

Changes to Spectrum Allocation and Communications Regulators Network Insight Seminar 5 December 2002

Session III: Mix and match versions of the ACA and the ABA

Introduction

I welcome the opportunity to participate in this Network Insight seminar dealing with the possible amalgamation of the ACA and ABA. If ever there was a topic that requires more debate and information, this is it. The AFC would be concerned if the government made major decisions about a new spectrum allocation system and merger of regulators solely on the basis of DCITA's Discussion Paper 'Options for Structural Reform in Spectrum Management' and subsequent submissions. The AFC, and the co-signatories to our submission broadly support a merger, but believe that it has fundamental implications for the future of the Australian broadcasting industry and communications media more generally. More work and far more time must be allocated to these decisions.

Before I provide you with my views about the option of an ABA/ACA merger, I would like to briefly outline the role of the Australian Film Commission and provide you with the context from which we approach this issue.

The AFC is the Federal Government's development agency for the film, television and interactive media industry. With an annual budget in the vicinity of \$20m, our role is to develop projects, people and the industry itself. We do this through a range of funding programs aimed at assisting the writing of scripts, the professional development of individual practitioners, and more broadly, a range of industry development programs from film festivals, to publications, to data collection, analysis and policy work.

The origins of the AFC lie in the commitment from successive Australian governments to the development of the Australian film, television and interactive media industry. We came into being as a Federal Government statutory authority over twenty-five years ago with a brief to support the development of Australian films and Australian filmmakers. The reasons were entirely cultural - film is a means by which individuals and nations develop a sense of identity and an understanding of themselves, and a means by which they communicate to each other and to the rest of the world.

Our purpose for engaging in this debate is ultimately to ensure that the issue of Australian content is on the agenda. Our aim is to ensure that one of the tests applied to assess any new regulatory model relates to the levels and diversity of Australian content to be achieved across all of Australia's communications media now and into the future.

We believe this is a critical test. It is one that will reflect ultimately not just on the impact on our \$1.2 billion screen content production industry, but more importantly, on the social and cultural impact for Australian audiences and more broadly for the national interest.

The Discussion Paper predominantly focussed on the future of spectrum allocation, rather than on a comprehensive consideration of the entire framework of policy developments affecting the communications sector. If there is to be change, it should not be seen as an exercise in transferring functions and resources from one organisation to another. While we can mix and match all we like by shifting functions, in the end what is needed in an increasingly converged future is a regulator based not on a vertical nor a horizontal approach, but a matrix approach – a regulator with a broad social, cultural and economic brief from government, and a consistent, whole-of industry approach to the entire communications industry.

Convergence

The spectre of convergence has influenced much of the debate about a merged regulator. The Commercial Television Australia submission has argued that ‘convergence arguments should not be used in support of any of the options proposed in DCITA’s Discussion Paper’. The AFC too has been sceptical about the impact of convergence and we do not see it as a phenomenon affecting *all* media. However, to ignore the coming together of telecommunications and the various forms of delivery of screen-based content is to ignore a reality we are already a part of.

Announcing a major restructure of Telstra, Chief Executive Ziggy Switkowski was quoted in the *Financial Review* as saying that the broadband and online services businesses promised ‘disproportionate growth’ and that tying those divisions in with Telstra’s Foxtel interests was like ‘putting in place the chemicals to combine to create something special’. Dr Switkowski went on to describe content as being one of the four points of Telstra’s compass and that this division would be expanded to include Telstra’s interests in Foxtel and other broadband and online services. (*The Weekend Australian Financial Review*, 30 Nov – 1 Dec. 2002 ‘Analysts Praise Telstra Switch’)

To ignore the increasing involvement of telcos in the delivery of screen based content into Australian households, to ignore the combined delivery of pay TV, telephony, broadband and other telecommunications services, is a head in the sand attitude. These developments may be of limited market and revenue share significance to free-to-air operators for the moment. However, in the long term, in the absence of a holistic view and a coherent policy approach, there is little doubt that these developments will serve to undermine the regulatory framework which has delivered to Australian audiences and to Australia as a nation, minimum levels of Australian content and an industry able to produce and export this content to the world.

In responding to DCITA’s Discussion Paper, Commercial Television Australia cites DCITA’s Convergence Review of 2000, which describes the soundness of existing broadcasting structures. However the same report also argues that ‘policy strategies designed to address industry-level issues must be constructed within a common policy framework for the entire convergence sector’.

