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Tim Dwyer

* The National Broadband Network (NBN) aka "Rudd-Net"

The NBN saga rolls on. AMM readers will recall that the centrepiece of the Rudd Government's election promise of a high-speed national broadband network was that a contracted network-builder receive \$A4.7bn of government funds as the basis of a public-private partnership model.

An important element of a parliamentary review process set up in 2008 was to establish the terms of the tender documents, which were to call for offers to build a new high-speed network.

By mid-2008 the Australian Senate had launched a review of broadband regulation, and began to consult widely about the establishment of an appropriate NBN model and the mode of its rollout (Senate Select Committee, 2008).

Seventy public submissions were received from a range of domestic and international stakeholders: ISPs, telco's, local councils, state governments. Google thought that the future provider of the network ought not be permitted to operate both the network, and the retail broadband business (Hart, "Split network and broadband: Google". Business. The Australian, 3 July 2008). No doubt the ironies of this suggestion were not lost on some readers of their submission who would have thought the argument rather Janus-faced given the dominant position of Google in the search engine market. Google had argued that the new network: "offer services on a wholesale basis to retail competitors on non-discriminatory and equivalent terms as it offers them to its own retail operations, from the perspective of both price and non-price terms and conditions" (Hart, 2008).

They were far from being alone in this suggestion. British Telecom also supported such a structural/functional separation model. Trenchantly opposed to this argument was the former monopoly provider, Telstra Corporation, who argued in their submission: "All that presently stands between Australia and world-class broadband infrastructure is the current regulatory

regime" (Hart, 2008). In reply, Telstra's critics put the case that Telstra was one of the world's most highly integrated telecommunications companies: that its structure gives it both the incentive and ability (reinforced by a very favourable access regime) to impede competition and slow the release of new technologies/products. Critics, quite rightly, noted that it was vertically integrated, owning both network and retail businesses. And that it was also horizontally integrated, owning various networks – including copper (ADSL), Hybrid Fibre Coaxial (HFC), 3G mobile and satellite – distribution platforms which all generate broadband products. Their argument was that maximising shareholder value for Telstra means minimising retail sales, cannibalisation by refusing rivals access to its network, or stalling and charging the highest access prices possible.

The most recent Australian debates focus on the future direction of broadband rollout in terms of optic fibre networks, or more specifically a fibre-to-the-home (FTTH) network that could be capable of delivering download rates of up to 100 megabits per second (Mbps). But the controversial element of the latest post-election proposal by the Rudd government, is not the speed or technologies on the wish list, but rather the fact that the Government has announced that it will own 51% of the new network via a broadband company in which it intends to invest up to \$AUS43 billion. This is a sign of the economically recessed times we now live in.

The proposal as it now stands, before any of the parliamentary horse-trading that will undoubtedly ensue, is that the Rudd Government will be the owner of what is, effectively, a re-nationalised monopoly-style network for a period of 13 years (until 2022), when the network would be privatised and sold to the highest bidder. The network, the government claims, would be structured as an open access one, wholesale-only infrastructure (Hudson, "Internet company to be sold by 2022", SMH, April 10-12, 2009). The article suggests that getting the sale clause through the Senate may be problematic, with the Greens indicating their preference for the NBN to remain majority publicly owned. It quotes the Greens communications spokesman, Senator Scott Ludlam, as saying "We're concerned that the Government is using taxpayer money to roll out the broadband network and then planning on selling it back to the private sector. The full privatization of Telstra was a colossal failure and is in part responsible for the mess the Government is attempting to fix. The broadband network must be operated in the public interest."

In "Secret team kept even ministers in the dark", the reconfiguring of the previous \$4.7 billion public-private partnership plan was laid bare. The expert panel assessing the NBN bid proposals confirmed that Telstra's had been deemed "non-conforming" and was therefore not considered, and all remaining bids rejected for not being "up to scratch" for their funding arrangements (lack of access to equity in contracting capital markets), or otherwise "underdeveloped". The committee recommended a new approach driven by the Government based on a FTTH model, not to the node as originally planned (i.e. FTTN). This had the added very important benefit of avoiding an estimated \$20 billion damages suit predicted to be brought by Telstra for by-passing its existing 'last mile' copper network from the node to homes (Coorey, SMH, 8 April 2009).

