

Opening Address ATUG 2008

Welcome to ATUG 2008 – ATUG’s annual 2 day update for members and industry partners on the issues of the moment and the directions for the next 12 months.

At last year’s ATUG 2007 conference I spoke to you about ATUG’s PACT Campaign, a campaign to stop a determined, directed, targeted (one could say DDT) effort to roll-back the regulations supporting competition and choice for end users on the promise of a fast, fibre future.

PACT Campaign

Our campaign, PACT, was about Protecting Australia’s Competitive Telecommunications sector – and ATUG Directors supported the campaign on behalf of all end users - including personal meetings and discussions in Canberra. ATUG is still watching competition, and the access and pricing issues, which underpin it, with hawk like vigilance

BUT this year we have an additional crusade in mind which I will discuss a little later.

Future Forums

I also spoke to you about ATUG’s Future Forums which we announced as a year-long dialogue to really talk about:

- what sort of broadband future Australia needs,
- the technologies which could support this,
- business models and investment and lastly
- the policy and regulatory approaches to support a massive infrastructure upgrade for Australia –

BUT without doing away with competition.

I will come back to what we learned from those forums and where to next a little later.

HIGH COURT DECISION

The High Court decision that the telecommunications access regime set out in the *Trade Practices Act* (TPA) did not amount to an acquisition of Telstra’s property was a welcome assurance about the basis for competition in telecommunications and the rightful place for regulation in regard to essential infrastructure.

Telstra’s case was that contrary to section 51(xxxi) of the Constitution, which provides that Parliament has the power to make laws with respect to the acquisition of property on just terms, the access regime effected an acquisition other than on just terms of some of Telstra’s local loops,

The High Court’s judgment is short and to the point and contains some very significant reminders about the core objective of telecommunications legislation which has remained

consistent through the history of changes

- from 1981 when ATUG was formed
- to the 1991 Telecommunications Act when the duopoly was introduced,
- to the 1997 Telecommunications Act which introduced open competition
- and the 1997 telecommunications specific amendments to the Trade Practices Act which provided an access regime and rules to deal with anti-competitive conduct.

The Access Part of the 1991 **Telecommunications Act** was intended:

To promote the long-term interests of consumers of telecommunications services by:

- (a) promoting and protecting competition in the telecommunications industry ...;
- and
- (b) enabling carriers to compete with each other on an equal basis ...

The **Trade Practices Act, 1997** telecommunications provisions deal with Declarations of Access services, which may only be made if:

...the Commission is satisfied that the making of the declaration will promote the long-term interests of end-users

A number of ACCC decisions about telecommunications matters must have regard to the long-term interests of end users.

The **1997 Telecommunications Act's** main object is to provide:

A regulatory framework that promotes:

- (a) the long-term interests of end-users ...and
- (b) the efficiency and international competitiveness of the Australian telecommunications industry

So what did the High Court make of all this?

The High Court in paragraph 33 of its judgment says:

“The objects thus identified in the 1997 Telecommunications Act and in Part XIC of the Trade Practices Act are wider than and different from that narrow self-interest which, statue apart, is all that one participant in a market would ordinarily consult when striking a bargain with another participant in that market.”

In regard to the particular argument proposed the high Court concludes in paragraph 52,

“Telstra’s bundle of rights in respect of the PSTN has always been subject to the rights of its competitors to require access to and use of the assets.”

And at paragraph 53,

“What is important is that the rights in the assets vested in Telstra were rights to

use the assets in connection with the provision of telecommunications services but those rights were always subject to a statutory access regime which permitted other carriers to use the assets in question.”

The importance of this decision cannot be underestimated. It reminds us that the core policy objective is the long-term interests of end users and that competition and thus choice for end users is legitimately preserved through the telecommunications Access Regime in the Trade Practices Act.

