6 September 2001

Professor Mike Woods
Presiding Commissioner
Inquiry into Telecommunications Competition Regulation
Productivity Commission
Locked Bag 2
Collins Street East
Melbourne VIC 8003

Dear Professor Woods,

Telecommunications Competition Regulation

Please find attached a submission to the Commission's Inquiry into Telecommunications Competition Regulation.

The Centre is aware of the advanced stage of the Commission's Inquiry and we apologise for the lateness of this submission. Key positions within our organisation including that of Director and Principal Solicitor have changed since the Commission conducted its research. However, the breadth and quality of information of the Draft Report, in addition to its policy implications, have prompted the Centre to comment at this late stage.

Accordingly, we have taken into some account views expressed in the public hearings, as well as some industry developments. We give some consideration to pay TV, keeping in mind the Commission's earlier work on Broadcasting, and we are particularly concerned at recent suggestions that the government could intervene to grant an access holiday to Foxtel in order for that firm to spend $500 million on upgrading its analogue pay TV network to a digital service.

We note that Foxtel is backed by the incumbent telco, the dominant free-to-air commercial television network, and the controller of two thirds of Australia's newspapers as well as a vast global communications and entertainment empire. In the Centre's view, the granting of an access holiday in such circumstances is contrary to the public interest and points to a distortion of the competition principles that underpin our regulatory framework. If the sector is to be subject to such interventions, the need for long-term measures that protect the public interest is even greater. We view the retention of Part XIB and Part XIC of the *Trade Practices Act* as integral to these measures for protection.

Again, the Centre thanks the Commission for the opportunity to comment on the Inquiry. We understand there will be limited scope for consideration at this stage; nonetheless, given the continuing contributions to the Inquiry from commercial participants, we forward our comments in the interests of maintaining a source of expression for the public interest in Australian media and telecommunications.

Yours sincerely,

Dr Derek Wilding
Director

Communications Law Centre Ltd

Telecommunications Competition Regulation

Submission
to the
Productivity Commission

September 2001

The Communications Law Centre

The Communications Law Centre is an independent non-profit public interest research, teaching and public education centre, specialising in media and communications law and policy.

The Centre was established in Sydney in 1988 and in Melbourne in 1990. It is affiliated with the University of New South Wales and Victoria University.

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Telecommunications Competition Regulation

Need for telecommunications-specific regulation

The Communications Law Centre stresses the continuing need for telecommunications-specific regulation.

Regulation should be viewed as a means by which to facilitate competition and as a supplement where competition alone does not ensure a diverse telecommunications sector that meets the needs of the Australian public.

The Commission has taken account of the public interest perspective in its Draft Report: "… as emphasised throughout this report, competition is not a goal in itself, but a means to an end" (16.17).

While supporting the Commission in its recognition of the facilitative nature of competition regulation, the Centre submits there is no apparent consensus on the nature of this 'end'. In our view, regulation must be designed to benefit the community, rather than individual businesses. In a mature, competitive market business will prosper and consumers will be well-served by a range of services which meet their needs. However it is the latter which should be the purpose of regulation, not the former. This understanding is particularly important in relation to the telecommunications industry, which can deliver information and services that enhance democratic political engagement by citizens.

A persuasive articulation of this end or goal of competition regulation in the telecommunications sector was expressed in the course of the Inquiry's hearings by Helen Campbell, Executive Officer of the Consumers Telecommunications Network. When questioned by Professor Woods on how her organisation would approach a definition of the long term interests of end-users, Ms Campbell explained:

we can be pretty clear about what our long-term interests are, and they are about choice and about quality and about price".[1]

Expanding this to articulate the notion of the *public benefit*, we might add that these goals ultimately enable citizens to engage in a social and cultural exchange that is fundamental to democratic social participation.

Yet even if we acknowledge that there will be differing perspectives on the role and the goals of regulation, it is inescapeable that in Australia the telecommunications sector is not in a healthy state. Any market in which a disproportionate slice of revenue finds its way to only one provider is hardly 'mature'. It is also a fact of Australian conditions that although almost 95% of the population has access to a terrestrial mobile phone service, the coverage of the landmass is limited to only 12.5%.[2] Add to this historical aspects in the evolution of media policy such as the late arrival of pay TV in the mid-1990s, and we have an environment in which regulation that safeguards the public interest becomes essential.

