the position that you hold.

MR SHAW: I'm Errol Shaw. I'm the director of regulatory affairs and planning at PowerTel.

MR SIMPSON: Rob Simpson, partner of Baker and Mackenzie, who advises PowerTel.

MR EMERY: Russell Emery, manager, regulatory in PowerTel.

PROF WOODS: Thank you very much. Welcome; and thank you for your submission, which we've had the opportunity to read and have found very useful for our deliberations. Do you have an opening statement that you wish to make?

MR SHAW: Yes, we do - or I do. I'd like to start with saying that there's one key message in PowerTel's submission that's come through fairly strongly in a number of other submissions; and that is that we still have one very dominant industry member in our industry. That market situation itself is well documented, competitive drawbacks; the effort - and some considerable effort by regulators and legislators - as well, over the last eight years has been targeted somewhat at dismantling that market power and getting rid of the economic millstone that we bear.

Essentially, we think there's been a lot of progress made, but we still have a long way to go to get to a level playing field. To do that, we contend that the industry-specific regulations, and the industry-specific regulator, must be retained. The regulators and the regulations need finetuning to address the obvious flaws, highlighted by experiences over the last three years. I think we've seen those in many of the submissions that we've gone through.

What I'd like to do now is step back and give you some context to PowerTel's submission, and put on record who PowerTel are and what we're about. We believe that PowerTel - I say this, "we believe", because sometimes it's a bit hard to determine exactly - we believe we're the third-largest provider of fibre-optic infrastructure in Australia. Since our inception two years ago as PowerTel, we've laid over 2,000 kilometres of fibre between Brisbane and Melbourne; we've wired hundreds of buildings in the CBDs of Sydney, Melbourne and Brisbane; and built a network between three capital cities.

It might be useful to say that when PowerTel was first born, out of the relationship with three utilities, one in Sydney, Melbourne and Brisbane, and an existing carrier called Spectrum, we really had no intention of fibring between the capital cities. We were going to fibre the CBDs of each of the cities, using our partnership with DTU, leveraging off that to get access to the buildings; we have contract duct access, etcetera, with these people. So we were going to advantage of what we were good at and what we knew we could do quickly. It didn't take us long to realise that, with the prices available from inter capital city bandwidth, we would have been silly not to build. I think that in itself has come out strongly in other submissions, as well.

PROF WOODS: This is when there were two providers of that predominantly, although obviously some microwave as well, but two cable providers?

MR SHAW: Yes. There were two cable providers, Optus and Telstra, on that route. They were able to convince the department and whoever, at the time of rewriting the 97 legislation, that the two carriers represent competition in the marketplace. However, when we came to looking at our business plans, the cost per megabit mile, if you like, of - as the Americans put it - transmission in Australia, was

something like 50 times the cost - I probably exaggerate there, it might have been 15 or 20 times the cost - of what you might experience in the USA. One of our parent companies was extremely surprised at the rate we'd have to pay and did a business case on building the network, and consequently, in the last two years, we've built a fibre network between Brisbane and Melbourne.

I'll go into it later, but I think we're also largely responsible for some of the major decreases in rates that other carriers would pay for access to network between those three cities; and the disparity between the price of network between those three cities and the access to network to other places where we don't have infrastructure demonstrate the effect that competition, as opposed to regulation, has on pricing.

PowerTel is not really into all the market segments in Australia, so that we are an access provider and an access seeker, and actively do both. We're focused on the wholesale market and on the corporate market. We don't have mobile network; we don't have a mobile play of any sort, having just recently disposed of our mobile route base, that we would resell this off. So what we offer in the marketplace, in the three CBDs, to the corporates is rapid deployment of scalable bandwidth; and what we offer to wholesalers is exactly the same thing; as well as the transmission between inter capital cities. From that perspective, PowerTel isn't quite the same as Optus, Telstra or AAPT, in fact, who probably like to see themselves as all-services carriers. So we're as interested in getting market share from wholesalers as we are from end customers.

I think that's by way of the opening statement. What I was going to do was go through our report. At the end of it I put a report card in, which was a little tongue-in-cheek, but - - -

PROF WOODS: We found it interesting.

