Communication and Media Policy Institute

UNIVERSITY OF CANBERRA

SUBMISSION TO THE PRODUCTIVITY COMMISSION INQUIRY INTO THE BROADCASTING SERVICES ACT 1992

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Franco Papandrea is Associate Professor of Communication and Director of the Communication and Media Policy Institute at the University of Canberra. He has more than 25 years' experience in research and policy analysis much of it with a focus on media and telecommunications issues. As a Research Leader in the former Bureau of Transport and Communications Economics, he led many major research studies on media regulation and policy issues and was the principal author of several major reports and papers. He is the co-author of the recently published Institute of Public Affairs monograph *Media Regulation in Australia and the Public Interest.* He has published many articles on media issues in economic and policy journals. In 1991-92 he was the principal adviser to the House of Representatives Select Committee on the Print Media. Currently, he is also an Associate Editor of *Agenda*, a journal of policy analysis and reform, and has held a Visiting Research Professorship, in the Faculty of Business, University of Alberta, Canada, for the past three years. He has a BE and an MBA from the University of New South Wales and a Grad Dip Ec and a PhD from the Australian National University.

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SUMMARY

Broadcasting services are subject to extensive regulation. Many of the current regulatory mechanisms act against the public interest, which they purport to serve. Few of them pass the standard two-part test for justification of government intervention in a market, namely that the market fails to produce an efficient outcome and the benefits of intervention exceed the costs. But even where intervention is justified by the existence of market failure, the adopted intervention mechanisms have seldom been the most effective and efficient available.

Technological developments are having an enormous impact on broadcasting and will completely transform the way the industry operates. Spectrum scarcity will disappear and much of the current regulation will become redundant and ineffective. While it may not be possible to eradicate the legacy of past policies, inefficient mechanisms should not be allowed to hinder market solutions and the development of efficient industry structures.

Planning and Licensing Regulation

The present size, structure and performance of broadcasting services would have been much different had entry into broadcasting not been constrained by overly restrictive spectrum planning, licensing and delayed introductions, or in some cases outright bans, of new services. Many of the entry restrictions have been motivated by a desire to protect the commercial viability of incumbent broadcasters. Why broadcasters merit such special protection from competition is not readily apparent.

There is no evidence to suggest that society would not be better served by freer entry to the industry. With freer entry, of course, there is always a risk that some ventures will fail. But this should not be a cause for concern. If the market was only able to sustain the current number of services, then that number would prevail, but competition would ensure that the most efficient operators would survive and provide the best possible service to society.

There is no justification for regulators to use their judgment to outguess the market on whether additional services will be commercially viable. Where public interest grounds, including spectrum scarcity, justify restrictions on entry, a market mechanism should be used to allocate the available licences.

There should be no artificial constraints on entry into broadcasting. Considerations of the viability of commercial services, in particular, should be left entirely to the market to determine. A market price mechanism should be used to allocate without delay all the available channels to those who value them most.

Commercial broadcasting licences are issued for a nominal period of five years, but renewal is virtually automatic on payment of the appropriate fee. In the absence of unconstrained entry into the industry, all licences should be allocated for an enforceable fixed period of time by a market mechanism, such as an auction. At the end of the licence period, the same mechanism should be used to re-allocate them to those who value them most.

The current approach of licensing both the carriage and content of a broadcasting service as a single entity effectively precludes competitive re-allocation of licences when they expire. When carriage and content are combined, the risk of not being able to secure renewal of a licence may undermine adequate investments in transmitters and other carriage infrastructure. Separation of carriage and content eliminates that risk and is particularly relevant in a digital environment where a single 7MHz channel can carry several different services.

In the absence of free entry into broadcasting, separate licences for carriage and content of services should be issued via a market price mechanism. The licences for content should be for enforceable fixed periods and on expiry should be re-allocated in the same manner. Consideration should be given to extending the arrangement to existing services after an appropriately sufficient period of notice to existing owners to divest themselves of either the carriage or content element of their current licences.

Technological neutrality is a necessary condition for efficient, non-distorting regulation to ensure that investment decisions are driven by market incentives and not by regulatory impact. Avoidance of unequal impact on different versions of the same service is particularly important in an environment of rapid technological change.

When regulation is justified, considerable care should be exercised to ensure that it is technologically neutral in its application and is directed to outcomes irrespective of the technology platform used to deliver them.

It is probably too late to undo most of the non-competitive and distortionary elements of the recent decision on the introduction of digital broadcasting. It may be possible, however, to retrieve those elements of the decision that have not yet been fully settled. It is becoming increasingly unlikely that HDTV will be the potent driver for consumer demand anticipated by the government and the commercial television operators at the time the digital conversion decision was made. Indeed, one of the major television networks is now calling for a change.

An unconstrained definition of datacasting and the removal of the ban on multichannelling would be likely to provide greater benefits to society than compelling all current commercial broadcasters to supply HDTV. To implement such a proposal, incumbent operators could be given the opportunity to withdraw from the current requirement to use their allocated 7MHz digital channel to broadcast in HDTV. Those choosing to withdraw from the requirement should be entitled to retain the use of a standard definition digital channel in addition to their analog channel during the prescribed simulcast period. All the spectrum thus released, together with currently unallocated spectrum, should be allocated by auction and no constraints should be

placed on its use. Separate licences should be issued for carriage and content. All non-HDTV content services should be made subject to the same licence conditions and program provisions, including Australian content, as are applied to analog channels.

The digital conversion decision should be reviewed to remove non-competitive provisions to the fullest extent possible.

Ownership Controls

Most of the major structural changes that have occurred in the industry can be traced to changes in the provisions regulating ownership of media assets. None of the previously imposed controls of media assets have been successful in creating an efficient industry structure and there is no reason to believe that the current set of regulations has been, or is likely to be, any more successful.

Ownership regulations have not delivered anticipated benefits of improved diversity of opinion. They hamper the development of efficient structures exploiting economies of scale and scope, prevent the formation of multi-media groups, and give incentives to the creation of arrangements designed to circumvent the restrictions. The non-economic case for ownership restrictions is weakened by technological developments and new services promising to deliver increased diversification of the media. Freer entry into broadcasting will also promote greater diversity of ownership.

The primary effect of the audience reach limit for television stations under common ownership has been to prevent the formation of single-owner national networks. At the same time, the restriction has produced little, if any, benefit in terms of media diversity as stations have been able to affiliate with the major groups to form virtual national programming networks. Removal of the reach limits should not produce a loss of diversity, but is likely to lead to improved efficiency.

No limits should be imposed on the population reach of television stations with common ownership.

There is little evidence that cross-media rules are justified by objective analysis of their impact on media diversity. In the longer term, the anticipated growth of new media services, particularly if current restrictive entry policies are discontinued, will provide substantial increases in the diversity of media outlets. Under those circumstances, the case for special restrictions above those imposed by the Trade Practices Act is weak and will get weaker with the passage of time. However, some sections of the community would be likely to have fears that increased media concentration could flow if media mergers were subject only to general competition rules. Special provisions, therefore, may be necessary at least in the short term.

Mergers and acquisitions involving major media groups coming under the purview of the Australian Competition and Consumer Commission should be subjected to a public interest test that takes account of the impact on:

- ***diversity of sources of opinion; and***
- ***the economic viability of the entity if the merger or acquisition does not proceed.***

Foreign ownership restrictions are based on outmoded nationalistic concepts and do not appear to serve a useful function. Their removal would expand the pool of potential investors in Australian media and would be likely to produce greater diversity of ownership of media assets.

Restrictions on the foreign ownership of Australian media assets should be removed.

Program Regulation

Some Australian content regulation of television programs would appear to be justified because market supply tends to be below an efficient level and indications suggest that the cost of the regulation is commensurate with the value of benefits accruing to society. Some of the instruments used to regulate for Australian content, however, have proved to be inefficient and should be amended or replaced by more efficient ones.

