

## Thomas Arthur of Telecom outlines his view of what the new legislation means for the merged carrier

**T**his is not an official Telecom view but my own observations as a member of CAMIA.

The reforms before the Parliament are the outcome of changing perceptions about how to create national wealth. It is no longer generally accepted that sheltered domestic infants naturally become internationally competitive firms. Professor Porter in his *The Competitive Advantage of Nations* (1990) writes:

*"Creating competitive advantage in sophisticated industries demands improvement and innovation - finding better ways to compete and exploiting them globally, and relentlessly upgrading the firm's products and processes. Nations succeed in industries if their national circumstances provide an environment that supports this sort of behaviour."*

The Minister in his Second Reading Speech on the legislation set out the Government's strategy, comprising the following elements:

*"To introduce genuine and sustainable network competition for the benefit of the wider Australian economy; and*

*to create a world class telecommunications company that has the ability and ethos to compete vigorously in what will be a key industry in a very competitive global environment."*

The Minister also gave a firm commitment to social equity and consumer protection, particularly in markets with little foreseeable competition.

In answer to the question, "What does the new legislation mean for Telecom?", Telecom expects to experience unrelenting domestic and international competition against the world's best companies, together with owner expectations centred on global markets. As a corollary, the new company would expect to operate with commercial freedoms and disciplines on a par with its competitors and appropriate for the investment cycles in this industry.

It is essential to Telecom that the philosophy behind the reforms - the importance of wealth creation for Australia - be retained. This means that the following policy goals should be aimed for:

- establishment of a sustainable competitive environment where market forces predominate, resulting in increased efficiency and innovation;
- allowing the managers to manage and be accountable for results; and

- ensuring that AOTC (the company formed from the merger of Telecom and OTC) is led with vision and given the resources to fulfil its potential.

Against these considerations, short to medium term compromise such as price control (both interconnection and customer contracts), capital availability, market structure (duopoly or more open competition) and access to infrastructure must be balanced.

### Specific comments

**T**here was considerable discussion during the public exposure stages of the drafting process about the discretions granted to the Minister and Austel. It is my belief that appropriate checks and balances have been built into the legislation in relation to the discretions (that is, public, judicial or parliamentary supervision).

The concepts of higher level services (HLS) and basic carriage services (BCS) have resulted in a great deal of discussion. In examining these concepts it must be remembered that the legislation does not reserve the provision of services to the licensees. BCS's may be provided by resellers under the foreshadowed Austel class licence. From a licensee's perspective, a BCS classification for a service clarifies the jurisdiction of the Trade Practices Commission and Austel. Secondly, it acknowledges the fact that many telecommunications services are derived from 'the network' and it is a very complex matter to unbundle services provided in this way.

The commercial reasons why the licensees are likely to prefer that many of their services be offered as HLS's flow from the high level of regulatory control over the provision of BCS's. These controls centre around provision of information, tariff requirements and very stringent competition policy requirements which represent complementary provisions to part IV of the *Trade Practices Act 1974*.

The legislation provides that carriers have the right to interconnect network facilities and that carriers must carry communications across their respective networks on each other's behalf. Telecom and OTC are well advanced in their preparations for

negotiations with the new carrier and would expect that an interconnect agreement could be ready when the new carrier commences operations. In passing, it is noteworthy that the scheme of the legislation is largely reciprocal in relation to interconnection rights. This is crucially important. As an example, if a customer attached to one carrier's network chooses to use services from another carrier's network, the first carrier will need to pass basic billing information such as the calling party's number to the other carrier. This is so regardless of the relative market shares of the carriers.

### Powers and immunities

**T**elecom currently enjoys statutory immunity from suit in contract and tort in relation to network service operations. The new arrangements will provide a power for Austel to determine a liability ceiling for tort actions. The reason that this is necessary is that there are situations where it is not possible for public carrier to either have privity of contract with all users of its services or to apply a user-pays system for the potential range of 'neighbours' in tort that could be affected by a failure of its standard services. In addition, liability insurance in practice is not feasible.

The carriers will have powers in relation to land similar to those currently enjoyed by Telecom. A related issue is the application of State and Territory laws in relation network infrastructure but not administrative office developments. The Government has opted for a national code reflecting the national nature of the telecommunications network rather than multiple State and Territory jurisdictions regulating these activities. State law application will be modified to the extent to which the foreshadowed Code applies to planning, asset use and operations.

