



Ownership rules OK?

While there is still no announcement about how the government plans to proceed reviewing media ownership rules, new laws about communications ownership and control are turning up in some unlikely places.

A funny thing happened on the way to the Media Ownership Inquiry.

In its policy statement for the 1996 election *Better Communications*, the Coalition committed itself to 'a comprehensive public review of the existing cross media regime'. 'For too long,' *Better Communications* argued, 'Labor has used media ownership policy as a means of putting political allegiances and paybacks before the national interest. The result is that, under Labor, we have witnessed the emergence of chaotic and inconsistent media laws with no evidence the public has benefited'.

Six months on, there is still no media ownership review although the speculation has been constant - what its terms of reference might be, who might chair it, whether it might be replaced altogether by a Green Paper on media policy. But in the meantime, the rules about control and ownership of Australian communications look like getting even more complicated.

First, the Telstra privatisation legislation (the Telstra (Dilution of Public Ownership) Bill 1996) on which a Senate Committee has recently reported and, more recently, the first tranche of communications regulatory reform legislation (which includes a Radiocommunications Amendment Bill 1996), propose to put new ownership and control concepts in places they've never been before.

The Telstra legislation includes a new Part 2, 'Restrictions on Ownership of Telstra'. It:

- limits the total foreign ownership of a partially privatised Telstra's shares to 11.6667% (35% of the one third of Telstra proposed to be offered for sale). It also limits the proportion of Telstra shares which

can be held by a single foreign individual or corporation to 1.6667% (5% of the one third offered for sale);

- requires Telstra's head office, base of operations and place of incorporation to remain in Australia; and
- requires Telstra's Chairperson and a majority of its directors to be Australian citizens.

Not to be outdone, the Radiocommunications Act looks like getting some ownership and control rules too.

Among the amendments proposed to be introduced in the Radiocommunications Amendment Bill 1996, are provisions applying section 50 of the Trade Practices Act 1974 (which limits mergers which substantially lessen competition in a market) to the issue of spectrum and apparatus licenses, and to the authorisation of third parties to operate under such licenses.

These are critical amendments designed to ensure that the same kinds of competitive disciplines which operate elsewhere in the economy are applied in the allocation of access to the radiofrequency spectrum. Without them, it is feared that a limited number of players could get access to substantial parts of the spectrum and abuse the power they gain.

The problem is that the acquisition of spectrum licences or apparatus licences is very new terrain for the Trade Practices Act and the Australian Competition and Consumer Commission. The organisations interested to gain access to the spectrum want a little more certainty about what the ACCC might regard as constituting a substantial lessening of competition.

So the Radiocommunications Amendment Bill 1996 gives the Spectrum Management Agency some help.

It gives the SMA the power, in determining procedures for the allocation of spectrum licences or transmitter licences, to impose limits on those acquiring the licences. Such limits can restrict the aggregate spectrum that any one person, a specified person or the members of a specified group of persons, can get access to. Limits might be expressed as in a specified part of the spectrum, a specified [geographic] area or a specified population reach. Similar powers are given in relation to the allocation of transmitter licenses.

Does this sound at all like the ancient history of ownership and control rules in the Broadcasting Services Act? - the 'chaotic and inconsistent media laws with no evidence the public has benefited' which the government is committed to reviewing?

Maybe.

The proposed rules about Telstra are necessary to implement the Government's election commitments about its partial sale. The proposed rules about radiocommunications licensing are necessary to give certainty about how competition policy might be implemented in a very new policy area.

They're a sign of how durable industry-specific, institution-specific and technology-specific rules about the control and ownership of communications continue to be.

Anyone who is looking forward to the Government's much-awaited Media Ownership Inquiry, or Media Policy Green Paper sweeping away decades of policy concepts, public expectations, and industry and political pressures about communications ownership and control, should take a look over their shoulder at the Telstra and Radiocommunications Bills. □

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