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* Telstra

The Sydney Morning Herald reports the Government, and to a lesser extent the Opposition, is finding Telstra's broadband campaign 'unhelpful and counter-productive'. Noting that although the Government's plan to have the private sector tender for the job of building and owning a new broadband network is potentially a point of marketing difference in an election year, they suggest that Telstra is working hard at undermining that plan. The alternative proposal by Kevin Rudd's ALP is to fund a similar network, but using Future Fund money. This article notes that the Government could adopt the same approach but 'given its historical opposition to state ownership of commercial enterprises, it would be bigger leap' (Maiden, 'Telstra: a pain in neck to all', Sydney Morning Herald, 11 June 2007).

* New Shield Laws for Journalists?

It is reported that the Western Australian Government 'has backed off from its threats to tie its support for new laws to protect journalists' sources to the sacking of

The West Australian's editor Paul Armstrong'. It appears that the threat related to a stoush between the paper and WA Attorney-General Jim McGinty. The WA Premier rejected the suggestion that the government's actions would be tied to any specific individuals or situations, explaining 'We will make our decisions based on what is right for the entire profession and making sure that we respect the requirements of the profession and changing needs'. The West Australian Newspapers CEO Ken Steinke suggested that his paper 'was probably not quite as aggressive in criticising the state Government in WA as The Daily Telegraph in Sydney was in criticising the NSW Government. He also said that the fact that The Western Australian was the only daily newspaper in Perth meant that politicians tended to focus on any negative stories it carried. (Korporaal, The Australian, Media and Marketing, 31 May 2007).

These developments at a State level in WA have occurred as the Federal Government introduces shield laws for Parliament to consider. The proposed new laws would give Judges a regulated discretion to allow Journalists to not reveal the identity of a source. Critics have suggested that in the absence of parallel whistleblower laws for public servants, the proposals will be of limited impact (Merritt, The Australian, 24 May 2007).

* Right to Know Campaign

The uncoordinated Federal and State developments in Shield Laws is occurring as the 'Right to Know Campaign' commences. A coalition of media industry groups has selected the former ICAC and Human Rights and Equal Opportunity Commissioner Irene Moss to head up an 'extensive review of free speech in Australia'. Her inquiry will examine issues such as court-ordered suppression orders, privacy, and restrictions on what can be reported in the media. The inquiry will also 'form the basis for a national lobbying campaign' on behalf of the media into restrictions on reporting (The Australian, 24 May 2007).

* Community TV

It is reported that the Government's indecision on how best to move community TV from analog to digital broadcasting is responsible for a delay in selling the new licence A and B channels (more below on these new digital channels). This report suggests 'there is widespread speculation the hitch concerns the five

metropolitan community stations, which are lobbying hard for a condition to be put in the Channel A sale documents requiring the eventual licence-holder to carry them'. It appears that the Minister, Senator Coonan, who ruled out a 'must-carry' provision in February, has not been entirely clear on the matter, but a policy adviser for the Minister is reported as saying there were 'no plans on changing the must carry provision on Channel A for Community TV' (Jackson, *The Australian, Media and Marketing*, 31 May 2007).

* **New Digital Media Report**

The Australian Communications and Media Authority have released their second report on how Australians are accessing and using digital media. It contains some very instructive data, including that more than 25 per cent of all Australian homes accessed video content from the Internet in the past year. It also shows that Australians access to broadband Internet doubled in the last 12 months to approximately 51% (ACMA, *Digital Media in Australian Homes - 2006*). Key findings include:

Media penetration

- Nationally, 29.6 per cent of households indicated they received Digital Terrestrial TV Broadcasting or DTTB, more than doubling the penetration recorded in the 2005 study (13 per cent).
- DTTB adopter households had higher adoption of subscription television and broadband internet.
- Penetration of personal digital hard-drive recorders (PDRs) increased to almost one-fifth of households (18.2 per cent), representing an increase since July 2005 (when 4.7 per cent of households had a DVD player with hard drive, 1.0 per cent had a free-to-air digital set-top box with hard drive, and 1.0 per cent had Foxtel iQ).
- Just over one-quarter (26.4 per cent) of households had subscription television, an increase since 2005 (23.7 per cent), and just over one-half of these households (54.4 per cent) also had DTTB. It is estimated that approximately 41 per cent of households had either digital free-to-air or digital subscription television.
- The internet was connected in 69.3 per cent of households and just over one-half of all households (51.7 per cent) had a broadband connection, double the number recorded in 2005 (25.8 per cent).

Television ownership

- Of the 3,564 display devices used to watch television programs in the sample, 609 (or 17.1 per cent of the overall 'stock') were identified as DTTB-capable, compared with 7.1 per cent in 2005.

Audio-visual content downloading/streaming

- One-quarter (25.4 per cent) of respondents said they had watched audiovisual content that had been streamed or downloaded from the internet or from a mobile device in the last month.
- Computer monitors and laptops were mainly used to view such content (22.6 per cent of all respondents), followed by mobile phones or personal mobile devices (11.5 per cent), and television sets (2.3 per cent).

