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Negotiating Group on Basic Telecommunications

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Response to Questionnaire on Basic Telecommunications

The attached communication is circulated at the request of Australia to Members of the Negotiating Group on Basic Telecommunications.

PART I

Definition and Market Structure

Definition

1. Australian telecommunications law does not explicitly define basic telecommunications (See answer to question 2).

The Telecommunications Act 1991 defines and uses the concept of Basic Carriage Service (BCS). The BCS concept is a functional description of basic connectivity and carriage services - as delivered to the consumer - on which all commercial telecommunications services are built. The Act defines all services that are not basic carriage services as higher level services (HLS).

The current regulatory framework does not exclusively reserve any services, including BCS, to the licensed carriers, Telstra, Optus and Vodafone. There are no restrictions on who may supply public switched, semi-dedicated and dedicated services, including intelligent network services.

2. Under the Telecommunications Act 1991, licensed general carriers (currently Telstra and Optus) have exclusive rights to install and maintain reserved line links and to be primary suppliers of satellite services. Licensed mobile carriers (currently Telstra, Optus and Vodafone) have exclusive rights to be primary suppliers of cellular mobile services.

A reserved line link is a wire, cable, optical fibre, tube, conduit, waveguide or other medium for carrying communications by electromagnetic energy between distinct places. Places are distinct unless they are on the same property or are contiguous properties with the same principal use. Exceptions are made in the case of private lines for transport authorities (railways, airports, etc.), electricity supply authorities, defence organizations, local/regional Government authorities.

The provision of all types of telecommunications services is open to competition. Service suppliers can compete with Telstra, Optus (and Vodafone in the case of mobile services) - and are subject to minimal regulatory controls provided they comply with the terms and conditions of the Service Providers Class Licence (for domestic services) and the International Service Providers Class Licence (for international services).

3. No.

Market structure

4. All areas of the telecommunications sector are open to competition. Until 1997, the Government has chosen to license two general carriers (to provide line links including satellite services) and three public mobile telecommunications carriers (to be the primary suppliers of cellular mobile services).

5. No basic telecommunications services are reserved to monopoly or exclusive suppliers in Australia. The two general licensed carriers, Telstra and Optus, have national licences to install and maintain certain telecommunications facilities - reserved line links - and to be the primary suppliers of satellite services. The general carriers also have the right to be the only providers of cable TV related infrastructure that is also used for voice telephony. The three licensed cellular mobile carriers (Telstra, Optus and Vodafone) have the right, by virtue of their licences, to be the primary suppliers of cellular mobile services. Telstra is a Government-owned company, subject to Australian corporations law. Optus and Vodafone are privately owned companies subject to Australian corporations law.

6. Yes. The Government's policy is that there should be strong Australian ownership participation in the telecommunications carriers. This does not prevent foreign equity participation. Share holdings in Optus are held by Cable and Wireless and Bell South. Vodafone is presently 100 per cent foreign owned but is required by its licence to achieve majority Australian ownership (at least 50 per cent or more) by 2003.

7. Not applicable - competition is permitted.

8. Australia is a member of the International Telecommunications Union (ITU) and, as such, is a signatory to the new ITU Constitution and Convention which entered into force in July 1994. These basic treaties are augmented by the International Telecommunications Regulations (WATTC Convention 1988) and the Radio Regulations to which Australia is also a signatory. The International Telecommunications Regulations provide for the establishment of agreements covering the trade of telecommunications traffic between signatories (Article 1, paragraph 1.5).

Australia is also a member of INTELSAT and INMARSAT, inter-governmental organizations established by treaty. These treaty organizations oblige members to consult with the Organization when they intend to allow trade in competing services (Articles XIV(d) and 8, respectively).

Bilaterally, Australia is party to the Closer Economic Relations (CER) trade agreement with New Zealand which includes the Protocol on Trade in Services (including telecommunications). The aims of the Protocol include the liberalization of barriers to trade in services and the establishment of a framework of transparent rules to govern trade in services between the two countries.

PART II

Competition

A. Subsectors

The following response to Part II A "Subsectors" applies to the subsectors (a) to (g) as well as the following additional basic services:

- voice/non-voice services using domestic/international private leased circuits
- paging services
- mobile data services
- satellite services
- cellular mobile services - including mobile data
- local/long-distance switching
- international switching and other international gateway facilities

N.B: Regulations for the provision of certain facilities - reserved line links, including cable TV infrastructure used for voice telephony in terms of (i) policy overview, (ii) modes of supply, (iii) market access, (iv) national treatment and (v) licensing - is discussed in our response to Part II B Categories Question 5 "Facilities Based".

Overview

(i) The Australian Government has chosen to maintain a transitional duopoly in the provision of specific elements of network infrastructure until 1997 to ensure that sustainable network competition develops before the market is opened more widely. The provision of reserved line links, the right

to be the primary suppliers of satellite services and cable TV infrastructure used for telephony (as discussed in our response to Part I Question 2) is reserved to Telstra and Optus.

The right to be the primary suppliers of cellular mobile services including mobile data services is reserved to the three licensed cellular mobile carriers, Telstra, Optus and Vodafone. However, service providers are free to provide these services (satellite and cellular mobile) competitively provided capacity is acquired from a licensed general or mobile carrier. The regulatory environment has been developed with the intention of encouraging competition, innovation and diversity in the provision of telecommunications services.

The provision of voice services, packet switched data services, circuit switched data services, facsimile services and private leased circuit services are completely open to competition under Australian telecommunications law. Persons other than licensed general or mobile carriers offering these services must comply with the provisions of the Service Providers Class Licence for domestic services and the International Service Providers Class Licence for international services.

