# 14 Communications

The Australian communications sector is undergoing rapid change, driven mainly by the fast pace of technological development and innovation. It is important to Australia's overall competitiveness that the sector adapts to the pressures for change. Government policies and regulations have the potential to significantly affect the pace of adaptation to the new technologies and market possibilities.

The Commonwealth Government has significant legislative responsibilities for communications. Legislation being reviewed under the National Competition Policy (NCP) includes:

- the *Broadcasting Services Act 1992*;
- the *Radiocommunications Act 1992*; and
- the *Australian Postal Corporation Act 1989*.

The Commonwealth-owned Australia Post and the part-owned Telstra are significant operators in communications markets, and the Commonwealth has been considering a range of regulatory issues relating to these enterprises. The Commonwealth is considering, for example, whether Telstra's internal accounting arrangements are conducive to competition in telecommunications. The Minister for Communications, Information Technology and the Arts announced in April 2002 that there will be an accounting separation of the wholesale and retail arms of Telstra. The details of this separation have not yet been announced (Alston 2002).

The Commonwealth Government has commissioned several inquiries in recent years that considered the impact of legislative and regulatory restrictions on competition in the communications sector. In March 1999, the Treasurer commissioned the Productivity Commission to advise on how to 'improve competition, efficiency and the interests of consumers in broadcasting services' (PC 2000a, p. IV). The Productivity Commission presented its broadcasting inquiry report to the Government in March 2000. The Government publicly released the report in April 2000, but has not announced its response.

In June 2000, the Treasurer requested the Productivity Commission to prepare an inquiry report into telecommunications competition regulation, with particular reference to parts XIB and XIC of the *Trade Practices Act 1974* and certain provisions of the *Telecommunications Act 1997*. The Productivity Commission was requested to assess whether these provisions in the two Acts prevent integrated telecommunications companies (such as Telstra) using their market strength to reduce competition, or whether alternative arrangements are necessary.

In January 2001, the Assistant Treasurer requested that the Productivity Commission, in undertaking the review, 'specifically consider the implications of current pay television programming arrangements for the development of telecommunications competition in regional Australia, and consider whether additional regulatory measures are needed to facilitate access to pay television programming' (PC 2001b, p. V). The Productivity Commission provided its inquiry report to the Government in September 2001. The Government released the report on 21 December 2001 and the Minister for Communications, Information Technology and the Arts announced the Commonwealth's initial response to this review on 24 April 2002.

In July 2001, the Assistant Treasurer referred legislation on radiocommunications to the Productivity Commission for inquiry and report by July 2002. The Productivity Commission was requested to focus on those parts of the legislation that restrict competition or that impose costs/confer benefits on business. The Productivity Commission is to report on appropriate arrangements for spectrum management.

On 19 December 2001, the Minister for Communications, Information Technology and the Arts released an issues paper and called for submissions to a Government review on datacasting services, as specified in schedule 6 of the Broadcasting Services Act. The Minister's media release (Alston 2001) stated that the purpose of the review 'is to ensure that the legislative framework for datacasting services provides the maximum scope for development of new and innovative digital services while maintaining the moratorium on new commercial television licences' (until the end of 2006). The inquiry report was under way at the time of the NCP assessment and is expected to be finished during 2002. It must be tabled in Parliament within 15 sitting days of its provision to the Government.

# Legislation restricting competition

## Broadcasting Services Act 1992

The Commonwealth Government is responsible for the regulation of broadcasting in Australia. The Broadcasting Services Act, which is the regulatory legislation, specifically mentions radio and television services in defining its objectives (s. 3a). Technological change, however, is likely to expand greatly the range of broadcasting services being regulated.

The *Television Broadcasting Services (Digital Conversion) Act 1998* added major new provisions to the Broadcasting Services Act. These provisions set the framework for the conversion of television services from analogue to digital format, and for the regulation of these services and other potential services provided via the digital spectrum.

The Council noted in the 1999 NCP assessment that legislative prohibitions on new commercial broadcasters and the use of digital channels worked against the objective of maximising viewer choice and product diversity. At the same time, the prohibitions were not obviously required to ensure the timely adoption of digital television, maximise the use of existing infrastructure or minimise disruption to consumers.

## Productivity Commission and departmental inquiries

The Productivity Commission reviewed the Broadcasting Services Act and the Government released its final inquiry report in April 2000 (PC 2000a).

