

**BIAA TELECOMMUNICATIONS CONFERENCE**

**THE MINISTERIAL INQUIRY INTO  
TELECOMMUNICATIONS**

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**WELLINGTON  
13 NOVEMBER 2000**

# **THE MINISTERIAL INQUIRY INTO TELECOMMUNICATIONS**

## **1 Introduction and overview**

This paper argues that a plausible case can be made that the recommendations of the Ministerial Inquiry into Telecommunications will lead to a more politicised and acrimonious industry with greater delays, higher costs, more rent-seeking activities and reduced investment in regulated infrastructure than is likely to occur under current arrangements.

Section 2 explains why the government's stated policy objective is likely to make it difficult to hold any regulator properly to account for decisions made in accordance with that objective.

Section 4 below evaluates the Inquiry's recommendations (summarised in section 3) in terms of those objectives. The key issue raised is the nature of the alternative against which those recommendations are being assessed.

Section 5 explores the question of the forgone alternative further by looking at the analysis in the Inquiry's report (the Report) of the problems with current arrangements. What problems with current arrangements need fixing? This section concludes that the problems appear to be so ill-analysed and ill-demonstrated as to make the case for regulation largely an article of faith.

Section 6 explains the need for a coherent theory of information and of regulation in any assessment of the likely efficacy of proposed regulations. There is an extensive economic literature on regulation.

Section 7 uses that literature to comment on the dangers of the regulatory path that is proposed for New Zealand and motivates this with observations on the experiences of other countries with industry-specific telecommunications regulators.

Section 8 makes some concluding comments, drawing attention *inter alia* to the need to consider compensation for regulatory takings if offshore investors are not to become even more wary about investing in infrastructure in New Zealand.

Perhaps two themes emerge from this paper: (1) governments shouldn't attempt to fix things unless experts can prove something is broken relative to a realistic alternative; and (2) better analysis is required.

## **2 The government's policy objective**

The government's stated policy objective is to achieve "cost-efficient, timely, and innovative services on an ongoing, fair and equitable basis to all existing and potential users".

This objective statement raises many questions:

- How is any regulator to determine what is cost-efficient, particularly when technologies are rapidly changing costs in unpredictable ways?
- What is fair and equitable? Is the principle that the user should pay more equitable than the principle that those on lower incomes or with fewer skills or who live in remoter areas should not get left behind even if they cannot pay the full cost?
- What if the most timely and innovative investments are uncommercial? Who should be made to pay the difference and what principle should be used to evaluate the equity of this impost? Moreover, if the difference between price and cost is subsidised, what is the incentive to reduce costs and to make production cost-efficient?

The government provided no criteria for determining what is fair and equitable, timely or innovative, or for making trade-offs between these attributes.<sup>1</sup>

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<sup>1</sup> This problem would be reduced if this objective were interpreted as being itself derived from the objective of economic efficiency. The efficiency criterion would then provide a yardstick for making trade-offs.

One of the most important questions such an objective raises is: "who is to determine the trade-offs between these attributes and how are they to be held accountable for their decisions"?

It is well understood in management theory that accountability goes out the window if any agency or agent is asked to maximise in more than one dimension. When there is no basis for determining trade-offs, the choice is arbitrary. One decision is as good as another.

Such discretion confers the freedom to exercise arbitrary power. For example, an import licence can be granted in order to provide for a better deal for consumers or denied in order to protect jobs or foreign exchange. A risky workplace can be closed down for environmental or safety reasons or tolerated because of commercial realities. Which is it to be, who is to decide and on what basis?

### **3 The recommendations of the Ministerial Inquiry into Telecommunications<sup>2</sup>**

The report of the Ministerial Inquiry into Telecommunications (the Report) recommended the following new features of an institutional nature:

- a sector-specific commissioner, with a racial orientation;<sup>3</sup>
- an industry forum;
- new regulations based on specified and designated services;
- an indefinitely expandable interpretation of what constitutes the "ordinary telephone services" that Telecom is required to supply under the Kiwi share agreement in conjunction with rules designed to make it harder for Telecom to fund those additional services;<sup>4</sup> and

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<sup>2</sup> These are set out more fully in other papers to this conference.

<sup>3</sup> Page 28 of the Report indicates that the commissioner would be required to have regard as far as practicable to any special factors that apply to Maori.