Digital versus non-digital households

- There were differences between households that had adopted, or were planning to adopt, DTTB compared with other households—largely mirroring the insights from the 2005 study. In homes without DTTB, there was significantly less subscription television and broadband connectivity (including watching audio-visual material from the internet).
- Non-DTTB households also had: a relatively high incidence of low incomes, and a relatively low incidence of high incomes; a lower incidence of children aged under 16 years in their homes; and a higher proportion of flats or apartments than free-standing homes or townhouses.

Drivers for DTTB adoption

- 'Enhanced picture experiences' remained the leading reason for DTTB adoption in more than one-third (36.5 per cent) of adopter households (up from 26.0 per cent in 2005).
- Reasons relating to 'television upgrade or replacement' increased in prominence to 28.4 per cent (11.0 per cent in 2005).
- Problem resolution-oriented reasons such as 'improved reception or signal' were cited by 19.6 per cent (down from 25 per cent in 2005), followed by 'extra channels, variety and choice' for 15.6 per cent (18.5 per cent in 2005). [ACMA, *Digital Media in Australian Homes - 2006*].

* **Seven Media Group and TiVo**

This newly refinanced group, a joint venture between the Seven Network and US private equity firm Kohlberg Kravis Roberts, is 'taking on pay-television group Foxtel's dominance of the digital video recorder market' in announcing an alliance with the US Nasdaq-listed TiVo digital recorder firm. Seven are saying that the alliance will also involve new convergent ties to telco interests to explore new interactive business developments.

This will include Internet telephony group Engin, which is partly owned by Seven. It seems the plan is to offer 'compelling, interactive, free-to-air digital terrestrial TV' that will also be available to other FTA and broadband content providers. TiVo is notorious in the US because of its recording and ad-skipping functionality (Bodey, *The Australian*, 31 May 2007).

* **Media Ownership**

While the government's new media ownership laws (the Broadcasting Services Amendment (Media Ownership) Act 2006) were passed in October 2006, they were not actually 'proclaimed' (or when the legislation actually came into force) until 4 April 2007. This proclamation date was expected to follow the release of more detailed planning arrangements regarding the allocation of datacasting licences, known as 'licence A' and licence B'. In the event, the date was not linked to the allocation of these licences as the Minister had earlier suggested it would be, and appeared, rather, to be conveniently related to the timing of several refinancing and restructuring deals that were already underway (Crowe, *The Australian Financial Review*, 4 April 2007. p.5).

Proclamation of Schedule 2 of the Act, which repeals foreign control rules and amends cross media rules, also contained new local content requirements for regional radio. The Government put these requirements into place as part of concessionary arrangements with their own National Party members, who were concerned about lack of diversity in regional markets. The local content requirements are subject to a review by the regulator, the Australian Communications and Media Authority (ACMA), the precise detail of which is yet to be announced. However, at this stage it includes a requirement to broadcast 12.5 minutes of local news per day. The other element of this so-called 'local presence' licence condition for regional commercial radio is that if certain 'trigger' events are set in play, for example, a change in the control of a media group, then the station must comply with the minimum news requirement, maintain existing levels of staffing and production resources, and follow certain record-keeping obligations. The first media group affected by the new licence condition was West Australian Newspapers, when Kerry Stoke's Seven Media Group crept into a 'controlling' position (over 15%) of the group soon after the proclamation date was announced (Tabakoff, *The Australian, 'Media'*, 12 April 2007, p.13).

Schedule 1 of the Media Ownership Amendment Act came into force on 1 February 2007. It introduced a number of key concepts relating to media ownership including prohibitions relating to 'unacceptable media diversity situations' and 'unacceptable three-way control situations'.

The amendments made in Schedule 3, relating to the allocation of new datacasting channels and other new digital TV rules concerning multi-channeling, commence on 1 January 2009. This date is intended to coincide with the commencement of Schedule 3 of the Broadcasting Legislation Amendment (Digital Television) Act 2006.

The dismantling of cross and foreign ownership rules will undoubtedly, over time, lead to industry consolidation through mergers and acquisitions, and this does not augur well for media diversity in Australia (Tabakoff, *The Australian, 'Media'*, 5 April 2007, p.13). Media ownership is yet to strike the kind of popular chord in Australian that it did in the US in 2004/2005 (when the repeal of cross media rules was attempted by the FCC), but this could well be the sequence of events that would do it.

* **Licence A and B**

Licence A is intended to allow the provision of up to 30 channels of information services. Examples include government information services, shopping channels, religious channels. There is a controversial caveat that services operated under this licence do not replicate free-to-air services. Licence B is intended to carry TV signals to mobile TV handsets (e.g. mobile phones) using the digital mobile technical standard, DVB-H. It remains to be seen whether the so-called 'digital action plan' offers viewers the kinds of diverse content experiences to lure them to buy digital TVs and set top boxes, and justify switching off analogue channels in the planned 2010-2012 schedule.

