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With the installation of a Gillard ALP minority government on 7 September, following their freshly minted alliance with the Greens and independents, at this point we can only speculate how media policy in Australia will play out. But given the narrow margin of seats, the role of the independents, and the persistence of the conservatives, political pundits are suggesting lowest common denominator policy making will ensue. For major political economic policy concerns like media, it's likely that the path of least resistance will prevail.

Although Labor is on the record as not wanting to unscramble the Howard Government's repealed foreign, and watered down cross media, laws from 2006/2007, (and indeed have hinted at taking them further), the Greens as powerbrokers may signal an obstacle to any new laws leading to further media concentration. Arguably the best-case scenario is that the Greens' commitment to media diversity will moderate any attempts to fashion less diversity in Australia's media industries. Among other stated measures for media and communications policies, given the opportunity, the Greens would like to:

- repeal those parts of the Broadcasting Services Act which reduce diversity of media ownership and opinion within Australia
- ensure diversity of ownership and opinion by introducing a media-specific public interest test to guide Australian Competition and Consumer Commission (ACCC) decisions on proposed mergers and acquisitions of media entities
- strengthen diversity of media ownership by giving the ACCC the power to enforce the divestment of merged media companies where those mergers fail a media-specific public interest test
- provide sustainable funding for community broadcasting, including the change to digital technology

- make funding to the SBS and the ABC comparable to current per capita funding models for public broadcasting in the United Kingdom
- require the online services of the ABC and the SBS to be major portal sites for the promotion of Australian content in all genres
- introduce a ban on junk food advertising during children's television viewing hours
- ensure independent and transparent review of the ACMA website blacklist, and
- increase research funding into the opportunities for Australian content and utilisation of new digital media (Australian Greens Policy, <http://greens.org.au/policies/media-arts-science/media-and-communications>)

* **Free-to-air Networks Update**

Probably the most significant story since the last edition in the commercial TV space was the funding windfall gifted to the FTA networks by the Federal Government. Earlier in the year the government gave the commercial TV networks a \$250 million rebate on their licence fees (Chessell 'TV licences and siphoning make for a political minefield', *The Australian*, Business, 20 February). All, apparently, *gratis*? Senator Conroy has defended this largesse on the basis that tough economic times had reduced the ability of the networks to spend on locally made content. Yet the rebates came with no specific conditions or requirements. The decision was much derided at the time, as a clear case of pre-election pork barreling. Glenn Dyer, in 'Figures prove \$250m Free TV rebate to be a total crock', for *Crikey* (21 July 2010), argued this has now been clearly "exposed as a complete crock by the latest six month ad revenue figures, and a statement [on Friday 16 July] by ACMA, the broadcast media regulator." The networks' revenue figures for the year ending 30 June, indicated increases of up to 19% in metro markets, and around 14% in regional ones. 'Revenue for the half was \$1.821 billion nationally, compared with \$1.546 billion in the first half of 2009.'

On announcing the licence fee rebates in February, the Minister said that they would be 33% in 2010 and then go up to 50% in 2011, to ensure continuing investment in Australian content. While indisputably a worthy goal in the face of the dominance of US content in the Australian market, compliance figures released by the ACMA in June showed all networks had no difficulty in easily exceeding their Australian Content quota targets.

Other important policy decisions that are now more likely to be made with a re-elected government, concern the release of a revised anti-siphoning list and a decision on putting out to tender the government-funded Australia TV Network, currently run as an arm of the ABC. On the latter, there's been some commentary to the effect that the ABC's existing contract is likely to be rolled over (Lee, 'Media decisions pushed back beyond the election', *SMH*, Business Day, 16 July). News corporation has a lot at stake on both fronts, their 25%

stake in Foxtel Pay TV needs more sport for the hungry beast, and their 33% of Sky News would get a cash boost. So here we go again: no doubt they'll ramp up the lobbying and attempt to sweeten their bid for the \$20 million a year DFAT contract, hoping that those anti-government (and Greens) election headlines were not seen as being completely toxic.

