



TELSTRA CORPORATION LIMITED

**Submission to the Productivity Commission
on
Bilateral and Regional Trade Agreements**

16 March 2010

1. Introduction

The Australian Government has negotiated, and is negotiating, a number of bilateral and regional trade agreements (FTAs). Through the Productivity Commission's review, the Government is seeking to better understand the impact these FTAs have on trade and investment barriers, and on Australia's trade and economic performance. It is Telstra's view that these agreements have had a positive impact on Telstra's investments in foreign telecommunication services markets and that opportunities exist for the Government to improve again on these outcomes.

Telstra has a commercial interest and presence, either in its own right or through its wholly owned subsidiaries and joint ventures, in a number of countries around the world. Given Telstra's international presence, opportunities for liberalisation and harmonisation of regulatory arrangements are of significant interest – especially in the Asia-Pacific region. The diagram attached to this submission maps existing and proposed Australian bilateral and regional trade agreements against Telstra's current Mode 3 presence – i.e. establishment of a commercial presence via subsidiaries – in the Asia-Pacific region (and also including Mode 3 presence by Telstra's joint venture Reach).¹

2. Significance of multilateral WTO arrangements

Telstra strongly supports Australia's involvement in the WTO. Telstra particularly recognises and welcomes the contribution of successive Australian Governments in progressing the liberalisation of trade in telecommunications services on a multilateral basis within the WTO since the early 1990s. Nothing in this submission is intended to derogate from Telstra's support for these WTO processes.

3. Positive impacts of FTAs

Some of Australia's concluded bilateral agreements have included telecommunication services chapters. These include Australia's FTAs with Singapore, the United States, Chile and ASEAN-NZ. These arrangements have taken a 'WTO-plus' approach overall, building on the commitments in the Telecommunications Annex to the General Agreement on Trade and Services (GATS) and the Reference Paper on Telecommunications.² An example of the WTO plus approach of these chapters are the commitments in relation to independence and transparency of regulatory decisions.³

The major benefit from the telecommunications services chapters included in several FTAs, has been their ability to 'lock in' existing levels of domestic liberalisation, preventing parties from introducing more restrictive measures in the future. This increases certainty and reduces foreign investment risk. Telstra welcomes the proposed inclusion of telecommunication services chapters in the China, Japan, Korea and Malaysia agreements.

Telstra also benefits from other non-telecommunication services chapter-related FTA measures. For example, human resource mobility measures in the US FTA have

¹ As noted in the Productivity Commission's Issues Paper, there are four defined modes of supply of services in the GATS, namely Mode 1 – cross-border supply; Mode 2 – consumption abroad; Mode 3 – commercial presence; Mode 4 – presence of natural persons. See the Issues Paper, *Bilateral and Regional Trade Agreements*, December 2009, footnote 2.

² WTO, Agreement on Telecommunications Services (Fourth Protocol to the General Agreement on Trade in Services) (1997) 36 ILM 354, 367. See also: www.wto.org/english/news_e/pres97_e/refpap-e.htm

³ See, for example, Arts 12.17 and 12.19 of the US FTA.

allowed preferential visa arrangements for Telstra business personnel travelling and working in the United States. This has been of practical benefit at a time when Telstra has been significantly increasing its investment in undersea telecommunications cable system capacity to the United States, for example the recently completed Telstra Endeavour system from Sydney to Hawaii.⁴ Harmonised securities regulation in the Australian New Zealand Closer Economic Relations (CER) has also benefited Telstra as it operates on both sides of the Tasman (Telstra Clear is the second-largest fixed line carrier in New Zealand).

4. Opportunities for better outcomes

There are also opportunities for better trade related outcomes for the Australian telecommunication industry that in turn will deliver economic and trade-related benefits for Australia generally.

a. Introduction of a telecommunication services chapter to the Thai FTA

Australia's FTA with Thailand does not include a telecommunication services chapter. This omission has meant that Australian investment in Thailand under the FTA has been limited to no more than 25 to 50 percent foreign ownership in equipment sales and leasing, consulting, database access and (Very Small Aperture Terminal) VSAT services.⁵ These concessions were marginal and did not deliver improved access to the Thai telecommunications services market.

Australia's new multilateral FTA with ASEAN-NZ, to which Thailand is a party, imposes telecommunication services related obligations on Thailand.⁶ This creates an opportunity for the Australian Government to propose carrying across the ASEAN-NZ FTA Telecommunications Annex into the Thai FTA at the latter agreement's next review.

b. CER Harmonisation of Telecommunication sector regulation

Since coming into force in 1983, the CER has not harmonised telecommunications sector regulation.⁷ The inclusion of such a work program would provide benefit to trans-Tasman market participants such as Telstra and our subsidiary Telstra Clear, New Zealand's largest fixed line competitor.⁸ Such harmonisation would also, for example, allow the issue of the high cost

⁴ For more information on Telstra Endeavour, see "Telstra's Endeavour submarine cable is live", 24 October 2008: www.telstra.com.au/abouttelstra/media/announcements_article.cfm?ObjectID=43763

⁵ See Annex on Thai commitments on services and investment, available at: www.dfat.gov.au/trade/negotiations/aust-thai/Annex8-Thailand.pdf

⁶ ASEAN-NZ FTA, Chapter 8, Annex on telecommunications, available at: www.dfat.gov.au/trade/fta/asean/aanzfta/chapters/chapter08_annex_tc.html

⁷ Tania Voon and Andrew D. Mitchell, "Achieving a Common Market for Telecommunications Services in Australia and New Zealand", (2006)(26) *Australian Year Book of International Law* 149.