MR SHAW: - - - it sort of highlighted where we thought we were trying to get to; what we'd achieved; and suggested ways of how we should move forward.

PROF WOODS: We're happy to go through your submission, but we'll probably manage to touch everything by way of question, if not.

MR SHAW: The other things that I have done is - and Russell's been here for all of the time, I've been here for a major part of the time - there are a number of issues that you raised with other carriers that I almost jumped out of my seat and said, "Please, please, sir, pick me. I know the answer."

PROF WOODS: Do you want to start on those and then let's see where else that gets us?

MR SHAW: Yes. One of the questions that was asked repeatedly was, what are the bottlenecks? It always came back to the local loop. The local loop is definitely a bottleneck and is intrinsic in Telstra's stranglehold on the industry. You just can't be

in business without dealing with Telstra. I dream of the day when Telstra can't be in business without dealing with somebody else, but that's another story. So the local loop is definitely there. Mobile originating and terminating access is another loop because of the bottleneck nature of a captured handset.

I think, to say there's effective competition, in fact vigorous competition, in the mobile marketplace is true on one level, I think as Macquarie said, but it's not quite true on the other; that other level being at a wholesale level.

PROF WOODS: Could you just go back through that?

MR SHAW: Yes. When the ACCC had a roundtable conference - I almost called it Jamboree - into pricing of non-dominant networks, both Telstra, Optus - particularly Optus and Vodafone, went to great lengths to explain that putting a customer on the net to them meant more than the value that that customer spent with them, in fact, their business plan relied heavily on the interconnect cost, the price that they charged, to a fixed-line carrier dialling up someone on their service. To the point where, as a corporate, you can actually buy services cheaper from some of those mobile phone suppliers, more cheaply than the cost based pricing for terminating a call from another carrier.

So I believe that's a very large part of their business plan, or their business case, and there is no competition in origination or termination of mobile services. We're actually going through the process now of putting together a document that examines the retail rates that are available out there, corporate rates that we believe are available out there, because everything is commercially confidential and no-one tells you what they charge. We're submitting it, we'll include it as part of our submission, and we'll also include it as part of a submission to the ACCC on another arbitration thing, just general interest in another arbitration they're conducting.

PROF SNAPE: So you'll be fleshing out that statement that you just made that, there is no competition in the originating and terminating of the mobiles?

MR SHAW: Absolutely.

PROF SNAPE: Yes, thank you.

MR SHAW: The other bottleneck is probably the transmission services where there is no triplification of resources - of infrastructure. If you look at the price on - and this all comes through in pricing, people charge monopoly rents when they can get away with charging monopoly rents. If you look at the price of transmission from Sydney to Melbourne in 1998 - I think Barney Blundell from Macrocom stole my thunder a little - it was around about \$200,000 for an E1. Today a list price, not a negotiated price, a list price, is probably around \$70,000 or less. Yet that service isn't regulated. The list price from Melbourne to Adelaide for the same service, which is roughly the same distance if that's got a lot of bearing on it, is around about twice that, yet that's a regulated service.

That highlights two things, it highlights that monopoly rents are charged when you can charge monopoly rents and that regulation, or the current regulation, is not necessarily seen by industry as an effective way of dealing with these issues. Yet infrastructure duplication appears to be the way you deal with these issues under the current regulations.

I'd expand that by saying that there are so many arbitrations that are notified to the ACCC that you pick the most important ones. Most of the business and the traffic goes down the east coast of Australia and you would focus on those issues because they're the big numbers in your profit and loss. However, when you can charge monopoly rents on the secondary and tertiary issues then you must still be making good money out of those things and they would, over a longer term, be challenged, I feel. But that's just the situation of where we are now.

PROF SNAPE: But presumably the volume of traffic between Adelaide and Melbourne wouldn't support more facilities and may not support more facilities there for more lines and more competition?

MR SHAW: The answer to that is, maybe, which meant, maybe we'll build and maybe we won't, depending on what - when we first went to the available networks we said, "Look, we need to make a build or buy decision here. Help us to make a buy decision because we don't believe in duplicating or triplicating infrastructure if it's not necessary." I don't know their thinking so I won't assume it but we ended up building because it was a no-brainer.

