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18 March 2003

The Hon Howard Young
c/o Clerk of the Bills Committee
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Mr. Young,

Telstra Corporation Limited ("Telstra")
Outline of Key Issues with the Telecommunications (Amendment) Bill 2002

I refer to our briefing meeting with you on Friday 28 February. Thank you very much for taking the time to meet with us. We were very pleased at the level of understanding that you had of the industry submissions and that you had clearly taken time to read and consider them. You asked that we prepare a very short summary of our issues and that the summary be prepared on the assumption that sector specific M&A regulation is introduced. I am happy to do so, but I would like to reiterate that Telstra maintains the strongest objection to sector specific competition regulation for the many compelling reasons set out in its various submissions to the Bills Committee. Nevertheless, on the assumption that sector specific legislation will be introduced, the key concerns of Telstra are as follows:

- (a) the powers created by the proposed section 7P should be vested in a board rather than an individual;
- (b) the change of control threshold is too low (for example, a change in control occurs if someone becomes a director of a licensee irrespective of the size or composition of the board);
- (c) the tests in section 7P(1) should be objective (that is, whether or not a change in control occurs should not be determined on the basis of the TA's opinion but rather on an objective basis);
- (d) the guidelines issued by the TA under section 6D should be subject to review by the Legislative Council;
- (e) the scope of directions in relations to mergers that may be issued by the TA under section 7P(1) should be determined on an objective basis and confined to Hong Kong;

- (f) the TA should only be permitted to issue a direction in relation to a merger under section 7P(1) if it is in the public benefit to do so;

there should be a time limit specified in clause 7P(1) during which the TA may exercise his power to issue directions after a change of control;

the TA should be permitted under section 7P(6) to consent to changes in control which are in the public benefit. Moreover, the TA should only be permitted to exercise the powers under section 7P when it is in the public benefit to do so;

- (i) the proposed statutory basis for voluntary pre-approval in section 7P(5) and consent given by the TA under that regime in section 7P(6) should incorporate clear statutory procedures;

- (j) the amendments should not preclude an option for an informal clearance procedure;

there should be a limit on the costs which may be recovered by the TA under section 7P(11) for considering an application under subsection 7P(5);

- (l) appeals under section 32L to the Appeal Board should be on their merits and the timeframes for appeal increased;

licence conditions should not deal with the same subject matter as section 7P;

the test of the effect on competition in section 7K (anti-competitive practices) should be consistent with the test in Section 7P; and

the Ordinance or the guidelines should provide for safe harbours.

Thank you once again for taking the time to consider our issues.

Yours sincerely



Simon Brookes
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