

**REGULATION REVIEW AND PUBLIC  
BROADCASTING**

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**A REPORT FOR THE AUSTRALIAN BROADCASTING  
CORPORATION  
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## REGULATION REVIEW AND PUBLIC BROADCASTING

*“No medium of entertainment, whether it be stage, cinema or literature, has such a powerful influence for good or evil as broadcasting.”*

Joint Parliamentary Committee on Broadcasting, 1942

### 1. Competition Policy Review of Broadcasting Legislation

1.1 The Productivity Commission has been directed by the Commonwealth Treasurer to undertake a legislation review in relation to the Broadcasting Services Act 1992 and certain closely related Acts. This review is to operate under the Productivity Commission Act of 1998 and in terms of the Competition Principles Agreement 1995, consistent with the Commonwealth’s general requirements for regulation assessment.

1.2 The Terms of Reference for the Inquiry draw specific attention to the “Guiding Principle” for National Competition Policy legislation review, which is given in Clause 5(1) of the Agreement as follows:

“The Guiding Principle is that legislation (including Acts, enactments, ordinances or regulations) should not restrict competition unless it can be demonstrated that:

a) the benefits of the restriction to the community as a whole outweigh the costs; and

b) the objectives of the legislation can only be achieved by restricting competition.”

1.3 The Acts for the national public broadcasters (ABC and SBS) have not been referred to this Inquiry. Nevertheless as a major participant in the broadcasting system the Australian Broadcasting Corporation has a sustaining interest in the Inquiry and in its findings and recommendations. For the same reason the Productivity Commission itself needs to be fully informed as to the ABC’s role and activities. If it is not, it will be unable to properly assess the legislation referred to it. In particular, the ABC contributes centrally to common objectives in Australian broadcasting policy. As such it represents one very important means by which broadcasting objectives can be met and so must be properly taken into account under the Competition Principles Agreement Guiding Principle, and the associated requirements for conduct of a review under the Agreement. For instance, Clause 5(9)(e) explicitly requires a review to “consider alternative means of achieving the same result including non-legislative approaches.” Public broadcasting squarely fits that requirement in relation to broadcasting policy objectives.

1.4 Competition Policy legislation review is predicated on the presumption that there should be no restrictions on competition unless they can be shown to be in the public interest, and that those restrictions are the most appropriate way of meeting the objectives of the legislation.

- 1.5 The balancing of public benefits and public costs is the ‘public benefit test’ in legislation review. Guidance on the content of this test is offered in Clause 1(3) of the Agreement. It is the purpose of this report to provide some analysis of the public interest considerations that do arise in broadcasting markets and to review the role of the ABC in serving to enhance that public interest in an effective and efficient manner.

## **2. Old Broadcasting Industry Economics**

- 2.1 The Inquiry’s terms of reference refer to the broadcasting industry as a “diverse range of radio and television services for entertainment, educational and information purposes.” As such the industry is distinct from live arts and education and from non-electronic media such as books, magazines and newspapers. It has also, been seen as, distinct from electronic information technology and communication services such as computing and telephony.

- 2.2 However the degree of complementarity and/or substitution between these activities is important for broadcasting review, and their increasing technological overlap or convergence in both production and distribution is explicitly a matter referred to the Inquiry for consideration. Indeed technological change has introduced an important distinction between ‘old’ and ‘new’ broadcasting economics and the implications thereof for policy intervention.

- 2.3 Old broadcasting economics saw broadcasting as a distinct and special industry. This referred to both industry structure and behaviour, to industry performance or output. At the structural and behaviour level key features were:

- a) a technology which involved access to a limited frequency spectrum for supply of a product unpriced to the program user
- b) a product demand which was derived commercially from advertisers’ demand for message time linked to programs
- c) economies of scale and scope, both vertical and horizontal, which inhibited competitive conduct and structure and had direct impact on the local television production industry.

At the performance or output level the key feature was

- d) the pervasive and persuasive nature of the resultant broadcasting product.
- 2.4 These features of the industry gave rise to concern over market failure under free markets because of the potential for:
    - a) monopolisation arising from economies of scale and scope and spectrum access limits (and low elasticity of substitution for alternative products and services)

- b) asymmetric information issues arising from advertiser-derived demand not reflecting program consumer demand intensity beyond the decision to watch or listen
- c) inequities arising from the cost-incidence of advertiser funding falling disproportionately on lower income consumers
- d) externalities and merit issues arising from the pervasive and persuasive nature of broadcasting with profit-based decisions neglecting social costs of imported culture, violence and pornography and neglecting social benefits of children's and educational programming and of presentation of political and community affairs, except to the extent reflected in commercial outcomes
- e) disequilibrium and co-ordination issues arising from adoption of new technology ahead of suitable standardisation. (eg MDS pegged back in Pay TV legislation)

2.5 Some or all of these market failures were seen as so important in broadcasting that most countries around the world intervened heavily in the industry, and continue to do so. It is not simply special pleading to characterise the industry as having been distinctive for these reasons.

