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Media: Unpacking the Package

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Introduction

As expected, the release of the Government's media reform package has largely been recognised for what it is – an essential transition to the new digital world of innovation and choice for consumers.

So far as commentators are concerned, some want to proceed more quickly and others want to cling to the past for as long as they can.

But as this week's Pricewaterhouse Coopers media and entertainment report notes, the balance of power in the dynamic communications sector is fundamentally shifting from those who own it to those who consume it.

And so, what is being proposed is an integrated and far-reaching package to transition the current industry settings to the new digital environment by encouraging new players and new services for Australian consumers.

The cross media rules, for example, are almost 20 years old. While Paul Keating may be very publicly nostalgic about the old Labor days of the Princes of Print and the Queens of the Screen, he has obviously missed a few technological turns of the wheel!

For instance, when Paul Keating was Prime Minister the Internet was mainly confined to academics, pay-TV was in its infancy in Australia, there was no framework for digital radio, IPTV had not been thought of, let alone 3G mobile phones, video iPods or television over a mobile device otherwise known as DVB-H.

The Government's package of reforms will allow the Australian media sector to move from the old analogue-based regime into the dynamic new

world of digital content, where traditional media co-exist and compete with new delivery platforms.

The proposed reforms will enable existing players to make the most of emerging digital media technologies and give them the flexibility to structure their businesses to be globally competitive media companies.

The package will also allow a better competitive environment and encourage new entrants into the media market offering consumers greater choice to tailor their own media experience.

It is complemented by the Government's \$3.1 billion investment in broadband through the Connect Australia package and the Communications Fund and is reinforced by the Government's development of a national Broadband Blueprint.

This will help provide the essential infrastructure needed to connect the country to faster broadband and enable all Australians to access the full range of innovative and new multi-media services.

Putting consumers first

I have always said consumers are the end game in this process and I believe they will be the biggest winners.

By next year, a range of new services may be available over the two vacant allocations of digital spectrum and these services could include free-to-air, in-home, digital only channels or even perhaps snack television delivered over a mobile device.

Both national broadcasters will be able to show a range of new and exciting content on their two multi-channels as soon as legislation is passed.

Commercial broadcasters will be permitted to broadcast content on a high definition digital multi-channel and by 2009 can add to that with a standard definition multi-channel.

And a 'use it or lose it' scheme for sports rights on the anti-siphoning list will be operational ensuring both the industry and consumers can be confident the scheme is operating as intended.

It would be very welcome for Australians who love their sport if these reforms result in increased sports coverage. Going digital is about more than improved picture quality.

And with these new services we aim to make the digital experience in Australia more attractive for consumers so this can contribute to driving take-up of digital television in Australia.

Driving digital switchover

So how do we get to digital switchover and a superior viewing experience for Australian consumers both in terms of picture quality and content?

Conversion to digital is the most fundamental change in broadcasting since the introduction of television itself 50 years ago.

The current industry settings are based on regulation of analogue spectrum as a scarce resource and they will become redundant once digital conversion is complete.

But until the switchover to digital broadcasting is achieved the opportunities for new digital free-to-air services on the Broadcasting Services Band are distinctly limited by available spectrum.

Calls for more free-to-air commercial services now and claims that existing free-to-air proprietors are further entrenched fail to grasp this essential point.

This is not a competition argument but a complex matrix of market drivers, global change, consumer choice and content but, above all, spectrum scarcity.

I have already announced that the small amount of spectrum available before switchover to digital will be allocated to new and innovative digital only services rather than another look alike television service based on an old and challenged model.

For not only would a fourth free-to-air television network face significant challenges as a start-up with relatively low take-up of digital television, simply replicating a service that already exists would not open up competition in any tangible sense.

It is an indisputable fact that traditional broadcasting is facing many challenges. The relative regulatory freedom of digital and other platforms such as broadband, mobile phones and the Internet mean new services are outpacing broadcasting.

This rapid convergence has, in my view, made redundant the Productivity Commission recommendation made back in 2000 to price and allocate the existing analogue spectrum as a scarce resource.

In fairness to the Productivity Commission the landscape has changed dramatically.

The main game now is how to switch off the analogue transmission to unlock the full potential of digital technology and how to do this as expeditiously as possible so that broadcasting can complement and compete with the other emerging services and platforms.

