

The Auditor-General  
Audit Report No.20 2000–2001  
Performance Audit

## **Second Tranche Sale of Telstra Shares**

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Canberra ACT  
30 November 2000

Dear Madam President  
Dear Mr Speaker

The Australian National Audit Office has undertaken a performance audit in accordance with the authority contained in the *Auditor-General Act 1997*. I present this report of this audit, and the accompanying brochure, to the Parliament. The report is titled *Second Tranche Sale of Telstra Shares*.

Following its tabling in Parliament, the report will be placed on the Australian National Audit Office's Homepage—  
<http://www.anao.gov.au>.

Yours sincerely



P. J. Barrett  
Auditor-General

The Honourable the President of the Senate  
The Honourable the Speaker of the House of Representatives  
Parliament House  
Canberra ACT

## **AUDITING FOR AUSTRALIA**

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# **Summary and Recommendations**





# Summary

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## Background

1. The October 1999 Telstra 2 sale involved the second sell-down by the Commonwealth of its shareholding in Telstra Corporation Limited (Telstra). The initial sell-down (referred to as Telstra 1) comprising 4.29 billion shares occurred in November 1997 raising \$14.2 billion in Commonwealth proceeds. The Telstra 2 share offer comprised 2.13 billion shares representing some 16.6 per cent of the company. Although the number of shares sold in Telstra 2 was approximately half the number sold in Telstra 1, Telstra 2 is estimated to have raised \$16.0 billion, \$1.8 billion more than the initial sale.

2. The Telstra 2 sale was outlined in the Government's 1998 pre-election policy as the second stage in the proposed full privatisation of the company. The *Telstra (Further Dilution of Public Ownership) Act 1999* was passed by the Parliament on 21 June 1999, allowing the second tranche sale to proceed. This Act permitted the sale of up to 49.9 per cent of the Commonwealth's original equity interest in Telstra.

## Audit approach

3. Telstra 1 was the subject of an ANAO performance audit that found the Telstra 1 offer was completed in accordance with the sale timetable but that there was evidence that the offer was not fully priced and that overall value for money in future sales should be improved. The Explanatory Memorandum for the Telstra 2 sale legislation stated that the issues raised by ANAO would be taken into account in the management of Telstra 2.

4. The Telstra 2 sale performance audit objectives were to:

- assess the extent to which the Government's sale objectives were achieved;
- assess the effectiveness of the management of the public share offer, including action taken in response to the 1998 Telstra 1 performance audit report; and
- identify principles of sound administrative practice to facilitate improved administrative arrangements for future Commonwealth public share offers.

## Audit conclusions

5. The Telstra 2 share offer was one of the largest public share offers conducted world-wide in 1999. The sale was conducted in a timely manner, within a tight timeframe. The success of the offer was underpinned by the strength of Australian domestic demand, which was reflected in 87 per cent of the shares being allocated to Australian investors, including two-thirds of shares allocated to retail investors.

6. Gross proceeds from the Telstra 2 sale are estimated to amount to \$16.04 billion, with effective settlement procedures adopted for the \$9.76 billion in first instalment proceeds received in October 1999. After deducting the Commonwealth's direct sale costs of \$169 million, net sale proceeds are estimated to be \$15.88 billion. The sale costs represent 1.1 per cent of sale proceeds, a significant reduction compared to Telstra 1 (1.9 per cent) and the 1996 Third Tranche Sale of the Commonwealth Bank of Australia (1.5 per cent).<sup>1</sup>

7. The issue price was set at \$7.80 per share representing a modest discount to the prevailing market price for Telstra shares. The price was set at this level having regard to aggregate demand, prices bid into the institutional book, the prevailing market and the expected stock market outlook. At the strike price, institutional demand covered allocation by 1.9 times compared to 6.2 times in Telstra 1 and 3.1 times in the 1996 Third Tranche Sale of the Commonwealth Bank of Australia. Telstra 2 instalment receipts initially traded at a discount to the issue price and on-market stabilisation purchases were undertaken by, and at the discretion of, the Telstra 2 Global Coordinators to assist this situation. Following these initial stabilisation purchases, the instalment receipts traded at a modest premium for the remainder of the 30 day stabilisation period. In this context, the issue was fully priced.

## Sale management

8. The Office of Asset Sales and IT Outsourcing (OASITO) was responsible for management of the Telstra 2 sale. Overall, OASITO's management was effective as the sale was completed in accordance with the timetable and within budget. OASITO built on its experience with

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<sup>1</sup> A significant factor in the reduced sale costs was the \$88.8 million (51 per cent) reduction in payments to the major Telstra 2 advisers and the selling syndicate compared to Telstra 1. These reductions were primarily the result of the improved tender and contract negotiation procedures implemented in the light of experience with the Telstra 1 sale and consistent with previous ANAO recommendations.

the Telstra 1 sale and also took steps to ensure that the recommendations made in ANAO's Telstra 1 sale performance audit report were addressed in the management of the Telstra 2 sale. This contributed to improved administrative processes and a more cost-effective outcome, including cost reductions of some \$90.4 million compared to Telstra 1.

9. OASITO gave greater attention to its tendering and contract management procedures in the Telstra 2 sale. Financial administration of contracts in Telstra 2 was improved. Management of sub-contractors was also generally of a high standard.

10. The Telstra 2 Global Coordinator contract was negotiated in a manner that maximised the Commonwealth's bargaining position. Of note is that the process by which the Global Coordinator fees and selling commissions were negotiated represented a substantial improvement over that adopted in Telstra 1. While acknowledging this improvement in performance, there is one lesson to be learnt from the process and that is the need, in the interests of all stakeholders, for full transparency in the way tenderers' past performance is taken into account in any selection process.

## Accountability

11. A number of steps were taken during the sale process in pursuit of the objective of a sale conducted to the highest standards of probity and accountability including establishing a Process Review Committee (as had occurred in Telstra 1) to review decision making processes and a Joint Project Secretariat to, amongst other things, maintain a central record of important documents.

12. The objectives of the ANAO performance audit of the Telstra 2 sale included assessing the effectiveness of the management of the Telstra 2 offer, including action taken in response to the performance audit report on the Telstra 1 sale. Accordingly, part of this Telstra 2 performance audit report examines OASITO's review of expenditure on the 1997 Telstra 1 international roadshow. This part of the report is directed solely to the adequacy of the management and financial accountability processes of OASITO in respect of the expenditure on the Telstra 1 international roadshow. In this context, ANAO recognises that, in Telstra 2, OASITO took steps to address the concerns raised by ANAO in relation to the Telstra 1 roadshow through improved contract management procedures, greater cost consciousness and a more appropriate allocation of costs.

13. Among other things, ANAO's performance audit of the Telstra 1 sale found that the \$3.02 million in payments to the Telstra 1 Roadshow Coordinator were not independently verified through appropriate supporting documentation and an effective audit trail was not maintained of this Commonwealth expenditure. ANAO's analysis of a small sample of the supporting documentation identified a number of anomalies in the roadshow expenditure. ANAO provided OASITO with this documentation to enable OASITO to complete a reconciliation. Further correspondence was exchanged and, as a result of ANAO advocating that a comprehensive reconciliation be undertaken, on 16 October 1998, OASITO commissioned an internal review of expenditure on the Telstra 1 international roadshow.

14. In July 1999, OASITO completed its review of the 1997 Telstra 1 roadshow expenditure, by which time a total of \$A151 468 had been repaid to the Commonwealth out of total payments of \$3.02 million. OASITO's Internal Audit and Financial Management Committee also noted in July 1999, based on advice from OASITO's internal auditor, that there was no evidence to support any contention that there was dishonesty or intent to defraud the Commonwealth by any party.

15. ANAO considers that the experience with this prolonged review of Telstra 1 international roadshow expenditure highlights a number of steps agencies should take to enhance the prospects of early resolution of any outstanding matters in the Commonwealth's interests. This includes: obtaining timely advice from relevant specialists in order to inform judgements about whether further action is necessary; and coordinating all relevant advice to inform decision making on significant issues based on appropriate risk management assessments. Such action not only provides assurance for the Chief Executive in terms of his/her responsibilities under the *Financial Management and Accountability Act 1997* for the proper use of public money but also provides an appropriate audit trail for both internal and external audit purposes. Sound processes add to the confidence and accountability of all concerned.

# Recommendations

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**Recommendation No.1**  
**Para. 2.47** ANAO *recommends* that, in any future expenditure investigations that are to consider the propriety of Commonwealth expenditure, OASITO obtain and coordinate appropriate and timely independent advice to inform sound risk management assessments and decision-making for both assurance and accountability purposes.

*Agree:* OASITO

**Recommendation No.2**  
**Para. 3.16** ANAO *recommends* that OASITO ensure appropriate procedures are in place to address transparently prior performance of tenderers when selecting advisers to ensure the credibility and integrity of the selection process in the interests of all stakeholders.

*Agree:* OASITO



# **Audit Findings and Conclusions**





# 1. Introduction

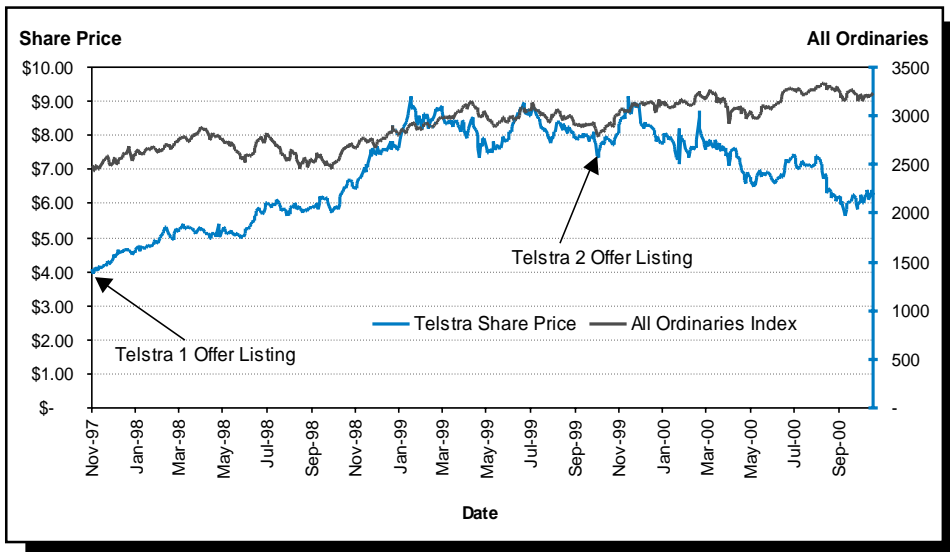
## Background

**1.1** The October 1999 Telstra 2 sale involved the second sell-down by the Commonwealth of its shareholding in Telstra Corporation Limited (Telstra). Telstra is Australia's largest telecommunications and information services company. Telstra's operating revenue in the year to 30 June 1999 was \$18.2 billion with a net profit of \$3.5 billion.

