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Australian Telecommunications Policy in the New Millennium: A Global Perspective

Valerie McKay looks at the way in which key global regulatory and technological developments rather than domestic considerations will play an increasingly stronger role in the shape of future telecommunications regulations and legislation in Australia.

INTRODUCTION

The Australian telecommunications industry has undergone significant changes in the last decade, from government owned monopolies to an environment of open competition. Broadly, the communications industry has evolved into its present state via three major reform phases. The most recent of these phases, which captures the present arrangements, is the 1997 package of legislation that entered into force on 1 July 1997. This included the *Telecommunications Act 1997* (TA) and Parts XIB and XIC of the *Trade Practices Act 1974*, (TPA) enacted specifically to address competition issues arising in the newly liberalised Australian telecommunications industry. The object of the TA is:

> *...provide a regulatory framework that promotes the long-term interests of end-users of carriage services or services supplied by means of carriage services; and the efficiency and international competitiveness of the Australian telecommunications industry*[1]

During the next decade, it is believed that international trade agreements and technological developments will transform telecommunications into a globally focused industry underpinned by a supranational regulatory regime. This paper discusses a major international telecommunications agreement, administered by the World Trade Organisation (WTO) and suggests that it will form the basis of a future global regime. It then considers which organisation's) could be a suitable global regulatory body to administer a supranational regime. The global nature of the industry is being further entrenched

by rapid technological developments. It is conceded implementing a comprehensive global regime is no simple task and notes that many other factors will need to be addressed in the formulation of any serious global telecommunications regulatory regime. However, it seems more likely than not that some form of agreement will be reached in the next 10 years and therefore any domestic legislative changes will be influenced by these global developments.

INTERNATIONAL REGULATORY DEVELOPMENTS

Amongst many other individual countries, there appears to be a growing trend towards liberalised telecommunications markets[2]. Between countries, multilateral trade frameworks are being established, in particular through the World Trade Organisation (WTO)[3]. The inclusion of telecommunications as part of the 1994 Uruguay Round of trade talks illustrates a significant supranational development. The Final Act 1994 resulting from the Round includes the General Agreement on Trade in services (GATS)[4]. The GATS establishes binding multilateral rules covering market access, national treatment of foreign services and service suppliers, and government regulation of trade in services[5]. One of the annexes to the GATS relates to telecommunications. When the Uruguay Round negotiations closed, agreement had not been reached on the regulatory disciplines provided in the telecommunications annex[6]. These disciplines included an access and interconnection provision for public telecommunications transport networks[7]. A Negotiating Group on Basic Telecommunications (NGBT)[8] was established to work towards negotiating commitments by countries to an agreement on basic telecommunications. Negotiations were concluded in February 1997[9] and the Report of the Group on Basic Telecommunications (GBT) released. The GBT, which entered into force on 5 February 1998, contains schedules of various commitments by 69 countries relating to market access and rules for fair market practice[10]. Offers made under the GBT are legally binding and disputes between countries can be taken to the WTO dispute resolution panel[11].

Australia's commitments to the GBT include allowing an unlimited number of basic telecommunications carrier licences and no sector specific foreign equity limits for new carriers. Foreign investment opportunities in existing carriers are also included in the one-third privatisation of Telstra and in Optus and Vodafone[12]. Interestingly, these commitments were already provided for from 1 July 1997 through the new framework, independently of the GATS telecommunications negotiations[13].

The next Round of talks is scheduled to commence by January 2000. It seems likely that more countries will make commitments to the GBT at this point and further issues such as international accounting rates will be negotiated. It is contended that the GBT, which presently accounts for more than 91 per cent of global telecommunications revenues[14] will form the basis of a supranational regulatory framework in the future.