In fact, there was a great deal of media coverage of the "Rudd-Net" proposal. In "Coalition draws the line at public funds for the network", the lead paragraph notes, "The Federal Opposition has refused to commit to completing Labor's eight-year, \$43 billion national

broadband project should the Coalition be returned to government" (Coorey, SMH, 8 April 2009). In the same two page spread on "The Rudd-Net Revolution", Ian Verrander's take was that it meant "Telstra's monopoly has been smashed at last"; while Joel Gibson and Kelly Bourke saw "Regional Australians left out in the cold yet again", noting that "The news that 10% of Australians would get broadband about one-eighth as fast as the rest of the country has raised fears that the regional and remote communities will again be left behind by progress." Alexandra Smith and Asher Moses presented the business perspective in "Eight years too long to wait for vital boost: business". In "Apple Isle reaps the fruits of network scheme" its explained how a successful NBN bid will be used to consolidate existing broadband access. The writer quotes the bid's main advocate, Premier David Bartlett as saying "Optic Fibre in Tasmania will be as important to the next five decades of economic and social growth as the dams and poles and wires of the Hydro were to the past five decades." Other articles in the featured coverage of the issue included "Old-style TV could be the biggest loser"; "Cutting-edge and world-beating"; "Changes at work, home and school".

But what is all this broadband distribution going to bring us and how? Some content providers have suggested that for IPTV, movie or TV on-demand services over the Internet to thrive, consumers will need widespread access to download speeds of at least 25Mbps – a far cry from the typical 1.5Mbps ADSL services currently used by most Australians, despite the fact that the advertised speed is often much higher. By contrast, a study by Ofcom of typical broadband speeds in the UK found consumers "receive an average broadband speed of 3.6 Mbps" which Ofcom claims is less "than the average maximum possible speed of 4.3 Mbps across the UK and significantly below advertised headline speeds". The research found that 60 per cent of UK consumers currently subscribe to packages promising speeds of up to 8 Mbps, and yet one in five of these subscribers actually receive an average speed of less than 2 Mbps. The average the actual speed consumers receive is 45% of the advertised headline speed (Ofcom, UK Broadband Speeds 2008, http://www.ofcom.org.uk/research/telecoms/reports/bbspeed_jan09/bbspeed_jan09).

Although a fibre optic network is frequently invoked, clearly it is not the only solution to deliver next generation broadband, with high-speed wireless 3G, ADSL and satellite networks already making up the mix of available technologies. It seems inescapable that in using a mix of technologies the speed of service will continue to be determined by geographic location and population densities; which in turn affects affordability, as the unevenly distributed national access in OECD broadband data corroborates (OECD, 2009, Broadband Portal <http://www.oecd.org/sti/ict/broadband>). With regional, rural and remote Australians receiving slower services than those living in metropolitan Australia, questions remain as to whether those living outside of our cities will be able to access the levels of functionality they will need to, as the Government asserts, to fully participate in an online economy and society.

* **Australian Communications and Media Authority**

The April issue of ACMA'sphere reports on the subscription sector drama expenditure figures for 2007/2008. "The subscription television industry spent \$20.06 million on Australian and New Zealand drama programs in the 2007/2008 financial year in meeting its obligations under the New Eligible Drama Expenditure Scheme". There are currently 18 drama channels that are obliged to make the expenditures under the provisions of the Broadcasting Services Act, 1992.

The channels are distributed on the AUSTAR, FOXTEL, Neighbourhood Cable, Optus, SelecTV, Telstra and TransACT subscription services. Investments in the period included Australian film and animation such as the Tropfest short film festival, the Optus one80 project and Nick Shorts. To be responsive to the dynamic nature of the industry the scheme allows licensees and channel providers to acquit their obligations under a kind of 'accrual' scheme, that allows shortfalls in one financial year to be fully acquitted in the following year. In the 2007/08 year under half of the spend was on the current year's obligation (\$9.16 million), with the remainder catching up on the previous year's obligations.

In research news, ACMA has released a report which surveys the levels of trust and confidence of Internet users. According to ACMA's Australia in the Digital Economy Report 1: Trust and Confidence, "Australians overwhelmingly value the internet and see it as critical to their daily lives; however, Internet users are either taking no measures or only limited measures to ensure their online security." This lack of action may be explained, says ACMA, by "a high reliance by internet users on informal methods of training and gaining knowledge about the Internet. It may also affect users' awareness of available technical measures to protect home computers from online risks." The ACMA chair, Chris Chapman notes that such concerns don't form a barrier to participation in the online space, and this is evident in the wide usage of the net for a wide range of activities including e commerce and social networking (p. 8 "Internet skills maximize benefits and minimize risks", ACMAsphere). Reports in the series are available at: http://www.acma.gov.au/WEB/STANDARD/pc=PC_311655

*** The Australian Competition and Consumer Commission**

In "Samuel puts the squeeze on spin", the consumer watchdog has reiterated a recent decision made by the High Court and pledged to step up its scrutiny of infomercials, advertorials and current affairs programs and to draw a clear line between news and spin (Jackson & Pelly, Media, The Australian, 4 May 2009). This story relates to the High Court finding that Seven's Today Tonight had breached section 52 of the Trade Practices Act with two segments in 2004 and 2005. The court said that the network could not rely on section 65A of the Act "the so-called publisher's defence - partly because an arrangement with a marketer ... showed they were not at arm's length". The ACCC's Chairman Graeme Samuel is quoted as saying that some outlets had been "overstepping the mark in terms of moving from objective serious journalism into promoting products and services."