**1.2** The initial sell-down (referred to as Telstra 1) comprising 4.29 billion shares occurred in November 1997 raising \$14.2 billion in Commonwealth proceeds. The Telstra 2 share offer comprised 2.13 billion shares representing some 16.6 per cent of the company. Although the number of shares sold in Telstra 2 was approximately half the number sold in Telstra 1, Telstra 2 is estimated to have raised \$16.0 billion, \$1.8 billion more than the initial sale. This reflects the substantial increase in the Telstra share price between Telstra 1 and Telstra 2 (see Figure 1.1).

**Figure 1.1**

**Telstra Share Price: November 1997 to November 2000**



Source: ANAO analysis of published financial data, based on the fully paid share price.

## Sale objectives

1.3 The Telstra 2 sale was outlined in the Government's 1998 pre-election policy as the second stage in the proposed full privatisation of the company. The aim of the Telstra 2 sale was to reduce Commonwealth ownership of Telstra to 50.1 per cent. The stated sale objectives were to: achieve an optimum financial return from the sale; promote orderly market trading of Telstra shares; secure a timely sale process conducted to the highest standards of probity and accountability; promote an internationally competitive, low cost, innovative telecommunications industry; continue to build investor support for the Government's asset sale programme; support Australia's reputation as a sound international investment location; provide a solid commercial basis for any further sales of Telstra equity by the Commonwealth; and broaden share ownership.

1.4 The *Telstra (Further Dilution of Public Ownership) Act 1999* was passed by the Parliament on 21 June 1999, allowing the second tranche sale to proceed. This Act amended the *Telstra Corporation Act 1991* to permit the sale of up to 49.9 per cent of the Commonwealth's original equity interest in Telstra. When introducing the sale legislation into the Parliament, the Government advised that the Office of Asset Sales and IT Outsourcing (OASITO) would manage the Telstra 2 sale.

## Audit approach

1.5 The Telstra 1 sale was the subject of an ANAO performance audit (Audit Report No.10 1998–99, *Sale of One-third of Telstra – 'the 1998 report'*). In the 1998 report, ANAO found that the Telstra 1 offer was completed in accordance with the sale timetable but that there was evidence that the offer was not fully priced and that overall value for money in future sales should be improved. The Explanatory Memorandum for the sale legislation stated that the issues raised in the 1998 ANAO report would be taken into account in the management of the Telstra 2 transaction.

1.6 The objectives of ANAO's Telstra 2 sale performance audit were to: assess the extent to which the sale objectives were achieved; assess the effectiveness of the management of the offer, including action taken in response to the 1998 performance audit report; and identify principles of sound administrative practice to facilitate improved administrative arrangements for future Commonwealth public share offers.

1.7 The scope of the audit comprised all activities in connection with the reduction of the Commonwealth's Telstra shareholding to 50.1 per cent. This included the 1998 Telstra 2 pre-planning study, Telstra 2 offer preparation, conduct of the public share offer, and financial completion. The audit scope also included OASITO's review of expenses associated

with the 1997 Telstra 1 international roadshow that resulted in the repayment of \$151 468 to the Commonwealth out of total payments of \$3.02 million. The audit scope was limited with respect to continuing negotiations concerning the costs associated with the shortfall in the Telstra 2 buffer stock provision. Also, OASITO had not finalised all contract and sub-contractor payments at the time audit fieldwork was completed (June 2000).<sup>2</sup>

**1.8** The audit was conducted in accordance with the ANAO Auditing Standards at an estimated cost to the ANAO of \$410,000. From its panel of legal advisers, ANAO engaged the Australian Government Solicitor (AGS) to advise on contractual matters, the conduct of the review of expenditure on the 1997 Telstra 1 international roadshow and preparation and circulation of the proposed audit report.

**1.9** The majority of audit fieldwork was conducted between January 2000 and June 2000. Issues Papers were provided to OASITO for comment in May 2000, followed by a Discussion Paper in June 2000. A proposed report, or extracts thereof, was issued in August 2000 with a revised proposed report issued in October 2000. This report was originally due to be tabled in October 2000. The delay in tabling, with associated increased costs to ANAO, is attributable to the additional consultation required after the issue of the first proposed report in August 2000 including the second proposed report that was issued in October 2000.

## **Implementation of ANAO recommendations**

**1.10** The 1998 Telstra 1 audit report included 11 recommendations aimed at improving the future management of Commonwealth public share offers, particularly financial management. The Department of Communications, Information Technology and the Arts (DOCITA) agreed and the Department of Finance and Administration (DOFA) agreed with qualifications to one recommendation (Recommendation 7, which related to the sale of shares not paid for by institutional investors). All other recommendations related to OASITO alone. OASITO agreed with qualifications to nine recommendations and disagreed with two recommendations.<sup>3</sup>

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<sup>2</sup> Australian Auditing Standard AUS 806 states that the objective of a performance audit is to enable the auditor to express an opinion whether, in all material respects, all or part of an entity's operations have been carried out economically, efficiently and/or effectively. Any limitations on the scope of the auditor's work, and the reasons for the limitation, are required to be described in the audit report.

<sup>3</sup> The two disagreed recommendations related to managing foreign exchange risk in contracts and rewarding in the allocation process institutions who indicate their price elasticity of demand for shares.

**1.11** The Government advised in the Explanatory Memorandum for the sale legislation that the issues raised in the 1998 report would be taken into account in the management of the Telstra 2 transaction. Accordingly, OASITO required that each of the offer committees address the recommendations and findings from the 1998 report that were relevant to their operations. All the offer committees were required to regularly report to the sale Steering Committee (which was chaired by OASITO) of actions they had taken or proposed to take. The Global Coordinators' internal auditor reviewed the responses and their implementation in August and October 1999. OASITO obtained further assurance by requiring each of the offer committees to include in their Post Offer Completion Report details of the action they had taken in response to the 1998 report.

**1.12** ANAO found that OASITO built on its experience with the Telstra 1 sale and, together with its advisers, responded to the recommendations of the 1998 report. This contributed to improved administrative processes for the Telstra 2 sale and a more cost-effective outcome in a number of areas, notably:

- The process by which the Global Coordinator and Business Adviser contracts were tendered and negotiated maximised the Commonwealth's bargaining position and proposed fees and commissions were a strong differentiating factor in the selection process. Furthermore, fees were only paid where services had been provided. In aggregate, these improvements led to cost reductions of \$88.8 million compared to Telstra 1.
- ANAO's Telstra 1 audit identified deficiencies in the way expenditure on the 1997 Telstra 1 roadshow was administered and ANAO recommended improvement in future sales (Recommendation 4).<sup>4</sup> In addition, ANAO raised concerns with OASITO about the allocation of costs between the Commonwealth and the Global Coordinators, having regard to the Global Coordinators' contractual responsibilities. In Telstra 2, OASITO implemented Recommendation 4 from the 1998 report and also took steps to address the other contractual concerns

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<sup>4</sup> The initial cost to the Commonwealth of the Telstra 1 roadshow was \$3.06 million. Despite the significant sum of Commonwealth expenditure involved, ANAO's 1998 audit report found that, of this \$3.06 million, the \$3.02 million in payments reimbursed by the Global Coordinators to the Roadshow Coordinator were not independently verified through appropriate supporting documentation. As well, an effective audit trail was not maintained of this Commonwealth expenditure. Later recovery of \$151 468 reduced the cost of the Telstra 1 roadshow to \$2.91 million.

raised by ANAO. As a result of improved contract management procedures, greater cost consciousness, a more appropriate allocation of costs and the fact that Telstra 2 was a secondary offer, the direct cost to the Commonwealth of the Telstra 2 roadshow was approximately half that of the final cost of the Telstra 1 roadshow, with a saving of \$1.4 million.

- All potential exposures to foreign exchange risk were identified and managed.
- All logistics sub-contracts contained a pre-agreed timetable outlining each milestone, the time it was to be completed by and the payment that would be received once the milestone was achieved. Management of sub-contractors was also generally of a high standard.
- A number of steps were taken to improve the efficiency in settlement processes and prompt action was taken where institutions did not pay for their shares on the due date, including recovery of the interest cost to the Commonwealth of delays.
- The allocation criteria applied in the institutional bookbuild encouraged bidders to quantify their demand for stock at different prices, thereby indicating their price elasticity of demand.

**1.13 Finding:** OASITO built on its experience with the Telstra 1 sale and took steps to ensure the recommendations made in ANAO's report on the Telstra 1 sale were addressed in the management of the Telstra 2 sale. This contributed to improved administrative processes and a more cost-effective outcome, including cost reductions of some \$90.4 million compared to Telstra 1 (which also reflects the fact that Telstra 2 was a secondary offer).

## 2. Sale Outcomes

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### Sale timing

**2.1** In March 1998, the Government announced that, if re-elected, it would seek to fully privatise Telstra. After a tender process, OASITO contracted one of the Telstra 1 Global Coordinators to undertake a pre-planning study between April and August 1998. The purpose of this study was to: determine the likely aggregate investor demand for Telstra 2; analyse alternative offer structures; consider the possible timing for the sale; and analyse the key project management lessons from Telstra 1. The final report was provided to OASITO on 28 August 1998.<sup>5</sup>

**2.2** In November 1998, following the October 1998 Federal Election, selection of major advisers for the Telstra 2 sale process commenced. The first contract was signed on 10 December 1998 with OASITO's Domestic Legal Adviser appointed after a tender process. The successful firm had undertaken the same role in Telstra 1 as well as providing assistance with the preparation of Telstra 2 sale legislation and the 1998 Telstra 2 pre-planning study.

**2.3** Also in November 1998, OASITO sought tenders for the Global Coordinator and a Business Adviser positions. Following a tender process, these appointments were finalised on 17 and 21 December 1998 respectively. Three Global Coordinators were appointed to lead the global selling effort and to provide project management consultancy and sale related advisory services to OASITO. These firms were the same ones that undertook this role in the 1997 initial public offer of Telstra shares, namely: ABN AMRO Rothschild; Credit Suisse First Boston; and JB Were & Son. The firm appointed to provide independent business advice on all aspects of the transaction (Goldman Sachs Australia) was different from the Telstra 1.

**2.4** The appointment of the major sale advisers was completed in March 1999 with the selection of the international legal adviser and communications consultant. By this time, preparatory work had commenced on a contingency basis, pending passage of the legislation by Parliament. Five preparatory working groups were established with

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<sup>5</sup> The report focused on the sell-down of a further 16 per cent of Telstra but also commented upon the methodology for maximising the Commonwealth's position, from a market perspective, to ensure that it would be able to proceed quickly with the sale of its remaining shareholding in Telstra.

specific terms of reference in the areas of: process review; due diligence; logistics and retail marketing; offer structure; and institutional marketing. Once legislative authority was obtained, these groups became the offer committees that were responsible for much of the work necessary to complete the sale.

