



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



## **THE SENATE**

# **TELSTRA (TRANSITION TO FULL PRIVATE OWNERSHIP) BILL 2003 [NO. 2]**

## **Second Reading**

## **SPEECH**

**Monday, 29 March 2004**

BY AUTHORITY OF THE SENATE

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## SPEECH

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**Speaker** Cherry, Sen John

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**Senator CHERRY** (Queensland) (6.54 pm)—The Australian Democrats will again be voting against the Telstra (Transition to Full Private Ownership) Bill 2003 [No. 2] because the government have still failed to make out a case that this privatisation is in the public interest. It is a pity that we are debating this bill again today. There are 96 bills on the agenda for the Senate that I counted and yet we are required to waste time debating this bill again. We debated this bill at great length last year and had an extensive Senate inquiry last year. Between then and now, nothing has changed in terms of the government's position. No serious negotiation has been entered into by the government with anybody else. The concerns raised by the Senate the last time we debated this bill here have not been addressed. In fact we are just going through the motions.

**Senator CHERRY**—I have a very good speech here—I am about to give you a good education, Senator Campbell—about privatisation, but this debate, frankly, is not about privatisation; this debate today is about creating another double dissolution trigger. So I thought I might briefly address that issue before I move on to the actual bill itself.

By bringing this bill on for debate now, the government is opening up the possibility that this bill could become the trigger for a double dissolution election. I wonder at times whether the government have fully thought through the consequences of that. The sale of Telstra as a proposition is consistently opposed by up to 66 per cent of the population. If the government want to make this a trigger for a double dissolution, that is fine—that is their business. But it is worth noting that the minute the government call a double dissolution election, by the nature of the changes in the quotas, they will lose four senators. It is as simple as that. At the moment, the coalition have 35 senators. If they repeat the same vote they got at the last federal election, which looks fairly unlikely on current polls, then they would move up to 37 or 38 senators. But with the same vote they got into 2001, in a double dissolution election they would get a maximum of 31 or 32 senators—so they would lose five senators. I am pleased to see that Senator McGauran is here, because two of those senators whom they would have otherwise had in Queensland and New South Wales would be National Party senators.

In addition to that, the probability of getting the bill through a joint sitting is actually quite remote. Because of the changes to quotas in double dissolution elections, the government would probably have 31 out of 76 votes, which would be a deficit of 14 seats. So they would need a majority of 15 seats in the House to actually overcome the Senate deficit. At the moment, their majority in the House is 14. So they would need to increase their majority from that current position to be in a position to make up the deficit in the Senate at a joint sitting. It is worth noting that a swing of just five per cent against the government would see their House majority reduced to just 11 seats. A swing of one per cent would see their majority reduced to seven seats. A swing of 1.6 per cent would see a Labor government elected.

So even though the probability of getting this bill through a joint sitting is fairly remote we are still required to waste time today on this bill, we are still required to waste time tomorrow doing the media ownership bill and we were required to waste time last week doing the termination of employment bill yet again. Who knows what other bills we will be required to waste time doing between now and May with those 96 bills standing on the agenda—real bills—waiting to be debated by this Senate.

**Senator Ian Campbell**—So what you are saying is that we go to an election three times in a row, promise something and then don't bother trying to legislate.

**Senator CHERRY**—I think you should note the fact that every opinion poll shows that 66 per cent of the population is opposed to this. Why don't you put this up as a plebiscite? Then you could see if people support the ideas in this bill.

**The ACTING DEPUTY PRESIDENT (Senator Lightfoot)**—Order! I suggest that Senators Cherry and Campbell have a private meeting outside after your contribution, Senator Cherry.

**Senator CHERRY**—I remind Senator Campbell—through you, Acting Deputy President—that the slogan for the last election was 'we will decide who comes to this country and the circumstances in which they arrive'. It had nothing whatsoever to do with the sale of Telstra. This particular bill fails every public interest test of decent public policy. It is a pity that the government is, as I said, wasting our time making us debate it again. In October last year the Democrats called for stronger regulation to protect consumers, increased competition and regulation to improve network reliability. We called for the government to meet their obligations under the competition principles agreement and to undertake an independent review of structural separation—including consideration of the ACCC's *Emerging market structures in the communications sector* report. We called for a comprehensive analysis of Telstra's investment and infrastructure to be undertaken. We asked that Telstra be directed to increase its investment infrastructure to meet tougher performance standards and national policy objectives.

