The Vision thing

The last issue of CU *described the formation of Optus Vision in late 1994. What followed was struggle to secure content, and internal turmoil . . .*

In early 1995 the ownership structure of Optus Vision had been set: Optus Communications and US cable TV company Continental Cablevision owned 47.5 percent each; Packers' Publishing and Broadcasting Limited (PBL) owned 5 percent. PBL had originally intended to invest more in the Optus group, but backed away – reputedly as a result of Communications Minister Lee's refusal to allow Optus Vision to operate a closed network. However, PBL retained an option to increase its shareholding in Optus Vision to 15 percent by 1 July 1997.

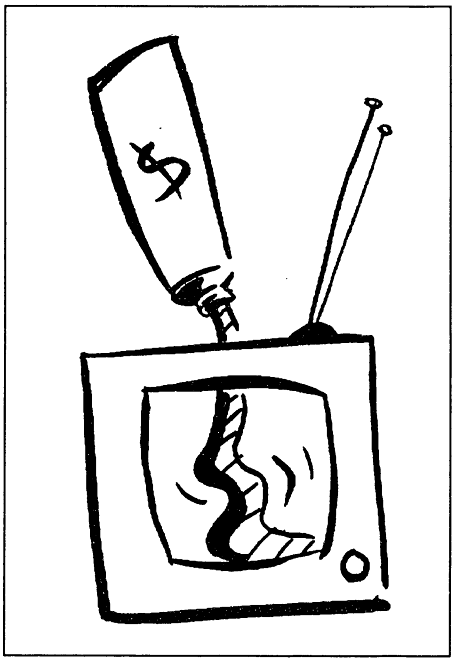
Optus Vision soon faced a competitor in Foxtel, a joint venture between News Corporation and Telstra which had arisen from the fallout surrounding the dissolution of the proposed 'PMT' (Packer Murdoch Telstra) consortium in late 1994 and the creation of Optus Vision. The 'cable race' was on, with Optus Vision seeking to pass 3.4 million homes, and Foxtel 4 million homes, in 4 years. While policy makers and concerned citizens debated the merits of infrastructure duplication, another battle loomed: the struggle for pay television content.

The battle for content

With carriage issues decided, the pay television operators scrambled to secure the content needed to deliver multi-channel services. This was to be fought on two fronts: domestically, the operators wanted rights to sporting events; while internationally all roads lead to Hollywood.

On the international front, Optus Vision obtained rights to Hollywood movies from the Warner Bros, Disney and MGM/United Artists studios, as well as from Village Roadshow, Regency Films, and the world's largest sports program supplier, ESPN.

In this arena, Foxtel suddenly found itself left high and dry and forced to negotiate with Australis Media, which had agreements signed with Universal, Paramount and Columbia Tri-Star studios. The subsequent programming rights cost Foxtel



an exorbitant $4.5 billion over 25 years: a deal so expensive for Foxtel that when Australis appeared close to receivership early this year, the Optus Vision-allied Packer orchestrated a rescue package in order to keep Foxtel on the rack.

Nevertheless, no pay television operator escaped high prices for US program rights, prices fuelled by competitive desperation or highly optimistic subscriber rate predictions. These predictions were habitually but misleadingly described as 'projections', since projections actually 'project' from some initial data, and pay television was new to Australia. Rather, predictions were generally based on a model of compound analogy. Beginning with a base figures derived from take-up rates in other countries, particularly the US and the UK, a premium was added to incorporate Australians' famed rapid take-up of new technologies – of which mobile telephones and video cassette recorders were oft-cited examples.

Seven wooed

On the domestic front, Foxtel and Optus Vision competed for an alliance with the sport-rich Seven Network. Seven held the rights to Atlanta and Sydney Olympics, the AFL and ARU rugby union competitions, the Australian Open tennis and a number of golf tournaments. Many observers had thought it a foregone conclusion that Foxtel would be successful, since the partners in the Foxtel joint venture, Telstra and News Corporation Ltd both owned substantial interests in Seven (10.9 percent and 14.9 percent respectively). Optus Vision had in fact complained to the Australian Broadcasting Authority (ABA) and the Trade Practices Commission that News and Telstra were attempting to coerce Seven to join Foxtel.

