



COMMERCIAL TELEVISION AUSTRALIA

Network Insight Seminar on possible merger of the ABA and ACA.

I'd like to open my remarks today by noting that broadcasters recognise the right and need for Government to review regulatory regimes from time to time to ensure that they reflect changes in the industry being regulated.

The paper touches on some significant policy issues. Any discussion of such issues would need to involve widespread consultation.

As it is the commercial television and radio industries have made a joint submission to the review because we do not believe that the paper makes a case for change. For that reason we have rejected all the options canvassed in the paper.

The paper itself says that two of the three options, B and C would raise serious questions about the "viability and effectiveness" of the ABA as a broadcasting regulator.

Clearly the paper favours Option A as it's unlikely that the Department is seriously considering leaving the ABA in a position where it can't function effectively.

So today I'd like to focus on Option A, the merger of the ABA and ACA and the issues around spectrum licensing.

The starting point for the commercial broadcasters submission is that there is no failure in the current regulatory regime and no reason which makes change necessary or desirable.

The Broadcasting Services Act 1992 which established the ABA recognised the need for planning, licensing and content of broadcasting services to be integrated and subject to specialised regulation. Under this regime Australians receive a diverse range of high quality services, free-to-air and interference free, and the Government receives substantial revenue. Since 1991 commercial television broadcasters have paid \$1.7 billion in license fees in constant dollar terms.

In that context the only argument being mounted in favour of change appears to be because of actual or anticipated "convergence". Interestingly since the tech wreck the experience overseas to quote the Guardian last week when commenting on the release of the Blair Government's Communications Bill, has been that broadcasting and telecommunications companies "have largely retreated to their own sides of the fence and their remains genuine concern over whether one organisation can reconcile the differences of both broadcasting luvvies and infrastructure techies within the same four walls"

As we note in our submission the Department of Communications own Convergence Review paper just two years ago stated that the existing structure of broadcasting legislation was sound and that continued separate operations of these regulations would be the best approach for the foreseeable future". It's not clear to us what has changed since then. And the University of Adelaide's Convergent Communications Research Group has submitted in its response to the paper that the status quo should be maintained while the implications of convergence are assessed over time. In our view convergence does not justify a one size fits all approach.

Some other submissions have cited the proposed creation of OFCOM in the UK or combined regulators elsewhere, as a rationale for Australia going down the same path. Any consideration of overseas experience needs to recognise the unique circumstances of the relevant country.

We should not forget that Australia has a very small population spread out over a very large land mass – the exact opposite to the UK experience and different again from the US for example.

The development of OFCOM in the UK is aimed at overcoming a system where there are multiple regulatory bodies, with overlapping jurisdictions and regulatory gaps – this is not the case in Australia.

Interestingly the Productivity Commission Report on Broadcasting did not support a merger of the ABA and the ACA. While conceding that combining the activities would generate some administrative efficiencies the Commission considered that "there are drawbacks from requiring one body to pursue multiple and sometimes conflicting objectives." (p214)

The Department itself has noted in its Convergence paper that "the cultural and social focus of the ABA has little in common with economic and technical focus of the ACA...and it is difficult to identify any significant synergies that would be generated by merging them"(p8 10 May 2000)

The fundamental problem with a merger as currently proposed is that it is not clear how those competing objects of the ABA and the ACA will be addressed. The paper says it is only concerned with the spectrum management issues relating to the ABA and ACA rather than the other functions undertaken by either organisation.

I note that one of the non broadcaster submissions argues that "the examination of potential changes to both the ABA and the ACA ...is problematic when conducted within the confines of spectrum management, given the very diverse and distinct functions and objectives of these bodies and the legislation under which they are established".

The ABC in its response says that as the discussion paper is silent on the numerous possible structures and objectives for a combined regulator the ABC considers it "extremely difficult to offer a meaningful response".

I think it is not surprising that none of the broadcasters whether, commercial or public, can see a public benefit from the options being canvassed.

The social and culture objectives which have been associated with broadcasting policy in Australia since its inception over 75 years ago, have been inextricably tied to the planning of broadcasting spectrum. That is why broadcasting services bands have been regulated separately.

Commercial broadcasters do not believe that a spectrum wide approach to planning is desirable.

We do support the principle in the Radcoms Act that the objective of broadcast spectrum management must be “to maximise the overall public benefit derived from using the radiofrequency spectrum”, but that is not necessarily the same thing as “maximizing the value” of the spectrum.

It is quite clear that other users of spectrum do not have and never have had the same social and cultural objectives as broadcasters.

And needless to say the technical basis for planning of the broadcasting bands is different.

Broadcasting services are delivered to whole communities simultaneously while telecommunications services provide one to one services. This and other differences mean that the planning tools and parameters used plan broadcasting services are different from those used to plan radiocommunications and telecommunication services. It's difficult to see how consolidation of such staff would result in any administrative savings or efficiencies.

Which brings me to the other issue canvassed by the paper – spectrum pricing models. This is one issue where there has been little or no public discussion of the implications for the 99% of Australians who currently receive a diverse range of broadcasting services, radio and television, public and commercial, free to the consumer. We are strongly opposed to a change to spectrum pricing, and we very much suspect those viewers and listeners may object to the changes too if they were asked.

Let me just say a couple of things up front.

Broadcasters pay significant fees for use of spectrum and use their spectrum efficiently.

Commercial television licensees pay more than \$210 million in annual broadcasting license fees, substantially more than comparable countries.

The revenue based charge reflects the value of the spectrum as the annual license fees are directly linked to the revenue generating capacity of the spectrum. In reaching 99% of the population broadcasters use just 2% of the available radio frequency spectrum.

Broadcasters are required to deliver services throughout their license areas and they must commence services within 12 months of the license being issued.

In our view spectrum pricing is not appropriate for services with a significant community benefit. It cannot value or undervalues the non monetary public benefits. It is inconsistent with maximizing coverage of broadcasting services and any move to spectrum pricing would adversely and significantly impact upon broadcasters and audiences in all license areas, including regional and remote Australia. For regional broadcasters in particular, a significant proportion of their translators do not “pay their way” commercially and could not be justified under a spectrum pricing regime.

In conclusion we think it is difficult to justify spectrum management reform on a revenue basis.

Not only is it not good policy, but as our submission demonstrates, the conversion model used by the Productivity Commission would have delivered less money to the Government than the revenue model as broadcasting revenue has grown faster than the CPI.

Commercial broadcasters are not opposed to change per se indeed we accept the role of Government in reviewing regulatory regime to ensure that they meet the changing needs of a radically developing industry but change for changes sake or change as a stalking horse for introducing spectrum pricing is a different matter. If we are to have a single regulator then there should be a thorough debate over the continued role of broadcasting and the public interest.