

## Telstra Corporation Limited

### Submission to the Department of Foreign Affairs and Trade on the Indonesia-Australia Comprehensive Economic Partnership Agreement



*Indonesia Investment Day hosted by Telstra in Melbourne, 9 May 2016*

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Note: [C-i-C] indicates that text has been redacted in this public version for commercial confidentiality reasons.

## 1. Introduction

Telstra welcomes the opportunity to make this submission to the Department of Foreign Affairs and Trade (DFAT) on the proposed Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA).

We support the Australian and Indonesian governments' objective of negotiating a bilateral trade agreement which is as comprehensive as possible, building on existing multilateral and regional agreements including the ASEAN-Australia New Zealand Free Trade Agreement (AANZFTA).

We have previously made detailed submissions to DFAT, on the Joint Feasibility Study into an Australia-Indonesia bilateral trade agreement (December 2007) and in response to the Australian Government's "Asian Century Towards 2025" country strategy paper on Indonesia (May 2013).

We also raised concerns about restrictions imposed by Indonesia on telecommunications market access in our submission to DFAT on the AANZFTA negotiation (February 2005), and when we appeared before the Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade inquiry into Australia's relationship with ASEAN (November 2008).

We highlighted the strategic importance of undersea cable systems traversing Indonesian waters and their role in international supply chains in our submission to the inquiry into the significance of the Indian Ocean region to Australia's foreign, defence and trade policy, conducted by the Senate Foreign Affairs, Defence and Trade References Committee (April 2012), and in our subsequent appearance before that committee (December 2012).

Those submissions highlighted Telstra's extensive involvement in the Indonesian telecommunications market in the past. In this submission we will not repeat that information, but rather provide an update on recent developments in our activity in Indonesia.

We also refer DFAT to the discussion contained in our previous submissions on Indonesian telecommunications regulation, relevant institutions, foreign ownership restrictions for the telecommunications sector, behind-the-border barriers to entry such as licensing procedures, and more general considerations such as the legal and tax system in Indonesia. In this submission we will provide brief updates on several of these issues.

We note, finally, that Telstra has engaged with DFAT and the Department of Communications and the Arts on several occasions regarding developments in our business in Indonesia as well as particular challenges that have arisen due to changes in Indonesian regulation. Topics discussed have included previous changes in the Indonesian government's 'Negative List' restricting foreign ownership in Data Communications System licences in May 2014 and the possible mandatory onshoring of data centres (Regulation No. 82) in October 2012. We will briefly update these topics in this submission.

If DFAT requires further copies of our prior submissions please contact Jamie Snashall of our Government Relations team who will be glad to provide these.

## 2. Recent developments in Telstra's activities in Indonesia

In the three years since Telstra's last formal submission to DFAT regarding Indonesia, we have significantly increased our activity in the Indonesian market, specifically in the provision of services to enterprises through the 'telkomtelstra' joint venture, and by adding international capacity and capabilities in the region through our acquisition of Pacnet. Details of these two developments are set out below, as well as our latest initiative to extend our muru-D accelerator to Indonesian entrepreneurs.

### *a. The 'telkomtelstra' joint venture*

In 2014 Telstra entered into a joint venture with PT Telkom Indonesia to supply managed telecommunications services to enterprises in the Indonesia market under the brand name 'telkomtelstra' (<http://www.telkomtelstra.co.id/en/>).



PT Telkom is the domestic incumbent carrier in Indonesia and remains the largest telecommunications provider with the most extensive fixed line network in the country. It is majority owned by the Indonesian government and has a record of working successfully with foreign co-investors in other parts of its domestic business.

The strategic approach of the telkomtelstra joint venture is to meld PT Telkom's existing infrastructure, local insights and relationships with domestic enterprises, with Telstra's experience in developing, designing and delivering networks and services for enterprise customers. The joint venture has access to international connectivity from both Telkom's international division, Telin, and Telstra.

Building on this combination of skills and resources, telkomtelstra operates in Indonesia as an end-to-end managed solution provider supplying next generation managed information and communications technology (ICT) services including networking, collaboration and IT services that leverage cloud architectures. To date, telkomtelstra has grown to close to 100 employees and it is managing more than 350 customer sites.