So in reiterating the precarious nature of competition itself, it is worth noting some examples of Australian and regional market consolidation since the release of the Commission's draft report: the replacement of Cable & Wireless plc with an existing regional player, Singtel; the demise of One.Tel; renewed media speculation (subsequently rejected) that Vodafone may quit the mobile market and that Hutchison may scale back or withdraw investment in its local operations; and severe downsizing by formerly large and prosperous telcos including those overseas.

To this we would add the following observations on specific problems in the telecommunications sector that competition has not solved:

- there have been significant delays in introducing number portability - in its Draft Report the Commission noted that "… delay may reflect strategic game playing by firms that have no commercial incentive to provide portability to their competitors" (13.8);

[1] Transcript of hearings, Sydney, 15-08-00, p. 148.
[2] TSI, *Connecting Australia: Report of the Telecommunications Service Inquiry*. Canberra: Commonwealth of Australia, 2000, p.126.

- there are large variations in CAN faults – 40% of distribution areas in the country experience fault rates over twice the level recommended as best practice by the ACA;[3]

- 2 million customers are still served by older cabling that is 3 times more susceptible to weather-induced failure; half the network is older than 20 years (its lifetime when constructed) and one third is older than 30 years;[4]

- power limitations of handsets will limit the ability of users to achieve 384kbps or faster data speeds for 3G services, without additional base stations – "consequently, the introduction of 3G services in rural Australia is likely to be problematic, at least in the early stages of network rollout";[5]

- 'consumer issues' such as unfair terms and practices by providers continue to plague the industry, despite competition regulation under the TPA, fair trading laws, etc (for example over 50% of complaints to the TIO about mobiles relate to misleading GSM contract advice, while the two highest categories of telecommunications complaints to the ACCC are misleading and deceptive conduct (34.1%) and misrepresentation (14.9%).[6]

As a result, the Centre would agree with the Commission's conclusion that competition in Australia is far from the level of maturity required before a telecommunications-specific regulatory regime would cease to be necessary.

To this we add several comments on specific matters raised in the course of the Inquiry.

[3] *Connecting Australia,* p.76.
[4] *Connecting Australia*, p.77.
[5] *Connecting Australia*, p.150.
[6] *Connecting Australia*, p.131; Communications Law Centre, *Unfair Practices and Telecommunications Consumers*. Sydney: CLC, 2000, p.58.

Repeal of Pt XIB and Modifications to Part XIC

The Centre expresses serious concern at the Commission's recommendation to repeal Pt XIB and the Commission's proposal to replace the LTIE test in Part XIC with a test based on the enhancement of overall economic efficiency.

We believe that while the prospect of anti-competitive behaviour is still possible, a regime to supplement Pt IV acts as a safeguard for the public interest. Accordingly, we disagrees with Telstra and supports the proposal of C&W Optus to remove the requirement for proof that a firm has 'taken advantage of' market power before Pt XIB becomes applicable.

If, however, Telstra is correct in claiming that Pt XIB, while not having been used recently, is a significant and ever-present threat which deters investment, the Centre suggests that Telstra be required to demonstrate specifically how such investment has been deterred. Furthermore, it would be worth exploring the mechanisms for Telstra to report on the nature of investments it would be able to make as a result of any repeal of Pt XIB. Telstra could then be made to commit to such investments, perhaps via the medium of Industry Development Plans.

In line with our view that the ultimate goal of regulation should be to achieve sectoral reform within the framework of broad social goals, the Centre opposes the proposal to replace the LTIE (long term interests of end-users) test with a test based on 'enhancing overall economic efficiency'. The public interest should never be forgotten nor elided from the legislation. The term 'LTIE' reminds us of the ultimate significance of competition regulation: that end users rather than producers should benefit.

The Centre also disagrees with the statement that it is inappropriate to insert social objectives into competition regulation; as is recognised, section 2 of the Trade Practices Act itself refers to the 'welfare of all Australians'. We do not consider it appropriate to emphasise the welfare of corporate interests if that would erode the welfare of Australian consumers.

This is not to say that the Centre disagrees with the goals of economic efficiency nor of enhancing competition per se; rather, that those goals are to be viewed as a means by which to achieve the 'meta-goals' of a diverse telecommunications sector that meets the needs of consumers and the community. This comment applies equally to the conceptual framework adopted in the Telecommunications Service Inquiry: regulation should strive to eliminate regional disparities in the enjoyment of telecommunications services, rather than blindly effect competition.