On the topic of spin, in "PR driving up to 80pc of content" it's reported that "as much as 80% of media content is derived from public relations material" according to a recent study by a UTS academic. The author of the study suggests that "30-80% of media content is sourced from, or significantly influenced by, PR practitioners, depending on the outlet, with estimates of 40-75% common." This research is hardly earth shattering news, but its value lies in its reiteration of the point that it was in the public interest that interaction between journalists and PR people be "open and managed" (Jackson, Media, The Australian, 4 May 2009).

*** Industry Self-Regulation**

The virtues of self-regulation were thrown under a spotlight recently in what has been described as a "debacle" for the advertising industry (Lee, "Coke debacle bad for industry self-regulation", SMH, Weekend Business, 4-5 April 2009). There may be wider lessons for

other self-regulation processes beyond the advertising industry too. The ACCC has found that Coke misled the public by claiming, in a misguided attempt to 'mythbust', that the iconic drink would not rot your teeth or make consumers fat. The advertising industry's self-regulatory process is looking particularly on the nose because earlier complaints lodged to the Advertising Standards Board (ASB) under the Australian Association of National Advertiser's (AANA) Code of Practice were dismissed. The AANA sheeted the issue home to the fact that there are a number of different processes involved: "It's not surprising that, given the different roles of voluntary codes and black letter law, matters dealt with under the different systems reach different outcomes". So, viva la difference? Coke admits that it got it wrong in relation to this ad campaign. Using a well-known television and film celebrity (Kerry Armstrong) to make blatantly misleading statements about the drink was always going to get them into ethical and legal hot water. But perhaps there's something in the AANA's point regarding the different available processes. Surely this is not only confusing for the public; it must also cast doubt on a regulatory mechanism that allows such flagrant transgressions. What did this debacle cost Coke? It paid Kerry Armstrong about \$70,000 dollars and the 'corrective' ads were worth \$200,000. And then there's damage to the brand.

* News Corporation

Rupert Murdoch has announced that News Corporation it wants to start charging readers for access to content on its newspaper sites during the next year. In Business Day in the Sydney Morning Herald (Steffens, "Online content to come at a price", 8 May 2009) he is quoted as saying "There is no doubt that the traditional newspaper model has to change, even though the present situation, I think, has been greatly exaggerated by the current recession. Classified revenues are undoubtedly migrating to the web, probably not to return" (p.20). It was reported that News Corporation was looking at replicating it's model of the Wall Street Journal, and was also investigating delivering content through electronic devices like Amazon's "Kindle", that sells content for papers like The Washington Post. However, in "News Corp explores e-news pay model" it's reported that Murdoch is confident of monetising the growing appetite of readers using content on new devices, but "he was dismissive of the possibility of News using a new newspaper-adapted version of Amazon's e-book device, the Kindle, to sell content" (Tabakof, Media, The Australian, 8 May 2009). He said he was interested in the business model of accessing news content on other devices such as Blackberrys. Murdoch added that News would "not be feeding our content rights" to the Kindle's creators and also noted "We will control the prices for our content and we will control the relationship with our customers ... Any device maker or website, which doesn't meet these basic criteria on content, will not be doing business long-term with News Corporation."

Murdoch advised that News Corporation would be vigilant in enforcing its intellectual property rights. The article notes that "In three weeks, 360,000 people have downloaded The Wall Street Journal's iPhone mobile reader, which allows readers to view its content free". According to Murdoch: "As you can imagine, we will soon be making them pay handsomely for the privilege of accessing the world's best business news source."

News Corporation's share price spiked as Murdoch declared the worst of the advertising recession to be over (Steffens, "News soars as Murdoch declares the worst is over", SMH, 8 May). The announcement took the spotlight away from the third quarter earnings which

indicated a 97% slide in the newspaper business; while weak care, financial and entertainment advertising almost wiped out the company's free-to-air TV station profits. In Australia, the Daily Telegraph's earnings fell 42%, with advertising sales down 16%. News Corporation is reporting the laying off of 3000 people across all businesses, and has merged the activities of some newspaper and TV stations.

