



Pay TV Access Rules

The bad press Michael Lee has been getting on his 24 November policy statement on access rules for cable services is probably a little unfair.

After all, the major plank of the policy is a decision that network operators must offer non-discriminatory access and interconnection to service providers.

This is a good starting point. It means that anyone who can pay the carriage fee can require a cable operator to connect their service to the cable network, and thus get access to the network's customer base; cable operators can't discriminate between types of providers, and can't refuse to connect a service which they regard as competitive with their own.

However, the policy allows a two to five year exemption from these rules for pay TV usage of cable, for three reasons. One, to allow cable operators to share in the start-up revenues from payTV so as to maximise their returns before they are forced to share with competitors; two, because capacity will need to be rationed anyway, in the early stages, and Government would prefer not to be involved in making choices about who gets on; and three, because owners of other pay TV delivery systems are not required to give access to their systems (for example, satellite licensees can choose which programming services they'll offer).

The immediate result of the policy statement was Optus Vision's refusal to play on these terms, announcing that it would abandon plans to roll out cable past three million homes. While this could be seen as just the first salvo across the bows of Government, if it hardens into a final position we will be getting the worst of both worlds: Telstra remaining a monopoly telephony carrier in the local loop (at least until wireless services become competitive), and, with its joint venture partner News Limited, the only major player in broadband cable. Is this a failure of policy? What should the Minister have done differently? Could a better outcome have been engineered?

The Communications Law Centre has argued consistently that pro-com-

petitive policies will not by themselves deliver diversity in ownership and content of new media and communications services. We have argued that you need to regulate *for* the content outcomes you want, not just create an open field of contention for market forces. With Australia's already highly concentrated media ownership and small domestic market, there are always tendencies towards oligopoly. The structures of Optus Vision and Telstra's Visionstream joint venture are classic illustrations - major television and print proprietors joining forces with the carriers. The Government response to this has been to say don't worry about who owns, concentrate on making sure they open up the new communications market. This has some plausibility, particularly in the context of convergence, where an interactive broadband service and a pay video service overlap in a single digital bitstream. Ownership rules based on definitions of the boundaries between old media won't do the job in a converged world.

Other Rules May be Needed

But maybe the lesson of the last month is that policy which does not worry about ownership structures, instead relying only on competition rules to bring about diversity of services, allows no scope for the positive synergies

between existing communications barons to be exploited in the public interest, while kept in check by tough regulation. Perhaps we need to focus on mechanisms for regulating rather than merely opening up cable services - for example, tough rules on the percentages of affiliated programming any cable operator can carry, which still allow a significant share in content as well as carriage revenues for network operators.

These sorts of rules will be needed if we have any extended period of limited competition under the current arrangements - ie, if Telstra-News Limited end up with the cable field pretty well to themselves for several years. The Government cannot assume that the Trade Practices Act provisions on abuse of market power and anti-competitive conduct will do all the work.

The CLC has also argued that community and public interest users, such as the public library system and public education sector, should be given mandated access to cable networks, because with rationed capacity in the foreseeable future, they won't be able to compete with commercial users for access on commercial rates. Regulating for desirable content might seem old-fashioned these days, but perhaps our communications players would be more comfortable with the old-fashioned ways which made them rich. They certainly do not seem to be taking to the brave new world of competition with too much enthusiasm. □

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