The Productivity Commission inquiry raised significant questions about the legislation and made extensive recommendations for change. The inquiry report argues that:

> *Broadcasting policy has been, and continues to be, characterised by highly prescriptive regulation. Such an approach was taken to the introduction of subscription television. More recent legislation on the introduction of digital television mandates specific television formats and services.*
>
> *This approach reflects a history of political, technical, industrial, economic and social consequences. This legacy of* quid pro quos *has created a policy framework which is inward-looking, anticompetitive and restrictive ...*
>
> *Technological change has ramifications for many areas of media regulation — access to spectrum, the definition of digital television services, ownership and control, and content regulation. With the increasing pace of technological change in media and communications, the means for achieving the community's policy objectives must also change.* (PC 2000a, pp. 5–6)

The report highlights the important barriers to entry that are established in the Broadcasting Services Act: the ban on new commercial television broadcasting licences until 31 December 2006, and the limitations on the release of broadcasting spectrum (PC 2000a, p. 314).

Further, the Productivity Commission expressed its concerns that the Government's digital conversion policy will not enable consumers to take full advantage of this technology, which has the potential to facilitate greatly increased choice and quality for television viewers. The policy provided each free-to-air television station with an extra channel (without charge), to convert from analogue to digital transmission, and protected the channels from additional competition until the end of 2006. 'Datacasting' was created, involving further regulations; sport cannot be datacast, for example, even though this would be a low cost method of transmission. Restrictions also relate to genres of programs, duration and timing of material, and mode of

presentation. Subject to a review by 1 January 2005, multichannelling by free-to-air stations is prohibited, reflecting concerns about protecting subscription television broadcasters. The Government made a full digital channel available to free-to-air stations, leaving little spectrum available to potential new broadcasters wishing to offer a digital product (PC 2000a, pp 9-15 and 256).

Reflecting these restrictions, few Australians have taken up digital television. The Productivity Commission expressed its concern that the digital conversion plan could fail unless substantially changed. It commented that:

> *Regulatory restrictions on datacasting, multichannelling, and interactive services will be costly to Australian consumers and businesses alike. They will delay consumer adoption of digital technology and deprive business of opportunities to develop new products and services for the world as well as Australian markets. They could have a particularly severe effect on regional consumers who have limited access to other broadband digital platforms.* (PC 2000a, p. 15)

The Productivity Commission recommended that:

> *Broadcasting policy must be reformed quickly to deal with the new competitive dynamics.*
>
> *As an initial step, fundamental reform is needed to make better use of the broadcasting spectrum ('the airwaves'). The spectrum should be priced and allocated as a scarce resource ... Access to spectrum should be separated from broadcasting licences. Broadcasters should be able to provide their services using whichever platform (over the air, cable or satellite) is most efficient ... Pricing spectrum would encourage broadcasters to use it more efficiently. Broadcasting licence fees should be replaced by spectrum access fees ...*
>
> *Anticompetitive legislation should be removed, including restrictions on the entry of new television stations, foreign investment, pay television advertising and sports broadcasting, and Australian quotas for advertisements.* (PC 2000a, pp. 2–3)

Among the most important concerns identified by the inquiry is that scarce spectrum should be allocated to its most highly valued uses. Existing arrangements that do not require incumbent television networks to bid for spectrum cannot guarantee this outcome. Similarly, mandating the 'simulcasting' of high definition television may not be consistent with consumer preferences.

The Productivity Commission inquiry report recommended that datacasting services be defined as digital broadcasting services to facilitate consumers' adoption of digital television. It also recommended that multichannelling and the provision of interactive services by commercial and national broadcasters be permitted.

The Commonwealth is yet to respond fully to the Productivity Commission inquiry into broadcasting, so has not addressed its NCP obligations in this area. The Government has begun the process of responding to aspects of the report — the Minister for Communications, Information Technology and the Arts announced on 5 August 2002 a review of the roles of the Australian Broadcasting Authority and the Australian Communications Authority. This review will focus on, but not be limited to, arrangements for the management of broadcasting and telecommunications spectrum.

The datacasting inquiry, announced by the Commonwealth in December 2001, is being conducted by the Department of Communications, Information Technology and the Arts. The department released an issues paper when the inquiry was announced. In discussing possible options for change, the issues paper suggested some liberalisation of the genre rules, case-by-case decisions by the Australian Broadcasting Authority on whether a datacast would fall within the definition of a commercial television broadcast, allowing datacasters to offer interactive services only, and allowing datacasters to offer narrowcasting services (services to specific groups). The issues paper suggests that the inquiry has quite a narrow focus and thus may not make recommendations that would have a potentially significant impact on competition. The department is expected to finalise the datacasting report in 2002, and the Government is required to release it within 15 sitting days of receiving it.

