



## RACV Club 501 Business Forum

### Speaking notes

### *Telecommunications & Media*

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#### **Telecommunications**

- Telstra, major transformation from focus on POTS (Plain Old Telephone Service) to PANS (Pretty Amazing New Stuff).
- Other telecommunications companies also meeting the challenge of the technological revolution.
- Primary shift from standard voice over telephone to emphasis on broadband and all that flows from it including internet, IPTV, streaming of audio visual content, VOIP.
- Telecommunications companies becoming media companies.
- Technologies at centre of transformation:
  - Copper wire – ULL, DSLAMs, ADSL (8Mbps), ADSL2+ (24Mbps). Although Telstra is yet to switch on an ADSL2+ service quite a number of competitors are already providing ADSL2+ broadband services. But note speed limitations depending on distance and interference (from other users).
  - HFC (Hybrid Fibre Coaxial) cable. Telstra 2.3 million homes. Optus 1.4 million homes. Speeds 17mps but capable of upgrade to 100mps+. But speeds diminish with congestion/contention.
  - Wireless – IBurst, WIMAX (Unwired, Soul, Astar, Intel). Speed 3Mbps. But developing over time, subject to congestion/contention.
  - 3G mobile telephone – Hutchison (2 years), Telstra, Optus, Vodafone. All similar speeds developing to around 14.4Mbps with HSDPA (high speed downlink packet access) towards middle 2007. Telstra suggests up to 40mps by 2009. But speeds subject to diminution with distances from transmission towers and congestion/contention.
- Wireless bandwidth like a pipe:
  - Audio visual content will quickly clog the pipe.
  - Coverage: Telstra 98 per cent of population (all but pockets of rural Australia).
  - Others developing but primarily in more densely populated areas.

### **Object of Section 152 AB:**

- Section sets out object of ACCC's regulatory powers concerning access to telecommunications infrastructure.
- "The object of this part is to promote the long term interests of end users"
- For this purpose the ACCC must have regard to achievement of the following objectives:
  - Promoting competition.
  - Ensuring that everybody can communicate with each other on a telecommunications network.
  - "Encouraging the economically efficient use of, and the economically efficient investment in, infrastructure".
- "In determining incentives for investment, regard must be had to the risks involved in making the investment".
- In summary, the ACCC's regulatory role is to strike a balance between ensuring that investors (taking account of their risks) are not discouraged from undertaking new efficient investment. At the same time, however, ensuring that consumers obtain the benefit of competition.

### **Two significant issues have recently been raised by Telstra in relation to regulation of new infrastructure developments**

- A. Wholesale access to its ADSL network.
- B. Wholesale access and/or roaming on its Next G mobile network.
- The ACCC has long recognised the more enduring benefits of efficient facilities based competition:
  - For example, the take-up of the ULL as an input to the provision of higher speed retail ADSL services – and we are now seeing a number of providers contemplating the provision of VOIP services – contrasts with competitors merely reselling a Telstra wholesale DSL service.
- OECD latest broadband statistics for Australia:
  - One of the strongest per-capita broadband growth rates over the last financial year.
  - The development of broadband technologies broadly in line with the experience in other jurisdictions – i.e. DSL is the leading platform, with wireless, fibre and fixed wireless at around 8 per cent penetration.

**A. Wholesale access to ADSL network.**

**In the ACCC's Position Paper, A Strategic Review of Fixed Network Services, June 2006 (Extract from Fixed Services Review)**

*"The review has also considered whether there is a case for declaring a wholesale xDSL service to address market power concerns over the provision of such services. The Commission, however, considers that a compelling case for declaration of a wholesale xDSL service at this time has not been made. In the face of potentially significant growth in the ULLS, wholesale declaration could encourage greater reliance on resale of xDSL services in place of greater take up of the ULLS, which could drive lower wholesale xDSL prices and innovation (by Telstra or a ULLS-based competitor).*

*The Commission will continue to monitor the supply of wholesale xDSL services and may re-examine whether to declare the service, if significant concerns about access to the service are apparent."*