The class licences impose minimal restrictions which are primarily intended to deal with technical efficiency of public telecommunications networks and to ensure that relevant standards are met. The International Service Providers Class Licence requires service providers to enrol with (notify) the regulatory authority. The International Service Providers Class Licence is intended to prevent the misuse of market power or offshore regulatory status by foreign operators. There are no licence fees or approval process.

The licensed general and mobile carriers' exclusive rights to install and maintain certain facilities and to be the primary suppliers of satellite and cellular mobile services are not constituted to inhibit the provision of any telecommunications service. Competitive safeguards in the Telecommunications Act 1991 ensure that service-providers have guaranteed interconnection and are able to access the network on terms that are transparent and non-discriminatory (see our response to Part III Questions 18-21 on competitive safeguards for more details).

Foreign suppliers can provide services, subject to compliance with the Service Providers Class Licence (for domestic services) or the International Service Providers Class Licence for international services - there are no restrictions on commercial presence of foreign suppliers in the sector for the provision of services. Australian foreign investment requirements as they apply to the sector are outlined in our response to question (iii) Market Access.

Modes of supply

(ii) Cross-border

Australia considers that cross-border supply applies to services such as telecommunications termination services whereby a service provider in the territory of one member delivers or terminates a telephone call to a service provider in the territory of another member. Under Article I of the GATS the service provider receiving the call is supplying a (termination) service to a service provider in another country.

Australia regulates the cross-border supply of international telecommunications services by the Telecommunications International Code of Practice and International Service Providers Class Licence.

The Telecommunications International Code of Practice only applies to licensed general carriers (currently limited to Telstra and Optus). It is intended to prevent the misuse of market power by service suppliers in other countries in their dealings with Australian licensed general carriers. The Code aims

to ensure that licensed general carriers use all reasonable endeavours to prevent misuse of market power by service suppliers outside Australia and to allow agreements between Australian based carriers and foreign service suppliers to be made on a commercial basis; in a manner that promotes services being provided at the lowest practicable cost to consumers; and which use the most efficient and commercially viable routing arrangements.

The provision of international telecommunications services within Australia by service suppliers other than the licensed general carriers, Telstra and Optus, is regulated by the International Service Providers Class Licence. A supplier is permitted to provide all international services to or from any destination unless AUSTEL, the independent industry regulator, determines that it is not in the public interest. All international services are assumed to be in the public interest unless proven otherwise. The principle competitive safeguard which AUSTEL would consider in making a decision about a particular service is occurrence of any abuse of market power or offshore regulatory status by a foreign service provider in supplying a basic telecommunications service into Australia from another country. There is no requirement that traffic be terminated by a particular service supplier.

Australia does not require international telecommunications service suppliers to negotiate parallel accounting rates or have any proportional return of traffic requirements. Any service supplier, for example resellers and international value added network service providers, can establish correspondent agreements (accounting rates) for the exchange of switched traffic with foreign carriers.

Consumption abroad: Australia considers that this mode of supply applies to services such as the provision of mobile telephony to consumers from outside Australia, home country direct and call back services. Consumption abroad could also apply to telecommunications termination services where the supplier provided the national termination service where the service does *not* include the international transmission.

There are no restrictions on this mode of supply of basic telecommunications services - (including country direct and call-back services) provided the service is compatible with the objects of the Telecommunications International Code of Practice or the provisions of the International Service Providers Class Licence.

Commercial presence: There are no sector-specific restrictions on the presence of foreign service suppliers of basic telecommunications services in Australia. Compliance with Australian companies law and foreign investment policy guidelines is required. At least two of the directors of a public company must be ordinarily resident in Australia.

Presence of natural persons: There are no sector-specific restrictions on the movement of natural persons. Executives and senior managers (intracorporate transferees) may stay for initial periods of up to four years and specialists, subject to labour market testing, for up to two years initial stay and total stay of up to four years.

Market access

(iii) There are no restrictions on the provision of domestic or international telecommunications services provided the service complies with the provisions of the relevant Class Licence. There are no sector-specific restrictions on the type of legal entity that may provide basic telecommunications provided the service supplier complies with general Australian company law. In the case of foreign-owned service providers' compliance with foreign investment policy guidelines is required. Service suppliers may be 100 per cent foreign owned.

National treatment

(iv) There are no provisions which treat foreign service suppliers less favourably than domestic suppliers for the provision of basic telecommunications services. Under the Telecommunications Act 1991 telecommunications service suppliers (service providers) are guaranteed non-discriminatory access to carrier capacity and transparent terms and conditions. No distinction is made between Australian and foreign-owned service suppliers.

Australia's foreign investment policy guidelines apply to foreign-owned or controlled enterprises after establishment in Australia.

There are no sector-specific nationality or residency requirements or restrictions on ownership of land or facilities. Acquisition of industrial or non-residential commercial real estate that is directly related to the business activities of the foreign service supplier is not subject to prior examination by the Foreign Investment Review Board. However, acquisition of urban residential real estate is subject to approval by the FIRB.

Licensing

(v) A class licensing system is used for regulating the provision of domestic and international telecommunications services. The licensed general and mobile carriers have to comply with their licences and pay licence fees. Service providers that are not licensed general or mobile carriers are simply required to comply with a class licence for which there is no approval process or licence fees. For international services, suppliers are required to enrol with (notify) the industry regulator AUSTEL of their intention to provide the service - approval for the service is not required. These licences apply to mode 3 (commercial presence).

The class licences impose minimal restrictions which are primarily intended to deal with technical efficiency of public telecommunications networks and to ensure that relevant standards are met.

B. Categories

Local/long distance/international

1. Australian telecommunications law does not distinguish between local and long-distance services - both local services and national long-distance services may be supplied by any service supplier. (Response to A. Subsectors covers this category of service in terms of (i) policy overview, (ii) modes of supply, (iii) market access, (iv) national treatment and (v) licensing.)