## Radiocommunications Act 1992

The Radiocommunications Act is the key legislation governing the use of the radiofrequency spectrum. Its primary objective is to maximise the public benefit from using the spectrum by ensuring its efficient and equitable allocation. Other objectives include making adequate provision for using the spectrum for public and community services and encouraging the use of efficient technologies to provide a wide range of services.

The Act implements these objectives by providing for:

- the preparation of spectrum plans by the Australian Communications Authority, setting out which parts of the spectrum are to be available for which purposes;

- the issue and trade of spectrum licences (authorising the use of transmitters/receivers on a given part of the spectrum) and their resumption by the Australian Communications Authority;

- the issue of apparatus licences to operate transmitters and/or receivers on parts of the spectrum not allocated for the issue of spectrum licences;

- the issue of class licences for specific purposes; and

- the reallocation of parts of the spectrum.

## Productivity Commission inquiry

The Commonwealth commenced a review of the Radiocommunications Act in 1997, but did not examine the NCP aspects of the legislation. Subsequently, the Productivity Commission commenced a review of the Act in July 2001, receiving terms of reference (from the Assistant Treasurer) that focused on those parts of the legislation that restrict competition, or that impose costs/confer benefits on business. The terms of reference required the Productivity Commission to report on appropriate arrangements for spectrum management, accounting for the Competition Principles Agreement (CPA) principle that legislation that restricts competition should be retained only if the benefits to the community as a whole outweigh the costs, and if the objectives of the legislation can be achieved only by restricting competition.

In its draft inquiry report released in February 2002, the Productivity Commission commented that:

> *Radiofrequency spectrum is a vital input to modern communications. The potential for interference creates a role for government in managing spectrum – but regulation risks stifling innovation and impairing the efficient allocation of resources. Market-based solutions based on property rights offer potential for better outcomes.* (PC 2002b, p. XXXII)

The draft report makes several recommendations, including that:

- spectrum licensing is working quite well, but could be improved by better conversion mechanisms, the sale of encumbered spectrum as a going concern, and licensing of 'fallow spectrum';
- 'public interest' tests for renewing licences should not apply to new licences;
- spectrum licences should be re-assigned using market based mechanisms three years before expiry; and
- all spectrum should be subject to the same rules. (PC 2002b, p. XXXII)

The Productivity Commission signed the final report on 1 July 2002 and forwarded it to the Government, which is required to release it publicly (by tabling it in Parliament) within 25 parliamentary sitting days of its receipt.

# Australian Postal Corporation Act 1989

Despite the rapid pace of technological change and the concomitant growth of alternative means of communication, postal services remain important to the communications needs of Australians. Australia Post remains a dominant player in the postal services and parcel delivery market, with a legislated monopoly in the provision of certain services.

The Australian Postal Corporation Act establishes Australia Post as a legislated corporation. It guarantees an Australia-wide postal service, known as the universal service. It also requires Australia Post to provide this universal service at a uniform price, whether a letter is sent from interstate or around the corner in a capital city. This is the so-called universal service obligation.

To ensure Australia Post can fulfil the universal service, the Act gives Australia Post an exclusive right to provide some postal services (reserved services). Without the risk of losing market share from competitors, therefore, Australia Post can use the protected profitable services to subsidise the services that the Commonwealth requires it to provide. Such reserved services and cross-subsidies are possible areas of reform to increase competition.

The postal services sector is considerably broader than Australia Post. A range of other operators offer services such as express delivery, parcel services and unaddressed mail delivery. Any competition reforms to the Australian Postal Corporation Act would be likely to result in additional players (and benefits for consumers) in deregulated areas of the market, because existing and potential players would wish to increase their role in this industry.

The Act restricts competition by reserving certain postal services to Australia Post. With a few exceptions, only Australia Post can carry a letter for less than $1.80 if it weighs less than 250 grams. In addition, only Australia Post can deliver international mail in Australia.

## Regulating in the public interest

Providing a universal postal service at a reasonable cost is the main objective of the Government's legislation. Further, postal services fulfil an important and growing role in business, where innovation and flexibility may be more important than for households. Nevertheless, any reforms that lower the cost of postal services for households as well as for businesses would enhance consumer welfare and the general efficiency of the economy.