2.6 In Australia the policy response to these factors took the form of

- a) access restrictions to existing technology and to the introduction of new technology for broadcasting
- b) regulation of ownership: vertical, horizontal and foreign and use of mechanisms such as aggregation to enhance national distribution of programs and services;
- c) regulation of program content, particularly in terms of local content, censorship, children's programming, and advertising time
- d) fiscal subsidy for national public and community broadcasting and assistance for film and television and multi media industries.

The result was a mixed system, with more commercial orientation than was common in Europe but stronger public broadcasting regulation and access restrictions than emerged in the United States. The system was slow in introducing new competitive technologies, while often (but not always) displaying high consumer adoption rates post-introduction.

2.7 Within these arrangements the Australian Broadcasting Corporation has played a major role in

- a) enhancing program diversity, including for advertising-free broadcasting and for mainstream and minority tastes not catered to by the limited number of commercial broadcasters

- b) supporting program innovation and risk taking in program production of direct benefit to consumers and the commercial industry
- c) promoting desirable social and political effects of broadcasting especially through Australian content, children's television, innovative content, cultural programming and news coverage and public affairs, in a manner divergent from commercial broadcasters
- d) providing inclusive national broadcasting coverage whilst also maintaining an 'adequate and comprehensive' service for all Australians, as required by its own legislated obligations so producing a full package of local, national and international news and other information services to all Australians irrespective of location or capacity to pay. .

### **3. New Broadcasting Industry Economics**

3.1 'New broadcasting economics' takes account of changes in broadcasting technology which have the potential to significantly alter some or all of the features of the traditional free-to-air broadcasting industry outlined above. Most important currently here are:

- broadcasting band spectrum reallocation and expansion (HDTV, multi-channelling and datacasting)
- Microwave distribution of broadband services (MDS)
- DTH satellite
- Hybrid fibre-coax cable (HFC)
- Copper-wire enhancement eg digital subscriber line (DSL technology).

The significance of these is in overcoming frequency-spectrum limits on service supply, increasing opportunities for alternative or additional service provision and allowing increased direct user charging.

3.2 Some commentators see these changes as sufficient to transform the broadcasting industry, removing its special status. In particular the diversity and charging options promise reduced supply delivery limitations and allow direct user payment systems – muting two distinctive elements of traditional broadcasting and rendering the industry more like other user-pay, supply-responsive industries. In these circumstances greater deregulation seems to some a natural policy response and a consummation devoutly to be wished.

3.3 However, it must be made clear that substantial market failure considerations may continue to be present and hence raise ongoing public interest concerns as follows:

- a) while monopolisation concerns due to limited spectrum access and low substitution are reduced, new economies of scale and scope emerge as do new access issues for global program supply and delivery platforms

- b) while user-pay technology reduces asymmetric information and funding inequity issues deriving from advertiser-funding, direct-pricing of what still remains a non-rival commodity with low marginal cost raises a new 'public good' problem for broadcasting services, so artificially limiting resource use;
  - c) while externality and merit concerns may be reduced in some areas if more specialised programming is more profitable (eg news coverage), in others they can increase eg pornography. Moreover all such service in a free-market will still source from profit motives for which no incentive exists to consider non-commercial perspectives or spillovers that diverge from the business bottom line;
  - d) premature introduction on new technology in the absence of appropriate product standardisation runs the risk of substantial consumer welfare loss (eg the abortive Betamax VCR introduction in Australia, US early adoption of the NTSC colour system vs PAL later adopted elsewhere) just as does unnecessarily delayed adoption.
- 3.4 Such market failure and market inadequacy concerns provide a necessary condition for collective intervention under the public interest criteria of Competition Policy Agreement requirements, and the new technology and associated broadcasting industry economics do not dispose of such concerns in any easy way.