Of the existing instruments, the quotas for Australian documentaries, for Australian advertisements and for overall transmission of Australian programs appear to be the least effective. The documentaries and advertising quotas have no noticeable impact on the behaviour of stations and appear to be redundant. The administrative procedures associated with these quotas, however, add unnecessary administrative costs to the broadcasters and the regulator. The administrative cost of the advertising quota, including the cost of administering the classification scheme to determine the national provenance of the advertisements, are substantial.

Quotas for Australian documentaries and Australian advertising do not serve a useful purpose and should be abolished.

Many of the domestic programs included in the current programming schedules of stations would continue to be supplied even in the absence of the transmission quota. Programs such as news, current affairs and sports not only have a large element of natural protection from imports, but also enjoy a high level of popularity among viewers and are profitable to stations. The supply of entertainment programs may be below optimal level without market intervention. Inclusion of all programs in a quota that affects only some of them is clearly not well focused. Exclusion of programs that are highly likely to be supplied anyway would allow the intervention to focus on those programs that are more likely to contribute to the cultural objective of the regulation and that would not be supplied in sufficient quantities without the intervention. In this context, the European approach of determining transmission quotas as a proportion of the air-time devoted to entertainment programs that compete directly with imports may have some merit. Making such a quota transferable between stations would also improve its efficiency.

Transmission quotas should apply only to programs unlikely to be supplied at optimal levels in the absence of regulation and the quotas should be tradeable between stations.

The adult drama quota imposes a considerable cost and its operation is less than efficient. Its tendency is to encourage the supply of low-cost domestic drama of questionable cultural value and of low appeal to audiences. The replacement of the quota with a production subsidy scheme would enable better targeting of the assistance to programs more likely to deliver the cultural objective of the regulation and more likely to reflect audience preferences. The use of a licence fee levy to finance the subsidy would ensure that commercial broadcasters retain their current obligation to pay for the supply of Australian drama.

The adult drama quota scheme should be replaced by production subsidies financed from a licence fee levy.

Children's programming represents a difficult problem for regulatory authorities. Commercial broadcasters clearly see it as a cost burden and try to minimise its impact on their profitability. Quality of commercial programming is often poor and so is its value to children. The ABC, on the other hand, has had substantial success with the production of children's programming. One possible solution to improve the provision of children's programming might be to relieve commercial stations from the responsibility of transmitting it but not from the obligation to fund it. Commercial broadcasters could be required to pay for funding of children's program at the same rate they do presently. The funding should be provided to the ABC, which together with its own current funding of children's programs, could apply to set up and finance an exclusive channel for children. The ABC should be allowed to use the multichannelling capacity of its digital channel for this purpose.

The ABC be required to set up an exclusive children television channel funded from its own resources and by a levy on commercial broadcasters.

The unstated assumption underlying the above proposals is that the industry environment will not undergo major change. While this may be a reasonable assumption in the short-term, it is clearly untenable in the medium- to long-term. Communications technology is undergoing rapid change and the pace of change is expected to increase. The television market is already changing and will continue to do so. This raises important questions for cultural policy at the national level. Given that some elements of the current Australian content regulation benefit society, appropriate policy instruments may need to be developed to ensure that the benefits will continue to accrue in the new environment.

SUBMISSION TO THE PRODUCTIVITY COMMISSION INQUIRY INTO THE BROADCASTING SERVICES ACT 1992

1. INTRODUCTION

Australian broadcasting policy has always been surrounded by controversy. Its history is dominated by powerful individuals seeking private gain and by governments more concerned with safeguarding political interests than promoting the public interest. Thus, many of the current or earlier media policies fail the standard two-part test for justification of government intervention in a market, namely that the market fails to produce an efficient outcome and the benefits of intervention exceed the costs. Even where market failure has been established and the need for intervention justified, more often than not the adopted mechanisms have clearly not been the most effective and efficient available.

In a recently published monograph, Albon and Papandrea (1998) identified four guiding principles for the evaluation of broadcasting regulation:

> "(1). Regulation should be retained or introduced only when correction of market failure is strictly necessary and justified or to achieve a clearly identified social goal whose benefits to society clearly outweigh all the cost associated with the regulation.
>
> (2). Regulation should be based on a clear, well-defined, transparent and predictable framework.
>
> (3). Regulation should be directed to outcomes and not to the way in which the outcomes are generated or delivered.
>
> (4). Regulation should be neutral in its impact on delivery technologies and on services with substantially similar attributes." (pp. 81-82)

The proposals put forward in this submission are based on these principles. It is also noted that these principles are consistent with the guidelines that have been set for the Productivity Commission by the Terms of Reference for this Inquiry.

The Productivity Inquiry provides an excellent opportunity to develop an efficient framework for future broadcasting policy. Communications technology is undergoing rapid change and the pace of change is increasing. Technological developments have already had an enormous impact on broadcasting. Broadcasting is at the early stages of conversion from analog to digital delivery and in a few short years we will have the means to completely transform the way the industry operates. Spectrum scarcity, the ostensible justification for most of the current regulatory instruments, will disappear. Other means of delivery will also become more widespread. And, in most instances, regulation will become redundant and ineffective. In the face of such change, the report of this Inquiry has the potential to become a most important guide for the policy changes needed to assist the transition of the industry to a deregulated environment.

While the industry will undergo considerable change, it will be virtually impossible to eradicate fully the legacy of past inefficient policies. For example, rectification of inefficient spectrum planning and licensing procedures of earlier eras would be inordinately costly to implement. Wherever possible, however, past policies should not be allowed to constrain future efficiency. In particular, in the current environment of rapid and possibly unpredictable technical change, it is especially important that policies

that hinder the efficient development of market solutions should be rectified or removed.

This submission addresses three principal areas of broadcasting policy, namely:

- planning and licensing;
- ownership and control; and
- Australian content quotas for television programs.

Each of these three areas is addressed in a separate section of the submission, and each section concludes with a set of recommendations for consideration by the Commission. The general thrust of the proposals that are put forward is to favour market solutions wherever there is a likelihood that the market will work. Wherever intervention is justified, to the fullest extent possible its function should be restricted to the correction of the identified market failure and everything else should be left to an otherwise unfettered market to resolve.

2. PLANNING AND LICENSING

Planning and licensing of over-the-air broadcasting services is dictated by spectrum scarcity and by the need to avoid interference between stations. This function is currently performed by the Australian Broadcasting Authority (ABA). In principle, this is primarily a technical function, which when properly exercised, promotes efficient use of resources. However, there is an associated danger that it may be misemployed as a *de facto* economic control of the structure of broadcasting markets. The history of Australian broadcasting planning is full of examples of restraints to market development such as unnecessarily high technical standards, inefficient use of spectrum, arbitrary geographic allocation of the available spectrum, arbitrary limits on the number of services in any one area and outright bans on the introduction of new services. Unfortunately, restraints of this kind have continued to be put in place right up to the present time.

Allocation of Channels

Frequency allotment and planning is essentially a partitioning problem. The number of channels available in any one area is determined by policy considerations on the distribution of services and by the technical criteria and methods adopted to avoid interference between services.

Generally, the same analog channel may be used by services in different areas provided they are sufficiently separated geographically to prevent their signals from interfering with each other. The separation distance between services using the same channel is determined by the power of the transmitter, the radiated pattern of the signal, the locations and heights of the transmitting antennas and the topography between the antennas. All these factors may be adjusted to maximise intensity of re-use of the same channels at different locations. There is also a need to avoid interference between adjacent channels because receivers have difficulty distinguishing between channel frequencies that are not sufficiently separated in the frequency spectrum. Typically, two stations transmitting to the same areas have at least one free channel between them. However, the use of directional transmitting antennas and other technical separation techniques will allow greater intensity of use of adjacent channels. Digital transmission is largely unaffected by these types of interference problems.

