

Twin Peaks in Communications Policy – Telstra and Cross-Media

There have long been flaws in the commitment to competition that underpins regulatory policy in telecommunications and broadcasting. However, these shortcomings have been more evident in the past year. As the Minister embarks on consultations designed to 'future-proof' Telstra, the objective (to 'retire debt') is explicit. At the same time, there is discussion of the best way in which to proceed with the dismantling of the cross-media rules.

The two issues dangle before the government, as enticing as the 'next wave' of industrial relations reform. And in one sense the government is right to link the issues, if only because they both represent premature policy moves. Both are instigated at a time when the government has the opportunity for long-term planning and implementation of those plans through the new Senate.

If there's a next wave of IR legislation forming in the distance, there's a dumper on its way in communications.

The common characteristic of current policy on both Telstra and cross-media is not that change is fundamentally wrong, but that it's happening in the wrong order. Four years ago the Productivity Commission set out a plan for reform of broadcasting regulation. It included relaxation of cross-media rules and the transfer of ownership and control to the ACCC under a new media-specific public interest test. This was one step in the process of regulatory reform. It was preceded by removal of the foreign ownership rules and improvements to the analogue and digital television licensing regime.

The principle that underpins this theory is that competition – real competition, not a choice of three – will itself promote diversity.

On the telecommunications side, in 2002 the ACCC, backed up by the National Competition Council, advanced the view that competition in telecommunications would be enhanced by the separation of Telstra's network from its retail business. Then last year the ACCC put the view that competition in both pay television and telecommunications is impeded by Telstra's ownership of the HFC cable used to deliver Foxtel and by Telstra's 50% stake in the Foxtel business. Whether right or wrong, the ACCC was thinking ahead – imagining how competition could be enhanced for long-term benefit.

For all the talk of future-proofing Telstra, there is nevertheless a series of key policy issues which deserves serious consideration before Telstra is privatised or the cross-media rules are dismantled. These include: structural separation; divestment of Foxtel; dual-rights for premium sports content; the end to datacasting; the introduction of multi-channelling; a fourth digital commercial television licence; a digital national indigenous broadcasting service; re-investment in the ABC and SBS; and the addition of a robust media-specific public interest test to the *Trade Practices Act 1974*.

These issues are not easy, but neither do they require speculative statements on how a private telecommunications company might operate or what data speeds will be able to be delivered over

its network in ten years. And they might give us a view on what the community thinks about the role of local media and the effects of further concentration – a supplement, perhaps to the views of media owners and share traders.

It might help our leaders to avoid the situation where the future proofers become the future eaters.

... And now to the future of Communications Update

Welcome to the last 'general interest' issue of *Communications Update* in hard copy format.

Like many other small organisations, the Communications Law Centre has taken the decision to cease production of a hard copy journal. The exception to this is our annual *Media Ownership Update* (MOU). With rising production costs and the absence of any dedicated editorial position, we decided that our priority should be the MOU and that future issues of general interest will be produced in soft copy. Anticipating this decision, no subscriptions have been taken beyond Issue 168, the MOU due early 2005.

We'd like to thank all our dedicated subscribers and reassure you that we will be in contact with details on how the annual MOU will be sold. In the meantime, we hope you find something in this issue to interest you. Our team at both the University of New South Wales and Victoria University have put together this 'in-house' issue that demonstrates some of the research and policy work underway at the CLC.

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