Future Forums

During 2007 as well as campaigning for competition, ATUG was very focused on the future ahead for end users and the communications industry. We held four forums focused on the Future and I would like to publicly express my appreciation to the many people who participated in those discussions – our summary report will be available in the next few weeks. Today I would like to report back what we found on a more informal basis:

The Demand Forum highlighted the need for a range of broadband speeds and pricing plans “fit for purpose”. Many end users are on a journey with broadband, building their understanding of value. They do not want to be presented with very high speed but unaffordable broadband services, which have more bang than their wallets have bucks.

Just as important for end users right now are proper plans where what you see in the ad is actually what you get; a market where switching broadband providers is as seamless as switching mobile providers. And for business users, a market where broadband availability is ubiquitous and quality is consistent. End user confidence emerged as a key issue as the economy in all sectors looks to transform just about all transactions and processes based on the new connectivity. Any to any connectivity and always on are shared visions but the need for speed and the ability to pay is specific to each user.

The Technology Forum came to the conclusion that fibre to the home/farm/business is the future for the fixed network. But to meet market demands for affordable, ubiquitous, high and (sometimes low speed) broadband and to deal with the distance/density issues in Australia, wireless services have an important role to play. And over time, just as voice services have become mobile, so will broadband services – for that segment of the market which is happy to pay the mobile premium for convenience. The geography of Australia will mean satellites will also be an important part of the future technology landscape.

End users are really not interested in the technical specification of the underlying platforms and don't approach this debate with any ideological predisposition to one platform or another.

The “Internet of Things” is an important part of the real and not too distant future for end users. The need for IPv6 and the migration issues associated with such a huge change were highlighted.

The role of the SMART GRID rather than just the Smart Meter may provide the basis for infrastructure competition, but will require co-operation at unprecedented levels between

Federal and State Governments through COAG and such processes and with the private sector.

And the Forum felt access to competitive backhaul capacity within Australia and internationally will become more urgent in the next few years as content becomes richer and information flows symmetrical.

The Investment Forum was held at a point in the cycle of Forums when Australia had just had an election where broadband was an important issue – another world first for Australia! The forum discussion focused on the rise and rise of social networking, better online content, smarter personal devices and the thinking by business and government about forms of Enterprise 2.0 or Agency 2.0 based on Web 2.0 technologies.

Businesses are seeing the move to digital business “net” based working as critical to mission and hence on the investment radar. ATUG itself is exploring Web 2.0 working as a way of meeting members’ needs for information including direct international updates from experts.

Telco land is exploring new models of investment – including public/private partnerships and how these can be effectively structured to achieve the multiple objectives that underpin them. PPPs are about risk management – an issue exercising the minds of many in Canberra no doubt.

New business models in the construction, operation end of the market are being matched with new business models in the content, applications end of the market. And all this innovation is taking place in a privately funded market where shareholder expectations are an important consideration – albeit not the only consideration as the High Court has reminded us.

Broadband has to be affordable as well as available for end users and Australia as a whole to reap the benefits of this new economic and community infrastructure.

The Policy and Regulation Forum was more focused on FTTH developments and supporting regulatory frameworks. Around the world two sets of issues are emerging:

- where incumbents build the FTTH networks, the issues are access to the switching network and fibre plant unbundling and pricing;
- where competitors build the FTTH networks, the issues crystallize around over-build.

The characteristics of countries that are successfully deploying fibre include

- Government regulatory commitment;
- strong user demand and
- a competitive broadband market.

A number of countries are exploring “functional separation” as a way of dealing more efficiently and effectively with bottleneck infrastructure meaning effectively competitive sectors can be left to market forces.

Beyond the “fibre build” debate, there remain some big policy questions arising from:

- the merging of the telephony and internet worlds;
- the development of behavioural economics as a way of understanding the role of consumers as effective market participants;
- the need to reduce unnecessary regulation on economic activity;
- scarce resources becoming more abundant because of technology developments;
- the need to re-think Universal Service from an Obligation on industry to a Safety Net Guarantee from Government.

Next Steps

ATUG has decided to continue our Future Focus during 2008, holding a series of discussions about Whether Australia needs a New Communications Act? And if we do, what end users would like to see in it.