In respect of the Commission's recommendations relating to the declaration criteria, the Centre would again consider the narrowing of the criteria in an attempt to avoid so-called type 1 errors of over-regulation to be too solicitous of the goals of industry. Far better in our view for the regulator to have the discretion to declare a service where it may help long term goals that will have some public benefit, than for incumbents (including non-dominant incumbents) to profit at the expense of social goals because the regulator has no discretion to make such declarations.

The Centre would propose in regard to the idea of sunsetting declarations that an access provider be allowed to make representations that the declaration should cease only after a certain period has elapsed. In this way, the onus would be on the provider (rather than the access seeker) to prove that structural competitive conditions had become such as to negate the need for declaration.

Standards and Industry Codes

The Centre notes that the Commission's brief is limited to Division 5 of Part 21 of the *Telecommunications Act 1997* (the TA). Nevertheless, in reviewing this matter in Chapter 12 of the Draft Report, the Commission inevitably comments on the role of ACIF in the code development process. It also includes a recommendation that the LTIE test be abandoned. Accordingly, while the Centre's response includes matters arising from Part 6, we confine our comments primarily to ACIF's role and the LTIE test.[7]

[7] The Communications Law Centre works with ACIF in the Consumer Codes Reference Panel.

Chapter 12 delivers 4 key messages. These are:

- that overall, the current arrangements work well despite some delays, low sign-up rates, and low compliance with voluntary codes;
- that the current system of industry self-regulation, backed by regulatory power to intervene when necessary, constitutes a good fundamental mechanism;
- that the involvement of both the ACCC and the ACA in interconnection standards is appropriate; and
- that the broadening of the LTIE test proposed by the Commission should also apply to the setting of technical interconnection standards under Division 5 of Part 21 of the TA.

The Centre notes the Commission's comment on ACIF: that on the one hand the processes are inclusive and operate on a consensus model, while on the other, the development of codes and standards is slow.

The Centre also notes the comment that firms may not always have a strong interest in co-operating to draw up industry codes and standards, particularly where the commercial interests of industry players converge.

The Centre submits that this is still the case, given the dominance of a number of carriers, and that participants within the industry who hold concerns about the outcomes of the ACIF process have reason to be frustrated.

All consumer representatives are concerned at the low level of sign-up to codes and the effectiveness of current compliance arrangements. The fact that One.Tel signed several codes and joined the CCRP only a few months before collapse, while major providers have still not signed, does little to inspire confidence in the scheme. If AAPT is correct in observing that ACIF is currently "doing about as much as industry self-regulation can actually achieve" then the question of compliance must be addressed externally to ACIF.

The Centre does not accept the conclusion drawn on page 12.2 of the Draft Report that "the fact that government has not needed to act under division 5 of Part 21 so far … (is because)… the industry has adequately addressed the issue of

interconnection standards in the presence of the regulatory backstop". The Centre is of the view that industry self-regulation alone cannot manage access and interconnection. We see the involvement of both the ACCC and the ACA as appropriate, and consider that government regulators are vital.

Furthermore, conclusions on the role of AICF in interconnection should not be extended to other areas of its operation without due consideration. At this stage, there is no reason to suggest that the problems that ACIF has encountered are terminal. Nevertheless, it may be that the regulators should take a more directive role than they have to date. In addition, ACIF clearly suffers from a low level of funding. If the commitment to ACIF is to be renewed, then in order to improve its strength and effectiveness, increased funds should be made available to support face-to-face meetings of the participants, education campaigns that add value to the substantial work commitment of all those involved, and a greater diversity of sustained consumer representation.

It should be acknowledged that an assessment of whether the current regulatory framework is "adequately addressing the issues" needs to include an assessment of whether what is achieved is done in a timely manner. On any test, the current system does not provide timely results.

Timeliness in developing and signing up to codes is an issue which should be taken into account by the ACCC in determining whether to direct the ACA to develop a standard. This is because it is relevant to both the long term interests of end-users and the provision of access to declared services. Clearly it is relevant to the needs of the consumer given the centrality of competition to the objectives of the TA and the capacity of delay to frustrate competition.

The fact that some providers are apparently unable to sign because they are concerned at letter-of-the-law compliance is an indication of problems with this system: these providers participated in the formulation of these codes and have had considerable time to make themselves compliant. Moreover, these documents are all *compromise* documents: the fact that providers cannot meet standards that are themselves less-than-ideal is worrying.