The opportunity we now have before us is that it's less of a no-brainer to build to Adelaide but it still is definitely on the horizon. I have a feeling that the closer we get to making a decision on that the prices might just come down. So, yes, at the current pricing there is enough business traffic to support another network; however, if that comes down materially over the time in which PowerTel itself needs to develop a business to do that, to provide those services there, I think that may change.

PROF SNAPE: So what you're saying is that, the high price there is not just reflecting the volume of the traffic as compared with the cost of building it, but that it is being priced above that level to the extent that you would be contemplating to put your own in?

MR SHAW: Yes. So rural access again is a classic example of a monopoly rent that's available. If provision of services is in any way related to the bandwidth and to the distance, which seems to be the way its charged, a 55 kilometre - off the top of my head and we'll put this in our next submission - a 55 kilometre E1 from Sydney to Windsor is about \$57,000 per year, \$60,000 per year, which seems strange when you can get an E1 from Sydney to Melbourne for the same price.

PROF WOODS: The cost of you replicating that would be very high?

MR SHAW: The cost of replicating to Windsor would be huge.

PROF SNAPE: You could do it by microwave, couldn't you?

MR SHAW: Microwave isn't fibre and has different technical - I'm no technician - but it has different qualities. It certainly could be done by using microwave but it's not necessarily the way we would go to provide the services that we, PowerTel, provide which is instantly scalable bandwidth with a disaggregated network. So the actual structure of our network isn't necessarily suited to a long haul wireless network.

PROF WOODS: Your reflection on possible behaviour of current cable owners, Melbourne-Adelaide; ie, that they may consider setting a price just below which you would otherwise choose to build your own - they didn't for Melbourne to Sydney.

MR SHAW: Yes, correct. That's what I think. I can't speak for them but that's what I believe.

PROF WOODS: But that either suggests a change in the marketplace or now that you've actually demonstrated that you will go build if the business case demonstrates. Something has happened to change - - -

MR SHAW: I think that's definite. It's a realisation that it's just not someone saying, "I'm going to build a network," because there have been other carriers who presented here today who have said, "We're going to build a network between capital cities," and they've been saying that for a number of years, and I think, maybe, the people with the network thought that was what we were telling them as well.

PROF WOODS: So your credentials in the ground may change their pricing behaviour to you in other circumstances?

MR SHAW: In fact, probably to everybody.

MR WOODWARD: Yes, that you may in fact be helping bring down the market price through that behaviour. To what extent is the demand for the cables matching supply? Pick Sydney-Melbourne for instance. We're having trouble getting a clear view. You're a provider of this service, you'd have some view presumably on whether the capacity is currently matching or far exceeding demand, that's both now and possible over the next three or four years.

MR SHAW: Again without the actual documentation of what we have done in front of me, our belief is that it's the real elasticity of demand, both in data services for corporate and then that becomes recognised as bandwidth for other carriers who don't have infrastructure, hasn't been realised in Australia. I think that's demonstrated by the fact that an E1 used to cost 200-plus thousand dollars, now it costs 60 or 70 thousand dollars. We're only just beginning to see a ramp-up in people actually using that bandwidth.

I also think with the Internet and a lot of the other data applications that are being developed for corporates there will be an explosion of bandwidth required. I think they're finding that in the United States where they have a lot more bandwidth than we are. It's like, per head of population, the bandwidth requirements are just being exploded all the time. So we're absolutely confident that the bandwidth we have will be well used.

PROF WOODS: And that the total bandwidth available will be well used?

MR SHAW: Yes.

PROF WOODS: Which presumably lies behind the business case of others who are also currently, as we speak with pick and shovel digging a hole.

MR SHAW: Indeed. A couple of those people aren't going to be in place until 2003 I think, which is a long time in telecommunications, or in communications in general.

PROF WOODS: As we are finding out.

MR SHAW: Yes. So in three years' time anything could be happening. As well as that they also have the ability to look at it for the next 12 months to see where it's going before they actually start digging holes. I guess that's the faith those people have as well.

PROF SNAPE: Can I ask what I'm sure you're going to regard as a very dumb question. I may have asked a few of those already, but I'll confess to this one. That is that, a few years ago we used to hear about the power lines being used for telecommunications and that seems to have disappeared.