**2.5** The legislative package for the sale was passed by the Parliament on 21 June 1999 and received Royal Assent on 5 July 1999. Following a prospectus pre-registration period for the Australian public between 25 July and 16 August 1999, the Telstra 2 share offer was launched by the Minister for Finance and Administration on 6 September 1999. Trading in Telstra 2 instalment receipts was planned to commence on 18 October 1999.

**2.6** The structure of the Telstra 2 offer was very similar to that used in the 1997 initial public offer. A sale by instalment approach was adopted, with securities listed on the Australian Stock Exchange (ASX), New Zealand Stock Exchange and New York Stock Exchange. The offer was divided into an Australian retail offer and an institutional offer:

- The Australian retail offer was conducted between 20 September and 7 October 1999 and involved: an offer to all members of the public; a broker firm component whereby members of the ASX and members of the Financial Planning Association could bid for shares which were then to be allocated to their private clients; and an offer to eligible Telstra employees.
- The institutional offer commenced with pre-marketing conducted between 6 September and 17 September 1999. This was followed by a domestic and international roadshow between 21 September and 14 October 1999. The formal institutional bidding process (known as a bookbuild) commenced on 5 October with institutions, the selling syndicate and ASX members (broker sponsored bids) able to bid for shares up to 4:00pm on 15 October 1999.

**2.7** The issue price was announced on 17 October 1999 and trading in Telstra 2 instalment receipts commenced on Monday 18 October. The institutional offer settlement date was 22 October 1999, retail applicants having paid the first instalment for their shares when lodging their applications.

**2.8** In total, 13 weeks elapsed between the start of pre-registration and institutional settlement. This represented a reduction of two weeks compared to the Telstra 1 offer. The reduction was achieved by reducing the length of the pre-registration period by two weeks and the time allowed for processing of the retail offer by one week. These reductions were offset by an additional week to allow for more accurate processing of pre-registration data, an area where problems occurred in Telstra 1.

**2.9 Finding:** Planning and preparatory work for the Telstra 2 transaction commenced in parallel with the Government seeking legislative authority to undertake the sale. By the time the sale legislation was passed in June 1999, OASITO's major advisers had been appointed and sale preparatory groups established. Following a prospectus pre-registration period, the Telstra 2 share offer was launched in September 1999 and completed in October 1999, in accordance with the sale timetable. The offer period was reduced by two weeks compared to Telstra 1. ANAO concludes that the Telstra 2 share offer was conducted in a timely manner.

## Financial returns

**2.10** Gross proceeds from the Telstra 2 sale are estimated to amount to some \$16.04 billion as at July 2000. The majority of Telstra 2 sale revenue is to be used to reduce Commonwealth debt<sup>6</sup> as well as fund the Government's \$1 billion *Accessing the Future* social bonus package.

**2.11** The major component of the Telstra 2 sale proceeds is the price paid by investors for Telstra shares. The security offered for sale was Telstra shares on an instalment basis<sup>7</sup> with instalments payable in October 1999 and November 2000.<sup>8</sup> The first instalment price was set at \$4.75 per instalment receipt discounted to \$4.50 for Australian retail investors. The second instalment price was set at \$3.05 per instalment receipt, discounted to \$2.90 for Australian retail investors who hold their instalment receipts continuously until the second instalment is paid. The instalment receipts were to be cancelled and a fully paid ordinary share transferred to investors following payment of the second (and final) instalment.

**2.12** Under the sale by instalment arrangements, some \$9.76 billion in first instalment proceeds has been received by the Commonwealth. A further \$6.28 billion was due to be paid on or before 2 November 2000. Similar to the 1996 Third Tranche Sale of the Commonwealth Bank (CBA3), Telstra 2 investors were able to prepay the final instalment so as to convert

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<sup>6</sup> Audit Report No. 14 1999–2000, *Commonwealth Debt Management*, examined the major actions taken to reduce net Commonwealth debt as a result of ongoing budget surpluses and the proceeds of asset sales, including Telstra 1.

<sup>7</sup> International investors were able to purchase interim American Depository Shares rather than instalment receipts. Each interim American Depository Share represents five instalment receipts.

<sup>8</sup> The sale by instalment arrangements were modelled on those used in Telstra 1 which, in turn, were adapted from the structure developed for the 1996 Third Tranche Sale of the Commonwealth Bank.



their holding from instalment receipts into Telstra shares.<sup>9</sup> As of June 2000, some \$11.8 million in prepayments had been received.

**2.13** The Commonwealth's direct sale costs of \$169 million represent 1.1 per cent of sale proceeds, a significant reduction compared to Telstra 1 (1.9 per cent) and CBA3 (1.5 per cent). The Telstra 2 costs were also comfortably within the approved sale budget of \$224 million. After deducting the direct sale costs of \$169 million, net sale proceeds are estimated to be \$15.88 billion (see Figure 2.1).

**Figure 2.1**

**Telstra 2 Sale Proceeds and Costs as at 31 July 2000**

	\$ m	\$ m
<b>SALE PROCEEDS</b>		
Australian Retail Offer	11 059.93	
Australian Institutional Offer	3 355.09	
International Offer	2 223.00	
Stabilisation Trading Profits	4.10	
Broker contribution to mail out costs	0.23	
<b>Total Value of Shares Sold</b>		<b>16 642.35</b>
Less Proceeds Foregone by:		
Instalment Discounts	557.04	
Employee Free Shares/Loyalty Shares	40.64	
<b>Total Proceeds Foregone</b>		<b>597.68</b>
<b>Gross Offer Proceeds</b>		<b>16 044.67</b>
<b>SALE COSTS</b>		
Selling Commissions and Fees	65.13	
Sale Logistics	44.46	
Global Coordinator Fees and Expenses <sup>A</sup>	13.58	
Advertising and Marketing	13.13	
Costs reimbursed to Telstra Corporation	6.63	
Legal and Accounting Advice	6.29	
Business Adviser	4.00	
OASITO Running Costs	1.53	
Other	0.98	
<b>Total Offer Costs</b>		<b>169.23</b>
<b>NET SALE PROCEEDS</b>		<b>15 875.44</b>
Notes:		
<sup>A</sup> Comprises fees paid of \$9.00 million, fees invoiced but not yet paid of \$1.50 million, expenses claimed of \$2.90 million and reimbursed buffer stock funding costs of \$184 388.		

Source: ANAO analysis of data from OASITO and the Global Coordinators.

<sup>9</sup> The CBA3 prepayment process proved to be administratively cumbersome (see pp. 28–31 of Audit Report No. 13 1997–98, *Third Tranche Sale of the Commonwealth Bank of Australia*). These administrative issues were addressed in Telstra 2 by: specifying that a minimum of 150 instalment receipts must be prepaid at any one time; the final instalment can only be prepaid on every second Friday from 12 November 1999 up until 1 September 2000; and the amount of the prepaid final instalment is fixed at \$3.05 per instalment receipt (the institutional price) with no time value of money discount applied.

## Financial settlement

2.14 Effective administration of the receipt of sale proceeds assists in maximising the financial return from the offer. In Telstra 1, ANAO identified a number of deficiencies in the settlement processes that resulted in not all shares being sold and the Commonwealth's financial interests not being protected. These deficiencies were addressed in the Telstra 2 offer, as follows:

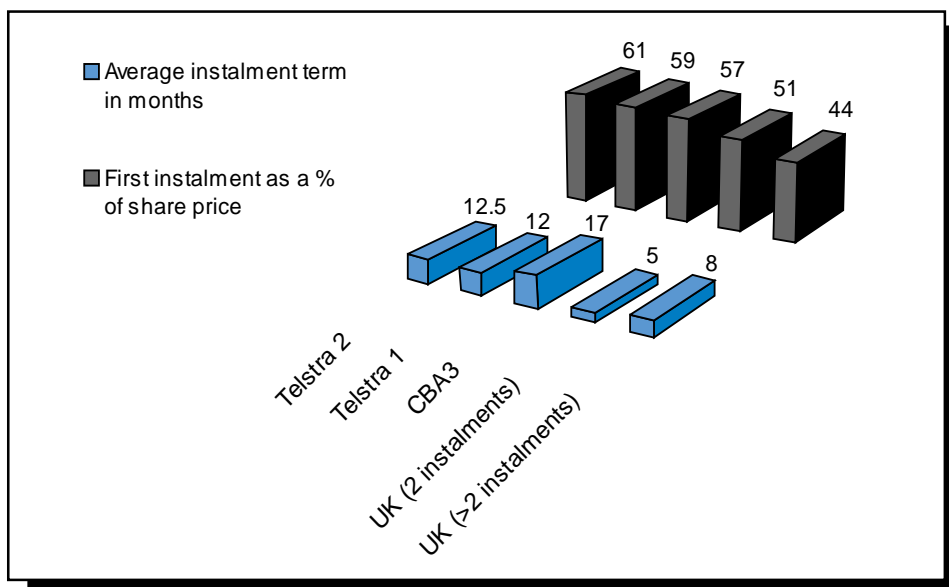
- For retail applications, new cheque processing procedures were adopted, aimed at allowing for same-day processing of retail offer proceeds.
- The risk of settlement default was addressed by the adoption of two significant initiatives, which OASITO advised ANAO were not available at the time of Telstra 1:
  - public and internet applicants were able to use the BPAY facility rather than cheques which ensured the Commonwealth received prompt, cleared funds. The Global Coordinators reported to OASITO that 9.7 per cent of retail applicants used this facility resulting in 8.0 per cent of application monies being received electronically; and
  - the ASX's Clearing House Electronic Subregister System (CHES) was used for settlement in the broker firm component of the Australian retail offer and for payment by Australian and New Zealand institutions. The CHES approach ensured that no shares were allocated to brokers and domestic institutions before cleared funds were received by the Commonwealth.
- There remained a risk that some domestic institutions would not settle on time or default on their purchases. The institutional bidding manual cautioned all institutions that the Commonwealth would enforce its contractual rights to settlement. Institutions did not pay for 13.1 million shares on 22 October 1999 (representing 3.0 per cent of sales to domestic institutions). These settlement defaults were identified on 22 October 1999 and action taken to enforce settlement on the next business day (25 October 1999). In addition, OASITO required that interest compensation of \$22 259 be paid to the Commonwealth for the delay.
- OASITO planned for the possibility that some shares may remain unsold as a result of settlement defaults, the Global Coordinators choosing not to exercise their over-allotment option or unexercised employee loyalty shares. To address the insider trading provisions of the Corporations Law, a wholly Commonwealth owned company,

Commonwealth Residual Shareholding Company Pty Ltd, was established to facilitate the sale of any residual Telstra shares.<sup>10</sup> The company entered into an agreement with the Commonwealth for the acquisition and sale of any residual Telstra 2 shares. As all institutional allocations were settled, the over-allotment option was exercised in full and OASITO expects that only a small amount of employee loyalty shares will be retained, the company was wound-up.