Telecom looks forward to realising the promise held out by the new legislation. This will mean lower domestic prices, new and innovative services and continuing service quality improvements, and continuing management challenge. Internationally, it will mean increased wealth for Australia through exports, growth of assets around the world and repatriated profits. Most importantly, it will mean that decisions about tomorrow's communications needs are being made by Australians with Australia's strategic development needs upper most in mind.

*Thomas Arthur is the Manager, Implementation of New Carrier Arrangements, Telecom Australia.*

## Anne Davies, Director of the Communications Law Centre gives a public interest perspective

**F**rom a public interest perspective the *Telecommunications Act*, as it has finally emerged, is a substantial improvement on the draft bill released for public comment earlier this year. Amendments have enhanced the consumer protection role of Austel, and provided for a public process. However, there remains a very fundamental concern about the extent to which the Minister (in reality the Department of Transport and Communications) has power over key areas of decision making.

It is somewhat ironic that the more important the category of licence, the smaller the role for Austel. In the case of general telecommunications licences - the class of licence under which Telecom/OTC and the second carrier will be licensed - many of the key decisions rest not with Austel but with the Minister. (Contrast this to the substantive decisions Austel can make in relation to enhanced services and cabling licences).

In relation to general telecommunications licences, Austel is more accurately described as an adviser to the Minister, rather than a regulator. Unlike the Australian Broadcasting Tribunal, it has no role in granting licences or in determining the conditions of the licence, both of which remain the responsibility of the Minister. Those important decisions will be taken behind closed doors in Canberra. Some might argue that it is preferable that the Government retain control of major decisions affecting telecommunications policy, but that argument ignores the difficulty that poorly resourced consumer groups face in accessing the bureaucracy.

### Public input

**H**owever, some avenue of public input into the decision-making process has been provided as a result of amendments moved by the Democrats, which require the Minister to first seek a report from Austel before he imposes, revokes or changes licence conditions. Of course he can ignore the Austel report, but his decision will also be a disallowable instrument, and subject to parliamentary veto. The success of this administrative model will depend very much on how it works in practice, and the modus operandi which Austel adopts in carrying out its advisory function.

A number of other areas of the telecommunications package which affect consumers also remain unresolved. The Government has included a definition of the universal service obligation (USO) which

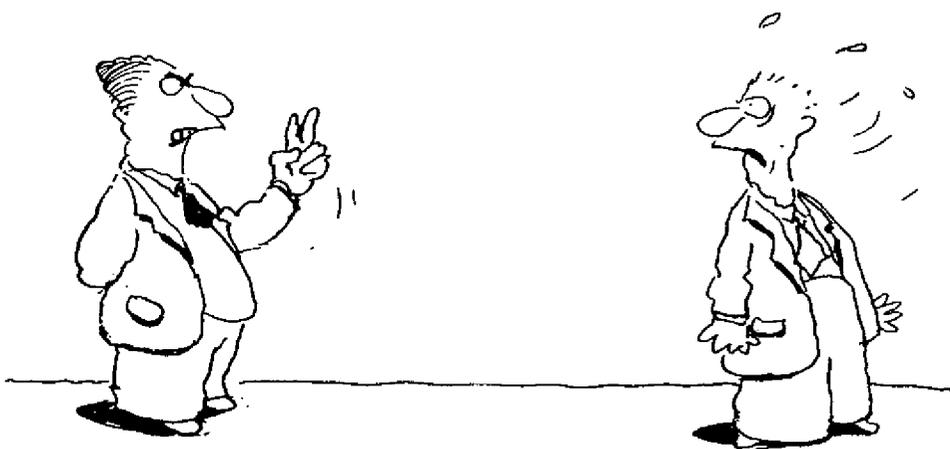
broadly defines what is expected of the carrier or carriers who are declared to be USO carriers. However the definition remains imprecise. Funding of services to disabled and other groups is still being investigated by an interdepartmental committee. Despite pleas by the consumer groups for an inquiry which would explore the appropriate scope of the USO now and into the future, the Government is still to commit itself to such an investigation.