<sup>4</sup> Interconnection prices would not include a contribution to Kiwi share losses. Telecom would not be able to charge ISPs for local calls to access the Internet. Telecom would not

- the creation of a permanent body whose terms of reference would appear to make it an advocacy group for those who want subsidised access to services, including the disabled.

The Report proposes that various Telecom services be designated immediately on the grounds of claimed net annual benefits of \$43 million.<sup>5</sup> It proposes a 31 July 2001 date for designating number administration and portability should agreement not be reached on these issues beforehand. Principles for determining prices would be imposed on designated services.

Specified services would initially include interconnection and carrier pre-selection, co-location on cellular sites, wholesaling and roaming of 2<sup>1</sup>/<sub>2</sub>G cellular networks and Sky TV's conditional access systems.

An important facet of the proposed structure is that it would remove any burden of proof of the abuse of a dominant position in relation to the regulation of a designated service. The Report refers to this as '*ex ante*' regulation.

The report also recommends *inter alia* that the relevant government minister be given the power to require the re-sale of any parts of the radio spectrum that are not being used.

#### **4 Evaluation of the Report's recommendations in the light of the government's objective**

The Report provides (on page 7) a summary table that relates its recommendations to each component of the government's objective for the industry. The summary makes it clear that the Report is assuming that its regulatory structure will produce timely decisions that resolve disputes efficiently and result in efficient prices and efficient investment decisions.

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be permitted to change local calling areas without the regulator's permission. An offset is that Telecom would be permitted to lower residential line rentals in urban areas.

<sup>5</sup> This figure has subsequently been revised – see below.

The summary table, and the Report more generally, fail to carefully specify the alternative against which the recommendations are assessed. More specifically, it fails to demonstrate that the implicit alternative is the next best alternative or even a feasible alternative.

The summary table relies heavily on an alleged finding of \$43 million per annum of net welfare benefits from its recommendations. The figure appears to be based on a calculated net benefit of \$43.9 million per annum by the Centre for Research in Network Economics and Communications at the University of Auckland. The Centre's report (the CRNEC Report) is included in the Report as appendix 6.

A table in appendix 6 on page 69 provides a breakdown of the \$43.9 million net gain. It shows that the estimated gain is virtually all derived from regulating interconnection prices down to 1.5 cents a minute. The details are provided on page 44.

Following criticisms of these calculations by the New Zealand Institute of Economic Research (NZIER) and the Networks Economic Consulting Group (NECG), CRNEC has reduced its estimate to between \$20 and \$40 million per annum.<sup>6</sup>

It appears therefore that the alternative against which the Report's recommendations are compared is that of a static world in which a monopolist can indefinitely derive an average interconnection revenue that is well above an assumed cost of interconnection of 1.5 cents per minute.

Putting aside all other points of dispute, the calculation assumes that:

- the New Zealand industry really has these characteristics; and
- there are no alternative remedies to the problem than those recommended.

The first question is about problem definition. Section 5 addresses this topic. The second question relates to the need to test proposals against relevant alternatives.

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<sup>6</sup> John Small, *The Costs and Benefits of Telecommunications Regulation*, paper dated 6 November 2000 presented to this conference.

As it happens, there is an obvious alternative recommendation. The government could presumably simply regulate interconnection prices down to 1.5 cents per minute and save all the costly complexities introduced by an industry commissioner, an industry forum, and specified and designated services. *The Report does not appear to consider this alternative.* It thereby fails to establish that its proposals are necessary.

The status quo is another alternative. While the Report does have this in mind, it is a very superficial treatment since it fails to discuss how the status quo would evolve in the absence of the regulatory apparatus that it recommends. For example, while it discusses the existence of the bill and keep agreement that Telecom has negotiated with Telstra Saturn<sup>7</sup> it is not apparent how it reconciles the existence of such contracts with the view it uses to justify the \$43 million per annum figure cited in the Report. A fundamental problem here is the CRNEC report's reliance on the use of average revenue rather than the charge at the margin.

John Small's paper to this conference does acknowledge the information problem that underlies CRNEC's myopic approach to determining the counterfactual against which the Report's recommendations are evaluated. However, it fails to put this problem into the broader context of a theory of information that relates to the problems of central planning.

The issue that needed to be addressed, and was not, was how the regulatory apparatus that the Report proposes is likely to work out and evolve in practice given all the problems with the theory of monopoly in relation to innovation and the problems of information and incentives that will bedevil any industry-specific regulator.