**2.15** Using an instalment receipt structure creates an exposure to the possibility of default by investors on the second instalment. The sale by instalment structure included measures to address the risk of the Commonwealth incurring losses as a result of any second instalment defaults. The first instalment was set at approximately 60 per cent of the share issue price in order to discourage default on the second instalment should the share price fall. This compares favourably to earlier Commonwealth public share offers that used the instalment receipt structure as well as United Kingdom experience (see Figure 2.2).

**Figure 2.2**

**Telstra 2 Sale by instalment comparison**



Source: ANAO analysis of data from OASITO and ANAO Audit Report No. 13 1997–98, *Third Tranche Sale of the Commonwealth Bank of Australia*, p. 66.

<sup>10</sup> In its audit of Telstra 1, ANAO found that 1.77 million shares had not been sold because of settlement delays and defaults. ANAO recommended (Recommendation No. 7) that OASITO, in consultation with the relevant shareholder departments, investigate the viability and merits of selling these shares. OASITO investigated such a sale but legal advice was that it was impractical for the Commonwealth to sell the shares because of the insider trading rules.

**2.16** If an investor defaults on the final instalment, the Telstra Instalment Receipt Trustee is empowered to sell sufficient of the investor's underlying shares to recover the outstanding payment and interest for the Commonwealth and to recoup administrative costs associated with the default. The investor would then be issued with the balance of the underlying fully paid shares. In the event that it is necessary to sell all the underlying shares and that the sale proceeds are insufficient to fully meet the final instalment payment, interest and administration costs, the instalment receipt holder remains liable for any shortfall.<sup>11</sup>

### **Buffer stock**

**2.17** For large public offerings like Telstra, a number of securities are reserved, called the buffer stock, from the total available for sale in order to satisfy legitimate claims from applicants who consider they have been treated unfairly, or have suffered from processing or other errors. Under an agreement with OASITO, the Global Coordinators purchase the buffer stock from the Commonwealth and hold it until it is transferred to applicants. The Global Coordinators receive payment for the buffer stock securities when they are so transferred.

**2.18** The original allocation to the buffer stock reserve in Telstra 2 was 17.78 million instalment receipts. The final total demand for buffer stock was later estimated to be 27.38 million instalment receipts, which resulted in a shortfall of 9.6 million instalment receipts. To cover this shortfall:

- 4.0 million instalment receipts were transferred from the Greenshoe market stabilisation purchases with a resulting loss of \$1.96 million in potential stabilisation trading profits payable to the Commonwealth; and
- on-market purchases of 5.6 million instalment receipts were undertaken by the Global Coordinators for the remainder of the shortfall. OASITO has estimated that the additional cost of the on-market purchases was approximately \$2.6 million.

**2.19** To deal with the costs associated with the on-market purchases, the Commonwealth and Global Coordinators agreed to a process to

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<sup>11</sup> Unless the share price falls to below the amount of the final instalment payment, there is an economic incentive for investors to make the final instalment payment because the fully paid share so obtained will be worth more than the value of the payment. If the Telstra fully paid share price falls to below the amount of the final instalment, implying that the instalment receipt is worthless, investors may, in the absence of debt recovery action by the Commonwealth, be economically better off defaulting, thus forfeiting their shares, and buying in the aftermarket at a lower price. In this circumstance, the Commonwealth would lose sale proceeds equivalent to the difference between the final instalment amount and the share price, for the shares on which investors do not make the final instalment payment.

determine who should bear what part of the costs associated with the buffer shortfall. The process involved the appointment of an independent auditor to review the circumstances leading to recommendations on the allocation of operational (but not contractual) responsibility, followed by both parties entering into good faith negotiations to reach a settlement. The independent auditor made recommendations on financial and operational responsibility for additional shares being required to supplement the original buffer stock estimate. Negotiations between OASITO and the Global Coordinators in relation to financial responsibility for the additional costs had not been concluded at the time ANAO's performance audit was completed.

**2.20 Finding:** Gross proceeds from the Telstra 2 sale are estimated to amount to some \$16.04 billion as at May 2000. Overall, settlement procedures for the sale of these shares were effective with the result that all shares included in the offer were sold and the Commonwealth's financial interests generally protected. After deducting the Commonwealth's direct sale costs of \$169 million, net sale proceeds are estimated to be \$15.88 billion. The sale costs represent 1.1 per cent of sale proceeds, a significant reduction compared to Telstra 1 (1.9 per cent) and CBA3 (1.5 per cent) and within the Telstra 2 sale budget.

## Issue pricing

**2.21** The pricing of the issue was an important decision that directly influenced the achievement of two of the major sale objectives, namely: achieving an optimal financial return; and promoting orderly market trading of existing Telstra shares and the Telstra 2 instalment receipts.

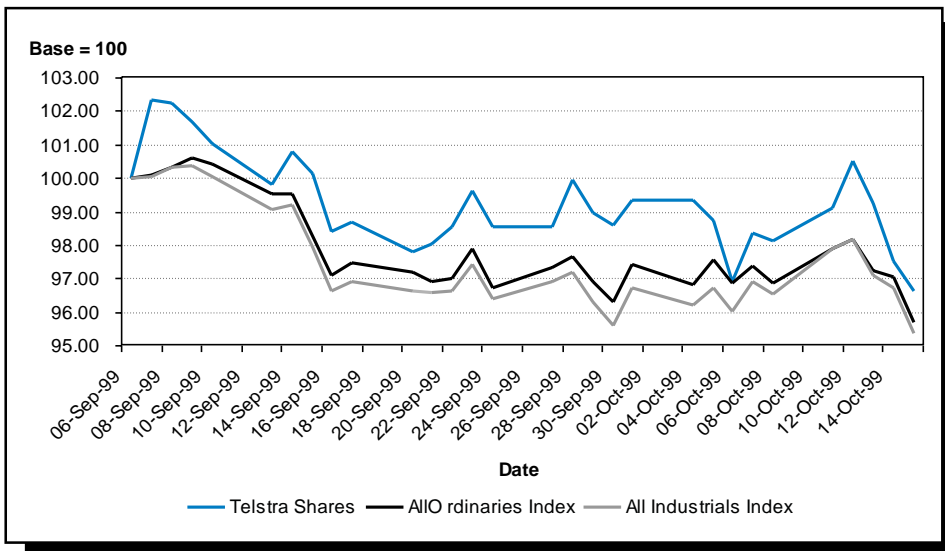
**2.22** With Telstra shares already trading on the ASX, the Telstra 2 bookbuild was conducted, and the pricing decision made, using the market price of Telstra shares as a benchmark. For this reason, OASITO took a number of steps to monitor market behaviour during the offer period in order to deter activity designed to manipulate the market price to the detriment of the Commonwealth. As illustrated by Figure 2.3, the Telstra share price slightly outperformed the market<sup>12</sup> between the offer launch date and pricing. The Global Coordinators advised OASITO that this indicates that the allocation policy to reward loyal holders worked well<sup>13</sup> and institutions were concerned that they would not achieve desired weighting in the offer.

<sup>12</sup> Represented by the All Ordinaries Index and the All Industrials Index.

<sup>13</sup> Post-sale institutional market research and share registry analysis commissioned by OASITO revealed that fewer institutions sold down their Telstra 2 allocations compared to Telstra 1.

**Figure 2.3**

**Telstra Relative Share Price Performance: Offer Launch to End of Bookbuild**



Source: Global Coordinator Post Offer Completion Report to OASITO.

**2.23** The price setting and allocation discussions involved representatives of the Global Coordinators, the Business Adviser, OASITO and the Minister for Finance and Administration. The discussions included a series of presentations on demand, prices bid into the institutional book, the prevailing market<sup>14</sup> and the expected stock market outlook. In this context, there were volatile market conditions at the time of pricing the issue with a 5.9 per cent drop in the Dow Jones Index and 5.4 per cent in the NASDAQ index in the week preceding the pricing weekend combined with a 1.2 per cent fall in the All Ordinaries in the same period. The All Ordinaries Index fell a further 2.1 per cent on Monday 18 October, the first day of trading in Telstra 2 instalment receipts.

**2.24** The offer price was announced on 17 October 1999 as \$7.80 per share for institutional investors discounted to \$7.40 per share for retail investors in Australia who hold their shares until the second instalment

<sup>14</sup> OASITO advised ANAO that: *the principal reference point used by the Commonwealth to identify the prevailing market price for Telstra shares was the volume weighted average price (VWAP) of Telstra shares traded on the ASX for the 3 day period preceding the pricing. The VWAP was disclosed in the Telstra 2 Public Offer Document as a cap on the final instalment price payable by public applicants. The use of the VWAP as a reference point is important in that it was designed to be fair and equitable to both the Commonwealth and investors because it had the effect of moderating fluctuations in price over the period preceding the pricing of the Offer.*

is paid.<sup>15</sup> The strike price of \$7.80 per share was unanimously supported by the Global Coordinators, the Business Adviser and OASITO. It represented a small premium to the 15 October closing price of \$7.78 per share but a modest discount to the five day volume-weighted average price of \$7.93 per share in the week prior to pricing. At the strike price, institutional demand (including international retail demand) covered allocation by 1.9 times compared to 6.2 times in Telstra 1 and 3.1 times in CBA3. OASITO advised the Minister that the higher coverage ratios in earlier offers reflected, in part, greater bid size inflation in these offers as part of a strategy by some institutions to secure their desired allocation of shares and that lower coverage ratios were not atypical in secondary offers. In commenting on a draft of this ANAO report, ABN AMRO suggested that the reason for higher coverage ratios in Telstra 1 than Telstra 2 is that investors were able to buy shares on the ASX prior to, during and after the bookbuild whereas in Telstra1 shares could only be bought in or after the bookbuild.