⁸ See Report of the House of Representatives Standing Committee on Legal and Constitutional Affairs, *Inquiry into Harmonisation of Legal Systems Within Australia and Between Australia and New Zealand* (2006), available at: www.aph.gov.au/house/committee/laca/harmonisation/report.htm; Report of the Joint Standing Committee on Foreign Affairs, Defence and Trade, *A Review of the Australia-New Zealand Closer Economic Relations (CER) Trade Agreement* (2006), www.aph.gov.au/house/committee/jfadt/nz_cer/index.htm; and Government Response to Review of Australia-New Zealand Trade And Investment Relations, 17 May 2007, available at: www.aph.gov.au/house/committee/jfadt/nz_cer/govtresponse.pdf

of international mobile roaming between Australia and New Zealand to be addressed within the context of a Single Economic Market.⁹

c. Active defence of Australian telecommunication interests

FTAs are designed to achieve symmetric market access opportunities and obligations for all parties. The application of these obligations and resultant national benefit are dependent on a party's active defence of their domestic industries. There have been instances over the last few years where the Australian Government has not taken steps to defend its own regulatory settings and industry in the face of criticisms from other FTA parties.

For example, a number of complaints by a US owned operator to the US Trade Representative (USTR) have alleged that US-based service providers are not accorded adequate access to Australian telecommunications networks and services in compliance with Australia's WTO and FTA obligations. The USTR has raised these claims in its public reporting.¹⁰

The Australian Government has chosen not to respond publicly to these allegations. This can be contrasted with other national governments and regulatory agencies – for example, Singapore and Germany – that have publicly defended their regulations and industries.¹¹

d. Greater involvement of Australian industry in FTA negotiations

The best outcomes are achieved when decision makers have the most timely and relevant data. Although DFAT is open to industry input in its initial consultations, the negotiations themselves are conducted without ongoing industry involvement. This prevents Australian industry from being able to provide timely and contextual advice to Australian negotiators. It also places Australian negotiators at a disadvantage relative to other countries whose private sector and civil society representatives are accorded a more active role. This disadvantage can and should be addressed by greater involvement of Australian industry and civil society in FTA negotiations.

⁹ See: Telstra and TelstraClear, "A Review of the Australia-New Zealand Closer Economic Relations (CER) Trade Agreement", 21 April 2006, www.aph.gov.au/house/committee/jfadt/nz_cer/subs/sub6.pdf. International roaming charges were the subject of the Report of the House of Representatives Standing Committee on Communications, *Phoning home - Inquiry into international mobile roaming*, March 2009.

¹⁰ The public record is available at: www.ustr.gov/Trade_Sectors/Telecom-E-commerce/Section_1377/Section_Index.html

¹¹ See: D Kotlowitz, "Is the United States Trade Representative's monitoring and enforcement of its trading partners' obligations on telecommunications services market access still credible?" *Communication and Policy Research Forum*, Sydney, 26 September 2006, available at: www.networkinsight.org/verve/_resources/kotlowitz_paper.pdf

e. Ongoing strengthening of FTA commitments

Australia's FTAs have established a minimum standard for market access. Although they represent a good start, there are still many barriers for Australian telecommunication companies operating in foreign markets. It is important that the Government treat the FTAs as evolutionary documents that are monitored, applied, incrementally improved and expanded over time.¹² Taking the opportunity to increase the breadth and depth of bilateral and multilateral trade liberalisation will deliver benefits for Australian industry through improved market access and clearer regulatory arrangements.

5. Conclusion

The FTAs have delivered greater regulatory certainty for Telstra. There are also many opportunities for the Australian Government to build on the existing commitments, involve Australian industry and civil society in negotiations and take a more active role in defending existing commitments. Making the most of these opportunities on top of existing work may require greater resourcing and/or focus. The Productivity Commission should assess the resource demands that the FTA negotiating agenda is placing on the Australian Government.

Telstra considers that, properly focussed and resourced, FTAs offer the possibility of playing a greater role in Australia's future economic development and prosperity.

¹² See for example the opportunities provided under the Side-Letters to the US FTA between Robert B. Zoellick and Mark Vaile, 18 May 2004, available at: www.dfat.gov.au/trade/negotiations/us_fta/final-text/letters/12_telecom_consultations.pdf

Attachment 1 – Map of Telstra’s Mode 3 presence against existing and proposed bilateral and regional trade agreements (including REACH).