The JV was carefully structured to be compliant with Indonesia's foreign ownership restrictions in respect of telecommunications services which were applicable at the time, while meeting the control and financial objectives of both partners. Telstra acquired the maximum permitted (at the time) 49 per cent equity, but controls the business on a day-to-day basis through holding the majority in the management board including appointing the President Director (the equivalent of the role of Chief Executive Officer). Telstra consolidates the telkomtelstra JV in the accounts of our Australian parent entity. PT Telkom, for its part, holds the equivalent of the chairman's position on the separate four-person supervisory Board of Commissioners, a distinct feature of Indonesian company law. We understand that by virtue of bundling the underlying carriage services with the managed network services, PT Telkom is able to fully consolidate the JV under Indonesian law.

Additional to supplying end-to-end managed networks to its customers, current telkomtelstra products include IT infrastructure and application-based cloud services, network and IT security services, and unified communications providing IP-based collaboration with secure access to voice, messaging and data over all types of workforce devices. The JV has rapidly gathered formal supplier accreditation from several major international vendors to deliver their products to enterprise customers.<sup>1</sup>

Through the telkomtelstra JV, Telstra has been able to support access to the Indonesian market by leading Australian digital services providers, including Australian digital signage company

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<sup>1</sup> Global industry partners to telkomtelstra include Cisco, for which the JV is CMSP certified; Huawei, for which the JV is 4 Star MSP certified; EMC, for which the JV is Platinum certified; Microsoft; and Riverbed, for which the JV is RASA certified. Software partners include Whispir, Mandoe Media, and IPScape.

Mandoe Media, with whom we work extensively and are an investor in. This highlights the role telecommunications services can play as an enabler for both our Australian suppliers and our Australian customers to gain access to offshore markets. We encourage the Australian government to consider telecommunications services in IA-CEPA in this broader context as an enabler for other services. It is important to recognise this multiplier effect from improved market access and to consider telecommunications services beyond a narrow sectoral view.

### *b. Acquisition of Pacnet*

In April 2015 Telstra completed the acquisition of Pacnet, an Asia-based telecommunications services and connectivity provider. Integration of Pacnet into the Telstra Global Enterprise and Services business, which focuses on providing services to multinational enterprises, governments and other carriers, has created a business that employs over 2000 staff across around 20 countries. The acquisition of Pacnet provided significant additional submarine cable capacity into the Indonesian market and traversing Indonesian waters. This in turn has exposed us to particular issues around maintenance and repair of our vital submarine cable infrastructure within Indonesian jurisdiction, which will be discussed in section 2(b) of our submission below.

Telstra continues to invest in new submarine cable systems which connect Australia to Singapore, the regional hub which in turn connects to Indonesia. Importantly, most cable systems that connect to Singapore necessarily must be run through Indonesia's Exclusive Economic Zone (EEZ) waters. We recently announced the conclusion of a Memorandum of Understanding to participate in the APX-West system between Perth and Singapore,<sup>2</sup> and we have purchased significant capacity on the Bay of Bengal Gateway (BBG) system, a new system connecting Singapore, Malaysia, India, Sri Lanka, Oman and the United Arab Emirates. This will enable Telstra to offer customers increased direct connectivity between Asia and the Middle East and then onward to Europe when combined with the Europe India Gateway (EIG) cable.<sup>3</sup>

As part of the Pacnet transaction Telstra acquired EAC-C2C, Asia's largest privately owned and operated submarine cable system connecting Japan, South Korea, China, Taiwan, Hong Kong, the Philippines and Singapore, and we are increasing capacity on the fibre pairs to ten times their original design and extending the life of this cable by seven years until at least 2035.<sup>4</sup>

These submarine cable capacity investments position Telstra to grow our share of traffic originating in Indonesia and to better serve Indonesian corporate and wholesale customers.

### *c. Extending muru-D to Indonesian start-ups*

The Telstra-backed startup accelerator muru-D ([muru-d.com](http://muru-d.com)) was initially based in Sydney but has recently expanded internationally by establishing an additional resident program in Singapore. Austrade Jakarta is working with muru-D to highlight the opportunity for young

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<sup>2</sup> Media Release, "Singtel, SubPartners and Telstra team up for new Perth to Singapore submarine cable link", 16 March 2016, <http://capitalb.net/resources/documents/APX-West-March16.pdf>

<sup>3</sup> Darrin Webb, "Leading a data driven world with enhanced international connectivity", *Telstra Exchange*, 10 May 2016, <http://exchange.telstra.com.au/2016/05/10/leading-data-driven-world-enhanced-international-connectivity/>

<sup>4</sup> *Ibid.*

Indonesian entrepreneurs to apply for the resident incubator program in Singapore.<sup>5</sup> This has included bringing the muru-D roadshow (where entrepreneurs can pitch in person to support their application to muru-D) to Jakarta and Bandung, at GEPI and EduTech respectively, in June 2016.

