

## **ADDRESS TO NETWORK INSIGHT SEMINAR JUNE 8 2004**

### **DIGITAL TV: the reviews**

#### **Whatever happened to the PC Report?**

**By Stuart Simson\***

So what did happen to the Productivity Commission report into the Broadcasting Services Act?

In a word nothing--and sadly our worst fears are coming to pass.

Listening to today's proceedings I ask myself: Do we really wish to do anything useful with the digital terrestrial broadcast spectrum?

Or are we witnessing, indeed even actors, in some kind of political charade?

Fours ago the late Professor Richard Snape and I and the team at the Productivity Commission prepared the 500 page report for the Government. The scope of the public Inquiry was "to advise on practical courses to improve competition, efficiency and the interests of consumers in broadcasting services."

We were asked to balance the social, cultural and economic dimensions of the public interest and have regard to the impact of technological convergence on broadcasting markets.

The report covered four main areas: the need for change, opening up the broadcasting spectrum, the issues of diversity, concentration and competition, and program content and standards.

A major focus of our enquiries was the digital revolution and specifically the government's digital broadcasting policy.

We concluded that rapid and certain conversion to digital television is the key to unlocking the spectrum. We said it will create opportunities for new players and new services. We said innovation should be embraced by:

- Setting a firm and final date of January 1 2009 for the analog switch-off;
- Providing for early digital conversion and release of spectrum; and
- Relaxing restrictions on digital services (that is datacasting and multi-channelling and picture formats.)
- And not mandating high definition transmission.

The report warned and I quote that "without substantial changes, the digital conversion plan is at serious risk of failure."

Four years on from our report, and six years since the digital conversion legislation passed parliament, the market is telling us that the policy has comprehensively failed. A few hundred thousand digital conversions in the free-to-air space is absolute testimony to this.

To be precise 322,000 digital FTA homes out of 7.2m TV households or 4.4 per cent. After taking account of households with multiple TV's the figure is barely two per cent.

And this is notwithstanding the fact that, according to DCITA, 75 per cent of the population now has access to digital terrestrial services by all broadcasters in their license area. A further 10 to 15 per cent will have access to at least one digital service.

The subscription television sector has a strategy for digital conversion and it would seem within a defined time period of a few years. It has already signed over digital 400,000 customers—that is more customers in three months than has occurred in three and half years of FTA digital.

But I'm sorry the subscription television sector should not be the benchmark of digital broadcast policy. By definition consumers pay for subscription television. They get this service via either cable or satellite.

FTA digital on the other hand is transmitted via the digital terrestrial broadcast spectrum. And this is a scarce public resource and should not be the exclusive preserve of vested interests. It should be "free" to Australians over and above of course the cost of a set-top-box.

Why does digital TV matter to all Australians?

Because digital television can improve reception, enhance sound and picture quality, and provide more channels and new interactive services.

And, as our report stated, the greatest benefit is this great public resource, the digital spectrum, can be freed to facilitate the introduction of new players and services.

In short we concluded that the switch to digital television is the most fundamental change in broadcasting since the introduction of television itself.

In fact what we should have said is that it is *potentially* the most fundamental change because, as we sit here today, this magnificent opportunity is passing Australia by. This is a totally unacceptable situation.

The Government has not formally responded to the Commission's report and is never likely to, at least not in an overall sense. Some aspects have been addressed but this has been on a piecemeal and opportunistic basis as and when a review comes due, or when a

change of policy is contemplated (for example, when foreign ownership and cross media rules were being reviewed).

To make the point there is no reference at all to our inquiry in the most recent DCITA discussion paper yet we considered the simulcast and multi-channelling in some detail.

A number of DCITA reviews are now under way—no less than 11 will be conducted in 2004 and 2005. One is into the moratorium on issuing new commercial licences. Another major review is on the nature of simulcasting. By their very nature these reviews have had a history of considering particular issues in isolation from each other. This reflects the way these reviews are defined in the Broadcasting Services Act. Very constrained outcomes are the result.

