



Austar United Communication Limited

**Summary of Submission to the Productivity Commission's Inquiry into
Telecommunications Competition Regulation**

May 2001

INTRODUCTION

Austar United Communications Limited (AUSTAR) made submissions to the Productivity Commission's Inquiry into Telecommunications Specific Competition Regulation in August 2000 and in February 2001 (the latter submission in response to the additional Terms of Reference announced in January 2001).

AUSTAR has considered the Telecommunications Competition Regulation Draft Report (March 2001) (the Draft Report) and welcomes the opportunity to offer comment on some of the matters that it discusses.

AUSTAR has been a provider of pay TV services in regional areas since 1995, but has in the last eighteen months begun to offer other services, including internet and mobile telephony resale. AUSTAR has also started investigating offering fixed line telephony products in rural and regional areas. AUSTAR's submission is focussed on issues affecting its primary business areas, and offers further comment on some other issues that will affect it going forward.

Following is a point summary of the main points in AUSTAR's submission. The submission will be given to the Commission soon.

SUMMARY

AUSTAR supports the Commission's primary conclusion, that telecommunications-specific competition regulation needs to be maintained in the medium term until the market approaches competitive maturity. AUSTAR would support the retention of Parts XIB and XIC of the Trade Practices Act. Whilst an industry-neutral approach would be ideal in a fully mature market at present this would damage the competition that is currently evolving in the market.

The Draft Report recommends that a number of modifications be made to the existing regime and discusses other options for amendment.

This submission makes the following points about the changes and issues canvassed in the Draft Report:

- The Draft Report identifies that the main reason that there are differences in the types and level of telecommunications services available in regional Australia is that there are very high sunk costs in rolling out networks and demand is thinner than in the major metropolitan areas. That said, it is our view that any changes to the regulatory regime aimed at encouraging access or service based competition would be a disincentive to facilities investment that is very much needed in the regions. Part XIC of the *Trade Practices Act* provides an appropriate level of flexibility and should not be amended to differently deal with regional markets.
- The inclusion of pay TV programming in the access regime in Part XIC of the *Trade Practices Act* would be inappropriate and unnecessary. It is AUSTAR's view that any problems that pay TV providers have in accessing content relate to the price of programming, and are not caused by anti-competitive conduct. An access regime for programming over and above the provisions already contained in Pt IV of the *Trade Practices Act* will be likely to detrimentally impact on AUSTAR's investment in infrastructure that will potentially provide interactive services, broadband internet services and telephony services to regional areas.
- AUSTAR does not support the abolition of the anti-competitive provisions in Part XIB of the *Trade Practices Act*. AUSTAR considers that the Draft Report fails to recognise the deterrent nature of the provisions and their value as a bargaining tool in negotiations with incumbent operators.
- A number of other modifications to the existing regime that are suggested in the Draft Report will improve its efficiency and should be adopted. These include the introduction of 'access holidays' and declaration sunseting.
- It is AUSTAR's view that pre-selection should, at this stage, be applied asymmetrically to the dominant carrier. It is also considered that single-basket pre-selection provides a number of cost-savings to providers and ultimately benefits users, and should not be replaced by mandated multi-basket pre-selection.

PAY TV PROGRAMMING

The main points that AUSTAR makes in relation to Chapter 16 of the Draft Report are as follows:

- AUSTAR does not hold exclusive rights to programming that restrict relevant others from being able to broadcast.
- There are entry issues for the Pay TV industry, the primary ones being:
 - Cost of programming; and
 - Cost of distribution in regional areas - transmission due to geographic size and low population density

- Any entry issues for small, regional providers are not because of exclusive programming arrangements.
- AUSTAR does not own any providers of key movie or sport content. We cannot directly comment, therefore, on the withholding of content. However an observation is that in the absence of other hard evidence as to why content is being withheld, that content is not being withheld for any anti-competitive reasons. Problems acquiring content are likely to relate to the price that is being asked.
- No clear evidence has emerged of market failure.
- A new access regime may mean a lower cost of entry for new operators than AUSTAR has to pay (and has had to pay).
- Pay TV is an expensive business and we think a number of the other operators have been looking for a "free ride".
- We do not agree with the view that the inclusion of pay TV in a bundled offering is essential to the roll out of broadband infrastructure. We note that Telstra has recently announced the rollout of ADSL in many regional areas and other providers like Neighbourhood Cable are proceeding with cable roll out, recently announcing a \$40m investment by a Hong Kong media investor to extend their cable system.
- Austar has invested large amounts of capital in building its business and is going to invest further in order to build out broadband infrastructure. AUSTAR's pay TV business, like all others in the industry, runs at a loss. Our current and proposed future investment is based on us having and retaining a critical mass of subscribers.
- It is our view that the demand for broadband services is still developing, in capital cities as well as regional areas. Sustainable investment is not, in our view, falling behind demand for such services.
- For the reasons set out above, an access regime is highly undesirable. AUSTAR also submits that an access regime should not be applied to pay TV content because:
 - there is no 'bottleneck' on content – alternative content is available. It would be inappropriate to declare content under the tests for declaration currently in Pt XIC or under the tests proposed by the Commission in the Draft Report;
 - any access regime that included the power for the ACCC to mandate prices where parties fail to meet commercial agreement would change the entire economics of the industry; and
 - many program providers are overseas and accordingly there could be jurisdictional and practical issues in relation to declaring content.