* **NBN**

Jock Given's analysis of the Government's commissioned study into the viability of the NBN, titled 'Inside Conroy's Implement' and published in *Inside Story* (17 May), asks 'What does \$25 million worth of consultancy conclude about the NBN?' Given reports that the results of the McKinsey and KPMG study became the basis of a Joint Media Release by then Minister for Finance and Deregulation, Lindsay Tanner and now renewed Broadband Minister, Senator Conroy, ('Landmark Study confirms NBN vision is achievable and affordable' Joint Media Release, 6 May). He argues that the study will be giving the Government what they hoped, but goes further, taking the original FTTH proposal from 90% to 93% of premises, providing much more detailed costing analysis (including the possibility of a cost blowout scenario), and the likelihood that it will not be overly attractive to private investors.

With the re-election of an ALP government came more certainty that the NBN, previously under a cloud, would now proceed as planned. In 'Election result finally clears way for Telstra and NBN', Jennifer Hewett (*The Australian, Business*, 8 September) reported that the election decision meant that both the \$43 billion NBN and the structural separation of Telstra got the green light.

The importance of that structural separation for the Government's NBN project was highlighted too, by the ACCC's successful action against Telstra, with the Federal Court levying a fine to the tune of \$18.5 million for abuse of market power in the telecoms networking sector (including profit margins of 45% or more). John Durie makes the point that this is really only peanuts for a company reporting a profit of around \$3.9 billion (Durie, 'Naughty Telstra up to its Old Tricks Again', *The Australian, Business*, 29 July).

And the election decision has also brought considerable relief to the NBN Co. and its CEO John Quigley whose future was also uncertain before the outcome became known (Durie, 'Quigley can now get back to work on delivery a national broadband network', *The Australian, Business*, 8 September and 'New Lease of Life for Broadband', Kruger, *Sydney Morning Herald, Business*). Apparently, even though Quigley was celebrating in his North Sydney offices, "he will also have to re-draw his plans slightly. Part of the deal with the independents will be to build the network from the bush to the city" rather than the reverse. Tay and Crozier, writing in *ITNews*, in 'Industry relieved over NBN' (7 September) noted "Telcos, IT businesses and peak information industry

groups expressed relief after Labor returned to power in Canberra with the support of the Greens and key independents". Clearly this level of investment in the sector is inevitably a boost welcomed by many interests.

The Telstra side of the arrangement is of course critical to the success of the NBN. The Government announced – in a pre-election Media Release in June – that it welcomed “the announcement by Telstra and NBN Co that they had entered into a Financial Heads of Agreement.” Although there is a great deal that remains subject to negotiations, the purpose of this ‘first step’ Heads of Agreement, it was claimed, was to set the broad terms for “the reuse of suitable Telstra infrastructure, including pits, ducts and backhaul fibre, by NBN” and “the progressive migration of customers from Telstra's copper and pay-TV cable networks to the new wholesale-only fibre network to be built and operated by NBN Co.” (Joint Media Release by the Prime Minister, and the Ministers for Finance and Deregulation, and Broadband, Communications and the Digital Economy, 20 June 2010). The MR also noted that “Australia's largest telecommunications company, Telstra, will become a participant in the rollout of the NBN, and is likely to become NBN Co's largest customer.” In effect, the Government is paying Telstra \$11 billion to buy their network infrastructure, absorb their customer base, and merge Telstra into the NBN.

Valuing Telstra Corporation at approximately \$9 billion the Government claims it will contribute another \$2 billion in its efforts to:

- Establish a new entity, USO Co with Commonwealth funding of \$50 million in 2012-13 and 2013-14, increasing to \$100 million per annum thereafter. The remaining funding that USO Co requires will be contributed by industry, as it is now with final arrangements subject to industry and stakeholder consultation;
- Provide \$100 million to Telstra to assist in the retraining and redeployment of Telstra staff that will be affected by this very significant reform to the structure of the telecommunications industry; and
- Require NBN Co to be the wholesale supplier of last resort for fibre connections in greenfield developments from 1 January 2011 (Joint MR, 20 June 2010).

Giving the go ahead to the NBN is an outcome that will be met with approval by the smart money who, like the rest of Australia, were facing the prospect that the Abbott coalition would cancel the NBN rollout (‘Coalition rule would cancel NBN rollout’, *The AustralianIT*, 4 May).