## 2. Specific regulatory concerns

### *a. Foreign ownership restrictions*

We have noted in previous Telstra submissions to DFAT regarding market access to Indonesia that the commitments provided in Indonesia's WTO GATS schedule<sup>6</sup> were very limited in respect of foreign ownership of telecommunications services, at a maximum of 35 per cent for carriers, and were soon exceeded by domestic liberalisation of market access. However, this leaves the specific foreign ownership limits subject to Indonesia's 'negative list' and there is always the risk that foreign ownership restrictions will revert back to their 1997 WTO GATS commitment level.

#### *i. Foreign investment limits under WTO GATS and AANZFTA – 35%*

To summarise briefly, Indonesia's WTO GATS commitment on telecommunications services is as follows<sup>7</sup> --

<b>GATS Schedule commitment</b>	<b>Adoption of Telecoms Reference Paper?<sup>8</sup></b>
<p><i>Local services:</i> Exclusivity for PT Telkom and its KSO partners.<sup>9</sup></p> <p><i>Long-distance services:</i> Exclusivity for PT Telkom.</p> <p><i>International services:</i> Exclusivity for PT Indosat and PT Satelindo</p> <p><i>Mobile:</i> only through a JV with a state-owned company</p> <p>Where foreign equity participation is permitted, it is limited to 35%. The foreign service supplier must be a</p>	<p>Partial adoption – excludes commitment to separation of regulator from suppliers and to non-discrimination in allocation of scarce resources (including spectrum, numbering and rights of way).</p>

<sup>5</sup> See: "Australia and Indonesia collaborate on startup acceleration", 26 May 2016, <https://muru-d.com/news/article/australia-and-indonesia-collaborate-startup-acceleration/>

<sup>6</sup> Indonesia's Schedule of Specific Commitments, GATS/SC/43/Suppl.2 dated 11 April 1997.

<sup>7</sup> Adapted from Telstra's submission to DFAT on AANZFTA, 14 February 2005, Appendix B.

<sup>8</sup> The Reference Paper sets out a range of best-practice regulatory principles, including ensuring interconnection, the prevention of anti-competitive conduct, transparency of licensing administration, independent regulation, and determining the provision of universal service. The Reference Paper is only expressed to apply to Basic Telecommunication Services, so Value Added Telecommunications Service providers are not automatically entitled to take advantage of its provisions on, for example, interconnection. However, some of the provisions set out in the Reference Paper in practice serve to benefit providers of VAS as well (e.g. the requirement for independent regulation).

<sup>9</sup> The Kerjasama Operasi or "KSOs" were 5 regional joint venture arrangements by the incumbent PT Telkom with foreign carrier partners for provision of local fixed-access services in Indonesia. Telstra was a 20% investor in the Central Java KSO, Mitra Global Telekomunikasi Indonesia ("MGTI").

<p>“world class operator with extensive international experience.”</p>	
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The provisions enabling maintenance of the monopolies of PT Telkom and PT Indosat /Satelindo over domestic and international services are redundant as these were terminated by mid-2004 and each company was permitted to enter the other’s previously exclusive market. Cross-shareholdings between the former incumbents were removed so that they have been entirely separate entities for the past decade. By 2005 all three of Indonesia’s major mobile carriers had significant minority foreign ownership.

In Indonesia’s Schedule of Specific Services Commitments in the AANZFTA there was some updating to reflect these changes, though the right to maintain exclusivity for local and international services beyond 2011 was retained. Disappointingly, in the AANZFTA there was no change to 35% foreign ownership limit and the Reference Paper amendments specifically made by Indonesia, were retained.

ii. **Foreign investment limits under current ‘negative list’ – predominantly 67%**

The current Indonesian ‘negative list’ applicable to foreign investors in telecommunications services, released by the President in May 2016,<sup>10</sup> applies a general limit of 67 per cent to the listed telecommunications services. It is notable that the limits for many types of telecommunications services have been raised from their previous ‘negative list’ cap of 49 per cent, other than mobile services where the previous cap was 65%. The listed services are:

- Operation of Wired Telecommunication Network
- Operation of Wireless Telecommunication Network
- Operation of Telecommunication Network that is Integrated with Telecommunication Service
- Operation of content provision telecommunication service (ringtone, premium short message services, etc.)
- Information centre (call centre) and other telephone added value service
- Internet service provider
- Data communication system services
- Public internet telephone services
- Internet interconnection services (network access point), other multimedia services

However, the new May 2016 ‘negative list’ also created a new restriction of 49% for e-commerce service providers (described as “marketplace-based platforms, daily deals, price

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<sup>10</sup> Attachment III Title 11 in Presidential Regulation No. 44 of 2016 regarding the List of Business Fields that are Closed and Business Fields that are Open with Requirements in the Field Of Capital Investment, 12 May 2016.

grabber, classifieds”) where the investment amount is less than 100 billion Rupiah. This was a category of service not previously subject to any restriction.

The categories of services reference code numbers in the Indonesian Standard Industrial Classification of 2015 (the ‘KBLI’) and those definitions can be vague and ill-defined, especially in respect of telecommunications where there is significant overlap between services. This creates further uncertainty as to whether an investment is caught or not.

The ‘negative list’ is amended on a frequent basis and the above changes to the foreign ownership limits, while mainly an improvement on the prior position, illustrate the commercial uncertainty associated with investment in the Indonesian telecommunications services market. At any given time the limits may be changed by Presidential proclamation. While previous investments are typically grandfathered even if in excess of the new limit, downward changes and the introduction of new service categories are disruptive to business expansion because of the inability to duplicate existing partner equity shares. Further, unexpected changes also create difficulty for investments that are planned to be made shortly after a new ‘negative list’ is issued.

We suggest it would be very helpful if in its scheduled commitments in IA-CEPA Indonesia bound itself to at least the current ‘negative list’ foreign ownership limits in respect of telecommunications services, with an improvement in the offer in respect of e-commerce service providers and a requirement that any category of service not specified is not subject to a foreign investment limit (i.e. a negative list approach).

The benefit of such commitments would be to underwrite the limits with treaty-based remedies in the event that the current ‘negative list’ is amended to create new restrictions on foreign ownership of telecommunications services providers. If Indonesia wishes to retain the format of the scheduled commitments on telecommunications services it made in the WTO GATS and AANZFTA then it should commit to no limitations in respect of the scheduled services save for those services currently limited under its 2016 ‘negative list’, for example, “Operation of Wired Telecommunication Network” would correspond to, “Public Switched Telephone Service (CPC 7521)” and “Circuit Switched Public Data Network Services (CPC 7523)”, in respect of which Indonesia should be requested to commit to at least the current restriction of 67 per cent. An omnibus reference to the ‘negative list’ as amended from time to time would provide no certainty to foreign investors and defeats the purpose of scheduling commitments.

#### *b. Permitting of submarine cable repair activities*

As noted, nearly all cables connecting to Singapore pass through Indonesian EEZ waters. At present Telstra has 1,900 kilometres of cable and 19 undersea repeaters within the relevant waters that we fully own, and we are also a partner in various consortium cables traversing the relevant waters. These systems connect Australia to South East Asia, the Middle East and Europe, and assume particular importance when systems running from Australia’s east coast to Japan and the United States are disrupted e.g. by seismic events. [C-i-C]. In the case of an accidental break in the cable (sometimes caused through activity by local fishing vessels), there is an urgent need to get a repair vessel to the break in the cable and any delays in doing so can impact internet connectivity in the region, including in Indonesia itself. [C-i-C]

[C-i-C]



### *c. Draft regulation of over-the-top services*

In May 2016 the Minister of Communication and Information Technology released a draft regulation to be applicable to providers of internet based applications and content (also known as 'over-the-top' or 'OTT' services).<sup>11</sup>

#### *i. Key provisions of the draft OTT regulation:*

The draft regulation defines OTT services as comprising two categories of service: internet-based application services (expressly including voice over internet protocol (VoIP) and social media) and internet-based content services.<sup>12</sup> In order to supply OTT services to Indonesian users, the provider must be an Indonesian national or be an entity incorporated in Indonesia, with foreign providers at minimum required to have permanent establishment (Bentuk Usaha Tetap or BUT) status. Further, all providers are required to register with the regulatory advisory body, the Badan Regulasi Telekomunikasi Indonesia (BRTI) providing evidence of their Indonesian corporate registration and tax information as well as setting out the OTT services they provide.<sup>13</sup>