MR SHAW: There was a company in the United States, I believe, that spent a considerable amount of time and money trying to develop telecommunications of some reasonable bandwidth, over power lines, so that you could have access to the home. In other words, compete with Telstra's local loop. It still needs developing I think is the term you'd use. It's like fibre-optic cable delivering local telephony; needed development. I think that's probably what's going on right now. It may be an answer but it maybe some time away, but with a site interconnect, for example, available now on Telstra's local loop and DSL technology being applied to that it lessens, to some extent, the investment in that equipment.

PROF SNAPE: If one was to challenge the local loop you're in the box seat to do it if you're using the power lines.

MR SHAW: The possibilities hadn't really escaped us, no.

PROF SNAPE: I suspect not. So it's not completely off the table?

MR SHAW: No, we're really watching the developments as far as the equipment goes without thinking it's something that's going to happen in the next year or two. We certainly have an eye on it, yes.

PROF SNAPE: Even though you're putting down fibre, you're putting it in the ground and you're not stringing it across from your poles?

MR SHAW: Yes. One of our partners who is DTU, Down Town Utilities, and they have a very extensive ducting network around each of the three CBDs. Part of our deal is we actually have a contract with those people to rent space from them in that duct and we actually paid them to pull the fibre through it because that's their expertise and it's an electrical duct; you don't want to get in there with telecommunications guys.

PROF SNAPE: So you can locate it with an electrical cable, there's no interference from it?

MR SHAW: Yes, indeed. Other carriers who have presented here today use those ducts, yes.

PROF SNAPE: But I was thinking more particularly about the things that go between capital cities.

MR SHAW: Transgrid actually owns the capital city infrastructure and, yes, we did have a long discussion with Transgrid.

PROF SNAPE: As to whether it was better to put it up in the air than under the ground?

MR SHAW: I think at the end of the day we decided we'd go our separate ways.

PROF WOODS: Presumably they put forward a proposition that they considered commercially in their interest.

MR SHAW: Yes, that would be a fair assumption.

MR SNAPE: I'll put it another way. It was a commercial rather than a technical decision.

MR SHAW: Absolutely. Yes.

PROF WOODS: Have you got any more on your list?

MR SHAW: Yes.

PROF WOODS: Yes, please. Wander through your list first and then we'll see what - - -

PROF SNAPE: Just before you do that. What we've been talking about in just the last few minutes was really an interconnection between your businesses, between the power business and the other, and the only interconnection you gave me was using the same ducting in the capital cities. It's perhaps rather surprising that that would be the only overlap.

MR SHAW: It's not.

PROF SNAPE: It's not surprising. It's not the only overlap?

MR SHAW: No, it's not the only overlap but at this stage it's the only one we have developed. We are still talking to our partners about any other possibilities that may exist, all the time we are doing that.

PROF SNAPE: Okay. Thank you.

PROF WOODS: Presumably you've got consumer billing processes and all sorts of things that allow you to spin off on those?

MR SHAW: Yes.

PROF WOODS: That was a very brief response.

MR SHAW: I'd like to address a position of Telstra's that XIB, I think, is a dinosaur provision. Our experience in dealing with Telstra has been that, you can't have particular access because you didn't submit your request in the time frame that we wanted you to, therefore we won't discuss it with you at all for at least nine months. That's a pretty quick summary of what's happened. I don't think that's really a sign of a mature industry.

I think in a mature industry, if you ring up a supplier and say, "I need to get some supplies from you," and that supplier says, "I don't have a ship coming out in the next couple of weeks with that product on it." They'd sit down and work out what was the quickest way they could actually get those goods to you. What we tended to find was, "You didn't meet the process, I'm sorry, and we don't have any." It's just a comment. We found that Part XIB was quite useful to at least get their attention. I think XIB is useful because we don't yet have a mature industry and people in the industry don't act maturely in dealing with each other.

PROF WOODS: Is that a reflection on Part IV though, that it's inadequate?

MR SIMPSON: I think probably Part IV does have problems when you look at the telecommunications industry and the thresholds that you have to cross. Part XIB is useful where, although it is a lengthy process to get the regulator to make a decision, at least having the ability to move quickly if they wish and to take up the issue with

Telstra, or whoever it may be, tends to at least move you somewhere down along the path you want to be towards some sort of commercial resolution.

