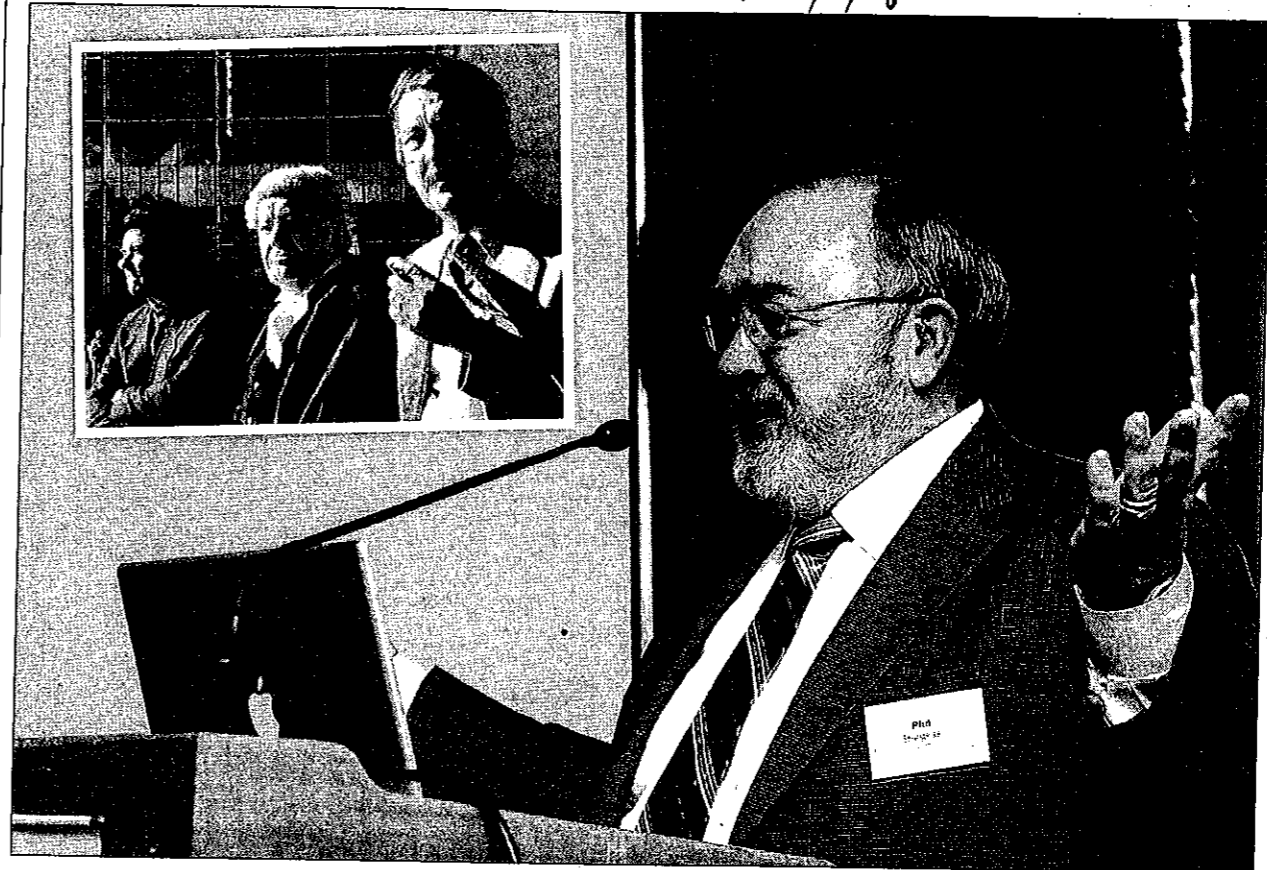


# Sad Telstra told: you're dreamin'

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FROM DREAM TO NIGHTMARE: Telstra's Phil Burgess and, inset, a scene from hit movie *The Castle*.

## FLEUR LEYDEN

THE High Court yesterday dealt Telstra a major body blow, by ruling against the telco's challenge to the competition watchdog's pricing powers.

All seven High Court justices dismissed the action, calling Telstra's argument "synthetic" and "unreal" and ordering it to pay a legal bill that could be as high as \$10 million.

When it launched the High Court challenge in January of last year, Telstra declared its network to be "its castle".

It claimed the Australian Competition and Consumer Commission's power to set the prices Telstra's rivals have to pay for access to its network, was like having its property compulsorily acquired without just compensation.

At the time, high profile Telstra executive Phil Burgess said that *The Castle*, the hit Australian film where a family successfully mounts a High Court challenge against the government's attempt to acquire their house, was his all-time favourite.

The High Court threw cold water on any such comparison yesterday, saying in its judgment that the telecommunications access regime set out in the Trade Practices Act did not amount to an acquisition of Telstra's property.

"The rights in Telstra's assets were rights to use the assets in connection with the provision of telecommunications services, but those rights were always subject to a statutory access scheme which permitted other carriers to use the assets," the court said.

"Telstra had always owned and

operated the assets within a regulatory regime, by which other carriers have the right to connect their facilities to Telstra's network and to obtain access to Telstra services."

The ACCC and 11 rival telcos being sued by Telstra welcomed the decision. ACCC chairman Graeme Samuel said the High Court had "comprehensively" rejected Telstra's arguments, and certainty had returned for companies wanting to invest in telco infrastructure that connects to Telstra's network.

Adelaide-based Adam Internet's MD, Scott Hicks, said Telstra had used stalling tactics in the hope its rivals would not have the financial capacity to continue. "The High Court has made it possible for all parties to compete on a level playing field and provide quality services in a cost effective way," he said.