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REVIEW ARTICLES

The Media in the Marketplace

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M. E. Beesley (ed.), ***Markets and the Media: Competition, Regulation and the Interests of Consumers****, Institute of Economic Affairs, London, 1996*

AUSTRALIAN governments have a long history of intervention in media markets. In October 1996 the Commonwealth government announced yet another media review. This review is examining the effectiveness of the current cross-media rules in meeting the stated policy objectives of plurality, diversity and competition in the media industries. Issues of convergence of technologies, services and enterprises are likely to raised during the review.

Australia is not, of course, unique with regard to government regulation of media-industries. Most OECD countries, and many non-OECD countries too, have adopted industry-specific media regulation. Indeed, the deregulatory reforms in many industries in the 1980s and 1990s appear to have left the media untouched. Governments are unwilling to trust media markets, and frequently cite market failure and market imperfections to justify their interventions.

Markets and the Media, a new collection from the London-based IEA, questions this stance. The editor, Michael Beesley, has written extensively on deregulation and privatisation in Britain's gas, water, electricity and transport markets. Four papers by different authors examine specific issues in media regulation: copyright, digital technology and its implications, the future of public broadcasting, and concentration and diversity in the media.

Barriers to Entry

In his overview, Beesley argues that concerns about media concentration are misplaced and generally unfounded unless there are substantial barriers to entry. Such barriers may occur at a number of levels. At the first level are the copyright holders: persons or entities who develop new ideas and new intellectual products. At the next level are the producers or publishers, who provide newspapers, films, television and radio programs, and sound recordings. The third level, often closely

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linked to the second level, consists of the delivery or distribution mechanism: the means by which the output produced at the second level reaches its audience. The fourth level comprises the reception mechanism, which in households would include telephones, television sets, radio sets and encryption devices such as the television-set top boxes for pay TV.

Beesley argues that, to justify the regulation imposed upon the industry, it would be necessary to show that significant barriers to entry existed at one or more levels. If that were the case, vertical integration between the various levels may inhibit competition and so provide grounds for government intervention. Should entry barriers at each of the levels be low, any vertically integrated structures that did emerge would be likely to reflect economies in transactions costs between the different levels. For example, internalisation of transaction costs in the film industry, where each unit of 'product' has unique characteristics, has long been accepted as an explanation for the extent of vertical integration that exists in the industry. Further, even if entry barriers did exist at any of the levels, there could well be factors likely to lead to freer entry in the future. If this is the case, then the removal of existing regulatory barriers may perhaps be justified to enable market forces to shape the future structure of the industry.

Copyright Issues

Dan Goyder examines the effects of copyright. In recent years, copyright protection has undergone a large number of changes in OECD countries. The rapid growth in the volume of intellectual output and the increased opportunities for the commercialisation of such output have led to the extension of copyright protection into new areas, such as computer software and data bases, and to an extension of the term of protection for copyright users.

The international harmonisation of copyright law has been encouraged under the Berne Convention in the 19th century and the Rome Convention in the 1960s. In the recently concluded Uruguay Round of GATT, the US was successful in placing 'trade related aspects of intellectual property' (TRIPS) on to the agenda and ultimately in achieving TRIPS agreements for international enforcement of intellectual property rights. Nevertheless, as Goyder observes, in some situations the aims of competition policy may conflict with the protection of intellectual property rights. He reviews a number of recent copyright cases in the European Union (EU) where the rights of copyright holders have been extended to include 'related rights'. For example, copyright owners of films and sound recordings have been given 'distribution rights' so that they can control, or even prevent, the entry into the EU of products by way of parallel import which they have licensed for sale overseas.

Such action echoes the continuing issue of reforms to the CD industry in Australia. In 1990 the Prices Surveillance Authority recommended changes to the Copyright Act to allow parallel import of legitimate sound recordings. International record companies were practising price discrimination and charging high prices in Australia for CDs by using provisions in the Copyright Act which prevented parallel

imports. Unfortunately for consumers, the government of the day chose to maintain the restrictions on parallel imports, and CD prices have remained high.

Goyder concludes by noting that the rights of copyright holders and the interests of general competition policy are likely to continue to conflict with one another, and suggests that there is a need for 'inventive solutions'. Unfortunately, Goyder does not canvass any such solutions himself.