The government have made no effort whatsoever to address these issues and recommendations. These recommendations reflect the concerns of the public that came out through the Senate inquiry. They reflect the concerns regularly expressed about Telstra on talkback radio, out in the bush and even in the suburbs. Yet they have made no serious effort whatsoever to actually address those concerns. In the last four months they have not even addressed the concerns raised by ACCC, the regulator. Senator Eggleston made a significant play about the fact that the government introduced competition in telecommunications. Have a look at what the regulator says about competition in telecommunications. The regulator said that competition has not developed to the extent that it would have liked or it had expected when it was introduced. In fact Senator Alston asked the ACCC to give him a report on competition in the market and any issues that might emerge. It said that the problems with competition are structural, that they cannot be fixed by regulation—they are structural problems—and government has refused to respond to that particular report. Yet we are asked to consider this bill, knowing full well that the competition regulator says that it cannot regulate Telstra effectively in the current competition market, knowing full well that there are still serious concerns about the performance of the network in terms of rising fault levels, knowing full well that the country measures have not yet been delivered. Yet we are still being asked to vote on this bill.

This bill actually shows this government is bereft of ideas in terms of actually developing a decent telecommunications policy. The government only have one policy, which is to flog it. Only last week we saw the ACCC serve Telstra with a competition notice for engaging in anticompetitive behaviour in relation to Telstra's wholesale pricing of high-speed Internet services in light of its retail offerings. The ACCC were also critical that Telstra did not inform the ACCC early enough about the price reduction. There has also been a leaked confidential document from Telstra's infrastructure services division, dated December 2003, which states that faults in Telstra's network are at a six-year peak, that the customer access network fault rate has been increasing since June 2001 and has accelerated in the last nine months and that this acceleration can be attributed to reduced rehabilitation activity in the recent past, and that the growth in the fault rate appears to be due to general network deterioration rather than a specific exceptional cause. What a great epitaph that is for the government's regulation of telecommunications!

At the Senate inquiry into this bill last year, that Senator Eggleston chaired, the CEPU questioned the effectiveness of the benchmarks of customer service guarantee faults, arguing that the emphasis on statistics had resulted in quick fix temporary work being done to clear faults without dealing with underlying problems. The Australian Communications Authority has acknowledged that 'some, and only some' of the causes of recurring faults relate to remedial work but that the new network reliability framework will allow the regulator to 'be able to work out where recurring faults were, what sorts of problems were being exhibited and to do something about them'. That framework has only been in operation for some 12 months but the ACA has already required Telstra to perform remedial work on 54 poorly performing exchanges and, following an audit of a further 48 exchanges, has identified a further four requiring remedial work.

With respect to Telstra's network, the leaked confidential document stated that without adequate investment in rehabilitation the customer access network fault rate will continue to increase. Yet Telstra has been deliberately

reducing its investment in infrastructure to increase its dividend payouts to shareholders for what I can only assume is a strategy to increase the shareholder price for a possible sale. Between 1995 and 2000 Telstra's capital investment averaged between 22 per cent and 27 per cent of its revenues. By 2003 it had slumped to just 15.5 per cent of revenues 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 revenues. 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 of its history—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 unreasonable to ask 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 sort of capacity. Of course we have stated this before but, again, there has been no response from the government, no particular concern about using its powers to ensure that there is a decent strategic national policy objective in telecommunications.

Since this bill was last debated there have been a few media reports arguing that a fully privatised Telstra could still be controlled by regulation. I do not know where people can get this particular argument from. When you have heard the main regulator through the ACCC Commissioner, Ed Willett, saying that regulatory changes should be made prior to privatisation, surely the message is loud and clear: there are real concerns about whether a fully privatised Telstra can be reined in effectively.

Telstra is the most regulated company in the country because it is one of the most vertically and horizontally integrated companies in the telecommunications sector in the world and it dominates the market in all major telecommunications services. Despite partial privatisation in 1997 and 1999, the ACCC concluded that competition had not developed as extensively as generally expected after full competition was introduced in 1997 and that various telecommunications markets were not yet effectively competitive, and during the 2001-02 progress towards achieving competitive telecommunications markets slowed. In their report *Emerging market structures in the communications sector*, the ACCC identified that without competition between telecommunications providers it was likely that networks would not be developed and used to their full potential; that new services, such as high-speed Internet, would not be introduced as early as they otherwise would; and that services would not be provided efficiently and at least cost for consumers. It has also been argued that the record-keeping rules to assist the ACCC assess anticompetitive behaviour will not remove the source of Telstra's market power and may not be an effective strategy to combat anticompetitive behaviour, which discourages real competition in the telecommunications industry.

