



HIGH COURT OF AUSTRALIA

Public Information Officer

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TELSTRA CORPORATION LIMITED v COMMONWEALTH OF AUSTRALIA,
AUSTRALIAN COMPETITION AND CONSUMER COMMISSION, PRIMUS
TELECOMMUNICATIONS PTY LTD, OPTUS NETWORKS PTY LTD, CHIME
COMMUNICATIONS PTY LTD, XYZED PTY LTD, POWERTEL LIMITED, REQUEST
BROADBAND PTY LTD, NEC AUSTRALIA PTY LTD, MACQUARIE TELECOM PTY LTD,
AMCOM PTY LTD, ADAM INTERNET PTY LTD AND AGILE PTY LTD

The telecommunications access regime set out in the *Trade Practices Act* (TPA) did not amount to an acquisition of Telstra's property, the High Court of Australia held today.

Telstra asserted that contrary to section 51(xxxi) of the Constitution, which provides that Parliament has the power to make laws with respect to the acquisition of property on just terms, the access regime effected an acquisition other than on just terms of some of its local loops, the twisted pairs of copper or aluminium wire running between a local exchange and a consumer's premises. Telstra has about 10.1 million local loops and about 5,120 local exchanges. The local loops are used for either unconditioned local loop services (ULLS), which have no equipment located along the loop, or line sharing services (LSS), which allows one supplier to use the low-frequency part of the spectrum for a voiceband service to an end user's premises while another supplier uses the high-frequency non-voiceband part of the spectrum for high bandwidth services.

Telstra began proceedings in the High Court against the Commonwealth, the ACCC and 11 other telecommunications service providers. Questions were reserved for consideration of the Court. The questions asked whether sections 152AL(3) or 152AR of the TPA in their application to ULLS and LSS were beyond the legislative competence of the Parliament by reason of section 51(xxxi).

The Court unanimously dismissed Telstra's case, holding that sections 152AL(3) and 152AR of the TPA were not invalid. The rights in Telstra's assets were rights to use the assets in connection with the provision of telecommunications services but those rights were always subject to a statutory access regime which permitted other carriers to use its assets. Telstra had always owned and operated the assets within a regulatory regime by which other carriers have the right to connect their facilities to Telstra's network and to obtain access to Telstra services.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*