Mr John Williams
Telecommunications Inquiry
Productivity Commission
PO Box 80
Belconnen ACT 2616

email: jwilliams@pc.gov.au

10 August 2001

Dear Mr Williams

Supplementary submission to the Productivity Commission Inquiry into Telecommunications Specific Competition Regulation

I refer to your email of 31 July 2001 requesting further information in relation to the Productivity Commission Inquiry into Telecommunications Specific Competition Regulation.

Attached is AUSTAR's response to the issues raised.

Please do not hesitate to contact me on (02) 9394 9845, or by email on jknolwer@austar.com.au should you have any further queries.

Yours Sincerely

Jeanette Knowler
Regulatory and Compliance Officer
Austar United Communications

Supplementary submission to the Productivity Commission Inquiry into Telecommunications Specific Competition Regulation

August 2001

Introduction

Austar United Communications Limited (AUSTAR) made submissions to the Productivity Commission Inquiry into Telecommunications Specific Competition Regulation in August 2000, February and May 2001.

This supplementary submission is in response to issues raised during the course of the Inquiry regarding the distribution by pay TV operators of their 'branded' retail service direct to customers.

The Productivity Commission has sought comment on the use of small cable networks by pay TV operators to deliver their branded retail product. In particular, the following issues were raised:

- Why pay TV operators are currently not making use of small cable networks to deliver their branded retail product when this option would appear to reduce up front costs.
- Whether the use of small cable networks would enable a greater capacity to 'unbundle' channels.
- Whether new customers attracted through use of small cable networks would be included against the minimum subscriber guarantees.
- The distinction between sub-licensing to another pay TV company which then retails that product and a situation where the pay TV company is the retailer to customers over an open access network.

AUSTAR's response to these issues is provided below.

Discussion

As noted in previous submissions, AUSTAR is considering an expansion of its service areas as well as extending the range of services offered. The opportunities provided by small cable networks to develop new service areas for the delivery of pay TV services have been considered as part of this process, however, it is AUSTAR's experience to date that no viable option has emerged.

In principle, AUSTAR agrees that small cable networks offer an alternative delivery option for pay TV products. Whether such an arrangement is a viable proposition depends on a number of factors including the location of the cable network, whether the pay TV operator has programming distribution rights in that area, and the commercial terms of the agreement.

Programming arrangements

In AUSTAR's experience, the terms of programming arrangements are a factor in determining plans for expansion of service areas or the provision of services over different technologies. The licensing agreements that AUSTAR holds for the channels it provides generally specify a licence area in which it may show the programming, and also the types of technology by which the content may be broadcast under the licence.

Operational infrastructure costs

The delivery of pay TV services requires both network and operational infrastructure. Even if an established network is used, a pay TV operator must still have a physical presence in that area to provide customer services, including door-to-door sales, installation and ongoing service support. In current service areas, AUSTAR provides this operational support through its systems offices and retail stores and there is a significant capital outlay required to establish this infrastructure.

As such, while the up front costs are significantly reduced by using an established network, the cost of providing the operational infrastructure is still an important factor in deciding to expand service areas.

More significant is the issue of ownership of set top boxes, compatibility of hardware and software and billing issues. All of these factors would have to be satisfactorily resolved and not impose significant cost or administrative burden before use of a small cable network would be viable.

Commercial terms

A small cable network operator would need to offer reasonable commercial terms to another pay TV operator to use their network. To date, AUSTAR has not found the commercial terms offered and discussed with smaller cable operators it has dealt with to be realistic or reasonable, either in terms of network access or programming supply.

Would the use of small cable networks enable a greater capacity to 'unbundle' channels?

As a number of submissions to the Inquiry have noted, the programming genres that primarily drive the take up of pay TV services are movies and sport. The packaging of programs is built around this key content and then filled out by a diverse range of niche channels. The business case for the channel line-ups and the tiering of different package options has been proven by the international pay TV experience, notably in the established US and UK markets.

In order for the services to be 'unbundled' to consumers allowing them to subscribe to only one or more channels, an operator would have to offer pricing terms based on this separate offer of channels. It is AUSTAR's view, based on the industry and its own experience, that it is not possible for a network operator to recover costs under such an arrangement. Consumers focus on a value proposition, while the offering of individual services would not create sufficient revenue to off-set a network operator's roll-out and operational costs unless priced quite high. AUSTAR does not believe that unbundled offerings are a viable proposition.

Further, channel providers often dictate the positioning of their programs in the channel supply agreements and it is not within the scope of these agreements for a pay TV operator to 'unbundle' and individually price them.

Would new customers attracted through use of small cable networks be included against the minimum subscriber guarantees?

AUSTAR agrees with the suggestion that such customers would be included against any minimum subscriber guarantee (MSG) that pay TV operators must meet in relation to premium channels.

Comments on the distinction between sub-licensing to another pay TV company which then retails that product and a situation where the pay TV company is the retailer to customers over an open access network.

AUSTAR agrees that it is not considered a sub-licensing arrangement where the pay TV company is the retailer to customers over an open access network.

The sub-licensing of pay TV services raises a number of contractual issues. Whether or not content can be sub-licensed depends on the terms agreed with originating channel provider. There are also issues about how to guarantee coverage and transmission quality of the product if a second party is the provider.

In regard to open access networks, it is difficult to see how such an arrangement would work in terms of the interface with the customer. Which pay TV operator, for example, would have ownership of the customer, the set top box and the billing rights, and who would perform the installations? At present, the technical systems including the conditional access systems are not commonly set up to allow for such an arrangement. The operational issues also would need to be fully canvassed. A definite consideration, however, is the economic terms for the provision of access. This has been the subject of lengthy litigation and arbitration to which we have not been a party so we offer no comment on this point, except to note that access charges should ensure the operator makes a return on their investment.