**2.25** Trading in Telstra 2 instalment receipts commenced on 18 October 1999. In Telstra 1, the instalment receipts traded at a significant premium to their issue price from the day trading commenced. As illustrated by Figure 2.4, the price of Telstra 2 instalment receipts initially fell below the issue price. The sale arrangements established with the regulatory authorities included a Green Shoe over-allotment option of 94.2 million shares to enable the Global Coordinators to purchase instalment receipts in the aftermarket so as to retard any decline in the open market price for up to 30 calendar days after trading commenced.<sup>16</sup> In accordance with these arrangements, the Global Coordinators purchased 12.1 million instalment receipts on 18 October and 19 October 1999 (days 1 and 2 in Figure 2.4) at an average price of \$4.45 per instalment receipt.<sup>17</sup> By 20 October the instalment receipt price had recovered to \$4.71 and traded above the issue price of \$4.75 for the remainder of the stabilisation period, which enabled all the shares that had been previously bought back to be resold and the Green Shoe to be “refreshed”. The trading profit of \$4.1 million (representing the difference between the price at which the securities were bought on

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<sup>15</sup> Retail investors in other jurisdictions pay the institutional price of \$7.80 per share.

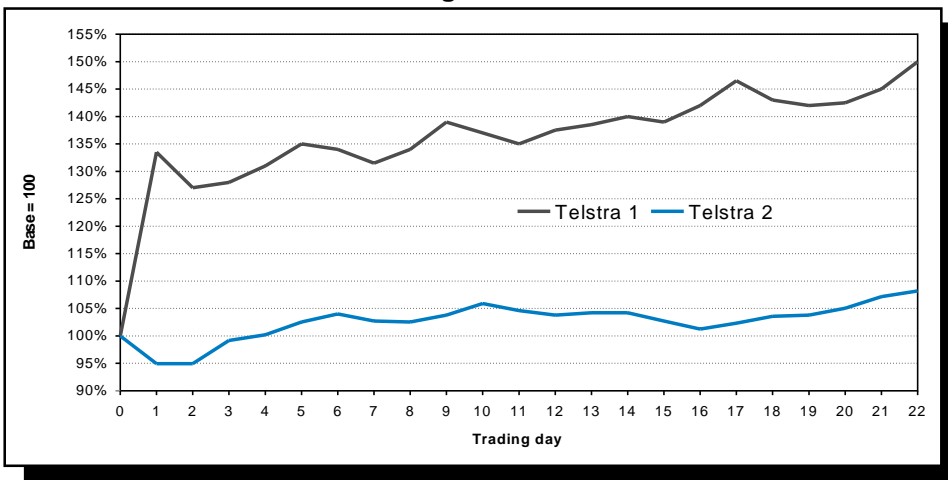
<sup>16</sup> The stabilisation arrangements were similar to those adopted in Telstra 1. Further details on market stabilisation is included at pp. 82 – 91 of Audit Report No. 10 1998–99, *Sale of One-third of Telstra*.

<sup>17</sup> A total of 6.94 million instalment receipts were purchased on the Australian Stock Exchange at an average price of \$4.51 per security with the equivalent of 5.12 million instalment receipts purchased on the New York Stock Exchange at an average price of \$4.37 per instalment receipt.

market and the price at which they were sold on market) was paid to the Commonwealth. One of the Global Coordinators (JB Were & Son) advised ANAO that:

*The stabilisation purchases in the first two days, under arrangements approved by the Australian Securities and Investments Commission (ASIC) and the ASX, did not lead or make the market (indeed the Global Coordinators were only in a position to stabilise at prices at which the instalment receipts were already trading and could not ‘bid up’ the price). ...We would contend that improved market conditions were the prime driver of the improved performance of the Telstra share price and the instalment receipts, rather than the fact that stabilisation trading had occurred.*

**Figure 2.4**  
**Telstra Public Share Offers: Trading Price in the Immediate Aftermarket**



Source: ANAO analysis of data from the Australian Financial Review.

**2.26 Finding:** The issue price was set at \$7.80 per share representing a modest discount to the prevailing market price for Telstra shares. The price was set at this level having regard to aggregate demand, prices bid into the institutional book, the prevailing market and the expected stock market outlook. At the strike price, institutional demand covered allocation by 1.9 times compared to 6.2 times in Telstra 1 and 3.1 times in CBA3. Telstra 2 instalment receipts initially traded at a discount to the issue price and the Global Coordinators undertook stabilisation purchases to assist this situation. Following these initial stabilisation purchases, the instalment receipts traded at a modest premium for the remainder of the 30 day stabilisation period. ANAO concludes that the issue was fully priced with the stabilisation purchases contributing to an orderly aftermarket.



## Demand and allocation

**2.27** The success of the Telstra 2 offer was underpinned by the strength of Australian retail demand for shares. A nation-wide advertising and marketing campaign was undertaken to ensure the widest possible cross-section of Australians were aware of the offer.<sup>18</sup> Requests for offer documents were received through four channels, namely: a direct marketing and return mail campaign; telephone calls to the Share Information Centre; a direct-mail campaign to broker and financial planner clients; and an offer website.<sup>19</sup> As a result, 3.1 million offer documents were distributed with investors also able to examine the prospectus through the offer website.

**2.28** Through the public offer and broker firm components, retail investors bid for 3.3 billion shares representing allocable demand of some \$25.1 billion. Scaleback of the public offer was small with 87 per cent of public applicants receiving all shares they applied for, with 964 million shares allocated to, or set aside for, retail applicants. Compared to the general public offer, the broker firm component was subject to much higher levels of scaleback with 437 million shares allocated compared to stated demand of 2.21 billion shares (80 per cent scaleback). The size of the retail tranche, scaleback and allocation policy was consistent with the sale objectives relating to building investor support for the asset sale programme, broadening share ownership and providing a solid commercial basis for any further sales of Telstra equity by the Commonwealth.

**2.29** The institutional offer comprised Australian and New Zealand institutions and members of the ASX bidding for shares as well as an international offer undertaken through a syndicate of underwriters. Planning and preparation for Telstra 2 had emphasised the need to strengthen international demand. However, in monetary terms, international demand in Telstra 2 was 68 per cent below Telstra 1 with the most significant falls in demand relating to the European and United States tranches.<sup>20</sup> International demand in Telstra 2 was also significantly

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<sup>18</sup> This included a non-English speaking background and visually impaired marketing campaign.

<sup>19</sup> The offer website represented an enhancement on the Telstra 1 approach. The Telstra 2 website enabled potential investors to pre-register for an offer document (as in Telstra 1) as well as to apply for and pay for shares on-line. Some 153 000 pre-registrations were received through the offer website with 12 500 applications submitted worth around \$32 million. The website was also used to distribute a number of press releases and manuals to the press, brokers and financial planners.

<sup>20</sup> OASITO advised ANAO that global accounts bid into the Rest of the World book which partly explains the decline in the European and United States tranches.

below the estimates included in the 1998 pre-planning report and the estimates included by the Global Coordinators with their tenders (see Figure 2.5). This was particularly noticeable in the European and United States tranches. As a result of the comparatively weak international demand in Telstra 2, international investors were allocated only 13 per cent of the shares on offer.<sup>21</sup>

**Figure 2.5**  
**Share Demand and Allocation**

	<i>Global Coordinator Tenders</i> (\$b)	<i>Pre- marketing</i> (\$b)	<i>Final Demand</i> (\$b)	<i>Allocation</i> (%)
<b>Australian Offer:</b>				
Retail	9.0	8.4	25.1 <sup>B</sup>	66.5
Institutional	7.0	6.8	5.4	20.1
<b>Total</b>	<b>16.0</b>	<b>15.2</b>	<b>30.5</b>	<b>86.6</b>
<b>International Offer:</b>				
Europe	4.3	2.9	1.9	5.9
United States	3.9	1.7	1.6	3.9
Rest of the World	1.8	1.2	1.9	3.6
<b>Total</b>	<b>10.0</b>	<b>5.8</b>	<b>5.4</b>	<b>13.4</b>
<b>Total Offer</b>	<b>26.0</b>	<b>21.0</b>	<b>35.9</b>	<b>100.0</b>
Note:				
<sup>A</sup> Where a demand range was provided, the mid-point of the range has been taken. The estimates tendered by the Global Coordinators have been averaged.				
<sup>B</sup> Includes broker firm demand of \$16.8 billion.				

Source: ANAO analysis of data from OASITO and the Global Coordinators.

**2.30** Concerned that demand may not be adequate to ensure all shares were sold and/or achieve an optimal price for the shares sold, OASITO and its advisers investigated the merits of issuing a security that had both equity and debt characteristics. If the hybrid security appealed to debt security investors that were additional to equity investors that would otherwise have purchased Telstra shares it would have relieved any downward price pressure on the equity component.

<sup>21</sup> The contribution in percentage terms of international investors to demand in Commonwealth public share offers has been declining since the Qantas offer.

**2.31** Two major hurdles were encountered during the development of the proposed hybrid structure. The first, which was overcome, was whether the proposed structure was allowed under the relevant Commonwealth legislation as it could be considered a borrowing. The second hurdle was the Government's requirement that the issue of exchangeable bonds not adversely affect the Commonwealth's reported fiscal or net debt position. Despite investigating a number of possible approaches,<sup>22</sup> OASITO and its advisers were unable to satisfy the Government's criterion in relation to fiscal or net debt implications. Accordingly, the exchangeable bond proposal was abandoned shortly before the offer was launched.

**2.32 Finding:** The success of the offer was underpinned by the strength of Australian domestic demand, which was reflected in 87 per cent of the shares being allocated to Australian investors, including two-thirds of shares allocated to retail investors. The size of the retail tranche, scaleback and allocation policy was consistent with the sale objectives relating to building investor support for the asset sale programme and providing a solid commercial basis for any further sales of Telstra equity by the Commonwealth. In comparison, international demand was less than estimated such that only 13 per cent of shares were allocated to international investors. In monetary terms, international demand in Telstra 2 was 68 per cent below Telstra 1 with the most significant falls in demand relating to the European and United States tranches.

## Accountability

**2.33** A number of steps were taken during the sale process in pursuit of the objective of a sale conducted to the highest standards of probity and accountability, including: establishing a Process Review Committee similar to that adopted in Telstra 1; establishing a Joint Project Secretariat to, amongst other things, provide an administrative support and coordination office for the offer; the appointment of internal auditors both for the Global Coordinators and OASITO.

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<sup>22</sup> During the development of the exchangeable bond proposal, OASITO kept DOFA informed of progress but did not ask for any specific accounting advice as to its treatment in the Commonwealth's accounts.

## Review of Telstra 1 roadshow expenditure

2.34 This part of the report is directed solely to the adequacy of the management and financial accountability processes of OASITO in respect of the expenditure on the Telstra 1 international roadshow. In this context, ANAO recognises that, in Telstra 2, OASITO took steps to address the concerns raised by ANAO in relation to the Telstra 1 roadshow through improved contract management procedures, greater cost consciousness and a more appropriate allocation of costs. Nevertheless, the specific concerns raised could have been dealt with quickly and more satisfactorily if appropriate accountability processes had been put in place. As such, there is an important lesson to be learnt in this respect for any future similar expenditures.