Switchover

Which brings me to why the 2008 date for switchover in metropolitan areas needs to be revisited and to the rationale for adopting 2010-2012 as a more realistic target for Australia, provided there is a Digital Action Plan to help us get there.

Some commentators have been highly critical of resetting the date for switchover, arguing the premise that if digital take-up had been considerably more prolific than thus far, 2008 would have been an achievable deadline.

Others have argued that if only the Government were to give all Australians a digital set-top box switchover would be just around the corner.

Although a cost-benefit analysis of giving away set-top boxes to the disadvantaged and possibly beyond will no doubt be a feature of the Digital Action Plan, sadly the logistics of getting to switchover are more complicated than these two scenarios indicate.

A little recognised fact is that even under the current legislation there are several switch-off dates throughout Australia.

- 31 December 2008 for Brisbane, Sydney, Melbourne, Adelaide and Perth;
- 31 March 2011 for Darwin, Northern NSW, regional Qld, regional Victoria, Eastern Victoria, Western Victoria, Southern NSW and Tasmania; and
- 31 December 2011 for Mildura/Sunraysia, Riverland, Spencer Gulf, Mt Gambier, Broken Hill and Griffith/Murrumbidgee Irrigation Area.

A further challenge in meeting these dates is that arrangements for the rollout of digital transmissions to remote licence areas are yet to be finalised.

Having just returned from a visit to several remote communities where even the most basic infrastructure is a challenge, the logistics of maintaining an air-conditioned digital transmitter in these communities is a complex scenario.

It may well require consideration of direct to home satellite transmission as the most cost-effective and reliable solution.

Broadcasters are required to provide digital services with the same level of coverage as their analogue services as soon as practicable after the start of, and certainly by the end of, the current simulcast periods.

As such they are expected to be rolling out digital transmissions in accordance with the switchover dates currently provided for in the legislation.

The rollout schedule is set by the Australian Communications and Media Authority (ACMA) in consultation with broadcasters.

As at November last year around 1000 transmitters were still to be commissioned in the rollout for both the national and commercial broadcasters.

On the current rate of about 15 a month, the remaining rollout could still take a further five to six years.

However, the schedule will be impacted by the availability of digital transmitters on the open market and the capacity of broadcasters, engineering staff and other variables such as difficulty and degree of site upgrades relevant to installing them.

Upgrading to digital is a global issue as the US, UK and the EU all convert to digital. Availability of transmitters, other equipment and qualified people to install them need to be serious considerations.

The rate of take-up will also be influenced by such matters as public education, limited commercial multichannelling from 2007 and 2009, the removal of genre restrictions on the national broadcasters' multichannels and the allocation of licences for new digital services over spare spectrum, making the period around 2010-2012 an ambitious but realistic switchover timetable.

However, should anyone still adhere to the view that a 2008 switch-over date is realistic, I would be interested in their views and a timetable for:

arrangements for conversion for remote digital television; conversion of self-help facilities; conversion of community television; channel planning for digital transmitters and signal coverage; establishment and funding of a testing and conformance centre; issues such as the need to convert reticulated systems in multi-unit dwellings and hospitals; and what subsidies or incentives should be made available and to whom and when?

These issues are only part of the complex mosaic of matters that are being addressed in the Digital Action Plan. And also let me disabuse those who confidently claim that Australia lags behind other nations in switching off the analogue signal.

In fact, Australia's new target for switchover of 2010-2012 aligns with most comparable countries.

Germany will be completed by 2010, France is aiming for 2011 region by region, the US is looking for a nationwide switch off in February 2009 and the UK is switching off region by region between 2008 and 2012. The EU has broadly called for member states to look to 2012 as a common switchover date.

But in facing the looming and complicated task for switching over to digital, several countries have revised their original switchover dates. Even the UK, much touted for driving digital take-up – originally had a target

based approach that has now been recast with firm dates for switchover between 2008-2012 by commercial broadcasting region.

In the US, the original date was the end of 2006 with a target of 85 per cent take-up. Take-up targets have now been abandoned with a date of 17 February 2009 set nationwide.

Italy and the Netherlands (which is currently set for the end of 2006 for national broadcasters) are also likely to revise their dates following the election of new governments.

Although it needs to be recognised that there are different regulatory and commercial settings in other countries, I take the view that it is appropriate for Australia to be broadly in line with the rest of the developed world and that is what we will aim for with our Digital Action Plan which will be released by the end of the year.

