

11 May 2001

Lynette Williams
Telecommunications Inquiry
Productivity Commission
PO Box 80
Belconnen ACT 2616 – by email to telco@pc.gov.au

Dear Ms Williams

***Comment on the Commission's Draft Report into
Telecommunications Competition Regulation***

I attach comments from the Service Providers Industry Association (SPAN) on the Commission's draft report. We will not be appearing at the hearings next week, although several of our members who have provided input to the Association will be attending and will no doubt wish to elaborate on some of the matters we discuss.

We appreciate the opportunity to provide an overall view on behalf of our membership. We thank the Commission and Commissioner Woods in particular for taking the opportunity to discuss the draft report with our membership at our SPAN meeting on 11th April. SPAN would like to continue to support the Commission's review wherever we can do so.

Sincerely

Phil Singleton,
Chairman, SPAN

SPAN Response to Productivity Commission Draft Report: “Telecommunications Competition Regulation”

Summary:

SPAN welcomes the draft report and congratulates the Commission on the comprehensive coverage of the issues surrounding its reference. SPAN has been pleased to contribute to the industry consultation process through the SPAN/ATUG Forum in December 2000 and the SPAN Forum to discuss the draft report held on 11th April 2001. Commissioner Mike Wood was joined by a number of senior industry executives in discussions at these events.

SPAN supports the recommendations in the draft report that it considers will address concerns about transparency, timeliness and certainty in the regulatory process. We agree with the Commission’s assertion that telecommunications specific regulation will continue to be a requirement for the foreseeable future, while supporting measures that will encourage commercial negotiation, in preference to regulatory intervention, as a means of resolving contention over access and commercial issues.

We support the recommendations of the Commission regarding the removal of retail price controls and the Telecommunications Access Forum (TAF). We support changes to the Carrier Industry Development Plan (IDP) requirements, although we are reluctant to call for their removal as recommended in the report.

SPAN’s principal concern with the report’s recommendations centres on the idea of removal of Part XIB, the telecommunications specific anti-competitive provisions of the Trade Practices Act. This concern has been expressed strongly by our members, with the exception of Telstra that as the Commission is aware, takes an opposite view.

While acknowledging that the Part XIB provisions have been seldom invoked, we consider that their existence exercises a restraint on anti-competitive behaviour. The industry would need to study any alternative proposals carefully before agreeing to the removal of Part XIB and considers that the suggestions put forward relating to substitution of powers under Part XIC and Part IV to take the place of Part XIB are unacceptable.

Certainty, speed and transparency:

The recommendations in Chapter 8 i.e. 8.1 – 8.5 inclusive provide clarification of objectives and criteria related to the access regime and are generally supported as contributing to certainty of purpose and application of the access regime. The introduction of “access holidays” could be contentious, particularly if the

service/facility subject to the holiday became a bottleneck in competitors' development of different but related services and facilities. This would have to be provided for.

SPAN supports recommendations 9.1 – 9.4 that preserve and refine elements of the existing access regime, while recommending the abolition of the TAF.

Recommendation 9.7, advocating class arbitrations of similar disputes is strongly supported in the interests of more timely outcomes, as is recommendation 9.8 permitting the ACCC more flexibility in the use of information across different arbitrations. We support recommendation 9.8, along with 9.10, 10.1 and 10.3 since they will provide greater transparency and certainty in the application of the access regime, through publication of criteria for access pricing decisions.

Recommendation 10.2 calling for the removal of retail price controls that give rise to the “access deficit” is consistent with the SPAN position on this issue.

Concerning draft recommendation 11.1, calling for the repeal of legislative requirements for carrier industry development plans, SPAN is not opposed to the encouragement of industry development through appropriate government policies. However, the administration of the current IDP regime does not reflect the dynamics of the current industry, a fact recognised by the government. We expect a review and discussion paper on this subject from the government in the near future and would want to see that before finalising a position on this recommendation.

Need for further consultation:

Recommendation 5.1 calling for the repeal of Part XIB of the Trade Practices Act is a cause for concern. As stated above, considerable discussion of alternative measures would have to take place leading to a broad industry consensus before such repeal could be supported.

The recommendation (17.1) relating to powers to determine the aggregate universal services levy (USO) needs further discussion. Transfer of sole authority to the ACA would need to be preceded by a broad agreement on the methodology to be used in arriving at the USO quantum. Any resolution of the method of determination of the USO would need to include clear criteria for defining the USO coverage in terms of services and geography/demography. Achieving that broad agreement may present some difficulty. The Minister's powers may need to be retained as a “circuit breaker” in these circumstances.

Call for further information and comment:

While individual SPAN members may have more specific and varied responses to the Commission's call for comment and further information, SPAN's long-standing position in support of competition and access seekers leads us to submit the following association view in support of the above comments:

SPAN considers that there is a need for further discussion of the objective of economic efficiency that the Commission has raised in several contexts such as

investments and buy/build decisions. Such discussion needs to address the appropriate balance of the interests of competitors, shareholders and end users, both near and long term. It is SPAN's observation that there are sharply differing views of where that balance is, currently and where it should be.

SPAN supports the establishment of time limits for arbitrations, and indeed for other regulatory processes and interventions. Such time limits should be subject to periodic review to ensure that continuous improvements are achieved.

Alternative approaches that would encourage commercial negotiations should be energetically pursued. SPAN is currently examining possible application of alternative dispute resolution mechanisms and tools in the hope that new approaches will emerge that can reduce the cost and delay inherent in the current arbitrations and litigation that the industry is engaged in. We will be pleased to advise the Commission of progress.

The Commission has asked for feedback on publication of reference prices by the ACCC. In general, SPAN favours transparency of access pricing related to declared services and would support such publication.

SPAN considers that pre-selection has provided significant benefits to access seekers and to consumers in supporting competition. While industry members may have differing views on which services should be subject to pre-selection and on multi-basket pre-selection, SPAN considers it important in the longer term for there to be a clear line of responsibility and methodology to determine such matters. While the ACCC may be the best authority to make such a decision, there should be appropriate requirements for the industry and the ACA to contribute technical and commercial inputs.