Lobbying and litigation in telecommunications markets – Reapplying Porter’s five forces

Abstract

The Porter five-forces model is conventionally limited to analysis of markets and actions taken there. In heavily regulated industries, such as telecommunications, nonmarket actions, such as lobbying and litigation, can be used by firms to determine the extent of the market, conditions for entry and exit, the nature of the competition and financial outcomes. By extending the application of the model to include these activities, a more complete and insightful understanding of corporate strategy can be achieved. Examples are drawn from the telecommunications industry. This extension to the Porter model generates significant new areas for research in regulated sectors.

(150 words)

Keywords: Business strategy, Management, Telecommunications, Advocacy, Political strategy.

Track: Strategy

Wordcount: 6993
Introduction

The development by a corporation of its competitive strategy was set out authoritatively by Porter (1980) and subsequently developed in thousands of articles and case studies, standing up very well over time. He identified “five forces” with which a firm must contend:

- Rivalry amongst existing firms;
- Threat of new entry;
- Threat of substitute products or services;
- Bargaining power of buyers; and
- Bargaining power of suppliers.

These have been considered almost exclusively in terms of the competitive dynamics of the market, with actions being taken in terms of prices, qualities and features. A significant gap exists because the model has not been extensively explored in heavily regulated sectors of the economy, perhaps because of the complexities of the interactions between markets and regulation or from a belief that regulation merely interferes. Strategic management research has focused on competitive markets, seeking generic models, solutions and techniques, without the complications of regulation, while those researching regulated sectors have concentrated on changes in policies, laws, regulations and technologies, plus tactical reactions to them, playing down or ignoring questions of corporate strategy.

Nonmarket strategies, the use of lobbying and litigation to shape the markets on which competition will subsequently be played out, have received much less attention than their market counterparts. Yet all five of Porter’s forces are susceptible to actions by firms and by their current and prospective rivals, seeking to predetermine or to reshape the nature and the extent of competition on the market, with potentially significant effects on future revenues.

In all countries there are reasons and opportunities for businesses of almost every type to seek improved terms from federal, state and municipal governments, to facilitate or to obstruct market entry, to ease or to tighten market conditions, to lighten or to waive taxes. Actions can be brought in the courts to enforce, to review, or to annul governmental and regulatory decisions, in order to promote corporate goals or to thwart those of others. Most countries have explicit or implicit industry strategies, creating opportunities for corporations to argue for subsidies and for tax breaks. Procurement by government can be financially significant in areas such as defence and infrastructure, creating opportunities for advocacy and, sometimes, for corrupt practices. The stakes are especially high in heavily regulated sectors, such as broadcasting, energy, posts, telecommunications, transportation and waste, where parliamentarians and civil servants can be lobbied to influence the legal framework, after which regulators can be lobbied to shape the implementing rules, and their decisions can be challenged in the courts, if only to increase uncertainty about or to delay their implementation.

Inevitably, some corporations go too far, for example, litigation to subvert competition, incurring legal costs in efforts to avoid competition and thus escape the disciplines of the market, imposing costs on consumers (Baumol & Ordover, 1985). The responsibility falls to elected politicians to design systems of national and international regulation that ensure lobbying and litigation by firms is held within reasonable limits, notably on transparency, in order that consumers, voters and economic growth are not penalized.

---

1 See, for example, Strategic Management Journal, Harvard Business Review, Advances in Strategic Management and Grant (2010).
The telecommunications sector has long been subject to heavy regulation to counter the effects of monopolies and oligopolies, and to ensure efficient use of limited radio spectrum, while coping with Schumpeterian and network economic effects. The model of government as policy maker, implemented by an independent regulator, spread from the USA to most countries, carrying with it a burden of intense lobbying and aggressive litigation. The latter was generally lost in countries without rule of law, while the whole system was sometimes trumped by corruption. Operators are heavily engaged with governments, parliaments, regulators and courts, expending significant resources and achieving not insignificant successes. What has been missing is an attempt to relate these activities to corporate strategy and performance.

The following section reviews the literature on strategy in the telecommunications sector. This is followed by an analysis of the literature on nonmarket actions and strategies. The five forces described by Porter are then re-examined in terms of the lobbying and litigation that has been used in the telecommunications sector. This is followed by a conclusion and suggestions for further research.

