

CLAYTON UTZ

Network Insight Seminar

Digital Action, Licence A and Licence B

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Session 2

Licences A and B: What are the rules?

Channel B - Access regime

- Channel B - access regime - Radiocommunications Act 1992 Part 3.3, new Div 4A
- To be eligible to apply - access undertaking accepted by the ACCC: s118B
- Licence condition: s109A(1)(ij) - licensee and authorised persons

Channel B - Access Regime (cont'd)

- Enforceable by Federal Court
- Remains in force while the licence is in force and transferred with the licence
- Can be varied with ACCC agreement
- ACCC Discussion Paper - 15/12/2006

Rationale

- Limited spectrum until analogue switch off
- Potential impact of control of Channel B on related/relevant markets
- "Promote competition by enabling access to the bottleneck created by the Channel B [licence] which the [licensee] may not otherwise have an incentive to provide."

What is access?

Section 118A:

"A reference in [Division 4A] to **access** to a channel B datacasting transmitter licence is a reference to access to services that enable or facilitate the transmission of one or more content services under the licence, where the access is provided for the purpose of enabling one or more content service providers to provide one or more content services"

What is access? (cont'd)

Content service - one authorized under the BSA that the Channel B licensee may provide (not commercial broadcasting service or subscription tv service capable of being received by a domestic digital tv receiver).

Content service provider - company who provides, or proposes to provide, a content service. Section 118M.

What is access? (cont'd)

- Does it include access to content?
- Explanatory Memorandum
- ACCC Discussion Paper

ACCC Role

- Initial allocation, monitoring and enforcement
- Decision-making criteria re acceptance and variations: s118H
- Procedural Rules: s118L
- Section 106A Radiocommunications Act 1992 (and 114A) and section 50 TPA.

ACCC Discussion Paper

- Demand for services and possible business models
- Identification of key issues regardless of use, bidders, business models
- Initial comments on decision-making criteria - modelled on criteria for accepting access undertaking for non-declared service under Div 6 Part IIIA of the TPA (s44ZZA(3))
- Guidance/models - kinds of access undertakings

ACCC Discussion Paper (cont'd)

- Case by case assessment
- Procedural rules
- Interaction with section 50 TPA
- Timing and processes - interaction with ACMA allocation steps
- Challenges

Issues flagged in submissions to ACCC

- Not all submissions publicly released
- Assumption - mobile tv likely use
- Need for flexibility
- Nature of access
- 3G mobile services
- Other access models?

Issues flagged in submissions to ACCC

(cont'd)

- Market definition/analysis
- Level/intensity of regulation
- Overseas experience - possibly limited relevance

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