Having determined the number of available channels with the chosen set of technical standards, the ABA then sets about allocating the channels geographically and among the competing uses including commercial services, national services, community services and narrowcasting services. The criteria used to evaluate trade-offs are not transparent. The allocation appears to be based on some notional criterion of equitable geographic distribution of channels and within each locality on equitable distribution among competing uses. For example, the analog television plan provided for six wide-coverage channels throughout Australia, including regional and remote areas, and the VHF-FM radio plan distributed channels as follows:

- 16 wide coverage channels in mainland State capital cities;

- 12 wide coverage channels in 'main cities' such as Canberra, Hobart, Darwin, Gold Coast, Newcastle and Wollongong; and
- 8 wide coverage channels in regional and remote areas.

It is unlikely that such an arbitrary formulaic planning approach will lead to an efficient allocation of channels (i.e., each channel allocated to its most valuable economic and social use).

Licensing superimposes additional controls on the number of services in a market. The availability of a channel in a given locality is only a precondition for a service. The extent to which the available channels are used to provide services and timing of licensing of new services are both at the discretion of the regulator. Again the criteria used to decide the number and timing of new service licences are not clear. In the past, regulatory authorities have been required to make judgements even on matters such as the assessment of commercial viability of broadcasting services which are more appropriately in the province of markets to make.

Once plans are established and services begin to be deployed accordingly, changes to spectrum allocation are difficult to implement. Considerable care, therefore, should be exercised to ensure that allocations retain as much flexibility as possible to respond to changes in market demand for services. Arbitrary allocations that provide for equal number of channels in all State capital cities, for example, seem to have little regard for actual and potential differential demand in those cities. Similarly, exclusive reliance on the use of channels to in-fill broadcast signals in areas of poor reception without concern for the associated opportunity cost of forgoing their use for the provision of additional services, suggest a less than efficient use of resources. Alternative means of ensuring the supply of an adequate service to the relatively few residents in weak signal areas have seldom been considered. For example, in many cases the cost of installing high gain antennas or of cable reticulation of off-air signals to improve reception by the affected few would have been much less than the value of the benefits of providing additional services to larger numbers of people.

Technological Neutrality

Technological change can also have a sizable impact on planning and licensing. The high cost of rectifying ill-considered decisions, such as the use of the FM band for television services, vividly illustrate the enormity of the consequences of poor planning. Furthermore, technological convergence is blurring the boundaries between different types of services. The same service can now be supplied using different delivery platforms (e.g. over-the-air broadcasting, cable, microwave, satellite, etc.). Traditional licensing policies using technology to differentiate between services are thus becoming increasingly difficult to sustain. This was partially recognised by the *Broadcasting Services Act 1992* (BSA), which sought to establish a technologically neutral framework for the continuing development of broadcasting. The adopted framework was somewhat narrow in scope, however, and continues to rely on different rules for different media (free-to-air and pay television) or for differently defined elements of the same medium (narrowcasting and broadcasting).

Although the BSA made a useful step forward with respect to technological neutrality, the government appears to have been unwilling to put the concept into practice. Two landmark decisions in broadcasting made since the BSA was introduced in 1992 have both ignored the concept of technological neutrality. The decisions on the introduction of pay television and digital broadcasting have major implications for the structure of the broadcasting industry and, for different reasons, both have imposed technologically prescriptive solutions favouring particular interest groups rather than orderly market developments.

In 1992, in order to make the sale of the financial troubled domestic communications satellite, AUSSAT, the government decided that pay television was to be introduced with the satellite as the carrier. The satellite pay television service had a very limited capacity of ten channels and envisaged two commercial licensees with four channels each and the remaining two channels being set aside for services supplied by the Australian Broadcasting Corporation (ABC). No additional satellite licences were permitted until 1997. Initially, the use of other delivery technologies was not restricted. When an entrepreneur accumulated microwave spectrum licences with the intention of using them for the delivery of pay television services, the government amended the legislation to prohibit such services until after the scheduled start of the satellite service. In the event, technical problems with the development of appropriate standards delayed the start of satellite delivery, which was further undermined by the roll-out of broadband cables for the delivery of communication services including pay television.

The more recent decision on the introduction of digital television represents an even greater departure from the concept of technological neutrality. The decision mandates the introduction of high definition television (HDTV) and the allocation of a 7MHz channel to each of the existing free-to-air operators. The use of the spectrum for multichannelling or subscription television was prohibited (with a review in 2005). Provisions were also made for the introduction of datacasting services, but what constitutes such a service is yet to be defined.

The decision is overly prescriptive and almost totally ignores market forces. There is no significant evidence that Australian consumers are ready to embrace HDTV. Indeed, it is likely that consumers would have been better off with an expanded supply of standard television services, several of which could be accommodated in each 7MHz of spectrum. The Australian decision to mandate HDTV is unique in the world and prescribes the use of a unique standard. All indications to date are that the definition of datacasting will also be highly prescriptive.

Australian society would have been better served by a more market-oriented decision. It would not have been unreasonable for incumbent broadcasters to expect an allocation of spectrum for a standard definition service to enable them to transmit in both analog and digital formats during the transition period. Without restricting its use, the rest of the available spectrum could then have been allocated by means of a spectrum auction, as provided by the BSA. The bids of potential operators, including incumbents, would then have been guided by perceived demand for HDTV, standard television, datacasting and other services and would have ensured that the spectrum was allocated to its most valuable use. In addition to securing substantial revenue for the government, such an

approach would have avoided the inherent high risk that a non-market-based solution is incapable of correctly predicting consumer demand.

Protection of Incumbents

Protection of the commercial interests of incumbent broadcasters is a feature of government policy that has few, if any, parallels in other industries. Although protection of the commercial viability of incumbents was discontinued as a mandated policy by the introduction of the BSA in 1992, it continues to exert considerable influence on licensing decisions by the regulator and on policy decisions by the government.

As part of its planning process, the ABA has recently released its "Draft Licence Area Plan Sydney Radio", which provides for two additional commercial FM services. The ABA's intention is to licence one of the new services soon after finalisation of the plan early next year. Licensing of the second service is proposed to take place four years later (ABA, 1999). Some background to the reasons for the delayed licensing of the second service is provided in press coverage of the draft plan. An *Australian Financial Review* article by Collins (1999) reports the Chairman of the ABA, Professor Flint, maintaining that "the ABA has a responsibility to ensure the likely viability of new services ... 'we have to look at the scale and economic circumstances in the licence area and that does require some regard to the issue of demand'". Another report in *The Australian* (Burke, 1999) reports that Professor Flint "defended the draft plan, pointing out that Sydney advertising revenue had grown by 80 per cent since 1979 so there were grounds for new licences, but the ABA had decided on a phased approach to give the existing operators time to absorb a new entrant".

Similarly, when announcing the Government's decision on digital television, including a ban on the licensing of new commercial services until 2006, the Minister for Communications argued that while the Government "would normally welcome additional competition, in any industry, as healthy and likely to lead to benefits for the consumer", because of the special circumstances facing them, Australia's free-to-air and pay television industries "deserve a degree of special treatment, and the Government makes no apologies for [the] decision" (Alston 1998).

The concern of politicians and regulators with the commercial fortunes of incumbent broadcasters do not appear to have any consideration for the loss of benefits to society arising from delays and bans on the introduction of new services. The associated economic costs are difficult to assess without measures of the intensity, level and distribution of demand for additional services, and without estimates of the additional number of services possible under different licensing regimes. That the forgone benefits are considerable, however, is readily evident even from rough estimates. For example, the introduction of pay television was delayed for 12 years after it was first recommended. This prevented many people from enjoying services they clearly desired and were willing to pay considerable sums to enjoy them. Already, there are over a million households paying more than $40 a month each for pay TV services. This is equal to an aggregate of around $500 million a year. Assuming that the same take-up rate would have been experienced had pay TV been introduced 12 years earlier, current

subscribers levels suggest that society has forgone at least six billion dollars of benefits because of the delayed introduction. As pay TV penetration is growing steadily, the value of the forgone benefits are likely to be considerably larger.

