



## **COMMUNICATIONS FORUM**

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**A DEREGULATORY AGENDA FOR BROADCASTING?**

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## Introduction

The appropriate starting point is to consider whether there is a need to regulate to achieve the Government's stated policy objectives of plurality, diversity and competition. Is there something wrong with broadcasting markets that makes it unlikely that these objectives would not be achieved without regulation?

There appears to be a common belief in Australia (and in many other countries) that market forces cannot be relied on to achieve these objectives. For example, the House of Representatives Select Committee into the Print Media stated that economies of scale in newspaper publishing favour monopoly newspapers in a particular geographic market and common ownership of newspapers in separate geographic markets. Economies of scale in radio and television broadcasting encourage both the networking of programs and common ownership of radio and television licences across different geographic areas. There may be significant economies of scope in the ownership of different types of media within the one geographic market.

Consequently there are market factors which are likely to lead to increased concentration in media markets. US mergers such as Time and Warner, Disney and Cap Cities ABC and the Viacom CBS merger announced last week are examples of this.

If regulation is needed, the question arises whether the policy objectives are achieved by the current regulatory arrangements.

Regulatory models applied to broadcasting have typically been based on the assumption that barriers to the entry of new broadcasters prevent effective competition, and consequently it is necessary to regulate in some way such as cross media ownership restrictions in order to meet the objectives of plurality and diversity.

The barriers to entry were based on the idea of spectrum shortage. In Australia it has long been held that there is very little spectrum capacity for the entry of new free to air

broadcasters. This spectrum shortage idea then creates an additional regulatory element.

Given that spectrum is publicly owned and is in short supply it is often argued by governments that it is appropriate to impose some social and non commercial obligations on those who have been given access. In some countries until relatively recently, an extreme version of this concept led to governments supplying all broadcasting and thereby providing the types of broadcasting which the government decided were appropriate, essentially on the grounds that the resource was too scarce and therefore valuable to be allocated to private profit seeking firms.

Now where there are substantial barriers to entry such that competition is limited to a few players, such as is the case with free to air TV broadcasting in Australia, an argument may exist on diversity grounds to regulate say via ownership restrictions and on social grounds by requiring licence holders to broadcast certain types of programming. Thus regulations regarding editorial balance and children's programming quotas have been imposed on free to air TV broadcasters and not on other media on the grounds that free to air broadcasters use a scarce public resource.

It would seem therefore that in the absence of spectrum capacity, barriers to the entry of new broadcasters would be low and the justification for much of the regulation would be significantly diminished. Digitalisation would appear to provide the opportunity to reconsider much of the regulation.

Digitalisation has the potential to remove capacity constraints in free to air broadcasting. In the absence of a new regulatory structure it is possible to envisage a scenario where there is a substantial increase in capacity. If we took conservative estimates of the analog capacity currently available and looked at digitalisation it is probable that you could find space for 40 channels (as long as they were not high definition TV). Now if there was that capacity would it matter if there were common ownership between a newspaper and one of the 40 free to air channels?

Of course there may be arguments put forward that you would still need some form of content regulation, especially rules regarding local content. While I do not support the cultural protection types of arguments for regulation, my primary issue is with competition. In Australia it has often been argued that the deliberate restriction on new entry in free to air TV (and remember the last commercial entry was 1965) enables the three commercial networks to meet local content obligations.

A problem with this approach is that it may be very inefficient regulation. Who is to say that the protection given to the 3 commercial networks for the past 35 years was necessary to fulfil local content requirements?

It is possible to have a more competitive and efficient market while still imposing content regulation on cultural grounds. Any broadcaster able to meet the government's content requirements would be free to enter. If the market is too small to support a large number of broadcasters who meet these requirements, some broadcasters will leave the market.

But it may be that new entrants could meet these requirements more efficiently than the incumbent firms. The current regulatory arrangements protect the incumbents and costs are picked up ultimately by consumers via reduced choice and higher prices for TV advertised products.

While digitalisation will provide for deregulation of broadcast markets, it may well require some regulation of cable. For example it may be necessary to establish an access regime to cable networks if Australia's two cable owners Optus and Telstra refuse to provide access to new content suppliers.

I might mention one other area where there may be a need for some form of regulatory intervention. Pay TV in Australia has developed largely on the basis of exclusive programming. The tying up to pay TV rights to much subscription driving content for many years by Foxtel may be a major barrier to the entry of new pay TV companies, especially regional cable companies. This may impact on regional cable

investment thus limiting access in regional Australia to competitive cable delivered services such as telephony, internet, data and pay TV.

Most importantly deregulation of broadcast markets should not be undertaken on a piecemeal approach. Any deregulation which leaves some regulation in place will provide benefits to some at the expense of others. eg removal of cross media rules while maintaining foreign ownership restrictions.

Finally, I would point out that deregulation which does not include the removal of the various restrictions imposed on the use of digital spectrum will not achieve the most efficient outcomes. Some of the regulations again benefit existing free to air networks at the expense of new entrants wishing to offer new services.

What is needed is a deregulatory environment such that spectrum owners are free to decide how to best use the technology rather than have government prescribed regulation regarding use such as decisions to mandate HDTV.

It is important to be aware that the merger provision of s.50 of the *Trade Practices Act 1974* while maintaining competition within markets, would not necessarily maintain plurality and diversity across different markets. That is, the Act would not necessarily block for example, the acquisition of a newspaper and a TV station by telecommunications company.