**Corporate strategy in the telecommunications sector**

Analysis of the strategies used in the telecommunications sector has been less than deserved or necessary, focusing mostly on manufacturers and on the internationalisation of operators, with little attention having been paid to domestic Internet access, fixed or mobile telecommunications operators. For telecommunications policy researchers, attention has been on innovations and their Schumpeterian economic effects, plus the interminable changes in policies, laws and regulations, themselves frequently related to observed or anticipated technological changes (e.g., convergence and next generation networks). Their concern has been how policy-makers and regulators have designed markets, the entry and exit barriers, and how operators respond, often tactically, rather than on the formulation or effectiveness of corporate strategies and how their regulatory activities fit into a wider model of corporate activities.

For example, examination of the strategies of the two principal Chinese manufacturers, Huawei and Zhongxing Telecom Equipment (ZTE), has been limited, despite their considerable successes. Sun (2009) suggests Huawei nurtured its capabilities on the Chinese market, before entering those foreign markets which had similar institutional arrangements, an account that is very accepting of the “wolf spirit” mythology of the firm, led by the semi-mythical Ren. The lack of an appropriate analytical framework makes accounts of the telecommunications manufacturers disappointingly incomplete.

Reviewing research on telecommunications operators, Jakopin (2008) identified few areas of interest. Initially, there had been work on international telecommunications traffic and the demise of the inter-governmental accounting rate system, as new national licences were issued, allowing the emergence of an imperfectly competitive market for international voice telephony. The opening of domestic markets to foreign entrants, sometimes on a reciprocal basis, created opportunities for operators to expand abroad, by direct investment, in pursuit of economies of scale, notably by acquiring one of the scarce mobile licences in each of a sequence of countries, either at the time of licensing or through later acquisition of a licensed operator.

---

2 The term “next generation” has been repeatedly borrowed from the relaunch of the *Star Trek* television series, with its new ship and crew (Roddenberry, 1987)
Internationalisation attracted attention because of the changes it brought to a sector previously defined by national borders and because of the difficulties in implementation. Operators copied one another, trying to create international alliances to serve business customers, with imitation substituting for their lack of foreign experience, pursuing:

- Economies of scale
- Increased environmental adaptation; and
- Reduced transaction costs.

A brief exception was BT which tried vertical integration with Mitel, a Canadian manufacturer of telephone exchanges (MMC, 1986). BT has recently moved into sports television, despite the provision of the content having proved commercial very difficult for operators.

Graack (1996) raised early questions about the stability of the alliances amongst operators, some of the complexities of which were described by Curwen (1999). These were reshaped, as operators sought more amenable partners or to acquire stakes in foreign operators. The result was a few global and some continental groups, often registered in offshore tax havens and sometimes with undisclosed local business partners, concealing corrupt transactions.

As governments increased competition in domestic markets, operators expanded abroad in pursuit of growth, but in a seemingly random fashion:

... associated with (i) ex ante unnatural market imperfections created by host states, whereby an internationalizing firm faces a small number of single, non-delayable, and transient windows of market entry opportunity, and (ii) ex post potential to arbitrage and leverage regulatory and political processes, and create both technological and market-based advantages as an incumbent firm. (Sarkar, et al., 1999, p. 369)

A recent analysis of the European telecommunications sector identified technical challenges, but not strategic opportunities and threats (Liebenau, et al., 2012). This was despite serious concerns over challenges to established “telco” revenues and business model from over the top (OTT) providers offering services by subscription or free at the point of use, some paid for by advertising. A general examination of the “business model” as a strategic tool, observed how it connected technologies to revenues, raising the question of whether organisational structure should be aligned with technological structures (Baden-Fuller & Haefliger, 2013). To date, the challenges for regulated firms facing apparently asymmetric threats from less regulated rivals with different business models remains poorly explored.

The accounts of internationalisation appear descriptive, somewhat optimistic and lacking in any real explanatory or predictive power. Copycat behaviour suggests the operators were influenced by their rivals, rather than by evaluations of their capabilities and resources, though they were constrained by use of very similar technology platforms, issues insufficiently evaluated. By mixing expansion to serve multi-national corporations (MNCs) with expansion for economies of scale as retail mobile operators, there was a failure to see two different business models, requiring different resources and offering different returns. There has been remarkably little interest in the strategies of operators in national markets, where business models were being challenged less regulated rivals.

