

Review of Telecommunications Specific Competition Regulation
Submission to Productivity Commission
By Paul Budde

Further to our initial submission, which highlighted several of the regional issues, I would like to submit this additional information.

1. OBSTRUCTIVE GOVERNMENT POLICIES

In our initial submission we indicated that the current system is very obstructive in terms of regional development and that government initiatives over the last few months have done more harm than good:

- Digital TV legislation makes commercially viable regional service impossible.
- Pay TV legislation provides no support whatsoever for regional companies to establish regional services.
- The ACCC lacks the power to implement otherwise sound telecommunications policies that would encourage new networks in regional Australia.

The digital TV legislation deprives regional Australia of affordable high-speed Internet (datacasting) services. As has occurred in Europe and the USA, digital TV could quickly have become a mass medium here also; this would have been of particular benefit to regional users, as very few regions have a broadband cable infrastructure – furthermore it is unlikely that these regions will receive such fixed networks in the near future.

The content monopoly currently enjoyed by the three pay TV operators has severely hampered the development of both the pay TV and the broadband market, especially in regional Australia. We therefore strongly support the ACCC's bid, also endorsed in the Besley Inquiry, to limit further damage by the establishment of a more viable pay TV market as a platform for broadband services in regional markets. The onus of proof of public interest should lie with the cable TV operator, not the regulator. It should be assumed that the regulator will always, and only, act in the public interest.

The latest USO regime will protect Telstra rather than stimulate innovative new services in regional and rural Australia.

On the other hand, many sound initiatives have been developed and some good regulatory decisions have been made; however, none of these have so far been implemented. Further regional initiatives would therefore not necessarily translate into action, unless the government becomes more committed to implementation, sets up strict timeframes and confers appropriate powers upon the regulators to allow them to monitor developments. High on the list of priorities would be interconnect, access, local loop terms and conditions and number portability.

And so we would not support the government introducing yet more initiatives. Let us first fix the existing ones. Then, if these still don't work, consideration could be given to a different approach.

Macquarie Corporate Telecommunications' suggestion for the appointment of a regional commissioner is laudable, but unless this commissioner is invested with more powers than the ACCC the result will simply be the addition of another regulatory layer into the system and further delays to the process.

2. REGIONAL DIFFERENCES

In general, there is no major difference in market power between regional or national markets. Competition should be the key driver. Most regional markets require a niche market approach and there are plenty of companies that would like to offer such services. In our market research we indicate that communities of between 3,500 and 5,000 inhabitants, for example, could economically establish their own cabled information highway. Wireless systems could complement these networks and offer a commercial model for the operators.

Obviously such systems can only flourish if the government and regulatory decisions are implemented.

Too risky...

Lack of government willingness to implement regulatory decisions will result in a large number of potential operators withdrawing from this market, as these delays can last for 5 years and more. The implications of this (legal actions, submissions, lobbying, staffing, etc) can only be handled by companies as large as Telstra (eg Cable & Wireless, Telecom New Zealand, etc). None of the smaller regional operators will be able to cope with this. This is the most critical issue for regional players. For them, the ongoing delays and the high level of unpredictable risk resulting from this uncertainty, is simply too great.

3. OBSTRUCTION 1 : PAY TV LEGISLATION

What is happening in telecommunications now has happened before – in 1994, around the development of pay TV. Lack of government support brought about the collapse of all but one (Neighbourhood Cable) of the approximately 40 regional cable and satellite TV projects that were around between 1994 and 1996. Unlike the rest of the world, there is no requirement under Australian legislation for the incumbent operators to pass on their exclusive programming rights to regional operators when they, themselves, are not using those rights.

Furthermore, anti-siphoning laws are limiting the opportunities for regional operators to build viable businesses. Most of the programs that are on the list will never reach regional Australia. Pay TV at least provides regional users with a choice, which they don't have under the current system. The free-to-air broadcasters are the only ones who would benefit from having an extensive anti-siphoning list, since that would make competing services less attractive to the users, and less commercially viable as a result.

The absence of a must-carry obligation for free-to-air services, which is common in other countries, is also hampering regional development. In other countries free-to-air broadcasters fight their regulators to ensure that their channels are broadcast via cables and satellites, whereas in Australia the broadcasters want the pay TV operators to pay for it.

Is the commercial interest of broadcasters in Australia so different from those in other countries, or are the free-to-air broadcasters here trying to limit competition by trying to make pay TV less attractive to the users? It would surely be in the interest of the free-to-air broadcasters' customers (the advertisers) to have as wide an audience as possible!

4. OBSTRUCTION 2: TELECOMMUNICATIONS LEGISLATION

Furthermore, these operators were unable to negotiate telecommunications services on commercially viable terms and conditions, as the telcos had every reason to impede competition and the government had not set up any requirements along these lines in their licensing system. Only a combination of telecoms and entertainment services will give a regional information highway commercial viability. Without implementable policies, as described above, the risk is simply too great for these regional operators to provide telecommunications services to their customers.

The paper would suggest that access currently exists. Regional operators are forced to accept the unacceptable terms, conditions and prices from Telstra otherwise they are not able to operate at all. They are bypassing Telstra at every opportunity but the fact remains that Telstra is the only company that provides local access. The regional operators rely on comments, decisions and promises from government, regulators and Telstra and hope that over time these conditions will ease and so enable them to survive and build up their business. I am not aware of any broadband access facilities available to these operators that would warrant the development of regional broadband networks.

4.1 CONCLUSION:

Without policies that secure 'immediate' access to commercially viable ADSL, cable modem and broadband wireless networks it will be impossible for regional operators to establish their services. Further delays will make it impossible for these operators to continue and we will see a massive exodus of these operators especially from regional markets. Currently European, Canadian and US regulators are addressing this issue in their respective jurisdictions as well.

Open access

Open access is of the utmost importance to regional operators. Open access to the analogue pay TV networks was 'guaranteed' by the government in 1996. After many legal battles this was confirmed at the highest level in 2000; however implementation is still hampered by the lack of willingness on the part of the government to enforce these decisions. The world has moved on since that time and open access to digital networks has already been secured in Europe and is also under
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investigation in the USA and Canada. If we in Australia move at the same speed as we did in the past regarding analogue network access, very little may eventuate on the issue of digital access until perhaps later on in this decade.

5. USO SAFETY NET

Under the right policies only a small proportion of Australians will need a full subsidy – truly remote homesteads, Aboriginal communities etc, and this group will always exist, no matter what form future policies and strategies may take. The current USO regime should be able to look after this group (we estimate it at under 1% of the total population).

5.1 COMMENTS ON BROADER USO ISSUES ADDRESSED IN THE PAPER

USO operators should be stimulated to earn excess revenue. This can originate from innovative services that are seen by customers to have value. That's why it is so important to have niche market players – they are closer to their customers and are always more innovative.

Market power is manifest, with smaller operators experiencing uncertainty due to the control Telstra is able to exercise over terms and conditions, delay of access, interconnect, etc.

The problems that regional operators are facing are the same as those faced by national and metropolitan operators – non-implementable regulatory decisions. Of course, there are other unique problems and differences as well, but none of them would prevent regional operators from establishing their services.

6. COHESIVE APPROACH

Up until now one of the major governing problems has been that the various services are regulated under different regimes by different authorities. As we already argued in our 1996 submission, a cohesive all-encompassing legislation is necessary if we wish to establish a knowledge-based society and stimulate the growth towards an e-economy. The government asserts the importance of information and knowledge, but it fails to provide a clear vision and an overall policy structure that would stimulate the growth of such a society. This Inquiry should forge a path in this direction.

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