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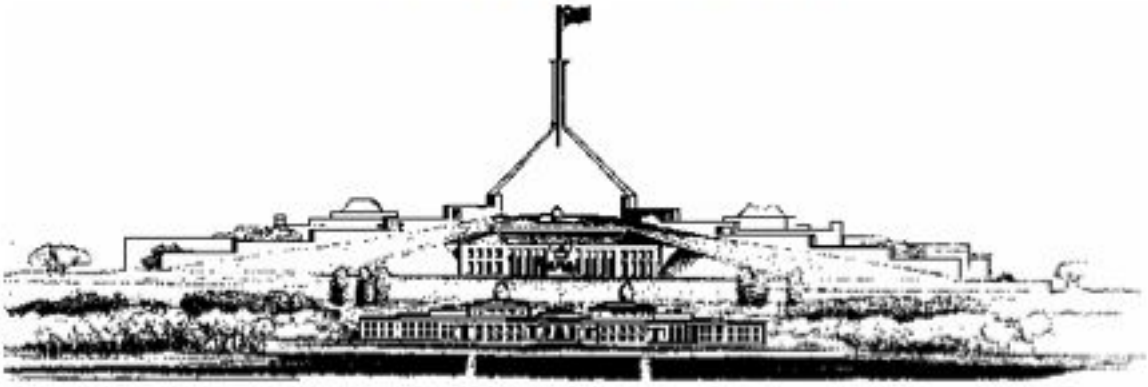

THE SENATE

TELSTRA (TRANSITION TO FULL PRIVATE OWNERSHIP) BILL 2003

Second Reading

SPEECH

Monday, 27 October 2003

BY AUTHORITY OF THE SENATE

SPEECH

Date	Monday, 27 October 2003	**Source**	Senate
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Questioner		**Responder**	
Speaker	Cherry, Sen John	**Question No.**	

Senator CHERRY (Queensland) (7.46 pm)—The Australian Democrats will be voting against the Telstra (Transition to Full Private Ownership) Bill 2003 because the government has failed to make out a case that this bill is in the public interest. Evidence to the Senate committee revealed lack of competition, continued dissatisfaction with services, high telecommunications prices, gaps in services between city and country Australia and a reduction in infrastructure investment. This is all contrary to the 1996 coalition policy on privatisation, which said:

> The Liberal and National Parties believe privatisation should only occur where it is demonstrably in the public interest.

Under its Charter for the National Interest, the coalition argued that privatisation should require evidence of a clear public benefit to be derived from the privatisation of a particular sector; a focus on benefits to consumers, including protection of consumer interests; and a commitment to maintain community service obligations, recognising the special needs of rural and regional Australians. Yet the Senate inquiry into this bill—and I attended every hearing—showed that, on all key criteria, the government has failed to make out a case that the sale is justified and in the public interest.

In addition to the Senate inquiry, Senator Bartlett and I undertook a survey of people from regional and rural Queensland, asking how they felt about the government's agenda, supported by The Nationals, to sell off the rest of Telstra. This activity was inspired by comments made by the Leader of The Nationals, John Anderson, when he said that Telstra's services were up to scratch and The Nationals were prepared to sell it on that basis. We surveyed residents in four Nationals electorates and in three Liberal electorates covering Bundaberg, Coolum Beach, Dalby, Gladstone, Hervey Bay, Mackay, Maryborough, Nambour, Warwick and Thuringowa. The response was huge, with 13,000 responses. The results showed an overwhelming opposition around regional Queensland, with 80 per cent opposed to the further sale of Telstra.

The Nationals member for Maranoa, Bruce Scott, voted to sell Telstra. In his speech to parliament on the further sale of Telstra, he said:

> I have always said that I would only support the full sale of Telstra once services in the bush were up to scratch.

Yet our survey of the people in his electorate of Maranoa found that 80 per cent disagreed with his view that the government had improved the level of telecommunication services to such a degree that the sale should proceed. More than 78 per cent believed the standard of services provided by Telstra would decline if it were fully privatised. More than 83 per cent believed the further sale of Telstra would not benefit them. The Liberal member for the electorate of Herbert, Peter Lindsay, also voted to sell Telstra. In his speech to parliament on the further sale of Telstra, he said:

> The electorate wants to see the full privatisation of Telstra.