The Commonwealth is likely to require any reforms to be made in the context of maintaining the universal service obligation. That service clearly has a community service obligation feature because the real cost of delivering letters to most regional parts of Australia would be greater than the uniform price. It would be preferable for any such community service obligations to be clearly defined in legislation, and transparently funded and reported. There is some uncertainty about some of the community service obligations that Australia Post delivers, including uncertainty about whether the services are required, and about the extent and source of their funding. Reforms should allow Australia Post to meet defined social contributions and, at the same time, benefit consumers of postal services by encouraging growth in competing firms.

## National Competition Council review

On 19 May 1997, the Commonwealth requested that the National Competition Council review the Australian Postal Corporation Act and report on the legislation's restrictions on competition. The terms of reference for the review required the Council to consider the Government's commitments to maintain Australia Post in full public ownership and to provide a standard letter service to all Australians at a uniform price.

The Council recommended a package of reforms, including:

- that Australia Post retain the obligation to provide an Australia-wide letter service, with the unprofitable parts of this obligation treated as a community service obligation funded directly from the Budget;
- that household letter services remain reserved for Australia Post, with a mandated uniform rate of postage;
- that business letter services be opened to competition, with Australia Post free to discount against a maximum charge set at the same level as the uniform rate for household letters; and
- that all international mail services be opened to competition.

These recommendations were aimed at:

- maintaining and, where appropriate, enhancing the social obligation of Australia Post to provide a mail service that is reasonably accessible to all Australians;
- maximising the contribution of Australia Post to the Australian community; and
- facilitating the emergence and growth of competing firms in the postal services industry in the interests of the Australian community.

## Reform activity

The Commonwealth Government announced its response in July 1998. The key changes included:

- reducing the protection afforded to Australia Post's monopoly from 250 grams and four times the standard letter rate to 50 grams and one times the standard letter rate;
- removing incoming international mail from the monopoly;
- establishing a regime to provide third party access to Australia Post's network services; and

- converting Australia Post from a statutory corporation to a corporations law company.

The Commonwealth also announced that Australia Post would continue to fund its community service obligations from cross-subsidies and that the uniform rate would remain at 45 cents until at least 2003. While the Commonwealth's proposals differed from those recommended by the Council, both approaches were aimed at increasing competition in the provision of mail services while maintaining Australia Post's universal service obligation and the uniform letter rate.

When the Commonwealth announced its reform proposals for Australia Post, it intended to introduce them into Parliament by the end of 1998, with the reforms to be implemented from 1 July 2000. It did not introduce the amending Bill into the Parliament, however, until the autumn session in 2000. The Senate Environment, Communications, Information Technology and the Arts Legislation Committee examined the Bill, reporting on 5 June 2000.

The Government withdrew the Bill on 29 March 2001. As a result, the Government no longer has a response to the NCP review of the restrictions on postal services. Given that the NCP review found Australia Post could fulfil its social obligations with a less restrictive regime, compliance with CPA clause 5 requires the Government to provide a reform package that removes unjustified restrictions on the provision of postal services.

# Competitive neutrality matters

Competitive neutrality measures, which all governments have adopted, seek to ensure significant government-owned businesses do not have an advantage over their private competitors simply as a result of their public ownership. Competitive neutrality ensures significant government businesses face the same taxes, incentives and regulations as those facing private competitors and that prices for their goods and services reflect the full cost of supply. Private companies that believe government-owned competitors are not applying appropriate competitive neutrality principles can raise a complaint with the competitive neutrality complaints body in their jurisdiction.

On 18 February 2000, the Conference of Asia Pacific Express Carriers lodged a competitive neutrality complaint against Australia Post with the Commonwealth Competitive Neutrality Complaints Office (CCNCO). It claimed that Australia Post enjoys an advantage in competing for business because it receives preferential treatment from Customs with respect to screening charges. In particular, it argued that Australia Post is advantaged by:

- higher thresholds for incoming and outgoing postal items before formal Customs screening requirements take effect; and

- exemption for postal items from recently introduced reporting and cost recovery charges for high volume, low value consignments.