The loss of benefits from the restrictions to the number of radio and television services has also been substantial. An indication of the value of the demand for additional services may be gauged by the value of the licences held by current incumbents. All three major commercial television networks have recently revalued their licences. The value of the Nine network's Sydney, Melbourne, Brisbane and Darwin television licences, for example, was more than doubled from $554 million to $1.32 billion and that of the Ten Network stations in Sydney, Melbourne, Brisbane, Adelaide and Perth was increased from $326 million to $1.12 billion (Mathieson, 1998).

Another indication of the monopoly rents accruing to incumbent broadcasters from arbitrary distributions of the number of services in capital cities may be gauged from the average revenue earned by capital city radio and television stations in 1996-97. The average revenue of capital city television stations range from a low of $49 million for Adelaide to a high of $238.5 million for Sydney. Similarly, the average revenue of commercial radio stations ranges from a low of $6.6 million in Perth to a high of $16.2 million in Sydney (ABA, 1998a).

The amounts paid to secure new FM radio licences are yet another indicator of the benefits conferred to incumbents by policies that restrict entry to the industry. For example, in Sydney a total of $17.5 million was paid for the right to convert two existing AM stations to FM (Commonwealth of Australia Gazette, 1991). Licences outside large metropolitan areas are also valuable assets and are eagerly sought. A recent auction of seven commercial radio stations in regional Queensland raised $3,325,000. The lowest successful bid of $325,000 was for a licence in Mackay and the highest of $600,000 for a licence in Bundaberg (ABA, 1998b).

Conclusions

The present size, structure and performance of broadcasting services would have been much different had entry into broadcasting not been constrained by overly restrictive spectrum planning, licensing and delayed introductions, or in some cases outright bans, of new services. The current high values of broadcasting licences reflect the rents accruing to their holders and provide *prima facie* evidence of excessive entry restrictions. Many of the entry restrictions have been motivated by a desire to protect the commercial viability of incumbent broadcasters. Why broadcasters merit such special protection from competition is not readily apparent. There is no evidence to suggest that society would not be better served by freer entry to the industry. With freer entry, of course, there is always a risk that some ventures will fail. But this should not be a cause for concern. If the market was only able to sustain the current number of services, then that number would prevail, but competition would ensure that the most efficient operators would survive and provide the best possible service to society. There is no justification for regulators to use their judgment to outguess the market on whether additional services will be commercially viable. Where public interest grounds,

including spectrum scarcity, justify restrictions on entry, a market mechanism should be used to allocate the available licences.

There should be no artificial constraints on entry into broadcasting. Considerations of the viability of commercial services, in particular, should be left entirely to the market to determine. A market price mechanism should be used to allocate without delay all the available channels to those who value them most.

Commercial broadcasting licences are issued for a nominal period of five years, but renewal is virtually automatic on payment of the appropriate fee. In the absence of unconstrained entry into the industry, all licences should be allocated for an enforceable fixed period of time by a market mechanism, such as an auction. At the expiry of the licence period, a market mechanism should be used again to re-allocate them to those who value them most. Such a process would secure for the government any scarcity value associated with the licence. The government could also retain the right to impose obligatory content clauses and would then be free to amend them each time a licence is re-allocated. The current approach of licensing both the carriage and content of a broadcasting service as a single entity effectively precludes competitive re-allocation of licences when they expire. Under those circumstances, the risk of not being able to secure renewal of a licence that could lead to considerable reductions in the economic value of fixed assets may undermine adequate investments in transmitters and other carriage infrastructure. Such a risk could be avoided by separately licensing carriage and content. Owners of transmission facilities would not necessarily be excluded from holding a content licence. The effectiveness of this approach has been demonstrated in the United Kingdom where it is used to allocate programming licences for television. Separation of carriage and content would be particularly relevant in a digital environment where a single 7MHz channel can carry several different services.

In the absence of free entry into broadcasting, separate licences for carriage and content of services should be issued via a market price mechanism. The licences for content should be for enforceable fixed periods and on expiry should be re-allocated in the same manner. Consideration should be given to extending the arrangement to existing services after an appropriately sufficient period of notice to existing owners to divest themselves of either the carriage or content element of their current licences.

As recognised by the BSA, a necessary condition for efficient, non-distorting regulation is that its treatment of a service should be independent of the process by which the service is produced or delivered. Such equal treatment ensures that investment decisions are driven by market incentives and not by regulatory impact. The need for regulatory policy to avoid unequal impact on different versions of the same service is particularly important in an environment of rapid technological change when both services and delivery platforms are no longer confined to traditional and distinct structures. In such a situation, regulatory approaches that are not neutral in their effect on both delivery technologies and on substitutable services can greatly distort incentive structures, economic efficiency and development.

When regulation is justified, considerable care should be exercised to ensure that it is technologically neutral in its application and is directed to outcomes irrespective of the technology platform used to deliver them.

It is probably too late to undo most of the non-competitive and distortionary elements of the recent decision on the introduction of digital broadcasting. It may be possible, however, to retrieve those elements of the decision that have not yet been fully settled. It is becoming increasingly unlikely that high definition television (HDTV) will be the potent driver for consumer demand anticipated by the government and the commercial television operators at the time the decision was reached. Indeed, one of the major television networks is now calling for a change.

An unconstrained definition of datacasting and the removal of the ban on multichannelling would be likely to provide greater benefits to society than compelling all current commercial broadcasters to supply HDTV. To implement such a proposal, incumbent operators could be given the opportunity to withdraw from the current requirement to use their allocated 7MHz digital channel to broadcast in HDTV. Those choosing to withdraw from the requirement would be entitled to retain the use of a standard definition digital channel in addition to their analog channel during the prescribed simulcast period. An auction mechanism could then be used to allocate all the spectrum thus released, together with currently unallocated spectrum. Broadcasters choosing to proceed with HDTV transmissions would be excluded from the auction. Other broadcasters would be eligible to compete with other bidders to secure unrestricted use of the available spectrum. Separate licences would be issued for carriage and content. All non-HDTV content services would be subject to the same licence conditions and program content provisions, including Australian content, as are applied to analog channels.

The digital conversion decision should be reviewed to remove non-competitive provisions to the fullest extent possible.

3. OWNERSHIP REGULATION

Ownership of media industries has been treated differently from other industries. Most of the major structural changes that have occurred in the industry can be traced to changes in the provisions regulating ownership of media assets. None of the previously imposed controls of media assets have been successful in creating an efficient industry structure and there is no reason to believe that the current set of regulations has been, or is likely to be, any more successful.

Ownership controls impose much more onerous limits on media industry concentration than those allowed by trade practices legislation for industry in general. These are claimed to be necessary to ensure diversity of opinion and programming. Legislators have always been concerned about the power of the electronic media to influence public opinion. The Joint Parliamentary Committee on Wireless Broadcasting (1942), for example, was of the view that "no medium of entertainment, whether it be stage, cinema or literature has such a powerful influence for good or evil as broadcasting". Because of such fears, it was thought that regulation was necessary to avoid excessive concentration of ownership that could lead to undesirable restrictions on the expression of a diversity of views and to the risk of adverse influence on public opinion by those in control. With respect to foreign owners, the perceived risk is one of alien influence on the domestic culture and political system.

Three different mechanisms are currently used to control ownership of broadcasting media:

- First, individual ownership of asset in one medium is limited. For commercial television, no more than one station per licence area may be owned or control by an individual. In addition, the aggregate reach of television stations under common ownership cannot exceed 75 per cent of the Australian population. For commercial radio, no more than two stations per licence area may be owned or controlled by one individual.
- Second, cross-media limits prohibit common ownership of a controlling interest in television radio and newspaper interests in the same market. An individual may own a controlling interest in only one of these media in any one licence area. Ownership of a controlling interest in different media in different licence areas is permitted.
- Third, foreign ownership of a controlling interest in a commercial television station is prohibited. There are no restrictions on foreign ownership of commercial radio stations.