Meanwhile, Lachlan Murdoch has made his first major media investment via his Illyria Nominees vehicle company, buying a 9.1% stake in Paul Ramsay's regional TV Prime Media Group alongside Kerry Stoke's Seven Network. This represents a \$16 million stake in Prime's recent \$110 capital raising. It was reported that Lachlan Murdoch "had been on the lookout for media opportunities since the collapse of his \$3.3 billion deal last year to privatize Consolidated Media Holdings with James Packer, which would have given him stakes in the pay TV businesses Foxtel and Fox Sports, and in PBL Media, the owner of Channel Nine and ACP Magazines" (SMH, Business Day, Steffens, "Murdoch takes a Prime stake in the media", 30 April 2009). Following the removal foreign ownership laws some two years ago, PBL Media is now almost 100% owned by the private equity group, CVC Asia Pacific.

* **Telstra**

Kerry Stokes, the principal shareholder of Seven Media, owner of the Seven network, has acquired approximately 1.25% of Telstra through a number of investment vehicles over the past 18 months. Since Telstra owns 50% of Foxtel, and Seven is thought to own a small percentage of Consolidated Media Holdings (which owns a quarter of Foxtel) there is some speculation that Mr Stokes "may be positioning himself to have a strategic say in the event that either of those interests in the pay TV operator came up for sale", while others just thought it about investing in a good dividend stock (Oakes, SMH Business Day, "\$500m Stokes investment in Telstra", 23 April 2009).

In her Media Diary column, Meade notes that Telstra Media "is quietly hiring for a top-secret online and mobile content division as it moves to set up a fully fledged media comms operation" ("Calling content providers", Media, The Australian, 27 April). Meade's sources say the aim is to set up a group like Fairfax Digital and News Digital Media. Headed by Justin Milne, the group will focus solely on content issues. Telstra has been advertising for various roles in the new unit.

In other telco competition matters, it's reported that Telstra is trying hard to derail a merger/joint venture between its competitors Vodafone and Hutchison, arguing in the Victorian Supreme Court that Telstra should be handed control of the "3" mobile network (Oakes, "Telstra seeks network control", SMH, 4 May 2009). Telstra is arguing that Hutchison "forfeited control of the 3G mobile network when it agreed to merge with Vodafone". The claim arises from Telstra paying \$450 million for half of the Hutchison's "3" mobile network in 2005, an arrangement made under an agreement that expires in 2017. The ACCC is also assessing the proposed merger on competition policy grounds: it would place the new entity within striking distance of the number two telecoms organisation, Optus.

The Australian Financial Review reports "Telstra picks insider as new chief", with the news that David Thodey will replace Sol Trujillo (White, Clegg & Williams, AFR, 8 May, 2009). The appointment of Telstra's group managing director for enterprise and government comes "as the

company faces the threat of a break-up and the loss of its dominance of fixed-line telecommunications due to plans for a \$43 bn NBN". The appointment is seen as a victory for Telstra's largest shareholder, the Future Fund (which holds the remaining publicly-owned portion of 16%), and specifically its Chair, David Murray who was reported as being furious at Telstra for not lodging a compliant bid in the NBN process. Thodey is seen as the candidate best able to repair estranged relations with the Government.

A few days later it was reported that Catherine Livingstone would replace Donald McGauchie as Chair of Telstra. McGauchie resigned immediately after the appointment of Thodey. Livingstone is the former chairwoman of the CSIRO and used to run the bionic ear company Cochlear. It seems the new duo at the top of Telstra will be aiming to chart a new course of cooperation with the Government as it begins its NBN plans (Hudson, SMH, Weekend Edition, "Livingstone ushers in new Telstra era", 9-10 May 2009).

* **Packer and Seek**

It's reported that the James Packer backed job classified website Seek has raised \$100 million in a share placement. Packer and Seek's joint CEOs Paul and Andrew Bassat put in about a third of the money. Apparently Consolidated Media Holdings paid \$27.7 million to maintain its 27% stake. The extra funds are slated to be used for expansion of its education and training business (Steffens, SMH, Business Day "Seek tapes market for \$100m to shop", 24 April 2009).