The CCNCO (2000) investigated the complaint and recommended that:

- the value thresholds for formal Customs screening of incoming and outgoing mail be aligned for postal and nonpostal articles;
- the Government consider the feasibility of imposing cost recovery charges for informal Customs screening of incoming postal items; and
- the Government address concerns about charges for nonpostal items in high-volume, low-value consignments be addressed as part of the broader issue of whether Australia Post should pay cost recovery charges for informal screening of incoming postal consignments.

The Council's 1998 report on Australia Post raised the issue of differential Customs treatment. The Council recommended that the *Customs Act 1901* be amended so all postal operators are subject to a threshold of the same value. The Government introduced the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001*, which provides a modern legal framework for Customs' management of import and export cargo. The Government proposes to harmonise the value thresholds for both incoming and postal items on 1 July 2002 and for incoming postal items in March 2004.

The Minister for Customs has agreed in principle to the CCNCO's second and third recommendations. The imposition of cost recovery charges on Australia Post would require legislative change to the *Customs Act 1901* and the *Import Processing Charges Act 1997*. The Australian Customs Office is consulting with the Department of Communications, Information Technology and the Arts on this matter.

# NCP obligations relating to Telstra

Telstra supplied Australia's telecommunications services as a public monopoly until 1991, when the Commonwealth Government introduced changes that ended Telstra's monopoly provision of telecommunications carriage services.[1] The Government accorded Optus a second fixed network carrier's licence, and Optus and Vodafone were given carrier licences to compete with Telstra in seeking mobile phone business.

The Telecommunications Act resulted in the introduction of full competition in carriage services, and the number of suppliers of telecommunications has

[1] Carriage service operators rent space on the networks and supply services to the public via these networks.

since burgeoned (with more than 60 licensed carriers at the end of 2000). Telstra is the still dominant player in the Australian telecommunications industry, however, a result of its huge and pervasive network of communications lines throughout Australia that has been established over many years, and its associated 'incumbency' in the eyes of many customers. The Australian Competition and Consumer Commission's (ACCC's) submission to the Productivity Commission's inquiry into telecommunications competition regulation commented on the characteristics of the Australian market and Telstra, noting:

> *... the overwhelming dominance in the national market, and almost every segment of that market, of a single, vertically integrated incumbent. This dominance creates the potential and the fact of extensive market power in the most basic carriage services as well as a range of enhanced services. Telstra's ubiquitous network and integrated nature ensure that even when other firms operate with it in the delivery of retail services, they rely on interconnection to its network in almost every circumstance. These circumstances are not matched to anywhere near the same extent in any other network industry.* (ACCC 2000, p. 6)

In its final inquiry report, which was released by the Treasurer on 21 December 2001, the Productivity Commission commented that:

> *As the original incumbent, Telstra is still very much the largest operator in the industry, accounting for around two-thirds of telecommunications services revenue ...*
>
> *Effective competition is less well developed in:*
>
> - *Local access services — Telstra's ubiquitous copper local loop is still overwhelmingly the dominant customer access network in Australia ... At June 2001, Telstra accounted for around 95 per cent of local access services*
>
> - *Local telephony services — Telstra accounts for around 81 per cent of retail telephony revenue and 83 per cent of retail local services ... Sustainable service-based competition in local telephony is dependent on Telstra's local call wholesale service provided to competitors, as well as its access price for the unconditioned local loop service ...*
>
> *Overall, while the existing state of competition is much greater than some years ago, this partly reflects the impact of the competition regulations that are in place. In the absence of any regulatory oversight, it is likely that competition would be weakened significantly* ... (PC 2001b, pp. 83 and 99).

The Productivity Commission report argued that regulation in the telecommunications industry is required because carriers need access to Telstra's local loop to offer call origination and termination services to their

customers, with the local network tending to be a natural monopoly as a result of the magnitude of construction costs. As well, Telstra's prior status as the monopoly provider means that it dominates the access network and subscriber numbers. The Productivity Commission recommended that the ACCC continue to oversee telecommunications competition and that access arrangements apply only to core telecommunications services (PC 2001b, 'Overview').

## CPA clause 4 obligations relating to Telstra

Legislation in 1997 and 1999 provided for the part privatisation of Telstra, and the company is now 49.9 per cent privately owned. The part privatisation raised a commitment under clause 4 of the CPA for the Commonwealth to review, *inter alia*, 'the merits of separating any natural monopoly elements from potentially competitive elements of the public monopoly'.

