

Multichannelling the Public Interest in Digital Television Regulation

In the future we won't be able to live without digital television, but at the moment, despite its great promise, we can and we are. With the public interest in mind **Simon Curtis** looks at the effect of the current regulatory framework in relation to multichannelling, and the possibilities for change.

As required by the *Broadcasting Services Act 1992* (Cth) (BSA), reviews are currently underway into the future of digital television. The reviews, due to be completed by the end of this year, include a review of simulcasting and multichannelling regulation and the provision of commercial television services after December 2006. Reviews of the quotas for High Definition Television (HDTV), as well as the duration of the simulcast period, are scheduled to occur by the end of 2005.¹

In the policy debate surrounding the current reviews, much emphasis is placed on whether the existing framework, or proposed regulatory changes, are in the public interest. If the submissions by major industry players to the reviews are taken as a guide, then what is in the public interest tends to coincide with the commercial interests of the organisation making the submission.

In the context of the current reviews, the public interest would appear to be best served by a regulatory regime that:

- ensures viewers continue to receive at least the same television service during and after the conversion;
- maximises the potential for new and innovative services;
- ensures a diversity of content and views across all broadcast media;
- maintains appropriate local content and consumer protection regulation in the digital era; and
- is flexible enough to absorb technological developments and increasing overlap of broadcasting and wider communications services and applications.

The extent to which these public policy objectives can be achieved is a useful starting point to analyse the effectiveness of the current regulatory framework regarding digital television, as well as the appropriateness of potential regulatory changes. This article gives a brief overview of the policy debate, focussing on some of the arguments for and against the relaxation of multichannelling restrictions.

Current regulation

The existing regulatory framework for the conversion to digital television² has attempted to balance the interests of the various stakeholders (commercial broadcasters, pay TV and internet service providers) but also to ensure that during the switch to digital all consumers received the same free-to-air (FTA) television service they always had. As DCITA's 'Issues Paper for the Multichannelling Review'

states, the digital conversion policy framework aims to ensure that:

... viewers continue to enjoy high quality television services throughout the conversion process and that the changeover to digital is undertaken with minimum disruption to viewers' enjoyment ... The framework is aimed at providing clear sign posts for investment decisions which enable industry to build on existing infrastructure and expertise wherever possible.³

At present, commercial television broadcasters and national broadcasters must simulcast in analogue and standard definition television (SDTV). There are several minor exceptions to this such as digital enhancements (eg player profiles for sporting events) and the ability to multichannel when a designated live event (generally sport) runs over time into a scheduled news program.

Broadcasters are required to transmit at least 1040 hours per year (approximately 20 hours per week) of HDTV. The mandating of HDTV was one of the reasons for granting FTA broadcasters 7MHz of spectrum for digital transmission.

Broadcasters can use their spare spectrum for datacasting if they so choose. Other than that, they are restricted from using digital spectrum for any other service (eg pay TV, commercial radio etc).

Provision was made for new players to introduce datacasting services, however the genre and content restrictions determined for datacasting licences have made datacasting provision unappealing for potential investors.

To compensate existing FTA broadcasters for the investment required to convert to digital, a moratorium was placed on the grant of additional commercial broadcasting licences until December 2006.

Effect of current legislation

The regulatory framework reflects a delicate balancing act between industry interests and ensuring a smooth transition for consumers from analogue to digital. The highly prescriptive nature of the legislation has ensured that both viewers who have invested in digital receivers, and the majority who have yet to switch from analogue, receive essentially the same service from commercial and national broadcasters. While this may be at the cost of providing the flexibility for broadcasters to experiment with the potential of digital technology, it has at least ensured that viewers who have already made the transition have not lost any of the television

services they enjoyed in analogue, and vice-versa. Digital transmissions by commercial and national broadcasters can now be received in most parts of Australia.

However, the relatively slow take-up of digital television would suggest that – combined with the presently high cost of HDTV monitors and receivers – the current offerings of the commercial and national broadcasters are not providing a major incentive for consumers to make the switch. While the restrictive regulatory framework has given certainty to the existing players, it could also be argued that the potential for innovation and new services via digital television has yet to be realised.