In further support of the point that a lack of government intervention should *not* be taken automatically to suggest that the system is working, we would note that number portability is years overdue and multiple basket pre-selection is still far away. The One.Tel fiasco raised additional issues, not the least of which was the ACA's reluctance to intervene, based on legal and other advice that "a clear effective direction was not possible".[8] The ACA stated that no specific breaches of the Billing Code could be demonstrated. This is despite the fact that the administrators continued to bill customers for a service after the network had been shut down, and that customers were unable to stop direct debits from their bank accounts and credit cards.

In this context, it is vital that the regulatory regime retain the requirement for regulation in the long term interests of end-users. It is the Centre's view that any move to replace the LTIE test with a broader public benefit test is a move that dilutes the interests of residential and small business customers and as such is undesirable. This applies to both the TPA and the TA, which is the subject of Part 12 of the Draft Report. We strongly disagree that the concept of "end-users is too sectional an entity for regulation. There should be no concern that the LTIE test operates for the benefit of "particular sub-groups": the test establishes users, rather than carriers (or providers), as the ultimate beneficiaries. This is entirely appropriate. The competition-based purposes for *imposing* the test set out in section 152AB are entirely consistent with the objects of the Act itself: "to enhance the welfare of Australians through the promotion of competition and fair trading and the provision for consumer protection" (section 2).

Furthermore, the emphasis on the end-user addresses directly the

> "imbalance of power within the market which has long been recognised by government as the very rationale for the regulation of consumer transactions … Where such an imbalance of power exists a forum is required that will

[8] Letter from Alan Horsley to Helen Campbell of CTN dated 23 July 2001 relating to the billing practices of the One.Tel administrators.

balance competing demands to ensure an outcome in the public interest. This is the traditional role of government".[9]

Government, it could be said, has acknowledged this responsibility in underpinning competition in telecommunications with the LTIE test: any decision to remove that test in favour of a test based on enhancing overall economic efficiency does *not* serve the public interest.

Number Portability

The Commission's assessment in Chapter 13 that "delay may reflect strategic game playing by firms that have no commercial incentive to provide portability to their customers" goes to the heart of concerns about any diminishing role of competition regulation.

Mobile Number Portability is years overdue; this process is indicative of the failure of competition to deliver outcomes that are advocated by all except those with narrow commercial interests to protect. The recent proposal from Telstra that a porting fee be imposed on customers is further evidence of the need for strong regulatory guidelines.

In relation to the Commission's list of pricing principles, the Centre's view is that providers should bear the cost of number portability since portability is a sensible and desirable feature in the mature market. The question of which of the options is selected is a matter for industry.

The Centre takes this opportunity to note that research relied upon in measuring consumer issues associated with number portability is indicative of the limitations of much information gathering in this field. While providers have access to substantial market research commissioned for commercial purposes, there is very little

[9] Kate MacNeill, Self Regulation: Rights and Remedies - the telecommunications experience" in Chris Finn (ed*), Sunrise or Sunset? Administrative Law in the New Millennium*. Canberra: AIAL Inc, 2000, pp 249-266 @ p.260.

independent research available. The fact that the Commission must turn to a study that is 6 years old and based on a sample of 71 businesses and 15 residential users underlines the need for more substantial, contemporary, independent research. The identification by the Commission of aspects of consumer costs not measured by the STM study (identifying which provider offers the best value for money; filling out forms, providing billing information, arranging for connection of service) indicates the need for a combination of both quantitative and qualitative research.

Carrier Pre-selection

In relation to carrier pre-selection, the Centre supports the transition to multi-basket pre-selection and makes the following brief comments.

In relation to the Commission's observation that a shift to multi-carrier pre-selection might take up to three years, the Centre submits that delays or a lengthy implementation phase should not be seen as reasons for not initiating improvements. Other developments such as LNP or MNP have taken up to 4 years, yet are worthwhile developments. Further, code development may take a long time, but is worth undertaking. It is feasible that some elements of the transition can be run concurrently, and implementation should be commenced as soon as possible.

In relation to the arguments of C&W Optus that pre-selection should only apply to Telstra, the Centre rejects this view as a self-interested commercial position which is not founded on any sector-specific benefits that come from competition regulation.

Concerning the proposal to move responsibility for determining which services are included from the ACA to the ACCC, the Centre supports this proposal. The Centre agrees that the ACCC is likely to be in a position to foreground the competitive benefits of pre-selection.