**Nonmarket strategy**

Firms can build sustainable advantage and revenues by means of actions not directly on the market (Baron, 1995). The following are possible elements of a nonmarket strategy:

- Litigation against:
Lobbying and litigation in telecommunications markets – Reapplying Porter’s five forces

- governments,
- regulators, and
- rivals;

- Lobbying of:
  - politicians;
  - officials; and
  - regulators.

The term “nonmarket” is neither elegant nor especially accurate, since the objective of such actions is usually about the market, to shape the terms of competition with rivals and even to exclude rivals. A better term might be “market-shaping strategy”, which can be equally and, perhaps, more influential than a competitive strategy in determining market outcomes. In terms of the Porter five-forces model, such a strategy helps to define the boundaries of the market, the nature of the competition and the number of competitors, though little research has, as yet, been conducted on the development and effectiveness of such strategies.

Efforts by firms to influence or to shape public policy are intended to (Lord, 2000):
- Reduce uncertainty;
- Mitigate or eliminate perceived threats; and
- Create market opportunities.

Despite large sums and considerable efforts being expended on these objectives, it is far from clear how effective the activities are or, even, whether corporations understand how to ensure value for money.

Corporate political activity (CPA) is broadly defined as “any deliberate action taken by firms to influence governmental policy or process” (Getz, 1997). The generic strategies are shown in Table 1, all of which are ways of taking messages to politicians, civil servants and officials. One danger of such a classification is that there is a fine line to be drawn between offering a “financial incentive” and paying a bribe.

Firms have a choice of possible groupings for public policy actions (Olson, 1965), categorized as:
- An individual corporation;
- A horizontal alliance (i.e., with some rivals);
- A vertical alliance (i.e., with some suppliers or customers); and
- A general business alliance.

Issues of concern to most enterprises (e.g., employment legislation and environmental standards) are generally handled collectively, mostly as tactics, rather than strategy.
Table 1 A taxonomy of political strategies (Hillman & Hitt, 1999, p. 835)

<table>
<thead>
<tr>
<th>Strategy</th>
<th>Characteristics</th>
<th>Tactics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Information</td>
<td>Targets political decision makers by providing information</td>
<td>Lobbying, Commissioning research projects and information reporting results, Testifying as expert witnesses, Supplying position papers or technical reports</td>
</tr>
<tr>
<td>Financial incentive</td>
<td>Targets political decision makers by providing financial incentives</td>
<td>Contributions to politicians or party, Honoraria for speaking, Paid travel, etc., Personal service (hiring people with political experience or having a firm member run for office)</td>
</tr>
<tr>
<td>Constituency-building</td>
<td>Targets political decision makers indirectly through constituent support</td>
<td>Grassroots mobilization of employees, suppliers, customers, etc., Advocacy advertising, Public relations, Press conferences, Political education programs</td>
</tr>
</tbody>
</table>

The process of building corporate political advantage requires high-level attention, with a crucial role for the CEO in order to reach the decision-makers. For example, Yoffie (1988) described how the Semiconductor Industry Association (SIA), an horizontal alliance, lobbied the US administration and Congress, persuading them to adopt highly beneficial courses of domestic and foreign action. To be effective, firms need to develop relations with ministers, senior officials, members of parliaments and their staff, in order to establish credibility and to build up political capital.

Hayes (1978), in refuting Bauer, Pool, and Dexter (1963), stresses the effectiveness of corporate lobbying depends less on the quality of the interventions than on the presence or, more importantly, the absence of competing lobbyists, such as rival firms, consumers or suppliers. He described three categories of response by legislators to corporate calls for action, divided between topics where there was a consensus and conflict amongst interested parties (see Table 2). Hayes noted that the US National Rifle Association (NRA) had positioned itself in the non-decision box and showed every sign of seeking to keep the issues there – a stonewalling performance that continues to this day (Feldman, 2008) (Barkan, 2012).