Debate continues as to what will drive the take-up of digital television. While HDTV has been described as a technology in search of a compelling demand,⁴ the FTA broadcasters have generally argued that the superior picture and sound quality of HDTV will be what eventually coaxes consumers. Television use is largely passive, and it could well be that people will continue to use television in the digital age as they have always done. If so, then enhancing the audio and visual experience of television may eventually be the most attractive feature of digital broadcasting. With the growth in the DVD and home cinema markets, it could be concluded that increased delivery of HDTV programming on both FTA and subscription broadcasting may eventually play a significant part in persuading people to switch to digital.⁵

On the other hand, the take up of Foxtel Digital here, and the UK digital television experience would suggest that increased service choice is more likely to hasten digital conversion. After an uncertain beginning, digital terrestrial television in the UK is now taking off with the introduction of Freeview. The extent of the demand for such programming in Australia is, however, still largely unknown. It is unclear, for example, what proportion of Foxtel Digital subscribers were pre-existing analogue customers, and what proportion have been new subscribers attracted by wider channel selection.

Relaxing the multichannelling regulations

All that can really be said with any certainty is that the future shape of digital television is uncertain. As such, the mandating of HDTV, and the restrictions on FTA broadcasters experimenting with multichannelling would appear to be counterproductive in ascertaining the direction of digital programming that

would best suit the needs of Australian consumers. Criticisms of the current regulatory framework focus on the inability to exploit the potential for wider choice and new services that digital technology can offer, and the lack of competition in both the FTA sector, and between FTA and pay TV. The attempt to balance the interests of the various players has arguably entrenched the position of existing players, particularly the commercial FTA television networks.⁶ A strong argument can be made that relaxing the restrictions on multichannelling (and, indeed, opening up the commercial broadcasting sector to additional licence holders) can provide the public with greater choice, and encourage more people to convert to digital.

It is at this point that Australian content looms large in the debate over future television regulation. Arguments against relaxing simulcasting and multichannelling restrictions, and against the possibility of a fourth commercial television network, question the capacity of the commercial broadcasting industry to absorb such changes, and the subsequent effects on investment in the production of Australian content. It is said that additional channels would fragment the audience, reducing viewer numbers per program and thus advertising revenue. Commercial broadcasters would then be forced to cut expenditure. With local content, particularly local drama, said to be increasingly expensive to produce in comparison to the cost of imported programming, the Nine and Ten networks in particular have argued that multichannelling and/or a fourth commercial network will inevitably lead to a reduction of investment in the local industry, and thus a reduction in the quality and quantity of local content.

The economic argument is supported to some extent by Allan Brown,⁷ who concluded that there is limited scope in the Australian market for existing networks to introduce new multichannelled services, or for new commercial players to succeed in the commercial television broadcasting market. Brown's analysis concludes that the switch to digital will not change the fundamental economic characteristics of advertiser-supported television broadcasting in Australia, which he argues will continue to be dominated by the existing large networks providing programming for mass audiences. He is unconvinced that the market is large enough to support many more FTA television channels.

Other research has pointed to a very profitable FTA sector, amongst the most profitable in the world.⁸ Cox concludes that the FTA networks are programming more Australian content than is required by regulation but, as profits increase, are actually *reducing* investment in Australian programming as a proportion of overall expenditure.⁹ The implication is that the commercial networks are sufficiently profitable to absorb at least some fragmentation of advertising revenue.

The fragmentation argument is also diluted by the UK experience where, although the share in advertising revenue for the FTA sector may be decreasing, the FTA sector can still charge a premium through their ability to deliver a mass audience. It has been argued more than once that in a fragmenting market FTA advertising space may actually be more valuable to advertisers.¹⁰ The position of the Seven Network, in contradiction to Nine and Ten, would suggest that at least one existing commercial network does not see any potential fragmentation in advertising revenue as significant enough to prevent the viability of multichannelled broadcasting, and suggests that niche programming on additional channels may present additional revenue streams.