Ownership restrictions have significant effects on the efficiency of broadcasting entities. By restricting the extent to which a broadcasting enterprise can grow they impair the achievement of economies of scale or scope. Economies of scale are restricted by the audience reach limits and the ban on ownership of more than one television or two radio stations in a given area. Cross media ownership restrictions, on the other hand, impact primarily on economies of scope. Foreign ownership restrictions reduce the pool of

potential investors in media assets and thus may impact adversely on both competition and diversity of views.

Because domestic ownership controls affect both diversity of opinion and economic efficiency, the social benefits of increased scope for potential expression of a diversity of views have to be weighed against the cost of reduced efficiency. Similarly any beneficial effect of excluding foreigners from the pool of investors in media assets has to be weighed against the benefits of the potential increase in competition and ownership diversity that could flow from foreign investments in media. Just because diversity of opinion and diversity of programming are desirable goals, it does not necessarily follow that the current ownership controls of broadcasting media are effective or efficient in delivering those goals.

Much of the perceived need for ownership controls stems from the effect of other regulatory provisions. Had free entry into broadcasting been allowed, more owners would probably have entered the market and, thus, much of the concern with promoting diversity of views might have evaporated. We need to ask, therefore, whether it may not be better to promote greater diversity of views by removing entry barriers rather than by trying to rectify the effect of those barriers with another layer of regulatory intervention.

Limits on Audience Reach

The public good nature of television programs generates strong incentive for broadcasters to maximise the size of the audience for a given program. One way of maximising audience size is to transmit the same program to a network of commonly owned or affiliated stations. Audience reach limits, however, prevent the extent to which networks can be formed under common ownership. In a network, centralised program purchasing and scheduling functions can be performed much more cost-effectively than the alternative of performing those functions separately for each station in the network. Networks also have advantages over independent stations in producing programs and competing for independently produced programs, because production costs can be spread over all the stations in the networks. Networks also enhance the sale of advertising, particularly for television where national advertising prevails and is placed mainly through advertising agencies. Advertisers tend to pay a premium for large audiences and incur lower placement costs by dealing with a network. Similarly networks benefit from having a single specialised sales force for all their stations and from the ability to promote the stations as a group.

The current limits on the population reach of television stations under common ownership has not stopped the formation of ‘programming’ networks with a population reach in excess of the limit. The formation of programming networks is brought about by two major factors, namely economies of scale from the ability to spread the cost of a common programming function and by the ongoing ban on the licensing of new commercial services. The latter ban means that unaffiliated stations have only one realistic programming choice and that is to affiliate with one of the three major networks. As a result the same programs, with only minor local variations, are broadcast throughout the country. In other words, the audience reach limits have

essentially no effect on the delivery of diversity of programs, particularly those such as news and current affairs that are likely to influence opinion. Under the circumstances, the value of the regulation is questionable.

Prohibition of common ownership of multiple broadcasting outlets in the same licence area creates a conflict between program diversity and providing greater scope for diversity of opinion. Independently owned stations competing with each other tend to duplicate programs appealing to large audiences. Minority audiences would be more likely to be catered for by owners of multiple outlets in the same service area who would have a financial incentive to broadcast complementary rather than competing programs on the commonly-owned stations. Whether audiences value programming diversity more than potential reductions in diversity of opinion is not known.

Given that at most there are only three commercial services operating in any one locality, multiple ownership of television stations might not be desirable. Indeed, it is unlikely that multiple ownership of television stations would be approved under the competition provisions of the Trade Practices Act. For radio, however, where the number of stations is larger, common ownership of two stations is permitted. There has been no apparent loss to diversity of opinion from common ownership of radio stations, but there have been noticeable programming diversity improvements as the commonly owned stations are targeted to audiences with different demographic profiles.

Cross Media Rules

Cross-media rules are likely to be preventing the formation of multimedia groups and the benefits of economies of scope likely to be associated with them. They also limit the capacity of owners to maximise administrative efficiencies and their scope to reduce their commercial risk by being involved in competing activities (timing of rises and falls in demand for advertising in different media is not necessarily concurrent). To achieve similar efficiencies, rival media groups or outlets are forced to enter into cooperative arrangements. Examples of such co-operation include radio and newspaper groups sharing advertising personnel and parts of their premises, and radio and television stations sharing local news gathering personnel, facilities and programs.

Cross-media regulation is inequitable between powerful media in its application. Pay television is not subject to cross-media ownership restrictions despite its steadily growing subscriber base that now exceeds one million households. Similarly, for the print media, while newspapers are subject to the regulation, magazines are not. The potential influence of some magazines should not be underestimated as some of the more popular ones have weekly circulations that exceed the weekly circulation of some of the major metropolitan daily newspapers.

There are no Australian studies of the economic effects of cross-media ownership. Several overseas studies, examining mainly the impact of joint ownership of television stations and newspapers on advertising rates, have led to mixed conclusions. These mixed conclusions, however, should not be surprising. Studies of competition between newspapers and other media have indicated low cross-elasticity of demand (Busterna, 1987; Print Media Inquiry, 1992; BTCE, 1993). With newspapers and television

essentially catering for different sectors of the advertising market, it is unlikely that common ownership of both media would lead to significant changes in prices. Prices would be expected to reflect the level of competition within a particular sector of the market (newspaper advertising, TV advertising, etc.). Consequently, as common ownership of two media outlets, operating in two different sectors of the market, does not change the level of competition within the sectors, there should be little expectation of price changes as a result of common ownership.

Cross-media restrictions are motivated by a desire to facilitate diversity of opinion in the main media. The most important issue for consideration, therefore, is whether the restrictions are contributing significantly to that objective. There is no empirical evidence or analysis on the effectiveness of the regulation that could help reach such a conclusion. Simple listings of the number of media owners pre and post the 1987 introduction of the regulation are simplistic and do not take account of other significant factors that may have been at play, including concurrent changes to other aspects of ownership regulation. Indeed, as the existing cross-media ownerships were allowed to continue under the 'grandfather' provision of the change, it is highly probable that the outcome is due to other factors.

Even if they were effective in promoting greater diversity of media, their continued justification in the light of technological developments must be questioned. Pay television is already a major mass medium. In radio, the number of stations has grown significantly since 1987, including many community services totally independent of other outlets. Household access to the Internet is growing rapidly (nearly 280 per cent between 1996 and 1998) and more than four million adults accessed the Internet in 1998 (ABS, 1999). Access to overseas radio services via the Internet has been possible for some time, and Australian radio services are beginning to be available. Web TV is also a reality. The expected continuation of these developments will deliver considerable diversity of access to sources of information for most of Australian society.

A fact often overlooked by proponents of greater control of the media is that the Australian Broadcasting Corporation (ABC) (operating one television and several radio nationwide networks) and the Special Broadcasting Service (SBS) have as one of their principal functions the responsibility to increase diversity in broadcasting and provide independent sources of information and opinion. Thus, even in the unlikely event that all commercial media owners colluded to misinform the public on a particular matter, the independence of the ABC and SBS would be a considerable protection of the public interest. In other words, the existence of the ABC and SBS provides a stronger guarantee of diversity of opinion than cross-media rules.

Notwithstanding these realities, there appears to be some, albeit misplaced, support for cross-media ownership controls. Most of this support is based on the sentimental ideal that no one in society should be in a position of excessive influence on information and opinion. Of course, it would be hard to argue against such an ideal even if in reality there is a low risk of someone being in that position. Consequently, it may be difficult to secure full acceptance of, and support for, the abolition of cross-media rules and a more acceptable interim milieu may need to be considered. The Commission, therefore,

may like to explore the possibility of introducing a public interest test in the consideration of media mergers and acquisitions under the Trade Practices Act .

The Report of the Print Media Inquiry (1992) by the House of Representatives Select Committee on the Print Media recommended the use of such a test as part of the assessment of mergers and acquisitions of newspapers because of the highly concentrated ownership of that industry. The Committee recommended an amendment to the Trade Practices Act to require the merger authorisation process to examine and take account of the likely impact of a merger on:

"(1). free expression of opinion;
(5). fair and accurate presentation of news; and
(6). the economic viability of the publication if the merger (did) not proceed" (p. 237).

