

What will the PC do to your TV?

The Productivity Commission is expected to release its Draft Report into Australia's broadcasting legislation on October 22. Terry Flew, director of the Centre for Media Policy and Practice at Queensland University of Technology, looks at what it might say

The term "PC" used to refer to your personal computer, a different appliance to your TV or radio, and used for different purposes. More recently, it's been a term used as a shorthand for "political correctness". Now, "PC" has a third meaning for those involved with broadcast media. It refers to the inquiry of the Productivity Commission into Australia's broadcasting legislation, an inquiry which commenced in March 1999 and which should release a Draft Report this month.

All three meanings of PC could be relevant to this Draft Report. An important trigger to the Inquiry, and part of its terms of reference, is to look at the impact and implications of technological change and media convergence. One of the major issues which has been debated in recent times has been the transition to digital broadcasting, and what it means for policymakers, industry participants and the wider community to have growing convergence between personal computing (PC) and the Internet with broadcast TV. Critics worry that the economists of the Productivity Commission may be too "PC" in their answers, and are concerned that it pay equal attention to the social and cultural dimensions of the public interest, as well as recommendations aimed at improving competition, efficiency and consumer outcomes in the operations of broadcasting services.

It is interesting to consider why the Inquiry is taking place, and why it is being conducted by the Productivity Commission rather than by the Department of Communications, Information Technology and the Arts (DCITA). In both cases, the 1998 digital conversion amendments to the *Broadcasting Services Act 1992* have been thrown into relief. The stress in these amendments upon guaranteeing free access to additional spectrum to the existing free-to-air broadcasters, in exchange for an agreed timetable for conversion from analog to digital, was widely perceived at the time as a "free kick" to the incumbents and potentially anti-competitive in its impact, as well as having the potential to be overridden by new technological developments.

In its Broadcasting Issues Paper released in March 1999, the Productivity Commission had three key elements in its terms of reference. First, it was to "report on practical courses of action to improve competition, efficiency and the interests of consumers in broadcasting services". Second, it would focus attention on "balancing the social, cultural and economic dimensions of the public interest". Finally, it would "take into account the technological change in broadcasting services, particularly the phenomenon of convergence".

In doing so, the Commission was required under its own guidelines

to follow the principles of the Competition Principles Agreement 1995 between Commonwealth, State and Territory governments, which requires that legislation should not restrict competition unless it can be demonstrated that the benefits of the restriction to the community as a whole outweigh the costs; and that the objectives of the legislation can only be achieved by restricting competition.

The work of the Productivity Commission in conducting the Inquiry has been highly regarded by most participants. The initial Broadcasting Issues Paper was an admirable statement of the range of issues surrounding broadcasting policy and legislation, and the Commissioners have been widely complemented for their commitment to an open process, their speed in making materials available to all participants through their website, and their thoughtful and probing line of questioning. There has certainly been no sense of an "A list" of major industry participants and policy players, and a "B list" of those speaking on behalf of smaller organisations, public interest groups, or in a personal capacity as academics or concerned individuals. The ability to undertake such a process within a tight timeframe has been impressive, and a model for the conduct of future public inquiries.

In the subsequent hearings, debate has tended to focus upon particular issues, including:

- the 1998 Digital Terrestrial Television decision, and whether it should be revised in light of

the development of new services such as datacasting and interactive services (the "PC/TV convergence");

- the desirability of amending the *Broadcasting Services Act* to allow for the introduction of a fourth free-to-air broadcasting network before 2007, as limited by current legislation;
- the suitability of an Australian content transmission quota as the best means of securing the *Broadcasting Services Act's* objective of promoting Australian identity, culture and cultural diversity; and
- the relative merits of current restrictions upon concentration of ownership, cross-media ownership and foreign ownership of Australian commercial broadcasting licences, and where regulatory responsibility should lie.

The recommendation on digital conversion is the most open one. It cannot be looked at in isolation, since DCITA is simultaneously conducting an inquiry into datacasting. Very significantly, the Seven network broke ranks with the Federation of Australian Commercial Television Stations (FACTS) at a late stage in the submission process, arguing for amendments to the Digital Terrestrial Television decision which give broadcasters the option to use the digital capacity to deliver multichannel services in standard definition format, and remove the distinction between datacasting and other service types. This brings Seven closer to the position of the members of Digital Convergence Australia than FACTS and the other free-to-air commercial networks.

The proposal for a fourth commercial free-to-air has been driven by News Limited, which clearly envisages operating such a network, in a digital format only. It has provided

an interesting test for the production industry representatives, since the Commissioners are clearly of the view that, with all other regulations remaining, a fourth commercial network would be *prima facie* a good thing, as it increases potential demand for local production by one-third. The industry groups have countered that advertising revenue may be insufficient to allow for four viable channels commissioning quality local production. This is, however, a dangerous argument, since the Commissioners view this as an outcome to be decided in the marketplace rather than by regulators, and since the industry groups have indicated their dissatisfaction with the existing networks and the program licence fees currently being paid. It is a clear instance where the application of competition policy principles points to a new approach to broadcasting regulation.

Given the Productivity Commission's origins as the Industry Commission, and its historic role in the reduction of tariff protection in the Australian manufacturing sector, it is not surprising that the Commissioners have been heavy questioners of a quota-based system for ensuring Australian content. At the same time, alternative approaches to Australian content and children's programming - such as those proposed by the Communications and Media Policy Institute at the University of Canberra for production subsidies for Australian drama production taken from a licence fee levy and moving children's programming to a second ABC channel - have little support elsewhere. The question of rules for Australian content and children's programming goes to the heart of what, in the Seven submission, is termed the social contract, where barriers to entry are the condition for minimal content requirements. If the principles of the social contract, such as a roughly equitable provision of basic services and a

space for local and non-commercial content, are still seen as valid, the question of how these are to be guaranteed in an open television marketplace is a threshold issue both for the Commission and for broadcasting policy in the future.

Future ownership and control regulations are another threshold issue. There are two dimensions to this. First, there is the question of whether existing restrictions on concentration of ownership (based upon audience reach), cross-media ownership, and foreign ownership should remain. It is unlikely that the Commission's Draft Report will recommend the immediate elimination of all three. Rather, what is more likely is a phased reduction in ownership restrictions, with the controls on foreign ownership most likely to be lifted. There is an argument, put by economists such as Allan Brown of Griffith University, that this action is the most likely to introduce greater competition into broadcasting, and least likely to lead to a further concentration of economic and political power with the incumbent broadcasting players.

A further issue is whether the Australian Broadcasting Authority will continue to have special responsibilities for competition policy in broadcasting, or whether these powers will be transferred to the Australian Competition and Consumers Commission (ACCC) for general regulation under the *Trade Practices Act*. The ACCC paper canvasses options in this area, which range from maintaining the status quo, expanding the scope of the *Broadcasting Services Act*, applying the *Trade Practices Act*, applying the *Trade Practices Act* with a public interest test, and inquiries by a specialist public interest agency.

**Terry Flew is visiting the
Communications Law Centre on study
leave**

