6th World Media Economics Conference

Centre d'études sur les médias and Journal of Media Economics

HEC Montréal, Montréal, Canada
May 12-15, 2004

The Development of Pay Television in Australia

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Subscription television was slow to develop in Australia, and numbers are still relatively low, with around one in five households subscribing. The policy process by which pay TV was introduced was protracted and chaotic, involving many reverses and uncertainties. The industry's early stages were marked by many shifting coalitions, and huge losses. Despite the Government's early rhetoric about diversity, its policy moves made that result less possible. The industry has now consolidated into monopoly dominance by Foxtel – owned by the two biggest media corporations Rupert Murdoch's News Limited and Kerry Packer's PBL plus the incumbent telecommunications carrier, Telstra.

Introduction

This paper explores the policy making process surrounding the slow introduction and so far tepid adoption of pay television in Australia. It outlines the five main periods of policy-making and the development of the industry. In the first, the Fraser Government (1975-1983) rejected two early proposals from corporate groups. With the change of government, pay TV dropped off the policy agenda, this delay finally eventually enshrined as a moratorium. The government finally made a positive commitment to introducing pay TV in 1991, largely as a result of telecommunications reform. This initiated a third period which was marked by a spectacular series of policy inconsistencies and somersaults. After pay TV eventually began, there followed a series of commercial failures and problems. The final phase has been one of consolidation. Now in an essentially monopolistic structure, there is stability and limited growth.

This saga has its own intrinsic fascinations. However it also raises analytical issues of more general interest both about the process and substance of the policy. The policy process was marked by inconsistencies and discontinuities, abetted by the uncertainties about how the technologies and new services would develop. In what was almost always a low priority on the policy agenda, the weakness of the policy process allowed the strongest interests to shape the outcome.

Secondly, the combination of policy decisions with existing commercial advantages has transformed the early promise of endless diversity into a quasi-monopoly structure. Government decisions abetted that process, against the interests of Australian consumers. In particular the government's failure to play a strong role in the development of infrastructure has allowed monopoly in the provision of services to result.

1. Initial Rejections 1977-1983

Television in Australia began, as everywhere else, as a terrestrially transmitted, free to air service. It was introduced in 1956 and within a decade and a half almost all households in the country had at least one TV set. Like Britain, Canada and Japan, Australian TV comprised a mixed model, with some channels financed by the government and others via advertising, with in Australia's case commercial dominance. Since the 1960s, there have been three commercial networks in the major cities, and there are now two public channels. The Australian Broadcasting Corporation (ABC) has been in existence since 1956, and was joined in 1980 by the multi-cultural broadcaster, the Special Broadcasting Service (SBS).

Although Australia only adopted a positive commitment to subscription TV services in the 1990s, it first entered the policy agenda much earlier, and the Fraser Government (1975-1983) twice came close to adopting it. Both proposals came from very strong figures in corporate Australia, and both came close to succeeding, but faltered for different reasons.

The first came from John Elliott's IXL-Elders group. Elliott, now in some disgrace, was a towering figure in Australian politics and business through the 1970s and 1980s. Elliott was involved in a series of dramatic takeovers and became a central figure in the Melbourne business establishment. He held important positions in the Liberal Party organization, and although he was never a member of parliament, in the late 1980s, he was widely canvassed as a future party leader by some who saw him as a potential saviour of Australian conservative politics.[1]

Elliott's company,[2] which had originally come into broadcasting by accident, as part of a larger takeover deal, wanted to introduce a cable TV service, and bought a small cable company in America. Communications Minister Tony Staley persuaded them that rather than put their resources into cable TV in America, there would soon be an opportunity to develop a pay TV service in Australia.

Somewhat overlapping this initiative came another from one of the very few business figures in Australia who could match Elliott's profile and influence. Kerry Packer, the owner of the Nine network and also Australia's biggest magazine publisher, proposed to the Government in 1977 that he would launch a communications satellite. This was of great interest to a government, which had a very strong orientation towards its rural constituency. Packer's proposal would have provided a telephone service plus television service to remote communities. If it succeeded, it would have given his TV network a huge commercial advantage, and given him great monopoly advantages in several respects, although the initial costs of establishing the service would have been considerable.

