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It looks like 2011 is going to be a year of ongoing consolidation in Australia's already highly concentrated media landscape. When you distil this down, basically a smaller number of the usual suspects will own and run the media in this country. Media diversity means a cake divided up among the Murdochs, Kerry Stokes, James Packer, the Gordons, and the private equity-controlled Nine and Fairfax. As Bernard Keane points out in 'Our Fast Vanishing National Media Diversity', the first four of those listed are often acting "in concert" in various media outlets to further reduce the total number of voices. (*Crikey.com*, 16 November 2010). To this situation we must add the new arrangements at Network Ten, with Lachlan Murdoch seated at the board table with James Packer. (See the ACMA's media controller's database http://web.acma.gov.au:80/rcmg/mcdIndex.htm). There was considerable media trumpeting when Packer led a $250 million charge back into commercial FTA television last October. (Chessell & Kitney, 'Packer Swoops on Ten Network', *The Australian*, 20 October, 2010; and Shoebridge, 'Packer's surprise $250 million raid on Ten', *The Australian Financial* Review, 20 October, 2010).

As a result of Murdoch's controlling interest in DMG radio licences around the country, "Murdoch's arrival at Ten will reduce the number of registered media groups under the cross-media rules by one in each mainland state capital (a registered media group is anyone who controls either a single, or groups of, radio licences, TV licences and large newspapers, and there must be five registered media groups in each mainland state capital)." (*Crikey.com*, 16 November 2010). Based on this analysis, in Perth with the number of registered media groups falling from 6 to 7 with Murdoch's new interest in Ten, it would take only one more cross-media transaction to reach the minimum of five (5) registered media groups in capital cities.

The same situation would apply in Adelaide. With a merger still not out of the question between Southern Cross Media Group Limited (with their radio stations in 44 licence areas) and Austereo with national radio networks, Today (including *Breakfast with Kyle and Jackie O* around the country), Triple M and two joint venture stations in Canberra and Newcastle), to create the dominant commercial radio group, diversity will be further cut back in some metropolitan and regional markets. (Tim Dick, 'Southern Cross shareholders don't buy the argument', SMH *Business Day*, 2 February, 2011).

*** Convergence Review**

Fewer owners and controllers of our media is particularly significant in light of the mounting evidence which points to online media being dominated by the old media players. A 'Convergence Review' is now underway, but it may not be until 2012 that any actual law and policy reform emerges. Conroy and his Department of Broadband, Communications and the Digital Economy (DBCDE) signaled the review over 12 months ago, and by April 2010 Conroy had earmarked some likely targets including the 75% commercial television networks audience-reach rule. Aimed at maintaining media diversity at a national level, he argued:

[a]s we move into high-speed broadband and TV stations start streaming their content live, I just don't think that that 75 per cent reach rule can survive. The technological change is going to wash over the top" (Lester and Sharp, 'Conroy signals shake-up in TV ownership rules' SMH, *Business Day*, 2 April 2010.)

Removal of this rule may precipitate consolidation between metropolitan commercial TV networks and regional commercial TV networks Prime, WIN and Southern Cross. A reassessment of the rule has been on the cards because of the growing popularity of online catch up services now offered by Nine (Fixpay) and Seven (Plus 7) and the rollout of the NBN. An industry-wide Freeview catch-up service (with embedded Electronic Program Guide) is still a possibility despite these existing network services and Nine's MOU with the US Hulu portal (Lee, 'Freeview says industry-wide catch-up service not dead yet' SMH, *Business Day*, 4 February 2011).

The challenge for the Government will be to not take the predictable line and consign updating Australian and local content, and structural diversity in the media to the 'too hard' (read 'our media mates wouldn't like that') basket. In a submission I have prepared with colleagues at the University of Sydney we argue that industry restructuring and parallel changes to audience access and consumption practices call for the development of new diversity rules by all democratic governments, not that they be irresponsibly abandoned.