2. No - any supplier can provide local, long-distance and international services (Response to A. Subsectors covers this category of service in terms of (i) policy overview, (ii) modes of supply, (iii) market access, (iv) national treatment and (v) licensing.)

Wire-based

Any supplier can provide wire-based services (but not the underlying reserved line links). (Response to A. Subsectors covers this category of service in terms of (i) policy overview, (ii) modes of supply, (iii) market access, (iv) national treatment and (v) licensing.) The regulatory provisions applying to the provision of line links in terms of (i) policy overview, (ii) modes of supply, (iii) market access, (iv) national treatment and (v) licensing is discussed at Part II B, question 5 "Facilities based" which follows.

Radio-based

Any supplier can provide radio-based services, but the licensed general carriers (Telstra and Optus) have the right to be the primary suppliers of satellite services.

The licensed mobile carriers Telstra, Optus and Vodafone have the right to be the primary suppliers of cellular mobile services including mobile data services. The service providers' class licence does restrict the use of radio-based networks when it is interconnected with the public switched telecommunications network.

Service providers are free to compete in the provision of satellite or cellular mobile services provided capacity is acquired from a licensed general or mobile carrier.

The provision of other mobile services such as PACTS is completely open to competition under the provisions of the PACTS Class Licence. (Our earlier response at Part II A. Subsectors covers this category for services in terms of (i) policy overview, (ii) modes of supply, (iii) market access, (iv) national treatment and (v) licensing.)

Resale basis

3. International resale is permitted with connections to the public network at one end or both ends. Enrolment and compliance with the International Service Providers Class Licence is required. Resellers can provide public switched services and have arrangements for exchange of traffic with foreign carriers. This includes resale of switched voice capacity.

(Our earlier response at Part II A. Subsectors covers this category of service in terms of (i) policy overview, (ii) modes of supply, (iii) market access, (iv) national treatment and (v) licensing.)

4. Resale of private leased circuit capacity is permitted provided the service complies with the Service Providers Class Licence for domestic services and the International Service Providers Class Licence for international services.

(Our earlier response at Part II A. Subsectors covers this category of service in terms of (i) policy overview, (ii) modes of supply, (iii) market access, (iv) national treatment and (v) licensing.)

Facilities-based

5. See response below under (i) Overview.

Overview

(i) The Australian Government has chosen to open the services market to competition. However, the provision of line links between distinct places including the provision of cable TV infrastructure used for voice telephony is reserved to the licensed general carriers.

The facilities reservations and allowed exceptions are described in our response to Part I Question 2.

The licensed general carriers have the exclusive right to install and maintain line links between Australia and a place outside Australia. This includes international cables and international satellite links. There are no restrictions on the provision of other network facilities such as switching.

Foreign share-holding in privately owned licensed carriers is permitted. However, it is Australian Government policy that Optus (a licensed general and mobile carrier) remain at least 51 per cent Australian owned - as defined by the Foreign Acquisitions and Takeovers Act 1975. Vodafone, Australia's third licensed mobile carrier (presently 100 per cent foreign owned) is required to achieve majority Australian ownership (at least 51 per cent), by 2003.

Modes of supply

(ii) Cross border: Australia does not consider that cross-border supply generally applies to facilities-based service provision, as the installation and maintenance of facilities implies a commercial presence.

Consumption abroad: For facilities this could relate, for example, to the ability of consumers of other members to use their own GSM cellular or AMPS mobile handsets or hand-held portable satellite equipment in Australia.

The use of mobile telephone handsets by foreign consumers in Australia is permitted. Access to a local network through a local service provider is needed. It is the responsibility of the local service provider to ensure appropriate standards are met and to have a roaming agreement with the relevant foreign service provider.

Commercial presence: Commercial presence applies to those service providers installing and maintaining facilities in the territory of Australia.

As mentioned earlier the licensed general carriers, Telstra and Optus, have rights to install and maintain line links. There are no restrictions on other facilities such as switching.

The licensed general carriers (Telstra and Optus) and licensed mobile carriers (Telstra, Optus and Vodafone) have additional rights compared to other service providers in relation to land access, rights of way and the application of State and local planning and environmental laws.

Presence of natural persons: No sector-specific restrictions apply. See earlier comments on presence of natural persons on page 4.

Market access

(iii) As outlined above, entry to the Australian market for the provision of line links is generally limited to the two licensed general carriers Telstra and Optus and, in the case of the right to be the primary suppliers of cellular mobile services, the three licensed mobile carriers, Telstra, Optus and Vodafone until 1997. There is no specific restriction on the type of corporate entity that can obtain a general or mobile carrier licence. There is scope for foreign equity participation in the private sector licensed carriers, Optus and Vodafone. It is Government policy that Optus maintain majority Australian ownership (at least 51 per cent) and Vodafone (presently 100 per cent foreign owned) is required to achieve majority Australian ownership (at least 51 per cent) by 2003.

National treatment

(iv) There are no limitations applied to or discriminatory treatment imposed on general or mobile carriers which have a foreign equity share holding. Access and interconnection rights are mandated for all general and mobile licensed carriers. Carriers do have more favourable access and interconnections rights of facilities than do service providers. No sector-specific restrictions apply to ownership of land or buildings. See comments under National Treatment page 6 on acquisition of real estate.

Licensing

(v) Licences are required for this subsector in Australia.

- The installation and maintenance of line links is reserved to entities holding a general carrier licence. The Government has agreed not to issue any more licences until 1 July 1997. The current licensees are required to meet conditions set out in declarations by the Minister under sections 64 and 65 of the Act.
- The provision of public mobile telecommunications services are reserved to entities holding a public mobile licence. The Government has agreed not to issue any more licences until 1 July 1997. Licence fees are determined by AUSTEL on a cost recovery basis, in proportion to the timed traffic of all carriers (general licensed or mobile).
- All other services are provided under a class licence system explained at A (i), above.

