

This is the second part of a 2-part article on the United Kingdom's Communications White Paper. This second part examines the UK's approach to issues of access and competition.

## Access and competition in the UK

In the last issue of the *ABA Update* (no. 97, April 2001), the first part of this article examined the proposed regulatory framework and content regulation issues arising out of the United Kingdom's Communications White Paper released in December 2000. This second part examines the issues of competition in the market place and access to communication services.

### **1. Competition and market dynamism**

The UK Government's proposed regulatory changes, outlined in the White Paper, are principally technology and competition driven. As competition becomes more pervasive in the industry, OFCOM (Office of Communications) proposes to be in a position to rely on general competition powers, although it is to have specific powers available to it to promote competition within sectors. By bringing together the Office of Telecommunications (OFTEL) and the Radiocommunications Agency, OFCOM will have responsibility for implementing and monitoring competition powers and the efficient use of spectrum.

The White Paper identifies two new competition-related issues: the efficient management of radio spectrum; and electronic program guides and similar technologies.

#### **Efficient management of radio spectrum**

The White Paper recognises that it is no longer sensible to separate the provision of spectrum from the economic regulation of communications and proposes:

(a) commissioning an independent review to advise the Government on the principles to apply to the management and efficient use of spectrum. As part of this process, it is expected that the spectrum used by broadcasters will be valued, and

(b) refining the existing market-based process of auctioning spectrum and introducing ways for private companies to trade in spectrum.

As a result of amendments to the Wireless Telegraphy Act in 1998, the administrative allocation of spectrum by the Radiocommunications Authority was replaced with a market-based auction process not unlike that used in Australia. Refinement of the auction process is intended to promote competition so that the timely availability of spectrum can meet emerging industry demands which are intended to result in varied and quality services for consumers.

In Australia, the Productivity Commission, in its *Broadcasting Inquiry Report* (3 March 2000) canvassed similar issues regarding the management and use of spectrum.

The recent experiences of Australia and overseas with price-based auctions of 3-G mobile spectrum illustrate the soaring value of spectrum. In Australia, auctions for 3-G mobile telephony spectrum have been completed and generated a total revenue of A\$1.168 billion.

#### **Electronic program guides (EPGs) and similar technologies**

EPGs are much like search engines and will be of increasing importance as the range of digitised programming and consumer choices grow exponentially.

EPGs could be used to limit competition and restrict consumer access by making certain content difficult to find, for example, in the case of content not favoured by an EPG operator. While this could be delivered through flexible regulation, in the first instance OFCOM will have the power to protect both consumers and competition by being able to impose appropriate conditions on operators of EPGs and similar gateways.

#### **Australia's recent competition experience**

The Australian communications and broadcasting industries have been under the scrutiny of several agencies and Australia's experience with competition issues has been most recently addressed in the Productivity Commission inquiries into:

- (i) Productivity Commission Draft Report—*Telecommunications Competition Regulation*, March 2001;
- (ii) Telecommunications Service Inquiry Report—Telecommunications—Specific Competition Regulation *Connecting Australia*, September 2000; and
- (iii) Productivity Commission Report — *Broadcasting in Australia*, March 2000

In relation to the Productivity Commission Draft Report *Telecommunications Competition Regulation*, it is noted that the Australian Competition and Consumer Commission in its submission to that inquiry takes a similar perspective to the UK White Paper on vertical integration in pay TV programming and its effects on competition. The UK, however, unlike the ACCC, is reluctant to ban vertical integration on the basis that it would slow down investment into the high-speed

networks and because network operators will always pursue exclusive agreements with content providers to obtain the most attractive packages for their consumers.

In relation to the report, *Broadcasting in Australia*, the Productivity Commission's report made various recommendations based upon competition and market forces theories. In relation to the switch to digital, it noted that the Government has limited competition insofar as incumbent television broadcasters have been provided use of spectrum ahead of new entrants. It recommended a less restrictive and more competitive framework.

## **2. Universal access to diverse services**

One of the principal objectives of the UK Government addressed in the White Paper is to provide universal access to television (including digital), radio, telephone and the Internet.

To ensure universal access, the White Paper sets out the UK Government's commitments to:

- ensuring public television availability free at the point of consumption (both before and after digital switchover)
- monitoring public television services and promoting access via satellite as well as cable
- access to digital services
- BBC Radio availability on all main platforms
- universal access to the Internet by 2005
- universal access to telephone services
- promotion and availability of high bandwidth services, and
- education and training in the new technologies.

The main initiatives are:

### **Transition to digital**

• In the UK, terrestrial public service television is received by 99.4 per cent of the population. The UK Government is committed to ensuring that the population continues to receive the same channels free<sup>1</sup> after the switchover to digital. In this regard, public service channels are

<sup>1</sup> Set-top-boxes are available free to consumers in the UK who subscribe to digital services on pay TV.

to be given *due prominence* in electronic program guides in the UK to ensure universal access to public service television.

This commitment to public interest considerations in the switchover to digital services is also a major focus of the Federal Communications Commission in the US, which in December 2000 published a report to Congress, *The Public Interest Obligations of Television Broadcasters in the Transition to Digital Television*. This report identified a set of principles on how broadcasters could fulfil their statutory duty to serve the public interest, including local issue-oriented programming, public service and emergency announcements, the protection of children and diversity.