The Digital Revolution

The second paper, by Malcolm Matson, examines the implications of the technological revolution brought about by digitalisation. Matson believes that much of the regulation imposed on broadcast media is at best misguided and unnecessary, and at worst deliberately anti-competitive and protective of certain existing media interests. He argues that the British government has accepted that competition is the appropriate instrument to achieve technological development and that regulatory regimes that make explicit references to specific technologies militate against innovation and competitiveness.

This approach is in marked contrast with the one adopted by Australian governments. In particular, the Labor government's regulation of pay TV made numerous mistakes by regulating with regard to technology. It forced satellite pay-TV providers to operate in an extremely constrained environment. By restricting individual operators to a maximum of four channels, it severely limited satellite transmission viability at a time when competing delivery mechanisms, such as cable, could provide many more channels at a lower price. The failure in Australia of satellite to emerge as a viable competitor to cable must to some extent be blamed on inappropriate regulatory constraints that reflected the government's view of likely technological development.

A second major theme developed by Matson is that digital technology linked with optical-fibre transmission has made available an enormous capacity for the transmission of communication. The major consequence of this is that communications industries really consist of two separate industries: the supply of infrastructure and the supply of services using that infrastructure. Matson argues that vertically integrating the infrastructure provision with service delivery increases the cost and risk in a competitive market. Such integration could therefore be justified only if the vertically integrated firm had some exclusive government licence which precluded competitive entry.

According to Matson, the capacity of fibre-optic cable is essentially infinite. Given that some countries, such as the UK, the US, and now Australia, are permitting and encouraging the development of competing optic-fibre networks, the market price of carriage will decrease as more capacity is deployed. Should this be the case, then the only way in which a high price for transmission could be maintained is by government regulation. This is not to say that Matson argues for such intervention: on the contrary, he argues that the existence of excess capacity and the inevitable decrease in transmission prices to zero means that government intervention

is unnecessary. In this view of the future, issues of regulatory provision of access and the regulation of the price of access become irrelevant.

Matson supports the general deregulatory approach adopted in the UK. But he notes that, while the British government has been strongly opposed to any supply-side restrictions on telecommunications transmission capacity, many other countries have bowed to the demands of existing (generally publicly owned) monopoly transmission entities, and prevented new entry.

Matson is not entirely uncritical of the UK regulatory regime. He argues that an artificial distinction between the carriage of telecommunications traffic on the one hand and of television signals on the other has divided responsibility for licensing these activities between different regulatory bodies. Such splitting of regulatory responsibility has the potential to result in different regulatory procedures being applied to competing firms. Australia has adopted a similar approach based on method of signal carriage, thus dividing responsibilities between AUSTEL and the Australian Broadcasting Authority, with a more general regulatory responsibility being exercised by the Australian Competition and Consumer Commission. This creates the potential for regulatory conflict as well as the more obvious problem of over-regulation.

Matson rightly concludes that regulatory mechanisms should not be used to protect existing interests. It is his view that digitalisation of information will eliminate any meaningful distinction between television, telecommunications and computing, and any regulatory mechanisms that do operate should apply equally to all media.

Public Service Broadcasting

The third contribution to *Markets and the Media* is by David Sawers, who considers the future of public service broadcasting. Sawers believes that arguments for public service broadcasting (defined generally as broadcasting whose primary objective is the 'improvement' of its audience) are based on invalid market-failure arguments and reflect a strong paternalistic attitude on the part of regulators.

Supporters of publicly funded broadcasting have typically claimed that the market for commercial television services will always contain imperfections that can best be overcome by public broadcasting. In particular, it has been claimed that the external benefits to consumers from consumption of certain programs will be ignored and that consumers will make a less than optimal investment in the consumption of such programs. But even if such arguments were valid, it would not necessarily follow that publicly funded broadcasting would eliminate the market failure. As Sawers notes, supporters of public broadcasting assume that whereas consumers are ignorant of their own best interests, the producers of television programs for the BBC (or the ABC) are not.

The assumption that an intellectual elite should decide what consumers see and hear is hardly consistent with the liberal-democratic tradition. Furthermore, it is difficult to reconcile this view of what public broadcasting should do with what it actually does. Fearful of the consequences of shrinking audiences and low ratings,

public broadcasters in the UK and Australia seek to attract wide audiences. But this duplicates the approach of commercial broadcasters and undermines the market-failure case for public broadcasting.