Yet the survey of his electorate of Herbert showed that 85 per cent of Townsville respondents did not support the further sale of Telstra. More than 80 per cent believed the standard of services provided by Telstra would decline if it were fully privatised. More than 80 per cent disagreed with the government that telecommunications services had improved to a level that should allow the further sale of Telstra. These results were reflected in the seats of Fairfax, Fisher, Longman and Dawson—Dawson, very interestingly, is De-Anne Kelly's seat and, again, over 80 per cent were opposed to the sale of Telstra. Yet all of these sitting members supported the sale of Telstra. Importantly, the survey also asked people whether they thought the Senate was doing the right thing in preventing Telstra from being sold off, and 80 per cent believed the Senate was in fact doing the right thing. So that is the view of the people of Queensland.

The government's view is that privatisation will increase competition in the domestic markets. Despite partial privatisation of Telstra in 1997 and 1999, the ACCC's view is that:

Competition has not developed as extensively as generally expected after full competition was introduced in 1997 and that various telecommunications markets are not yet effectively competitive.

In fact, during 2001-02 the ACCC reported that progress towards achieving competitive telecommunications markets slowed. The ACCC gave evidence that there were some existing and potential emerging structural impediments to the development of effective competition in potentially contestable markets and that one of the key factors was that Telstra dominates the market in all major telecommunications services. In addition, Telstra remains in almost total control of the customer access network, and it is the only supplier of territorial fibre infrastructure into many regional areas. In relation to the Internet, Telstra not only provides the connection service for the vast majority of subscribers but is also the biggest single ISP. Through Foxtel, Telstra dominates content and distribution of pay TV services. Australia is the only developed country where the incumbent telco is also allowed to operate the cable TV network.

In their report on emerging market structures, the ACCC identified that, without competition between telecommunications infrastructure providers, it was likely that networks would not be developed and used to their full potential. Not only does the bill reduce the ability to monitor and intervene in market power abuse; the ACCC gave evidence that no areas of the bill actually improved competition. Further, there is little evidence around the world that reducing public ownership improves customer outcomes, particularly in markets where the former government telco retains strong market dominance.

Comparing public ownership with the OECD's price for domestic phone charges comparator highlights this relationship. Three of the four countries with the cheapest phone prices have majority publicly owned telcos, while three of the four with the highest prices have private ownership rates of their telcos in excess of 90 per cent. The Democrats believe that the government have provided no evidence to support privatisation as a means of reversing the slowdown in competition and benefits to consumers, as observed by the ACCC. We would argue that further consideration needs to be given to the structural impediments and to further regulation before any further privatisation is even considered.

On the topic of structural separation, the committee in the course of its inquiry received considerable evidence on whether the telecommunications markets in Australia can ever be fully competitive if Telstra is not structurally separated. The OECD has recommended that structural separation should be considered as a means of promoting competition in utilities and as a preferred alternative to regulation. The National Competition Council in Australia adopts a similar view to the OECD which is reflected in the Competition Principles Agreement. Similarly, the ACCC, in its report to government in July on competition telecommunications, concluded that the structural power of Telstra precludes regulation being fully effective in ensuring fair competition and pricing.

Several models of structural separation could be considered. The OECD, the National Competition Council and the Competitive Carriers Coalition mostly focus on what is called vertical separation—separating out the wholesale network from the retail service provision. It has been acknowledged by several commentators, however, that such an option carries with it high transitional costs. The ACCC and Professor John Quiggin have argued instead for horizontal separation—separating out whole parts of Telstra's businesses with the potential to compete against the rest of the business. The ACCC has recommended to the government that the Foxtel HFC, or hybrid fibre cable, network be divested, which, it argues, could form a new competitor for Telstra.

For Australia to ensure that the opportunities for competitive outcomes are maximised, we need to ask fundamental questions about whether the current structure of the telecommunications market is optimal and whether the power of a vertically and horizontally integrated Telstra will kill off competition into the future. It is disappointing that, despite the recommendations of the NCC, the ACCC and the OECD, the government has not yet explored the competitive advantages, costs and benefits of the various structural separation alternatives. We certainly recommend that this needs to occur.

