IPA Submission to

Future use of unassigned television channels

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Introduction

Australian spectrum policy is largely characterised by a 'command and control' approach to allocation. Government allocates rights, conditions of their use, and the services which may be provided. Such rights can rarely be traded, and are subject to continuous government supervision and regulation.

Such a top-down approach is ill-suited to managing the implementation and diffusion of technological innovations, nowhere more so than in the field of communications and information technology. While such a framework may satisfactorily – although certainly not ideally – manage a limited and static array of services, its capacity to manage the allocation of new and future technologies is limited.

Centrally planned licenses, regardless of whether they are auctioned off or simply distributed, require detailed comprehensive studies and consultations with regard to demand, public policy objectives, technical obstacles and cost factors. Such a detailed system rigidly defines the parameters and extent of the spectrum rights, but at the cost of restricting flexibility, experimentation and innovation on the part of the licensee.[1]

While extremely difficult to estimate, it is certain that this framework costs consumer welfare enormous amounts of money. For instance, looking at the delays in mobile telephony rollout in the United States caused by regulatory spectrum allocation, Jerry Hausman estimated that the cost to American economic welfare exceeded US$85 billion in 1990 dollars.[2] It is particularly hard to estimate the cost of foregone investment, but it is clear that inefficient allocation of spectrum costs Australian consumers similarly. With only an extensive consultation process as a means to second guess market outcomes, regulators are unable to reliably respond to consumer demands and the potential benefits of uncertain new technologies.

This 'command and control' approach of government policy towards spectrum, particularly in the Broadcasting Services Band is a government intervention designed to prevent one user of the electromagnetic spectrum from interfering with another.

However, it has been well recognised in the economic literature on spectrum rights that management of the electromagnetic spectrum would be best conducted under a secure property rights framework. Highly regarded from the time of its first enunciation (1959) is Ronald Coase's demonstration of how well-defined and transparent property rights would result in spectrum being allocated to its highest value uses, regardless of the manner in which it was first distributed.[3]

Such a system would include clear and unambiguous initial definition of interference rights in terms of power limits, subject to negotiated changes by rights holders. Spectrum rights would be flexible in their use – no restriction would be placed outside interference limitation, international agreements and economy-wide competition law. Rights would be transferable and exclusive.[4]

In Australian radiocommunications policy, only "spectrum" licenses approach this ideal. While initially allocation of such licences may not be in practice technologically neutral, given an active secondary trading, the market would allocate technologies to its best use area of spectrum.

In contrast, "Apparatus" Licenses are a highly prescriptive and inflexible method of allocating rights to the electromagnetic spectrum. Apparatus license require regulators to predict and usher in new technologies and services, a task which they are ill-suited to perform satisfactorily under the best of circumstances.

ACMA discussion paper

It is within this context that IPA approaches the ACMA discussion paper "Future use of unassigned television channels". Given the rapid technological innovation in this area, it is disappointing to see that the additional channel capacity left after the remarkably ineffective digital television allocation should be allocated to apparatus licenses, particularly datacasting transmitter licenses (DTLs.) While recognising that this allocation is largely up to the government, IPA urges ACMA and the government to reorientate spectrum allocation and management away from its 'command and control' past. Ronald Coase's insight was that the initial allocation of these rights is immaterial as long as these rights are tradable. Government and ACMA should focus on assuring that the two new licences are as flexible as possible and allow the market to dictate an efficient outcome.

Potential uses

The availability of these channels represents a rare opportunity for media companies of all sizes to experiment with a variety of services if they feel it is in their com-

mercial interest. But given the rapid development of on-the-shelf and future technologies and their uncertain reception in the Australian public, it is not possible to reliably forecast future demand for services.

For instance, datacasting seems to have no role in an Australia being blanketed with internet coverage, but may have temporary use for rural and regional areas poorly served by telephonic and broadband communications technologies. Similarly, subscription television and mobile television may only have temporary appeal, as bandwidth increases and online services, still in their embryonic stage, develop. DTL restrictions on certain genres of television programs and audio content could further reduce forecasted demand for services on these channels.

But to develop policy on such predictions, and to then allocate scarce resources based on those policies, invites policy failure.

If government is serious about providing new media and content for Australian citizens, it should introduce flexible, consumer-responsive services on these two channels. Ideally, these channels would not be allocated as DTLs at all, but instead as spectrum licences. Whether this would result in two new free-to-air commercial broadcasters, or as experimental internet delivery mechanisms, or as subscription television networks, is a question that the market, aided by a strong institution of spectrum property rights, should be left to answer. Anything else invites significant inefficiencies leading to a loss of consumer welfare.

Competition Issues

Given the above, and that the two new potential services have not yet been utilised, it makes little sense to restrict licence acquisition beyond economy-wide competition law. ACMA and competition regulators should treat potential new services as part of a wide, and steadily increasing, media market which includes traditional media services like FTA television, radio and print media as sharing its market with subscription television and internet media. Even more useful would be to also factor in mediums like DVDs and other time-shifting and recordable devices.

Media ownership regulations are already extensive, even if recent DCITA proposals are implemented in full. It is not necessary to supplement them with extra provisions for the two new television services – instead of encouraging competition and new services, doing so would have a contrary effect.

Similarly, 'use-it-or-lose-it' provisions needlessly restrict flexibility on licence usage. Given the challenge posed by new technologies and media for incumbent broadcasters, companies that have invested in rights to the new television channels will have an incentive to utilise them in whatever way they find most commercially viable. With an increasingly insatiable public demand for audiovisual entertainment and information, it is highly unlikely that it would deem restricting supply the best way to compete with subscription television or online entertainment.

Conclusion

Not all the recommendations above are under the jurisdiction of the ACMA. However, as the regulatory body with the most expertise and an advisory role, the ACMA must push further for a strong, property rights focused and consumer responsive regulatory regime. Regulatory bodies are ill-suited to predict the development of new technologies and are unlikely to result in equitable and efficient outcomes.

Recommendations

- Regulators should not attempt to second guess consumer demand and market outcomes of implementation of the new channels.
- Licencees should be given maximum flexibility to experiment with services, business models and technologies.
- New services require no special competition regulation.

References

1. Evan Kwerel & John Williams, "A proposal for a rapid transition to market allocation of spectrum", p62. Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-228552A1.pdf
2. Jerry A. Hausman "Valuing the effect of regulation on new services in telecommunications" *Brookings Papers on Economic Activity, Microeconomics*. V. 1997 (1997) p1-54
3. Ronald Coase, The Federal Communications Commission, *Journal of Law and Economics*, v. 2 (Oct, 1959), p1-40.
4. It may also be necessary to institute special provisions for low-power devices–cordless telephones, wi-fi networks etc. Evan Kwerel & John Williams, "A proposal for a rapid transition to market allocation of spectrum", p3-8

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