Table 2 A typology of policy processes (Hayes, 1978, p. 145)

| Supply pattern | Demand pattern                  |  |
|----------------|---------------------------------|  |
| No legislation | Consensual (Non-zero sum)       | Conflictual (Zero-sum) |
| Policy without legislation | Non-interference (Laissez-faire) | Non-decision (Suppression of conflict) |
| Rule of law    | Distribution (Pork barrel politics) | Redistribution (Resource transfers) |

By extension, a non-market strategy may also include the various forms of grand corruption, since these cannot reasonably be considered to be activities on the market, even if money may be paid. Arguably, they could be separated out as a criminal strategy, though such a distinction would be difficult to make and in some countries taking bribes is not a crime. Alternatively, corrupt actions could be discounted as tactics, rather than strategy, though a pattern of corruption would point to an implicit strategy (Mintzberg, 1979).
An analysis of the legitimate nonmarket activities of telecommunication operators examined their international expansion, but contains data errors and mixes together mobile and fixed network internationalisation without consideration of their differences (Urbiztondo, et al., 2013). The authors argue that firms seek to reinforce their domestic regulatory influence by means of their overseas operations, without indicating what sort of evidence or experience might reinforce such domestic positions. Moreover, the causation can be reversed to argue that diffusion of the European Union (EU) regulatory model had made countries more amenable to entry by operators with experience of EU policies, regulations and processes.

Nonmarket actions by telecommunication operators have been claimed to be more effective than market actions (Fernández & Usero, 2009). While the reasoning seems sound and even illuminating, the metric and data source are problematic, a single indicator of market share, taken from the trade journal Mobile Communications, which gives only the number of customers. It would be essential to check the analyses using other indicators of market shares (e.g., revenues and traffic volumes). It is therefore uncertain that the study confirms the view that it is better for first movers to focus on differentiation and for followers to concentrate on price actions, or that:

... our empirical research shows that non-market actions – lawsuits and complaints – are the only actions that significantly erode pioneer market share. (Usero & Fernández, 2009, p. 1143)

Disappointingly no attempt was made to measure spending on litigation and lobbying or their relative effectiveness, for example, in comparison with spending on advertising.

Wang (2010), commenting on the work of Fernández and Usero, noted the lack of research on the competitive use of nonmarket actions and pointed to possible variations between different oligopolistic industries. He also identified a number of alternatives to the use of market share, such as:

- Costs;
- Earnings per share (EPS);
- Profits; and
- Return on equity (ROE).

Wang agreed with them in arguing:

... the adopting of lawsuits by firms as a main competitive weapon is likely to be unhealthy for industrial development. (Wang, 2010, p. 906)

Yet, this is not self-evident, since threats of litigation may improve policy and regulation, or constrain anti-competitive behaviour. Recourse to law might seem distasteful, but could be for the best. Moreover, there are likely to be self-imposed limits, where rivals are reliant on the supply of, leased lines, national roaming or access to masts.

**Threat of new entrants**

Governments and regulators have struggled to build competitive markets out of what were until recently monopolies, generally run directly by the state, developing an impressive array of mechanisms to introduce and to sustain competition (ITU & Infodev, 2013). Telecommunications markets tend towards monopolies or oligopolies because of the high levels of investment needed to construct networks and the economies of scale. Market

---

3 In Figure 1 in Urbiztondo, Bonardi, & Quelin (2013) states that OTE has no foreign operations, when its mobile arm COSMOTE was present in the Balkans, similarly the African operations of Portugal Telecom are omitted, while Telenor apparently only had two foreign networks. BT had 58, which can only be fixed networks supporting its business customers.
Lobbying and litigation in telecommunications markets – Reapplying Porter’s five forces

performance depends on conditions – a central tenet being the possibility of market entry – that are exposed to lobbying and litigation, both by incumbents and prospective entrants.

In the USA there was intensive lobbying in the years leading up to the Telecommunications Act of 1996, followed by lobbying of the Federal Communications Commission (FCC), which had to adopt a series of implementing rules and orders, followed in turn by litigation of those decisions up to the Supreme Court (Economides, 1999). In particular, the incumbent operators sought to resist local loop unbundling, intended to increase competition in retail Internet access markets, but which the Congress had nonetheless included in the Act. This statutory obligation was gradually eroded by appeals against implementing decisions taken by the FCC, eventually forcing it to abandon that policy in favour of competition between incumbent telecommunications and cable television operators, excluding service-based competitors from the market, except on purely commercial terms (Sidak, 2003).

