



AUSTEL got it wrong: Telstra

Telstra has lodged an application in the Federal Court challenging AUSTEL's finding earlier this year that Telstra is dominant in the international telecommunications services market.

Commentators watching the case predict a long, drawn out battle which could take 'months if not years' to resolve. As yet, the Federal Court has not decided if it will hear the matter but arguments from respondents - AUSTEL and Optus - that the Court should not take on the role of specialist regulator - are not expected to prevail.

Senior associate and communications law expert at Clayton Utz, Bruce Lloyd, says Telstra is determined to have the Federal Court find that AUSTEL 'got it wrong' with its dominance finding so that it can avoid the restrictions which the *Telecommunications Act* places on the 'dominant' player.

Under the Act, a finding of 'dominance' prohibits that player from discriminating between customers in terms of charges and conditions of supply. In other words, Telstra - being dominant - could not offer a large corporate customer special discount rates on overseas calls whereas, Optus and other players which are non-dominant, could undercut Telstra significantly. Telstra is still smarting from the loss of lucrative international customers such as the Department of Foreign Affairs and Trade.

In its report, AUSTEL found that Telstra had 'a strong market leadership position derived from a unique depth and breadth of products, high and essentially stable market shares in all product categories, and a clear price leadership role.' Therefore, it had a 'commanding influence' over

the market for international telecommunication services. AUSTEL also found that competitors trying to enter the market were either unable to compete, or, like Optus, unwilling to compete.

AUSTEL said it would review its findings if: there was a fall in Telstra's retail market share; if Optus started providing local call services to a substantial part of the IDD customer base; if there was a major change in other circumstances; and within 12 months of the original finding.

Rather than wait for one of these triggers, Telstra chose to initiate proceedings in the Federal Court requesting a declaration that Telstra is not dominant in the international telecommunication services market. Presumably Telstra perceives that it could gain some benefit from a Court declaration that binds AUSTEL's future reviews, both in international and other markets.

Telstra is expected to argue that other service providers, both domestic and foreign, could contest the market despite the government's policy of having only one facilities-based competitor and that there is the potential for foreign carriers to enter the market in the next three to five years.

Bruce Lloyd says Telstra is also likely to argue that pricing regulation under the Act actually 'creates' Telstra's price leadership role and provides incentives for Optus not to compete rigorously.

With so much at stake, Telstra seems determined to fight AUSTEL's finding. If the Court rules in Telstra's favour, Telstra stands to gain a powerful weapon in its armoury to regain lost customers and retain its present customer base on the basis of selective pricing strategies. □

SBS viewership increases

THE LATEST research into SBS TV audiences, released in the organisation's latest annual report, shows that more than 4.6 million people are tuning into the multicultural broadcaster every week. That's an increase of around 400,000 since the same time last year.

The vast proportion of viewers come from the five major cities - Sydney, Melbourne, Brisbane, Adelaide and Perth - but a growing number are coming from regional areas which have only recently had transmitting facilities extended to them.

But the big obstacle is still the inability of many potential viewers to receive a 'viewable' picture. In nine cities surveyed, a massive 19.8 per cent of homes were not able to receive a decent picture while a further 25.2 per cent (or 1.154 million homes) were still receiving faulty pictures.

In the five major cities, more men than women watch SBS and the vast proportion of viewers are over 25 with a strong viewership (20 per cent) from the over 55 age group. Almost 40 per cent of SBS viewers are from semi-professional backgrounds while a further 30 per cent are labourers, tradespersons, drivers and related workers.

On the multicultural front, 62.6 per cent of SBS viewers were born in Australia, compared to 28.5 per cent born in the Asia-Pacific, Europe or another non-English speaking country. A further 14.3 per cent were born in another English-speaking country.

The vast majority of SBS programs are broadcast in English (51.84 per cent) with French (7.67 per cent), Italian (7.63 per cent), and German (5.39 per cent) the closest challengers. Aboriginal language programs made up just 0.02 per cent of SBS programming. □