

**Australian Consumers' Association**  
comment on  
**Productivity Commission**  
**Broadcasting Draft Report**

**Summary**

- The ACA is in basic agreement with the thrust of the Productivity Commission report.
- The ACA is encouraged that the Commission recognises the need to encourage diversity and discourage concentration.
- We support the recommendations to facilitate entry of new players to broadcasting, both in terms of regulatory barriers and spectrum availability
- We agree that high definition television will not drive digital conversion
- The 'revenue neutral' allocation of current spectrum to broadcasters and free multi-channelling implies a huge gain by incumbent broadcasters.
- Ending analogue simulcast should be driven by consumers not technology.
- It is disappointing the Commission does not endorse standard definition simulcast.
- In our opinion, digital convergence offers opportunities for even further concentration and control of media content that cannot be safely ignored
- The bottleneck of scarcity may well move from spectrum to content.
- Whatever the competitive framework, it must be established and operating successfully before cross media rules can be removed.
- The Commission must emphasize the integrated and systemic nature of the recommendations presented.

***The ACA is in basic agreement with the thrust of the report***

1. The general thrust of the Productivity Commission report is fine. Australian consumers deserve a greater degree of choice and diversity in broadcast media. It is perhaps sobering to contemplate that there is not a lot of congruence between what the Commission presents as a rational analysis and what has (and in all probability, will) happen with regard to broadcasting in Australia. In fact the Report reads as an excellent case study in the sidetracking and complication of regulatory process by vested interests, in what are documented as a set of quid pro quos.

***But ...***

2. It is equally apparent that consumers will miss out on the opportunities of the digital revolution about to engulf the broadcast industry if policy is left as it is. The Commission has hit the nail on the head with its critique of the likely future of digital television as configured by the Government. **High definition television is not going to drive the digital convergence** that the Commission endorses with such urgency.
3. Despite getting the diagnosis correct, the Commission gets the prescription for digital TV wrong. It advocates that the mandatory high definition requirement be

abandoned and that multi-channelling be allowed by broadcasters in their allocated bandwidth. Designing from scratch, this direction might be the way to go, so long as the established players did not get too big a slice of free multi-channelling. But **the 'revenue neutral' allocation of current spectrum to broadcasters recommended by the Commission proposes a huge transfer of wealth to the incumbent broadcasters.** They suggest broadcasters be gifted with spectrum based on analogue usage. This can then be utilized for much more efficient digital broadcast, thus conferring a large capital gain. A more equitable approach would be to establish a valuation of spectrum on a digital basis, and then perhaps construct transitional arrangements to speed the spectrum hand-back.

4. In this context we are nervous of the 'forced march' model of ending analogue simulcast with a hard date for spectrum hand-back proposed by the Commission.<sup>1</sup> **The consumers of Australia should drive the change by what they demand, not be obliged by fiat to adopt new technology.** The current situation of the broadcasting industry has arisen because it has been commercially and technologically, rather than consumer, driven. Let us not repeat the same mistake. If the proposition is sufficiently compelling, Australian consumers will move, and historically they move quickly. But if they are not buying it, for whatever reason, then freeing further spectrum to provide even more of what they are not adopting seems a course bereft of logic.
5. But with the Government apparently set upon its chosen course, the policy settings cannot be revisited with the luxury of a greenfields agenda. In this context, **it is disappointing that the Commission does not endorse the notion of standard definition simulcast with high definition.**
6. Indeed the report does not seem to understand the capacity of the digital broadcast channel to be tuned to carry a mix of somewhat lesser but still high definition profiles with a standard definition signal and other program services. Not only is the simulcast approach technically feasible, it would make digital TV affordable for many more households. By growing the market place for digital services generally, this would assist in developing the competitive environment the Commission recommends.
7. This middle ground solution, which the ACA has consistently advocated, would provide a vital stepping stone for consumers into the digital future. Requiring standard definition simulcast is the only step, given the current legislative framework, which would advance the cause of analogue spectrum return, which the Commission gives such a prominent role in creating competition in broadcast.

***The ACA is encouraged that the Commission recognises the need to encourage diversity and discourage concentration***

8. Besides the apparent error of judgement with regard to standard definition simulcast of digital TV, the ACA is in basic agreement with the thrust of the Productivity Commission report. The ACA is encouraged that the Commission

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<sup>1</sup> Draft Rec 6.3

recognises the need to encourage diversity and discourage concentration in broadcasting and the media. We share the conclusion that Australian consumers deserve a greater degree of choice and diversity in broadcast media. It is apparent that consumers will miss out on the opportunities of the digital revolution about to engulf the broadcast industry if policy setting are left as they are.