Uncertainty regarding the viability of more television channels does not necessarily mean that the FTA sector should continue to be protected from competition, or that existing FTA networks should continue to be prevented from multichannelling if they choose to do so. Few industry stakeholders, consumer groups or commentators appear convinced that the potential dangers in relaxing restrictions on multichannelling outweigh the potential for new services and increased competition in the FTA and wider broadcasting sectors.¹¹

So long as appropriate Australian content and consumer protection standards are maintained, there would seem to be a compelling argument that FTA networks be granted more flexibility to use their digital spectrum before and after the analogue switch-off. The networks themselves could then decide if it is economically feasible to provide extra channels or new interactive services or increase HDTV output. Nine argues that the provision of multichannelling by one network will inevitably lead to similar services by the other networks, a situation that it claims would be unsustainable. While this may well be the case, it would seem more appropriate to allow the commercial networks – and ultimately the television viewing public – to decide the future form of digital television, rather than it being confined by prescriptive legislation.

A more flexible regulatory framework is also likely to be more effective in accommodating developments in digital broadcasting technology. As the ABA has noted, technological advances can produce services that "do not fit within existing definitions, or result in the capacity to achieve previously prohibited actions".¹² Current legislative definitions are set to become increasingly stretched as digital technology allows broadcasting licence holders the potential to deliver multiple programming streams with discrete and/or different services. The ABA argues that the current discrete definition of "broadcasting service" in the BSA may lead to "the artificial division of a service into separately regulated components at odds with the common sense perception of the viewer" (for example, a broadcasting service that also provides datacasting and/or internet service).¹³

Perhaps the only prediction we can confidently make regarding the future of digital television is that the analogue signal will eventually be turned off – perhaps not in 2009, but probably within the next ten years. The current regulatory framework, while providing a safe environment for existing broadcasters to convert to digital, and ensuring continuity for viewers, has not been successful in encouraging significant take-up of digital. Nor has it given the networks much room to experiment with the potential of digital broadcasting. Whether or not consumers actually want more programming choice, or better sound and vision, it would seem to be in the public interest to let the public, and not regulators, decide.

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Notes

¹ Other aspects of digital television regulation due for or under review, but beyond the scope of this paper include the viability of an Indigenous Digital Broadcasting Network, and simulcasting and HDTV quota provisions in under-served areas.

² BSA, Sch 4.

³ DCITA, 'Provision of Services Other than Simulcasting by Free-To-Air Broadcasters of Digital Spectrum: Issues Paper' (Simulcasting/Multichannelling Review), May 2004, p. 4.

⁴ R. Parker, 'Economics' Role in the Race Toward Digital TV', *Prometheus*, vol 16, 1998, p. 198.

⁵ See J. Bird, 'HDTV: The greatest advance since colour?' *ABA Update*, June 2003, p. 20

⁶ See ACCC, *Emerging Market Structures in the Communications Sector*, June 2003; Productivity Commission, *Broadcasting Inquiry Report*, March 2000; J. Gibson, 'Understanding digital television', *Arena*, vol 57, 2002, p. 90; M. Hudson, & T. Jordan, 'Digital television in Australia' *Telecommunications Journal of Australia*, vol 48(4), 1998, p. 5.

⁷ A. Brown, 'The digital future of terrestrial advertiser-supported television', *Prometheus*, vol 21(1), 2003, p. 41.

⁸ ACCC, note 6.

⁹ P. Cox, *Beyond the Three Pillars, AANA Submission on DCITA Issues Paper – Provision of Commercial Television Broadcasting Services After 31 December 2006*, October 2004, p. 32.

¹⁰ ACCC, note 6; Cox, note 9; D. Airley, 'What I Saw at the (Digital) Revolution', Presentation at the ABA Annual Conference, Canberra, 23–24 June 2004.

¹¹ See submissions to the Simulcasting/Multichannelling Review (2004) by the ACCC; Australian Association of National Advertisers (AANA); Australian Consumers Association; Media, Entertainment & Arts Alliance; and the Australian Childrens Television Foundation.

¹² ABA, Submission to Simulcasting/Multichannelling Review, 2004, p. 2.

¹³ *ibid*, pp. 4–5.