Our report noted that broadcasting policy evolved in an era of distinct media that could be regulated separately. Indeed, broadcasting policy has been, and continues to be, characterised by highly prescriptive regulation. Such an approach was taken to the introduction of subscription television where legislation on the introduction of digital television mandates specific formats and services.

We argued that this approach reflects a history of political, technical, industrial, economic and social compromises. This legacy of quid pro quos has created a policy framework that is inward looking, anti-competitive and restrictive. Yet as boundaries between media dissolve and the old concept of broadcasting becomes obsolete, this regulatory framework is eroding and becoming circumvented.

The DCITA review process appears destined to perpetuate this failed legacy. To be fair, the invitation in the simulcasting discussion paper for participants to address other issues is welcomed but I wouldn't hold out much hope of the review taking a broad perspective.

There is certainly no scope for the across the board perspective we took in 2000 and which the ACCC tackled in its 2003 review of Emerging Market Structures in the Communications Sector.

For the record (and as recorded in the DCITA discussion paper) the ACCC also found that relaxing the prohibition on digital multi-channelling by FTA operators could heighten competition both between the existing FTA operators and pay TV sectors by creating scope for innovation and a wider variety of service offering.

The ACCC considered that broadcasters should have a choice about whether to multi-channel based on the benefits and costs of doing so. It concluded that no persuasive evidence had been presented that removing the prohibition on multi-channelling would harm the FTA sector.

The ability to unravel the quid pro quo legacy is severely constrained if a narrow focus is taken.

Our arguments seem as prescient today as they were in 2000. Broadcasting markets need to be opened up to encourage competition and innovation. Fewer restrictions should be placed on broadcasting and datacasting licences.

We suggested that as spectrum became available it be sold for 'digital broadcasting' purposes (as distinct from 'broadcasting' or 'datacasting'). This would have allowed competition to emerge in the digital world, and would have by-passed all of the regulatory shackles applying to the existing broadcasting licences. As analog faded away, so too would the regulatory constraints.

We also said that HDTV should not be mandated, and multi-channelling should be allowed. All spectrum other than that used for a SDTV simulcast should be charged for at market rates (instead of raising license fees of the commercial broadcasters based on revenues).

We also said that foreign ownership and the restrictions on issuing new broadcasting licences need to be axed before relaxing the cross media laws. We suggested a new media specific public interest test and a market for ideas.

Judging from the comments attributed to the incumbents in the DCITA discussion paper, and press coverage of these reviews, the debate is still stuck in the quid pro mentality. The debate about ending the moratorium on new commercial licences focuses on whether we should allow a fourth commercial licences when it should be about unrestricted entry.

The concern of the incumbents and the champions of Australian content is that further entry will fragment the industry and lead to lower quality production as ratings per channel decline. But who is to say that three or four commercial broadcasters are the 'right number.' An unrestricted market might only sustain three or four like broadcasters and that might be the end deal.

But we should let the market work this out. And why restrict others from offering different formats, including multi-channelling and so-called datacasting. New services might help to grow the market, but in different ways.

But nobody can argue that the existing policy is working.

The only substantial public policy argument in favour of regulating broadcasting is to address local content issues. Social objectives for local content need to be considered but possibly through more direct measures.

Trying to apply minimum content provisions to the myriad of new channels and formats that digital TV and other platforms, such as the internet and digital radio will allow, will hold back the reform of broadcasting.

We had suggested that a review of content policy be undertaken to develop policy instruments for the digital age, but that as long as analog was with us some minimum content rules might be needed to achieve social objectives.

The DCITA discussion paper on provision of services other than simulcasting states that the digital conversion framework aims to ensure that viewers continue to enjoy high quality television services throughout the digital conversion process and that the change-over to digital is undertaken with minimum disruption to viewers' enjoyment.

