

Law Cambridge:Harvard University Press, 1987.

2 Andrea Dworkin, "Pornography Happens To Women." <http://www.igc.org/Womensnet/dworkin/PornHappens.html>

3 P138 in "Playboy's Money" in Catherine Mackinnon, *Feminism Unmodified*, op.cit.

4 <http://www.spectacle.org/1195/McElroy.html>, among other theorists and writers.

5 <http://www.spectacle.org/1195/McElroy.html>

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7 Refer to Mackinnon, *Feminism Unmodified*, op.cit.

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Meltdown to Liberalisation: Telecommunications in Asia

Chris Shine and Jacqui Brosnan look at the liberalisation of the telecommunications industry in Asia in the context of the WTO agreement and give a snapshot of current developments

Prior to the recent economic difficulties Asian economies had been progressing down the road toward telecommunication market liberalisation. Telecommunications is viewed by many Asian countries as a sector of great opportunity for development and foreign investment, particularly amongst those countries poorly served in the fields of basic telephony and value added services.

This article looks at Asian liberalisation in the context of the World Trade Organisation ("WTO") agreement to liberalise basic telecommunication services and provides a snapshot of current developments.

WTO AGREEMENT

The WTO agreement signed on 15 February 1997, extended the General Agreement on Trade in Services ("GATS") to basic telecommunications

services. Central to the agreement was the acceptance of regulatory principles contained in the Reference Paper (in whole or in substantial part) by 69 WTO member countries.

The Reference Paper sets out the key regulatory requirements to ensure non-discriminatory market access. They include competitive safeguards, non-discriminatory interconnection, competitively neutral universal service obligations, public availability of licensing criteria, an independent regulator, and non-discriminatory procedures for the allocation and use of scarce resources. The purpose of the GATS agreement is not to force nations into one model or another, but rather to insure that, whichever path toward telecommunications competition is chosen, the regulatory structure will fairly protect users and competitors against abuse of dominance and ensure that, even in a competitive environment, the ability to communicate is not impaired.

CHINA

Negotiations are currently on foot regarding the appropriate terms of China's membership of the WTO. These include the terms on which China will agree to liberalise its telecommunications sector.

There is no independent regulator of telecommunication services in China. The Ministry of Posts and Telecommunications is both the dominant provider and regulatory authority. Some limited competition is emerging in value added services. Although there is a general prohibition on foreign network management and operation, foreign investment is possible indirectly through joint venture structures.

China's current WTO telecommunications service offer is:

- Basic telecommunications: Foreign firms can form joint ventures to construct basic telecommunications

networks but may not operate the network. (This is really just a restatement of the current position and does not represent a significant advance.)

- **Value-added services (including e-mail, voice mail, on-line information and database retrieval, electronic data interchange, value-added fax, code and protocol conversion, on-line information and data processing):** Within 2 years of accession, foreign suppliers will be permitted to establish one joint venture in Shanghai and one joint venture in Guangzhou. Foreign investment will be restricted to 25 percent. Within 5 years of accession, the number of joint ventures will be increased and the geographic scope will be expanded, though the amount of liberalisation remains unspecified. The offer does not indicate whether foreign equity share limitations will be relaxed. The scope of business will be limited to electronic data interchange, code and protocol conversion, and on-line information and data processing. Within 5 years of accession, the business scope will be enlarged by an unspecified amount.

Considerable persuasion is being exerted in the negotiations. Foreign governments, particularly the USA, would like to see more significant progress in opening the market. For China there is a national sovereignty issue. However, with the desire of China to significantly improve its teledensity by the year 2000 it has a policy dilemma. It is hard to see foreign telcos investing in China to the levels needed to improve services without the equity and operational protection needed to generate the required comfort levels. The requirement of independent regulation and a settled interconnect regime is also acute.

China is yet to exhibit major financial flow on effects from the Asian crisis, however, current circumstances can not be helping it to achieve the investment required.

HONG KONG

Hong Kong has enjoyed significant domestic growth and a hub status in Asian telecommunications. On the international service front the competitive position of Hong Kong and its WTO offer

was hamstrung by the existence of a monopoly.

Hong Kong Telecom International ("HKTI") enjoyed the exclusive licence to provide certain circuits and services (including public telephony) until the year 2006. The Hong Kong regulator, OFTA, had long sought to expand the range of services available for competitive provision outside the scope of the HKTI exclusivity.

Incrementally, recent years have seen the licensing of Managed Data Network Services, callback, self provided circuits for corporate use, VPN, and ISR for data and fax. The jewel, international voice competition remained entrenched in its exclusive shroud.

In a major watershed HKTI and the Hong Kong Government have reached a deal for the early surrender of the exclusive licence.