In contrast to European operators, which expanded internationally, the large US operators concentrated on horizontal domestic expansion by acquisition, trying to reverse the divestiture of AT&T, deploying their considerable energy and expertise in lobbying and litigation to ensure their deals were approved at merger control and licence renewal. They also lobbied an already somewhat xenophobic Congress, seeking to block foreign firms from entering the US market, purportedly on national security grounds (Lacey, et al., 2002). The attacks on Huawei, allegedly an arm of the Chinese military-industrial complex, forced it to withdraw from selling equipment to operators in the USA (Rogers & Ruppersberger, 2012) (Harris & Fish, 2013).

A key determinant of the oligopolistic nature of telecommunications markets is the amount of spectrum available for any given service and, in particular, for mobile telephony. This can be traced back to a series of decisions by the inter-governmental World Radio Conference (WRC), which has assigned spectrum bands for successive generations of mobile telecommunications. Each was limited, able to support only a very small number of operators, enabling some market entry, though generally requiring the use of the same technology, which greatly constrained competition. Those operators with spectrum licences sought to avoid wholesale access for mobile virtual network operators (MVNOs) or to do so only on commercial terms, while in some countries they lobbied for an unnecessary obstacle, that MVNOs be licensed. Interventions did not end with licensing, for example, with battles over the reassignment of 2G spectrum for use with 3G technologies (e.g., OFCOM (2013)) and for permissions for network sharing between operators (e.g., ÉC (2003) and (2004)).

**Bargaining power of suppliers**

The relationship between operators and manufacturers is less subject to regulation than amongst operators. Governments of the EU, Japan, South Korea and, more recently, China, have sought to support innovation across the value chain, funding research and pre-commercial development of components and network protocols through to deployment, including the assignment of spectrum for new services. The influence of governments has been strongest in the selection of particular technologies, notably GSM for the EU single market and TD-SCDMA for part of the Chinese market. Some governments have aided exports of network equipment by soft loans to foreign governments and operators.

---

4 Fear of prosecution under the Foreign Corrupt Practices Act (FCPA) may have discouraged overseas acquisitions.
Lobbying and litigation in telecommunications markets – Reapplying Porter’s five forces

From its 11th Five-Year Plan (2006–2010), the Chinese government pushed the development and use of indigenous standards, aiming for leadership in 3G and 4G technologies for mobile Internet:

Starting in the 2000s, the migration to 3G networks began a drastic shift from technological and industrial dependence on foreign inputs to a systematic and purposeful buildup of domestic innovation and production capacities by building and leveraging China’s domestic demand. In this 3G industrial scheme, telecom operators are the nodal institutions. The outcomes of such deployment as well as the resulting market dynamics, in turn, are likely to shape telecom policy in the 4G era. (Hong, et al., 2012, p. 925)

Fan (2006) explains the importance of an indigenous mobile technology, TD-SCDMA, for which the government allocated spectrum to China Mobile, the largest of the three state-owned operators, forcing its use and overseeing a TD-SCDMA industrial alliance. This had the advantage of avoiding royalty and licence fees paid to non-Chinese firms for 2G and other versions of 3G. The National Development and Reform Commission (NDRC) recently announced an inquiry into price-fixing by Qualcomm (BBC, 2013). In a network analysis of TD-SCDMA the role of government was admitted, but then played down in favour of commercial actors, yet each of these had connections with government, with many of them being state-owned enterprises and almost all having been licensed to produce particular devices (Lu, 2012).

The relationship between operators and manufacturers is one in which the adoption by government of technical standards can play a significant role. There will be significant differences in the approach to such decisions between countries which are predominantly consumers of technology and those which are manufacturers.

**Threat of substitute products or services**

Given the regulatory and commercial challenges of market entry it is unsurprising that significant attempts have been made to devise substitutes for telecommunications equipment and services, with some network operators seeking to offer substitutes for broadcasting services. One conspicuous casualty was the rental of video cassettes and DVDs, a business that moved online, disintermediating firms such as Blockbuster (Teece, 2010). Often entry and massive expansion have come before the development of a business model, with monetization following later.

The high prices of international telephony attracted the development of software for voice over Internet protocol (VoIP). After a sometimes shaky start, this now accounts for nearly all the recent growth in international voice traffic (Telegeography, 2013). Initial attempts to interconnect to licensed operators faced lobbying efforts to block or to subject VoIP to comparable regulation, an argument that continues with mobile networks (Leisinger, 2006). Established operators complained of unfair competition, of regulatory arbitrage, of misuse of numbering resources and the lack of location information with calls to the emergency services. Cisco lost a challenge against the decision of the EC to approve the acquisition of Skype by Microsoft, in which it had hoped to force interoperability with Skype VoIP software (Cisco Systems & Messagenet SpA v EC, 2013).

