La Trobe University
Media Studies Lecture

Australia's changing communications and media landscape

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Introduction

Australia's media landscape is experiencing a period of tremendous change. The process of transformation has largely been driven by great advances in communications technology that are redefining how we produce and consume media – from home grown entertainment to news clips from the frontline of overseas conflicts.

But a raft of other changes to Australian media are also on the horizon. Following on from the government's media discussion paper released in March this year, Senator Coonan last month announced a range of proposed reforms and strategies to facilitate the move from the analogue to the digital environment. As Senator Coonan stated in her media release, "a more flexible system is needed to allow media companies to adapt and prosper in the new digital environment" and, of course, compete with the new forms of media that inhabit it.

The government's New Media Framework includes:

- a proposed Digital Action Plan to facilitate the transition from analogue to digital services by 2010-2012;
- allowing commercial TV networks to broadcast one standard multichannel from 2009 and allowing full multichannelling no later than the digital switchover;
- allocation of two reserved digital channels for new digital services such as mobile television or new in-home service; and relaxation of the restrictions on cross-media and foreign ownership.

There has been much debate about what these changes will mean for the Australian people and for the media industry in this country and what role the regulators, such as the Australian Competition and Consumer Commission (ACCC), will have.

The government has stated that cross-media ownership laws will be relaxed to allow cross media mergers to proceed, subject to there remaining no fewer than five independent media groups in metropolitan markets and no fewer than four in regional markets. This condition will be administered by the Australian Communications and Media Authority (ACMA).

Existing licence limits would also continue to apply – that is, a person will still only be able to control one commercial television licence or two commercial radio licences in any licence area. Media mergers and acquisitions would also remain subject to section 50 of the Trade Practices Act (TPA), which is of course where the ACCC comes in.

The ACCC recently released a paper that set out guidance on the likely approach we would take in assessing whether a cross–media merger raised competition issues of concern.

Some readers of that paper might be disappointed that it provides guidance only, not hard and fast guidelines or answers to any of the hypothetical questions about particular media mergers that have been thrown around in the press.

This is because it would be highly inappropriate for the ACCC to attempt to pre-judge any hypothetical media merger. As is the case with all merger analysis, the individual circumstances and competitive implications of a media merger proposal will need to be considered during a comprehensive and public informal clearance process. This process provides the merger parties and all other interested persons with the opportunity to submit their views on proposed mergers to the ACCC. It is only after having undertaken such a process that the ACCC can conclusively identify the relevant markets, and assess the impact on a proposed merger on competition in these markets.

The ACCC also recognises that the media sector, like all other sectors of the economy, has its own unique characteristics that will need to be considered in a merger investigation. The ACCC's informal clearance process enables these characteristics to be identified and given proper weight when determining whether or not a merger is likely to substantially lessen competition.

Digitisation and Convergence

Before I talk about the ACCC's likely approach to assessing media mergers, I want to discuss in more detail the nature and extent of the changes occurring in the media industry.

According to The Economist, we are in the early stages of a media revolution of similar proportions to that sparked by Johannes Gutenberg's 1448 invention of 'movable type' for commercial use which put bibles in the hands of the masses for the first time.[1]

When we think of the media, we tend to think of it in very traditional forms – newspapers that we read in the morning over a cup of coffee, radio broadcasts that we listen to for talk back and coverage of the footy, and television that we watch for the evening news and our favourite soapies. We have generally considered these modes of delivery – newspapers, radio and TV – as distinctly separate and, consequently, defined them as different markets within the overall media sector.

But those neat categories are starting to come under fire, principally from the internet but also from pay-TV and, more recently, other wireless media, most notably mobile phones.

With the immense resources of the internet at their finger tips, consumers no longer have to rely on a limited number of information sources provided by the typical media gatekeepers such as newspapers or free-to-air television networks.

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[1] 'What sort of revolution' *The Economist* Survey on New Media, 22 April 2006.