Sawers argues that there may have been a good argument for the public provision of a universal and impartial broadcasting service in the past, when the number of services was limited by technology and the spectrum had a scarcity value. But now that technology has made possible a vast increase in the number of services (channels) available, and consumers can pay directly for what they want, their demands will be met by the market. The argument that consumers lack perfect information applies in a wide range of information and entertainment services; yet most governments do not provide publicly funded 'quality' newspapers, CDs or cinemas, for example. Sawers concludes that any justification for public broadcasting that ever did exist no longer does so.

Convergence and Diversity in the Media

The final contribution to the collection, by William Shew and Irwin Stelzer, has already attracted much attention in the UK and Australia. Their paper, 'A Policy Framework for the Media Industries', examines the regulatory implications of technological changes leading to convergence. The authors argue that regulations should not impede the development of economically optimal business organisations, while at the same time there is a need to preserve competition and diversity.

One of their major arguments is that past examinations of concentration and market power and of consequent issues of diversity and choice have been distorted by inappropriate market definitions; any analysis of these issues should therefore be based on concentration in the entire media industry. Shew and Stelzer believe that a high degree of competition exists between newspapers, magazines, television and radio for both consumers' attention and advertising dollars, and that such competition justifies a broad definition of the relevant market.

One of the objectives of media regulation is to limit the political and cultural power of media organisations. Shew and Stelzer consider the problems inherent in the measurement of power. While economic power is typically measured by revenue, much of the media industry's revenue comes from advertisers rather than consumers. Since advertising rates reflect advertisers' willingness to pay to reach particular demographics, advertising revenue may not necessarily be a measure of political and cultural influence. For example, the political influence of broadsheet newspapers may be greater than that of their tabloid counterparts; yet the advertising revenue of tabloids may be considerably greater.

Still, it is possible that consumer spending on the media could be a measure of media influence. But it is made more complex by the fact that some influential media are available at no direct cost to consumers. Free-to-air television and radio, both public and private, may exercise considerable influence, but this would not be captured in a consumer-spending measure. In addition, whereas some media rely on advertising as their principal source of revenue, others rely predominantly on subscription revenue. For example, it may be that more 'serious' small-circulation

publications relying largely on subscriber revenue have considerably greater influence than high-circulation advertiser-supported publications.

To avoid such problems, Shew and Stelzer argue that the measure of influence should be the time the public devotes to various media. They claim that the average adult in the UK devotes almost 40 hours a week to the media. Over 60 per cent of this time is spent watching television. Radio accounts for around 28 per cent, newspapers 9 per cent, magazines 2 per cent and cinema less than 1 per cent. The authors conclude that 'the media conglomerates often criticised for their size have inconsequential shares of the national media market' (p. 135). The only significant media group in terms of concentration is the BBC with 44 per cent of the market; News International, by contrast, has only 3.4 per cent.

The authors conclude that concerns over the concentration in the UK media are ill-founded. Further, by treating the media as a whole as the relevant market rather than individual segments of it such as television, newspapers and so on, they conclude that specific cross-media ownership rules are unnecessary in the UK at the present time. This is not to say that no regulation is necessary. They suggest instead that media-specific regulation may be largely unnecessary and that existing general monopoly regulation in the UK, which uses a 25 per cent share of a market as the trigger for an inquiry into whether the monopoly activity is contrary to the public interest, should be applied to the media industry.

Shew and Stelzer's approach has some considerable theoretical appeal. Arbitrary restrictions on cross-media ownership may prevent the realisation of a variety of economies of scale and scope. The degree of substitutability between a variety of media products is such that a high level of concentration in a particular segment of the media market may not produce the market power often associated with ownership concentration. Yet the measurement of market influence poses considerable practical problems. Whatever measure of such influence is adopted — time share, audience share or revenue share — the weightings to be attributed to individual media like newspapers and television will remain controversial. Whereas Shew and Stelzer would claim that a time-share approach eliminates the need for weightings, some observers would argue that some media should still be weighted more heavily than others. For example, if one company owned every national daily newspaper in the UK, its share of the media market would be a mere 3.7 per cent as measured by time share. Such a figure would be unlikely to justify intervention, yet such an outcome would undoubtedly attract criticism of the usefulness of a time-share approach.

Nevertheless, Shaw and Stelzer offer a provocative and partially persuasive argument. Media regulation should not discourage technological development and should be sufficiently flexible to take into account rapid change and the probable convergence of what until recently have been separate industries with their own particular regulatory regimes. As technology lowers entry barriers, it is eliminating many of the grounds for media regulation. Governments need to respond to this in a suitably deregulatory manner.