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SPEECH TO THE INTERNATIONAL INSTITUTE OF COMMUNICATIONS: THE HARMONISED FRAMEWORK - DIGITAL PLATFORMS & THE MEDIA

Introduction

It is a pleasure to speak at this important forum considering a harmonised framework for digital platforms and the media.

Of course this discussion topic is a reference to recommendation 6 in the ACCC's final report of the Digital Platforms Inquiry:

Process to implement harmonised media regulatory framework: A new platform-neutral regulatory framework be developed and implemented to ensure effective and consistent regulatory oversight of all entities involved in content production or delivery in Australia, including media businesses, publishers, broadcasters and digital platforms. This would create a level playing field that promotes competition in Australian media and advertising markets.[1]

In December last year, I joined with the Prime Minister and the Treasurer to announce our government's response to the Digital Platforms Inquiry - which included accepting recommendation 6.

In my remarks today I want to do three things:

- Look at what history teaches us about change in the media and communications sector
- Discuss the importance of competition – and of competitive neutrality
- Speak about the path forward to implement recommendation 6.

What History Teaches Us

I want to firstly take a brief look at the history of the media and communications sector - and to argue that we can see a clear pattern in which the arrival of a new technology disrupts the market and in turn drives changes to regulation.

Mass communication and access to information arguably kicked off in the fifteenth century when Gutenberg invented the printing press.

By the beginning of the seventeenth century, newspapers were being published in Germany and it didn't take long for similar publications to appear across Europe. Monarchs, fearful of

criticism, tried to control the distribution of information by requiring licences for the use of printing presses.[2]

In 1662 the English Parliament passed the *Licensing of the Press Act*, which gave the government the power to regulate printing and printing presses and to prevent the "frequent Abuses in printing seditious treasonable and unlicensed Bookes (sic) and Pamphlets."[3]

Since that time we have seen a succession of new communications technologies arrive - typically disrupting businesses which were dominant under the previous technology.

Samuel Morse's 1830s invention, using electronic telegraphy, became the International Morse Code in 1851[4], which led to the establishment of the telegraph sector, soon dominated by Western Union.[5]

Then the telephone came along in 1876 - and while the telegraph business stayed healthy for many decades, it increasingly played second fiddle to the phone business.

In Australia, the first telephone exchanges opened in Melbourne and Brisbane in 1880. The Postmaster-General's Department was established at Federation in 1901 and it and successor organisations ran the phone network as a government owned monopoly for almost a century.

From the earliest days of colonisation Australia had a vigorous privately owned newspaper sector. But it faced significant disruption when radio came along, with public radio launching in 1923 and the ABC starting operations in 1932.

An even bigger disruption came with the arrival of television. From the late 1920s, governments had considered whether such a service would be commercially viable – and you will not be surprised to hear that existing commercial media interests opposed its introduction.[6]

Following the 1953 Royal Commission into Television, which considered how the system could develop, how many stations should be licensed and what conditions and standards should be imposed on licensees, Parliament passed the *Television Act* in the same year.[7] The aim was to launch services in time for the Melbourne Olympics.

The deadline was met - just - with TCN Nine launching its television service in September 1956 and the ABC launching in November that year with Channel ABN2.

Throughout this period, television services operated under a regulatory framework set out in the *Broadcasting Services Act 1942*. It had been largely designed for radio in the 1940s, but adapted to allow television broadcasting to commence in 1956.

Comprehensive regulatory change did not occur until the early nineties. In introducing the *Broadcasting Services Bill* to the House in 1992, the responsible Minister, Kim Beazley noted that the 1942 Act was a '…dog's breakfast.' He went onto say that:

The dog which was without question a loose, rabid doberman pinscher, has been shot between the eyes and replaced by a sleek greyhound of legislation.

Of course it was a greyhound for its times – when the sector was more narrowly defined than today. There were three metropolitan commercial television networks, a handful of regional broadcasters plus the ABC and SBS. Talkback radio, which had only been made legal in 1967, was dominant in the AM bands. FM radio was reshaping the delivery of music radio, following the introduction of Triple M, 2Day FM and Triple J in the 1980s.

It was a time of influential "media moguls" - Kerry Packer, Christopher Skase and Alan Bond - and advertising "rivers of gold".

The media sector today is significantly more diverse - with a variety of transmission technologies, devices and business models used to serve content to Australians who are consuming it very differently than they were even five years ago.

In 2015, less than two per cent of Australians had SVOD services; around 57 per cent use these services today, and it is continuing to grow.[8]

New devices enable different viewing habits. According to the ABC's research, 94 per cent of video-on-demand viewing happens in the home. The rest is at work, school or university or commuting. 63 per cent is viewed on a big screen and 15 per cent via a hand-held device.

