

# News Corp unit faces \$105m legal bill

Neil Chenoweth

A six-year legal battle over piracy claims has left a News Corp subsidiary nursing an estimated \$US100 million (\$105 million) in legal costs.

A California jury last Friday found that NDS Group, which makes the smartcards that safeguard News Corp's worldwide chain on satellite broadcasters, had breached federal and state piracy laws, but awarded damages of only \$US1546.

However, in mega-litigation, as with last year's epic C7 case that cost \$200 million to run, damage awards can be dwarfed by the legal bill.

The jury cleared NDS on two counts under the Racketeer Influenced and Corrupt Organisations Act, and two charges under the Digital Millennium Copyright Act, but found NDS had breached the Communications Act and two articles of the California Penal Code, though without malice.

Both sides claimed victory. "This verdict is a complete vindication of NDS's position at trial, and it puts an end to the lie that NDS is in any way responsible for . . . piracy," NDS lead lawyer Darin Snyder said. "This is also a vindication of NDS's long-term anti-piracy strategy."

## KEY POINTS

- NDS must pay costs for both sides in smartcard piracy suit by Echostar.
- It still faces another piracy case brought by Spain's Sogecable.

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Echostar executives were more restrained, clearly disappointed the jury had rejected their claim for \$US1 billion in damages.

However, NDS is liable for both sides' legal costs.

Last Friday, Andre Kudelski, the head of Swiss-based Kudelski Corp, which made the Echostar cards that were hacked by NDS, told the Geneva newspaper *Le Temps* that plaintiffs' legal costs were \$US20 million.

US legal sources suggested NDS's own costs since 2002 totalled between \$US80 million and \$US100 million. The disparity between the two sides reflects the frugality for which Echostar chief Charlie Ergen is famous — in his last legal battle with News Corp, Mr Ergen ended up in a court case with his lawyers over the size of their fees. During the trial, NDS kept a legal



Charlie Ergen is famous for his frugality in running Echostar.

Photo: BLOOMBERG

team of 25 in the courtroom opposing the four Echostar lawyers, and in recent months has engaged a wide array of consultants and private investigators.

NDS faces another piracy case still in discovery stage, also before judge David Carter, brought by Spanish satellite group Sogecable, which will have access to the sealed evidence obtained by Echostar.

In the Echostar case, NDS admitted it had also hacked the smart-

cards made by French media group Canal Plus, which were also used by Sogecable, but denied publishing the source code. NDS also faces controversy in Italy, where police last February cracked a piracy ring involving 300 people dating back to 2004. In court documents, Italian police claim that several of those charged were working for NDS.

Canal Plus first raised claims in March 2002 that NDS had hacked its smartcards and published the

source codes on a piracy site. NDS booked legal costs of \$US3.8 million as an exceptional item in the following four months, and another \$US6 million in 2003 after the case was settled. The News Corp group traditionally reports exceptional items net of tax and other returns.

Since then, NDS has included legal costs from the piracy claims as part of general and administration expenses, which rose sharply in 2004 and since then, it has reported significant increases in legal costs each year except 2006. General and administration charges are running \$US24 million higher in the first three quarters of the year. Legal costs are initially paid by News and later reimbursed by NDS.

Judge Carter flagged throughout the trial that he believed the case would end up with the Appeals Court. Both sides lodged objections over restrictions on evidence presented, and over the complicated set of jury instructions.

While the trial had begun with tight restrictions on evidence, including a block on many of the documents obtained by Echostar, the judge moved to widen the case in the last days, saying that he could have been too restrictive.

# Floods, quakes, heat and snow all part and parcel

The Asian arm of transport logistics giant Toll finds adapting is the key to its success in the region, **Katrina Nicholas** writes in Singapore.

There's flooding in Myanmar, a heatwave in India and the aftermath of a devastating earthquake in China so Toll Asia chief executive Wayne Hunt considers himself lucky.

"In one of our warehouses some of the pallets fell out from the racking but it wasn't a lot," he says of last week's massive quake in China's Sichuan province. "The people are OK and the buildings are OK, the power is back on and we're starting services again so we have been blessed, so blessed."

Dealing with such natural disasters is fast becoming part and parcel of Hunt's regular routine. In January, snowstorms in China brought transport systems to a standstill and in August, Toll will adjust its delivery schedules to take account of the Beijing Olympics.

Nine months into the role, Hunt, who moved last September from Melbourne to Singapore to head the fastest growing part of Toll Holdings' sprawling transport and logistics empire, is learning to adapt.

