Telstra

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Regulatory
Legal and Regulatory

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Dear Professor Snape,

QUESTIONS ON NOTICE - BROADCASTING INQUIRY HEARINGS

Below are responses to the questions that were asked of Telstra at the recent Broadcasting Inquiry Hearing, which my colleagues and I elected to take on notice. As are noted in the transcript of the hearing, these questions are:

> *1) The explanation for the comment made in the Telstra submission that the spectrum allocated to each commercial FTA for digital TV conversion exceeds the requirements; and*
>
> *2) Where to draw the line in terms of applying content regulation to new digital services.*

FTA spectrum allocation

The Telstra submission on page 19 states that

> *The amount of spectrum to be loaned to FTA broadcasters far exceeds that required for digital conversion, and following the tabling in Parliament of a number of reviews to occur this year, amendments to the Radiocommunications Act, 1992 will be proclaimed, to the effect that the loaned spectrum may also be used by the FTA broadcasters for datacasting....*

This statement highlights that free-to-air broadcasters (FTAs) have been given an extra 7mhz of spectrum to simulcast their analogue programs in digital. However, because the digital signal is more compressed and therefore takes up less spectrum than the analogue signal, the allocated 7mhz will not be taken up in full by broadcasting television programs in Standard Definition format (SDTV). It is however acknowledged that the *Television Broadcasting Services (Digital Conversion) Act 1998*, allows FTAs to use this excess capacity to transmit High Definition Television (HDTV), and, pending completion of certain reviews, datacasting and potentially enhanced programming services. The point of this

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comment was to highlight that this extra spectrum over and above what is required for SDTV could have been allocated to new datacasting players rather than to the FTA broadcasters. This comment was not intended to state that technically the spectrum FTAs will have to convert to digital television is greater than they need to transmit broadcasting services and additionally the permitted new services such as datacasting and possibly enhanced programming.

Content regulation

In order to answer this question it is useful to examine the regulatory policy underlying the *Broadcasting Services Act, 1992* particularly that behind content regulation.

The policy basis for the *Broadcasting Services Act 1992* is set out in section 4 of the Act:

> *Regulatory policy*
> *SECTION 4.*
> *(1)The Parliament intends that different levels of regulatory control be applied across the range of broadcasting services according to the degree of influence that different types of broadcasting services are able to exert in shaping community views in Australia.*
> *(2)The Parliament also intends that broadcasting services in Australia be regulated in a manner that, in the opinion of the ABA:*
> *(a) enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on providers of broadcasting services; and*
> *(b) will readily accommodate technological change; and*
> *(c) encourages:*
> *(i) the development of broadcasting technologies and their application; and*
> *(ii) the provision of services made practicable by those technologies to the Australian community.*

Further, the objects of the Act, set out in section 3, include diversity in the services provided and promotion of broadcasting services' role in developing/reflecting Australian culture.

On the basis of their level of influence, it is clear why the FTA broadcasters currently must comply with several levels of content regulation covering Australian content quotas, censorship and particular types of programs such as children's programs or drama.

Although there are now undoubtedly new media services emerging, primarily online services, statistics show that the Australian population is spending more time watching FTA television as opposed to watching pay TV or using online services. That is, despite a marginal decline in FTA television viewing overall it still has been reported that FTA television has a 90% audience reach in any one week. And it has been estimated that Pay TV's total audience rating point delivery of all people in prime time would only be 2.2. Once this figure is divided by the number of Pay Television channels (54) it would produce an average rating of 0.04 % per channel. In a practical sense a movie shown on one of the commercial FTA broadcasters out rates a movie on Foxtel's Showtime Channel by 6 to 1 in prime time.[1]

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[1] All the figures in this paragraph have been sourced from an article entitled "Free-to-Air folks are alive, well, watching" The Australian Financial Review, 7/7/99, page 38.

Considering the overwhelming media influence that FTA broadcasting services have it does make sense that content regulation should reflect this. The level of media influence can usefully be characterised by firstly, the size of audience of the service, secondly the number of providers of that service and thirdly the customer's control/means of accessing the service. The range of broadcasting/new services are examined below in relation to these criteria.