2.35 In Telstra 1, the Global Coordinators jointly sub-contracted an independent Roadshow Coordinator for the 1997 Telstra 1 international roadshow. A total of \$3.02 million was paid by the Global Coordinators to the Roadshow Coordinator. On the basis of a certification from the responsible Telstra 1 Global Coordinator<sup>23</sup> that it was proper to have paid this \$3.02 million, OASITO reimbursed this sum.<sup>24</sup>

2.36 Among other things, ANAO's performance audit of the Telstra 1 sale found that the \$3.02 million in payments to the Telstra 1 Roadshow Coordinator was not independently verified through appropriate supporting documentation and an effective audit trail was not maintained of this Commonwealth expenditure. ANAO's analysis of a small sample of the supporting documentation identified a number of anomalies in the roadshow expenditure and, on 19 August 1998, ANAO provided OASITO with this documentation to enable OASITO to complete a reconciliation. Further correspondence was exchanged between 21 August and 13 October 1998. As a result of ANAO advocating that a comprehensive reconciliation be undertaken, on 16 October 1998, OASITO's then Chief Executive formally requested the Chairman of the OASITO Internal Audit and Financial Management Committee to commission a review of the Telstra 1 roadshow expenditure. The Chief Executive indicated that the review should be conducted not by OASITO staff, but by the professional accounting firm that functioned as OASITO's internal auditors, and be overseen by the external member of the Committee.

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<sup>23</sup> As indicated in footnote 68, page 57 of Audit Report No.10 1998–99, *Sale of One-third of Telstra*, Credit Suisse First Boston Australia Limited (the responsible Telstra 1 Global Coordinator) advised ANAO that, 'in order to certify the Telstra roadshow invoice, Credit Suisse First Boston performed a detailed review of the invoice and supporting documentation and appointed an external consultant to determine if the project management fees, underlying production numbers/quantities and personnel rates were correctly invoiced.'

<sup>24</sup> Audit Report No.10 1998–99, *Sale of One-third of Telstra*, pp 55–59.

**2.37** A draft report was received by OASITO from its Internal Auditor on 10 December 1998 and the settled final report was provided on 29 January 1999. The report concluded that: *while the vast majority of expenditure incurred on the Telstra International Roadshow was compatible with Commonwealth Government guidelines, in the few instances where expenditure was not consistent with those guidelines, that expenditure was properly accounted for and incurred in good faith. We consider that the exceptions identified occurred because of the absence of specific guidelines in the contracts covering the activities undertaken as part of the Telstra International Roadshow between the Joint Global Coordinators and the Commonwealth and between the [Roadshow Coordinator] and the Joint Global Coordinators.* The Internal Auditor recommended that \$147 638 be recovered, in addition to the \$3,263 already repaid following ANAO's initial review of a sample of documentation.

**2.38** In response to a request from the OASITO Internal Audit and Financial Management Committee, on 8 February 1999, the Internal Auditor advised the Committee that: *on the evidence and documentation that we have seen during the preparation of our report, we are of the opinion that the expenditure was properly accounted for and incurred in good faith, and that there was no dishonesty or intent to defraud the Commonwealth on the part of either the [Roadshow Coordinator] or the [responsible Telstra 1 Global Coordinator].*

**2.39** OASITO advised ANAO that the only legal advice it obtained, on 2 December 1998, was not advice as to whether the behaviour of any party was or was not fraudulent. On 17 February 1999, in response to a question as to whether there was any evidence of fraud, OASITO advised the Senate Finance and Public Administration Legislation Committee that:<sup>25</sup> *the issue has been raised. The issue of whether there is any evidence of fraud is not yet resolved. However, we have formally asked the accounting advisers who have been through this with a fine toothcomb, and they have formally advised us that in their opinion, while there are indications of poor administration, they have no view that there has been any deliberate intent on anybody's part to act dishonestly. It would appear to be unlikely but, as I say, the fraud processes required of me have not yet been fully acquitted, and I need to go through some more processes and advise the Minister.*

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<sup>25</sup> Senate Finance and Public Administration Legislation Committee, *Official Committee Hansard*, 17 February 1999, p. F&PA 336.

**2.40** OASITO has advised ANAO that the further processes involved were: due consideration of the Internal Auditor's report by the Internal Audit and Financial Management Committee; consultation by the Internal Audit and Financial Management Committee with ANAO to identify any additional concerns or material not addressed in the Internal Auditor's report; consideration of the Internal Auditor's report and associated Internal Audit and Financial Management Committee report by the OASITO Chief Executive; and the provision of advice by the Chief Executive to the Minister.

**2.41** On 17 February 1999, the Internal Auditor provided OASITO with a more detailed report, the purpose of which was to discuss some of the issues identified in the 29 January report and make some suggestions as to how OASITO could deal with these issues. This had been foreshadowed in the covering documentation for the 29 January 1999 report. From 2 March 1999, the first meeting of the Internal Audit and Financial Management Committee after receipt of the 17 February report, until its report to the OASITO Chief Executive on 15 July 1999, there was extensive correspondence and a number of meetings with ANAO to discuss outstanding matters relating to the review of Telstra1 roadshow expenditure. The Internal Auditor was asked by OASITO to conduct a further review of the large number of issues raised by ANAO, which led to two further reports from the Internal Auditor on 6 April 1999 and 27 April 1999. OASITO has advised that ANAO's queries had not been resolved to OASITO's satisfaction until 7 July 1999.

**2.42** At the conclusion of the Internal Auditor's review, a total of \$A151,468 had been recovered. The majority of the recovery represented air fare refunds recoverable from the Roadshow Coordinator with the balance representing items incurred by the international roadshow teams (see Figure 2.6).<sup>26</sup>

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<sup>26</sup> OASITO also considered whether it should seek reimbursement of \$131,432.66 in foreign exchange variance as the Roadshow Coordinator contract required payment by the Global Coordinator in pounds sterling, whilst OASITO required all invoices to be paid in Australian dollars, but concluded that it had reimbursed the responsible Global Coordinator in the correct manner and disagreed with ANAO that the exchange rate variance should have been borne by the responsible Global Coordinator.

Figure 2.6

## Telstra 1 international roadshow: Commonwealth financial recoveries: July 1999

Expenditure category	\$A
Scheduled air travel, primarily refunds received but not passed to Commonwealth.	105 470.30
Private and excessive use of limousines.	20 126.68
Sub-contractor expenditure in excess of entitlements, unsubstantiated claims, personal expenditure & sightseeing.	12 667.44
Accommodation including personal expenses.	5 651.20
Equipment: expenditure not incurred & overcharged.	4 841.82
Other items	4 131.68
<b>Total overpayments recovered</b>	<b>152 889.12</b>
Less: transport costs incurred but not charged	(1 421.61)
<b>Total Commonwealth recovery</b>	<b>151 467.51</b>

Source: ANAO analysis of information from OASITO and reports of OASITO's Internal Auditor.

**2.43** The Internal Audit and Financial Management Committee provided its report to the then OASITO Chief Executive on 15 July 1999. The Committee concluded that it was satisfied that:

*On the basis of the information available to it, the expenditure incurred by OASITO was reasonable and justified and there is no evidence to support any contention that there was dishonesty or intent to defraud the Commonwealth by either the [Roadshow Coordinator] or [the responsible Telstra 1 Global Coordinator]. Also, the relevant parties have now reimbursed all expenditure that was not incurred within the guidelines of the Commonwealth financial management, procurement, and travel policies.*

**2.44** ANAO considers that the experience with this prolonged review of Telstra 1 international roadshow expenditure highlights a number of steps agencies should take to enhance the prospects of early resolution of any outstanding matters in the Commonwealth's interests. This includes: obtaining timely advice from relevant specialists in order to inform judgements about whether further action is necessary; and explicitly drawing together all relevant advice to inform decision making on significant issues based on appropriate risk management assessments. Such action not only provides assurance for the Chief Executive in terms of his/her responsibilities under the Financial Management and Accountability Act for the proper use of public money but also provides an appropriate audit trail for both internal and external audit purposes. Sound processes add to the confidence and accountability of all concerned.

**2.45 Finding:** In July 1999, OASITO completed a review of expenditure on the 1997 Telstra 1 roadshow, by which time a total of \$A151 468 had been repaid to the Commonwealth out of total payments of \$3.02 million. OASITO's Internal Audit and Financial Management Committee also noted in July 1999, based on advice from OASITO's internal auditor, that there was no evidence to support any contention that there was dishonesty or intent to defraud the Commonwealth by any party.

**2.46** ANAO considers that the experience with this prolonged review of Telstra 1 international roadshow expenditure highlights a number of steps agencies should take to enhance the prospects of early resolution of any outstanding matters in the Commonwealth's interests. This includes: obtaining timely advice from relevant specialists in order to inform judgements about whether further action is necessary; and coordinating all relevant advice to inform decision making on significant issues based on appropriate risk management assessments. Such action not only provides assurance for the Chief Executive in terms of his/her responsibilities under the Financial Management and Accountability Act for the proper use of public money but also provides an appropriate audit trail for both internal and external audit purposes. Sound processes add to the confidence and accountability of all concerned.

## Recommendation No.1

**2.47** ANAO *recommends* that, in any future expenditure investigations that are to consider the propriety of Commonwealth expenditure, OASITO obtain and coordinate appropriate and timely independent advice to inform sound risk management assessments and decision-making for both assurance and accountability purposes.

**2.48** Agencies responded to the recommendation as follows:

- *Agree:* OASITO. OASITO commented that, in cases such as the review of Telstra 1 roadshow expenditure, it considers the appropriate procedure to be that the expenditure investigation is conducted by professional, independent personnel with appropriate investigation training, and overseen in an appropriate arms-length fashion.



## 3. Contract Management

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### Background

**3.1** OASITO manages its sale projects with extensive support from private sector advisers, consultants and project managers. On short notice from the Government, the first Telstra 2 advisory appointments were made in early 1998 when pre-planning business and legal advisers were engaged by OASITO.

**3.2** The pre-planning business adviser role was open to selective competition, with five firms invited to tender. The candidates comprised the three Telstra 1 Global Coordinators and two other firms that were involved in Telstra 1. OASITO advised ANAO that the field was limited because of the need for advisers with immediate and complete familiarity with Telstra 1 as the Government required urgent commencement of work, and OASITO's own Telstra 1 staff had moved to other areas of work. The Telstra 1 Global Coordinators were the only firms to respond to the invitation. The successful firm was considered by the selection panel to be best placed given: its submission was considered to comprehensively address the key selection criteria; its team was assessed to possess considerable depth; and its proposed fees were the lowest (capped at \$80 000 up to 31 July 1998).