The draft licences, circulated in June for public comment, also caused some anxiety. Many of the conditions that consumer groups had expected to find in the drafts, such as requirements for network roll-out by the

second carrier, and enforceable standards of service, were absent. Whether the Government intends to make quality of service enforceable is uncertain. Austel's functions under the Act include establishing quality of service indicators, but Austel has already acknowledged that these are indicators only, and are not enforceable by it or by individual consumers.

Finally, there is still much work to be done in devising a system of complaints handling for the new environment. The Government has announced that it will establish an industry ombudsman by 1993, and the House of Representatives Committee into Telecom Complaints has endorsed that option, suggesting it should come under the auspices of Austel. In the interim it is important that complaints processes do not put the consumer in the untenable position of having to shop between carriers if they have a problem with their service.

## DIGITALIZED COMMUNICATION...



## Robin Davey, Chairman of Austel, outlines the challenges facing the Government's regulator

**O**ne of the greatest challenges facing Austel under the new telecommunications regime is how best to ensure a smooth transition from the old to the new. Some idea of what is involved in meeting that challenge may be gained by contrasting the new with the old regime.

The principle features of the new regime are:

- a fixed network duopoly, licensed to supply a full range of domestic and international services using all or any available technologies. That is, the establishment by the end of 1991 of a private sector competitor to a merged

Telecom/OTC;

- each of the duopolists being granted a mobile licence and being allowed to supply public access cordless telecommunications services under an Austel class licence;
- full competition in public access cordless telecommunications services under the Austel class licence;
- a third mobile operator (to be selected by the end of 1992 and be licensed to begin operations in the second half of 1993);
- full resale of domestic and international telecommunications capacity;
- an end to the duopoly in 1997; and
- a 'universal service obligation' to be

shared among carriers on an equitable basis.

#### Under the old regime:

- rather than a duopoly there was a series of facilities and service monopolies with:
- Telecom having the domestic fixed and mobile network monopolies;
- OTC having the international monopoly;
- AUSSAT having the monopoly to provide the space segment of Australia's domestic satellite system;
- competition was allowed at the margins only in the area of value added services and in the supply of customer equipment and customer cabling;
- while private networks were allowed, with liberalised common interests, resale was prohibited;
- there were no public access cordless telecommunications services; and
- finally, Telecom alone bore the responsibility of meeting "community service obligations".

The challenge is all the greater because there was no gradual evolving change from the old to the new due to market forces, such as may occur in other industries. The changes were forced; the result of deliberate decisions to move as quickly and effectively as possible:

- from statutory entrenched monopolies, with competition at the margins only;
- through a period of duopoly that will face significant competition from resale, mobile and cordless operations; and
- to a period of open competition in 1997.

### Trade practices regulation

**E**xpressing the changes in those terms helps to explain why the Government opted for industry specific legislation with an industry specific regulator, Austel, rather than leaving the challenge to be met entirely by way of the general trade practices laws administered by the Trade Practices Commission.

That is not to say that the *Trade Practices Act* will have no application to the telecommunications industry. Indeed, it will. For example, its customer protection provisions would apply to false or misleading representations about a service or about customer equipment and its exclusive dealing provisions would apply to public access cordless telecommunications services base station site agreements.

But the *Trade Practices Act* will have no application to the agreements central to the success of competition in the industry, namely, the terms and conditions of interconnection and access agreed between the carriers and registered with Austel or, in the absence of agreement, arbitrated and determined by Austel. Such agreements or determinations are 'specifically authorised' by the legislation and taken outside the ambit of

#### the *Trade Practices Act*.

Austel's role in relation to those interconnection/access agreements illustrates another challenge for Austel. The role calls for skills and expertise in respect of matters going beyond the confines of Austel's former focus on the customer side of the network. Another area where that expansion poses a challenge for Austel is its responsibility for the national numbering plan. Numbering has significant competitive implications and meeting the challenge will involve the application of Austel's considerable technical and economic skills in consultation with all interested parties. Yet another area where Austel will be meeting the challenge in consultation with all interested parties is its responsibility for managing Australia's input to the setting of international technical standards under the policy guidance of the Minister. Austel already has 'runs on the board' in meeting this challenge and is well placed to make Australia a key player in the region and to bring influence to bear in this strategically important area of international standards.

Perhaps the greatest challenge for Austel is how best to promote the permitted competition and to ensure that it is real and effective competition, so that the true benefits of that competition to consumers, industry and the national economy may be fully realised.