The Motion Picture Association of America (MPAA) and the Recording Industry Association of America (RIAA) have fought a long war against piracy, objecting to citizens sharing and uploading music and movies (Cavazos & Szyliowicz, 2011). They persuaded Congress to

---

5 e.g., USD 2.00 was paid to Qualcomm for every CDMA handset manufactured.
6 WhatsApp has recently announced it will add voice to its mobile app.
adopt the Digital Millennium Copyright Act (DMCA), then used this for civil litigation against individuals (Kao, 2004) (Boag, 2004) (Monseau, 2012). Ultimately, these efforts seem to have failed in their attempt to resist technological change, which their members are being forced to adopt. In 1996, the World Telecommunications Policy Forum brought together the various parties needed for outline agreement on low Earth-orbiting satellites (LEOs) (ITU, 1996). This was intended to open a new market for truly global mobile services, but while the technology worked, it failed commercially (e.g., Iridium), due to the success of international mobile roaming with GSM (Chini, et al., 2010).

**Bargaining power of buyers**

In monopoly or oligopoly markets buyers have limited power. Business users were early lobbyists for liberalization, in order to improve their choice on the market, successfully aligning themselves those players seeking to enter markets (McKendrick, 1987). They also managed to make progress on areas such as reducing the price of leased lines. Perhaps the last success of the business users began in 1999 with a complaint about charges for international mobile roaming, which the operators resist to this day, but which the European Union greatly reduced, though in the name of consumers. This concealed a significant defeat, since businesses failed, in the face of operator resistance, in what would have been a simple technical task, the integration of mobile telecommunications into their cheap and efficient, but exclusively, fixed virtual private networks (VPNs). (Sutherland, 2013)

Consumers have had limited success, partly because their interests were often too divergent. In the USA there was action to reduce slamming, cramming and “bill shock”, despite resistance from the operators. In a number of countries the unlocking of mobile handsets was enabled and contract terms relaxed. The authorities in Australia battled over several years to reverse the trend of rising complaints, developing a Telecommunications Consumer Protections Code, improving compliance and improvements in customer service by ISPs and operators:

> It has sent more than 340 letters to service providers seeking information about possible non-compliance with the TCP Code, issued 107 formal warnings and given 10 directions about non-compliant behaviour. A handful of companies have also been directed to join the TIO scheme—all carriers and eligible carriage service providers must be members. (ACMA, 2013)

Some recent success has come from crowdsourcing data on speed and latency of broadband services, increasing consumer ability to force operators directly or through regulators to improve services.

**Rivalry among existing competitors**

Competition amongst operators is constrained, in terms of the numbers of rivals and the nature of the services, by the use of licences and common standards, the need for interconnection and interoperability, and the scarcity of spectrum. Using common, usually global, technology platforms, business models and regulated wholesale services, innovations are easily replicated and competition limited, for example, to the composition of a bundle of services and devices, and to prices, often heavily dependent on regulated wholesale inputs. Differences in quality of service and of experience are difficult for consumers to understand and seldom the basis for competition.

Competition between two alternative versions of second generation (2G) mobile telephony, CDMA and GSM, each with a different business model and technology platform, was
convincingly won by the latter, because of support from the EU, the attraction of international roaming revenues, and the availability of a business model for pre-paid customers. Operators successfully lobbied for the second spectrum band to be used for the GSM technology platform and business model, rather than a cheaper alternative. While there were more operators, the additional competition was without distinguishing innovation. With fixed broadband, a shared reliance on the DSL technology platform, business model and regulated wholesale services meant competition was narrowly focused on prices.

The market power of Apple allowed it to force operators to lower the upfront charge for its iPhone, obliging them to finance hire purchase deals for their customers, with the repayments concealed in monthly service plan charges. Apple also engaged in litigation in South Korea, Japan, Germany, Italy, Netherlands, UK and Australia to block the sale of Samsung products, which would compete with its iPhone, because they allegedly violated its patents (Cusumano, 2013).

