

New Zealand access to the Australian broadcasting industry

Jim Stevenson discusses the framework governing the trade in broadcast services between Australia and New Zealand and concludes that freer trade requires further micro-economic reform and Government commitment in Australia.

The capacity of individual states to intervene in all facets of the broadcasting industry is becoming increasingly limited in the global broadcasting market. Neither New Zealand nor Australia can operate regimes effectively in the longer term which seek to insulate their countries from global factors.

In the markets for the provision of services both to and by the broadcasters, we are seeing increased linkages in business and employment in both countries. This dimension to our integration in the global market place is likely to intensify as a result of Closer Economic Relations (CER) micro-economic reform of the Australian economy.

New Zealand regime

The New Zealand regime for services to broadcasters and services by broadcasters is very liberal by international standards. There are no statutory entry restrictions into broadcasting, including no industry specific foreign ownership restrictions. There are no cross media ownership restrictions apart from New Zealand's general competition law under the *Commerce Act 1986*.

Ample radio frequencies for television and radio have been released and spectrum management policies are liberally administered. Provision is made for the regulation of technical standards but few regulations exist — except to prevent radio interference.

Behavioural standards are largely based on self regulation although backed by intervention by a Broadcasting Standards Authority.

There are no mandatory content quotas on broadcasters. Cultural and social policy objectives in broadcasting are assisted directly by a public tax described as the public broadcasting fee which is dispensed by an independent authority on competitive terms. There has been some experimentation with voluntary 'quotas'; for instance New Zealand music on radio.

The national environment for broadcasting in New Zealand reflects the underlying micro-economic reforms in

New Zealand in recent years to make New Zealand's economy internationally competitive. It also reflects other factors. For example New Zealand is a net importer of technology and of programming. Unlike other industrialised countries, New Zealand has ample spectrum availability. Unfortunately there are limitations on a small economy to sustain significant infusions of public money or advertising revenue in broadcasting and this limits New Zealand's ability to support New Zealand identity programming. We have to use what we have efficiently.

Australian regime

The Australian national environment for broadcasting is much more regulated at present.

There are continuing restrictions on entry into television and radio markets although Australia does enjoy a range of national and regional television and radio options. Management of the radio spectrum is along traditional administrative lines and distinguishes between different technologies and markets, for instance, video audio entertainment and information services (VAIES) and pay TV. There are artificial markets in FM frequencies.

Restrictions on foreign ownership. There are also cross-media ownership restrictions in addition to general competition law.

Australia maintains an independent regulatory authority, the Australian Broadcasting Tribunal, which administers elaborate regulation of entry and Australian content.

The current regime in Australia, in part, reflects the more limited progress on micro-economic reform in Australia. In part it reflects the interests which have arisen from earlier commercial entry into radio and television than took place in New Zealand. There is a very strong emphasis placed on promoting Australian cultural identity in an economy with a greater capacity to support assistance measures. Spectrum management policies reflect all the above factors. Correspondingly the greater range of competitive

restrictions on services to and services by broadcasters leaves Australia more vulnerable to complaint internationally and bilaterally from New Zealand.

The TransTasman framework

Bilaterally the main elements of the TransTasman trade framework for broadcasting services are:

- the ANZCERTA agreement;
- the Services Protocol;
- ministerial Undertakings and Arrangements;
- inter agency cooperation; and
- national legislation.

ANZCERTA was primarily designed to facilitate the free flow in goods, but under its auspices all manner of arrangements have been concluded.

Services Protocol

The Services Protocol of 1988 is the key instrument for the further development of free trade in services, and particularly in broadcasting.

The objectives of the Protocol are to liberalise barriers to trade in services, to improve the efficiency and competitiveness of service industry sectors, to establish a framework of rules to govern trade in services and to facilitate competition in trade in services. The Protocol requires each country to grant to persons of the other country and services provided by them both access rights and treatment in its market no less favourable than those allowed to its own persons and services provided by them. The Protocol applies to all service sectors, except those sectors inscribed by each country in the Annex to the Protocol. Both countries inscribed various aspects of broadcasting and communications in the Annex.

Ministerial understandings and arrangements

In this category falls the exchange of letters of 1988/1989 relating to Ministerial understandings on the use of AUSSAT satellite facilities for

telecommunications and broadcast services between Australia and New Zealand. In particular, New Zealand sought an undertaking from the Australian Government that TransTasman broadcasting (and telecommunications services) take into account respective standards regimes. I understand these arrangements are presently under review no doubt to tie in with the changing environment for AUSSAT. Another example of TransTasman cooperation is found in the necessary coordination mainly under the International Telecommunications Union of AM radio services. Australian and New Zealand officials also consult regularly on spectrum management issues of mutual interest including harmonization of technical standards.