General carrier licence holders have to pay fees annually.

Public/non-public supply

Our earlier response at Part II A. Subsectors covers the supply of both public and non-public basic telecommunications services in terms of (i) policy overview, (ii) modes of supply, (iii) market access, (iv) national treatment and (v) licensing.

Our response at Part II B, question 5 "Facilities" covers the provision of facilities used in private networks in terms of (i) policy overview, (ii) modes of supply, (iii) market access, (iv) national treatment and (v) licensing.

6. Generally, no. However, there is a distinction in the provision of radio communications and international services. Where radio communications or international links are sourced from entities other than a general licensed carrier they can only be used for their own use (not for sale) when connected to the PSTN at both ends, or if for resale they can only be connected to the PSTN at one end.

7. The dominant licensed general and mobile carrier, Telstra, is required to make available all Basic Carriage Services (with the exception of those specified at question 8), interconnect and the standard telephone service on a non-discriminatory basis to the public generally.

The provision of the standard telephone service is included as part of Telstra's universal service obligation, as is the provision of public pay-phones.

The public provision of services other than the standard telephone service is a commercial decision to be made by basic telecommunications service suppliers. As stated at A(i) the Telecommunications Act 1991 contains competitive safeguards which ensure that service providers have guaranteed interconnection and are able to access the network on terms that are transparent and non-discriminatory.

8. The following types of basic telecommunications are permitted to be supplied on a non-public basis in accordance with an exemption contained in the telecommunications regulations:

- a basic carriage service provided for a communication that does not originate from a place in Australia and whose destination is not a place in Australia;

- a basic carriage service provided as part of a trial of which AUSTEL has been given prior notice, which is for the purpose of establishing the technical or commercial feasibility of providing a service and which is to be conducted in only part of Australia for a limited duration; and
- basic carriage services for which an international accounting rate applies and that is supplied to a recognized operator of a public telecommunications network in a country outside Australia.

9. Telecommunications service suppliers that are not licensed general or mobile carriers are obliged to comply with the general terms and conditions of the relevant class licence. The class licences impose minimal restrictions which are primarily intended to deal with technical efficiency of public telecommunications networks and to ensure that relevant standards are met. No other obligations are imposed.

In contrast, the licensed general and mobile carriers currently Telstra, Optus and Vodafone have a number of specific obligations/responsibilities as set out in the Telecommunications Act 1991, related instruments and their licences. These relate to:

- contributions to pay for universal service
- continued access to untimed local calls via the standard telephone service
- prompt identification and repair of faults
- provision of accurate call charging
- network rollout obligations
- network modernization obligations
- provision of operator and directory services
- obligations to provide services for certain categories of users
- provision of network traffic and planning information to other carriers for interconnection and network development purposes
- billing information
- provision of equal access technologies
- access to supplementary services and infrastructure
- industry development plans interconnection and tariffing obligations and a number of other obligations
- requirement to cooperate with law enforcement organizations
- the provision of an industry ombudsman

10. See response to Part II, question 6.

11. Any service provider may install and operate pay-phones in Australia.

However a general licensed carrier may be required to supply, install or maintain a public pay-phone under Australia's Universal Service Obligation regulations. As stated at question 7, Telstra currently holds the universal service obligation to supply, install and maintain pay-phones to ensure that they are reasonably accessible to all Australians on an equitable basis.

The price charged for pay-phones operated under the Universal Service Obligations must be notified to and may be disallowed by the Government. The price charged for other public pay-phones is not subject to any price limitations.

Charges for interconnection of pay-phone suppliers are determined in accordance with the Basic Carriage Services tariff charges.

PART III

Regulatory Issues

Relationship between regulatory and operational functions

1. While basic telecommunications suppliers and other interested persons are consulted in the process of policy formulation, the Australian Government is solely responsible for the making of regulatory policy in relation to telecommunications.

Enforcement of regulations is the responsibility of the independent telecommunications regulator, the Australian Telecommunications Authority (AUSTEL).

Basic telecommunications suppliers are consulted by AUSTEL in the process of standards setting. However, AUSTEL has statutory responsibility for the setting and enforcement of telecommunications technical standards.

2. Yes. AUSTEL is responsible for the formulation and enforcement of telecommunications technical standards.

3. The national Australian Government has sole responsibility under the Constitution for the making of laws regulating telecommunications.

Suppliers can resolve questions and disputes with the regulatory authority, AUSTEL.

AUSTEL has the power to arbitrate charges for interconnection between general licensed carriers.

Telecommunications suppliers may ask AUSTEL to reconsider various decisions, particularly in relation to customer equipment and customer cabling.

Suppliers can also apply to the Administrative Appeals Tribunal of decisions for review of decisions by AUSTEL.

Review of AUSTEL decisions by the Federal Court may also be sought under the Administrative Decisions (Judicial Review) Act 1977.

Frequency allotment or assignment

4. Frequency allocations are made in accordance with the International Telecommunication Union (ITU) Regulation Region 3 allocations. Australian allocations are published in the Radiocommunications Australian Spectrum Plan.

Frequencies are assigned by the Spectrum Management Agency in accordance with the licensing arrangements set out in the Radiocommunications Act 1992. The system of licences that applies to radiocommunications use in Australia involves:

- (a) apparatus licences, under which a radiocommunications device may be operated at a specified location and frequency;
- (b) class licences, under which any person may operate radiocommunications devices that are covered by the terms of the licence;

- (c) spectrum licences, under which the use of a particular frequency band within a geographic area is authorized.