The requirements applying to the operations of OTT providers include that:

- they are required to filter content to comply with local law;
- they must use the national payment gateway provided by an Indonesian domiciled provider (though, to the best of our knowledge, there is no such single gateway in existence);
- data is to be located in data centres within Indonesia;
- they are required to offer their services using Indonesian IP addresses; and
- data is to be made available for lawful interception, with records to be retained for at least 3 months<sup>14</sup> or as long as may be directed by a court in legal proceedings;

OTT content providers are required to ensure that the content traversing their service complies with a lengthy list of sensitive topics including defamation, offending religious values, or portraying gambling or violence.<sup>15</sup>

Penalties for failing to observe the requirements include "bandwidth management" (which is assumed to mean traffic throttling or website blocking) to be implemented by the user's ISP or mobile operator to prevent access to the service and at the direction of Directorate General of Posts and Telecommunications.<sup>16</sup> The content restrictions are subject to enforcement under general Indonesian law,<sup>17</sup> understood to refer to criminal law prosecution.

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<sup>11</sup> Public Consultation, "Bill of the Minister of Communication and Information of the Republic of Indonesia regarding Provision of Internet Based Application and/or Content", May 2016. The Bill has been provided by Telstra to DFAT.

<sup>12</sup> Art. 1.1-3 of the Bill.

<sup>13</sup> Art. 4 of the Bill

<sup>14</sup> Art. 8 of the Bill.

<sup>15</sup> Art. 6 of the Bill.

<sup>16</sup> Art. 13(2) of the Bill.

<sup>17</sup> Art. 14 of the Bill.

ii. Concerns with implicit trade barriers contained in draft OTT regulation

The stated goals of the draft regulation are to create a favourable business environment for OTT services, develop Indonesia's domestic creative industry, provide for legal certainty and fair competition, protect consumers, and maintain Indonesia's sovereignty.<sup>18</sup> Instead, the proposed regulation could cause OTT providers to withdraw their products from the Indonesian market due to the high cost of compliance. Many jurisdictions have adapted existing legislation to address new forms of communication such as OTT messaging and VoIP services. This can be accomplished without requiring the use of local IP addresses and local servers for all user communications. OTT providers have limited ability to provide real-time filters for such a wide range of possible offences, but would be able to act in the event of user activity which was clearly in breach of domestic law and is identified to the provider by law enforcement authorities.

There have been media reports of access to some consumer orientated sites and services, such as Netflix and Reddit, being limited due to concerns with OTT providers. However, the draft OTT regulation does not only target OTT content providers but also expressly covers widespread applications like VoIP, and potentially including unified communications services provided by Telstra and other applications which we make available in our Software-as-a-Service (SaaS) offer to enterprise customers.

We are concerned that the proposed regulation would act to exclude Australian OTT suppliers, ranging from start-ups to larger providers such as Telstra, from the Indonesian market. Particular barriers to entry are:

- the permanent establishment requirement, which would involve very high compliance cost for smaller start-up businesses;
- the registration requirement, which most OTT providers serving Indonesian users from offshore are unlikely to become aware of, imperilling their service (and their users' access to it) with the threat of being blocked by order of the DGPT at any moment;
- the obligation to use the national payment gateway, which creates a monopoly for a specific payment mechanism and prevents OTT providers from using their regular payment system suppliers; and
- the mandatory data localisation requirement is impractical, as it would require every OTT provider to procure Indonesian IP addresses and server capacity. (A similar concern arose in late 2012 with Regulation 82 which obliges "electronic system providers" that provide services to the "public" to have their data centre and disaster recovery centre in Indonesia.<sup>19</sup> However, to date the relevant implementing regulations for this requirement have not been issued and there is no clear definition of services provided to the public in the above context, with the informal guidance having been that it does not apply to cloud service providers.)

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<sup>18</sup> Recital (b) of the Bill.

<sup>19</sup> Regulation No. 82 of 2012 on Organizing Electronic Systems and Transactions, under Law No. 11 of 2008 on Electronic Information and Transactions.