A further key argument raised for the sale of Telstra is that 49.9 per cent private ownership leaves the company half pregnant—already required to act in the commercial interests of all shareholders, but restrained by public ownership from making full commercial decisions. However, Telstra in its evidence acknowledged that the government's 50.1 per cent ownership allows it to decide the composition of Telstra's board of directors. If a director fails to satisfy the government it could easily vote them off, which remains a powerful control mechanism for all majority shareholders. As Professor Bob Walker, a shareholder activist, told our committee:

Majority shareholders have a controlling interest, and are capable of calling the shots on the financing and operating decisions of corporations—regardless of the pious sentiments expressed in the Corporations Act.

Professor Quiggin argued that Telstra's majority public ownership, in acting as a brake on offshore investment, probably saved the company and taxpayers a large amount of money, in that it was unable to participate in the dotcom bubble during the 1990s and that, as a percentage of GDP, Australia's losses were small compared with those of the US and elsewhere. Government officials acknowledged to the committee that majority ownership has resulted in a high level of reporting and interaction between the department of finance and Telstra management. Finance department officials said:

> The CAC act sets out quite an intense overlay of reporting to the government as the majority shareholder in terms of annual reporting et cetera that private sector companies do not have, and that generates interaction. There is a lot of interaction.

Under the bill that is being considered, a range of public accountability measures, including the application of the Freedom of Information Act and the requirement for Telstra to appear before Senate estimates committees, will be removed. The minister's power to direct Telstra in the national interest will cease to apply when the Commonwealth's equity has fallen below 50 per cent, as will the application of FOI and the application of Commonwealth public sector employment and occupational health and safety laws. When the Commonwealth's equity falls below 15 per cent, the bill will repeal the power of the minister under the act to require Telstra to provide financial reports to the Commonwealth, the obligation of Telstra to notify the minister of significant events, the obligation to keep ministers informed of the operation of Telstra and its subsidiaries, the obligation to provide the minister with its corporate plan and the obligation to provide the Commonwealth with prior notice of any action which may dilute the Commonwealth's holding.

As can be seen, majority public ownership does have a significant impact on Telstra's ability to operate, notwithstanding the obligation on the board to maximise profits. This bill substantially reduces the requirements of Telstra to interact with the government and the parliament and thus properly fulfil its public interest obligations. It is clear that customer dissatisfaction with telecommunications is on the rise. An analysis of the results of consumer awareness and information needs surveys conducted by the Australian Communications Authority paints a worsening picture of consumer confusion and distrust in the telecommunications marketplace. As the Australian Consumer Association noted:

> ... all comparable indicators show a decline in consumer regard for the market. There is an explicit and progressive deterioration in consumer confidence.

Recent figures from the Telecommunications Industry Ombudsman show that complaints against Telstra rose by 2.9 per cent in the year to 30 June. The Australian Communications Authority has reported that customer satisfaction with telcos in Australia fell from 74 per cent to 60 per cent in 2002. The 2003 *OECD Communications Outlook* showed that Australians were paying more for their phones than most industrialised countries—44 per cent more than the British, 35 per cent more than Canadians and 11 per cent more than the Americans. The ACA's *Telecom munications Performance Monitoring Bulletin* also showed a downward trend in all indicators of customer service guarantees in the most recent quarter. Indeed, there has been a marked change in performance, particularly in urban areas. For example, the percentage of faults cleared by Telstra within CSG time frames rose from eight per cent in June 2001 to 18 per cent in June 2003. Nationally, the percentage of faults repaired by Telstra within CSG time frames fell from 93 per cent in June 2001 to just 86 per cent in June 2003.