Sources of news are becoming more diffused than that. During the Iraq war, readers could access ‘news’ from the front-line from a variety of bloggers, ranging from a 21-year-old member of the US Army stationed in Baghdad to an anonymous young Iraqi citizen, nicknamed the Baghdad Blogger, whose frequent dispatches appeared as well received by consumers as those of the seasoned war reporters and foreign correspondents from the established media.

When Cyclone Larry hit far-north Queensland in March this year, the ABC was able to get access to remarkable pictures of the damage and post them on its web site by putting out a call to its audience to send in their amateur photos and video footage of the event.

And in the London bombings last year, moblogs – blog images and text sent from a mobile phone – provided the first coverage of the event. Within 20 minutes of the blast the BBC’s newsroom was flooded with pictures and video clips filmed with mobile phones. The first published image of the blasts appeared on a moblog site. About 3000 people posted still and video images to a site called Moblog UK in the days after the bombing.

The BBC has now established a desk to monitor “user-generated content”. That desk now receives in excess of 10,000 emails, SMS and video contributions each day.

Of the three newcomers, the internet really stands out. Equipped with a high speed broadband internet connection, anyone in Australia can access the widest range of news, information, analysis and entertainment, including digital versions of traditional newsprint articles, radio broadcasts and television programs.

Digitisation and other technological developments have made it possible for a single mode of delivery to carry multiple forms of existing media. As a result, formerly separate industries are converging, while whole new business models are being created.

Of course, the degree of convergence is not uniform – there will always be occasions where content delivered by a newspaper or radio broadcast will trump a digital version delivered over the internet.   But there can be no doubt that convergence is fundamentally changing the media landscape.

How new technology is redefining old media

Newspapers

All major Australian newspapers have websites that provide the standard print content supplemented by audio and, in many cases, audio-visual material. Not only has this changed the media experience for consumers, it has required newspaper journalists and editors to re-engineer their traditional work processes: consumers now expect text, audio and video footage on breaking news to be posted throughout the day, every day.

For example, when Tasmanian miners Brant Webb and Todd Russell emerged after a fortnight from the Beaconsfield mine, newspaper companies kept their readers up-to-date before the presses even began to roll by posting on their websites the same sound and video clips that were previously the sole preserve of radio and television stations.

The digital medium is allowing newspaper companies to provide a range of new services to their readers, from searchable classifieds enriched with a multitude of colour photos and maps, to greater reader interactivity through on-line polls and discussion forums.

But the changes aren't all going the way of newspapers. Newspaper-based websites would seem to be facing increased competition for the attention of readers from a range of other online sources of news and entertainment.

First, a variety of websites now provide text-based news coverage, such as the ABC Online, NineMSN and CNN. Second, geographic location is no longer a barrier to reaching international sources. If you are looking for a movie review or the latest on the troubles in Iraq, a reader can just as easily access a web-site based in Miami or Madrid as one in Melbourne.

Third, search engines, such as Google News enable readers to seek out specific stories of interest from a variety of news sources, such as Reuters, while general web searches allow consumers to rapidly access original sources or first-hand accounts written up in blogs, bypassing journalistic summary and interpretation altogether.

Finally, for better or for worse, the opportunities for collaboration in the production of content are increasing. The internet enables consumers to receive and contribute content as well as interact with and modify existing content in a way not possible using traditional modes of delivery. For example, any internet user can contribute to or edit articles for the collaborative online encyclopaedia, Wikipedia, which is available free of charge to any internet user.

Radio

While new technology may have had a greater effect to date on the delivery of printed news than on audio or visual information, radio broadcasting is also changing.

While radio has traditionally been the only widely available source of mobile 'real time' entertainment, news and information, its dominance in audio media is being eroded by the development of wireless technology which can deliver 'real time' content to devices such as laptops, 3G mobiles and digital radios. For example, even Melbourne-based subscription-funded community radio station Triple R streams its content worldwide over the internet.