* **New Freedom of Information and Shield Laws**

In "FOI changes would exclude MPs", the Sydney Morning Herald reports that the NSW government has declined to include the Ombudsman's recommendations that politicians be included in new FOI laws. The proposed laws would however include fines of up to \$11,000 for public servants that knowingly breached the laws. The new laws include a proposal to create a new office of information commissioner "to promote open government, review decisions of agencies, train staff and provide advice to agencies and recommend changes to the law". It's proposed that the commission will be empowered to investigate complaints but not have the power to order release of documents. That power would remain with the Administrative Decisions Tribunal (Moore, SMH, 24 April 2009).

The MEAA's annual review of press freedom applauds the long awaited overhaul of these laws, their ability to promote a "pro-disclosure" culture and the establishment of the new office of information commissioner. But, it also notes, there remains a "cloak of secrecy" in Australia. MEAA federal secretary Christopher Warren sees, for example, that under the proposed new whistleblower laws, not all whistleblowers will be protected if they speak out – and journalists who refuse to reveal the identity of their sources may still be convicted (Warne-Smith, "Whistleblowers left exposed by new shield laws", Media, The Australian, 4 May 2009). In "The fight for easier access to the truth", veteran journalist Laurie Oakes's speech to the Press Freedom dinner, he observes "The only circumstances where blowing the whistle via the media would be protected would be where a matter had been disclosed through the internal public service system but had not been acted on within a reasonable time and then only if the matter threatened "immediate and serious harm to public health and safety" (Oakes, Media, The Australian, 4 May 2009). The so-called Public Interest Disclosure Act would not protect those who expose corruption or maladministration.

* Sports News Rights

In "AAP in fight for access to matches" the issue of reporting sports is given an airing (Canning, Media, The Australian, 4 May 2009). This issue has been discussed in other fora in the last couple of years, including in the Press Council's annual reports. The latest development discussed in this article is that AAP have made a submission to the Senate committee inquiry into the reporting of sports news, calling for the rights of journalists and photographers covering sports events to be covered under the Trade Practices Act. The problem the proposed legislation would seek to address is the situation where media staff sent to cover events are being locked out and prevented from reporting. AAP's proposal is that the ACCC would be empowered under the Trade Practices Act to regulate access rules. In their submission to the Inquiry the ACCC would be given the power monitor and enforce the rules. The analogy is made to the role the ACCC performs in relation to telecommunications access rules where they have the power to "declare" particular services, requiring companies responsible for a given service to give access to other companies wishing to use that service.

The suggestion made in the submission is that it would be preferable to use the Trade Practices Act to ensure that news organisations have a right of access to sporting events. A mandatory code of practice could be followed to achieve this outcome, the submission argues. AAP, understandably, argue that a distinction can be drawn between exclusive rights agreements, and the capacity of media organizations ability to prepare news report on sports events. Media Watch 20th Anniversary

ABCTV aired an anniversary one-hour special of Media Watch on 7 May called "Media Watch 20 Years". It's an excellent resource for those interested in monitoring the ethics and general performance of Australian media. The publicity for the program puts it this way: "Stuff Ups, Beat Ups & Barneys features some of the best, funniest and most important moments in the program's colourful history of over two decades."

There is a specific site linked to the Media Watch site featuring extended interviews with past presenters, and a selection of landmark programs: <http://www.abc.net.au/mediawatch/20th/> Who can forget the ACA's "The Paxtons", Today Tonight's "Barcelona Skase chase", "Safron and Ray Martin", Cash for Comment, Today Tonight's "Sluggo and the Single Mother", Brogden and the Daily Telegraph, or Alan Jones, 2GB and the Cronulla Riots.

* Public Broadcasting Funding

The ABC struck gold in the May budget proceedings, receiving the funding it had lobbied for, and then some. It gets \$167 million to create a new children's digital TV channel and to produce an extra 90 hours a year of Australian content. This is a boon to both the ABC and the independent production sector for an expanded slate of co-productions.

The new children's channel will be called ABC 3 and transmit from 6am to 9pm daily. The ABC also receives \$15.3 million over the triennium under a rural broadband scheme to deliver 50 local broadband hubs based around the ABC's extensive local radio network/websites 'that will involve community websites and portals to create a virtual town square, plus extra capital funding.' (Hudson, 'ABC the big winner as SBS gets the flick', Budget 2009, SMH, 13 May 2009).

The SBS on the other hand did not fare so well in the budget. It received only \$20 million, well below their \$200 million request. The latter amount seems disproportionate given the excellent mix of programming that the SBS puts out.

It was also announced in the budget that the Government would spend \$140 million over three years to help households get ready for the switch to digital TV.

*** About the Author**

Dr. Tim Dwyer is a lecturer in the Department of Media and Communication (MECO), The University of Sydney.

*** Contact Details**

E-Mail: tim.dwyer@usyd.edu.au

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