**3.3** Scoping study/planning study roles place a firm in a strong position for future advisory work on the sale process. In relation to the Telstra 2 pre-planning business adviser role, OASITO noted that fees were not a differentiating factor between the three candidates as each was prepared to 'buy' the assignment. The contract, which was not signed until 28 May 1998, provided that the pre-planning business adviser would be paid a monthly fee of \$20 000 for a period of four months from 1 April 1998 until 31 July 1998. In the event the project was not completed by 31 July 1998, further fees were to be negotiated. The total paid by OASITO was \$80 000.

**3.4** Also in early 1998, OASITO re-engaged its Telstra 1 Domestic Legal Adviser to provide legal support prior to the passage of sale legislation. OASITO advised ANAO that this role was not tendered for the same reasons of urgency as for the pre-planning business adviser, given the drafting of the legislation commenced immediately after the Government announcement. OASITO also considered the sole source approach cost-effective and defensible on the basis of the pre-agreed discount fee rates offered by the incumbent. This role was later extended

to involve general legal work associated with the Telstra 2 pre-planning phase, including the planning study. The cost of legislative and Telstra 2 pre-planning legal advice was \$193 000.

**3.5** On 9 November 1998, OASITO invited seven firms to lodge proposals, by 30 November 1998, for the role of Telstra 2 Domestic Legal Adviser. The selection panel recommended that the firm that acted as the Telstra 2 pre-planning legal adviser and Telstra 1 domestic legal adviser be appointed. The panel considered that this candidate offered the best value for money to the Commonwealth.<sup>27</sup> A contract was signed on 10 December 1998. At the conclusion of the contract period (31 December 1999), total payments to OASITO's Telstra 2 domestic legal adviser were \$2.78 million.<sup>28</sup>

## Global coordinator selection

**3.6** On 10 November 1998, OASITO invited 14 firms to submit a proposal to act as a Global Coordinator and/or independent Business Adviser for Telstra 2. Firms were permitted to lodge proposals for either or both roles but individual firms could only be appointed to one role. OASITO strongly encouraged firms that were qualified for both roles to apply for both. This was done to maximise competition for both the Global Coordinator and Business Adviser positions.

**3.7** All invited firms provided written proposals by the deadline of 30 November 1998. The shortlisting panel was chaired by OASITO's Chief Executive and included another OASITO officer and two private sector representatives. To assist with shortlisting, OASITO prepared a comparative matrix of the proposals and undertook a comparison of the costs of the fee proposals submitted by candidates. On 5 December 1998, ten firms were shortlisted for interview for the Global Coordinator and/or Business Adviser roles.

**3.8** The selection panel was the same as the shortlisting panel except one of the private sector representatives was substituted because of a perception of a potential conflict of interest. Interviews with the shortlisted firms were conducted on 10, 11 and 12 December 1998. In assessing the merits of the shortlisted candidates, the panel considered

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<sup>27</sup> The successful candidate reduced its proposed fees from \$2.7 million to \$1.9 million following its interview with the panel.

<sup>28</sup> Total payments to the Telstra 2 Domestic Legal Adviser were \$3.04 million as of June 2000.

the most important issues were: coverage of main global equity markets; syndicate structure; the need for project management skills and experience; capacity to establish and manage a joint project management office; quality of analyst support; and corporate advisory and research capacity.

**3.9** OASITO's review of expenditure on the Telstra 1 international roadshow was continuing at the time OASITO invited tenders for Telstra 2 Global Coordinators.<sup>29</sup> Accordingly, it was important that the selection process address the ongoing expenditure review in an open and consistent manner to ensure the credibility and integrity of the process. Desirably, this would have required:

- the panel to have sought information in writing from the OASITO Internal Audit and Financial Management Committee as to the progress and findings of the review; and
- the selection panel report to have fully and transparently documented the evaluation of the tenderers including any consideration of information obtained on prior performance.

**3.10** The evidence available to ANAO is that the OASITO Internal Audit and Financial Management Committee did not provide the selection panel with a written report on the progress of the review before the panel made its selection recommendations to the Minister for Finance and Administration. Nor was the selection panel provided with a copy of the draft report that the Internal Audit and Financial Management Committee had received from the Internal Auditor on 10 December 1998. ANAO noted that OASITO refrained from providing the draft report to the OASITO panel representatives until after the selection process was finalised and the contract signed on 17 December 1998. A copy of the draft report was provided for comment to the responsible Telstra 1 Global Coordinator on 11 December 1998. ANAO notes that OASITO advised the Senate Finance and Public Administration Legislation Committee in February 1999 that it had not, at this time, completed its consideration of the roadshow expenditure. OASITO's consideration of this matter was completed in July 1999.<sup>30</sup>

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<sup>29</sup> The timing of the shortlisting and interviews was contemporaneous with settling of the Telstra 1 responsible Global Coordinator's and the Roadshow Coordinator's responses to OASITO's internal auditor on questions relating to the 1997 Telstra 1 Roadshow. In addition, a draft review report was provided to OASITO on 10 December 1998 and OASITO had written to the AFP on 9 December 1998.

<sup>30</sup> See paragraphs 2.39 to 2.43 of this report.

**3.11** In response to the October 1999 draft of this report, OASITO advised ANAO that the Internal Audit and Financial Management Committee considered it appropriate not to pass the draft to the selection panel before the responsible Telstra 1 Global Coordinator had been provided with the opportunity to comment in accordance with natural justice. This followed earlier advice from OASITO that the selection panel was informed of the deficiencies evident in the management of [certain of the expenditure claims made in connection with] the Telstra 1 roadshow. OASITO went on to indicate that the responsible Telstra 1 Global Coordinator was ranked accordingly in the panel's selection report.

**3.12** In this context, ANAO's legal adviser advised that knowledge of the existence of the Telstra 1 international roadshow review was not sufficient to inform the panel's evaluation. In addition, in order to ensure that the responsible Telstra 1 Global Coordinator was treated fairly, it would have been necessary to seek its comments on any information obtained from a source other than the responsible Telstra 1 Global Coordinator which was to be used in evaluating its tender.

**3.13** On 15 December 1998, OASITO advised the Minister for Finance and Administration that the selection panel's unanimous recommendation was that the firms that acted as Global Coordinators in Telstra 1 be appointed as Telstra 2 Global Coordinators. OASITO entered into fee and contract negotiations with the preferred candidates on the basis that, if agreement could not be reached quickly, then second ranked candidates would be offered a Global Coordinator role.

**3.14** In Telstra 1, the Global Coordinators were appointed before the contract was negotiated. Negotiations then took place over the following five months when the Commonwealth's bargaining position was weak and the adviser's were focused on sale related tasks. For Telstra 2, the contract was drafted so as to address specific issues which arose in Telstra 1 as well as comments made by ANAO in respect of the Telstra 1 transaction.<sup>31</sup> As a result, the Telstra 2 Global Coordinator contract was negotiated in a manner that maximised the Commonwealth's bargaining position. The contract with the Telstra 2 Global Coordinators was signed on 17 December 1998.

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<sup>31</sup> In Telstra 2, candidates were provided with a draft contract and required to include suggested changes to the draft contract in their tender response with any material changes taken into account as part of the selection process. The preferred candidates were invited to negotiate a final contract but were told that other firms were standing by if a negotiated outcome could not be reached quickly.

**3.15 Finding:** In Telstra 1, the Global Coordinators were appointed before the contract was negotiated. The Telstra 2 Global Coordinator contract was negotiated in a manner that maximised the Commonwealth's bargaining position. While acknowledging this improvement in performance, there is one lesson to be learnt from the process and that is the need, in the interests of all stakeholders, for full transparency in the way tenderers' past performance is taken into account in any selection process.

## Recommendation No.2

**3.16** ANAO *recommends* that OASITO ensure appropriate procedures are in place to address transparently prior performance of tenderers when selecting advisers to ensure the credibility and integrity of the selection process in the interests of all stakeholders.

**3.17** Agencies responded to the recommendation as follows:

- *Agree:* OASITO. OASITO commented that it considers these procedures have already been implemented in OASITO and were followed in the selection process undertaken in the Telstra 2 share offer. OASITO further commented that its selection procedures do address prior performance of tenderers and it is always concerned to ensure the credibility and integrity of its adviser selection processes, including for Telstra 2.

### *ANAO comment*

**3.18** The ANAO recommendation emphasises the importance of transparency in selection processes (refer paragraph 3.10).

## Commissions and fees

**3.19** Candidates for the Global Coordinator and Business Adviser roles were advised in the 10 November 1998 request for proposals that, in relation to the selection criteria, cost-effectiveness was most important. This criteria included: expected outcomes; resources and capability offered; and the amount and structure of proposed fees and charges. The cost-effectiveness criterion was an addition to those adopted in the Telstra 1 sale and was aimed to address ANAO recommendations from Telstra 1.<sup>32</sup>

<sup>32</sup> In Telstra 1, ANAO found that the tenders for, and management of, the Global Coordinator contract in future sales required substantial improvement. In particular, ANAO recommended greater emphasis be given to financial issues when tendering for advisers; more competitive pressure be exerted on selling commissions and fees; the signed contract fully reflect the basis on which fees are to be calculated and paid; and fees only be paid for services actually provided. See Audit Report No.10 1998–99, *Sale of One-third of Telstra*, Recommendations 1, 2, 9 and 11.

**3.20** OASITO comprehensively analysed the fee proposals of all candidates. All proposals were below those paid in Telstra 1 but most were above OASITO's budget estimates. Accordingly, the shortlisting approach for Global Coordinator candidates involved excluding those firms whose fee proposal was considered high and whose substantive proposal offered no competitive advantage over others, and then to exclude any remaining firms whose proposals were considered relatively weak. Fees were also used as a strong differentiating factor for the Business Adviser role.

**3.21** The preferred Global Coordinator and Business Adviser candidates were advised that should a preferred firm be unable to come to agreement on fees quickly then the offer of a position would be withdrawn and the offer made to the firm identified as next most suitable. Fee negotiations were completed on 17 December 1998 with the preferred candidates agreeing to a fee proposal that was within the negotiating position agreed between OASITO and the Minister.

**3.22** The fees and commission rates negotiated by OASITO compare favourably to Telstra 1 and to CBA3 (see Figure 3.1). In addition to the improved negotiation approach adopted for the Global Coordinator fee, OASITO's negotiation of selling commissions had regard to ANAO's report on the Telstra 1 sale as follows:

- Competitive pressure on selling commissions was encouraged by OASITO seeking shortlisted firms' agreement with the Commonwealth's fee proposals. This approach was advocated by Recommendation 11(a) of ANAO's 1998 report. The reduction in fees on international sales was particularly significant, with the Telstra 2 commission rate less than half that paid in Telstra 1 which reduced sale costs by some \$20 million.<sup>33</sup>
- Having regard to expected levels of retail demand and other steps expected to be taken to generate demand from retail investors, commissions on broker firm sales were reduced to the same level as broker stamped retail applications, consistent with Recommendation 11(b) of ANAO's 1998 report. Reducing broker firm commissions to the same rate as that paid on stamped retail applications reduced sale costs by approximately \$11 million.
- Although OASITO continues to pay settlement underwriting fees, in Telstra 2 they were not paid on the Green Shoe optional shares or on the non-underwritten second instalment. In this respect, implementation of Recommendation No. 9(b) of ANAO's 1998 report reduced sale costs by more than \$1 million.