KEY PARTICIPANTS IN REGULATORY DEVELOPMENTS AND A POTENTIAL GLOBAL REGULATOR

The implementation of the GBT has come about through the work of key players. Of these, the US is arguably the most influential player with the European Union (EU) and the Organisation for Economic Cooperation and Development (OECD) also involved in moves towards establishing a uniform policy framework. The EU and OECD prepare extensive reports on telecommunications developments, and support adoption of liberalisation policies, privatisation and competition in telecommunications markets[15]. Organisations such as the World Trade Organisation (WTO), the World Bank, the International Monetary Fund (IMF) and the International Telecommunication Union (ITU) are also key players in telecommunications developments. The WTO has 132 Members[16] and administers the General Agreement on Tariffs and Trade (GATT) and GATS, while the World Bank and IMF provide finance for countries to privatise their public telecommunications operators (PTOs)[17]. The ITU is a treaty organisation established in 1865. It has 188 national members[18] and its three sectors deal with coordination and development of technical and operating standards for telecommunications and radiocommunications, including satellite services[19]. Its basic treaties may only be altered at plenipotentiary conferences, held at four-yearly intervals[20].

As proposed above, the GBT could form the basis of a global treaty and legal framework for access to telecommunications services. A regulatory body would be required to administer this treaty and it is suggested that the WTO and/or the ITU would be an appropriate choice. One possibility would involve the WTO taking responsibility for competition policy issues including access and the ITU administering technical regulation, similar to the situation in Australia with the Australian Competition and Consumer Commission (ACCC) and the Australian Communications Authority (ACA). At present, the ITU has more Members than the WTO and decisions are made on a consensus basis. The WTO has fewer Members and less representation from developing countries. Requiring countries to ratify the GATT, GATS and the principles contained therein before being admitted as Members controls membership to the WTO. There are advantages and disadvantages with both groups. For example, the ITU is sometimes criticised for its cumbersome negotiating process, which tend to emphasise "... careful deliberation and continuity over speed and flexibility"[21] and require consensus from all countries often resulting in lengthy delays in reaching decisions[22]. However, the WTO may also be seen as being controlled by developed countries' interests to the detriment of developing countries' interests[23]. A global regulatory body would require an effective decision making process that is fair to all participants but allows for fast decision making so as to keep pace with technological developments. Regardless of which organisation controls the global regulatory regime, its seems likely that regulators within individual countries, for example, the ACCC would continue to give effect to the principles via their own regulatory methods.

TECHNOLOGICAL DEVELOPMENTS SHAPING FUTURE TELECOMMUNICATIONS REGULATION

Future telecommunications regulation will depend in large part upon technological developments. Like the information industry, the telecommunications industry is very dynamic and characterised by rapid changes in communications technology. For example, innovations are providing new methods of delivering domestic and international telecommunications services and altering demand patterns by offering superior services at lower prices.

Satellite technology is one example of the speed at which technology changes. Less

than thirty years ago, satellite technology was prohibitively expensive for individual nations. Through treaty organisations such as Intelsat[24] and Inmarsat[25] the pooling of resources meant that technology was affordable and available to most countries on a fairly equitable basis. This arrangement worked well when government owned monopolies dominated the industry and the technology was expensive. However, today's satellite technology is less expensive so there is increased demand for limited spectrum space coming from nations and private commercial operators with sophisticated services available to consumers. The Radiocommunication sector within the ITU, which is responsible for the allocation of scare orbital space and frequency spectrum to accommodate satellites has to consider many competing interests[26]. These technological developments have caused many to question the continuing existence and effectiveness of groups such as Intelsat and Inmarsat with some members advocating privatisation of the organisation and open competition in the industry[27].

Satellite technology also serves ever increasing mobile markets Worldwide, the mobile market has increased sevenfold between 1990 and 1995[28], while Australians have one of the highest per capital take up rates in the world[29]. Domestic and international mobile networks are rapidly expanding culminating I the first truly global mobile networks appearing this year[30]. Therefore, there is an argument that access to global networks should be regulated on a global basis.