It should be noted that even in the case of the highly concentrated newspaper industry, the Committee intended that the test should be applied sparingly and proposed an average daily circulation of 30,000 as the threshold below which the related recommendation for mandatory pre-notification would not apply. At the time, only a handful of daily capital-city or regional newspapers, not already part of one of the two major print media groups, had a circulation in excess of the threshold. If the public interest test were to be adopted by the Commission, consideration should also be given to limiting its application to major media groups by using an appropriately defined threshold.

Foreign Ownership Limits

Foreign ownership restrictions prohibit foreign individuals and companies from acquiring a position to exert effective control over a television licensee company. The restrictions affect not only foreign citizens and companies wishing to invest in Australian broadcast media, but also foreign-owned creditors of licensee companies taking equity positions in those companies or directorships on their boards. They may also apply to locally-owned investment funds (including superannuation funds) managed by the local subsidiaries of foreign-owned financial institutions.

The effect of these restrictions on economic efficiency depends on the extent to which they alter patterns of ownership in the industry and limit the capacity of media companies to secure benefits of economies of scale and scope. By limiting the pool of potential investors in Australian media stocks they may also disadvantage existing and potential licensees and their shareholders. Specifically, they are likely to reduce the opportunities for licensees to maximise the profitability of their operations and/or the realisable value of their licences, and for foreign companies to diversify into Australian media assets. Another possible cost of the foreign ownership restrictions is a distortion of the debt/equity structure of broadcasting companies by favouring debt over foreign equity.

Ensuring majority Australian ownership of television does not necessarily guarantee programming that is sympathetic to Australian cultural values. Programming choices reflect commercial imperatives such as the program's price and attractiveness to audiences. If foreign programs have a substantial advantage in these respects, the

nationality of a station's owner, or indeed its program manager, is likely to have little influence on program choice. A more effective means of ensuring Australian cultural values in television programming is to target that objective with specific regulation.

While the Parliament's concerns with foreign control were understandable at the time of their introduction in the context of the 'cold war' era, the continued validity of those concerns a half-century later is questionable. Today it is virtually impossible to prevent foreign media influence on domestic audiences. A large proportion of programs on television is sourced overseas. Radio waves simply do not recognise national borders and can be accessed by domestic audiences with a variety of means. Similarly, technological change and the development of new media are increasingly undermining the effectiveness of foreign ownership regulations. When overseas media can be accessed easily via satellite receivers and the Internet, restrictions on foreign ownership of domestic media would appear to be increasingly futile.

Suspicion that foreign owners of television services may be motivated to influence Australian opinion adversely would appear to be misplaced. Presumably, unless a television station was owned by an unfriendly foreign government intent on subversion, the motivation of foreign investors would be to secure the best return for their investment. It would not be in the interests of foreign owners, therefore, to act in a manner not sensitive to domestic audiences and risk alienating them because such action would lower, rather than increase, the value of their investment.

Conclusions

Because of restrictions on audience reach, cross-media ownership, and foreign ownership, Australian media is facing an economic cost in the form of reduced efficiency. The regulations, however, do not appear to have delivered the expected substantial benefits in terms of improved diversity of opinion. The regulations hamper the development of efficient structures exploiting economies of scale and scope, prevent the formation of multi-media groups, and give incentives to the creation of arrangements designed to circumvent the restrictions. In addition, the introduction of new services and technological developments, promising to deliver increased diversification of the media, have weakened the non-economic case for ownership restrictions. Furthermore, in large part, the need to promote greater diversity of ownership of broadcasting through ownership regulation is the direct result of restricted entry to the industry. For these reasons, it is argued that it is difficult to justify continued retention of the current set of ownership regulations.

The primary effect of the audience reach limit for television stations under common ownership has been to prevent the formation of single-owner national networks. At the same time, the restriction has produced little, if any, benefit in terms of diversity as stations have been able to affiliate with the major groups to form virtual national programming networks. Removal of the reach limits should not produce a loss of diversity, but is likely to lead to improved efficiency.

No limits should be imposed on the population reach of television stations with common ownership.

There is little evidence that cross-media rules are justified by objective analysis of their impact on media diversity. In the longer term, the anticipated growth of new media services, particularly if current restrictive entry policies are discontinued, will provide substantial increases in the diversity of media outlets. Under those circumstances, the case for special restrictions above those imposed by the Trade Practices Act is weak and will get weaker with the passage of time. However, some sections of the community would be likely to have fears that increased media concentration could flow if media mergers were subject only to general competition rules. Special provisions, therefore, may be necessary at least in the short term.

Mergers and acquisitions involving major media groups coming under the purview of the Australian Competition and Consumer Commission should be subjected to a public interest test that takes account of the impact on:

- ***diversity of sources of opinion; and***
- ***the economic viability of the entity if the merger or acquisition does not proceed.***

Foreign ownership restrictions are based on outmoded nationalistic concepts and do not appear to serve a useful function. Their removal would expand the pool of potential investors in Australian media and would be likely to produce greater diversity of ownership of media assets.

Restrictions on the foreign ownership of Australian media assets should be removed.

4. REGULATION OF AUSTRALIAN TELEVISION PROGRAMS

Regulation of the quantity of Australian programs broadcast by commercial television services was a vexed issue even before the introduction of television in Australia in 1956 and has been debated strongly ever since. Australian programming quotas were first introduced in 1961 and have been expanded gradually since then. Currently they require that at least 55 per cent of all programming be Australian, including specific quantities of adult and children's drama, children's programs and documentaries. Following a High Court ruling last year, New Zealand programs may be used for compliance with the quotas. To date, however, use of New Zealand programming has been minimal and the indications are that the situation is unlikely to change.

In the early days of television, and particularly in the 1960s and 1970s when industry protection was commonplace, both policy makers and lobbyists clearly saw Australian-content quotas as an employment-creation mechanism. Although cultural motives were occasionally referred to, there was little doubt that the protection of jobs in program production was a primary objective of the quotas — an objective that was also assiduously pursued with measures such as bans on imported commercials and on the use of foreign actors and production crews. Today, although the rhetoric has shifted noticeably so as to emphasise cultural objectives, the production industry's unrelenting defence of the existing quota regime continues to be strongly motivated by employment protection.

A more definite shift in objectives has occurred at the policy level. The BSA maintains that broadcasting has an important role in 'developing and reflecting a sense of Australian identity, character and cultural diversity' and uses that belief as a justification for regulation. The responsibility to determine the nature and extent of appropriate regulation — a task requiring the exercise of a considerable amount of value judgement — is held by the ABA.

Domestic content quotas are often seen as a *quid pro quo* for restricted licensing of entry to the industry (BTCE, 1991). When viewed in that context, the cost of compliance with the quotas is essentially a non-transparent tax or royalty for the right to secure the monopoly rents conferred by broadcasting licences.

Australian content quotas impose considerable cost, but indications are that the benefits accruing to society are commensurable with the cost. A recent comprehensive study of Australian content regulation (Papandrea, 1997) used a contingent valuation survey to estimate the value of the community benefits accruing from the regulation. While it concluded that the benefits were broadly commensurate with the cost of the regulation, more interestingly it found that the benefits could be increased with a different composition of programs.

Transmission Quota

Currently, 55 per cent of all commercial television programs broadcast from 6:00 am to midnight must be Australian. Traditionally, stations have had little, if any, difficulty in meeting their transmission quota obligations. Even during the period when a points system (rather than quantity quotas) was in place, Australian programs rarely fell below 50 per cent of all programs, even though compliance could have been achieved easily with a substantially lower proportion. The natural protection and popularity of news and current affairs and sports programs are generally sufficient to ensure that a large proportion of all programs is of domestic origin.

In aggregate, naturally protected programs and programs subject to special domestic quotas, such as adult and children's drama, children's programs and documentaries, are approximately sufficient to satisfy the quota. Any shortfall can be easily made up by screening repeats of previously-broadcast programs or specially made low-cost, low-quality, 'quota-quickies', at times when audiences are small. In such circumstances, it is uncertain whether much value is gained by mandating a separate transmission quota. Indeed, to the extent that repeats or quota-quickies of low audience appeal are used to satisfy the quota, social welfare may possibly be reduced because those programs may be valued less than imported substitutes.

