Regulatory intervention a sound solution

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For The Straits Times

The ongoing telco war between SingTel and StarHub is beginning to resemble a farcical soap opera.

In the latest instalment of this frustratingly protracted saga, the audience is told StarHub will stop supplying its pay-TV services to 73 non-residential properties which are accessible only via SingTel's network of telephone lines.

Who said or did what to whom? On whom should the blame for this debacle be pinned? What new twists will the next episode bring?

As intriguing as the new twist in the industry, one thing stands out: the value of access to services which they are keen on having.

The recent bloodbath in the free-to-air television market sees StarHub's refusal to allow access to its network to the new entrant.

The current state of affairs is the result of inherent imperfections in the structure of the market for telecommunications services. StarHub is the only company in the market for pay-TV services, while SingTel occupies a dominant position in the upstream market for telecommunications infrastructure which service providers need access to in order to compete in downstream markets.

While the two companies are not in direct competition with each other in the market for pay-TV services, they are rivals in the market for fixed-line and mobile telephone services, as well as competing Internet service providers. If StarHub were to entrench its position for pay-TV services, it might be able to leverage on the market power it acquires in that market into the telephone and ISP markets, strengthening its overall portfolio of services in a way which gives it an edge over its rival. It is therefore not in the interests of its competitor to allow this to happen.

But putting aside the individual interests of the two competitors, there are larger and deeper structural issues which need to be addressed if consumers are to benefit fully from the telco liberalisation process. Issues which only the regulator can address.

On the basis of the facts which have been made public, it would seem that we have an almost classic case for applying what American antitrust jurisprudence refers to as the doctrine of "essential facilities". This doctrine is invoked to require access to be granted to the requesting party, on terms and conditions fixed by the regulator. The only condition the owner of the facility was a public monopoly, raising antitrust concerns of public policy and commercial fairness which only the industry regulator is qualified to answer. In fact, the industry regulator has to play a critical role in the application of the "essential facilities" doctrine simply because it is the only institution with the relevant expertise to deal with pricing issues. As the SingTel-StarHub saga should have taught us, they are quite unlikely to resolve these issues on their own.

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LEGAL FRAMEWORK FOR COMPETITION

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Sectoral regulators should have greater confidence in the legitimacy of their roles as competition watchdogs, especially where the industry in question is probably never going to have more than one or two serious competitors. After all, if they do not take the necessary steps to address the inevitable structural failures in the competitive process, who will?"