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<sup>33</sup> In addition, savings of some \$5 million were achieved through a small reduction in the commission on domestic institutional sales.

**Figure 3.1****Comparative commissions and fees: Recent Major Commonwealth share offers**

	<b>CBA3 (1996)</b>	<b>Telstra IPO (1997)</b>	<b>Telstra 2 (1999)</b>
<b>Transaction Size</b>	<b>\$5 145m<sup>A</sup></b>	<b>\$14 241m</b>	<b>\$16 045m</b>
<b>Advisory Costs</b>			
• Project Management	\$2.2m <sup>B</sup>	\$35.6m	\$10.5m
• Business/Financial Adviser	\$1.5m	\$ 4.0m	\$ 4.0m
<b>Institutional offer commissions</b>			
• Domestic institutions	0.5%	0.8%	0.64%
• International institutions	1.5%	1.75% <sup>D</sup>	0.84% <sup>F</sup>
<b>Public offer commissions</b>			
• Broker stamped	1.0%	1.10%	0.50%
• Broker firm	1.5%	1.45%	0.50%
• Entitlements	0.75% <sup>C</sup>	1.10%	Not relevant
• Employee	0.00%	1.10% <sup>E</sup>	0.00%
Notes:			
<sup>A</sup> Includes \$1.0 billion share buy-back.			
<sup>B</sup> Includes \$0.7 million paid to the Co-lead managers and Co-managers. No fees were paid to the Co-lead managers or Co-managers in either Telstra 1 or Telstra 2.			
<sup>C</sup> The CBA3 entitlements fee of 0.75 per cent was subject to a cap which was only paid on those entitlement applications that bore a broker's stamp.			
<sup>D</sup> Comprised a competitive selling concession of 1.05 per cent, management commission of 0.35 per cent and underwriting fee of 0.35 per cent.			
<sup>E</sup> Applications by Telstra employees were included in the Australian retail offer with commissions paid on the same basis and at the same rate as other retail applications.			
<sup>F</sup> Includes 0.08 per cent underwriting fee payable on the first instalment. The underwriting fee component did not apply to shares that were subject to the Greenshoe Over-allotment Option or to the second instalment.			

Source: Audit Report No.10 1998–99, *Sale of One-third of Telstra* pp. 38 & 106 and Telstra 2 Share Offer Public Offer Document, 6 September 1999, p. 25.

**3.23** In aggregate, advisory fees and selling commission payments totalled \$42.2 million in CBA3 (0.8 per cent of gross proceeds), \$174.8 million in Telstra 1 (1.2 per cent of gross proceeds) and \$86.0 million in Telstra 2 (0.5 per cent of gross proceeds).<sup>34</sup> The significant reductions in Telstra 2 commission and fee payments (see Figure 3.2) was primarily the result of:

- the 71 per cent reduction in the Global Coordinators' project management fee from \$35.6 million to \$10.5 million;
- lower selling commissions and fees, particularly in the international tranche and the broker firm component of the retail offer. This was

<sup>34</sup> Of this amount, the three Global Coordinators were paid \$34.2 million, or 43 per cent of fee and commission payments. This compares to \$91.2 million in Telstra 1, or 56 per cent of fee and commission payments.

partly due to the fact that Telstra 2 was a secondary offer as well as OASITO's improved negotiation processes; and

- the allocation of two-thirds of the offer to retail investors (retail selling commissions were lower than institutional) and the fact that 46 per cent of retail applications were lodged directly by the investor rather than through a stockbroker, resulting in no commissions being paid to brokers.

**Figure 3.2**

**Telstra Public Share Offers: Adviser Costs and Savings**

<i>Contract</i>	<i>Telstra 1 (\$m)</i>	<i>Telstra 2 (\$m)</i>	<i>Reduction (\$m)</i>
Global Coordinator Project Management Fee	35.6	10.5	25.1
Selling Commissions and Fees:			
– International	45.8	17.3	28.5
– Australian Retail	53.7	26.8	26.9
– Australian Institutions	24.5	20.9	3.6
Accounting Adviser/Investigating Accountant	6.2	1.5	4.7
Business Adviser	4.0	4.0	-
Domestic Legal Adviser	2.6	2.9	(0.3)
International Legal Adviser	1.0	0.6	0.4
Communications Adviser	1.4	1.5	(0.1)
<b>Total</b>	<b>174.8</b>	<b>86.0</b>	<b>88.8</b>

Source: ANAO analysis of data from OASITO.

**Financial administration**

**3.24** The contract with the Telstra 2 Global Coordinators drew a clearer distinction than previously between the management services to be provided by the Global Coordinators in return for a project management fee and services to be provided in return for selling commissions. The contract stated that, in return for providing all of the specified management services, OASITO would pay the Global Coordinators a management fee of between \$7 million and \$10.5 million.<sup>35</sup> The fee comprised:

- a base fee of \$7.0 million payable by way of \$120 000 on contract signature and monthly advances of \$450 000 payable on

<sup>35</sup> The Management Fee paid to the Global Coordinators differed from that originally negotiated and included in the contract signed on 17 December 1998. The original fee, which would have been between \$7 million and \$12 million, involved a number of elements including components related to the performance of Telstra shares during the offer period. The objective of this component was to provide the Global Coordinators with a financial incentive to manage the offer so as to maximise Commonwealth proceeds, thereby addressing concerns about the pricing of Telstra 1. This was changed after ASIC expressed concerns about the wider adoption of such a fee arrangement.



15 February 1999 and on the 15<sup>th</sup> of each subsequent month with a final settlement following sale completion; and

- a completion fee of \$3.5 million payable following full settlement of the project.

**3.25** ANAO found that the base project management fee of \$7.0 million was paid by OASITO in the manner provided by the contract. However, the contract did not clearly define *full settlement of the project* in relation to the payment of the \$3.5 million completion fee. The Global Coordinators invoiced OASITO for the \$3.5 million completion fee in October 1999. Although the project had not been completed at this time as: the second settlement required as a result of the Global Coordinators exercising the Green Shoe over-allotment option had not occurred;<sup>36</sup> the settlement of shares from the buffer stock allocation had not been completed; and many sub-contract payments had not been finalised. Accordingly, OASITO withheld payment of \$1.5 million of the completion fee. At the time audit fieldwork was completed (June 2000), OASITO still had not paid this fee.

**3.26** The project management, consultancy and sale-related advisory services to be provided by the Global Coordinators included: planning of the sale process; advising on the offer structure, issue pricing and allocation of shares; advice and assistance with due diligence and the preparation of the offer documents; marketing and roadshows; engagement and management of the selling syndicate; and subcontract management. In relation to sub-contractors, the Global Coordinators were required to: arrange for and conduct all tenders; negotiate with possible sub-contractors; select (in conjunction with OASITO) sub-contractors; enter into and administer contracts; pay sub-contractors and account for payments; manage sub-contractor disputes; and recover any sums improperly paid to or owing from any sub-contractors.

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<sup>36</sup> The underwriting agreement signed on 16 October 1999 provided that the over-allotment option could be exercised any time up to and including 15 November 1999 (30 calendar days after the date of the agreement). The option was exercised on 12 November 1999.

3.27 Included in claims for reimbursement under the expense cap were a number of invoices from the Global Coordinators' domestic legal counsel for legal advice in relation to tendering for, engaging and contracting with sub-contractors. OASITO reimbursed the Global Coordinators for this advice, with a total cost of \$95,106.53. AGS advised ANAO that OASITO was not under a contractual obligation to reimburse this sum to the Global Coordinators. This is because the contract explicitly states that OASITO will not pay any part of the costs incurred by the Global Coordinators in tendering for, engaging, contracting with or administering the contracts of any sub-contractors. ANAO suggested OASITO investigate recovery.<sup>37</sup> In response, OASITO advised that:

*The intention of the parties when the commercial terms of the contract were negotiated was that all legal expenses of the Global Coordinators would be reimbursed subject to the expenses cap of \$4 million. It [is] also noted that it is normal practice in public share offers for global coordinator legal expenses to be reimbursed. OASITO has had legal advice that there is some ambiguity in the contract as to the way in which the Global Coordinator's legal fees were to be treated. No exclusions to the reimbursement of legal expenses were made or intended in that part of the contract dealing with fees and expenses, and the ambiguity with the earlier clause was a drafting oversight. All parties to the contract have acted on the same assumption, and OASITO has legal advice that recovery of the sum in question may be difficult. Given the original intention, OASITO does not think it appropriate to attempt to recover the fees paid in these circumstances.*

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<sup>37</sup> Recovery of the \$95 106.53 in reimbursement payments to the Global Coordinators would also have been consistent with OASITO's approach to the Telstra 2 Roadshow Coordinator contract. As OASITO was already paying a management fee to the Global Coordinators to, among other things, plan, manage and execute roadshows, OASITO required the Global Coordinators to bear production and project management fees and costs paid to the Telstra 2 Roadshow Coordinator. This ensured the Commonwealth did not pay fees twice for the same services.

**3.28 Finding:** The fees and commission rates negotiated by OASITO compare favourably to Telstra 1 and to CBA3. Furthermore, payments in Telstra 2 to OASITO's major advisers and the selling syndicate were reduced by \$88.8 million (51 per cent) compared to Telstra 1. Major reductions were achieved in selling commissions and fees and the Global Coordinator project management fee, primarily as a result of the improved tender and contract negotiation procedures implemented by OASITO as a result of previous ANAO recommendations. Financial administration of contracts was also improved with only one significant instance noted where there was doubt whether payments were, or were not, in accordance with the contractual arrangements between the parties. OASITO has advised that, in that case, there was ambiguity in the terms of the written contract. ANAO reaffirms earlier audit recommendations<sup>38</sup> that OASITO protect the Commonwealth's interest by ensuring signed contracts fully capture the basis on which fees will be calculated and paid.



Canberra ACT  
30 November 2000

P. J. Barrett  
Auditor-General

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<sup>38</sup> Audit Report No.10 1998–99, *Sale of One-third of Telstra*, Recommendation 2 and Audit Report No. 48 1998–99, *Phase 2 of the Sales of the Federal Airports*, Recommendation 4.

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