MR SHAW: The issue of bundling was also raised and discussed. From a power source perspective, the issue of bundling comes from having a vertically-integrated dominant service provider. What we seem to run into is a whole-of-business discount; in other words, we give all of our services to this vertically-integrated business and, if we do that, then we get a discount of 15 per cent across all of our services. It's very difficult to deal with, I believe, through competition law and also as a carrier who is not vertically integrated. From our perspective, that is the issue that we have with bundling. I'm not sure how you deal with it but it's characteristic of a dominant vertically-integrated carrier in the marketplace.

PROF WOODS: Isn't a possible answer to identify what is the core building block and if you regulate that then whatever else they choose to do by bundling themselves there will have been some internal separation and therefore that bundling is available to other parties as well?

MR SHAW: Yes. I think I understand what you're saying.

PROF WOODS: So, if you set open access and base priced at a local loop, anyone then can bundle other things to that, if they wish, in an equally competitive manner to the current incumbent.

MR SHAW: Yes, I understand what you're saying and, yes, that's true. The issue for us would probably - delivered by the organisational separation, I believe it was sort of volunteered by Telstra, if there was operational separation there was a network group, and that the prices charged by that network group to the retail group were visible, then I'd probably have no objection - without thinking too deeply on the issue - that everybody on the industry would pay a standard rate for access to that network, and knew what that was, I think that would go a long way to resolving those sorts of issues.

PROF SNAPE: The standard rate would be dependent upon what?

MR SHAW: The rate would be dependent on what was a fair price for the network group to continue to invest in infrastructure and to get a reasonable return on their current investment.

PROF SNAPE: But would it be the same price for everyone irrespective of what conditions they're taking it on, or irrespective of the volume of business? What?

MR SHAW: I think all of those things are options or things that need to be considered. I think, in the UK, OFTEL BT has a one price for access for everybody, regardless of volume. So, I mean, all of those things need to be considered, and I really don't have an answer to that question, beyond everything is a possibility, but it's that - - -

PROF SNAPE: So you're ruling out a matrix which would have various ingredients of the deal in it?

MR SHAW: Indeed, no.

PROF WOODS: We should pursue that with BT at some stage.

PROF SNAPE: Could I look at page 6, where you say - it's under the heading of XIC and Declaration - and you've got:

The declaration process does not encourage the development of efficient technical interconnection arrangements. Inevitably, new entrants are forced to comply with outdated, rigid processes, and labour-intensive arrangements for technical interconnection. PowerTel's attempts to develop more efficient, fully automated arrangements are strongly resisted.

Could you elaborate on those "outdated, rigid processes, and labour-intensive arrangements for technical interconnection"?

MR EMERY: The point we were simply trying to make there was that, we're in a process right now where we've been attempting to get interconnection at the optic-fibre level and automated processes for changing demand, etcetera. The point we were trying to make is that since we've been in existence we have been trying to enter into interconnection arrangements with Telstra, which are less rigid than a fairly strict E1 by E1 connection regime that we seem to have to go through. Unfortunately, we did not bring our technical people here to talk about how they would like to see the interconnection; but essentially the complaint is that we're an optic-fibre company, with fairly high-level equipment and processes hanging off it on our end, and what we are forced to do is look at the interconnection almost from a copper based point of view.

PROF SNAPE: I guess if we want more detail on that we can get back - - -

MR EMERY: Certainly; we can provide more detail.

PROF WOODS: It would be useful if you could provide us with that and express it in terms that we can comprehend.

MR EMERY: Yes.

MR SHAW: We've actually got papers that we've used to encourage that, so, yes, there's no problem at all.

PROF WOODS: Thank you very much. Just before we progress too much further into your submission, you made a comment about the TAF on page 4, that, "It has

generally been ineffective at reaching consensus." Any further comment? Do you want to abolish the TAF, or do you want to change it, or do you want to ignore it?

MR SHAW: I think the TAF - Sorry, Russell?

MR EMERY: Sorry; both of us have been on the TAF, more or less, since its inception, so we're fairly close to the operation of the TAF. We were part, also, of the group reviewing whether and why we should have a TAF, in the context of Part XIC, and we understand the role it was intended to fulfil. What we're saying is that the TAF has simply been unable to fulfil this technical advisory role, in terms of interconnection, that was envisaged for it under the present structures.