Katherine Sainty (a partner in technology, media and commercial group of law firm DLA Phillips Fox) writes in *The Australian* that when these two new national television licences are allocated later this year 'it represents an exciting opportunity for consumers, and the fact that each is a national licence ensures rural and regional consumers will be able to benefit equally'. In terms of content, 'we know we won't be getting any more TV like we see on existing free-to-air and subscription channels, such as dramas, documentaries and news. The expectation in the market is around "snack TV": bite size, magazine-style programming that appeals to niche audiences or is suitable for mobile TV' (Sainty, *The Australian, Media and Marketing*, 31 May 2007).

* **Register of Media Owners**

One of the first steps that needed to occur before the proclamation of the ownership rules, repealing existing cross media and foreign ownership laws, was the establishment by Australian Communication and Media Authority (ACMA) of a Register of Controlled Media Groups. A new section 61AU of the Broadcasting Services

Act 1992 (BSA) requires the register to include the registrable media groups and the controllers of each of the media operations in these groups in all commercial radio broadcasting licence areas (the geographical area used for the rules). The new law required all commercial radio, datacasting and commercial television licensees and publishers of associated newspapers to give ACMA details of all controllers and directors of the media operation within five days of 1 February 2007. Separately, controllers (i.e. the specific individuals) needed to notify ACMA in writing of all media operations they were in a position to control at that time.

The main purpose of the Register is to track changes in the control of media groups, and to ensure compliance with the new media 'diversity' rules in any transaction they undertake. Media groups entering into transactions will be required to notify ACMA within five days of becoming aware of the relevant change of control. Assuming that the transaction does not result in an 'unacceptable media diversity situation' (as defined in section 61AB of the BSA) or 'an unacceptable three-way control situation', ACMA will update the register initially as 'unconfirmed', but then has 28 days in which to decide whether to grant 'confirmed' status. These so-called 'unacceptable three-way control situation' refer to a cap on separate media groups owning more than 2 out of 3 of the different media outlets (radio, television, newspapers). Under the new laws the overall number of outlets is not permitted to be less than 5 separate 'voices' or media groups in metropolitan markets, and 4 in regional markets.

This assessment is based on a new points system whereby if the number of points is already at or below the 5/4 level, the new laws prohibit transactions that result in a reduction. ACMA has the power to grant prior approval to prohibited transactions on conditions which require that media diversity be restored within a prescribed period.

The register contributes to these new arrangements by listing all registrable media groups (consisting of two or more media operations) in each radio licence area in Australia. A registrable media group attracts one point for its whole group. This is in contrast to an 'independent media operation', which itself attracts one point. The idea is that the register is also used as a resource to advise companies wishing to merge their operations of the existence of any registrable media groups in the relevant licence areas.

On 30 May 2007 ACMA released a supplementary report in two parts to assist in 'value-adding' to the interpretation and implementation of the register. The so-called 'Media Diversity Report' provides a guide to industry and the community on the number of points in a licence area - an indicator of the level of diversity in the control of media operations in that licence area. The report lists media operations in the licence areas that are not part of a media group (i.e. independent media operations), as well as the controllers of those media operations. ACMA claim that the report will be used to administer the 'shared content test' for merging commercial television operations (under section 61AE of the Act).

*** The Media Diversity Report consists of two parts:**

- Part 1 includes the media groups and other media operations in each licence area, together with information relating to the 'shared content test' and section 38A commercial television licences. It also contains a guide to the number of 'points' in each licence area.
- Part 2 is designed to be a useful cross-reference to Part 1 of the Report, providing an alphabetical list of the controllers of all media operations appearing in Part 1.

It should be noted that the report only lists commercial radio services, commercial television services and associated newspapers. Services that are not subject to the media control rules but which contribute to media diversity (including ABC, SBS, community radio and television services and open narrowcasting services) and not included.

(ACMA MR 54/2007 'ACMA publishes Media Diversity Report' 30 May 2007)

So what can ACMA do if these laws and regulations are breached? Potentially, ACMA has the power to make individuals pay large penalties in the event of non-compliance. ACMA can also direct a person or company to take action (including divestiture of assets) to remedy an unacceptable media diversity situation or an unacceptable three-way control situation.

*** Regional Media**

It is reported that the main regional television operator, WIN TV, owned by Bruce Gordon, is 'proceeding with its aim of becoming a super-regional television network' following its agreement to buy Adelaide's Channel Nine from Southern Cross Broadcasting. Although its bid for Newcastle-based NBN was defeated after PBL's new controllers (Private equity group CVC Asia Pacific) successfully offered \$250 million for the station, it

looks likely to pick up Channel Nine in Perth from Eva Presser's Sunraysia Television group (Tabakoff, The Australian, 31 May 2007).

*** Digital Action Plan**

In order to implement the digital switchover plans, the government has proposed that the Department of Communications, Information Technology and the Arts (DCITA) will establish a dedicated group, costing around \$17 million over 4 years, to be known as 'Digital Australia'. That group is tasked with identifying needs and generally raising awareness of the digital switchover process. Determining the actual details of implementation of the DAP, including critical dates, is the role of ACMA.

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