Several of these concerns also arise in respect of another draft regulation that is currently being consulted upon, the “Regulation on Trade Transactions through Electronic Systems”. This has been proposed by the Ministry of Trade to manage suppliers engaging in consumer-facing e-commerce, the providers of their e-commerce platforms, as well as advertising on those platforms and data privacy.<sup>20</sup> Provisions include a requirement for local incorporation,<sup>21</sup> the use of Indonesian IP addresses and local data centres,<sup>22</sup> obtaining of a permit from the Minister by foreign providers of “Electronic Communication Facilities” used for e-commerce,<sup>23</sup> and retention of customer personal data in Indonesia unless the Minister has consented to it being transferred to a foreign jurisdiction on the basis of at least equivalent privacy protection.<sup>24</sup>

### iii. Relevant measures in IA-CEPA

Our view is that IA-CEPA should include a provision ensuring that data localisation measures are restricted to only where they are justifiable for legitimate privacy and security requirements. Further, cross-border supply of OTT services should not be restricted by measures which are more burdensome than necessary to achieve the stated legitimate objective. These provisions might be modelled on the freedom of cross-border data flows commitments in the Electronic Commerce chapter of the Trans-Pacific Partnership Agreement (TPPA).<sup>25</sup>

Additionally, IA-CEPA should provide for regulatory transparency commitments including that proposed regulations be widely publicised to ensure interested parties are given adequate opportunity to provide comment. The general transparency provisions in Chapter 26 of the TPPA and the specific provisions in Article 13.22 in the Telecommunications chapter of the TPPA, both contain appropriate measures on which IA-CEPA text might be modelled.

## 3. Update on general telecommunications regulatory environment

Our previous submissions to DFAT provided a detailed description of the general legal and regulatory environment for telecommunications services in Indonesia. The current position remains largely unchanged: the principal legislation remains the 1999 Telecommunications Law,<sup>26</sup> with two key regulations issued in 2000 by the Ministry of Communications and Information Technology (MCIT) giving effect to the legislation on a day-to-day basis.<sup>27</sup> A draft of a new telecommunications law was circulated amongst a small number of stakeholders in late 2013 but does not appear to have progressed to open consultation. E-commerce is dealt with in a more

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<sup>20</sup> Ardi Wirdana, “Indonesia E-Commerce Bracing for a Year of Regulatory Debates and Continued Growth”, *ASEAN Today*, 9 January 2016, available at: <http://www.aseantoday.com/2016/01/indonesia-e-commerce-bracing-for-a-year-of-regulatory-debates-and-continued-growth/> -

<sup>21</sup> Ministry of Trade, “Regulation on Trade Transactions through Electronic Systems”, Art 12.

<sup>22</sup> Art 25.

<sup>23</sup> Art 18.

<sup>24</sup> Art 57.

<sup>25</sup> TPPA Arts. 14.11 and 14.13 in particular.

<sup>26</sup> Law No. 36 of 1999.

<sup>27</sup> These are: Regulation No. 52 of 2000 – Provision of Telecommunications; and Regulation No. 53 of 2000 – Use of Radio Frequency Spectrum and Satellite Orbit.

recent suite of legislation and regulation, with further proposed regulation currently under consultation by the Ministry of Trade as noted above.<sup>28</sup>