9. Therefore **we support the recommendations to facilitate entry of new players to broadcasting, both in terms of regulatory barriers and spectrum availability.** Foreign ownership, so long as Australian content is protected and media specific ownership rules are observed, could indeed be handled by normal foreign ownership controls and tests.

## **The issue of media concentration is more difficult**

10. The ACA is less certain that the future of media diversity can be happily consigned to the Trade Practices Act, albeit with a media specific public interest test. The issue of media concentration is not as the Commission seems to conceive it<sup>2</sup>, a passing problem to be solved by digital conversion. **Digital convergence offers opportunities for even further concentration and control of media content** that cannot be safely ignored. Therefore, the Commission's statement that "The current technological revolution in broadcasting means that it is no longer necessary or fruitful to be bound by the issues of the past."<sup>3</sup> needs to be qualified.
11. Many of the issues in broadcast and media regulation are attached to convenient technological markers. It is true that these markers are losing their utility to structure debate, formulate policy and help frame regulation. But that does not mean that the debates, policies and regulation issues have necessarily changed at all. But we have lost the convenient methods to resolve them, and the strain is showing.
12. The Commission sets out a set of threshold conditions before the cross media rules should be removed. Missing from this set is any test of their effectiveness, or a time frame for their successful operation. Telecommunications is supposedly governed in the Long Term Interests of End Users (LTIE), and one lesson of the experiment to date has been that the Long Term can take ages to arrive. It can be seen from the telecommunications regime that a framework set up to grow and encourage competition (also under the ACCC) can take a long time to deliver results to overcome the behaviour of incumbents and second string entrants (such as access obstruction, price shadowing, etc). Therefore, **whatever competitive framework may be set up, it must be shown to be established and operating successfully before it can be used to justify removing cross media rules.**

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<sup>2</sup> Overview P. XLII states "The need for the media-specific public interest test should be reviewed when the digital conversion process has been substantially completed." It is a very moot point when digital conversion will be over, how we will know that it was over, and what technological dynamic may follow. It is unlikely to be more gentle than the passage to digital.

<sup>3</sup> Overview P. XXVII

13. The Commission seems to set great store on the capacity of new technology which delivers new services and channels to empower new and independent entrants. However wider technological options in the hands of incumbent players may offer wider possibilities for delivery, but no necessary increase in diversity. The forces of critical mass brand power and financial gravity will confront new players with significant constraints and imperatives for rationalisation. Content rather than delivery is likely to be the locus for these forces, and it is in content that the public interest in diversity of ownership resides.
14. Fundamental to the thesis of the Commission is the notion of “freeing up spectrum to allow entry into the industry of new players [to] increase the diversity of views and opinions in the ‘market for ideas’ as well as providing consumers with a much greater range of services than is available currently. Freeing up spectrum will promote competition and consumer benefits.”<sup>4</sup>
15. In our view **it may well be that freeing up spectrum moves the bottleneck of scarcity from spectrum to content**, not necessarily changing the dynamics of concentration appreciably. The efficiencies and economies in content are likely to reside in a gather / create once, use many times in various channels and packages. This will create great pressure to concentrate ownership of the content source, which is likely to become a scarce resource , not just for broadcast, but in all information delivery systems (print, cable, satellite, LMDS, broadband etc).
16. There are many emerging opportunities for cross platform collaboration. Content lines can be blurred across media. However this simply increases the necessity of rules which control the concentration of media ownership and control into fewer and fewer hands. **The potential for concentration of new media in the hands of old media players is enormous.** Underlying technologies have virtually no relevance to ownership, except to offer additional opportunities for vertical and horizontal integration. In theory, technology lowers barriers to entry, in practice to date, the capital requirements to achieve critical mass for broad market acceptance remain as high as ever. This favours established players.
17. The potentially all encompassing nature of digital media ownership will, in our opinion, present a significant challenge to a market place only scheme to rein in concentration of media ownership in the future. The potential for market failure is high as content comes to share common digital origins. Policy makers will have to engage the admittedly difficult task of ensuring that consumers have media diversity in fact as well as in appearance.
18. The 'break up' value of the Report may be greater for some players than the value of the integrated report as a 'going concern'. **The Commission must emphasize the integrated and systemic nature of the recommendations presented.**

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<sup>4</sup> Overview P.XXIX

19. Unfortunately, the Report may well run aground on the rocks of political obstinacy. The problem will be what various political beach combers might construct from the wreckage. Plucked from the surf and rearranged out of context, individual recommendation could be damaging. The Government is on record as wanting to dismantle the cross media rules, without mention of the long term or any of the market safeguards and competitive necessities nominated by the Productivity Commission. We are anxious that the Commissions Report must not be used to encourage or justify this short term political aspiration, which would, in our opinion, have serious adverse impacts on the Australian media landscape. Whenever this Report is quoted in future, the audience will have to remember - check the context for any endorsement claimed.