Commercial Television Australia also mentions a University of Adelaide ‘think tank’ to support their argument for the status quo, but there are many counter perspectives on convergence. A report from the Australian Key Centre for Cultural and Media Policy says, ‘a growing body of commentary from the academic, industry

and government sectors has argued that convergence creates irresistible pressures to integrate the institutions of telecommunications and media regulation both at the organisational level of regulation, and at the level of norms, or laws'. (*Cultural and Social Policy Objectives for Broadcasting in Converging Media Systems, 2001*).

A Merged regulator

The AFC supports the option of merging the ABA and the ACA, as long as the social and cultural objectives of broadcasting regulation are maintained. We would advocate a regulatory philosophy that viewed social and cultural issues in a positive light, and not mainly as prohibitions to broadcasters. In our view there are compelling arguments in support of a 'converged' regulator in the current and future communications environment.

However, in contemplating a change to the structure of regulation, we would be concerned if economic and technical regulation was assumed to have a priority over social and cultural. The issue of content – its nature, its diversity, its origins – must be accorded equal status. The new agency would need appropriate functions, power and people to address these critical issues.

There continues to be a tension between the idea of an industry specific regulator and the application of general competition regulation to broadcasting. This tension arises from the fact that while many of the competition policy issues are not unique to broadcasting, the social and cultural aspects of communications are unique. As emphasised, we believe it vital for a regulator to deal adequately with the social and cultural issues relating to communications as well as competition policy.

In considering the functions of a merged regulator, account needs to be taken of the role of the ACCC in controlling competition in the telecommunications and broadcasting industries. The relationship with the ACCC was not touched on in the Discussion Paper, but clearly it impinges on media regulation. Speaking this year at the 20th Anniversary of the Australian Children's Television Foundation, Allan Fels said: 'It is entirely probable that the current regulatory arrangements for Australian content will come under considerable pressure over the next few years. Digital broadcasting, free-to-air multi-channelling, an explosion of pay TV content, and other technological developments are likely to make the current regime need review.'

The AFC's concern is to ensure the different roles of regulation are recognised. The Broadcasting Services Act strikes an appropriate balance between regulation to achieve social and cultural outcomes and regulation for economic and technical outcomes. The AFC would wish to see that balance preserved.

Regulatory structure

The legislation that the ABA and the ACA currently administers contains an extensive list of objectives, some of which may be somewhat contradictory, but none of which is given priority. The BSA sets out a regulatory policy for the ABA, whereas no similar direction is given to the ACA. This is an issue that will need to be resolved. We note that in the UK, the Joint Committee examining the Communications Bill recommended that the principal duties of OFCOM include 'ensuring the availability of a diversity and plurality of high quality content in

television and radio' and also to promote effective competition in national, regional and local communications markets throughout the UK.

We think that there is merit in the proposal of the UK to supplement OFCOM's main board with a Content Board and a Consumer Panel. The proposal for the Content Board arose from concerns about the need to maintain high-level supervision of content regulation. There was also concern that the regulation of content might get subsumed into a focus on competition and economic regulation in the new agency. Similar issues confront the structure of a new Australian regulator.

DCITA's Convergence Report mentioned earlier, noted that 'the cultural and social focus of the ABA has little in common with the economic and technical focus of the ACA. This is also reflected in management skills and the membership of the boards of these organisations.' These differences in organisational culture are not set in concrete and we are optimistic that both the ABA and ACA could benefit and evolve by a melding of their fundamental approaches.

There are undoubtedly lessons to be learnt from overseas models, including that of the US Federal Communications Commission, which has six operating bureaux with a functional distinction according to the industry being regulated. Nevertheless, the AFC is fully aware that these models relate to particular economic and social circumstances, and the nature of telecommunications and broadcasting systems that are different to our own. While there is no international template for regulatory reform, 'around the world there is a discernible trend towards the agglomeration of telecommunications and broadcasting regulators into single regulatory bodies'. (Key Centre Report, 2001)

Australia probably sits at a mid point of international practice in terms of regulatory practice, between rule making and openness. It could be argued that Australia is better prepared to deal with new regulatory challenges than many other countries. In our opinion a merger is highly likely, but at the same time there is not a great urgency to make changes to our regulatory structures. Nevertheless, we do not advocate maintaining the status quo until forced into change by dynamic shifts in the communication environment. The AFC believes we must begin the process of change now, even if the evolution takes five or more years to achieve.

Kim Dalton
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