The types of content being consumed on broadcast television has also changed. During the 1990s, film, drama and sport dominated the list of top rating programs each year.[9]

In recent years, reality television has emerged as the dominant genre. Last year, over 2.6 million Australians tuned into the finale of *Married at First Sight*, and this does not include people who watched it on catch up television[10] and *The Masked Singer* saw nearly 1.4 million curious Australians keen to unmask the Robot.[11]

Although we are still watching Australian programs on free-to-air television, SVOD services have given audiences the ability to watch content from anywhere in the world - and at a time of their choosing.

Television broadcasters are up against Netflix, Amazon Prime Video, Disney Plus and YouTube Premium and now operate in a far more competitive environment. In 2018, commercial free-to-air had an advertising share of 21.8 percent - a massive drop from their share of just over 30 per cent in 1996.[12]

The SVOD sector in Australia - non-existent in 1996 or even 2006 - generated revenue of over $1.1 billion domestically in 2018. PwC predicts this will grow to over $2 billion by 2023.[13]

The lesson from history, I would argue, is that major change in communications technology, and in turn communications markets, prompts changes to the regulatory framework within which those markets operate.

History also shows us that we have traditionally regulated with the means of distribution front of mind.

But today we need to ask the obvious question: can we continue to regulate distribution technologies in different ways when in substance they are delivering the same kinds of content to the same market?

Competition and Competitive Neutrality

This was a key question the ACCC asked about media regulation in its Digital Platforms Inquiry. In coming to its answer, the ACCC comprehensively laid out the way that new technologies, and new market participants - particularly the giant global digital platforms such as Google and Facebook - have disrupted the market. Its recommendations for change build upon its analysis of how the market has transformed.

At the outset it is important to recognise the primacy of competition as a policy objective. Competition is a powerful engine for lower prices, better service, more innovation and better outcomes for consumers. So the Government wanted to know if the growth of the digital platforms is boosting or damaging competition.

That is why the then Treasurer, Scott Morrison, charged the ACCC with conducting the Digital Platforms Inquiry: to examine the effect the digital platforms are having on competition in the media and advertising services markets.

What the ACCC found is that the digital platforms have changed how people and businesses connect. In a given month, around 19.2 million people in Australia use Google Search, 17.3 million use Facebook, 17.6 million use YouTube (owned by Google), and 11.2 million use Instagram (owned by Facebook).[14]

Many Australians access these services daily for long periods of time, spending an average of 23 minutes a day on Google (excluding YouTube) and just over half an hour a day on Facebook.[15]

Next, the ACCC made a very clear finding that our existing regulatory frameworks are profoundly challenged by the business models of digital platforms, their global nature and the pace at which digital technologies and services evolve and iterate.

Digital platforms have fundamentally changed the way media content is produced, distributed and consumed, and Facebook and Google have grown rapidly to become the dominant players in important online markets in Australia. This dominance is underpinned by the volume of data these companies gather and control.

The Morrison Government has accepted the ACCC's overriding conclusion that there is a need for reform—to better protect consumers, improve transparency, recognise power imbalances and ensure that substantial market power is not used to lessen competition in media and advertising services markets.

The Final Report contained 23 recommendations ranging across competition, consumer protection, privacy and media regulatory reform.

The ACCC's recommendations concerning media regulation drew on its detailed factual analysis. It carefully documented the very substantial differences between the regulatory requirements on traditional media businesses, such as free-to-air television, and the very much

lighter requirements on businesses which compete with them, such as internet-based subscription video on demand (SVOD) services.

For example, different rules apply to content depending on whether it is distributed on free-to-air television, subscription television or on subscription video on demand services.

The ACCC found that despite the increasingly significant role played by digital platforms in distributing content to Australian consumers virtually no regulation applies to these services.

The bulk of Australian content obligations only apply to commercial free-to-air television broadcasters – despite newer SVOD services being accessed by more than 55 per cent of Australians.[16]

The content rules are but one area, of the several highlighted by the ACCC, where there is a sharp disparity between the extent and cost of regulatory burdens faced by traditional media businesses and those faced by internet-based competitors.

Other imbalances across platforms highlighted by the ACCC include advertising standards and publishing regulations and standards.

The ACCC called for a harmonised regulatory framework, which applies equally to businesses serving the same market, regardless of the technology they use. It said the benefits of this approach would include:

- creating a more level playing field between market participants and increasing competition on the merits
- removing redundant legislation to reduce the overall regulatory burden on industry
- simplifying the complex system of regulations currently in place
- enabling the determination of issues most important to Australian audiences - and ensuring that such issues are more consistently and reliably protected, so as to do a better job of safeguarding community expectations and standards
- Establishing more flexible, technology-neutral principles that could better respond to technological change and innovation
- improving the global competitiveness of Australian digital content industries.

The Path Forward

Let me now turn to the path forward.

In deciding how we would respond to the ACCC's recommendation, the Government took note of the ACCC's comment that this is a large and complex reform and is best dealt with in stages.

We certainly agree with that view!

What we have committed to, then, is that the Government will commence a staged process to reform media regulation towards an end state of a platform-neutral regulatory framework covering both online and offline delivery of media content to Australian consumers.