An agreement was signed on 20 January 1998 under which:

- HKTI will surrender its licence on 31 March 1998.
- The Hong Kong Telephone Company ("HKTC") local fixed network licence will be transferred to a new group company and expanded to cover external services and facilities.
- The other 3 fixed network licensees (Hutchison Communications, New T&T and New World Telephone) will have their licences amended to allow the provision of external services from 1 January 1999 and external facilities from 1 January 2000. In other words International Simple Resale of HKT circuits will be available initially with full facilities based competition to follow a year later.
- Others will be able to offer ISR from 1 January 1999.
- The question of additional facilities based carriers from 1 January 2000 is to be subject to a review during 1998.
- HKT will receive (subject to the approval of the Provisional Legislature) HK\$6.7 billion (net of tax) in compensation.
- Royalty payable by HKTI under the exclusive licence ceases as of 20 January 1998.

- A phased rebalancing of local tariffs will take place removing the existing cross subsidisation from international services.

While the deal is a compromise in terms of phased liberalisation and compensation it represents a significant advance. Hong Kong will now be able to enhance its status under the GATS principles as an open competitive market for international services. The fact that ISR and facilities based competition will be available will drive down service prices. The introduction of carriers competing with HKTI will see inroads into accounting rates for Hong Kong international services.

Hong Kong based carriers and ISR operators will target the China market with the potential to influence accounting rates in China.

INDONESIA

The Minister for Tourism, Post and Telecommunications is responsible for telecommunications regulation in Indonesia.

Indosat and Satelindo (in co-operation with Indosat) have exclusive statutory rights to operate international basic telecommunications services until 1 March 2005. Telkom has an exclusive statutory right to operate domestic basic telecommunications services:

- until 1 January 2001 in the case of wire line and fixed wireless networks, subject to permitted co-operation arrangements with private enterprises;
- until 1 January 2006 in the case of domestic long distance telecommunications services.

Private enterprises (including foreign enterprises), may provide domestic basic telecommunications services in co-operation with Telkom. The co-operation may take the form of a joint venture company with Telkom as a shareholder, an operational co-operation arrangement or a management contract. Private enterprises (including foreign enterprises), may provide non-basic telecommunications services independently of Telkom, Indosat and Satelindo.

The Foreign Investment Law provides that telecommunications is a field of

activity closed to 100 per cent foreign direct investment. Non-Indonesian investors are required to incorporate a locally incorporated subsidiary to conduct business in Indonesia. A non-Indonesian investor may hold up to 95 per cent of the capital in a locally incorporated subsidiary.

The government's policy on liberalising the provision of telecommunications services will be reviewed on the expiry of the relevant licences. The Indonesian WTO offer simply reflects the current licence situation. It has been reported that Telkom's long-distance licence is under negotiation to move the expiry date to 2001.

The current economic crisis makes it difficult to predict market reforms. This economy is being closely watched by many.

JAPAN

The Ministry of Posts and Telecommunications is responsible for administering telecommunications regulation in Japan. Competition exists in most service offerings, including long-distance and IDD calls, mobile telephony, VAS, switched re-sale and private line re-sale. A number of recent changes aim to further liberalise the telecommunications sector.

In 1997 the MPT announced that NTT would be reorganised. NTT is the former government monopoly carrier which was privatised in 1985. NTT has remained the dominant provider of telecommunications services in Japan. Under the reorganisation, NTT will be reorganised into three separate companies - domestic long-distance service company and two local service companies serving the western and eastern regions of Japan. The reorganisation is set to occur in 1999.

NTT has been licensed to provide international services. KDD has been licensed to provide domestic services.

In June 1997, the discretion of the MPT to refuse to issue a permit, on the basis of demand and supply for telecommunications services was removed. Telecommunications service providers now must provide interconnection, unless justifiable reasons exist to refuse.

In December 1997, connection of international leased lines to the public

switched telecommunications network at both ends was liberalised. Bans on Internet telephony and international simple resale ("ISR") have also been lifted.

In February 1998 foreign ownership restrictions on facilities based providers were removed. This means that foreign companies can be Type I carriers. Worldcom Japan KK, received the first permit as a telecommunications service provider wholly owned by a foreign entity on 2 March 1998. Foreign ownership caps remain at 20% for NTT and KDD and are reflected in the WTO offer.

MALAYSIA

Local call services are provided by a monopoly provider, Telekom Malaysia. There is competition in long-distance, international, mobile services, VAS and VPN services. Switched re-sale and private line re-sale is not open to competition.

In the WTO context the Government has recently relaxed the limit on foreign ownership from 30% to 49% in order to attract foreign investment in the telecommunications sector. However, investment must be in existing licensees.

Jabatan Telecom Malaysia (the state regulatory agency) is speeding up its plans to introduce equal access that will allow Telekom Malaysia customers to access alternative trunk and international gateway services via an access code. This was originally scheduled to be introduced at the start of 1999, however JTM wants equal access ready by mid-1998.

SINGAPORE

Telecommunication Authority of Singapore ("TAS") is responsible for telecommunications regulation in Singapore.

The provision of public basic telecommunication services is presently dominated by Singapore Telecommunications Limited ("SingTel") which has been granted an exclusive Public Basic Telecommunication Services ("PBTS") licence until 31 March 2000. Originally the licence guaranteed SingTel's monopoly until 2007 but was successfully renegotiated by the government after the payment of compensation.

Competition exists in VAS (using the SingTel network) and VPN services. Switched re-sale is permitted subject to commercial agreements with licensed operators. Private line re-sale is only permitted for corporate purposes.