The development of portable devices that can store large volumes of audio files and play them with an impressive sound quality, combined with the ease with which audio files can be shared between users, has required the music industry to reconsider the way it promotes and exploits its musical creations.

These same devices are also fuelling the popularity of podcasting, which is enabling consumers to 'time-shift' their favourite radio programs or enjoy made-for podcast content that previously would never have got an airing. For example, The Ricky Gervais Show, developed exclusively for podcasting by the creator of the hit UK comedy The Office, is the most downloaded podcast to date. Meanwhile, ABC radio offers regular podcasts from around 110 programs from a range of stations, such as Radio National, Triple J and local radio.

In fact, the podcasting phenomenon is so mainstream that the New Oxford American Dictionary declared the term 'podcast' the 2005 Word of the Year.

Television

Developments in broadband services will allow the delivery of video directly into people's homes and onto their PCs or a range of other personal media devices. Already, a number of companies have plans to offer streamed or downloadable movies and episodes in Australia. In the United States, fans can already purchase episodes of hit TV series from iTunes.

As broadband penetration and speeds increase so, too, will the range of services that can be provided to consumers. With them will come new business models for innovative content and service providers in the media sector. For example, once broadband speeds reach around 6 megabits per second – which several Australian carriers and ISPs deliver today using either ADSL 2+ or cable technology – then IPTV can be provided allowing viewers to receive DVD-quality TV. IPTV services are already a reality for consumers in parts of the world such as Hong Kong, the United States and some countries in Europe.

Digitisation of broadcasting technologies is also proceeding apace. A trial of Digital Video Broadcasting-Handheld (DVB-H) technology, which allows simultaneous transmission of television, radio, video, audio and internet content to handheld devices, was undertaken during the Commonwealth Games in Melbourne.

Mobile carriers are already delivering short video clips to third generation mobile handsets. Consider some figures 3 Mobile has just released about its Big Brother Mobile TV service. Hutchison 3 Mobile users accessed 3.5 million video streams during the series' 100 days and spent a mind-boggling 542,500 hours watching the streams.

Clearly, different modes of delivery appear to be converging. Over time, the process is likely to lead to competition between media outlets that have traditionally been considered to occupy separate, complementary markets.

Of course, when the ACCC undertakes a competition assessment, our focus is rightly on the here and now. While we need to understand the technological trends, our decisions cannot be based on mere speculation. As yet, it is too early to tell which companies will survive the tumultuous process of change and which will not, and where the competition issues of greatest concern will lie in the future.

We do, however, recognise that in considering competition in the media industry, we will need to pay close attention to the control of the telecommunications pipes as well as the media content.

The importance of pipes and content to competition in media markets

As technology advances and take-up of broadband continues, how people access the content they desire, and at what speed, will increasingly be determined by the control of the telecommunications networks – the pipes – connecting homes and business.

As the pipes are increasingly able to deliver a wide range of content to consumers, the question of who controls the content, especially premium content such as sports and new release movies, will become a key question in assessing competition.

The majority of Australians now have regular access to the internet at home. Obviously, the speed of internet access is a big factor in determining how easy it is to access the kinds of new media applications and services on offer.

Broadband access, which is considerably faster than dial-up, is on the increase both in Australia and overseas. In March 2006, there were 3.16 million broadband users in Australia, a 78 per cent increase over the previous year. PricewaterhouseCoopers forecasts that broadband will reach 448 million households globally by 2009.

High-speed broadband is already progressively being delivered to increasing numbers of consumers right now at speeds of up to 24 Mb/s. That’s many times the speed required to deliver DVD-quality vision over the existing network. What’s more, a number of service providers are doing this already over the existing copper lines, by installing next-generation switching boxes in telephone exchanges.

High-speed broadband is also currently available to around three million Australian households passed by the cable networks in Australia that are used to deliver pay TV. Many customers already receive speeds of up to 17 Mb/s over these cables.