**B. Telstra's third generation Next G network**

- The ACCC welcomes Telstra's commitment to the development of high-speed 3G data services using its 850 MHz network.
- As the ACCC has said for some time now, the retail mobile services market is exhibiting more encouraging market outcomes than the markets for fixed-line telecommunications services.
- Fundamentally, this is because the market structure, comprising four mobile networks, is more inclined towards delivering competitive outcomes in the downstream mobile services market than the markets for fixed line services.
- The ACCC held a wide-ranging Mobile Services Review in 2003 (finalised in 2004) that examined whether a number of mobile services should be regulated, and the nature of the regulation that should apply.
- Now, mobile services is a good example of an area in which the ACCC regulates very little. It is also a good example of where symmetric regulation operates – that is, all mobile operators are subject to the same (albeit few) access obligations.
  - For example, an outcome of the Mobile Services Review is that all mobile providers are obliged to supply a voice terminating access service (that is, they are obliged to end voice calls) on their mobile networks – this applies to Vodafone, Optus, Hutchison and Telstra. And it applies to all their mobile networks, regardless of whether it is a 2G or a 3G network.
- The Mobile Services Review also canvassed the idea of regulating a mobile voice roaming service. After carefully considering the issues the ACCC formed the view that declaration was not necessary to ensure competitive benefits are realised, in light of commercial roaming arrangements that existed.

- The ACCC committed to ongoing monitoring of this commercial environment to test for the ongoing availability of roaming services.
- The declaration of a resale mobile service (eg. wholesale end-to-end mobile service) that Optus appears to be advocating in relation to Telstra's 3G 'Next G' 850 MHz network has not been contemplated by the ACCC.
- As I have already noted, the ACCC has long recognised the more enduring benefits of efficient facilities-based competition.
- Since the Mobile Services Review, the ACCC itself has not seen a need to take any formal steps towards declaring any other services (other than voice termination) on mobile networks.
- The ACCC could only do so after it has held a public inquiry and there has not been a decision by the ACCC that there is sufficient reason to hold such an inquiry.
- Any such inquiry would need to determine whether any bottleneck characteristics exist in 3G services, for example, in regional and remote areas:
  - In other words, a focus on whether there is a good case that there are economic impediments to competitors building their own network(s)

### **Achieving regulatory certainty**

- Telstra properly seeks regulatory certainty for its new infrastructure investments.
- The ACCC has consistently made the point that there are mechanisms under the Trade Practices Act to achieve regulatory certainty after a full public inquiry:
  - An exemption from access obligation is able to be obtained.
  - Undertakings can be offered that propose the terms and conditions on which a carrier will offer the market access to a service
- Parties need not wait for a declaration inquiry. The Trade Practices Act provides for these mechanisms to be submitted to the ACCC at any time.

### **Also on the ACCC's radar:**

- Excessive claims of speed by network service providers advertising ceiling rates the likely speeds:
  - Can be misleading - number of different offers in the market, difficult to make comparisons.
  - Need to delineate the whole range of parameters that will dictate the likely speeds the customers will obtain for fixed line or mobile data services.

- It is not enough for service providers to make ‘blanket claims’ that customers will get speeds ‘up to’ a certain threshold when significant limitations apply to the attainment of those speeds.
- The ACCC has already reminded all 3G service providers of their obligations whenever making representations of download/upload speeds – particularly when representing that new HSDPA technology will afford customers speeds in excess of 2 Mbps.

## Media

- All this is important in context of development of media and technological revolution evidenced by the move from traditional media forms of newspapers, television (FTA and Pay TV) and radio to embrace the internet with prospects of multiple channels of print, audio and visual content being available on consumer time shift basis.
- Revolution is seeing new forms of audio visual streaming (IPTV, movie downloads, world wide radio and podcasting) together with weblogs as new sources of information and opinion – with relatively low barriers to entry in terms of the technology BUT potentially high barriers in terms of production of credible and accessible content.
  - Is not replacing, *at this stage*, mainstream media as source of credible and accessible news, information and opinion.
- The Government’s media reform package:
  - 5-4 voices rule;
  - Two out of three – restricting one company from owning radio, TV and newspaper businesses in the same market both regionally and in the cities; and
  - Section 50 of Trade Practices Act - substantial lessening of competition in any market (advertising, classified or display, news, opinion, sport, entertainment etc) note also geographic markets international, national, state and local regional with different implications.
- ACCC will focus on markets for advertising product, supply of content to consumers and purchase of content from content providers (which for news and information that means editors and journalists).
- In any media merger analysis, there are a range of competition issues which the ACCC is likely to explore including:
  - the impact of technological convergence on media markets and therefore on the potential for proposed media mergers to lessen competition:
    - whether online advertising, particularly online classified advertising, competes with other advertising media.
  - whether proposed media mergers might give rise to competition issues in relation to the supply of content to consumers:

- whether the available evidence supported the existence of a news and information market for a particular merger, and then whether the proposed merger raised issues in that market.
- whether proposed media mergers might raise competition issues relating to the acquisition of content:
  - whether a proposed merger would consolidate exclusive rights to compelling content. e.g. Sporting content.
- The ACCC will continue its focus on ensuring that the control of communications pipes being used to deliver future media services cannot be exploited to stymie competition in downstream media markets.