- Using digital technology to refine public service television to maintain local and regional programming is seen as a way of addressing perceived gaps currently in the types of services provided in regional areas. Like the UK, this also is a primary commitment of the FCC in the US.
- One in five households in the UK currently access digital broadcasts and interactive services through subscription television services. The Government proposes to work with industry and viewer groups to develop a strategy to successfully complete the switchover to digital.

### **Development of high bandwidth services**

• The development and regulation of high bandwidth services in the UK is among the top priorities of the White Paper. The UK aims to promote public and private sector investment to enable expensive high bandwidth infrastructure to be developed to meet industry demands. Emphasis is on cable and digital subscriber lines, 3-G wireless technologies, broadband fixed wireless networks and satellite services. Private sector investment is expected to be high, but less viable markets such as rural and regional areas, which will be underserved, will be the focus of proposed regulatory intervention. The White Paper canvasses the need for a strategy of public and private investment to overcome any disparities.

### **Internet access**

- Universal access to the Internet by 2005 is a key access issue for the UK Government. The proposed strategy to successfully achieve this target is:
  - to encourage competition in the market; and
  - to provide national educational programs such as 'UK Online' and 'UK Online for Business', both being strategies which focus on education and access for people and businesses. The Government's intention is to establish 6000 online centres by 2002 to fast track the education of the public in relation to online services. 'Learn Direct' is one such online training program funded by the UK Government in an effort to achieve universal access to the Internet in the UK.

## **3. Maintaining diversity and plurality**

The approaches set out in the White Paper for achieving diversity (in range of programs and services available) and plurality (in choices of providers available to consumers) are:

1. Market dynamism and promotion of competition;
2. Use of, and access to, digital services; and
3. The provision of quality content (via new services and technologies).

Particular points of interest arising out of UK Government's initiatives are:

### **Regionalism/Localism**

The UK has a well established regional television reach delivered by the ITV network and the BBC's regional variations and local services. The White Paper focuses particularly on strengthening regionalism on public service broadcasting and proposes to do so by:

- ensuring that the value of regionalism is taken into consideration in digital planning for regional areas to be initiated by consultation between regional representatives and the broadcasting industry. The Government is currently seeking comment on extending diversity on radio via 'Access Radio' and developing a spectrum plan for local television services to take effect on the digital switchover to give a clear

indication of the expectations for delivery and diversity.

- encouraging consultation and debate between broadcasters, producers and consumers at a local level on how to strengthen and develop regional programming, particularly using new and developing technologies.
- reviewing regional obligations of ITV companies whenever there is a change in ownership. OFCOM will have the power to amend a licence condition to meet any deficiencies in the market. Regional obligations are a condition of the licence of ITV companies.
- monitoring the BBC's compliance with regional targets.
- promoting the Cultural Diversity Network (CDN) with an aim of achieving an adequate representation of multicultural society both on and behind the screen.

#### **Community broadcasting**

Local and niche radio licences are currently issued as restricted service licences. There are only 90 restricted service licences, mainly for hospital and student radio stations. Very short-term restricted service licences are also issued for particular events such as religious and sports festivals, youth and community projects.

Restricted service licences have had limited access to funding in the past and this has inhibited the growth of a strong community radio sector. One suggested way for addressing this is to establish an Access Fund within OFCOM. The Fund would receive money from other sources and OFCOM would allocate funding to assist the start-up of community broadcasters, small-scale terrestrial projects and Internet radio broadcasting. The proposal is currently open for public comment.

#### **TV and radio ownership**

Proposals are set out in the White Paper for changes to television ownership rules in the Broadcasting Acts of 1990 and 1996. The proposed changes are to:

- replace the 15 per cent limit on share of television audience with another system to ensure plurality in television services

- revoke the rule prohibiting single ownership of the two London ITV licences and hand over assessment powers to the competition regulator
- replace, or revoke completely, the points system for radio ownership with a simpler regime (possibly utilising audience share percentages as for television), and
- amend general disqualifications on ownership.

As in Australia, the proposed changes to the ownership rules have generated considerable public and political debate. These proposals indicate the Government's possible relaxation of the rules is likely to result in further mergers among commercial television operators and potentially enable Independent Television (ITV), currently owned by Granada Media and Carlton Communications, to be owned by a single company for the first time.

#### **Cross-media ownership**

Amendments to, and relaxation of the cross-media ownership rules are also proposed, in particular, those relating to cross-media mergers. The catalyst for this review has been high-profile mergers in the UK such as the Granada/Carlton/United merger of last year. The UK Government has invited public comments on this issue.

#### **Approach to newspapers**

A light touch regulatory approach is proposed for newspaper mergers. These are currently subject to a public interest test, including consideration of performance relating to accuracy and expression of opinion. The Government has invited public consultation on this issue.

The White Paper is based upon the UK Government's stated commitment to competition, market forces and self-regulation as the way forward for the new communications environment. Most industry bodies have welcomed the establishment of OFCOM as the super-regulatory body, but the success of many of the proposals in the White Paper is still the subject of much debate in the UK.