Not only is telecommunications technology developing, rapidly, but there is increasing convergence with other industries such as information technology and broadcasting. A key issues for future regulation and policy is the link between telecommunications and Internet technology. The information age is giving rise to unprecedented demand for services providing instant worldwide data transmission. The Internet which to date has developed with minimal regulation arguably presents the greatest regulatory challenge in the future. Delivery of Internet services is presently via public telecommunications infrastructure and the emergence of Internet voice technology will create access and pricing issues between information technology providers and telecommunications service providers.

According to the OECD, mobile phone growth is the current driver of the telecommunications market and Internet growth will see the next wave of infrastructure development[31]. It is proposed that demand for data traffic will eventually exceed demand for voice, the same way voice telephony demand succeeded telegraph as the preferred means of communication last century[32].

OTHER ISSUES AFFECTING THE ESTABLISHMENT OF A GLOBAL TELECOMMUNICATIONS REGIME

There are other factors and issues related and distinct from telecommunications that will also require consideration in the creation of an effective global telecommunications regulatory regime. The factors that Drahos and Joseph identify as having a significant effect on supranational telecommunications policy include: the telecommunications market itself; competition policy; telecommunications standard setting; the international telecommunications accounting regime; intellectual property; and satellite regulation[33]. In another paper, competing interest of various players, threats to national sovereignty and foreign investment policies are nominated as key factors[34]. These are all necessarily linked with telecommunications in some form or other and obtaining international consensus on these complex factors will be complicated.

Thus, it may be argued that the development of a supranational telecommunications regime is too difficult give the many complex issues involved. However, international treaty making has achieved consensus in more complicated arenas. For example, the Law of the Sea Convention[35] resolved many contentious issues and political differences and the treaty is now supported by 138 nations including the US[36]. The US, EU and the OECD support implementation of a market access model for world telecommunications markets. Given past experiences in agreements such as TRIPS[37] and the persuasive power of the US to 'get things done' through bilateral, multilateral or even unilateral means, its seems inevitable that some supranational policy will be formulated. Furthermore, as asserted by Frieden, "[t]he increasingly volatile, complex, and competitive telecommunications environment, closely linked with information service markets, supports a new world telecommunications order."[38]

IMPLICATIONS FOR AUSTRALIAN TELECOMMUNICATIONS POLICY

As outlined above, there are some significant developments occurring in a global context which are likely to have an effect on the direction of Australian telecommunication policy and regulation. The TPA provides that by 1 July 2000, there must be a comprehensive review of the operation of the Part IXB[39]. Although no equivalent provision applies to the TA, it is suggested that the same date would be an appropriate time to review the legislation. In three years the effects of competition in more sectors of the industry should be apparent so a review would be timely. Although a comprehensive global access regime will not be in place by 2000, further progress towards the formation of a framework will have occurred and alterations could reflect any changes if required.

With respect to international telecommunications issues, Australia has been an active participant in WTO and ITU negotiations and it is proposed that this stance be maintained to ensure that Australian viewpoints are aired and the effects of any global agreements are understood. Furthermore, it is argued that Australia's competition policy and foreign investment rules are compatible with the global market access model of telecommunications being formed through the GBT. As noted earlier, Australia's GATS commitments are generous with no restrictions on basic telecommunications carrier licences and no sector specific foreign equity limits for new carriers.

CONCLUSION

The international industry is a state of flux. In the medium term it is suggested that international telecommunications agreements such as the GBT will form the basis of a future global regulatory framework. It is also submitted that future access regulation will be driven from a supranational perspective headed by a global regulatory body, but administered by a national regulator.

Rapid growth and convergence of telecommunications technologies also point towards a future global regulatory regime. There are, however, many complex issues that will have to be resolved before a supranational regime can be implemented. Although this will be a difficult task, it is not impossible as international cooperation has been

achieved in areas more politically sensitive than telecommunications.

Finally, Australia's current telecommunications and competition policies appear consistent with international trends towards market access models. It is submitted that Australia should maintain its position in international fora to voice issues concerning Australian industry and participate in development of policies to be incorporated into the global regulatory agenda.

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