These new media technology developments will be under the spotlight in the DBCDE review. Submissions on the review's draft Terms of Reference closed on 28 January 2011. Many key industry stakeholders and commentators have made submissions to the wide-ranging review which "intends to fundamentally review the policy and regulatory frameworks that apply to the converged media and communications landscape in Australia." (See Terms of Reference, Background Paper and submissions see DBCDE's review pages at htpp://www.dbcde.gov.au /convergence).

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

As I reported in the last edition of the AMM, the government gifted the commercial TV networks a $250 million rebate on their licence fees over 2010 and 2011. This largesse was explained away in terms of the high costs of the digital conversion and compliance with the production of Australian content. The almost 20% acquisition in Network Ten by James Packer and Lachlan Murdoch has clearly put paid to those kind of 'unprofitable old media' arguments. Ten's switching on of the new digital channel 11, their renewed investment in news and current affairs programming, and the anticipated economies that will flow from more liberalized anti-siphoning rules, all point to ongoing profitability.

Another sign of the resilience of FTA networks are the reported industry discussions of an automated trading for selling airtime. A coalition of buying agencies is apparently going to call a tender this year for an electronic system for the $3.8 billion commercial TV industry. The suggestion is that with the launch of new digital channels there is renewed demand for a more efficient way of managing the time and labour to plan and book ads in the growing digital television space. Industry stakeholders are looking at comparable electronic systems in other industries, including the airline sector and stock exchanges. (Lee, 'Automatic trading is on the cards', SMH, *Business Day*, 4 February 2011).

*** NBN**

The NBN rollout will continue to be at the heart of many elements of media and communications policy over coming years. The way the convergence review figures the role of the NBN within Australia's media and communications landscape will have long term consequences for the future availability of content, and the important shaping role of regulatory supervision put in place by the Government for Australian audiences. On the other hand, the ACCC in a report to the Federal Government has forced NBN Co's hand to redesign it's 'points of interconnection' (POI) for competitors using the wholesale access network: recommending 120, rather than the 14 NBN Co. suggested in their recently released business plan (Battersby, 'ACCC forces NBN Co to Change Plan', SMH, *Business Day'*, 21 December 2010). It is worth noting that the US Federal Communications Commission (FCC) in their current review of ownership rules is exploring links to broadband planning goals, asking the question "How does access to broadband affect our diversity goals?" (FCC, *Ownership Review*, 25 May 2010).

The NBN debate is now on the radar in ways that could not have been fully anticipated. The Queensland flood and cyclone devastation means that previous promises to build the NBN from the 'outside in', that is, beginning with underserved rural areas first, not the big cities as originally planned, will no doubt need some tweaking.

In fact, the NBN has become the Federal Government's main legislative priority for the first parliamentary sittings, ahead of its proposed new flood levy laws (Ryan, 'NBN tops as legislative priority', *The Australian*, 2 February 2011). Predictably, the opposition is making a great deal of political mileage out of these priorities, saying that the NBN funding (valued at around $27.5 billion in government funding) should be ditched in favour of post-flood and cyclone reconstruction. In this context the Communications Union National Secretary, Peter Tighe, makes a useful point:

Why would Telstra go back in and put in the old copper cable when you can put in fibre optics, which is going to assist the businesses in those areas?" (Hall, 'Union Slams Call to Ditch NBN for Flood Recovery', *ABC Online News*, 21 January 2011).

Presumably the government and NBN Co will be taking these disasters into account during their new infrastructure rollout plans.

It's reported that Telstra has reached agreement on the key commercial features of its deal with the NBN, to formalise the earlier non-binding heads of agreement. The deal would see the former monopolist receive $11 billion for handing over its copper network customers to the NBN's fibre network, and giving NBN access to Telstra's underground pipes and ducts for 20 to 30 years (Battersby, 'Telstra rushes to seal NBN Co deal before half-year results', SMH, *Business Day*, 8 February 2011). This was confirmed by Ministerial Media Release.