### Brian Perkins of AAP Communications gives a reseller's view of the reforms

**A**fter 90 years of prohibition resale and its sibling, the carriage of third party traffic, have finally taken on the cloak of legitimacy and respectability.

At last the fertile marketing minds in companies other than Telecom and OTC can be unleashed to create and develop new innovative service offerings based on the resale of capacity and carriage of third party traffic on basic facilities of services supplied by the carriers.

These new reseller-provided services may now be offered as 'eligible services' under conditions to be described in a new class licence currently being drafted by Austel.

Eligible services may include just about any service it is possible to conceive. However, the class licence conditions will ensure that certain technical standards are met where interconnection with the carriers'

public switched networks is required. Other licence conditions are likely to address the supply of international services to ensure that the national interest is protected and Australia's international obligations are met.

Within these, hopefully broad, limits resellers may offer any eligible service to the marketplace.

### The objectives

**W**hat does the Government hope this will achieve? Clearly the answer is, amongst other things, lower prices, better customer service and a wider range of products and services.

Resellers can play an important role in achieving these objectives if they are able to operate profitably. However, to do this they must receive fair treatment from the carriers, particularly Telecom/OTC who will be both

### Consultative process

**M**uch of Austel's success has been due to its commitment to consult with interested parties and the willingness of persons outside Austel to participate in that consultative process.

The consultative process is most important in the area of consumer interests. The enormous changes in the telecommunications industry present an educational challenge for Austel. Part of this challenge is to create, monitor and publish indicative performance standards against which consumers may satisfactorily measure the quality and prices of the services offered in a competitive environment. At the end of the day, the benefits of the changes will be measured against their impact on domestic and business users. The adequacy and sensitivity of the processes which involve these consumers may be Austel's greatest challenge.

Austel for its part will continue its commitment to the consultative process and it hopes for a continuation of the willingness of others to participate in that process.

Given the continuation of the willingness of others to participate in the consultative process, Austel is confident that it will be able to meet all the challenges facing it under the new telecommunications regime and, in particular, ensure that the permitted competition is real and effective competition with all that should flow from that.

their supplier and often their competitor. To be competitive, they must be able to buy the basic carriage services they require, at reasonable prices. In the future, competition between the two carriers will be important in ensuring that the prices of these basic services are directly related to the cost of providing them.

### Interconnect charges

Initially, however, all basic carriage services must be purchased or leased from Telecom/OTC, and resellers will have little bargaining power to ensure affordable prices and reasonable conditions of supply. This will be particularly true in regard to charges and conditions for interconnection to the public switched networks, especially the public switched network and integrated switched digital network.

With the current dominance of Telecom/OTC in mind, the Minister has reserved the right to review and, if necessary, disallow the charges set by Telecom/OTC for interconnection of reseller's networks. This provides a level of comfort to resellers they might not otherwise have enjoyed.

Nevertheless, there are already indications that the price resellers will be expected to pay Telecom/OTC (and the future second carrier) may well be higher than each carrier pays to the other for the same, or even technically better, interconnection facility. There appears to be no justification for this.

On the contrary, a strong argument can be made in favour of setting a standard interconnection charge for all service providers, carriers and non-carriers. In accordance with normal business practice, appropriate discounts could be offered for high volume usage and this would naturally and reasonably favour the carriers. Resellers would be unlikely to find argument with this.

Under the new regulatory regime the carriers, by virtue of their facilities

reservations, have a financial advantage in the supply of basic carriage services. This is an acceptable benefit arising from having the rights and responsibilities of a general carrier licence. However, it should not, and must not, be extended to the provision of higher level services especially by the dominant carrier, Telecom/OTC.

Austel, through its chart of accounts and cost allocation manual, will no doubt keep the prices at which Telecom/OTC transfers basic carriage services to its higher level services arms under close scrutiny. This will be critical to resellers in maintaining their competitiveness.

### Containing BCS

For similar reasons, resellers are relying on Austel not to broaden the scope of the carriers' basic carriage service offerings. To do so would limit the range of services over which resellers could compete on equal terms with the carriers and thus reduce resellers' abilities to establish viable business operations.