Researchers Ben Eggleton and David Moss suggest: ‘The country can’t face the technological future through the copper wire’ (*SMH*, 16 August). They argue that optical fibre will pay for itself, stimulate the innovation economy, and have multiple applications. And they ask: “How do we know this? Because we are scientists who are working right now to create the photonic and optical systems that will be installed in your home for the next 50 years.” And they make a

persuasive argument. But it's clear that the NBN debate has a long way to go, and since the re-election of the ALP minority government, in a concession to the power broking independent members of parliament, the Government has already promised to build the NBN from the 'outside in'. That is, beginning with underserved rural areas first, not the big cities as originally planned. Senator Conroy has defended this position, arguing that the NBN rollout was always about deploying a mix of metro, rural and regional broadband services (*ABC RN, Breakfast*, 13 September).

* **The Australian Communications and Media Authority (ACMA)**

The ACMA research section has released an update of their *IPTV and internet video delivery models: video content services over IP in Australia* (June, 2010). The report provides useful data and discussion in relation to changing service delivery taxonomies and usage patterns, arguing this will have important implications for content owners/providers, distributors, broadcasters, network owners and regulators.

As part of the ACMA's current research program, the agency has produced two interesting and complementary occasional papers which discuss contemporary media regulation: *Citizens' and the ACMA – Exploring the concepts within Australian media and communications regulation* and *Optimal conditions for effective self- and co-regulatory arrangements* (ACMA, June 2010).

The 'Optimal Conditions' paper surveys ten 'optimal conditions' for self and co-regulatory arrangements, and could be usefully read in tandem with an ACMA-commissioned research paper, released in June 2009, prepared by Professor Lesley Hitchens, titled *International Regulation of Advertising, Sponsorship and Commercial Disclosure for Commercial Radio Broadcasting*. While the Hitchens' paper has a quite narrow focus on regulation of the commercial radio sector in a number of overseas jurisdictions, the comparative international approach it takes renders it a useful benchmark study. By asking the whether "co-regulation is the optimal solution", the ACMA sensibly infer that in different contexts lighter (self-regulation) and even more interventionist (legislative) models will (sometimes) be required in regulating the media and communications industries. However, it's the lighter end of the intervention continuum that receives the lion's share of discussion in the paper. It's argued that scanning relevant 'environmental conditions' (such as the number of market players and the kinds of products offered) and 'features of the regulatory scheme' (are the objectives defined in law, the government or the regulator), provides a useful diagnostic framework for assessing costs, benefits and wider regulatory needs.

The Citizens paper presents a framework to facilitate a reanimated focus on the notion of 'citizenship' in the context of the delivery and regulation of media and

communications. Tapping into a venerable, but sadly lacking idea in media policy debates in recent years, this occasional paper harks back to the seminal work of T. H. Marshall in his 1950 book *Citizenship and Social Class*, which has been influential on various strands of social policy, including half a century of media and communications policies framed in public interest terms. For Marshall, taming the excesses market forces was an important pre-condition for a just society. In a time when neoliberal ideologies dominate a great deal of our public policy thinking, including media policy, it's curious when these kinds of ideas return *Mary Celeste*-style, even if it is only "a starting point for considering the ACMA's role relating to citizens" (*ACMASphere*, Issue 55, August). It appears that the ACMA are doing a local interpretation of the UK's Ofcom's policy work on citizenship; except that in the UK's case the notion of citizens/citizenship was intentionally written into its *primary* legislation on the creation of the UK's new convergent regulator in 2003. The ACMA proposes to activate their brand of 'citizen filter' in terms of service delivery, encouraging active citizen contribution; regulating in the public interest, and, educating informing and advising citizens.

* **Finally**

Speaking of filters, in the lead up to the Federal Election, Minister Conroy announced the Government's new strategy for their controversial mandatory internet filtering proposal. Bernard Keane, in 'Conroy's change of tack: make us pure, but not yet' (*Crikey*, 9 July), notes the window-dressing that apparently the Government hopes will soften the public's attitude to the proposal.

The new approach is proposing to have the OFLC undertake decisions on whether sites get added to the blacklist, rather than the ACMA; site owners will be told if they make it onto the list; 'block notices' will need to be displayed on affected sites; RC decisions by the Classification Board, like those for other media, will be appellable; there will be an annual review of the list, and the blacklist will not be made public. Keane comments that the key announcement was that the Government is to undertake a review of the RC category to be completed by the end of 2011, under the direction of 'an eminent person', to see whether it is meeting 'community standards'. This new strategy for net filtering regulation takes the heat out of what many internet industry experts regarded as a pretty clunky regulatory approach that has seen two major ISPs, Internode and TPG, refusing to co-operate with the Government (*Quicklinks*, August, 2010).

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