Toll Asia, one of Toll Holdings' four main operating divisions (the others are its Australian and New Zealand operations, a global freight forwarding business out of Hong Kong and its 63 per cent stake in Virgin Blue), reported revenue for the six months to December 31, 2007 of \$S376 million (\$288 million), versus \$S278 million the previous corresponding period.

Earnings also climbed, from \$S45 million to \$S47 million, and managing director Paul Little put Toll Holdings' strong overall growth down to robust organic and acquisitive growth in the region of 8 per cent.

Business from Asia is now forecast to account for almost 40 per cent of Toll's revenue by 2011, about double what it is currently. Considering the market's sheer scale, it's not hard to see why.



Natural disasters are, well, only natural in the course of Toll Asia's transport services in Asia.

Photo: BLOOMBERG

"It's booming, the opportunities here are ginormous," says Hunt, a Toll veteran of some 18 years.

"With the acquisition of [Hong Kong freight forwarder] BALtrans that gives us a really powerful global network of cross-border capability and linking that with Toll Asia, the provider of inbound or land-based services, we really have got a true total logistics solution to cover the entire globe."

Even though Toll's market share is tiny at just 2 per cent, the size of its operations in Asia is impressive.

As well as three big sites in Singapore, there are offices in Cambodia, China, India, Indonesia, Malaysia, Thailand and Vietnam. Staff total about 7000, including 2000 in China and another 2000 in India.

Last month, Toll invited its whole board for a three-day tour, the first time members had viewed operations thoroughly as one group. Hunt thinks it went well and gave executives already familiar with Asia, like Oxiana chairman Barry Cusack and

former Ansell CEO Harry Boon, a taste of what was to come.

As well as capitalising on Toll Asia's foothold in the fast moving consumer goods transport and logistics space by moving into the distribution of other things like high-tech gadgets and automotive

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parts, Toll Asia hopes to dramatically expand its presence in the energy and resources sector, which encompasses oil and gas, coal mining and marine.

"We're seeing a lot of opportunities out of Indonesia, particularly with the demand for coal and the fact that it's often in very difficult places," Hunt says.

"In some areas it takes 14 days to barge coal down from the mines into the deeper waters where it can be

loaded onto the mother ship, and we're also focusing on start-up mines where they can't even get equipment in because there is simply no infrastructure.

"So we have what's called self-loading and unloading barges, all the latest technology, and I do think being an Australian company helps. There's a level of innovation in the equipment that's quite revered in these areas."

Another big growth area for Toll Asia is in what it calls its SOPS, or Singapore Oil and Petroleum Services business.

Towards the east of the island, Toll has about 50 hectares of land occupied by some 200 tenants who support the oil and gas industry, chief among them oilfield services giant Schlumberger.

"And we manage this jetty where all the big oil rigs come in for repair and where the supply ships come in to get loaded up with fresh water and things, but those ships which feed the oil rigs, we don't have any of those," Hunt says.

"We have this wonderful marine capability in Sembawang Kimtrans [acquired last December] and so we want to get into this side of the market. That's definitely a big growth area, to be a blue chip provider of offshore petroleum services for all of the region."

However despite Hunt's obvious enthusiasm, analysts and investors have yet to be convinced. Many regard expansion in Asia with wholesale suspicion and consolidating such a fragmented market will take time, and money.

Morgan Stanley said recently that Toll, which has almost no debt, could access about \$600 million for deals if it extended its gearing to 40 per cent but Little, who will this week again travel to Singapore for a progress update, has said it is dangerous to talk about war chests in the current economic environment.

"Asia doesn't compare to the Australian business in terms of the dollars they are getting out of it but it is where they are looking for growth," ABN Amro analyst Mark Williams says.

"They went in a few years ago with the SembCorp Logistics acquisition and since they have tried to build up that business. But there's still more work to do filling in a few gaps and fitting in more businesses to get the scale they need."

As well as some operational risk, Williams also sees the rising cost of oil as hampering Toll's Asian growth aspirations.

"I wouldn't think [rising] food prices would have a huge impact but oil prices, yes, being a transport company. They're input costs and in Australia, Toll has been relatively successful passing them on but whether they can do it in Asia is another matter."

Hunt agrees and admits escalating labour costs could also curb Toll Asia's expansion. But he says customers get the issues too.

"They understand fuel is such a high component and we are constantly working with them so we can recover it," he says.

"Besides, whatever they are doing, more and more of it is coming from Asia, so there's no doubt we have to be there too."