By applying equally to all stations, the quota may not maximise benefits to society. A station has no incentive to produce in excess of the quota even though it may have a comparative advantage in producing Australian programs relative to other stations. Similarly, stations that may have difficulty in complying with the quota will be forced to do so with inefficiently produced programs. If quotas were transferable between stations, however, an efficient station would have an incentive to produce above quota because it could sell its excess to a less efficient station. Both stations would benefit from the transfer. Viewers would also benefit from the resultant improved programming used to satisfy the global quota.

Drama Requirements

A little less than 40 per cent of all commercial television programming is in the form of drama and most of it is imported. Of the almost 11,000 hours of Australian programs per year that the three commercial networks combined have to screen to comply with the local content quotas, only 600 hours approximately relates to drama. This implies that domestic programs other than drama are the main countervailing force against the perceived negative influence of imported programs. Yet, most of the arguments about the influence of television programs on national culture revolve around drama and most of the cost of complying with Australian content regulation is attributable to the drama quota. What makes drama programs more important to cultural development than, say, current affairs or sports programs, is never spelled out by those arguing in its favour.

In defence of the drama quotas, the production industry often points to the fact that Australian programs regularly feature in the top-rating programs on television. But popular Australian programs, including top-rating drama, would not need quotas to

ensure their broadcast. The more popular a program, the greater the advertising earnings it can generate for a station and the greater its capacity to compete with imported programs. While the cost disadvantage of Australian drama would render it uncompetitive with high rating imported substitutes, **high-rating** domestic drama can generate sufficient advertising revenue to outweigh its cost disadvantage *vis a' vis* **average-rating** imported substitutes (Papandrea, 1998). It is against the lower rating imported programs that domestic drama has to compete. The supply of high rating imports is limited and highly sought by stations. If a domestic drama program were to be replaced by an imported one, the replacement could only be done with a program whose rating is lower than the least rating imported program already on the schedule.

But not all domestic drama is high-rating. Some of it appears to be made on low budgets specifically to comply with the quotas and is shown late at night when audiences are small. These programs have a clear cost disadvantage relative to similar-rating imported programs and would not be scheduled by stations were it not for the quota. Their low audience appeal, of course, is also an indication of their doubtful cultural value. Even if these programs were of high intrinsic merit, the fact that relatively few people choose to watch them means that they have little influence on cultural development and are of little value to society.

The Papandrea (1997) contingent valuation survey is quite revealing in this respect. Although support for domestic programming was widespread, many respondents wanted a different composition of programs. Large proportions wanted increases in documentaries, news and current affairs, and children's programs. With respect to drama, respondents indicated a desire for more movies and less serials and series of the type encouraged by the quota. In other words, while the Australian public supports and sees value in Australian programming, its support for the type of drama that is encouraged by the quota does not appear to be high.

Although popular Australian drama is competitive with non-high rating imported substitutes, its appeal to television stations is reduced substantially by the high risk associated with program development. Television stations face a lower risk, and a lower up-front investment, when committing to exhibit an imported program. Continued production of imported programs is primarily determined by good ratings in their country of origin that could be useful indicators of potential success in other markets. But even if it fails to appeal sufficiently to prime time audiences, an imported program can be shifted with little penalty to another time slot for the duration of the associated purchase obligations. A replacement imported program for prime time is likely to be available at similar cost. In contrast, a similar shift for a domestic series would incur a substantial penalty. In the latter case, because only first-release drama complies with the regulation, the disincentives to the broadcaster would be compounded since the commissioning of a replacement series would have cost and risk disadvantages similar to those of the one being replaced. Thus, while broadcasters have an incentive to schedule domestic drama after it has proven its audience appeal, the high initial risk of commissioning the drama is a disincentive to production. Consequently, without some form of regulatory support, current levels of Australian drama may not be sustained.

The key function of the drama quota, therefore, would appear to be to force stations to accept the high risk of investing in Australian production. In response, stations will attempt to minimise the cost of compliance and will produce low-cost programs which, if unsuccessful with audiences, can be scheduled during non-peak viewing time. Because some of those programs are of low cultural value, the current points systems incorporates a minor incentive (the 'format factor') to encourage compliance with the quota with fewer, but higher cost, hours of programming. The aim of the current and of a similar earlier incentive ('quality factor') was to equate the points earned to the average value of production, thus ensuring an approximately constant cost of compliance with the quota. Because such incentives have no effect on the associated risk factors, they have had little influence in encouraging higher value productions.

Some of these problems associated with quotas could be overcome with a production subsidy arrangement. Unlike quotas, a production subsidy can be targeted to specific outcomes. Eligibility for subsidy assistance could be limited to specific programs and could be adjusted to reflect production values and could be directed specifically to the type of programs with the greatest influence on cultural development. It could also be linked to market signals on viewer preferences. For example, the subsidy could be paid to broadcasters when they purchase the rights to broadcast a program. Alternatively, the subsidy could be paid to producers who can demonstrate commitment from a broadcaster that the program will be put to air. This latter mechanism has been used in program funding schemes in New Zealand and Canada.

A change from programming quotas to production subsidies would shift the cost of the regulation from the broadcasters to the Government, unless it is accompanied by offsetting taxation. The current arrangements are essentially an inefficient form of indirect taxation on broadcasters. Thus, its replacement by a more direct tax mechanism could result in improved efficiency. While the current licence fees arrangements continue to apply, for example, it would be relatively easy to increase the rate at which the fees are levied to cover the cost of subsidising drama production. The rate increase should be set at a level that did not increase the average cost currently incurred by stations to comply with their drama quota obligations.

Under a subsidy scheme, there would be no need to force stations to broadcast Australian drama. Indeed any such constraint could be counter-productive because it would reduce the need of program producers to take audience preferences fully into account in their production decisions. Stations, however, would have to pay the higher licence fee irrespective of whether or not they chose to broadcast the subsidised drama. In choosing between programs, the broadcaster would compare the price of imported programs with the subsidised price of domestic programs and their expected audiences and would choose those likely to make better marginal contributions to profits. Because imported program prices are unlikely to change as a result of the subsidy arrangements, the competitiveness of Australian drama compared to imports would improve. In addition, the direct linkage between program choice and audience appeal would increase the cultural benefits derived from the regulation.

Children's Programs

Protection of the interests of children with regard to television programming has always attracted considerable attention in considerations of the function of television in society. According to the ABT, "regulatory action for children's television has essentially been a response to lack of quality, age specific, television programs for children and the need to protect their interests" (ABT, 1987). Generally, there is widespread agreement that the needs of children deserve special consideration. The Papandrea (1997) study, for example, found that 57.7 per cent of Australians were willing to allocate additional expenditure to children's programs.

The issue of children's programming is more complex than for other programs. The need to protect children extends beyond programs to advertising where the regulators impose controls on both the type and quantity of advertising during children's programs. Programs for pre-school children are not permitted to carry advertising at all. These restrictions exacerbate the impact of the regulation on broadcasters. Even if advertising restrictions were not more stringent than those for other programs, the minority appeal nature of children's programs would bias broadcasters against them.

Children's drama is perhaps the least attractive type of programming to free-to-air commercial broadcasters. It is virtually as expensive to produce as adult drama, but does not have the wide audience appeal of the latter. Coupled with the advertising restrictions, the cost of drama is a large disincentive to broadcasters and their natural response to the quota would be to minimise their cost of compliance with it. Under a fixed quantity quota regime the only way this can be achieved is through reductions in program quality.