We will work through the detail carefully, dividing the work into a number of stages, as the ACCC recommends, and consulting with affected stakeholders at each stage.

Commencing in 2020 our immediate focus is on three key issues:

- developing a uniform classification framework across all media platforms;
- the extent of Australian content obligations on free-to-air television broadcasters (including drama and children's content), and whether there should be Australian content obligations on subscription video-on-demand services; and
- other aspects of the policy framework to support Australian film and television content.

As regards the first of these issues, classification, in December last year I announced a review of the National Classification Scheme that was established in 1995.

The National Classification Code and the Guidelines for the Classifications of Films have not been reviewed since 2002 – and the Guidelines for the Classification of Games were last examined in 2013.

This process is being led by Neville Stevens AO, a former secretary of the then Department of Communications, Information Technology and the Arts and the then Department of Industry, Technology and Regional Development.

I expect that the Stevens review will:

- help redesign a classification framework better suited to a modern content environment and identify any updates needed to the classification code and guidelines; and
- consider different approaches to classification to reflect the growing diversity of services available to consumers in the marketplace.

Without wanting to pre-empt the outcome of the Stevens review, I think there is room for industry to play a greater role in the classification process, while maintaining the integrity of the Australian classification scheme. This will likely mean a more streamlined classification process that is adaptive to the digital content market, outlines the obligations of industry across platforms but very importantly continues to perform the key role of providing valuable classification information to Australian consumers.

Mr Stevens is considering public submissions and engaging with stakeholders, and I anticipate receiving his report in April.

Let me turn then to the second and third of these issues - Australian content obligations and the policy framework supporting Australian film and television content. In December, we indicated that the next step would be for the Government to release an options paper co-authored by Screen Australia and the Australian Communications and Media Authority that will look at how to best support Australian stories on our screens in a modern, multi-platform environment.

Screen Australia and the ACMA are hard at work on this paper. We said we wanted to release it in the early part of 2020 and we are working to that timetable. My expectation is that this paper will set out a comprehensive fact base on the issues, including:

- the policy rationales for supporting Australian content - both economic and cultural
- The extent of support the Australian government provides to the sector directly
- The extent of regulatory obligations on the television sector
- The growth of streaming services globally and in Australia - and the impact this is having on the Australian television sector and the content production sector, including both threats to existing business models and opportunities to meet global demand for content from the streaming sector.

As you would expect from the nomenclature, the paper will also sketch out some high level possible policy options in response. Of course this will be as a prompt for public discussion and industry consultation - not as an indication of any decisions having been taken. I look forward to getting into that consultation once the paper is ready to release.

These three issues, then, form the first phase of our response to the ACCC's recommendation to harmonise the media regulatory framework.

By the end of 2020 I anticipate we will make announcements about the details and process for a second phase of reform. This is expected to include a review of the advertising rules and restrictions across all delivery platforms, consideration of mechanisms to monitor and enforce the regulatory framework across all platforms, and other measures to remove redundant legislation and implement a coherent legal framework for consumers and for industry participants.

Conclusion

Let me conclude, then, by returning to the argument with which I began: the history of the media and communications sector shows a series of market disruptions driven by technology, which in turn have prompted a reset of regulation.

The ACCC's Digital Platforms Inquiry comprehensively lays out the scale of regulatory disparity and market disruption which is presently occurring in the Australian media and communications sector.

In response, our government has a clear agenda for regulatory reform, as we work to harmonise the regulation of the media sector.

Our aim is for a more coherent, consistent and competitively neutral framework – that has benefits for consumers, the sector and the nation.

[1] ACCC (2019) *Digital Platforms Inquiry – Final Report*, p 31

[2] https://www.washingtonpost.com/archive/1998/02/11/a-history-of-newspaper-gutenbergs-press-started-a-revolution/2e95875c-313e-4b5c-9807-8bcb031257ad/

[3] https://dash.harvard.edu/bitstream/handle/1/17219056/677787.pdf?sequence=1

[4] https://www.britannica.com/topic/Morse-Code

[5] https://www.britannica.com/technology/telegraph/Development-of-the-telegraph-industry

[6] https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/Media_ownership/1950-1956

[7] https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/Media_ownership/1950-1956

[8] Roy Morgan (2 Sept 2019) The new minority – the home phone connected

[9] Analysis by the Bureau of Communications and Arts Research of OzTAM data (2019)

[10] OzTAM ratings

[11] https://www.adnews.com.au/news/the-masked-singer-reaches-1-37m-in-grand-final

[12] ACCC (2019) *Digital Platforms Inquiry – Final Report*, p 18

[13] PwC (2019) *Global Media and Entertainment Outlook*

[14] ACCC (2019) *Digital Platforms Inquiry – Final Report*, p 6

[15] ACCC (2019) *Digital Platforms Inquiry – Final Report*, p 44

[16] Roy Morgan (2 Sept 2019) The new minority – the home phone connected