In the 1997 NCP assessment, the Council noted that the Commonwealth believed related reviews before the part privatisation satisfied its clause 4 obligations. The Commonwealth indicated that it preferred to prohibit anticompetitive conduct and to facilitate third party access to services via the use of telecommunications-specific parts of the TPA (parts XIB and XIC respectively) rather than to pursue the structural separation of Telstra's fixed local network.

The Council also noted that further changes to the regulatory regime governing Telstra had been proposed in the Telstra (Transition to Full Private Ownership) Bill 1998. Moreover, the ACCC had established a telecommunications working group with industry representatives to review Telstra's accounting and cost allocation arrangements, to help develop an accounting separation model for Telstra. The Telstra (Transition to Full Private Ownership) Bill has not proceeded, so its further limitations on anticompetitive behaviour by Telstra — limitations that the Council had indicated would considerably address the Commonwealth's responsibilities under CPA clause 4 — have not come into effect. The ACCC, however, released draft record-keeping rules in June 2000, with final record-keeping rules coming into effect in May 2001.

In 1999, the Council commissioned work by the economic consultants, Tasman Asia Pacific, which was published in the 1999 NCP assessment. Tasman found that record-keeping rules would allow the ACCC to assess anticompetitive behaviour by carriers and carriage service operators, and would comprise a necessary first step to establishing a broader ring-fencing framework. Tasman concluded, however, that a ring-fencing regime would not remove the sources of Telstra's market power and therefore the incentive for it to engage in anticompetitive behaviour. Tasman argued that the advantages of structural separation of the natural monopoly elements from the competitive elements of the telecommunications system would exceed the costs.

The Productivity Commission reviewed telecommunications-specific parts of the TPA (parts XIB and XIC), on which the Commonwealth has largely relied to constrain Telstra's conduct in relation to market competitors (PC 2001b). As noted above, the Productivity Commission's final report argued that regulation is required in response to Telstra's dominance of the local loop, the natural barrier to entry of network construction costs, and Telstra's historical relationship with most Australian phone users. The Productivity Commission recommended:

- legislating the criteria for regulatory pricing decisions;
- allowing a group of access seekers to resolve their access price arrangements with an access provider simultaneously; and
- preventing access price structures from allowing a vertically integrated access provider to set terms and conditions that discriminate in favour of its downstream operations.

The Productivity Commission also recommended that the ACCC be required to report publicly every year on the state of competition in the pay television and related telecommunications markets, and to investigate and report on instances where networks (proposed and new) have difficulty accessing content and pay television services. The Productivity Commission also found that problems in other sectors can have adverse effects on telecommunications (for example, pole access pricing by power utilities). It argued that access arrangements across industries should be consistent.

## Analysis of CPA clause 4 compliance

The Productivity Commission's final report finding on the link between Telstra's ability to maintain market power and its ownership of the fixed network emphasises the importance to telecommunications of appropriately addressing the structure of Telstra. The terms of reference for the inquiry required the Productivity Commission to report on the community and economic benefits and costs flowing from parts XIB and XIC of the Trade Practices Act and certain provisions of the Telecommunications Act. The Productivity Commission also was required to report on whether these legislative provisions:

> *… are sufficient to prevent integrated firms taking advantage of their market power with the purpose or effect of substantially lessening competition in a telecommunications market, or whether alternative arrangements are required or appropriate.* (PC 2001b, p. V)

While this term of reference appears broadly consistent with the underlying requirements of CPA clause 4, term of reference 5(c) specifically prevented the Productivity Commission from considering the structural separation of Telstra. This limitation on the scope of the inquiry prevented the Productivity Commission from considering the option in CPA clause 4(3)(b) of facilitating

competition in telecommunications by separating the natural monopoly and competitive elements of Telstra's business.

The Council acknowledges that the part privatisation means that shareholders have invested in Telstra on the basis of its ownership of the integrated local network. Achieving a competitive telecommunications industry capable of delivering substantial benefits to consumers suggests, however, that the Government should further consider the structure of Telstra, including the option of structural separation of the fixed network.