#### **4. Public Broadcasting and the Public Interest**

- 4.1 The key point to be made here is that public broadcasting is a central instrument catering to these identifiable public interest objectives in broadcasting. It is a light-handed intervention primarily based upon transparent public subsidy, not regulatory, mechanisms, and it continues to provide
- a) countervailing power in situations of concern over monopolisation and concentration including guaranteed access to a full package of programs, services local information and entertainment for audiences throughout Australia
  - b) alternative funding arrangements to both advertiser and user-pay methods, each of which has inefficiency properties
  - c) programming that allows for divergence of social from private cost and benefit and for promotion of recognised 'merit' objectives.
- 4.2 It is also important to stress that alternative subsidy of commercial broadcasters cannot for the most part provide equivalent achievement of these objectives, because the crucial difference is the value derived from introducing into the broadcasting system an alternative system of ownership, funding and accountability. Ownership does indeed matter and in this case public ownership matters precisely because it does produce diversity, pricing and socially-responsive programming divergent from commercial imperatives. No matter how much

programming the new abundance of technology produces for the broadcasting market, its private provision remains profit-derived. In this field an alternative remains desirable and beneficial.

- 4.3 Crucial conditions for public broadcasting to fulfil this role effectively are
- a) comprehensive provision of technology access for the public broadcaster to enable equivalent benefit from the economies of scale and scope available to private providers, including in new multi-media
  - b) guarantee of funding sufficient for independence from short-term political pressure and for full-scale multi-media provision without direct charge so easing public broadcasting pressure to restrict system innovation and ensuring different pricing than the commercial systems
  - c) provision of statutory status to give political independence combined with full accountability to Parliament, auditor-general, ombudsman, administrative appeals tribunal and under FOI legislation.

4.4 Criticism is made that such public broadcasting will be provided inefficiently compared to commercial providers and will allow pursuit of provider objectives divergent from the intended public interest. Such theoretical 'property rights' and 'public choice' critiques may have some merit in some applications. But the status of such theories in broadcasting markets is quite open in logic and quite contrary to considerable relevant evidence. In fact there is strong empirical evidence that:

- a) public broadcasting can and does operate at lower unit costs of production than for commercial broadcasting
- b) public broadcasting can and does meet rigorous standards of public preference, including through willingness-to-pay studies.

4.5 In the new broadcasting economics as in the old there is a very strong role evident for public broadcasting in advancing the public interest. Indeed, if anything, the need for that role is enhanced by new technology which

- a) limits the effectiveness of alternative industry-specific regulatory approaches
- b) strengthens the need public broadcasting to be active in comprehensive as well as niche and minority programming

In fact, new technology can be argued to enhance the need for a major national broadcasting presence that is both fully comprehensive and squarely based on thoroughly different ownership, funding and accountability principles from the commercial sector.

Strong and even stronger private networks and multimedia presence are very likely to emerge and require, in the public interest, an equally strong and comprehensive broadcast and multimedia presence from public broadcasting.

- 4.6 The significance of the public alternative is readily seen in an area such as news and current affairs. The commercial interests of private proprietors can clearly influence the extent and direction of provision of such programming, often in subtle ways. The capacity for public broadcasting to provide a different approach in an area central to the health of our democracy is well established. Numerous program analyses and public opinion polls attest to both the difference and to the high regard in which that difference is held across the population.
- 4.7 Enthusiasm for economic liberalism and technological change can lead to a view that there is little the state can and should do, perhaps especially in this most globalised and changing of industries. This view does not withstand closer scrutiny. Policies certainly need to adapt in the light of these influences, but they are neither impotent nor unnecessary.

As technology alters and a plethora of new private sources of information and entertainment opens up, the key function in such an era of abundance will become that of editorial guidance. The market itself will provide more such editorial capability. But a healthy civil society will be better fostered if a strong public alternative is also seen as central to our broadcasting future.

- 4.8 This is not to say that public broadcasting need be the only response. It is to say that it is an important part of any response.

## **5. Conclusion**

- 5.1 This report has considered public interest considerations arising from market failure in broadcasting. These are matters required to be reviewed by the Productivity Commission in its Inquiry into the Broadcasting Services Act 1992 and certain related Acts.
- 5.2 Certain market failure problems have been identified despite the impetus potentially available for a more liberal broadcasting market emerging from new technology.
- 5.3 It is proposed that public broadcasting provides an appropriate and effective means to enhance public interest objectives in the evolving broadcasting area. It does so in a manner that is substantively more flexible and less restrictive than much regulation. Since the aim in competition policy must be to maintain the least legislative restriction on competition, consistent with protecting the public interest, public broadcasting meets this need well.

## **REFERENCES**

Old Broadcasting Industry Economics is well surveyed in an Australian context in Allan Brown and Martin Cave, "The Economics of Television Regulation: A Survey with Application to Australia", *Economic Record*, 68(202), December 1992. The



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