These two technologies, ADSL2+ and cable, are the same technologies in widespread use in Europe and North America to deliver broadband.

Telstra’s fibre-to-the-node (FTTN) proposal – which it recently withdrew – involved upgrading parts of its copper network with fibre optic cable.

But Telstra’s decision not to proceed with this upgrade does not mean Australia will be left behind other countries in terms of broadband, as some commentators have suggested. Widespread rollouts of fibre networks are still uncommon. Most telephony incumbents in Europe and North America continue to rely primarily on copper networks.

Several carriers are rolling out new 3G mobile networks. Telstra for example has said that its 3G network will make wireless broadband internet available to 98 per cent of the Australian population as early as January next year.

There's no doubt that in some areas, particularly in less densely populated parts of the country, wireless may be better placed than a fixed network to deliver many broadband services in the future.

The traditional over-the-air delivery of TV should also not necessarily be considered as being left behind. It still commands the lion's share of advertising revenue compared to on-line media.

Digitisation of broadcasting technologies is proceeding apace. The Minister's digital package includes proposals to release two new digital channels, which could be used for new subscription TV services or perhaps for mobile TV.

Finally, there remains the longer-term prospect of direct fibre-to-the-premise, which exists in small proportions in the Australian network, as in Europe and Canada. More excitingly, in Japan there is substantial fibre-to-the-premise, driven in response to competitors' DSL rollouts. And in the United States there is some fibre-to-the-premise, driven by competition from cable firms.

Given this cornucopia of possible networks, we can't let ourselves become solely focussed on who controls the pipes, or indeed start picking likely winners between the different technologies.

What technology will mean for consumers

New technology can be a powerful and positive force for change. It allows new entrants into markets that have previously been closed due to the limitations of old technology. It means more choice for consumers. The ACCC clearly has an important role in ensuring the availability of this new technology is not unduly hindered by the anti-competitive behaviour of incumbents who consider it a potential threat to their market position.

It also means that media market boundaries may change over time. Some market borders may expand as firms formerly in different markets find themselves competing; some markets may become narrower.

It may be that one day, traditional retail services such as individual newspapers, television stations and radio stations are no longer so critical.

Rather, what may become more important is having content that people want to access; and having a variety of ways to deliver it to the customer across a communications network.

What does this all mean for advertisers?

There are indications that audiences for traditional media platforms are declining. However, when visits to related new media provided over the internet are included, the situation often does not appear to be so dire. For example, radio audiences in Australia appear to be falling. However, some stations, including ABC Radio National and Austereo's TripleM, have found that the availability of podcasts of their programs has strengthened audiences.2

One estimate suggests that 30 per cent of the time Americans spend consuming media is via the internet.3 On the face of it, this alone suggests a degree of demand side substitutability between different types of media content through which advertisers can reach their target audiences.

As you would expect, advertisers are responding to these trends. According to Roy Morgan research[4], expenditure of advertising revenue grew by 60 per cent from 2004 to 2005, and at $620 million, surpassed that spent on cinema, pay TV and outdoor advertising combined. Expenditure on internet advertising is expected to come close to the $1 billion mark this year.

[2] 'Rating paradise lost', Daily Telegraph 1 April 2006.
3 'Imagining the Google Future' (1 January 2006) CNNMoney.com (http://money.cnn.com/magazines/business2/business2_archive/2006/01/01/8368125/index.htm).
4 Quoted in 'Surfing the net to catch the second ad wave', the Australian Financial Review, 10 August, 2006.

PricewaterhouseCoopers estimates the fastest growing component of the global advertising market is online, which is expanding more than four times faster than television.[5]

The report goes on to predict that most growth opportunities for astute advertisers will be associated with niche media, where content is targeted at specific interest groups, or ‘lifestyle media’, where content is on-demand, interactive and involves a sophisticated combination of video, audio and text.[6] Reaching these audiences will require different approaches to those used in mass market advertising.