*I suggest that this failure to carefully assess alternatives and to establish the superiority of its recommendations against realistic alternatives is one of the Report's major weaknesses.*

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<sup>7</sup> Refer to pages 66-67 and appendix 6, pp 30-31.

## **5 Problem definition**

At the heart of the alleged welfare gains from the Report's recommendations is the assertion on page 45 of Appendix 6 that:

The local loop for the vast majority of New Zealanders is an essential facility operated by a monopolist under naturally monopolistic conditions.<sup>51</sup> This means that replicating the local loop in order to provide wholesale services is uneconomic and socially wasteful.

Footnote 51 asserts that the existing network is a natural monopoly if it would be socially wasteful to construct an entirely new network to supply all PSTN connections offered by Telecom and no others. It further asserts that Saturn's investments do not contradict the natural monopoly contention since Saturn's networks provide a large and more valuable set of services than those available from copper wire.

I find it difficult to look at this statement other than with incredulity for the following reasons:

- it overlooks the reality that Telecom's current market share was at its peak when the old Post Office enjoyed a statutory monopoly; it is competition that is eroding that market share and shows every sign of continuing to do so;
- the concept that there is no price discipline unless Saturn replicates the network for the supply of all PSTN connections ignores the issue of competition at the margin, contestability and credible threats;
- the argument that there is no product market competition because Saturn is providing additional services seems to be akin to arguing that because electricity provided a larger and more valuable set of services than gas, electric light would not be able to compete with the gas light;
- the statement omits any reference to wireless competition in all its forms; and

- it fails to acknowledge even the existence of a substantial body of expert opinion to the contrary, let alone respond to it.<sup>8</sup>

The discussion in the main body of the Report is equally perplexing. Section 3.7.1 purports to be an assessment of the existing regulatory regime. The discussion is superficial, but to its credit it is also inconclusive. But this inconclusive finding makes the Report's case for rejecting the existing regime something of a mystery.

The Report puts great emphasis on the assertion that New Zealand's arrangements are suspect by virtue of their uniqueness in an international context. However, it fails to show that there is any country whose approach is not unique. In comparing the approaches of Australia, New Zealand, Chile and Guatemala, Pablo Spiller and Carlo Cardillo found that each had blazed its own trail and experienced its own difficulties. For example, they commented that the Australian approach concentrates decision making in one set of hands and gives parties the (wrong) incentive to make exaggerated and continuous claims in the hope of extracting favourable treatment.<sup>9</sup>

In any case, the Report's unquestioned presumption that the existence of regulation internationally proves that it serves the national interest has been disproved by an extensive literature on the economics of regulation.<sup>10</sup> The demand for self-serving regulations is insatiable. Supply is determined by political considerations. The national interest is not necessarily the dominant consideration in any particular decision.

Regulations commonly create cross-subsidies that have to be preserved by entry barriers that the regulations protect. Vested interests in the form of user groups and firms in the industry will therefore lobby for regulations. The willingness of firms to

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<sup>8</sup> Refer, for example, to the views of Gary Becker, Richard Posner, Pablo Spiller and Carlo Cardillo, Lawrence Gasman and Dan Alger. John Kay, writing in the *Financial Times* as recently as 17 October 2000 on the failures of regulation, stated bluntly that: "Competitive answers are usually better. This is straightforward enough for telecommunications, where the days of natural monopoly are over."

<sup>9</sup> Pablo Spiller and Carlo Cardillo, 'The Frontier of Telecommunications Deregulation: Small Countries Leading the Pack', chapter 3 in *Regulator's Revenge: The Future of Telecommunications Deregulation*, ed Tom Bell and Solveig Singleton, Cato Institute, 1998.

<sup>10</sup> See pages 326-327 in Kip Viscusi, John Vernon and Joseph Harrington, *Economics of Regulation and Antitrust*, MIT Press, 1998.

lobby for regulations undermines the argument that regulations tend to benefit consumers, not firms.

In the absence of regulation of interconnection, for example, any substantial firm that wanted Telecom to lower its interconnection prices could achieve this goal by making Telecom or its shareholders an offer that was too good to refuse. The fact that they do not do so surely establishes that they are putting their shareholders' interests ahead of consumers' interests. While I would be amongst the last to criticise them for this, it simply makes the point that businesses that are lobbying for regulation are likely to be doing so primarily because it serves their shareholders' interests.

The Report asserts on page 2 that New Zealand is unique in not having industry-specific regulation, yet how else should the Kiwi share be interpreted? Moreover, on page 16, footnote 8, the Report observes that three other OECD countries do not have an independent telecommunications regulator.