After some indecision, the Government rejected this proposal. It thought that such strategic infrastructure should be in public hands, and was also mindful of the political damage that would be incurred if it was seen to be favouring Packer. Once this decision went against him, Packer lost interest in the satellite. His main interest at this stage, anyway, had been using satellite as a means of extending the reach of his free to air TV network and as an alternative means of telephony. As the policy process later developed, Packer was the most implacable and most influential opponent of the introduction of pay television.

The then Communications Minister, Tony Staley, a former academic, was one of the few technological enthusiasts ever to hold that portfolio. He announced the Government's commitment to launching a satellite, a secondary use of which would be the distribution of a pay television service. This was foreshadowed in the late 1970s, although the satellite was only finally launched in 1985 under a new Government, the Hawke Labor Government.

A year later, Staley also announced the Government's commitment to introducing pay TV, and directed the Australian Broadcasting Tribunal to hold an inquiry into it. That inquiry in a five volume report in 1982 recommended in favour of introducing pay services. It was widely expected that the new Minister, Neil Brown, would announce a positive decision by the government at a media conference that year. However the expectation was not fulfilled and the minister made no direct commitments either way, much to the chagrin of members of Elliott's company in the audience. Later Dr Kate Harrison, using freedom of information legislation, found a draft of the minister's speech for that night in which the positive decision was announced. For some unknown reason at the last minute, the government changed its mind. By such threads hang great differences in policy direction and the structure of the Australian television industry.

In contrast to many of the later moves on pay TV, both these decision processes took place with little public scrutiny or debate. However these early decisions were a precursor of later policy processes in the degree of uncertainty and inconsistency within the government's ranks. Moreover, finally in the absence of a compelling reason for change, the strongest prevailing interests and the status quo prevailed. It was also indicative of later problems that these two early moves involved two different means of delivery.

2. The Era of Perpetual Delay 1983-1991

With the change of government in March 1983, the immediate prospect of pay television disappeared. Not only was the Hawke Labor Government concerned with pressing problems of economic management and re-structuring, but even within the broadcasting area, pay TV was a low priority. The state of the public broadcaster, the Australian Broadcasting Corporation, and moves to extend competition in commercial television to rural areas were much more pressing priorities.

In the first years of the Labor Government the Australian media situation seemed one of stable oligopoly with little prospect of substantial change. Four groups (the Herald and Weekly Times, Fairfax, Murdoch and Packer) between them owned all the Melbourne and Sydney TV stations, all the metropolitan daily newspapers, most of the magazines, most of the national news agency and newsprint facilities, plus assorted holdings in theatre, books and cinema.

There were three small signs of change in the air, although neither individually nor together did they suggest the upheaval that was soon to come. The first was the move to give some choice to rural viewers, who had lived with local commercial monopolies in TV thus far. The second was that with Rupert Murdoch's decision to acquire American citizenship and renounce Australian citizenship, he would sooner or later have to dispose of his Australian TV holdings ie the channels Ten in Sydney and Melbourne.

Thirdly, there was a ginger group in the bureaucracy and among owners outside Melbourne and Sydney who were pushing for change in one of the foundations of Australian television policy, the two station rule. One company could only own channels in two cities. This rule had been introduced to maintain some diversity of ownership, but it had several problems. In practice nearly all decisions about the production or purchase of programs had to be made on a national scale, so *de facto* national networking prevailed. Moreover the policy took no account of the differing sizes of the markets channels served. So, two stations in Melbourne and Sydney (accounting for 43% of the national market) counted the same as two provincial stations (accounting perhaps for only 1% of the national market).

The effort to change this rule provoked the most intense internal conflict of the Hawke Government's first years in office. The Prime Minister always had as his highest priority keeping the major media proprietors Murdoch and Packer on-side. Senior Cabinet Minister and a central participant, John Button recalled in his memoirs, 'In Cabinet discussions on media issues these two (Murdoch and Packer) were like Banquo's ghost loitering behind the Prime Minister's chair.'[3]

After a deadlock over how to change this rule had prevailed for almost two years, Treasurer Paul Keating introduced a compromise. It would allow one TV owner to have a much larger national reach (originally proposed to be 75%, later reduced to 60%), but at the same time would introduce a new principle – a ban on cross-media ownership. This stopped the same company owning a newspaper and TV station in the same city. The clause was grand-fathered, but would apply to all new ventures and acquisitions.