Sports rights

One of the most problematic elements of broadcasting involves the regulation of sports rights – more specifically, the anti-siphoning scheme.

Put simply, the anti-siphoning rules were introduced to ensure that events of national significance and cultural importance would continue to be available on free-to-air television, despite the introduction of subscription television. The rules operate to ensure that pay television licensees may not acquire pay-TV broadcast rights until the free-to-air broadcasters have either declined to acquire broadcast rights or the event is de-listed. Even though the list was pruned in 2004, it still contains over 1300 individual events.

The Government now plans to review the scheme's operation and continuing rationale for its existence in 2009 prior to the expiration of the current list (in operation until the end of 2010) and in connection with digital switchover and in the light of developments on convergent platforms.

In practice I would acknowledge that the scheme is not without its imperfections.

Whilst the Government is committed to ensuring sports events of national significance remain on free-to-air television, contrary to popular belief the anti-siphoning scheme does not guarantee that any particular event is shown on free-to-air television or that the event will be shown live or uninterrupted.

It merely allows free-to-air broadcasters first right to purchase sports rights.

The outcry during the last Ashes series was a case in point. Despite a public outpouring of emotion, the free-to-air broadcasters could not make a commercial case for buying the rights.

SBS saw an opportunity and successfully purchased the rights and, in conjunction with pay-TV, broadcast one of the most exciting series of cricket we have seen for some time.

A similar outcry over Channel 7's plans to show Saturday night's Bledisloe Cup match after midnight in Victoria and South Australia was another example where consumer anticipation was not matched by the reality of the coverage of a sport on the anti-siphoning list.

To ensure the continuing integrity of the list, I have foreshadowed a 'use it or lose it' scheme. This will be a key part of reform of the regime in the lead-up to the 2009 review.

The 'use it or lose it scheme' will ensure that the anti-siphoning rules work in the way they were intended to and do not produce the perverse effect of reducing rather than increasing the total availability of sport to consumers.

There are significant issues to be worked through with stakeholders in any revamp of the scheme and the stakes are significant - for the pay-TV industry, for sports rights owners and sporting organisations, for advertisers, for free-to-air broadcasters and for consumers who expect that events of major significance will continue to be available on a free-to-air platform for the foreseeable future.

In October last year I directed ACMA to monitor the use by free-to-air broadcasters of sporting events on the anti-siphoning list scheme. This was to establish an objective base upon which to design a scheme that will define 'use' and what will warrant an event being removed from the list if it is not so used.

I have recently received the first interim report from ACMA.

It is the first time information has been gathered by the regulator which comprehensively surveys the commercial free-to-air television broadcasters' dealings with broadcast rights to events on the anti-siphoning list.

Obviously there are claims for confidentiality concerning rights held to listed events and rights provided or on-sold to other broadcasters that make the report - in its current form - inappropriate for public release.

However, I consider that there should now be broader industry engagement with other stakeholders in the sports broadcasting community including pay-TV, ASTRA, public broadcasters, sports rights holders and sports marketing groups about matters such as 'use' and what constitutes a 'live' broadcast for the purpose of the rules.

This consultation will enable the development of a use it or lose scheme to be introduced from 1 January 2007.

Diversity of ownership

The reform proposals to relax the cross media and foreign ownership restrictions have drawn the most polarised responses with dire predictions of consolidation and reduced diversity. These views on cross media however ignore the significant safeguards that have been built into the policy.

The cross-media restrictions will be relaxed to allow cross media transactions subject to there remaining at least five independent media groups in metropolitan markets and four in regional markets.

Existing licence and reach limits, which provide that a person may only control one commercial television licence or two commercial radio licences in any licence area, and that a person may not control commercial television licences reaching an audience of more than 75 per cent of the Australian population, will remain.

Public disclosure will be required when a media outlet reports on the activities of a cross held entity in the same group. There will be legislated local content requirements for regional radio and television.

As with all other industries, the Australian Competition and Consumer Commission (ACCC) will ensure the competition laws are complied with and that any proposed mergers or acquisitions do not substantially lessen competition in a particular market.

Obviously there is great interest in the approach that the ACCC will take to proposed mergers. Public statements by the Chairman Graeme Samuel indicate a disposition to consider the impacts of convergence in determining the markets affected by a merger.