In the long term, innovative and high quality, multi-feature services will be the key to competition between resellers and carriers. However, if resellers cannot possibly be price competitive then there will be no widespread competition to inhibit the two carriers from entering into a comfortable market sharing arrangement and we will very likely end up with the type of duopoly which operated in the Australian airline industry for many years.

The resale sector of the telecommunications industry should be seen as the 'nursery' of future network competition as it is most likely that, from the ranks of the resellers, network competitors will emerge in the post-1997 period. It will be a matter of concern to the whole industry if, when the sunset expires on the duopoly, no new network competitors emerge to challenge the incumbents.

legislation; those conditions were already established under the 1989 Act.

The definition of basic carriage service (BCS) is critical because it establishes the bench mark for what is, and is not, reserved to the two carriers. In turn, this will determine which will become the competing value added services (to use the old expression). Anyone will be allowed to sell basic carriage services but non-carriers will have to buy them at commercial rates. When the dominant carrier uses BCS for value added services (now called higher level services when offered by carriers) they are required to charge their own high level service arm the same commercial rates which it charges non-carriers. It should be noted that non-carriers' offerings are called 'eligible services' - a term embracing both resold BCS and value added services.

The definition in the legislation is only one aspect. Austel's interpretation and the determination it makes as to what are BCS will be the acid test for competition in value added services.

The point is that users who are in the market for value added services are likely to find out fairly quickly just how effective competition in value added services will be. The Australian Telecommunications Users Group has worked hard to keep the definition of BCS as tight as possible for this reason, but, as indicated above, much will depend on Austel's determination.

It will be vitally important to a number of people, not least PABX suppliers, whether Telecom's Centrex service is determined to be a BCS or not. As far as users are concerned that decision will have an impact on the cost of such a service. The decision is also likely to have a major impact on the market for virtual private networks.

The provision that a dominant carrier may be required by Austel to unbundle a service it provides also has considerable potential benefits for users.

Under the existing Act private line links were only permitted across public places with the concurrence of Telecom. Though a few approvals had been given in the past, more recent applications have not succeeded. The new legislation allows for contiguous areas, specifically defined as areas which share common borders - to be designated as an 'eligible combined area'. This gets over the dreaded 'cadastral separation' and its silly consequences where an occupier of adjacent premises which had separate titles could not cable them up to be serviced by a single PABX, for instance. The new legislation will go further, we understand, to cover what is sometimes known as the 'Myer case'. That is, where an organisation occupies adjacent but non-contiguous areas (such as a department

## Alan Robertson of The Australian Telecommunications Users Group on the impact of the reforms for users

At the time of writing the Telecommunications Bill 1991 is still being debated so that it is possible, if highly unlikely, for changes to be made which could alter conditions under which users will operate.

There are several features of the legislation which will set the framework. The main ones are the definition of basic carriage service; the latitude to be allowed for establishing private line links; interconnect

arrangements; and resale of both mobile services and network capacity. Of course, the tariffs set for Telecom services will continue to affect all users, but the recent decision to set the price-cap for certain charges at CPI minus 5.5 per cent (2 per cent for local calls, connections and rentals) should keep prices down reasonably satisfactorily - especially if the CPI is only 4 per cent. But these prices, and other charges which the Minister has to approve are not dependent on the new

# CAMLA PRESIDENT'S AGM ADDRESS

Julia Madden's address to the sixth annual general meeting of CAMLA on 18 April 1991

**S**ince last year's Annual General Meeting CAMLA's membership has rapidly grown - increasing from 340 members in March 1990 to 490 in March 1991.

This growth is in no small part attributable to CAMLA's masthead, *Communications Law Bulletin*, the quality of which has gone from strength to strength in the past 12 months. The increased diversity of issues which it covers and the quality of each of the articles has attracted new members. Such a feat has been due to the efforts of *CLB's* Editor, Grantly Brown. He has been initiator of many of the promotional distributions of *CLB* to a number of groups targeted as a source of potential members. The format of the *CLB* is constantly improving and we have recently seen the introduction of graphics. Early last year Associate Editors were appointed and we are greatly indebted to each of these, being Christine Allen, Richard Coleman, Kerrie Henderson, Page Henty, Yasna Palaysa, Stephen Peach, Bruce Slane and Peter Waters, for their contribution in ensuring the success of *CLB*. The Associate Editors come from various backgrounds which engender the diversity of issues *CLB* now contains.