We've tried to come up with a way of refining TAF, and we felt that perhaps if you restructured it with a far more direct involvement of the ACCC, in determining its work and its processes, you would come up with more agreement and more independent technical assessment and advice than is currently possible, where each operator on the TAF really looks at a commercial interest in every technical issue surrounding interconnection.

MR SHAW: To sum up, the TAF has moved to a position where it would seem to be negotiating bilateral commercial agreements, as opposed to looking after what is the best way for industry to do things, such as interconnect and what services should be interconnected, and that slows the process down enormously. How I'd like to see the TAF operate, I would like to see it go back under with what we have now, the ACCC, and act as an advisory body to the ACCC.

PROF WOODS: Yes.

MR SHAW: Hopefully to shorten the process.

PROF WOODS: Thank you for that. I noticed on the bottom of page 6, where we were looking before at the fully automated efficient arrangements, that you define competition existing, ie, "more than two carriers". In the mobile market does that mean that more than two mobile operators is, in your words, "competitive".

MR SHAW: Again, when I say, "more than two operators to have competition", I'm referring in the market in which they operate. The wholesale market for bandwidth, when there are three operators there providing bandwidth, they seem to operate effectively, and the prices that are available, and the active seeking of - how shall I put it? The people who buy our bandwidth have a choice of three providers. They don't have to go with us simply because we have a network down there.

The wholesale access market in mobiles is not competitive because, as a fixed-line provider, our customers have no choice in who we terminate that call with. We have to terminate it with the network that number is connected to. So there's no choice from a wholesale base as to who you use. In transmission there is, except for, in many cases, the last mile, which is the local loop.

PROF WOODS: That's actually quite a useful distinction that we can pursue. You have an interesting proposition, on the bottom of page 7, that following the first arbitration - this is on access issues - the ACCC can then set a benchmark ceiling rate. You then talk about, "The ACCC must publish a report on the subject." I'm not sure - you're a bit silent perhaps on whether that report include the benchmark ceiling rate as such. I wasn't quite sure what the report that it would publish would contain. If you could elaborate that would be helpful.

MR EMERY: Sorry; we're actually proposing two different solutions there. The first one was - - -

PROF WOODS: I noted the word "alternatively", but I was wondering if that benchmark ceiling rate is one way of being incorporated in the report.

MR EMERY: Yes, it is. The point we were simply - in trying to assess a way of adding transparency to the process of arbitration we were looking for mechanisms of how to increase transparency and at the same time reduce the number of arbitrations. The second method was simply a refinement of publishing the full detail of the arbitration down to - once the two parties notify an arbitration and take part in it, no matter what happens in that process the ACCC, or whoever is appointed as the arbitrator, should be required to make it known about what happened in that arbitration, whether it went to conclusion. I guess, it just comes out of us not knowing what's happening in any of the arbitrations at the moment.

MR SHAW: I also think it may stop arbitrations of the same nature being notified between - an example, I guess, if we notified an arbitration with Telstra on local call resale, and Macquarie, because that's not a public number, need to go through the same process. I think it would save time if the thinking, the logic, and even the prices were published by the ACCC. Too often you go to arbitration, the process is long and drawn out and a commercial deal is cut before arbitration is completed. I'm not sure that that's arbitration.

PROF SNAPE: You think that would then, if they give their reasons in details and full details like that, open up to legal challenges and delay the process even more?

MR SIMPSON: I think there's a risk, in that, we would really probably suggest more along the lines of a ceiling rate rather than introducing a process that's going to lend itself to more challenges.

PROF SNAPE: Because there are, with respect, lawyers all over this industry.

MR SIMPSON: Yes.

PROF WOODS: Can I sort of go slightly broader for a moment. When you're looking at how the markets are evolving, we're finding that there is less distinction in terms of content between what used to be strictly broadcasting and what was

telecommunications, and now you're just the owner of a pipe and presumably you don't particularly care what it is that the provider is squirting down it is as long as you can digitise it and - - -

MR SHAW: We'll wholesale our network to anybody that wants to buy it for any reason, as long as it's legal.