5. Frequencies are assigned under the licensing arrangements set out in the Radiocommunications Act 1992. No distinction is made under that Act on the basis of whether radiocommunications licensees are foreign-based or not. All radiocommunications licensees are required to comply with the conditions of the licence and the general laws of Australia, including laws identified in other sections of this questionnaire.

Numbering and identification codes

6. AUSTEL has the responsibility for managing numbering of telecommunications services and developing a plan for the numbering of telecommunications services in Australia. AUSTEL has developed a national numbering plan that sets out number allocation.

AUSTEL's National Numbering Plan is designed to:

- promote and enhance consumer interests;
- promote competition and innovation in telecommunications services; and
- promote efficient use of numbers.

AUSTEL has also developed procedures for allocating numbers based on these principles. There are two broad categories of allocation defined by AUSTEL: primary and secondary number allocations. Primary allocations are those number allocations made by AUSTEL to service providers for the provision of telecommunications services. Secondary allocations are those made by service providers to their customers.

Requests for primary allocations of a routine nature (ie allocations that are fully consistent with the policies of the national numbering plan) are made directly by AUSTEL following the principles of the National Numbering Plan.

Requests for allocations of a non-routine nature (ie those that have significant potential consequences for consumers, competition or numbering efficiency and those requests that depart from the policies set out in the numbering plan) are subject to consideration by the Numbering Advisory Committee (NAC), which is made up of representatives from industry and consumer groups. The NAC provides advice to AUSTEL.

AUSTEL has not established rigid rules and criteria for secondary allocations. However, it monitors closely the allocations that are made to ensure that they are consistent with the National Numbering Plan.

7. Yes. All suppliers are allocated numbers according to the principles set down in the National Numbering Plan developed by AUSTEL.

Standards and type approval

8. AUSTEL has mandatory standards for customer equipment and customer cabling. These cover:

- safety
- analogue telephones

- customer switching systems
- cellular mobile telephones (both AMPS and GSM)
- CT2-CAI cordless telephones
- satellite terminals
- Ku Band service (using carrier satellite)
- L Band mobile service (using carrier satellite)
- L Band mobile service (using INMARSAT-M)
- ISDN (Primary Access and Basic Rate Access)
- analogue video leased line
- Token Ring, Ethernet LAN leased line
- 2.048 MBit/s, 8.448 MBit/s, 34.368 MBit/s & 139.264 MBit/s leased line
- Telex
- private telecommunications network performance (when connected to a telecommunications network operated by a carrier)
- cabling, and cabling installation standards.

In addition, AUSTEL requires customer equipment to have a defined level of electromagnetic interference performance, against a Standards Australia Standard (AS 3548 based on CISPR 22).

9. Yes, to all parts of this question.

Consistent with GATT requirements, AUSTEL has a 60 day public exposure period during which interested persons may make representations concerning the proposed standard. Copies of the proposed standard are available, at a modest charge, from Standards Australia.

Also in accordance with the requirements of the GATT Agreement on Technical Barriers to Trade, copies of proposed standards are advised to GATT signatory countries through the Australian Department of Foreign Affairs and Trade.

The private sector participates in the development of standards through peak telecommunications organisations, carriers and user groups whose representatives are members of AUSTEL's Standards Advisory Committee. These organisations, as well as others such as consultants with relevant interests, supply technical experts to serve on the technical Working Groups that develop the standards.

10. Customer Equipment (CE) requires type approval. CE is deemed to be all equipment connected, or intended to be connected, by means of fixed line or radio to a telecommunications network operated by a carrier, whether directly connected or through other equipment. There are some exemptions from the regulation which apply to certain equipment connected by radio means.

AUSTEL accredits test houses to perform testing against its technical standards. Test reports from this source are accepted for compliance assessment purposes and for permit issue. AUSTEL has also accredited the testing laboratories of some suppliers of terminal equipment for self test purposes. Test reports from such laboratories are also acceptable for compliance assessment purposes.

Computers and some other types of equipment, such as data terminals, have been covered by blanket permits. These types of equipment are not subject to individual permits as long as they comply with AUSTEL's basic safety standards. This exception is made as it is considered that such equipment is not usually intended to be connected to a carrier's telecommunications network. The approach here is to apply a form of "class" exemption based on the assumption that suppliers comply with requirements unless the contrary is demonstrated.

Australia also participates in a form of mutual recognition arrangement whereby a limited number of Asia-Pacific nations accept AUSTEL permitted equipment for connection to their networks without further authorisation, or accept a test report from an AUSTEL accredited test house.

Australia is currently negotiating Mutual Recognition Arrangements with the European Union. In the case of equipment intended for connection in Australia, these arrangements will allow for certification by a European Conformity Assessment Body (CAB) (knowledgeable in Australian mandatory standards and suitably accredited) to ensure that equipment meets AUSTEL technical standards. Under the Arrangements, the CAB would issue an AUSTEL supplied permit number to the supplier of compliant equipment. The normal AUSTEL permit fees will apply.

Equipment attachment

11. All terminal equipment connected to, or intended to be connected to, a telecommunications network operated by a carrier must have an AUSTEL Permit that it meets relevant AUSTEL technical standards. AUSTEL can exempt certain classes of customer equipment from the permit process.

12. Telecommunications service suppliers may use their own switches. If these switches are connected to a general licensed carrier's facilities they must have an AUSTEL Permit establishing compliance with relevant AUSTEL technical standards.

13. Yes. Service providers are required to allow the attachment of customer equipment as long as the CE has an AUSTEL authorisation or Permit establishing compliance with technical standards.

Interconnection

14. Interconnection is regulated under the Telecommunications Act 1991 which provides general and mobile carriers with equal access rights to each others facilities and services. As part of these arrangements, AUSTEL can participate in negotiations between these entities about interconnection or can arbitrate areas of dispute.