Of course, the control and distribution of premium content, such as high-profile sporting events, will remain important. It is just that advertising associated with this content may not be the only, or even the best, way to reach target audiences.

It may be that one day, traditional retail services such as individual newspapers, television stations and radio stations are no longer so critical.

Rather, what may become more important is having content that people want to access; and having some way to deliver it to the customer across a communications network.

Importance of Content

Access to content will be an important input in the new media industry.

Delivering the right type of content to viewers and subscribers is critical to the success of any media company. Some content is so compelling to viewers, and thus so attractive to media companies and valuable to content owners, that it is subject to exclusive agreements. Such arrangements are not necessarily anti-competitive. Indeed, free-to-air broadcasters have traditionally competed

[5] *The Rise of Lifestyle Media – Achieving Success in the Digital Convergence Era: An International Perspective*, 10 (2006) PricewaterhouseCoopers.
[6] *The Rise of Lifestyle Media – Achieving Success in the Digital Convergence Era: An International Perspective*, 14 (2006) PricewaterhouseCoopers.

heavily for exclusive rights to content as a means of differentiation amongst themselves, without raising competition concerns.

However, if a particular new media player, especially a vertically integrated player with interests in telecommunications, is able to acquire sufficient compelling content on an exclusive basis then competition concerns may arise in the various broadcasting, telephony and internet sectors.

The ACCC's experience suggests that access to premium content is necessary not only for competition in that sector but also for the development of new broadband networks to supply telephony and internet services. Increasingly, video and TV services will be provided together with internet and traditional telephone services as part of what the telcos call the 'triple play'.

So, looking first at premium content for traditional Pay TV. While there is no clear line, sport and movies are generally regarded as premium pay TV content. Such content is widely considered to drive demand for pay TV services and strengthen any pay TV offering. The Productivity Commission has stated that the key drivers of a high volume pay TV business are recent release movies and premium local sport. Similarly, the 2003 European Commission decision regarding the merger between two Italian pay TV operators, Telepiu Spa and Steam Spa, noted that premium content such as blockbuster movies and football are what drive subscriptions to pay TV.[7] The ACCC's previous market inquiries indicate that in Australia premium pay TV content is generally considered to be the Fox Sports channels, the Fox Footy channel and the recent release movie channels, Showtime and Movie One.[8]

Then moving beyond traditional Pay TV – the strong uptake of broadband services in Australia is giving rise to the introduction of new on-demand and pay-per-view content services such as short video clips to 3G mobiles; Video-on-Demand movies delivered via broadband; and rudimentary IPTV services. There are already a number of suppliers of these alternative services operating in Australia, including Telstra, Anytime, Reeltime and Hutchison.

[7] Emerging market structures in the communications industry report, p. 80.
[8] EMS, p. 81.

For these emerging services, it is perhaps too early to judge what will be compelling content. However, there is no doubt that content rights will be crucial to the success of any ventures using these new technologies.

I'll reiterate that exclusive agreements for the supply of content already exist and are not necessarily anti-competitive.

Having said that, the TPA recognises that exclusive contracts have the potential to be anti-competitive. Section 45 of the Act prohibits companies from entering any arrangements that result in a substantial lessening of competition. Section 47 of the Act is even more explicit: exclusive dealing that causes a substantial lessening of competition is illegal.

The ACCC would want to ensure that traditional incumbents cannot inhibit the emergence of new players or products by using their existing market power to tie up access to compelling content.

Media merger guidance

Clearly, these rapid advances of technology have implications for the way thye ACCC assess media mergers and there is still not a clear picture of how the sector will develop. Companies that may once have been thought of as a newspaper or radio station, may in the future need to be considered more as 'media companies'.

The ACCC's recently released media paper provides broad guidance on the Commission's approach to assessing future media mergers. This paper is available on the ACCC's website[9].

In the past, the ACCC has regarded the media as four distinct products – free-to-air television, pay television, radio and print. Those products have been thought of as having little overlap in content or advertising.

