Chapter 14

Malaysia: Citizens’ Access to News

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ABSTRACT

While the right to information has in most instances focused on the relationship between the individual and the state, there may be some instances where such a right is impeded due to private restraints or anti-competitive behaviors. This chapter is intended to recapitulate a period in the history of newspaper publishing when private restraints or behaviors that may otherwise be anti-competitive were used in an attempt to kill off a new daily at its inception. The episode took place at a time when there was no competition or antitrust law in force. It occurred when the Internet had just found its way to Malaysia and when printed newspapers were the main tools to disseminate news. This chapter also looks at the essential facilities doctrine and a similar case in another jurisdiction, and how these might have been applied to the episode.

INTRODUCTION

Access to information is a basic right of every citizen of the modern civilized world. Information comes in various forms and contents. It can either be some stunning news like an earthquake somewhere in South America, the breaking news of a tsunami hitting the coasts of some nations in the Pacific Ocean, the discovery of a new medicine that will cure a disease that has hitherto made scientists in the world clueless, or it can be simply some information relating to the neighborhood watch in a municipality or the advertisement of some promotions available at a local departmental store or supermarket. No matter what form it takes or what content it carries, every piece of information is relevant to the people at large, though the relevance to each individual varies from one individual to another, and may even be significant to some sections of the society.

Despite the recent advent of digital technology and the Internet, many forms of information find their way to the people via the printed media. Although such modern technology is common in some jurisdictions,
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it does not follow from that that every country enjoys the same access to such modern technology—there remains a technological gap between the developed nations, on the one hand, and the developing nations, on the other hand. Modern technology may also cost an arm and a leg and not every ordinary citizen on the street have the same luxury of having access to it. The degree of access also varies from one area to another area of one country, particularly between the cities and rural areas. Even when it comes to the introduction of digital technologies city folks tend to get to enjoy such technologies first as the technologies are rolled out countrywide. The fact that city folks tend to get to enjoy digital technologies first may also explain why they are more politically aware and tend to be more politically responsive. Different contents of information may also dictate different forms of access. The degree of access to news may also vary from one publisher to another. About 70 years ago the US Supreme Court had to deal with an antitrust case in which a large number of newspaper publishers formed an association called the Associated Press and they had some by-laws and rules that restricted membership as well as access to and sharing of news that their members gathered. Much like the episode that will soon unfold below, the case of Associated Press v U.S. took place in an era where the so-called “the Internet” was confined to the government departments and the military in the US. As the by-laws of the Associated Press purported to restrict sharing of news between its members and non-members and empower members to block membership applications of competitors, the US Supreme Court held the by-laws to be anti-competitive and illegal. In a way similar to the episode suffered by The Oriental Daily, as will be seen below, restricting the sharing of news gathered by its members with those non-members and restricting the membership of competitors would tend to restrict competition to the detriment of non-members, in the first instance, and the general public ultimately!

Digital revolution has no doubt transformed the media landscape. From the print media, more and more people have resorted to digital media. Flow of information is also at the speed of light. However, that simply means changes in the form of presentation, changes in the tools or channels of dissemination. Nevertheless, one thing never changes—the control and ownership of the media and the tools and channels of distribution of news. No matter what form or what channels of dissemination it remains a significant social and political issue as to who or what organization controls the media—in whatever form—and, hence, controls the nature or content of news that flow to the public at large. As Graeme Samuel, Chairman of the Australian Competition and Consumer Commission (ACCC) rightly stated, ‘we need to ensure that content does not become locked in the hands of the few, to the detriment of consumers or advertisers.’ (Samuel, 2007, p. 5) As such, monopolization of news channels remains a significant legal, commercial, and social issue no matter what form of dissemination is relied on in the modern digital age.

While some established newspapers in some countries are finding it hard to survive due to the advent of the digital world and are venturing into the “e-media” with newspapers being made available online instead of the printed form, most readers in large cities in developed countries from Tokyo to London stick to their old habit of getting hold of a copy of the morning newspaper for their breakfast or while commuting to work and even country folks who tend not to rush