On 24 April 2002, the Minister for Communications, Information Technology and the Arts announced the Commonwealth's initial response to the Productivity Commission's report on telecommunications competition regulation. He stated that the Commonwealth will:

- retain the telecommunications-specific regulatory regime;

- require that the ACCC publish benchmark terms and conditions (including prices) of access to core telecommunications services;

- remove the rights of 'merits review' in relation to access arbitrations. This means that Telstra will no longer be able to appeal to the Australian Competition Tribunal on the ACCC's access arbitration decisions. This measure, which is contrary to the Productivity Commission's recommendation, is a response to the view of some communications commentators that the appeal process has enabled the dominant player in the industry to slow the entry of other companies to the industry. The Commonwealth notes that companies seeking access to Telstra's infrastructure have experienced difficulty raising or committing capital because of the possibility of not gaining access and long delays in resolving access disputes; and

- implement accounting separation of Telstra's wholesale and retail operations to encourage a 'more transparent regulatory market'. The Government will decide the precise nature and extent of this accounting separation after discussions among the Government and Telstra and the wider industry. (Alston 2002)

The Commonwealth is faced with a range of complex issues. It is apparent that changes are occurring in important regulatory and possibly structural aspects of the telecommunications industry. The Council will monitor these changes in terms of adherence to the NCP.

**Table 14.1:** Review and reform of legislation regulating communications

| *Jurisdiction* | *Legislation* | *Key restrictions* | *Review activity* | *Reform activity* | *Assessment* |
|---|---|---|---|---|---|
| Commonwealth | *Broadcasting Services Act 1992* (including *Television Broadcasting Services [Digital Conversion] Act 1998*)<br>*Broadcasting Services (Transitional Provisions and Consequential Amendment) Act 1992*<br>*Radio Licence Fees Act 1964*<br>*Television Licence Fee Act 1964* | Licensing, entry, ownership, conduct | Review by Productivity Commission was completed in March 2000 and released in April 2000. Public consultation involved public release of an issues paper, a draft report, consultation, public hearings and receipt of submissions. Review raised significant questions and made extensive recommendations for reform, including:<br>• that licences granting access to spectrum should be separated from content related licences that grant permission to broadcast;<br>• that spectrum for new broadcasters should be sold competitively;<br>• that licence fees for existing commercial radio and television broadcasters should be converted to fees that reflect the opportunity cost of the spectrum; and<br>• that multichannelling and the provision of interactive services by commercial and national broadcasters be permitted. | The Government announced a review of the roles of the Australian Communications Authority and Australian Broadcasting Authority on 5 August 2002 (with a focus on arrangements for the management of broadcasting and telecommunications spectrum). | Council to finalise assessment in 2003. |

(*continued*)

**Table 14.1** continued

| *Jurisdiction* | *Legislation* | *Key restrictions* | *Review activity* | *Reform activity* | *Assessment* |
|---|---|---|---|---|---|
| Commonwealth | Telecommunications competition regulation (parts XIB and XIC of the *Trade Practices Act 1974)* | | Review by the Productivity Commission was released by the Government in December 2001, arguing that telecommunications regulation is necessary because carriers need access to Telstra's ubiquitous 'local loop' and its historical dominance of the customer base. Review also argued for an access regime. | On 24 April 2002, the Minister for Communications, Information Technology and the Arts announced the Government's initial response to the report, including:<br>• retaining the telecommunications-specific regulatory regime;<br>• requiring the ACCC to publish benchmark terms and conditions, as well as prices, of access to core telecommunications services;<br>• removing 'merits review' rights so Telstra cannot appeal to the Australian Competition Tribunal on the ACCC's access arbitrations; and<br>• implementing accounting separation of Telstra's wholesale and retail operations. | Council to finalise assessment in 2003. |

(*continued*)

**Table 14.1** continued

| *Jurisdiction* | *Legislation* | *Key restrictions* | *Review activity* | *Reform activity* | *Assessment* |
|---|---|---|---|---|---|
| Commonwealth | *Radiocommunications Act 1992* and related Acts | Licensing, spectrum allocation | A review commenced in 1997 but NCP aspects of the review were not completed. The Productivity Commission commenced a review of the Act and related Acts in July 2001. The review was completed on 1 July 2002 (to be released by the Government within 25 sitting days of its receipt). | The Government has not yet released the Productivity Commission's report. | Council to finalise assessment in 2003. |
| Commonwealth | *Australian Postal Corporation Act 1989* | Legislated monopoly for Australia Post for activities including letter delivery and inward international mail | Review was completed in 1998, recommending reserving only household mail to Australia Post. | Amendment Bill (reducing Australia Post monopoly protection from four times the standard letter rate to one times the standard letter rate, and the weight restriction from 250 grams to 50 grams; removing incoming international mail from the monopoly and establishing an access regime) was withdrawn. The Government has made no further response to the review. | Council to finalise assessment in 2003. |