Regional Differences in Competition

Comments and complaints from residents of regional Australia point to a problem in competition-focused regulation of what are critical social considerations. The Commission notes that in deciding whether declaration will be in the long term interests of end-users, the ACCC considers whether it will promote competition. There is, of course, more to the long-term interests of end-users than competition in its own right, even when considered in the context of users' economic interests. An understanding of the telecommunications needs of isolated residents or disadvantaged citizens based on a social services model is not in favour in the current policy climate. Nevertheless, citizens have every right to expect that their needs will be least acknowledged and addressed where possible.

Competition regulation *should* take account of regional differences. Mobile roaming is clearly in the long term interests of end-users who live in regions where coverage is poor and the risks of road travel are exponentially greater than in metropolitan areas. Those long hours spent travelling Australia's GSM-supported highways with silent CDMA handsets should provide regional residents with the opportunity to evaluate the ongoing commercial negotiation of mobile roaming on the part of our major providers. In the meantime, regional mobile phone users will continue to receive second rate treatment from Australia's competition policy.

The suggestion that a Regional Commissioner would have unprecedented power to shape regulation seems unsubstantiated. A trial of such a system would be in the interests of rural residents.

Pay TV

The Centre notes the value of the review of pay TV set out in the Draft Report and commends the Commission on its research in this area. We are particularly interested in the Commission’s consideration of the proposal that exclusive contracts

in the supply of pay TV content and free-to-air multi-channelling could weaken the viability of pay TV, which in turn could weaken the opportunities for alternative platforms in telecommunications, particularly in regional areas.

It is clear that the Australian market is unlikely to support a large number of pay TV providers. Even in the event that subscription levels reach the percentage seen in the UK, raw numbers of subscribers will never be high. In an ideal environment, of course, it would be desirable that consumers have access to the full range of pay TV programming on any given service. However, in the reality of the Australian market, it may be more desirable that there is at least *some* competition in the supply of services. The television industry operates on a principle of market differentiation by way of marquee content. This system, for better or worse, had been translated into the pay TV sector. The Centre has some concerns that changes to program supply arrangements may affect the viability of these services and other areas of the film and TV sector, and recommends further consultation with that sector.

This is not to say that it is inappropriate to consider this issue, or that the matter should be put aside; simply that the issue will involve more questions than have been asked so far, and there are stakeholders who will have contributions to make to any review of current practice.

In any event, in the Centre's view the issue of access to pay TV content is not the preferred entry point to the challenge of regional telecommunications services. We know that pay TV services and two-way internet access are likely to be supplied to people in regional Australia by satellite, but voice telephony is not well served at present by satellite. Instead of further bundling of these services, the interests of regional telecommunications users could be better served by improving the existing copper wire network and terrestrial mobile phone coverage in regional areas.

One area of the cross over between pay TV and telecommunications that has not been afforded due consideration is that of mergers and vertical integration. The Centre submits that an approach which regards any attempt to monitor vertical integration as futile on the grounds that such regulation could be subverted by the construction of de facto integration, is an approach that fails to take up the challenge of maintaining a public interest in Australian media and communications.

Over time, it may emerge that links between pay TV operators and telecommunications companies serve the interests of the Australian public and are acceptable within our regulatory framework. But in the meantime, we should still take into account the end effect: diversity of content.

If we look more closely into commercial arrangements in the sector we may find that exclusive supply contracts operate to produce a level of structural separation that achieves some degree of diversity of content. The opposite might be achieved by mergers and integration across broadcast, subscription television and internet portals.

For the same reason, levels of overseas content should also be monitored – the urge to achieve economies by trans-national media and communications conglomerates is not likely to coincide with the public interest in guaranteeing that new communications technologies bring new content and new perspectives on our culture and society.

Experience in the US demonstrates that tying strategies can result in marquee content going to a small number of portals and barriers to new services being erected. It is possible, then that bundling for better delivery of regional telecommunications could have counter-productive, long term effects.

Overseas experiences with the integration of cable companies and internet portals should act as a warning for the Australian market. One recent example in the US was the potential foreclosure of cable access to competing internet portals following the merger of AOL and Time Warner. In that case, the FCC warned that there would be an insufficient number of subscribers available for the competing conduits. In a review of the decision, Daniel Rubenfeld and Hal J. Singer note the FCC's conclusion that a new channel would need access to 40%-60% of subscribers in order to justify the generation of new marquee content.[10]

[10] *Open Access to Broadband Networks: A case study of the AOL/Time Warner merger.* UC Berkeley School of Law, Public Law and Legal Theory Working Paper No. 54 2000. p.644.

