

Book Review:

The Information Policy Maze

Ross Kelso reviews a new publication, "The Information Policy Maze: Global Challenges - National Responses", by Dianne Northfield.

The *Information Policy Maze: Global Challenges - National Responses* examines national approaches to the introduction and management of competition in the communications sector. The publication explores major issues that have emerged as telecommunications markets are liberalised and nations try to develop their information industries. It describes, examines and compares the approaches of nations, including different information strategies, competition policies and associated regulations, the role and scope of industry self-regulation, interconnection and access regimes, and approaches to industry development. While the focus is on the telecommunications sector, many of the issues raised have broader relevance across the information technology, broadcasting, radiocommunications and media sectors.

Despite differences in models, nations are essentially dealing with a similar set of issues, stakeholders and stakes, which are global in character. Comparisons of national experiences identify areas of continuing controversy and conflict among stakeholders. They also highlight some common lessons for nations reviewing their policies and provide a mirror for countries to examine results of existing approaches. *The Information Policy Maze* also provides insights in relation to current issues such as: regulatory responses and industry structure implications of the latest wave of industry mergers; and the objectives, processes and possible outcomes of forcing incumbents to provide access to their local loop infrastructure, as is occurring in many nations.

The countries examined are Australia, the United States, Canada, the European Union generally, and specifically France, Germany and the United Kingdom, Japan, South Korea, Singapore, Malaysia, and New Zealand. Nations are responding to policy challenges in unique ways, conditioned by different national priorities and economic, political, social and cultural circumstances. Country size, population, geography, and different

levels of infrastructure and service development are also influencing the adoption of diverse strategies. No one model is transferable from one country to another, nor is it clear that traditional policy approaches will be adequate or appropriate in the future. New issues are emerging, compounding the old, and policy and industry responses will not be immediate or comprehensive.

Based on examination of different national approaches and policy outcomes, key messages of *The Information Policy Maze* include the following.

NATIONAL STRATEGIES AND OBJECTIVES

National information strategies vary in objectives, design, detail, implementation and outcomes. However, in the late 1990s revisions to strategies have seen a directional shift in developed nations to a focus on the Internet and the promotion of service and application developments. Adjustments and revisions of strategies have been influenced by many factors, including difficulties in reconciling multiple policy objectives and trade-offs between stakeholder interests and expectations. Balancing of political, social, cultural and economic objectives has been attempted most overtly in Canada. Bureaucratic rivalries have also played a part in stalling implementation as seen in Japan and South Korea, and in most other nations in varying degrees. Jurisdictional conflicts between different levels of government, notably in the US following the *Telecommunications Act 1996*, are also found across some of the other nations examined.

The experiences of nations, including Singapore and Germany, have highlighted the potential conflict between centralised government control of information and communication developments and the desire for widespread use of a diversity of services. In the nations examined, inadequate sources of funding for network and service development remains an issue. Uneven network development and a lack of interoperability within and across

nations, notably in the US and Europe have also hindered implementation. Impediments to new service development created by inadequate underlying infrastructure are also seen in nations such as France. These implementation barriers have been compounded by industry reticence to deploy new infrastructure and services¹ and a situation of unpredictable and largely unmeasured demand with a lack of appropriate data on national and global levels.

COMPETITION POLICIES AND CONTINUED REGULATION

Partly in response to such challenges, and following global liberalisation trends and pressures to open markets to foreign entrants and trade, a growing number of nations have embraced competition to apply to information and communication industries. In many cases, the development or extension of complex regulatory structures and arrangements has accompanied the introduction of competition. The regulatory environment has been decisive in shaping the nature and level of competition in the telecommunications sector. For example, wholesale and retail service pricing has been as much influenced by regulation as it has by the introduction of competition.

There has been a trend of applying generic competition policies, fair trading principles and ownership regulation² across economic sectors. However, considerable diversity remains in the extent to which competition regimes apply to different economic sectors, to public and private sector organisations, and in relation to the level and nature of exemptions that apply. Despite these differences in approach, in most nations individual legislation or industry-specific provisions, including elements of competition policy, continue to apply to different information and communication services players and sectors. Rapid technological developments and "convergence" of technologies, markets and industry players are undermining the relevance and effectiveness of this

asymmetrical regulation - often a central strategy of promoting competition. Difficulties are likely to grow as services increasingly use and combine elements of different media in both their design and delivery.