However, in any voluntary organisation there are also the committee members in the 'backroom'. Not that I am suggesting anything clandestine in the activities of the CAMLA committee but rather wanting to emphasise that it is the contribution of those behind the scenes which enable the heart of CAMLA to continue pumping. It is the committee members who contribute ideas and energy and who organise luncheon addresses and our Annual Dinner address. This is no mean feat as to start with the organiser has to be willing to insert promotional fliers for the event in what is now nearly 500 envelopes. These events have included addresses by Kevin O'Connor, the Federal Privacy Commissioner, David Dale, Martin Hartcher, Richard Thwaites, Christopher Warren, Peter Banki, Richard Coleman, David McKnight, Jock Given, Janette Paramore and the Minister for Transport and Communications, Kim Beazley who addressed CAMLA's Annual Dinner. Without the generous contributions by each of these speakers CAMLA would not be able to offer its members the opportunity to attend such forums and exchange views.

The contributions of the entire committee are acknowledged but the contribution of one must be singled out. If you followed the proceedings of the last AGM, you could be forgiven for wondering why in fact Mark Armstrong isn't standing here giving this address tonight rather than me. In September last year Mark resigned as President due to unexpected family commitments and I was voted to fill this casual vacancy. Mark's contribution to CAMLA has been immeasurable. He has been at the helm in steering the course of CAMLA since its creation following the merger of the Australian Communications Law Association and the Media Law Association in early 1989 (and, of course, prior to that time charting the course of the Australian Communications Law Association). Those who know Mark will attest to his consistent tireless and unselfish efforts and enthusiasm in furthering CAMLA's interests. It is only through Mark's efforts as President of CAMLA for the first 18 months of

its life that it is as strong as it is now. On behalf of the committee I would like to take this opportunity to thank Mark Armstrong formally. However, his contribution to CAMLA did not end in September - he was elected as Vice President and in that position has continued his invaluable contribution.

In December last year I attended the inaugural function in Auckland to mark the formal commencement of CAMLA's activities in New Zealand. This function, addressed by Maurice Williamson, the New Zealand Minister of Communications and Brian Corban, Chairman of Television New Zealand, was highly successful and received media attention including press reports both prior to and following the function. Largely as a result of CAMLA's New Zealand committee member, Bruce Slane, CAMLA's membership now includes 40 New Zealand members and is growing. You will recall that earlier this year Cleo Sabadine relinquished the administrative tasks she has so competently performed since CAMLA's inception. CAMLA is greatly indebted to her for her time and effort. We are now lucky enough to have the services of Roz Gonczi and I would like to welcome her to CAMLA. Our agenda for the next 12 months is to increase and improve CAMLA's activities for its members - both in Sydney and other places such as Melbourne and New Zealand. Our ability to fulfil this ambition depends on the contribution of all committee members together with support from all of CAMLA's members for those activities which CAMLA organises.

In conclusion CAMLA, as a voluntary organisation, has had a highly successful year and the coming year should enable us to capitalise on CAMLA's achievements of 1990.

*from p9*

store occupying adjacent premises on more than one city block; or an educational establishment which has public road running through its grounds). It is understood that the Minister will make regulations under Clause 106 permitting private cabling across public property (roads for instance) within a specified distance, say 500 metres. This victory for commonsense should be of considerable benefit to users who are currently chafing under the 1989 Act.

There are two aspects here. One is that double-ended interconnect will now be permitted. The other is that users are yet to know what the new interconnect fee will be, and to whom it will apply. It may only be a charge to services providers while private network operators are spared.

Unrestricted resale - with some limitations on international resale - should benefit large users with spare capacity, even though they will not be able to compete with the price for which carriers can sell BCS. Even so, freedom to resell capacity can be expected to benefit both the seller, who would otherwise have it lying idle and getting no revenue from it at all, and the buyer, a small user, who may be able to get access to a private network at very competitive rates.

Resale of mobile services can be expected to benefit all users, and provide much needed competition in this service.

The most important effect, of course, will be the effect of network competition which, ATUG fervently hopes, will be felt increasingly during the course of 1992 and beyond as the competition to Megacom (AOTC) gets into its stride. In that context the most obvious benefit will be felt in lower tariffs for long distance calls.