The AOL/Time Warner case emphasises the hurdles to be overcome before any new content emerges from new services and the degree to which company mergers are regarded as a means of building market power. The push for consolidation - or 'concentration' as we know it in the media sector - has evolved to an extent where:

> "over the long term, the cable providers' tying strategy will thus determine competitive investment in both the broadband transport and portal markets, insulate cable providers from conduit and content competition, and ensure that **the delivery of Internet-based video by competing conduits does not erode cable providers' monopoly power in the market for traditional video programming**".[11]

All of this suggests that rather than target exclusive supply contracts, Australian regulators should take the step to monitor mergers and vertical integration in the media and communications environment – even if this presents the more difficult regulatory challenge. While the Australian market may present different issues from the US and some degree of integration of media and communications companies may be accepted, these should not be seen as reasons to abandon enduring public interest policy objectives concerning plurality of players and diversity of content. Any approach which does not take account of these objectives risks a level of technological determinism that could see new delivery platforms supported only by imported content or recycled local content.

Finally, in relation to multi-channelling by free-to-air (FTA) networks, the Centre submits that this issue should be viewed as a separate policy question. The fact that current FTA providers have been protected from competition until at least 2007 and that pay TV providers have been protected from multi-channelling on the part of the FTAs until at least 2005 suggests that this sector is far removed from market conditions that exist in other industries. Of course there are reasons why the media is regulated more closely than other industries, and the social and cultural role of the media means that regulation should remain even in a multi-provider market. However, on any view of current media policy, all players should have ample opportunity to adjust their business models for the period following liberalisation of commercial television licenses and multi-channelling by FTA providers.

[11] Rubenfeld and Singer, p. 639, emphasis added.

Universal Service Obligation

The Centre commends the Commission on its analysis of the USO competition models. Specifically, the Centre supports the inherent acknowledgment that a levy on industry is necessary in order for continuation of the socially-desirable universal service principle. As a public interest organisation, the Centre supports the Commission's proposals for encouraging competition in the provision of the USO on these terms.

The Centre further supports the Commission's proposal for the determination of the USL to be made by the ACA with the option of a full merits review by the Australian Competition Tribunal.

Conclusion

These comments began with a list of instances of market failure in the telecommunications sector. We have also experienced the failure of datacasting license allocation and lower-than-predicted returns on the sale of 3G spectrum licences.

In closing, we emphasise that this sector has not achieved a degree of maturity that justifies significant downgrading of regulatory protections. The Commission acknowledged that the access regime is still a necessary element of competition regulation; however the Centre is seriously concerned at the proposal to remove the LTIE test.

In our view, such a change "would reflect a move away from the regime's early charter to change market structures and foster competition, to one in which there is an assumption that telecommunications markets are efficient".[12] Such an assumption is not warranted.

[12] Alistair Grant & Jock Given (eds). *Australian Telecommunications Regulation: The Communications Law Centre guide*. 2nd ed (forthcoming). Sydney: CLC, 2001. p.44.

As noted above, the Centre endorses the Commission's observation that
"… the interests of industry players are not always aligned with those of the wider public, and provision for a regulatory backstop is an important safeguard".

In fact, it is our view that this understates the role of regulation and that protecting the public interest in Australian telecommunications services should be given a higher priority than that of a "backstop".

The Centre supports the view of CTN that issues of choice, quality, and price for end-users should underpin telecommunications regulation. Further, it is our view that regulation should serve the public interest and should advance opportunities for full social participation in media and communications services.

We make the following two conclusions:

- competition regulation must always have a social end; the current regime serves this end;
- in any event, competition has not achieved a level that would justify the removal of those mechanisms specifically designed to promote efficiency in the telecommunications sector.

The result is that on either approach, sector-specific regulation must remain a core element of the industry.

In closing, the Centre notes the difficulty in assessing telecommunications competition regulation, given that there is no objective measure of what the telecommunications landscape would resemble when competition is 'working'.

The Centre acknowledges that there are different policy views on aspects such as economic efficiency and social welfare. However, it is our view that the only way of balancing these concerns is to re-affirm the aim of regulation as the protection of the public interest through the maintenance or enhancement of current legislative provisions.