The ACA has indicated that it is concerned by Telstra's urban faults performance and has sought assurances from Telstra that they will take the necessary steps to raise the level of performance, but it remains to be seen how effective that will be. The Communications Workers Union has questioned the effectiveness of the benchmark of CSG faults, arguing that the emphasis on statistics has resulted in quick-fix temporary work being done to clear faults without dealing with underlying problems. Whilst the ACA acknowledges that this may be the cause of some of the recurring faults, it says that the new network reliability framework will allow the regulator to be able to work out where recurring faults were, what problems were being exhibited and do something about them. But the network reliability framework is still in its early stages. It could yet prove to be a powerful tool to require the upgrading of the network. For example, as a result of the Estens report the authority was required to prepare a report on improving the effectiveness of the network reliability framework. That report was handed to the minister on 30 September. The Democrats urge the government to respond to that report promptly and support further enhancement and enforcement of the network reliability framework.

The fundamental problem remains the regulatory environment in which the ACA operates. By legislation the ACA is obliged to be a `light' operator, relying heavily on self-regulatory industry codes. Certainly it raises questions about whether it can regulate a monopoly infrastructure provider, particularly through a future-proofing requirement. According to the evidence to the committee from Telstra, it will cost Telstra $5 billion to increase

Internet speeds across Australia from the 19.2 kilobits per second mandated by the Estens report to the 56 kilobits per second standard that would bring urban and rural Australia to the same standard. In contrast, the government's response to the Estens report provides only $181 million in new funding, which falls well short of the amount required to deliver rural services. Even Dick Estens conceded to the committee that it will require progressively increasing levels of government regulation to push up rural standards. He said that 19.2 kilobits per second was a minimum baseline that will need to be lifted as time goes on.

The Department of Communications, Information Technology and the Arts emphatically disagreed with this approach, arguing that it was not practicable to say there should be some kind of mandated service upgrade because services change so quickly. This is simply a cop-out. It is worth noting that between 1995 and 2000 Telstra's capital investment averaged between 22 and 27 per cent of its revenues. By 2003 it had slumped to just 15.5 per cent of revenue and it is projected to fall to less than 14 per cent this financial year. This compares with the OECD average of around 23 per cent of revenue. If Telstra were required to restore capital expenditure to 20 per cent of revenue, a level it held for all but the most recent years, it would increase capital spending by $1.35 billion a year, which would allow on Telstra's estimates a full overhaul of the network to a 56 kilobits per second standard in just four years. The Democrats believe that it would not be an unreasonable ask for the minister to use his powers under part 3 of the Telstra Corporation Act to direct Telstra, in the national interest, to upgrade its full network to that capacity.

In summary, the Democrats report recommends that the Telstra bill be rejected by the Senate. We do not believe that the government has made a case that there is a public benefit to be had from proceeding with this bill. In the meantime, we urge the government to ensure that the telecommunications market is substantially improved. We recommend that regulation to protect consumers, increase competition and improve network reliability be strengthened before any further privatisation is considered. We recommend that, in accordance with subclause 4(3) of the Competition Principles Agreement, an independent authoritative review be undertaken on structural separation, including consideration of the ACCC's report on emerging market structures in the communications sector, before any further consideration is given to the full privatisation of Telstra. We recommend that a comprehensive analysis of Telstra's investment in infrastructure be undertaken and that Telstra be directed to increase its investment in infrastructure to meet tougher performance standards.

If the government is interested in and serious about trying to turn around that 80 per cent opposition to the sale, it needs to acknowledge that the public is not convinced that the government has put up a case that this sale is in the public interest. If the government wants to convince that 80 per cent of people that this sale is a good idea, it needs to address the issue of infrastructure. It needs to address the issue of competition. It needs to address the issue of rising fault rates around Australia. It needs to address the issue of the gap between city and country services. It needs to address the concern about future-proofing of new services. It needs to address the huge gap between Telstra's current delivery of broadband Internet services and the public's expectation of what is reasonable. It needs to address the issues contained in this report and to convince the Australian people that this particular sale is appropriate.

The problem to date is that the government has not been prepared to do any of those things. We have a sale bill that will reduce the financial benefit to the public sector in Australia. It will increase rather than reduce the problems with competition policy and telecommunications in Australia, and it will do nothing to guarantee future-proofing of rural services or improvement in the declining fault clearance rate in urban services in Australia. From these points of view, the Democrats are adamant that this bill should not be supported by the Senate.