In assessing New Zealand's current arrangements in section 3.7.1, the Report also mentions the time it took Telecom/Clear to achieve the first interconnection agreement and the time taken to achieve number portability. It asserts that existing arrangements have proven inadequate to resolve disputes quickly and effectively.

This discussion lacks any framework for analysis. In contrast, a property rights framework would immediately ask if a lack of clarity concerning property rights could explain the problem. Clearly antitrust legislation creates uncertainty as to the legality of a dominant incumbent's offer in a commercial negotiation. Both the dominant incumbent and a new entrant are required to get the best deal they can negotiate for their shareholders. Antitrust legislation gives the new entrant negotiating leverage. If it takes a commercial dispute under this legislation to the Court or regulator it can hope to get a better deal and can expect to do no worse. This bias is not mentioned in the Report.

*Such an analysis should have led the Report to conclude that difficulties in negotiating agreements are intrinsic to all antitrust legislation. Whereas voluntary exchanges proceed on*

*the basis of mutual advantage, mandatory exchanges create the likelihood of loss, acrimony, refusal to cooperate and litigation.*

Lacking any framework, the Report leaps instead to the conclusion that antitrust legislation is more desirable if it resolves disputes quickly. In the last paragraph in this section it equates speed with efficiency and relates delay to the degree of contentiousness. However, disputes could be determined very quickly by the throw of a dice or by other arbitration processes. There is no need for the apparatus of an industry-specific regulator and industry forum if speed is all that is required. In reality, a speedy decision is not necessarily a sound decision, nor would it necessarily be less contentious.

Moreover, both the Telecom/Clear case and the number portability case had a path-breaking characteristic that the Report does not mention. Because of the lack of clarity of property rights they both presented major problems.

Having put great emphasis on speed, section 3.7.1 fails to produce any evidence that negotiations over New Zealand's subsequent interconnection agreements are currently proving to be more troublesome or prolonged than those emanating from regimes with an industry-specific regulator. The Report gives the impression that the Australian arrangements are comparable to New Zealand's in relation to cost and time.

However, Dr Tony Warren of Networks Economic Consulting Group has commented that the Australian regime is "drowning" in disputes over access, reporting that "at last count, there were 20 ongoing access disputes before the commission, many of which do not even involve Telstra".<sup>11</sup> A publication by Telecom this year states that Australia has had 37 arbitrations in recent years and that 30 of them are still ongoing.<sup>12, 13</sup>

Perhaps the weakest aspect of the problem definition section of the Report is its failure to consider, other than in the most superficial way, how New Zealand has fared compared with the experience of other countries with different regimes. The minister of

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<sup>11</sup> *The Press*, 18 July 2000.

<sup>12</sup> P 28 *op cit*

<sup>13</sup> The Inquiry report on page 24 also notes the costs of the Australian regime.

communications has indicated to this conference the government's desire to see New Zealand lead the world in the uptake of new telecommunications and information technologies. Yet research by the Institute for the Study of Competition and Regulation (ISCR) has found that under the current regime New Zealand is at the forefront, in terms of uptake, on all surveyed measures bar one.<sup>14</sup>

Although the Report does not appear to cite such analyses, the chairman of the Inquiry acknowledged at this conference that there is plenty of evidence that New Zealand has done relatively well. In the next breath, however, he asserted that the Report was making a judgment about the future.

Yet, as already noted, John Small's paper to this conference has eloquently explained why experts cannot predict how the future will evolve under the status quo. We can also note that the Report provides no *realpolitik* analysis of how regulation is likely to evolve under its proposals.

*In short, this debate over the problem definition section of the Report appears to have got perilously close to the point where we must conclude that the efficacy of the extra regulations that it proposes are an article of faith. The future under the status quo cannot be predicted yet its advocates believe it will be worse than that under an industry-specific regulator.*

This key problem here is the lack of an adequate theory of information, and therefore of regulation.

## **6 The lack of a theory of regulation**

The Report contains no recognisable in-depth discussion of the information and incentive problems that arise under the type of regulation it is recommending.

Nor is there any recognisable analysis using public choice theory of how special interest groups might be able to exploit the proposed arrangements. The opportunities the

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<sup>14</sup> The exception is the number of secure ISP servers, but there are reasons why the United States might have an advantage in this area and it would be a challenge to make a case that the welfare of New Zealand consumers can be assessed by counting the number of ISP servers in New Zealand.

proposed forum and the disclosure requirements provide for collusion and capture are unexplored.