Not only does the bill, through its repealing part 3 of the Telstra Corporation Act 1991, reduce the ability to monitor and intervene in market power abuse; but the ACCC has given evidence that there are no areas of this bill that would improve competition. The government, however, continues to ignore the recommendations of the OECD, the National Competition Council and the ACCC. The National Competition Council recommended that a review of the merits of separating any natural monopoly elements from competitive elements of the public monopoly be undertaken. This has not occurred. The OECD has made similar recommendations about considering structural separation as a means of promoting competition as an alternative to regulation. No review has occurred.

The ACCC, in its report to government in July on competition, concluded that the structural power of Telstra precludes regulation being fully effective in ensuring fair competition and pricing and that structural separation should be considered, particularly in respect of the Foxtel HFC network. Again, no government response to that report has actually been released. This is just a morsel of the evidence that Telstra should not be fully privatised while the current structural and regulatory arrangements are in place. These are amongst the many reasons to maintain majority public ownership of Telstra. The Democrats and the majority of the Senate are saying: 'If it's broken, don't sell it; fix it.' In addition to the regulatory and structural issues, the inquiry into the full sale of Telstra also found that Australian household consumers are still paying too much for their services; that services are not equal between urban Australia and regional and rural Australia; that there are no future-proofing mechanisms to ensure meaningful outcomes; that Australia's specific research and development is dissipating; and that networks are not being developed and used to their full potential.

In addition, there is little evidence around the world that reducing public ownership improves customer outcomes, particularly in markets where the former government telco remains the strong market player. Comparing public ownership using the OECD's price for domestic phone charges comparator highlights this relationship, with all countries judged in relation to Australia's domestic phone cost of \$US452 price parity. 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 in excess of 90 per cent. That in itself is a very good argument neither for nor against privatisation of Telstra but rather for looking for other reasons to actually consider its position.

Further, we need public ownership to ensure that regional and rural Australia has appropriate and decent services. Telecommunications are an essential economic and social infrastructure in rural areas and are becoming more important in the context of the information economy and the need to access services such as e-commerce, e-learning, e-health and e-banking. For example, the New South Wales Farmers Federation called for the following regulations to be reviewed before even considering the privatisation of Telstra:

- Timely and affordable access to future technology for rural and regional Australia is guaranteed under the Universal Service Obligations (USO) and USO include data standards as well as telephony services.

- A permanent trust fund is established with 10% of the proceeds from—

this sale—

to support the provision of high quality telecommunication services in rural and regional Australia.

- Each of the Customer Service Guarantee (CSG) criteria are met for each customer category (urban, major regional, minor regional, remote) in each State, rather than just the national average and that the CSG criteria include a better measure of carrier performance and volume of faults and new installs—

installations—

and are based on geographic not demographic criteria.

- Automatic penalties and a rectification process are defined for breaches of the USO and CSG in legislation.

Yet the government has not done any of those things at all. In fact, just last week Deputy Prime Minister John Anderson said that Telstra would not be sold off immediately because the preconditions had not been met. He said:

Our commitments on getting bush services right and getting future-proofing right are absolutely intact and they've not yet been fully delivered.

So why has the government brought this bill on? The National Party do not want Telstra sold and that is what their leader is saying, yet we are debating this bill, which has been rushed through—it was in the House last week and up here this week—pushing 96 other bills out of the way. On all key criteria the government has failed to make out a case that the sale is justified and in the public interest, whether it be on competition, service, legal or financial grounds—and the public knows this.

In September 2003, Senator Bartlett and I undertook a survey of the people in rural and regional Queensland seats, asking how they felt about the government's agenda, supported by the National Party, to sell off the rest of Telstra. Eighty per cent of the nearly 13,000 responses were opposed to the further sale of Telstra. Four months later, a ninemsn poll on 5 February found that 77 per cent—that is, 26,544 people—agreed that Telstra should be kept in public hands. Also in that same survey that Senator Bartlett and I conducted, over 80 per cent of people believed the Senate would be doing the right thing by blocking this sale tonight. It is not in the public interest. Even members of the government coalition backbench are saying so, and bringing this bill on tonight is simply blatant political manoeuvring. Bringing on the bill now is a waste of the Senate's time and a slap in the face for the public, more than 70 per cent of whom do not want Telstra fully privatised.

It is the government's focus on debt reduction and shareholder value over the national security and economic and social development of Australia that continues to be of concern to the Democrats and the majority of Australians. The Democrats argue that in its rush to reduce debt, despite Australia having one of the lowest national debts in the OECD, the government has not given adequate consideration to the implications of the full privatisation of a vertically integrated monopolistic Telstra and the alternatives to it. The Democrats will again not be supporting the full privatisation of Telstra because it is so clearly against the public interest.