INDUSTRY SELF-REGULATION

Many nations are examining the roles of regulation and industry initiatives in promoting competition. Models of industry co-operation or self-regulation provide a complement, rather than a substitute, to formal regulations and processes. Based on global experience, it is recognised that industry co-operation tends to breakdown as the level of competitive or commercial stakes, and the number of players involved, increase.

So, we find that self-regulation, or often co-regulation, mechanisms have been most successful in dealing with issues of: standards and technical specification development; service provider operational codes; some instances of complaints handling and dispute resolution; and content regulation. Areas of continuing controversy and disagreement among industry players, where regulatory oversight remains, include: setting and enforcement of anti-competitive conduct provisions; access pricing in relation to interconnection; number portability cost recovery issues; service and network element definitions; unbundling arrangements; universal service provisioning; and consumer safeguards.

ACCESS REGIMES

Once a decision to liberalise communications markets is made, establishing functional and acceptable access arrangements is key.³ However, no country has found a "magic formula" and access issues are likely to increase as more players and services enter the scene. Access is an area of continuing contention and controversy where the stakes are high and the stakeholders numerous. Controversial aspects in interconnection negotiations include:

- Service definition and unbundling arrangements and the regulatory treatment of different players and services;
- Access pricing, including call termination price and cost allocation methods;
- Number portability;

- Resale agreements; and
- Dispute resolution.

Traditional carrier, service and content provider distinctions are likely to remain for some time. Notwithstanding this, there has been a shift from regulatory reliance on service provider classifications to models defining and regulating different services. Regulators are also showing a preference to avoid restrictions on previously unregulated service providers and to apply less onerous access obligations on new entrants compared with incumbents. Nations generally maintain distinctions between basic or network services (least competitive) and enhanced or value-added competitively provided services, applying access obligations to suppliers of the former.

Access pricing is an ongoing area of conflict and regulatory oversight. As the lines between technologies, markets, players and services continue to blur, historical cost allocation difficulties are exacerbated. Nations are adopting various methods for the pricing of standard access services, with many showing a preference for cost-based approaches to interconnect pricing. At the same time, price regulation, including price monitoring and capping, are expected to continue in relation to services that are not competitively provided.

Regardless of the regulatory or industry mechanisms in place, an underlying framework for reasonable, expeditious and sustainable dispute resolution is fundamental. Dispute resolution via the courts takes time and costs, with both impacting the development of competition and benefits to end-users.

INDUSTRY DEVELOPMENT

While many countries have long-standing industry policies, the focus on information and communication services industry development increased in the 1990s. National approaches have varied markedly. Some nations, such as New Zealand, have no explicit industry development policies, while others have used mechanisms such as carrier leverage, government procurement, research and development programs and taxation incentives to stimulate local industry. The extent to which foreign or local companies are encouraged differs significantly. There is also variation in the degree of industry-specific or generic policy approaches.

As the number of players has grown and their activities have diversified, traditional industry policy approaches and the coverage of existing programs are under examination. While nations have approached industry development differently, they are dealing with similar barriers. These include: growing small and local companies; the availability and cost of risk capital for high technology innovation by start-ups and small companies; appropriate roles for public and private sectors in facilitating research and development; the coverage of existing industry development programs; promotion of content development; and approaches to industry skilling.

CONCLUSION

The introduction of competition is a slow process involving many options and many hurdles. It is usually associated with increased regulation and time and cost imposts on both regulators and industry players. Outcomes have been patchy, with urban business users the major beneficiaries. Despite the emphasis on competition, in many nations there are also signs of industry concentration. Incumbent carriers retain major market shares, particularly in local services, and major players continue to either engulf competitors or force them out of business. Meanwhile, a range of non-communications companies continue to explore market opportunities.

While many industry players have diversified their activities, many have also returned to a focus on core businesses after failed attempts in so-called "converging" markets. The globalisation trend is also countered by the continued, and in many cases extended, regulatory regimes and policies of individual nations. Technological developments will also have major implications for existing regulatory and industry structures. The forces and trends are complex and in many cases highly unpredictable.

