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Competition Issues in Broadcasting and Internet Content—Navigating the Unknown and the Unknowable

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What are the key competition issues in broadcasting?

1. Market power over the physical infrastructure used to supply programming to end users has traditionally been of concern to regulators
2. Increasingly the focus of competition authorities and regulators has turned to content supply and the way in which the sale and distribution of content affects competition in downstream markets

- Recent examples include:
  - UK Competition Commission re Sky
  - Australia re free to air Channel Seven Network proposed acquisition of Consolidated Media Holdings

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What are the key competition issues in broadcasting? (continued)

3. Vertical integration across the functions necessary to provide retail Pay TV services has also been of significant concern
4. Functions necessary for the supply of retail Pay TV include:
   - the production of content
   - the supply of programming
   - the broadcast of programming
   - the use of the physical infrastructure used to disseminate programming (cable networks, DSL networks, satellite facilities etc)

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What are the key competition issues in broadcasting? (continued)

- Examples of the potential anti-competitive effects of vertical integration between 2 or more layers of the supply chain include:
  - Refusal to supply essential inputs to rival downstream firms
  - Margin squeezes
  - Raising rivals' costs
  - Other discriminatory practices
- A recent example concerns the Comcast acquisition of NBC Universal in the US which was approved subject to important conditions

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How do technology trends affect competition in the broadcasting markets?

- Technological developments alter:
  - The range and quality of services provided
  - The underlying costs of provision
  - The extent of barriers to entry – for example, new technologies can provide new means by which the market can be contested
  - The ability of customers to switch supplier
  - Pricing mechanisms that can be used – for example, digitisation allows for pay per view services to be provided
- Digitisation generally has reduced barriers to entry

How do technology trends affect competition in the broadcasting markets? (continued)

- There are now a greater range of platforms over which content can now be disseminated
- In addition to to the use of traditional Pay TV platforms (eg, via cable, satellite and terrestrial networks), OTT technology allows the provision of SVOD over high speed broadband networks regardless of the underlying broadband technology type (such as cable, fibre or DSL)

Some economic considerations

- A key concern is that a downstream broadcasting service provider (SP) may be able to leverage its market position to gain power in an upstream market for content
- This concern amounts to a claim that the SP would be able to corner an upstream. If so, there is also the concern that this upstream “buyer’s” power would enable the exercise of additional market power in the downstream market
- it is important for competition authorities to undertake a careful assessment of market structure in examining potentially troublesome conduct

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Some economic considerations
Case 1—A competitive downstream market

- Assume that the downstream market (eg for pay TV services) is initially competitive
- However, the structure of the upstream market also has an important impact on market outcomes

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Some economic considerations

Case 2–Market power downstream, and both upstream and downstream

- Where upstream markets are competitive, and not inelastic in supply, it is extremely unlikely a downstream buyer could profitably monopolise these services
- Further, even if upstream supply is inelastic, leverage remains unlikely if at least some downstream firms are reasonably evenly matched
- In practice, competition authorities become most concerned when a merger between a downstream broadcaster and a provider of 'premium' content threatens the availability of that content to competing broadcasters

Some economic considerations

Case 2 (continued)

- This obviously depends on the elasticity of supply of competing content; but where that supply highly elastic, it seems unlikely that it would indeed be regarded as 'premium' or 'must have'
- However, even if competing supply is relatively inelastic, it does not follow that it will inevitably be profitable for the merged entity to refuse supply to downstream competitors
- In short, competition concerns in content markets certainly cannot be ruled out as a matter of economics
- However, any assessment of the likelihood of those issues arising depends on a complex, and often counterintuitive, analysis of market structure and conduct in both the upstream and downstream market

Policy Responses and dilemmas

- The markets at issue are being reshaped by rapid technological change
- In the past, communications services were largely defined by the technology used for their delivery
- However, technological change is allowing the delivery of multiple communications services through multiple technologies using common—or converged—digital platforms
- Convergence in the traditional broadcast media markets, bringing new entrants using communications technologies, has already occurred

Policy Responses and dilemmas (continued)

- Satellite, fixed-wireless and fixed network provision of broadcast television compete with traditional free-to-air broadcasters, and may indeed be displacing them
- This has brought new competing suppliers in broadcast transmission and in broadcasting. Moreover, it is likely that, within a decade, the emerging two way broadband market will subsume both the broadcasting and data markets
- A major impact that the convergence process and the associated technological changes have had, and will continue to have, is the dramatic levels of uncertainty it has introduced into business planning

Policy Responses and dilemmas (continued)

- Service providers face at least four types of increased uncertainties as a result of convergence:
  - The first is *demand uncertainty*
  - A second source of uncertainty relates to the deployment of new *technologies*
  - Third, despite the obvious success of firms such as Google and Facebook, uncertainty remains as to whether, and if so what, a profitable *business model* for a particular service might be
  - Finally, uncertainty also arises as to the potential sources of competitive products

Policy Responses and dilemmas (continued)

- In combination, these four types of uncertainty flowing from convergence generate significant market uncertainty.
- Furthermore, the above discussion underlines the deep uncertainty that exists about where profit opportunities lie in the emerging, but as yet poorly understood, markets

Policy Responses and dilemmas (continued)

- These uncertainties create dilemmas for competition regulators
- On the one hand, the inherent uncertainty can make intervention dangerous, both as market circumstances are difficult to assess and as intervention may rule out otherwise desirable market development
- On the other hand, the potential for innovation means it is crucial to keep opportunities open for future competition to develop

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Policy Responses and dilemmas (continued)

- As a general matter, this should make regulators cautious
- At it simplest, that is because regulatory ignorance is exceptionally large in the presence of the uncertainty generated by the present forms of convergence
- There are a number of reasons for this:
  - speed and unpredictability of technology change and its market consequences
  - the other uncertainties which characterise rapidly changing markets – for example, uncertainty as to levels and patterns of demand for new services
  - convergence implies a broadening of markets and enhancement of competition
- That said, some of regulatory risks are unavoidable

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Policy Responses and dilemmas
(continued)

- It is useful to consider the paradigm of sequential innovation—in which market change occurs through relatively abrupt shifts from one form of supply to another
- competition regulators should put a high priority on ensuring this process can continue—in other words, **that new generations of supply can displace the existing generation**
- Conversely, where competition issues essentially involve the rents accruing to established suppliers—the gain they make from any market power they may enjoy—that should be of somewhat less concern, so long as the manner in which those operators seek to secure or retain their rents does not undermine inter-generational competition

Policy Responses and dilemmas
(continued)

- Competition authorities should be less concerned about ensuring competition within an existing broadcasting platform **so long as** new platforms can displace it
- In practice, this will not be an easy line to draw
- However, the greater the extent to which the exclusivity is specific to a particular, narrowly defined, type of platform, the lower that risk is; conversely, the greater the degree to which it covers all existing and prospective types of platforms, the greater the scrutiny it should receive
- Overall, as the process of convergence continues, competition issues about broadcasting content and transmission are likely to be more acute

Policy Responses and dilemmas
(continued)

- However, technological change is also reducing the entry barriers into the production of content and expanding the range of transmission options—both of which should serve to reduce competition concerns
- At the same time, the speed and unpredictability of technological change makes it vital competition authorities recognise the risks of 'getting it wrong':
  - in the sense of mistaking transient commercial success for market power

    or
  - conversely, in over-estimating the corrective efficacy of entry and of new competition

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