Much of the discussion around Internet services in China has focused on questions of free speech (MacKinnon, 2008) (Kim & Douai, 2012). However, the Golden Shield Project or “Great Firewall” is also part of the industrial strategy, a government created non-tariff barrier behind which to create and shelter counterparts of the leading non-Chinese Internet services from foreign competition. The copy to China (C2C) approach for business models allowed exploitation of the massive and still growing domestic market, creating two of the five largest Internet companies. However, success required careful balancing:

So far, China’s Internet development has been guided mainly by an Internet governance approach that emphasizes both economic growth and information control. This combination of capitalism and authoritarianism seeks to unleash market forces and contain their political consequences at the same time. (Jiang, 2012)

Thus when Google retreated to Hong Kong SAR in the face of demands for yet stricter censorship, the contrast with Baidu was very evident, since the dominant Chinese search engine had embraced censorship and collaboration with government (Lu, et al., 2013). This had helped set the pattern for other Chinese Internet firms, with censorship not universally opposed by Chinese citizens (Guo & Feng, 2012) (Poell, et al., 2013). The obligations on firms to censor their customers involve both sticks and carrots:

The Chinese government calls the system corporate “self-discipline,” and hands out an annual award to companies that have done the best job of keeping their Web sites “harmonious” and free of sensitive content — ranging from the pornographic to the political. (MacKinnon, 2011, p. 197)

The domestic private sector is fully engaged with the Chinese government in the innovation needed for Censorship 2.0, needed to sustain its networked authoritarianism (MacKinnon, 2009).

Elsewhere, Google has faced extensive antitrust litigation for its alleged abuse of a dominant position in search, online advertising and scanned books (Manne & Wright, 2011) (Bork & Sidak, 2012) (Edlin & Harris, 2013). Its tax management or avoidance has also been the subject of criticism, with rivals lobbying against Google (PAC, 2013).

Competition amongst those admitted to telecommunications markets is often limited to prices and to the launch of innovative services. The first is constrained by regulated wholesale prices, which are subject to extensive lobbying and litigation, while the second is hampered by the use of common technology platforms and to the risk of mandated access for rivals.
Conclusion

The power of the Porter five-forces model has been demonstrated in sectors subject to relatively light regulation, though some firms contrive to obtain procurement contracts and tax breaks by non-market means. In more heavily regulated sectors, such as telecommunications, it makes limited sense to formulate a strategy without considering how policy and regulation might be used to influence the extent and the nature of competition, undermining rivals or bolstering an existing position. In a few cases operators engage in collective action, for example when confronting lobbyists from another sector.

While expertise in lobbying and litigation may not transfer directly, because of differences in administrative, cultural and political traditions, many arguments and practices can be shared. Precedents in one jurisdiction can be used to persuade regulators and judges elsewhere of the value of a particular line of reasoning. Public consultations, impact assessments, spectrum auctions, quasi-independent regulation and systems of appeals ensure a degree of familiarity, even in a physically or culturally distant country. Consequently, internationalisation not only allows economies of scale, but the exploitation of some resources for lobbying and litigation. This is linked to and can be reinforced by lobbying in regional and global intergovernmental organisations, such as the EU, OECD and ITU, which produce documents frequently cited as global best practice.

There is a strong case for further research on business strategy in the telecommunications sector, taking account of the full range of lobbying and litigation activities undertaken by firms to design markets or to strengthen their market positions, while weakening those of rivals. Organisational structures which allow firms to coordinate advocacy activities with their corporate strategies and business operations are of special interest. For example, there could be comparative studies of how different firms in one country or one firm in many countries, organise these relationships. An assessment of the costs of lobbying and litigation would be important, again with a range of possible comparisons. A review is needed of the methods to evaluate such expenditure and the value for money they deliver. There were markedly different patterns of mergers and alliances amongst telecommunications manufacturers and operators (Amesse, et al., 2004), which ought to reassessed in terms of the different relationships with national regulatory systems, some of which might be susceptible to lobbying. It would be useful to determine which litigation and other forms of nonmarket activity can erode first mover advantage. Comparisons with other sectors would be very valuable.

Bibliography


Jiang, M., 2012. Internet companies in China: Between the party line and the bottom line, Parie: IFRI Center for Asian Studies.


OFCOM, 2013. Variation of 900 MHz, 1800 MHz and 2100 MHz mobile licences, London: Office of Communications.


Lobbying and litigation in telecommunications markets – Reapplying Porter’s five forces