As a result of these complaints, the ABA agreed to investigate the matter. It sought to establish whether News controlled Seven, which would have been in breach of the cross-media and foreign ownership provisions of the Broadcasting Services Act; and whether Kerry Stokes, who had just purchased a 13.3 percent stake in Seven, was in a position to control Seven at a time when he controlled Channel Nine in Perth through his 20 percent interest in Sunraysia. The investigation was overshadowed when Seven, in an unexpected move, elected to join Optus Vision instead.

Under the alliance, Seven was granted, among other things, 2 percent equity in Optus Vision with an option to move to 15 percent by July 1997, together with a 30 percent interest in Optus Vision 's sports channels, an 8.33 percent interest in its movie channels and a $10 million signing on fee.

Super League

In early 1995, News Limited announced a breakaway rugby league competition, 'Super League', which was to be broadcast on the Foxtel pay TV network. Rugby League was considered the jewel in the crown of Australian sports viewing; and the possibility that Foxtel could attain rights to the major – or only – domestic rugby league competition was of serious concern to Optus Vision. It therefore agreed to bankroll the Australian Rugby League, in return for the pay TV rights and naming rights to the ARL competition and other benefits.

News commenced Federal Court proceedings against the ARL, alleging that the 5 year 'loyalty agreements' between the players, clubs and the ARL were entered into under duress, as the ARL had feared the movement of players and clubs to Super League. Upon commencing the hearings, News launched a self-described 'blitzkrieg' of signings, contacting many clubs and players to its ranks. The ARL cross-claimed, arguing that their competition constituted a joint venture between parties, and that the names, uniforms, colours and designs of the clubs were intellectual property which would be infringed if they were incorporated in Super League. On a wider economic scale, the Court was also required to address the nature of the markets in which the business of rugby league is sold, in order to determine whether the existing ARL competition comprised anti-competitive activity within the meaning of trade practices law.

At first hearing in March 1996, Justice Burchett of the Federal Court upheld the arguments of the ARL and found there were fiduciary duties between the parties which were breached. The court also found the loyalty agreements were not anti-competitive, as the business of rugby league did not constitute a discrete market, but part of other markets, characterised by the nature of the audiences and media in which the sport was sold.

However, on appeal on 4 October 1996 the Full Court unanimously reversed the original finding. It upheld Super League's appeal against the original decision and set aside the initial orders, permitting the commencement of the Super League competition in 1997. Among its principal findings were that the ARL's loyalty agreements were anti-competitive and void; and that no joint venture existed between the ARL and the clubs – meaning that there were no fiduciary duties between these parties that could have been breached or that News could have induced them to have breached.

Despite the finding, subsequently upheld by the High Court, Optus Vision continued to commit to the ARL, announcing that month a further $100 million rescue package. This brought to an estimated $210 million the money sunk by Optus Vision into the ARL over a five-year period.

Head to head rollout

Throughout all this, 'carriage' issues were progressing. Optus Vision announced in September 1995 that it would overtake the Telstra Multimedia rollout by the end of 1996, by doubling the speed of its rollout to pass 2.3 million homes by that time (compared to about 2 million by Telstra).

A year later, on 20 September 1996, Optus Vision announced that it had signed up in excess of 100, 000 pay TV subscribers, with chief executive Geoffrey Cousins announcing his resignation on the same day. However, Optus Vision's local telephony subscriber rates were less impressive, indeed allegedly were minimal. The company had faced software problems with its state-of-the-art network, which it eventually contracted US company Motorola to help correct.

Higher in the public consciousness, however, was the negative publicity Optus Vision was receiving over the exploitation of its (or, correctly, Optus Network's) statutory immunity from certain state and local environmental planning laws.

Honeymoon over

In October 1996, the Seven Network commenced a suit against Optus Vision, alleging that in granting a new option to shareholder PBL it had breached an agreement entered into amongst the shareholders.

In August, Optus Vision had offered PBL further rights to acquire 33 percent of Optus Vision (acquiring the additional 13 percent from Seven in the event that it failed to exercise its option to increase its shareholding from to 15 percent) and improved rights in relation to the Optus pay TV sports channel. Optus Vision was thought to have done so as a reward to PBL for its role in putting Optus Vision into a satellite joint venture with Australis Media. However, in allegedly doing so without Seven's knowledge or consent, Seven claimed that Optus Vision and its other shareholders had breached the shareholders' agreement, giving Seven the right to acquire the remaining 98 percent of Optus Vision it did not already own – at 80 percent of its value.