PROF SNAPE: How do you know if it's legal?

MR SHAW: We're required to make every effort to make sure that they're not using it for some illegal purpose - Rob, you're better at that than I am - so that's why I had to add that.

PROF WOODS: Actually, could you comment on that? That's an interesting point.

MR SIMPSON: I think some of the controls relate more to whether you've got any involvement in what's going down the pipe and whether it's reasonable for you to know, and I would think in many cases you wouldn't know. There are some provisions, as you'd be aware, dealing with phone sex and the requirements there.

PROF WOODS: Yes.

MR SIMPSON: But generally I would think in terms of what people are putting down the pipe, PowerTel or any other provider wouldn't generally be in the position to know what's going down it and would have some protection as a result.

PROF WOODS: I don't want to sort of head down that particular bit. As a general principle, putting aside the legal caveats of content, it's a pipe that you make available on a commercial basis. One of the markets that's evolving is voice-over IP, in which case people are doing that for the price of a local call. Once they dial in they can send that data to whoever is the recipient wherever they be. Increasingly, if that were to occur, and whether that be long distance or international traffic, how do you get your charge out of that? I mean, someone somewhere is squeezing some margins to allow voice-over IP at untimed local call rates.

MR SHAW: I think voice is going to be a commodity product in years to come and that voice-over, whatever protocol, will drop in price to a point where it doesn't matter too much. Right now it's not an issue for us at all.

PROF WOODS: Just because the market is so thin?

MR SHAW: Yes.

PROF WOODS: In a sense, although it is still just able to be digitised, it does have a particular characteristic of continuity of delivery rather than being able to aggregate the packets and then - so it has a distinguishing characteristic, in one sense, although

presumably more and more data transmitters want similar quality. So the volumes are not there at the moment, but it's an issue for some time in the future?

MR SHAW: Yes. I can sort of develop in the next paper some thoughts on that if you like. I haven't really given it a great deal of thought, but it's not something we worry about at all.

PROF WOODS: Yes, as long as somebody pays the bill.

PROF SNAPE: Again, you're thinking in that direction, the convergence in general that we've been talking about before, both as a source of competition - - -

MR SHAW: Yes.

PROF SNAPE: - - - and as the regulatory dimensions.

PROF WOODS: You make reference in your score card - and thank you for it- the Report Card, as you've titled it, "The regulatory safety net has become the prime negotiator."

MR SHAW: I base that on a number of arbitrations that you see notified with the ACCC. It's almost as though the two participants are unable to reach an agreement commercially and they always know that if they threaten to go to or notify of an arbitration they will get a better deal out of the access provider, whoever that may be, by doing so. That's a very poor sign for the industry and shows a very poor state of maturity for it.

PROF WOODS: But it's a very long list that you've attached.

MR SHAW: It is indeed a very long list that I've attached, which is indicative of why I say it seems so much as a primary source of commercial negotiation.

PROF WOODS: How do you change the incentive structure to go back to commercial negotiation? How do you change the incent?

MR SHAW: I'm not really sure on that. All I know is that when you find that that's what's happening, then you have a marketplace that is ready for some form of self-regulation and small r' regulation. That's a classic indicator that the industry doesn't accept commercial negotiation, as between the two parties, without a referee as a viable way forward at this stage.

PROF WOODS: I understand that, I just don't get from that what the solution is. A solution would be to cut out the option and then see what the market does, but that may create total mayhem.

MR SHAW: Yes, I wouldn't suggest that's a solution.

PROF WOODS: No, you probably wouldn't.

MR SHAW: Russell, have you got any thoughts on that?

MR EMERY: I think what we'd like to see is that the commercial behaviour of any designated wholesale arm of Telstra hasn't really reflected the concerns of the regulatory people; and that the wholesale arm of Telstra makes no distinction in its treatment of regulated building blocks or services on the one hand, and commercial wholesale services that it offers in competition to other carriers on the other hand. Until we can strip out the fundamental building blocks which all players in the industry need, and make them subject to a very clear and consistent set of guidelines, in terms of delivery, we'll never overcome that problem.