Broadcasting/ New Services Spectrum - Degree of Influence

Service Type	Audience Size	Number of providers	Customer control/access
FTA television	Around 6 million million analogue television receivers[2]	5 providers- one channel each (3 commercial 2 with charters)	No control. With the appropriate receiving equipment up to 5 FTA channels may be received.
Subscription television	Altogether the Pay TV industry has approximately 1 million customers.	3 major providers of around 54 channels available.	Control over which package of channels is subscribed to and which provider to subscribe to.
Datacasting	The take-up of datacasting services is highly uncertain at this stage. International experience has not shown a high take up rate.	Not known how many providers there will be, but likely to be at least 5 FTA broadcasters plus 2 or 3 others.	Likely to have more control than FTA programs, depending on the definition of datacasting that is adopted. Likely to be more interactive than FTA programming and more flexible re programming scheduling etc. Could have back channel capability. (In addition to choice over whether to get the datacasting STB or not.)
Online Services (either provided to PC or television)	Only 45% of Australian homes currently have a PC and only around 18% (approximately 1.3 million homes) of	Around 700 Internet Service Providers in Australia providing content and access to the entire world wide web.	High degree of control, in terms of when content is viewed as this is entirely at the consumer's

[2] *Australian Industry: Thinking Outside the Box: Digital Broadcasting Agenda , page 3.*

Service Type	Audience Size	Number of providers	Customer control/access
	have access to the Internet.[3] The take-up of online services provided to TV is uncertain but is not likely to be as high as for FTA or Pay TV services.		discretion. The only exception is live "net broadcasts". However there is still more control than with FTA television as to view a live webcast consumers must go to one website out of millions of websites available globally, as opposed to choosing one FTA channel out of 5.
Interactive games - via data carousel viewed on the Television.	Around 1.3 million data carousels - Sony Playstation and Nintendo brand, in Australia.[4]	2 well known brands (Nintento and Sony Playstation) of data carousel , games, a multitude of games provided by each. A popular game might sell as much as 100,000 games.	Highest degree of control, can be used at a time chosen by the consumer; highly interactive.

This analysis presents a useful hierarchy in terms of power to influence over consumers. Therefore in the case of FTA we can see that with the highest audience level, so few providers (limited by legislation), and no customer control over content that the influence of the service is a lot greater than for the other services. At the other end of the scale, interactive games played using, for example, a Sony Playstation are viewed on a television but there is much less level of influence since the customer has complete control over the service and there is a great diversity in the games available.

In between these two extremes lie online services and datacasting. Online services are clearly more diverse than datacasting services since there will only be a limited number of datacasters (as they need to use the broadcasting spectrum) and there are currently around 800 ISPs in Australia each with their own portals. ISPs do not control the content that is accessed through their service portal and around 90% of the content on the Web is sourced from offshore. The medium is a global one and Australian content regulation on the Internet would not ensure that Australian users of the Internet accessed Australian online content as there is nothing stopping them from accessing international content. The difference then is that in terms of FTA broadcasting there is no alternative within that service. There are no international channels that can be accessed alongside Australian FTA channels.

[3] ABS, *Use of the Internet by Householders, Australia*, February 1999, (catalogue 8147.0) Main Features, page 1.
[4] Sony Playstation has reported that it believed to have sold 1.1 million Sony Playstations in the last few years. It has been estimated by a Telstra executive responsible for online games and lifestyle products, that there are several hundred thousand Nintendo carousels.

Pay television services have more diversity than FTA broadcasting because of the number of channels the customer can choose from and the customer control aspect in terms of needing to subscribe to Pay TV as well as pay an up front connection charge. Also, there is no limit on the number of pay television licences that may be issued.

From this hierarchy of what has been characterised above as media influence, it is evident that as influence wanes, content regulation is less relevant and important.

To complicate this notion of a hierarchy of media influence further, there is the fact that by its nature Internet content is international and is neither monitored nor controlled by ISPs who provide access to it.

Not all Internet services are comparable in terms of influence. For example, in the case of an e-commerce enabling website (such as Telstra's Surelink site) should it matter that shoppers can access Australian merchants rather than overseas ones? In this case it is likely (and it is the case with the Telstra Surelink site) that for technical and commercial reasons online shopping sites will facilitate people buying from Australian merchants. If consumers want to make purchases from international merchants then they can either go to sites that are the equivalent of Surelink site in the US or go directly to the merchant's website. The imposition of Australian content type quotas on this type of service could be equated with prohibiting Australians from purchasing goods from overseas via direct mail catalogues when Australian substitute products were available. Clearly this would not be an acceptable policy.

I hope the responses to the questions raised at the public hearing help you in your task of drafting the Inquiry' report.

Please contact Jane Fowler, Manager, Industry Policy, on 9298 4858 if you have any queries with the above or require any further information on this issue.

Regards

Deena Shiff
Director Regulatory