Although Seven claimed that it was willing to pursue the matter to its end – contesting, for instance, that it could attract a foreign buyer – Seven's action was widely perceived by commentators and Optus Vision advisers as an attempt to give Seven the opportunity to renegotiate its programming contract.

Subscriber blues

By early 1997, all Australian pay TV operators were thought to have fallen substantially behind their target subscriber figures. Optus' estimated figure of 150, 000 subscribers fell far short of its scheduled target of 450, 000. As mentioned earlier, such shortfalls hit pay television operators badly, because the fees paid to Hollywood studios for programming rights were based partly on 'guaranteed' subscriber numbers, leaving operators to pay for subscribers they did not have.

In March, Optus Communications moved to take full control of Optus Vision. By April, Optus Vision made no secret that it had entered into discussions with Telstra over cable-infrastructure sharing arrangements. On 24 April 1997, Optus Communications announced it was to fully integrate its operations with Optus Vision. The Optus Vision network, carrying local telephony and pay TV, would ultimately merge with the Optus Communications network, which hauls long-distance and international telephony.

In June, Ziggy Switkowski's association with Optus Communications and Optus Vision came to an abrupt end, being replaced with Englishman Peter Howell-Davies, the nominee of majority shareholder Cable & Wireless, placing Optus into a holding pattern controlled by its UK overlord. In August, Optus appointed Australian Chris Anderson as its new CEO, an antipodean front man hired partly to disguise the fact that Optus is now a UK company which will primarily be run from London.

Alasdair Grant

Online but in the red

Can online news services make money?

A paradox of the information revolution is that while everyone agrees that information is valuable, most of us are not prepared to pay for it, at least not in full.

Information consumers are accustomed to being subsidised. Sometimes the subsidy comes from advertisers, as in commercial broadcasting and newspapers; sometimes from taxpayers, as in public broadcasting; sometimes from the creator of the information, as in many books which are written in effect for free.

And as the authors of a new paper on online news services observe, the habit of subsidy is also firmly entrenched in our newest medium, the Internet.

Susan Mings and Peter White have released a paper *Making Money From the Web?: Business models for online news,* part of La Trobe University's Online Media Program. They quote the American researcher E.K. Meyer: 'Directly charging Internet users for information has met with substantial resistance, particularly among early adopters of the "Internet culture". The Internet was created specifically to encourage free exchange of information among academic and government researchers. Users steeped in this tradition tend to view any commercial activity as infringing and hold one credo above all others: "Information wants to be free".'

Which actually means: 'We want information to be subsidised'. Fair enough, perhaps, but this attitude is one of many problems which confront news organisations which are trying to establish Net publishing operations – widely seen as strategically vital in the long term – without losing large amounts of money.

Many newspapers now have an online presence. According to the Website maintained by *Editor and Publisher* magazine, there are now more than 1200 daily papers online, along with more than 500 weeklies, 100 business papers, and a number of other specialised newspapers.

The vast majority of these are based in the United States, but Australia is also well represented, with ten titles. The most important of these are the major Fairfax papers, including *The Age, Australian Financial Review* and *Sydney Morning Herald,* and News Corp's *The Australian.* A number of provincial newspapers have also dipped a toe in cyberspace (including the *Illawarra Mercury,* which will be handy for the researchers at *Media Watch*).

Most of these sites have appeared only in the past two or three years, and many more are likely to follow. But as White and Mings point out 'There seems to be some consensus that newspaper publishers' (and others) rush to the Internet has vastly outstripped their understanding of how to profit from these endeavours'.

They identify four models for making information available on the Web on a commercial basis. These models rely respectively on subscriptions, advertising, transaction charging and 'bundling' with other Internet services.

The experience to date has not been encouraging for the subscription model, although there are some exceptions. The *Wall Street Journal* has succeeded in signing up some 100,000 subscribers to its online service, some 60 per cent of whom are not print subscribers. Another service, with much cheaper pricing, the Nando News Network, is also reportedly doing reasonably well.

Many newspaper sites operate on a 'teaser' system, in which a certain