Signing this deal was a much more upbeat news story than the media coverage of Telstra's directories (Sensis) copyright loss in the Federal Court on 15 December. The appeal court unanimously dismissed Telstra's appeal from an earlier copyright decision which found that listings in the *Yellow Pages* and *White Pages* directories were not protected by copyright because they were not "independent intellectual effort" (*Lexology*, 'Telstra Copyright decision to affect owners and users of directories databases and listings', 16 December 2010; *Telstra Corporation Limited v Phone Directories Company Pty Ltd* [2010] FCAFC 149). The court commented that while automated, computerised database production processes may contain traditional "sweat of the brow' elements, this was no substitute for the originality needed to show that copyright subsists in this work. The High Court made a similar finding in favour of Ice TV in April 2010, that it had not infringed Nine Network's copyright by using Nine's public TV guide listings (Battersby & Lee, 'Telstra sees red over directories copyright judgment'; and Maiden, 'Directories judgment opens a Pandora's box on copyright laws', SMH, *Business Day*, 16 December 2010). Telstra has since filed an application seeking special leave to appeal to the High Court in the directories case. (*Lexology*, 'No Copyright in Telstra's telephone directories', 7 February 2011).

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

In October 2010 Stephen Conroy, the Minister for Broadband, Communications and the Digital Economy, announced the reappointment of Chris Chapman as Chair and the appointment of Richard Bean as new Deputy Chair of the ACMA. At the same time he announced that the ACMA has three new part-time members: Louise Benjamin, Reg Coutts and Hugh Marks. All bring very relevant experience – Bean from Unwired, and before that Network Ten, Benjamin previously Deputy Chair of the Australian Publishers' Bureau, Professor Coutts is a telecommunications policy and regulation expert, while Marks was previously CEO of the Southern Star Group. (*acmasphere*, November, 2010).

In other developments, ACMA has released a series of consultation papers in relation to the 'Numbering Plan'. Arcane as that may sound, the way service numbers are allocated in the telecommunications sector has become an important issue in an increasingly convergent communications environment. The papers are intended to begin an important conversation with industry about the best ways to move forward. This is being prompted by large scale trends which are seeing consumers transitioning to VoIP and other electronic messaging, using more capped plans and bundled services, and thus reducing the prominence of distance-based charging regimes. (*acmasphere*, November, 2010).

ACMA has released new research into consumer usage of mobile premium services: The *Mobile Premium Services User Survey 2010* and *Community Research into Attitudes Towards Use of Mobile Payment in Australia*. The purpose of the research is to inform regulatory safeguards in this important area of consumer communications. The research is important because mobile premium services tend to be payment mechanisms for accessing digital content and interactivity with other services (such as mobile TV). The ACMA argue that such services "can be viewed as the starting point for the evolution of more sophisticated and transparent models of mobile electronic payment which may replace mobile premium services in the long-term." (*acmasphere*, November, 2010). The research indicates strong consumer interest in making payments using mobiles, but equally, expectations over security and anti-fraud measures if bank-level trust is to emerge.

Related research arising from the annual consumer survey, published as *Consumer engagement in e-commerce* shows 88% of Australian household internet users have undertaken one or more e-commerce activities in the last six months. The most popular activities are travel goods and services (56%), event, concert or movie tickets (43%) and household goods including furniture, electrical appliances and computer equipment (37%). In broad terms, the research indicates that e-commerce activities are influenced by age, gender, household income, level of education and employment. These papers are available via publications and research at http://www.acma.gov.au.

The ACMA has held public hearings in Sydney, Melbourne, Adelaide, Townsville and Launceston for the *Reconnecting the Customer* inquiry it commenced earlier in 2010. The inquiry is, based on the high levels of complaints, a long overdue 'fact-finding' investigation into the state of the telecommunications industry with submissions from individuals and consumer advocacy organisations, industry organisations and representatives. Australian's high level of consumer dissatisfaction, as seen in the volume of complaints about billing, internal dispute resolution procedures and difficulties in dealings with call centres are strong themes. A draft inquiry report is due for release in February 2011. (*acmasphere*, December 2010).

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