The Minister for Communications and the Arts may determine principles to govern charging for network interconnection between the licensed general and mobile carriers. The Minister has determined such principles, and these are set out in the Telecommunications (Interconnection and Related Charging Principles) Determination No 1 of 1991. All access agreements for interconnection containing access charges payable by a new licensed general or mobile carrier to an existing such carrier must comply with the charging principles. The charging principles specify initial charges (based on directly attributable incremental cost) to apply, and provide that other charges should cover the costs necessarily incurred by an existing carrier. All relevant direct costs are to be covered, as well as a commercial return to the existing carrier on relevant assets directly used.

The charging principles provide a mechanism for initial charges to be reviewed. Reviews may be triggered by an indicator of loss of market dominance, or availability of carrier pre-selection by customers. Subsequent charges are commercially negotiated.

There are safeguards to provide service providers (other than licensed general or mobile carriers) with access to the carriers networks.

15. The network suppliers that hold a general or mobile carrier licence are required to provide other network suppliers that are also licensed general or mobile carriers with access to telecommunication services and facilities. This is not restricted to just the basic telecommunications network or services. There are some safeguards to provide access to service providers.

16. Yes. Interconnection between leased circuits and public data networks is permitted.

17. The pricing of interconnection between carriers holding a general or mobile licence is regulated by the Telecommunications (Interconnection and Related Charging Principles) Determination No. 1 which sets out the initial charges and the principles for the charges. The principles require the charges to cover costs necessarily incurred as a result of interconnecting and of using the network of the other carrier.

Charges that are not specified in the above Determination are commercially negotiated between the licensed carriers in accordance with the charging principles. Agreed charges have to be submitted for AUSTEL to determine that they are in accordance with the charging principles.

The regulated or initially determined interconnection charges between licensed carriers are in the public domain, however, commercially agreed charges are considered confidential and although registered with AUSTEL, are not available to the public.

Apart from the initially determined charges which have been available to all licensed general and mobile carriers, other charges are negotiated between the licensed carriers. Charges relating to the interconnection of service providers with the licensed general and mobile carriers are set out in "filed" tariffs and are available to those who request access to these services.

Australian service providers can have different prices for interconnection with foreign service providers. The pricing of interconnection between an Australian licensed general carrier and a foreign service provider is negotiated. AUSTEL has certain powers to regulate the activities of the Australian carrier in this regard under the conditions of the International Code of Practice. These conditions are minimal and cover such areas as requiring the Australian carrier to provide information on tariffs and agreements with foreign service providers if so requested by AUSTEL. In the case of such requests, AUSTEL is to exercise due regard to the commercial confidentiality of the information.

The situation is similar for non-licensed general or mobile carriers supplying international services which may also negotiate pricing for interconnection with foreign service providers. These service providers must enrol with AUSTEL and adhere to the general conditions of the International Service Providers Class Licence.

Competitive safeguards

18. Safeguards are available under both general trade practices and industry-specific legislation.

Under the Trade Practices Act 1974, it is an offence to misuse market power (s.46); and engage in exclusive dealing (s.47); or unconscionable conduct (s.51AA) ; or misleading or deceptive conduct (s.52).

There are also a number of specific safeguards against anti-competitive conduct under the Telecommunications Act 1991.

AUSTEL's Function of Promoting Competition

Section 37 of the Telecommunications Act gives AUSTEL the function of promoting competition in the telecommunications industry, within the established regulatory framework, and for the purposes of:

- protecting competitors or potential competitors from general licensed carrier practices that are damaging to competition;
- facilitating the entry of new suppliers into telecommunications markets
- promoting competition among general licensed carriers
- protecting general licensed carriers from misuse of market power by other general licensed carriers
- arbitrating general licensed carrier disputes
- receiving and investigating complaints about anti-competitive market practices
- referring matters to the general industry regulator, the Trade Practices Commission.

Interconnection And Related Charging Principles

In relation to licensed general and mobile network carriers, legislation requires that each such carrier enable other licensed general and mobile carriers to access its network. Such access is to be provided on a non-discriminatory basis, and on reasonable terms and conditions. Provision is also made by way of supplementary access conditions for access to essential facilities and other services, such as billing and directory information.

As previously stated, the Minister for Communications and the Arts may determine principles to govern charging for network interconnection between the licensed general and mobile carriers. The Minister has determined such principles, and these are set out in the Telecommunications (Interconnection and Related Charging Principles) Determination No 1 of 1991. All access agreements for interconnection containing access charges payable by a new licensed general or mobile carrier to an existing such carrier must comply with the charging principles. The charging principles specify initial charges (based on directly attributable incremental cost) to apply, and provide that other charges should cover the costs necessarily incurred by an existing carrier. All relevant direct costs are to be covered, as well as a commercial return to the existing carrier on relevant assets directly used.

The charging principles provide a mechanism for initial charges to be reviewed. Reviews may be triggered by an indicator of loss of market dominance, or availability of carrier pre-selection by customers. Subsequent charges are commercially negotiated.

AUSTEL has the power to arbitrate charges for interconnection under s.154 of the Telecommunications Act.

With regard to interconnection between licensed general or mobile carriers and other service providers, there are safeguards to provide access to service providers. For instance, under s.234 of the Telecommunications Act, dominant licensed general or mobile carriers are required (with some exceptions) to connect a service provider wishing to provide an eligible service. Where a licensed general or mobile carrier fails to provide such access the aggrieved service provider may apply to the Federal Court for relief.

Australian-based licensed general and mobile carriers and other service providers interconnecting with foreign service providers are subject to the general conditions of the International Code of Practice and the International Service Providers Class Licence.

Accounting Separation

There is no requirement for service providers other than licensed general and mobile carriers to provide details of accounting separations.