These glaring gaps are compounded by the absence of any recognisable comparative institutional analysis. It is not that the Report is profoundly unaware of all these difficulties and omissions. They lurk in its nooks and crannies, emerging from time to time to justify one decision rather than another, only to be ignored entirely in other places.

The discussion on pages 26-27 of regulatory creep illustrates their influence. Perhaps the Report's most promising proposal for guarding against regulatory creep is the recommendation for a sunset clause in the form of a review after six years. While such a clause is strongly to be commended, its existence creates some perverse incentives which are not noted in the Report. In particular, it creates an incentive for the commissioner to confer privileges on incumbents and politically influential classes of consumers at an earlier stage than might otherwise occur. The commissioner could then rely on these groups to argue for the preservation of the commissioner's office.

The puzzle about the absence of any sophisticated comparative analysis of the strengths and weaknesses of regulatory regimes in the Report is heightened by the fact that this approach was used intensively in the second half of the 1980s when New Zealand governments adopted the lighter-handed structure.

These remarks can be illustrated using the summary table on page 7 of the Report and the discussion in paragraphs 6, 12 and 13 of the CRNEC Report. The summary table simply assumes that the regulatory structure will achieve efficient prices. The CRNEC Report implicitly makes the same assumption by commenting in paragraph 6 that "carefully designed regulation is capable of promoting efficiency gains". Its failure to address the question of how regulation is likely to work out in practice given the problems of incentives and information that bedevil the *realpolitik* of regulation raises major questions. None of these problems is discussed under the heading of 'Costs of Regulation' on page 7 of the CRNEC report. Paragraph 13 simply assumes the existence of "... a well organised and well governed regulator [who] makes all decisions with care ...".

(As an aside, the argument in paragraph 13 that the costs of regulatory errors will be zero if the decisions are unbiased seems to be an error. Take the case of the regulator who regulates the interconnection price down to 1.5 cents per minute. If that price is below marginal cost there is a theoretical positive welfare loss to society. But the same applies if the price is above marginal cost. The *ex ante* expected value of two positive numbers is obviously itself positive, not zero.)

## **7 Implications for the government's objectives**

Direct regulation of prices must lead to regulation of quality.

A major danger with all price regulation is that it will lead to cost-plus behaviour with endless litigation over costs. Because price regulation has to have regard to costs it has to have regard to the cost of capital – that is, rates of return.

But rate of return regulation biases investment decisions. In particular, it is all too likely to give investors the impression that losses will fall with them while prices will be regulated down to remove any profits above the cost of capital.

Moreover, the effects will not be confined to those investing in currently designated services. All investors must consider what services might be designated in future.

These considerations make it unlikely that the proposed structure will lead to efficient prices or investment in infrastructure. The Report seems to be simply naïve in its lack of consideration of the *realpolitik* of regulation.

The Report, perhaps understandably, appears to interpret the government's objectives as requiring it to find a structure that permits cross-subsidies for privileged groups of users. However, this is likely to require the commissioner to find ways of forcing incumbents to fund these cross-subsidies. Realistically, this will have to be at the expense of other users. But this will simply induce competitors to use new technologies to 'cream-skim' the incumbents. The regulator will then be caught between a rock and a hard place. The political pressures to erect entry barriers to protect the incumbents are likely to be very strong. This could be done under such guises as 'preventing uneconomic duplication of services', 'guarding against first mover advantages',

'preventing predatory pricing or dumping', or 'stopping fly-by-night competition'. None of this is adequately discussed in the report.

What about the government's objective for timely and innovative services? The Report's relevant recommendations, as summarised on page 7, are clearly based on the hope that an industry-specific regulator and the industry forum will make timely and efficient decisions. If only.

- Dr Justus Haucap has reported from Germany that industry-specific regulation in Europe "is rapidly earning a reputation for preventing or delaying the introduction of price reductions and new services".<sup>15</sup> He observes that:
  - Deutsche Telekom was denied a price reduction for some international toll calls in October 1999 by a German regulator on the grounds that they would harm competitors;
  - France Telecom's regulator had reserved the right to refuse to allow it to invest in ADSL because it might obtain a 'first mover' advantage;
  - British Telecom's regulator objected to its proposal in December 1999 for a flat rate option for Internet access on the grounds that the proposal might be anti-competitive; and
  - early this year the European Commission issued a warning to incumbent telecommunication companies in Germany, Spain and Italy because it deemed their monthly line rentals were too low.
- A study cited by the NZIER estimated that \$1.27 billion a year is lost in Australia from regulatory delays in introducing voice messaging and up to \$50 billion in delays in the allocation of cellular phone frequencies.<sup>16</sup>

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<sup>15</sup> *National Business Review*, 14 July 2000.

