



## Telecoms: a law unto itself?

**Peter Leonard**, Partner, Gilbert & Tobin, examines the underlying reasons for the proposed regulation of telecommunications under general competition policy principles

The movement from industry specific to general competition regulation has been more the product of political factors than efficient economic planning or design of regulatory institutions. This is not to say the ACCC is not an appropriate regulator, or that it will be less effective than AUSTEL. However, there is no reason to suggest that the ACCC will be more effective, or will be more balanced in its approach, merely because it has economy wide responsibilities.

A strong motivator underlying the reforms has been the desire of the Government to make the new telecoms regime conform as closely as possible to that recommended by the Hilmer Committee. Implementation of other recommendations of Hilmer relating to reform of state owned enterprises required the cooperation of State Governments, who would preferably phase out state public utility regulation (such as access and retail pricing tribunals) in favour of a national framework administered by the ACCC. This could only be achieved by agreement between the State and the Federal Government. The price of that agreement was grants to the States - so-called 'structural readjustment assistance' - and equality of treatment of federal and State utilities.

As a result, the industry structure and regulatory framework of the State-based electricity, gas, water, and transport infrastructure industries has been an important influence on telecoms reform. It has challenged both the continued existence of an industry

specific regulator - why should telecoms have one if the energy industries do not? - and the shape and extent of the rules. The current review process has been more about working from the platform of the economy-wide Hilmer competition rules to create specific variations dealing with

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industry specific feature of the telecoms industry, than an organic review of telecoms - specific regulation, as had been contemplated back in 1991. In

other words, what was originally intended as a review and adjustment of the telcoms regulatory framework became a complete rewrite. This also reflected the continuing movement towards economic rationalism and the corresponding political transcendence of the Treasury over portfolio-specific departments, such as DOCA.

That said, there is nothing inherently wrong, and much to be gained, by comprehensive and critical re-evaluation of industry specific rules on a periodic basis. My point is not to criticise the process, but to observe that the changes currently under discussion do not stem from the existing rules having passed their use-by date. Rather, they stem from a political desire to come up with a new framework conforming so far as is practicable with our economy wide regulation. We are entering a brave new world dictated by political forces and which will not necessarily be a model for modern regulators. □

*• This article is an edited extract of a speech given at the ATUG '96 conference, held in Melbourne on 30 May 1996.*

### Snippets from Pay TV forum

A PAY TV forum, held on 14 June at the State Theatre as part of the Sydney Film Festival, revealed some interesting facts concerning the progress of the fledgling industry. As industry players Sean O'Halloran (Optus Vision's MovieVision), Ian Fairweather (XYZ's Arena) and Rod Webb (SBS and others' World Movie Channel) swapped notes, the audience gleaned the following:

- the Australian market is exceeding expectations, with service providers now likening it more to the US market, where the majority subscribes, than to the UK market, with its 20% take-up.

- Movies are far more popular than sport (even for Optus Vision). Movies purchased by MovieVision will be screened approximately 12 times in various time slots over the course of a year. Arena is more avant garde than MovieVision, screening films such as *My Life as a Dog*. Of MovieVision, O'Halloran says: 'We're very mainstream. *Circle of Friends* and *Carrington* would be our outer limit and we wouldn't touch foreign language movies'.

- the market is extremely sensitive to installation costs, much more so than to monthly rentals. Maximum 'churn' occurs after the first month's subscription and then falls away sharply afterwards.

- Pay TV's initial year will be the most difficult for free-to-air stations, since the former's higher priority in film distribution contracts trumps the free-to-air's, drying their film supply until the 12 month lag is cleared. As the take-up of Pay TV increases, the number of feature films screened prime time by free-to-air stations is posited to decline from 3-4 to 0-1 per week. □