



# Price-Based Allocations - Who Wins?

**The recent completion of the SMA's price-based allocation of 190 MDS transmitter licences has highlighted the difficulties such an allocation system brings for smaller, alternative players in a dynamic, lucrative and competitive market - broadcasting.**

While one of the primary advantages of an auction is that it does not exclude anyone from participating in the bidding process, the biggest negative of such a process is that the willingness (and ability) to pay the highest amount is generally the sole determinant of success.

How does such a situation sit with the objects of the **Radiocommunications Act 1992**? The first object of this Act is to provide for the management of the radiofrequency spectrum in order to maximise, by ensuring the efficient allocation and use of the spectrum, the overall public benefit derived from using the radiofrequency spectrum (sub-s.3(a)). There is, however, potential for conflict between this object and that at sub-s.3(e), which calls for a system of charging for access to the spectrum.

Certainly the recent auctions were efficient. The SMA managed to dispose of the licences over a period of only a few weeks, a stark contrast to the old days of comparative merit, or beauty contests, between competing applicants. In the process, the Government banked in excess of \$90 million.

If the SMA had hoped for vigorous bidding amongst a range of competitors, it must have been disappointed, for the process was really a one-company show. Australis Media, its various subsidiary companies and franchisees managed to tie up about 95% of the available transmitter licences. Given that Australis Media was already the dominant player in the MDS market prior to the recent auctions, this process only furthered the concentration of ownership in that market.

Largely as a result of very few, if any, ownership, control or cross-media rules, the stable of interests for Australis Media now includes satellite pay TV licence B, most of the MDS transmitter licence market (which is likely to be used for broadcasting purposes) and it is reported that Australis has booked 15 of Telecom's Visionstream (cable) channels.

Under s.96A of the **Broadcasting Services Act 1992**, the Australian Broadcasting Authority and the Trade Practices Commission are charged with monitoring the cross-media ownership of the holders of non-satellite (eg MDS and cable) pay TV *broadcasting licences* in the context of the objects of that Act, in particular the object relating to encouraging diversity in control of the more influential broadcasting services. Under s.96A of the BSA, the ABA and the TPC are interested only in the cross-media ownership of the *broadcasting licences* and *not* with concentrations of ownership of the means of *transmission* by which such licences become operational (although the

TPC has acknowledged Australis Media's market power in relation to control of MDS transmitter licences). It is this gateway, the access to carriage, that will serve other objects of the Act relating to diversity of services.

The price-based method for allocating the MDS licences, while being efficient, may not, however, have worked in the public interest in terms of maximising the *use* of the spectrum. That is, diversification of ownership of the spectrum might better serve the public interest through the provision of new and interesting services, rather than use of the spectrum to further existing and known ambitions relating to pay TV.

It is these ambitions that are likely to have kept other participants from the process - they could never have afforded to compete.

What lessons can be learned from this so that smaller groups might be better placed to participate in future? Perhaps Australia could take a lesson from the United States, where rules are under consideration to aid small firms in licence auctions for wireless phone services. The *Wall Street Journal* reported on 22 June 1994 that the FCC had been given approval to let only small companies bid on certain licences. The FCC must also come up with rules to help small businesses, women-owned and minority-owned business and rural phone companies to bid successfully. It is likely that smaller companies will be allowed to pay off their winning bids in instalments and the FCC has been urged to limit larger companies' investment to non-majority equity interests that leave actual control in the hands of the individuals who are eligible to bid for the frequencies in question.

So, in answer to the question 'Price-based allocations - who wins?', the answer is those with the deepest pockets and the government. □ *Sue Ferguson*

## Public Utilities Forum

The Public Utilities Forum (PUF) is a forum of activists and organisations formed to safeguard the public interest in the present climate of corporatisation and privatisation of government and community based services. It seeks to ensure that change does not occur for its own sake, but provides net benefits to the community and consumers and improves the environment.

The Forum has developed a charter addressing its concerns relating to social and environmental objectives to be promoted in the reform of essential facilities and services. The Communications Law Centre is one of many organisations involved in the development of the Forum. A copy of the Forum's charter may be obtained from the Centre.