### **Media Diversity**

- There has been a lot of focus on the issue of “diversity”. It has been suggested that this is purely a social issue and not an economic one and thus not able to be dealt with under Section 50 of the Trade Practices Act.
  - Diversity is not solely either a social or an economic issue – it is both.
- The ACCC cannot guarantee diversity into the future – but lest this is interpreted as saying the ACCC cannot deal with reductions of diversity flowing from media mergers, let me make it clear exactly what our position is.
- Diversity needs to be seen from three perspectives - content producers, advertisers and consumers.
- A lot of the current debate about diversity is flowing from content producers who have their own views as to the desirability of the diversity of opinion from their viewpoint as content producers.
- Diversity is about providing a choice of content, views and style.
- Competition motivates and forces suppliers of content to serve the diverse needs and demands of advertisers and consumers:
  - As to content (entertainment, news, information and opinion) and
  - The methods of distributing and of consumers receiving that content.
- Desire by media outlets to distinguish themselves from their competitors
  - Competition forces content providers to provide diverse content
- Above all, competition is directed towards ensuring that as far as possible it is the demands and preferences of consumers that are the driver – not the views of legislators, media proprietors or content producers.
- Competition is about empowering the consumers to express their views as to the nature and style of content that they want to receive and thus the diversity that is offered to them.
- The ACCC needs to assess the likelihood of competition being sustained to provide consumers with choice. Consequently, while the ACCC will have regard to diverse choices potentially available through the

development of new technology and new sources (eg weblogs), the ACCC cannot reach its conclusions based on hypothetical speculation – it needs to focus on outcomes that have a real chance.

- The ACCC is not the diversity police. A reduction in diversity could occur by the unilateral action of an existing media proprietor choosing to reduce diversity of opinion through its existing media outlets – particularly if that proprietor has substantial market power.
- But in a merger context, a reduction in competition can lead to a reduction in diversity. Where this arises the ACCC will take this into account as part of its competition assessment under section 50 of the Trade Practices Act.

## **Conclusion**

- Much of the recent media debate has centred around speculation on prospective deals affecting ownership of existing media organisations – the focus being on outlets or distribution channels (TV channels, radio stations and newspapers).
- But convergence is potentially opening up a vast array of new channels for distribution of audio visual and print entertainment, news, information and opinion.
- ACCC's objectives are to promote competition and thus not allow incumbents to impede the development of competitive choices for consumers.
- Thus, ACCC focussing on ensuring minimal disincentives to efficient investment in new infrastructure that will open up channels of distribution and where it is economically inefficient to duplicate infrastructure (i.e. natural monopolies exist) access is provided on reasonable terms to competitors consistent with the objective of removing disincentives to providing competitive choices to consumers.
  - In other words, keep the pipes clear of blockages.
- ACCC also focussing on control of content and content producers. With an increasing diversity in distribution channels, it is essential that content and content production is not concentrated in a manner that can inhibit competitive choices for consumers.
- In summary, this is the process whereby the Trade Practices Act and the ACCC can make its contribution to preserving and potentially enhancing diversity in the media offering to the Australian community.
- Finally, let me place the role of the ACCC in its proper regulatory perspective. When we observe potential anti competitive arrangements or conduct about to or having taken place, or when we have before us a potential or proposed media merger, we will deal with these matters independently and objectively. This will occur after conducting rigorous analysis, with appropriate stakeholder and public consultation. Our decisions will be made on an informed basis and consistent with our responsibilities under the Trade Practices Act.

- The Commission will not be drawn into a public discussion of hypothetical speculation as to proposed media mergers. Nor will we participate in the at times frenzied discussion of individual corporate manoeuvres such as we have evidenced over the past week.
- While Australia is currently in the grip of a devastating drought, I would suggest that we would all be well served if some of our investment analysts and media commentators utilised a small portion of our dwindling water resources to take the proverbial cold shower!