Up to two more PBTS licences will be granted by TAS from 1 April 2000. Three consortia have made bids and the result of the tender will be announced in mid-1998. TAS has also announced that it intends to licence additional PBTS operators through future public tenders to provide commercial services from 1 April 2002.

Two cellular licences have been issued (to Singtel Mobile and MobileOne). This duopoly will last until 31 March 2000. Up to two more PCMTS licences will be awarded through public tender and the results of this will also be announced in mid-1998. These liberalisation initiatives form part of the Singapore WTO offer.

Paging licences have been issued to Singtel Paging, MobilOne, Hutchison Intrapage and SunPage.

There are currently three Internet service providers licensed by TAS. They are Singapore Telecom's Singnet, Cyberway and Pacific Internet. Content on the Internet is regulated by the Singapore Broadcasting Authority by way of a class licensing scheme. Internet service providers as well as Internet content providers come under the class licensing scheme and have to abide by the conditions thereof.

TAIWAN

The DGT has limited independence from the monopoly government operator, ChungHua Telecom which has a monopoly on providing local and long distance services until 2001. Some competition exists in mobile and VAS services.

Recently, Taiwan has agreed to increase foreign participation in telecommunications businesses by up to 59.99%, which includes direct foreign investment up to 20% and indirect foreign investment up to 39.99%.

Taiwan is also negotiating to join the WTO. It is likely that accession for Taiwan will coincide with the entry of China.

THAILAND

There is no independent regulator in Thailand but there are plans for a National Telecommunications Committee. Monopoly operators provide local and long-distance ("TOT") and IDD services ("CAT"). There are two mobile operators. Competition is available for value-added services.

Key reforms are currently under review, including wholesale changes to current concessions, cost based tariffs and foreign investment in TOT and CAT. Draft legislation has been prepared but is yet to be agreed by Cabinet. Again current economic circumstances will impact.

CONCLUSION

It is possibly too early to predict the impact recent economic difficulties will have on regional telecoms liberalisation. In practical terms local financial constraints will mean there will be fewer domestic investors. New investment, if it is to come at all, is likely to come from foreign sources. This may provide an impetus to liberalisation. On the other hand, telecommunications liberalisation may become a secondary priority as governments grapple with economic reform across multiple sectors.

While times are difficult, the underlying need to provide increased levels of

services to their peoples and continuing engagement in the WTO process will see Asian governments continue, if haltingly in some cases, on the liberalisation path. To maintain the information rich, information poor, dichotomy is not politically sustainable.

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Oprah and the Texas Cattlemen: Food Disparagement in the US and Australia

The enactment of food disparagement statutes in 13 US states has raised widespread constitutional debate, with critics claiming the laws effectively gag discussion by environmental and consumer groups of possible health risks. Anne Flahvin outlines the recent US developments and considers what, if any, restrictions apply in Australia to disparagement of generic food products

OPRAH AND THE TEXAS CATTLEMEN

The US food disparagement statutes came under the spotlight recently when TV personality Oprah Winfrey was sued by a group of Texas cattlemen who claimed that Winfrey's public vow never to let another hamburger pass her lips for fear of contracting bovine spongiform encephalopathy (BSE), or Mad Cow Disease, had caused a massive drop in the price of beef. As well as actions for common law business disparagement, negligence and defamation, the cattlemen sued for breach of a provision of the *Texas Civil Practice and Remedies Code* which imposes liability for the public dissemination of information relating to a perishable food product in circumstances where the publisher knows the information to be false and the information states or implies that the product is not safe for consumption by the public. The statutory action imposed a less onerous hurdle than common law

disparagement, under which a plaintiff must show an intention to injure. The case was widely tipped to become the first test of the constitutionality of the so-called 'veggie libel' laws, but this hope was dashed when US District Judge Mary Lou Robinson - without explaining why - ruled that the plaintiffs would be limited to arguing the case as a common law disparagement suit.

The food disparagement statutes are an attempt to fill what many observers believe to be a gap in the law. They were enacted in response to a failed attempt by Washington state apple growers to sue CBS 60 Minutes for a program on the pesticide Alar which was routinely sprayed on apples to improve their shelf life. The 1989 program discussed a report from the Natural Resources Defence Council entitled *Intolerable Risks: Pesticides in Our Children's Food*, which itself was based on Environmental Protection Agency data which suggested a statistically significant link between ingestion of Alar by lab animals and

development of tumours. What this case, *Auvil v CBS 60 Minutes*, highlighted was that while disparagement of a generic product might cause a substantial loss to agricultural producers, the common law could not be relied on for a remedy.

One hurdle was the group libel principle. Although the district court in *Auvil* initially denied the defendant's motion for summary judgment, holding that the telecast was of and concerning all apples, CBS was eventually successful in obtaining summary judgment on the ground that the plaintiffs could not satisfy the requirement of falsity. But in affirming this judgment, the court of appeals declined to consider CBS's argument that the 'of and concerning' requirement applied to common law product disparagement.¹ The question remains unsettled.

Pending a constitutional challenge, the food disparagement statutes - in settling that uncertainty - removed a major