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[9] www.accc.gov.au

We can no longer simply take that view in light of the technological convergence in the media sector.

Moreover, as traditional media boundaries blur, focus may shift from the way information is delivered to the actual products media companies offer. In this regard, there are three main categories the ACCC will consider as part of its assessment: the supply of advertising opportunities to advertisers; the supply of content to consumers; and the acquisition of content from content providers.

Does all this mean that all content and advertising is in the same product market? Probably not and certainly not necessarily so. At least one further question needs to be addressed: how effective is the competition between different forms of content and different advertising modes, and how effective is it likely to be in the future?

This question is easily expressed but extremely difficult to answer in dynamic markets. This is in large part because, contrary to the apparent certainty of market definition analysis, competition is neither a static nor a binary concept. There are degrees of competition which change over time and especially in dynamic markets.

Competition can be observed which is insufficient at any point in time to effectively discipline prices in a particular market. But that can change with new entry, expansion by existing market participants, changes in technology, changes in consumer tastes, innovation or any combination of these things. All of these considerations are likely to be relevant in consideration of a proposed acquisition in media and communication markets in the future. They will require careful comparison at the time of the proposed acquisition and two years or so beyond of the likely state of competition of a future with the acquisition and without it.

Other more specific products – such as premium content; classified and display advertising; and the delivery of news, information and opinion – may also be critical when considering particular mergers.

Having said this, the general framework for merger analysis will remain the same for media mergers. Taking supply of content as an example, if the price of one source of content rises, or its quality falls post merger, the question is the same one that arises in all mergers – what are the real alternatives for consumers?

But technological developments in the media sector will mean that we are asking these questions in new contexts. For example, when considering classified advertising, the ACCC will need to assess the degree to which online advertising provides a real alternative to print classified advertising and vice versa.

Where new services develop or look likely to do so in the foreseeable future, we will take them into account in assessing media mergers and acquisitions under the provisions of the Act. But we won't base our decisions on mere speculation.

And at all times, the ACCC will be looking closely at any content, advertising or news and information markets where concentration appears to be occurring.

Not only in Australia as a whole, but also in regional markets, as the Act requires.

Regional markets

Section 50 of the TPA specifically requires the ACCC to consider the impact of proposed mergers on markets in regional Australia. Consequently, the ACCC will take into account the differing circumstances in rural and regional Australia compared with urban areas. Consumers in regional areas rely heavily on local suppliers of news and information, as compared to consumers in urban areas who have greater access to a variety of media outlets, including new media. Competition in those local markets may be more vulnerable following a merger than competition in the larger cities. As such, the ACCC will continue to consider implications at the local and regional level when assessing mergers proposed for those areas.

Media diversity

A key purpose of the Act is to protect competition in markets in Australia, including media markets. Media diversity is primarily protected by specific provisions in the Broadcasting Services Act.

However, the ACCC will consider the impact of media mergers on market concentration, and therefore on the number and market share of media outlets in a market. The ACCC will also consider whether a merged media business could exercise market power by reducing the quality of the content it provides consumers, which could include reducing the diversity of the content it provides. However, the ACCC must also, among other things, assess the ability of new players to enter the market. If barriers to entry are low, then a merger even between two significant media outlets might not raise competition concerns.

Ultimately, whether or not protecting media competition will maintain the current level of media diversity in Australia will depend on the outcome of individual media merger investigations undertaken by the ACCC. As indicated above, it is not possible to indicate now what these outcomes might be.

As a fundamental part of assessing media mergers, the ACCC will base its assessment on what a market is likely to look like in the foreseeable future. Analysis will be based on hard evidence, not hypothetical views of what the future might look like. So, for example, media mergers that, based on the best current evidence, are likely to substantially lessen competition will not be cleared on the basis of mere speculation about future technological developments.

As markets continue to evolve, so too will the ACCC's analysis and the factors it takes into account. The ultimate test however will remain: whether a merger will lead to a substantial lessening of competition.