

Regulating the telecommunications market

Growing investment in Australia's telecommunications infrastructure is changing the telecommunications markets and leading to a reassessment of regulation of the sector in many parts of the country.

Services are typically regulated where there is a lack of effective competition, for example where there is only one company that has the infrastructure to supply voice or data services to residences and businesses (typically Telstra).

In order to increase the likelihood of competition, companies that control this monopoly infrastructure are often required by law to provide access to their services by competitors.

However, as other companies move into particular geographic areas and begin installing their own equipment, the types of services they need to reach potential customers may no longer depend on access to all or even any of the services on the incumbent's network. Once they can begin competing through using their own or alternative infrastructure, some types of regulation become less important and can begin to be wound back – and in some cases the need for any type of regulation can disappear altogether.

In recent years a number of operators have invested in extending the footprint of their own network equipment and have been able to both reduce their reliance on Telstra services and offer an increasing range of services to more customers.

The result has been greater control over their own costs and more scope for innovation in the retail offerings of a number of companies, which in turn has prompted Telstra to upgrade its own services.

These changes in the way companies can compete also have implications for regulation. In late August, the ACCC granted Telstra an exemption from its obligations to supply wholesale line rental and local carriage services in 248 exchange service areas, covering some of the more densely populated metropolitan regions. The scope of the exemption granted by the ACCC was more limited than Telstra had been seeking and was dependent on a number of important conditions and limitations.

In October, Telstra was granted a further exemption from its obligations to also supply access to the older public switch telephone network in a number of metropolitan and capital city areas.

Telstra has also sought to be freed from its obligations to provide Optus with access to all regulated fixed line services in areas that are covered by Optus's own independent cable network. The cable networks owned by both Optus and Telstra are capable of delivering pay television and high-speed data services, and Optus also uses its network to provide telephone services.

However, the ACCC was concerned the singling out of a particular competitor would represent a discriminatory access policy which would be likely to discourage investment and undermine the potential for efficient facilities-based competition in the telecommunications industry.

Telstra's strong position in the pay TV market and control over content, through its interest in Foxtel, would also be likely to limit any possible competitive benefits from granting the exemption.

These decisions all reflect the ACCC's view that where possible regulation should be kept to a minimum and markets allowed to operate to deliver the best prices and services to consumers. Those areas subject to regulation are therefore regularly reviewed as investment increases and markets develop, and regulation is adjusted or scaled back where appropriate.

However, achieving the right balance between imposing regulation that leads to greater competition and allowing businesses to operate as freely as possible is not always a straightforward process.

At the end of 2008, the Australian Competition Tribunal determined that there was an ongoing need for access to Telstra's network and that the ACCC had proposed scaling back that regulation too soon. The tribunal concluded that it was easier to revisit a decision at a later date and remove regulation at that time than it would be to re-regulate if it was found those restrictions had been removed too early. At the time of writing, Telstra has sought review of this decision by the Full Federal Court.

There are also future possible developments in the sector that may necessitate changes to regulation. Most notably, the Australian Government is currently in the process of assessing proposals to build a national broadband network. Such a network could significantly impact the scope service providers have to control their operations and the offerings available to their customers. In that context, the ACCC has provided a report to the expert panel assessing proposals, and is tasked with providing ongoing advice to the panel throughout the government's assessment process.

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