All licensed general and mobile carriers (including Telstra) are required under the Telecommunications Act to undertake detailed and transparent accounting separation of their various business activities, to enable identification of cross-subsidisation from less competitive to more competitive activities. General licensed carriers are required to keep their accounts in conformity with a Chart of Accounts and Cost Allocation Manual (COACAM) developed by AUSTEL under s.80 of the Telecommunications Act. COACAM requires carriers to report financial data on each of 26 separate broad product lines. Access, local, trunk, mobile, value-added and international services are among the activities that need to be separately identified.

Transparency In Tariffing

As with accounting separation, service providers other than licensed general and mobile carriers are not bound by any rules concerning transparency in tariffing.

All licensed general and mobile carriers must publish their tariffs for basic carriage services. The dominant carrier must charge strictly in accordance with these tariffs, whereas non-dominant carriers may charge less (but not more) than the published tariff.

Prohibition On Price Discrimination

A licensed general or mobile carrier that is in a position to dominate a telecommunications market (a "dominant" carrier) is not allowed to discriminate between persons who acquire services in that market. Discrimination is defined in terms of charges for the services or the terms and conditions on which they are supplied. AUSTEL has the discretion to approve discrimination that is broadly cost-based, in the community interest or in the nature of a new product trial. It also has power to disallow, in respect of a dominant carrier, tariffs or provisions of tariffs that materially and adversely affect the development and/or maintenance of commercially sustainable competition in a market, or are likely to do so.

Licensed general or mobile carriers are not allowed to discriminate, in the supply of basic carriage services, against resellers of basic carriage services, suppliers of higher level services, or their customers.

A dominant carrier cannot favour itself when using its own basic carriage service to supply a higher level service or when using a basic carriage service that it has been directed to "unbundle" and supply.

19. Yes, Australia's regulations distinguish between dominant and non-dominant suppliers but only in the case of general and mobile licensed carriers.

As noted in answer to question 22, some of the constraints on tariffing and price discrimination apply only to a carrier that "is in a position to dominate" a telecommunications market. Under s.28 of the Telecommunications Act, a licensed general or mobile carrier is taken to be in a position to dominate a market if the carrier could be taken to be in a position to dominate that market under s.50 of the Trade Practices Act 1974 prior to its amendment in 1992. Prior to its amendment, s.50 did not define "in a position to dominate". However the meaning can be determined by reference to the relevant case law.

Yes, there are safeguards concerning service providers who have monopoly or dominant control of access to certain market or network segments. See headings on "transparency in tariffing" and "prohibition on price discrimination" in answer to question 18.

20. There is no telecommunications-specific anti-trust policy. Telecommunications suppliers are subject to an industry-wide antitrust policy.

Under the Trade Practices Act 1974, corporations must not directly or indirectly acquire shares in the capital of a body corporate or acquire any shares of a person if the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in a market. Similarly, a person must not directly or indirectly acquire shares in the capital of a corporation; or acquire any assets of a corporation if that would have the same effect.

In determining whether the acquisition would have such a result, the Trade Practices Commission must take the following matters into account:

- the actual and potential level of import competition in the market
- the height of barriers to entry to the market
- the level of concentration in the market
- the degree of countervailing power in the market
- the likelihood that the acquisition would result in the acquirer being able to significantly and sustainably increase prices or profit margins
- the extent to which substitutes are available in the market or are likely to be available in the market
- the dynamic characteristics of the market, including growth, innovation and product differentiation
- the likelihood that an acquisition would result in the removal from the market of a vigorous and effective competitor
- the nature and extent of vertical integration in the market.

21. Basic telecommunications suppliers are not prohibited from engaging in the manufacture and supply of telecommunications equipment. However, in the case of general or mobile licensed carriers, accounting separation of their manufacturing and other activities ensure that cross-subsidisation that may be anti-competitive can be identified.

Pricing-related measures

22. The Government does not have a role setting charges except in that the Minister may initially determine the interconnect charges between general licensed and mobile carriers. Tariffs, access charges and accounting rates are not set by Government. However, the Government has established a tariffing regulatory framework for the three licensed carriers, particularly for the dominant carrier, to prevent discriminatory and anti-competitive tariffing. This does not apply to other service providers.

The three general and mobile licensed carriers (but not other service providers) are required to "file" (or lodge) their proposed tariffs with AUSTEL and are not permitted to charge more than the "filed" tariff. A dominant carrier must charge in accordance with its "filed" tariffs. AUSTEL has the power to disallow tariffs of a dominant carrier that are anti-competitive.

The Government has also imposed specific price caps on Telstra for its main services. These controls aim to ensure that efficiency gains from competition are passed on to consumers through falls in the real (inflation adjusted) price of services. The price caps also minimise the impact on residential users of "rebalancing".

The existing price cap arrangements require the prices (in revenue weighted terms) for predetermined "baskets" of services to fall, on average and over the duration of the arrangements, by the "Consumer Price Index minus X". That is, they must fall in real terms by a pre-set factor ("X").

The current arrangements, which end on 30 June 1995 and which are currently under review, require the average price of Telstra's main services to fall, in real terms, by 5.5% a year.

Access charges, such as rental of a handset, must also be "filed" with AUSTEL and are subject to price caps.

In accordance with an exemption which covers the termination of international services, accounting rates are not required to be "filed" with AUSTEL nor are they subject to price caps. Accounting rates are negotiated between service providers under the terms of the International Telecommunications Regulations (WATTC). The only condition relating to accounting rates is that holders of an International Service Providers Class Licence may be required to provide information on these rates to AUSTEL.

No specific pricing requirements have been placed on service providers that are not general or mobile licensed carriers. However when setting prices, general and mobile licensed carriers and other service providers are required to comply with the Telecommunications Act 1991 and with all general Australian commercial and trade practices laws.