PROF WOODS: That gets back to a very early conversation we were having with you, about what are these fundamental building blocks, and so far we've got: the local loop, because you have no choice but to terminate on that for a large proportion of your traffic; the captured handset, in that if somebody rings you have no choice but to - because of any-to-any connectivity - deliver to wherever, whoever, has that handset; and transmission where there isn't, as you put it, "triplication". Is that complete list?

MR SHAW: Rural access was on that, as well.

MR EMERY: Yes.

PROF WOODS: Rural access, right.

MR EMERY: We wouldn't say that was the complete list, but they seem to us to be some of the major concerns that everyone has; they're common to all carriers. There has been a lot of focus on the local loop, and everyone talks about the local loop. We would actually say it's access to the customer - - -

PROF WOODS: Yes.

MR EMERY: - - - not just the definition of local loop. Sorry, I've just lost my train of thought.

PROF WOODS: We were just going through the building blocks. Basically, if we can identify what they are, we can then come to views on whether we need industry-specific regulation or whether we need some modification, if at all, to the generic legislation of IIIA and Part IV. But we need to understand what these building blocks are and to sufficiently define them, and that will then set up the task to determine what's the appropriate regulatory response, if any.

MR SHAW: Can we take on board to try and do that as well in a more thorough manner? Just intuitively I think, if you look to the arbitrations you might find what those building blocks are - - -

PROF WOODS: We did, with interest - - -

MR SHAW: - - - because what is notified to the ACCC are the issues that burn most, I guess.

PROF WOODS: Certainly on the access side, which is what they deal with. I'm not totally convinced about, however, XIB versus Part IV; but if you want to elaborate your arguments as to why XIB is still essential, we'd welcome that as well.

MR SHAW: Yes, we think XIB needs to be strengthened.

PROF WOODS: But if you could elaborate - - -

MR SHAW: Yes, sure.

PROF WOODS: - - - rather than deal with that this morning. Are there matters that you wish to raise with us? Have we finished your list, or have you got some more?

MR EMERY: One of the points we just wanted to make in the context of your questions about building blocks is that: one of our conclusions is that we would prefer to see the focus of regulation at the wholesale carrier-to-carrier relationship level; and if you can clean it up there, I think you drive the competition at the retail end of the chain.

We feel that most of the constraints really still exist in terms of the industry being able to deliver end-to-end services over a multiplicity of carriers. I've noticed that you've been asking people, "How would you ring fence? Where you would focus your regulation?" That would be the thrust of where we would like to see the regulation.

PROF WOODS: If you could elaborate on that for us that would be good. Other matters?

MR SHAW: No. I think that will do us. I guess what we'd also like to do is to list indicators in the market that would lead you to believe that some dismantling of the current industry-specific regulation, or industry-specific regulators, was appropriate.

PROF WOODS: Yes.

MR SHAW: The most important of those is that self-regulation assumes, I believe, that sitting around the table are market participants, each with some equivalence of market power, where what we have today is essentially if one of those market participants doesn't agree, it's not going to happen under self-regulation; and that when all of the participants in the marketplace feel they have something both to gain and/or to lose from a negotiation, as opposed to, "We're only going to lose from this,"

you'll find that industry can actually get on with the business of getting on with the business much more readily.

To some extent in the last eight years that's happened with the dominant market player that we have, but the numbers tell you we've still got a long, long way to go. Someone with 75 per cent of the market share is clearly outrageously dominant - and I'll take it to the Olympic Games we're going to have in a month's time - if someone won 75 per cent of the gold medals we'd probably realise they were dominant at the Olympic Games. It's very hard to have self-regulation of any sort in that environment.

SIMPSON: They'd probably win 75 per cent of the gold medals and sell another 20 per cent to the other participants.

PROF SNAPE: So you want some lead hung around some of the competitors?

MR SHAW: Perhaps just drug testing.

PROF WOODS: We might finish with your presentation on that point. Thank you very much, and we do look forward to further submissions from you that will elaborate.

Can I ask at this point, is Primus in the audience, to come forward? That being the case, are there any other people who wish to come forward and make a presentation to this public hearing? In the absence of any forthcoming, that concludes these hearings. Thank you all to those who participated so fully and made their information so willingly available to the commission.

AT 12.50 PM THE INQUIRY WAS ADJOURNED ACCORDINGLY

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