Documentaries

Special quotas for Australian documentaries were imposed for the first time in 1996. The only assistance provided to documentaries prior to 1996 was eligibility for financial assistance by the Australian Film Finance Corporation. The reasons advanced for the support of documentaries are similar to those for adult drama including cultural importance and under-representation on programming schedules. Documentaries are also costly to produce. Furthermore, the one-off nature of most documentaries, irrespective of national origin, renders them unappealing to broadcasters. A drama series, for example, offers opportunities for the building up of audience loyalty over time and for promotion and scheduling economies. On the other hand, documentary series in which each program deals with a different issue offer little scope for the retention of audience loyalty. Indeed, each program may appeal to different audiences with different interests and may have to be promoted separately. In any event, the one-off nature of documentaries means that cohesive series are difficult to assemble for regular scheduling.

The Papandrea (1997) contingent valuation survey found extensive support for additional Australian documentaries. Over 62 per cent of people (the highest proportion of any of the categories tested) indicated a willingness to support additional expenditure

for documentaries. The average intensity of demand for increased expenditure on documentaries was the second highest recorded in the survey, and was only slightly lower than for children's programming.

The ABA's decision to set specific quota levels for documentaries provided few details of its motivating factors. The quota level of 10 hours per year was well below the quantities that were already being broadcast by the major networks. The networks have continued to supply more than the prescribed level since 1996 suggesting that the quota is largely redundant. In choosing a low quota, the ABA appears to have followed the precedent set in other areas of programming, euphemistically referred to as a 'safety net'. For the regulator, a low ineffective quota has proved to be a useful device to appease those lobbying for its introduction without upsetting broadcasters or adding to their costs. As happened in other areas of regulation, however, there is an inherent danger that, under pressure from supporters, the quota level will be gradually increased over time.

Australian Content in Advertising

Under the regulation, at least 80 per cent of advertising time broadcast 6:00 am and midnight is to be used for Australian produced advertisements. New Zealand produced advertisements are considered to be Australian for the purpose of the regulation. The regulation has applied in its current form since 1992. As one might expect, there is a high level of natural protection for locally produced advertisements. Specific targeting of local markets would be difficult to achieve with foreign advertisements with which audiences do not easily identify. The available information on performance of stations indicates that the use of foreign produced advertisements is well below (approximately half) that permitted by the regulation. The regulation therefore does not seem to be serving a useful purpose and its necessity is questionable.

Impact of Technological Change

Technological changes are likely to alter considerably the structure of broadcasting services. The much larger choice of services likely to be available to viewers will fragment audiences and consequently diminish the influence of each individual service. The anticipated structure of television is one where channels will specialise in one or a few types of programs, rather than the current approach where the limited number of channels supply a broad range of programming. Subscription television services are already exhibiting the characteristic of specialised channels.

The changing nature of television services means that domestic content regulation applicable to all channels is unlikely to be effective or necessary. Services specialising in time-dependent programs with an inherent local advantage, such as sports and news and current affairs, are likely to supply domestic programs for a large proportion of their transmission time without regulation. Because of the relatively small domestic market, other specialist services may have to depend on imported programs to fill their schedules. The public good characteristics and non-time-dependent nature of other programs, such as drama, provide a strong incentive for channels specialising in such

programming to source them overseas. Minimum quotas for domestic content applied across the board would thus discriminate against services with a high level of import dependence.

It may be possible to apply regulation to specifically defined services, as is done with "predominantly drama channels" on subscription television services. Such an approach may be feasible in the short term, but is unlikely to remain effective in the longer term. The definition of the services may be difficult to police or the regulation may be inequitable to some of the delivery media, particularly when close substitutes are involved (for example, subscription drama channels, electronic video-on-demand services, and retail video hire). It may also mean that services likely to be affected by regulation will eventually move their operations overseas and supply Australian consumers from offshore locations beyond the reach of domestic regulation. Technological developments are likely to make such relocations more attractive and feasible in the future.

For some popular domestic programs, such as drama, production subsidies could be used to offset their cost disadvantages *vis à vis* imported programs. Alternatively, national broadcasters could be given responsibility to supply socially desirable programs, including drama. To remain competitive in a specialised service environment, the national broadcasters would need to develop some degree of specialisation in the services they provide. To be effective they are likely to require more than one channel. For example, in a digital television environment there would be considerable scope for the ABC to supply more than one program concurrently.

Direct provision of services can be targeted specifically to desirable programs. For drama, for example, emphasis could be given to the supply of higher cost (higher quality) programs attuned to audience preferences. There would be little point in providing programs that appeal to small minority groups when the primary aim of the intervention is to capture the cultural external benefits of domestic programs. Different channels, or parts of the program schedule on a single channel, could be directed at different sections of the community. The main function of such services would be to give people the capacity to access desirable domestic programs as an alternative to imported programs of the same genre.

Conclusions

Some Australian content regulation of television programs would appear to be justified because market supply tends to be below an efficient level and indications suggest that the cost of the regulation is commensurate with the value of benefits accruing to society. Some of the instruments used to regulate for Australian content, however, have proved to be inefficient and should be amended or replaced by more efficient ones.

Of the existing instruments, the quotas for Australian documentaries, for Australian advertisements and for overall transmission of Australian programs appear to be the least effective. The documentaries and advertising quotas have no noticeable impact on the behaviour of stations and appear to be redundant. The administrative procedures

associated with these quotas, however, add unnecessary administrative costs to the broadcasters and the regulator. The administrative cost of the advertising quota, including the cost of administering the classification scheme to determine the national provenance of the advertisements, are substantial.

Quotas for Australian documentaries and Australian advertising do not serve a useful purpose and should be abolished.

Many of the domestic programs included in the current programming schedules of stations would continue to be supplied even in the absence of the transmission quota. Programs such as news, current affairs and sports not only have a large element of natural protection from imports, but also enjoy a high level of popularity among viewers and are profitable to stations. The supply of entertainment programs may be below optimal level without market intervention. Inclusion of all programs in a quota that affects only some of them is clearly not well focused. Exclusion of programs that are highly likely to be supplied anyway would allow the intervention to focus on those programs that are more likely to contribute to the cultural objective of the regulation and that would not be supplied in sufficient quantities without the intervention. In this context, the European approach of determining transmission quotas as a proportion of the air-time devoted to entertainment programs that compete directly with imports may have some merit. Making such a quota transferable between stations would also improve its efficiency.

Transmission quotas should apply only to programs unlikely to be supplied at optimal levels in the absence of regulation and the quotas should be tradeable between stations.

The adult drama quota imposes a considerable cost and its operation is less than efficient. Its tendency is to encourage the supply of low-cost domestic drama of questionable cultural value and of low appeal to audiences. The replacement of the quota with a production subsidy scheme would enable better targeting of the assistance to programs more likely to deliver the cultural objective of the regulation and more likely to reflect audience preferences. The use of a licence fee levy to finance the subsidy would ensure that commercial broadcasters retain their current obligation to pay for the supply of Australian drama.

The adult drama quota scheme should be replaced by production subsidies financed from a licence fee levy.

Children's programming represents a difficult problem for regulatory authorities. Commercial broadcasters clearly see it as a cost burden and try to minimise its impact on their profitability. Quality of commercial programming is often poor and so is its value to children. The ABC, on the other hand, has had substantial success with the production of children's programming. One possible solution to improve the provision of children's programming might be to relieve commercial stations from the responsibility of transmitting it but not from the obligation to fund it. Commercial broadcasters could be required to pay for funding of children's program at the same rate

they do presently. The funding should be provided to the ABC, which together with its own current funding of children's programs, could apply to set up and finance an exclusive channel for children. The ABC should be allowed to use the multichannelling capacity of its digital channel for this purpose.

The ABC be required to set up an exclusive children television channel funded from its own resources and by a levy on commercial broadcasters.

The unstated assumption underlying the above proposals is that the industry environment will not undergo major change. While this may be a reasonable assumption in the short-term, it is clearly untenable in the medium- to long-term. Communications technology is undergoing rapid change and the pace of change is expected to increase. The television market is already changing and will continue to do so. This raises important questions for cultural policy at the national level. Given that some elements of the current Australian content regulation benefit society, appropriate policy instruments may need to be developed to ensure that the benefits will continue to accrue in the new environment.

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