This is a highly revealing statement. First you will note it says nothing about giving any priority to making digital conversion actually happen. Second it smells of the quid pro quo legacy--for god sake nobody rock the boat! And what does "minimum disruption" mean--well you can interpolate the "code" in that.

Finally, and so that there can be absolutely no doubt where DCITA and its political masters are coming from it said this: "In undertaking these reviews, there is therefore a need to carefully balance changes to improve the outcome of the framework with maintaining a stable environment for investment by industry and consumers."

Notwithstanding the above, the DCITA paper does make a number of important observations.

It states that evidence from Europe suggests that "a very significant early driver for take-up of digital television is program choice." DCITA refers to a report by a panel of representatives in 2001 that said FTA digital multi-channel services could be a key driver among those who do not want to pay additional costs (on top of the UK television fee).

On the requirement of FTA broadcasters to simultaneously transmit essentially the same analog and SDTV version of the same service, DCITA raises the question as to whether FTA broadcasters need to provide exactly the same version of the service in analog and digital mode.

But it then unfortunately puts forward a series of options that would be marginal at best in terms of driving content choice and innovation. And it ignores the really fundamental issue of when the government is going to bite the bullet and end the simulcast.

The bottom line is that (as DCITA notes) by broadcasting in digital mode the FTA broadcasters can theoretically provide two more digital "channels" within a 7 MHz spectrum allocation. The government made a full 7 MHz channel available to each of the five FTA networks, free of charge thank you very much. This limited the spectrum available for new entrants wishing to provide new digital services. Check mate.

We therefore concluded that the current policy framework does not address the three key issues of :

- Who will drive the conversion?

- How will analog switch-off happen?
- When will the analog switch-off happen?

All we know is that the duration of the simulcast is to be examined (you guessed it) by a separate review to be conducted by January 1 2006.

And with the paltry take-up of digital FTA in Australia it is inevitable that, without major action, the simulcast date will be extended for years to come. Which, of course, will suit the incumbent commercial FTA's just fine.

So what needs to be done now?

The Government should relax restrictions on digital services (that is datacasting, multi-channelling and picture formats). For example the spectrum currently slotted to datacasting would be sufficient for two digital channels in major metropolitan markets.

But this will not in itself be enough to bring digital TV into the lounge rooms of Australians. And until this happens there will simply not be a workable advertising revenue model to support new programming.

The Government could also change the rules and let FTA's offer subscription multi-channels (although it should then relax the anti-siphoning regime on the pay TV sector) and thereby attract subscription revenues. But subscription channels on FTA would only offer niche programming.

None of the above will deliver the critical mass or audience reach that advertisers will require.

Indeed even with big changes to the multi-channelling regime, datacasting and/or the introduction of new digital channels, and the drive that pay TV is giving take-up, I seriously doubt that digital penetration will reach 50 per cent of households on a five to 10 year time frame.

This means in my view the Government should examine incentives to complete the transition. In its crudest form it should consider subsidising the take-up of digital set top boxes so that analog is switched off before the end of decade. This will not come cheaply—on various assumptions the cost would be around \$500m to ensure every household had at least one digital set top box.

There are numerous ways to skin this cat. But what is certain is that the policy is not working now, and will not work, in the absence of positive government intervention into a market that is riddled with regulation and dominated by powerful vested interests.

Finally when we penned our report we were, for the reasons outlined above, under no illusions as to the obstacles to its acceptance. Informally, Richard Snape and I took the

view that we needed to produce a report that would have a relevance and shelf life for a number of years hence.

Well, perhaps for the moment it rests in peace with my fine and distinguished colleague.

But, but the sheer enormity of the digital revolution will mean that one day, it will have its day.

*(\*Stuart Simson served as Associate Commission on the Productivity Commission Inquiry into Broadcasting. He is executive chairman of emitch Limited. The views expressed in this paper are his own.)*