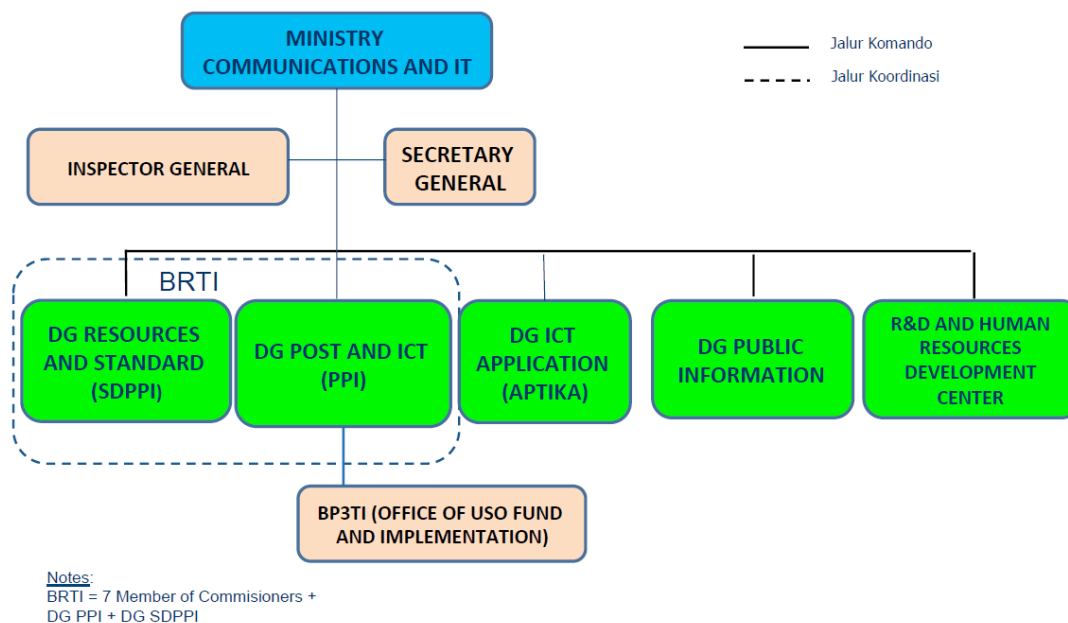
Regulatory authority for telecommunications services resides at a plenary level with MCIT but is exercised by staff acting through DGPT which in turn is composed of:

- the Directorate General of Implementation of Postal Services and Informatics (PPI); and
- the Directorate General of Resources and Devices of Postal and Informatics (SDPPI).

PPI and SDPPI are responsible for formulating and implementing technical policies on, and standardisation of, the implementation, resources and devices relating to the postal, postal services and informatics sectors in Indonesia

The BRTI is the regulatory agency responsible for regulating, supervising and controlling the implementation of telecommunications networks and services and is led by the Telecommunications Regulatory Committee (TRC) composed of seven appointed Commissioners together with PPI and SDPPI. The BRTI derives its powers from a formal delegation of authority from MCIT.

The institutional arrangements are therefore complex, reflecting internal checks and balances as well as the reliance of the BRTI on the public service staff in DGPT. The diagram below shows the structure as explained in a SDPPI presentation provided to Telstra:



As noted in our previous submissions to DFAT, the available licences are also diverse and complex, and proceed through an “in-principle” phase before being finally awarded. Usually there are roll-out requirements imposed as condition of progressing to a final licence. During the

<sup>28</sup> Law No. 11 of 2008 – Electronic Information and Transaction Law; and Regulation No. 82 of 2012 – Electronic Transactions and System Operations. On the Trade Ministry side, see Law Number 7 of 2014 – Trade; and the reference provided in footnote 22 above.

provisional phase the licensee is subject to annual inspections and no change to its shareholder structure can be made. Once the licensee passes its “operational worthiness” test it is granted a perpetual licence, but even then an evaluation is conducted every five years with the potential risk of suspension or withdrawal if irregularities are alleged. Once a final licence has been granted, a change in equity of more than 50% can only be carried out with consent of DGPT, placing the licence at risk in any disposal or acquisition transaction (this is additional to, and overlapping with, the jurisdiction of the competition regulator, the Komisi Pengawas Persaingan Usaha or KPPU).

The current licensing structure is complex to navigate and involves numerous discretionary decisions by the various arms of DGPT. There are often significant delays in processing of licensing requests due to resource constraints within the public service. The increasing use of VoIP poses particular challenges for the existing licensing scheme which deals separately with voice and data networks and has had difficulty addressing convergence, i.e. the provision of voice over data services. We understand that these issues are recognised within MCIT, and have been addressed in drafts of a new Telecommunications Act, however there are challenges involved in simplifying the scheme while transitioning existing licensees. The negotiation of IA-CEPA provides an opportunity for DFAT to advocate for licensing reform and to offer support for this difficult project as part of capacity-building initiatives.

Further, any foreign investment company (or PMA company) that intends to conduct telecommunication activities in Indonesia must obtain the necessary consents from the investment coordinating board (BKPM) and MCIT before it can carry out its commercial activities, in the following series of steps:

- obtain BKPM in-principle licence;
- obtain BKPM licence to conduct business (that doesn't require a licence);
- obtain MCIT in-principle licence;
- obtain MCIT operating licence; and
- finally amend BKPM licence (to reflect business that does require a licence).

This sequence of steps is unduly complex and the IA-CEPA negotiating process provides an opportunity for advocating better coordination between the relevant agencies.

