Telstra media plays in ACCC’s sights

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Rod Sims: “We would look extremely closely at any proposal by Telstra to increase its shareholding in Foxtel to anything that gives it an outright majority interest,” Photo: Rob Homer

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Australian Competition and Consumer Commission chairman Rod Sims has signalled any attempt by Telstra to expand its media interests will be subject to critical scrutiny, including a potential move for James Packer’s $1.8 billion Consolidated Media Holdings.

“We would look extremely closely at any proposal by Telstra to increase its shareholding in Foxtel to anything that gives it an outright majority interest,” Mr Sims said.

In a wide-ranging interview with The Australian Financial Review on the telecommunications sector, Mr Sims also revealed that the ACCC could seek greater oversight of the $36 billion national broadband network and even ask the government for more powers to prevent exclusive sporting rights from becoming a barrier to competition.

The Foxtel comments could place Kerry Stokes’s Seven Group Holdings and Rupert Murdoch’s News Corporation ahead of Telstra in any swoop for Mr Packer’s 50 per cent stake in ConsMedia, which the billionaire is reportedly prepared to sell to fund a push into the Sydney casino market.

Seven Group is ConsMedia’s second-largest shareholder with 24 per cent. Telstra owns 50 per cent of Foxtel while ConsMedia and News Ltd each hold 25 per cent.

Last week Telstra’s chief executive, David Thodey, described the company’s Foxtel investment as “the best thing we’ve ever done” and conceded that he would consider lifting that stake if the opportunity arose.

Mr Sims said: “As the telecommunications market increasingly sells bundled products, not just voice and data but also TV and mobiles, having someone in Telstra’s already strong position getting an even stronger grip on the content would be something that, as the competition regulator, would give us concerns.”

Digital media looms as a key growth area for a structurally separated Telstra, which is preparing to surrender its wholesale monopoly to the NBN over the next decade. Mr Thodey last week named media as one of three areas, alongside Asia and network applications and services, where the company would consider using its robust cash position for acquisitions.

“If someone puts a proposal to us we have to consider it in our formal processes,” Mr Sims said. “[But] we
cleared the Foxtel-Austar merger . . . on the basis that Telstra was a 50 per cent owner of Foxtel, and therefore on the basis that News and CMH have different interests that in some ways could constrain Telstra.”

In its recent approval of the Foxtel-Austar merger, the ACCC made it clear it still had concerns about Foxtel’s exclusive rights to domestic sporting content, but said that this was separate to its assessment of the takeover.

Mr Sims revealed the regulator could seek powers, similar to those held by UK communications regulator Ofcom, to open up access to sporting content for rival pay television providers, if it became concerned about competition in downstream markets such as broadband or telephony, as bundling of those services increases.

“You can’t say right now Telstra being linked to Foxtel is distorting the market, but if it were to in the future there are other ways we can look at sporting rights,” he said.

“We don’t have those powers [that Ofcom has]. There are two ways to solve it: either we ask the government for these powers, and they say yes or no, or we use existing M&A powers or ‘misuse of market’ powers. But we haven’t wrestled this issue to the ground yet.”

Mr Sims defended the ACCC against criticism it has received from sections of the media and from industry participants including iiNet, for approving Foxtel’s $1.9 billion takeover of Austar this month, after almost a year of deliberations.

“We got a sensible balanced outcome,” he said.

As part of the approval, the ACCC secured concessions from Foxtel, which agreed to open up a wide range of content including Sky News, Disney and ESPN channels to competitors broadcasting over internet protocol TV (IPTV) and on mobiles and tablet devices. Foxtel did so despite being confident that its position would have held up in the courts because it does not compete with Austar directly outside the Gold Coast.

“Those undertakings are very important. If IPTV takes off, there is a massive range of content that is non-exclusive. The only issue is sport, but we are not talking about international sport, we are talking about rights to AFL and NRL,” Mr Sims said.

“At the moment those sporting bodies want to sell those rights exclusively. It might be interesting to see how the world unfolds; we just don’t know what’s going to happen in the future.”

In another sign of a more pragmatic approach compared with his predecessors, Mr Sims said his role was to apply competition laws. He said that would not be affected by political considerations. “I’m not in the business of social engineering. I am in the business of applying the laws. And I’m not in the business of playing politics. I don’t feel any political pressure at all,” he said.

“We will do what we have to, under the act. If I think the act needs to change I’m quite happy to say so, and always politely.”

Mr Sims said there was a still “a fair way to run” on assessing NBN Co’s special access undertaking (SAU), the document which outlines the network’s proposed pricing structure for the next 30 years, with a decision not likely until September.

“NBN have put forward the SAU genuinely, but when it comes from one party it obviously reflects their views,” he said. “There are many things that still need to be addressed and they will get worked through. I don’t think anybody thinks the current version is the last word,” he said.

Mr Sims indicated that he was sympathetic to telco providers’ concerns about the ACCC’s lack of oversight over NBN Co under the SAU.

But, in a boost for NBN Co, he indicated that, at this early stage, he was comfortable with the usage-based charges it is proposing to levy on its wholesale customers.

“It seems equitable that those that want higher speeds and more data should pay more,” he said.

Optus and Telstra have both complained about the controversial CVC charges NBN Co is proposing to levy on its wholesale customers. They say the charges bear no relationship to NBN Co’s costs and do not decline as usage increases.

Optus said last month that the usage charges could ultimately discourage take-up of the NBN among consumers. Telstra said in February they could lead to dramatically higher prices.

“We are still analysing it [the SAU],” Mr Sims said.

NBN Co has committed to limiting its price increases on its main products to half the inflation rate, in effect lowering prices in real terms over time.

We have just been through a period where you have had sunk investment and rising usage which has led to
falling [broadband] prices. But in the world we are moving to now there had to be more capex and someone has to recover those costs” Mr Sims said. “[NBN prices] may not be going down as fast as people want, but don’t forget if they reach their regulated return, prices go down further,” Mr Sims said.

“There is a trade-off; the more you increase the fixed charges, the more you may well increase prices for people don’t want a lot of usage. [Under current proposals] if you are comfortable with what you are using now you don’t have to pay more.”

The Australian Financial Review