In this environment of uncertainty and fluidity, a more constant factor is that the majority of issues considered in this book are likely to remain on national agendas well into the twenty-first century. They involve high stakes - political, economic, commercial, social and cultural. The stakeholders are diverse and growing in number. Nations are seeking workable solutions combining regulatory and market-based approaches. While national responses to the introduction and management of competition have been unique, the issues and stakes are largely global in character. This book seeks to

position the experience of different nations in promoting competition in information and communications sectors to provide some guidance and signposts through the *policy development maze*.

Published by RMIT University Press in December 1999, *The Information Policy Maze: Global Challenges - National Responses* is the result of a three-year project conducted by the Centre for International Research on Communication and Information Technologies ("CIRCIT") at RMIT, Melbourne Australia, and the Program on Information Resources Policy ("PIRP"), Harvard University, U.S.A. Further information

and purchasing details are available at: http://www.circuit.rmit.edu.au/publics/ipm_book.html

¹ Nevertheless, the study does recognise national differences. For example, in Australia, legislation targeted the development of a dual network infrastructure between 1991-1997 and carriers have invested significantly in infrastructure development. Similarly, in the UK, policy has supported infrastructure duplication. With the announcement of the US National Information Infrastructure agenda in 1993 there was a coincidence of industry investment in infrastructure and new services.

² Including regulation of horizontal and vertical agreements between firms; control of mergers and acquisitions; regulation of horizontal and/or vertical integration activities of individual firms;

and tests of the misuse of market power.

³ Extending across: carrier interconnection; service provider and content creator access to distribution channels; and end-user access to services.

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'For Those About to Rock' Cybersimulcasting Live Music on the Internet

Therese Catanzariti offers a lively analysis of the intellectual property issues in cybersimulcasting.

Australia is one of the largest music markets in the world. In terms of recorded music, in 1998 the Australian retail market accounted for US\$606.7 million, or 1.6% of world sales, making it the ninth largest market in the world. In terms of live music, a recent survey revealed that 50% of people surveyed in 1998 had watched a live band (including pub and small venue bands) in the previous 12 months, and 45% had attended major rock concerts performed in stadiums and large venues.

Australia is poised to become a major player in cybersimulcasts of live music.

This paper considers the copyright and other legal issues relating to the Content. I will explain the concepts using recent Sydney rock concerts as examples, and in particular:

- The *Billy Bragg and the Blokes* concert at the Enmore Theatre on 11 April 1999 to promote *Billy Bragg's* most recent album 'Mermaid Avenue', where *Billy Bragg* was supported by *Rebecca's Empire*;
- The *Regurgitator* concert at Selinas to promote *Regurgitator's* recent album 'Unit', where

Regurgitator was supported by *TISM*:

- The *You Am I* concert at the Enmore Theatre on 7 August 1998 to promote *You Am I's* recent album 'No 4 Album'.

THE CONTENT

The Content is made up of a number of different elements -

The Content can be split into:

- Works (literary, dramatic, artistic, musical works).
- Other subject matter (sound recording and cinematograph films).
- Performances.
- **Musical works** such as the music of the songs being performed and the music of the pre recorded music played as "warm-up" or "lights up" music.

At the Billy Bragg concert, the musical works included the music composed by Billy Bragg performed by Billy Bragg, the music composed by Rebecca's Empire performed by

Rebecca's Empire, and the music composed by the 'Small Faces' in the song covered by Billy Bragg.

- **Literary works** such as the lyrics of the songs being performed and the lyrics of the pre-recorded music and any banners or slogans.

At the Billy Bragg concert, the literary works included the Woody Guthrie lyrics which have been put to music by Billy Bragg and Wilko and which were performed by Billy Bragg, the lyrics to the Billy Bragg songs performed by Billy Bragg, the lyrics to the Small Faces song covered by Billy Bragg, the lyrics to the Rebecca's Empire songs performed by Rebecca's Empire, and the lyrics to the songs which were Billy Bragg songs translated into foreign languages and which were played as 'warm-up' music.

At the Regurgitator concert, the literary works included the piece recited by TISM 'Why TISM never gets groupies'.

At the Comedy Store, the literary works include the live comedy routine of any comedian, as soon as it is recorded in a material form, for