23. The Government only requires licensed general and mobile carriers (not other service providers) to submit their proposed tariffs for approval. Tariffs for international services are exempted from this requirement.

Generally when a licensed general or mobile carrier submits a tariff to AUSTEL, AUSTEL has two working days to scrutinise the tariff and can refuse to allow the tariff if it includes provisions which provide for the general licensed carrier to discriminate between service providers unless the discrimination is cost based. A tariff submitted by a dominant carrier must also not be anti-competitive. AUSTEL has 15 working days to examine dominant carrier tariffs.

The licensed general and mobile carriers are required to provide regular financial accounts to AUSTEL which separate out particular product groups in the accounts. Accounting separation provides transparency of the cost structures of those products which are provided in competitive markets from those provided on a less competitive basis. This provides AUSTEL with a mechanism for encouraging improved carrier performance and for identifying cross subsidisation.

24. Service providers other than general and mobile licensed carriers are not subject to any telecommunications-specific restrictions in relation to the principle of non-discriminatory pricing. They are however covered by the Trade Practices Act 1974 as are the licensed general and mobile carriers. The Act forbids certain types of discrimination where it is considered to be of such magnitude or is of such a recurring or systemic character that it is likely to have the effect of substantially lessening competition in a market.

Licensed general and mobile carriers are not permitted to discriminate between service providers and cannot price services differently depending on the use to which they are put. In addition, a dominant such carrier is not permitted to discriminate between any acquirer of telecommunications services. In a limited number of specified circumstances, AUSTEL may, however, decide that discrimination by a particular licensed carrier should be permitted. The main instance of this would be where the discrimination could be justified on the basis of the different costs borne by the carrier that are associated with providing the service. Highly targeted volume discounts are therefore allowable if they reflect relevant costs.

Accounting rates are determined according to agreements made under paragraph 1.5 of the International Telecommunications Regulations (WATTC). Hence Australian regulations concerning price discrimination cannot be applied.

The licensed general and mobile carriers are specifically exempted from laws prohibiting price discrimination for international services such as termination services (accounting rates).

The International Code of Practice which applies to domestic licensed carriers states that 'a carrier must use all reasonable endeavours to prevent a misuse of market power by an [international telecommunications] operator'. In relation to accounting rates or return telecommunications traffic, AUSTEL has the power, under the conditions of the International Service Providers Class Licence, to require a domestic licensed carrier that has entered into an agreement with an international telecommunications operator to provide information in a form and at a time specified by AUSTEL. Such information may include details of tariffs, agreements with foreign carriers or foreign domestic carriers, financial accounts, commercial relationships with foreign carriers or foreign domestic carriers, traffic statistics or customer connection statistics. In such circumstances, AUSTEL must have due regard to the commercial confidentiality of information.

Service providers other than general or mobile licensed carriers can also negotiate "accounting rates" for exchange of traffic. However to do so they must enrol with AUSTEL and abide by the conditions of the International Service Providers Class Licence.

25. No. This form of collusion is prohibited under Australian laws.

26. The licensed general and mobile carriers can set their own prices (including tariffs, access charges and accounting rates) with competition exerting downward pressure to encourage cost based pricing.

The regulatory framework encourages cost orientated pricing where competition is insufficient. Licensed carriers are required to provide details of the cost methodology used for compiling the financial accounts to AUSTEL. The methodology generally used to determine pricing is that of long run incremental cost. When examining predatory pricing, AUSTEL is prepared to accept fully distributed cost information from the licensed general or mobile carrier to determine whether the prices can be justified on a cost basis.

No specific pricing requirements have been placed on service providers other than the licensed general and mobile carriers.

27. The rules are the same for the pricing of new services as they are for existing services.

Rights of way for the construction of infrastructure

28. Yes.

Licensed general and mobile carriers have specific rights concerning land access which are specified in the Telecommunications Act. These rights do not extend to other service providers. Licensed general and mobile carriers have also been granted exemptions from State/Territory and Local Government environmental laws and planning regulations. In their place, the Federal Government has forwarded a Telecommunications National Code. Licensed general and mobile carriers must conform with the provisions of the Code in building their infrastructure.

29. Yes.

New telecommunications services

30. Any telecommunications service (including a new telecommunications service) which is provided by a licensed general or mobile carrier and is a "basic carriage service" needs to be tariffed with AUSTEL before it can be supplied to the public. AUSTEL generally has two business days to scrutinise new tariffs and can refuse to allow a tariff if it includes provisions which provide for the general licensed carriers to discriminate between service providers unless the discrimination is cost based. AUSTEL has 15 business days within which it must disallow new tariffs of a dominant carrier if it is of the opinion that the tariff would materially and adversely affect the development and/or the maintenance of commercially sustainable competition. There is no legislative requirement for "higher level services" provided by licensed general or mobile carriers to be tariffed with AUSTEL, but there are advantages to such carriers that do so.

All telecommunications suppliers (licensed general and public mobile carriers or providers of eligible services under an AUSTEL class licence) are required to consult with law enforcement and national security agencies about their plans to develop or use "new technology" in their telecommunications activities. Licensed general and public mobile carriers are also required not to operate a network that can not be intercepted by law enforcement and security agencies under the Telecommunications (Interception) Act 1979, unless authorised by the Minister for Communications and the Arts after consulting with the Attorney-General.

In answer to the second part of the question, tariffed basic carriage services may be supplied during the period within which AUSTEL may disallow the tariff.

Supply of new uninterceptible telecommunications services by licensed general and mobile carriers is not permitted until an authorisation has been issued. This does not apply to other service providers.

31. There are no services reservations under the telecommunications legislation. Any service (basic carriage service or higher level service) may be offered by any person, as there are no restrictions on resale of telecommunications services.