<sup>16</sup> Telecom, *Springboard to Success*, at page 28, citing Hausman.

- Dr Warren has also expressed the view that Australia is not seeing competition for copper wire because of the low prices the Australian regulator is setting for copper wire.
- Vodafone told the Inquiry that its proposed approach was likely to impede the adoption of new technology in New Zealand.<sup>17</sup>

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<sup>17</sup> Paragraph 3.4.8, page 23. See also paras 3.2.2 to 3.2.4.

## **8 Concluding comment**

The case for heavier, industry-specific regulation of telecommunications is much weaker today than it was in the late 1980s when the relative merits of alternative regulatory regimes were intensively analysed. The competitive pressures on Telecom that were then largely anticipated are now manifest.

No regulatory regime is ever likely to be wholly satisfactory, but the choice between them cannot properly be made by focusing on the weaknesses of one regime and contrasting them with a regime which effectively assumes a perfect regulator. The Report seems to amply illustrate the wisdom of the following assessment by *The Economist*:

The biggest economic-policy mistake of the past 50 years, in rich and poor countries alike, has been and still is to expect too much of government. Statism has always found all the support it needs among mainstream economists. They are unfailingly quick to point out various species of market failure: they are usually much slower to ask whether the supposed remedy of government intervention might not, in practice, be worse.<sup>18</sup>

The Report's proposals for 'ex ante' regulation allow an incumbent to be regulated without rigorous proof of wrongdoing. Appendix 6 of the Report raises the issue of an essential facility. Where a private owner has a facility that must be taken in the public interest there is a tradition going back to Magna Carta and beyond that due compensation be paid to the rightful owner. The Public Works Act 1960 was most emphatic in this regard, but the principle is found in several other important pieces of legislation. Oregon voters have just passed a measure called Measure 7 that requires payment to land owners when Oregon regulations cause property values to decline.

Telecom was sold subject to rules that permitted it to compete aggressively, but not to abuse a dominant position. Proof of abuse had to be given subject to due process. To change the rules after that sale and to propose an 'evolutionary' approach to redefining the coverage of the Kiwi share is arguably a partial confiscation of Telecom's property rights. Furthermore, there is evidence that Telecom's share price has declined relative

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<sup>18</sup> "The puzzling failure of economics", *The Economist*, August 23 1997, page 13.

to Telstra's share price during the period of the Inquiry. It is puzzling that the Report did not discuss the issue of compensation for regulatory takings in assessing the possible implications of its regulatory proposals for dynamic efficiency.

Policy analysts will note two paradoxes. One is that public policy is seemingly so concerned about the issue of monopoly in this very competitive industry when it is so unconcerned about monopoly in such areas as health, education, accident compensation, trade unions and producer boards. A second is the ease with which governments can be simultaneously concerned to regulate against collusion by business and to regulate for industry consultation and coordination. Does the left hand know what the right hand is doing? The following words by Adam Smith seem as apt today as when first written:

People of the same trade seldom meet together, even for merriment or diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.<sup>19</sup>

Lest economists and businesses feel that they are being unfairly singled out by this accusation, I hasten to add Adam Smith's opinion of those who would regulate private affairs:

The statesman, who should attempt to direct private people in what manner they ought to employ their capitals, would not only load himself with a most unnecessary attention, but assume an authority which could be safely trusted, not only to no single person, but to no council or senate whatever, and which would no-where be so dangerous as in the hands of a man who had folly and presumption enough to fancy himself fit to exercise it.<sup>20</sup>

In conclusion, a plausible case can be made that that the Report's proposals will lead to a more politicised and acrimonious industry with greater delays, higher costs, more rent-seeking and reduced investment in regulated infrastructure than is likely to occur under current arrangements.

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<sup>19</sup> Adam Smith, *Wealth of Nations*, 1776, Bk 1, Ch. 10, pt 2.

<sup>20</sup> Adam Smith, *Wealth of Nations*, 1776, Vol 1, Bk 4, "Of systems of political economy", Ch 2.