Radiofrequency spectrum is also allocated by MCIT acting through SDPPI, and we understand that procedures have been modernised and improved with expert advice including a 5 year AusAid project on spectrum pricing and planning. SDPPI faces a difficult task of defragmenting existing spectrum bands to accommodate larger lots supporting 4G Long Term Evolution (LTE) and thereafter 5G, made more complex by existing licence types being technology-specific. Telstra was consulted by SDPPI on our experience with defragmentation of the 1800MHz spectrum band in Australia, a mobile operator-led initiative, and we both met with SDPPI and provided a detailed summary of our lessons from the process.

The Australian Communications and Media Authority (ACMA) is widely respected in our region for its technical competence. Additionally there is a cohort of well-regarded independent radio engineers in Australia who support Telstra and other carriers to fulfil the self-regulatory elements of our legislation. We strongly support the inclusion of capacity building measures in IA-CEPA which would make use of Australia's leadership and technical expertise in radiofrequency spectrum engineering and management.

#### 4. Telstra's developing connected health services business

Telstra Health ([www.telstra.com.au/telstra-health](http://www.telstra.com.au/telstra-health)) is an emerging business which anticipates that the way healthcare is delivered will change. Telstra Health is helping lead that change by building a better connected health system. We have built up a team with experience across the health industry so we can work with providers, patients, government, funders and developers to create a new approach to healthcare.

The current business incorporates more than 18 acquisitions of leading connected health providers, and several commercial licensing arrangements to bring world-class products to the Australian and Asian markets. The current portfolio of products covers provider applications that range from hospital systems to individual GP and pharmacy needs, secure communication systems to enable connected care, telehealth services, and health analytics.

An example of Telstra Health's work in South East Asia is its deployment of the CloudMed Arcus Hospital Information System (an integrated patient care system that provides hospital networks spread over multiple locations with a single medical record) at Sunway Medical Centre group, Penang Adventist Hospital group and Tung Shin Hospital's Western Medicine and Traditional Chinese Medicine wings in Malaysia.

We believe that IA-CEPA provides an opportunity to facilitate the deployment of similar connected health services in Indonesia in the future, by Australian suppliers such as Telstra Health. Key measures to support Australian suppliers are:

- ability to provide cloud-based services with data localisation requirements only where these are necessary for legitimate privacy and security reasons;
- appropriate access to domestic telecommunications licences where required to provide connectivity services, whether by deploying our own infrastructure or through commercial arrangements with local providers;
- the ability for specialised IT and telecommunications engineering professionals to enter Indonesia under Mode 4 on a short-term basis to carry out installations, maintenance and emergency repairs; and
- the ability to provide connected health services on a Mode 1 basis, with Mode 3 establishment only required where this is justifiable for legitimate reasons of maintenance of professional medical safety standards, and/or privacy or security.

Due to the developing nature of the connected health business there is only limited experience with the types of behind-the-border barriers to trade that may exist or be created. It would be helpful to obtain the benefit of DFAT's experience in anticipating these barriers in IA-CEPA.

#### 5. Conclusion

Telstra reiterates the key message of its prior submissions to DFAT, namely that we seek specific commitments within IA-CEPA on access to Indonesia's telecommunications services market. Bound commitments on permitted foreign ownership need to be improved significantly compared those in the WTO GATS and AANZFTA. Recent events in Indonesia such as the release of the draft OTT regulation emphasise the need for the telecommunications services commitments, or another chapter of IA-CEPA such as the e-Commerce commitments, to include a provision dealing with cross-border data flows and the use of mandatory data localisation as a barrier to trade. IA-CEPA can act as a catalyst for Indonesia to move towards a simpler and more transparent telecommunications regulatory regime that is overseen by a well-resourced, politically independent and highly competent regulatory agency.

Indonesia may also gain significant value from greater access to Australian expertise relating to the development and implementation of telecommunications and competition policy, particularly as Indonesia suffers similar challenges in delivering high quality telecommunications services to a geographically dispersed and unevenly concentrated population.

We believe that fostering connectivity through telecommunications services with Indonesia, our nearest neighbour with a young population and a thriving democracy, will be an enabler for increased trade by all other services and goods sectors. We suggest that both countries need to look at trade in telecommunications services through a wider lens than the usual sectoral approach, and that the telkomtelstra JV provides an excellent example of bilateral cooperation at work.