He has mentioned the increasing relevance of content, including news and information and the acquisition of premium content as product categories that will be material to assessing a market. The ACCC will, in the near future, release its proposed media merger assessment framework. In addition to the competition safeguards, ACMA will oversee the diversity and local content safeguards.

The upshot of these safeguards is that there would be limited scope for mergers in regional markets and they would need to be assessed on a case by case basis.

For instance, a 4/5 test would mean that in around 63 per cent of markets there could be no mergers unless a new player entered the market.

In around 18 per cent of markets there are five voices so only one merger could potentially take place.

So, in around 81 per cent of markets there could be little or no merger activity unless new players first enter the market. In metropolitan areas a 4/5 test would mean that there would be little scope for mergers in smaller capital cities such as Adelaide.

The limitation on owning no more than two radio licences in a market would mean that Sydney and Melbourne could not drop below six voices.

And in addition to the traditional commercial media, consumers would continue to have access to ABC and SBS television, radio and online services; subscription television; community television and radio broadcasters, out-of-area and national newspapers, and a myriad of online services available over the Internet.

And in reasonably short order, they will also have access to the new digital services that these reforms will facilitate. In regional areas it is prudent to note that not all newspapers in a licence area are 'associated newspapers', which means they are excluded from the cross media calculations.

This eliminates from the calculation many community and local newspapers and national daily newspapers such as The Australian and the Australian Financial Review, as they are not associated with a particular licence area. I have heard the calls for more stringent rules to apply to mergers in rural and regional Australia and I will continue to consult with my colleagues – both Liberal and National – closely during the drafting of legislation.

But I do believe it is important to note that there are substantial risks in over-regulating regional markets that could have long term disadvantages for delivery of new media services, particularly to underserved licence areas. It is not possible – nor is it desirable – to legislate for every potential outcome. It is preferable to have a clear regulatory framework backed up by appropriate safeguards such as those relating to local content.

Over-regulation in this instance could shut out regional media companies from the benefits of reform, which will damage their businesses and ultimately, the services they deliver to their audiences.

The benefits of reform will enable regional media companies to invest in new technologies, as their metropolitan counterparts do, to deliver improved services to audiences.

We do not want to end up with a two-tier system for broadcasting in Australia that disadvantages rural and regional areas. And new technology is leading to the emergence of influential platforms such as broadband and the Internet. These services do not respect 'borders' like traditional media.

The concept of quarantining some forms of media within a licence area while other forms of media are ubiquitous will become increasingly difficult to justify.

Diversity of news and information

Quite apart from the high probability that it will be old media buying into new media rather than wholesale mergers or acquisitions of mature businesses, it is reasonable to ask what these changes might do to diversity of news and opinion?

The fundamental issue with diversity is the availability of diverse sources of information and opinion, not whether the Government should somehow seek to measure and equalise the popularity of different outlets. With the proliferation of media platforms there is a wealth of news and information available to every Australian.

Some of these sources are of course far more influential than others – that is simply the market in operation – but this can change over time. But anyone who thinks one or two big media players can keep information out of the public eye is living in the last century.

In a digital world, the market place of ideas and information is more transparent than ever before. It is not within any individual's power to direct or control public debate. Just look at the kind of stories which have been broken and propagated by online media here and around the world.

Matt Drudge and the Lewinsky story spring to mind, or the exposure of fake documents about President Bush in the 2004 election, or the now infamous Llewellyn affidavit here in Australia.

In the latter case, by the time a Supreme Court suppression order was sought by the relevant media organisation, the affidavit had been published online – it was already too late.

And when it comes to a variety of sources of opinion – the lifeblood of healthy democratic debate – there can be no question that the Internet has revolutionised the distribution of opinion.

The Internet is bristling with blogs, websites, podcasts and chatrooms where thousands upon thousands of views and opinions are expounded and spread. I have been accused of claiming that the Internet is a 'replacement' for diversity of ownership and content.

I have never made that claim – but I have always recognised that the Internet is a powerful source of news and opinion at an international, national and regional level – and its impact is growing exponentially.

Conclusion

Embarking on media reform in Australia is not for the faint hearted. As the saying goes – you would not start from here. However, I am confident that the reform package gets the balance right between transitioning old media and embracing the new and ensuring that Australians have access to the best the world can offer. As a nation we cannot ignore these changes and we cannot avoid reform. This time we must do it.