Retention of reservations

Australia's list of exemptions from the Services Protocol includes extensive coverage of telecommunications and broadcasting regulations. At the time the Protocol was negotiated in 1988 New Zealand had not advanced beyond the point of policy commitments to liberalisation in its broadcasting sector. New Zealand's reservation referred to the then broadcasting warrant restrictions as well as foreign ownership restrictions. It also noted restrictions on short-wave radio services and satellite broadcasting and narrowcasting services. For its part, New Zealand with its extensive liberalisation of broadcasting markets, should have no particular reason to maintain its reservation. For its part, Australian regulation has been retained and arguably intensified in some quarters. Obviously New Zealand's commercial objective is to seek further movement in the lists.

There have been various officials' meetings over the past year or so with respect to the Protocol and the reservations in particular, as part of the agenda to be worked through for the 1992 review of the CER relationship. I understand that although there may be a willingness on both sides to update the reservations, substantive changes are not yet envisaged on the Australian side. The Australians do not see the micro-economic reform process being driven by CER considerations.

Program standards

New Zealand believes that Australian television and radio programming and television advertising

standards are not in conformity with the national treatment provisions of the Services Protocol. They do not provide fully for equal national treatment for service providers. The three standards which have caused most concern in the area of television are Australian content for television programs (TPS14) and television advertisements (TPS19).

TPS14 sets a detailed scoring system for drama which is intended to ensure minimum levels of Australian drama and children's drama, and a quota which is intended to ensure that a specific percentage of transmission time is devoted to Australian programming. The aim of TPS14 is to seek an 'Australian look'.

New Zealand's position is that it does not accept that TPS14, constitutes a justifiable exception to the services Protocol. Australia for its part has argued that TPS14 does not discriminate against other foreign investment or involvement of foreign executive producers in the production of Australian drama. Australia also claims that its obligations under the OECD liberalisation code do not allow it to discriminate in favour of New Zealand.

Generally, New Zealand has made no progress at the official or ministerial level on this general issue, but some movement was detected in the terms of reference given by the Kim Beasley, the former Minister of Transport and Communication, to the ABT, to enquire into the effects of co-production treaties on the Australian film and television industry. New Zealand's arrangement with Australia fell within the terms of reference, which directed the ABT to consider Australia's international obligations. But far from giving full consideration to the Services Protocol and the CER relationship, the Tribunal surprisingly delivered a robust dismissal of Australian obligations under CER in its Report. The New Zealand Government, in August 1991, delivered a strenuous and detailed rebuttal of both the interpretation of CER and the Services Protocol, and the general obligation of Government agencies to give effect to treaty obligations in their domestic practices.

Advertising standards

The case of TPS 19 illustrates difficulties which have arisen in ensuring compliance with the Services Protocol obligations. The ABT is conducting an inquiry into foreign content in TV advertisements. The present arrangement is that advertisements produced in New Zealand are treated as Australian made advertisements. Accordingly, New Zealand

made advertisements are not subject to the foreign content rules on advertising established by the ABT.

However, in the course of a 1990 inquiry, the ABT issued a 'Preliminary View', a draft proposal which would reclassify New Zealand made advertisements as foreign advertisements.

Following publication of the Preliminary View, both the New Zealand Government and advertising industry made a series of representations to the ABT and to the Australian Government. As a result of these representations, the ABT released a second draft proposal which restored the classification of New Zealand advertisements as locally made.

This second draft has not yet been implemented. But even if it is promulgated in its present form, it would represent only the maintenance, after a significant struggle, of the status quo. There still remain aspects of the present standard which discriminate against the New Zealand advertising industry. The present standard states that advertisements with a level of foreign content higher than the prescribed limit of 20 per cent may be permitted if produced outside Australia by Australian personnel. However I understand that a further effort is now being made to persuade the ABT to liberalise in this area as well.

Conclusion

Free trade in TransTasman services affecting broadcasting are still some distance away. In part, progress will depend on micro-economic reform in Australia.

Compliance issues under the Service Protocol have also arisen largely because insufficient effect has been given to the Protocol by some administrative agencies in Australia. In part this may be a reflection on the level of commitment of Australia to free trade in services but it may also reflect the difficulties internationally of maintaining elaborate regimes to protect cultural identities based on regulation rather than direct financial assistance.

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