The effect, and probably the intent, was to advantage Packer and Murdoch and disadvantage Fairfax and the Herald and Weekly Times. The latter two's pattern of TV and newspaper ownership made it very difficult for them to expand. In contrast, Packer had no newspapers and so could expand in TV, while Murdoch was going to dispose of his TV assets anyway and so could expand in newspapers. (In the 1990s both men would become constant critics of the cross-media laws, but at the time they were introduced the policy package of which they were a part worked very much to these proprietors' advantage.)

The changes, which were foreshadowed in late 1986 and eventually became law in 1987, ushered in the most dramatic shake-up ever in Australian media ownership. In less than a year, 12 of the 19 metropolitan newspapers had changed owners, three of them twice. Eleven of the 17 metropolitan commercial TV channels changed owners, two of them twice. All the Sydney and Melbourne TV channels changed ownership. None of the four companies which had dominated Australian television in November 1986 were still involved a year later.[4]

The prices paid for the channels, and hence the debt levels of the new entrants, were as astounding as the extent of the changes themselves. These prices were based on the view that this would be the last chance to buy into television, and also that television was – as Lord Thompson had famously said – a licence to print money. Implicit in their calculations was that pay TV would not be introduced in the near future.

Even without competition from pay TV, the debt levels especially when joined with rising interest rates a few years later, proved unsustainable. None of the three new major owners survived in television. For periods, both Channels Ten and Seven were in receivership. As part of the original deal between himself and Alan Bond, Kerry Packer was after a holiday of a few years able to regain control of Channel Nine, while keeping the huge profit he made on the original sale.[5] The hope that originally motivated the reforms was to make Australian media less of a closed shop, to increase the diversity of media ownership. Instead its consequence was by most measures the opposite.

With all this ferment in the existing media, pay television had receded even further into the policy background. In September 1986, Minister Michael Duffy elevated this delay into a policy by announcing a four year moratorium on its introduction.

The most basic argument given by Labor politicians to justify their long inaction over pay TV is that there was no public demand for it ('None whatsoever. There was no imperative to drive it.' – Michael Duffy[6]). Duffy was also wary of the economic costs, both immediate and longer-term. There would be initial investment in infrastructure needed and continuing investment in programming. He thought each of these would have a bad effect on Australia's balance of payments.

A later Minister Kim Beazley talked about 'the ruination of the working class argument', that Australians 'who could not afford it would take the food from the mouths of their children by buying pay-TV services.'[7] Television viewing was heavy in all socio-economic groups, but heaviest among lower income groups.

A further key argument, especially potent in Australia, was that it would drain the best programming away from free to air TV, and poorer people would be denied the chance to see it. This argument applied especially to major sporting events. Sports rights have been a major bait for enticing audiences into pay TV in many countries, but in Australia sporting events are especially pivotal. 'In 2001, nine sessions of TV sport drew bigger audiences than the most popular regular program.'[8]

While there was no strong group pushing for pay TV there was a very strong group pushing against it. The key opponents were the free to air commercial networks, whose dominant audience and advertising share was threatened by any introduction of new services. They were the key influence on decision-making, but in addition the major 'high-brow' constituencies in the arts and entertainment were cool and/or hostile to the introduction of the pay TV. Some feared it would dilute the emphasis on Australian content. Others had the usual suspicion of new technologies that is widespread in the humanities. Pay TV was described as like a fifth wheel on a car, expensive, but unnecessary. There was a celebration of how wonderful Australia's TV mix was, and at the same time (a point tending to weaken the above claim) that Australians were among the world's heaviest renters of video movies.

Each of the arguments against pay TV could be rebutted or met by some policy provision. For example, the sports argument that was trotted out for several years was eventually met by anti-siphoning laws, which stopped sports events that had normally been telecast by free to air channels being taken by pay channels.

The lack of public demand is used to stop some developments but not others. Moreover in many cases, public appreciation and demand follows rather than precedes an innovation. There was no demand to build an Opera House at Point Bennelong beforehand, but after the Sydney Opera House was built public opinion was all in favour of it. If there is little or no call on public resources, and if the policy framework sufficiently protects other interests, surely the onus should be on those wanting to stop letting the market operate, rather than on those wanting to introduce the service. Nevertheless the bulk of opinion was that pay TV could damage the quality of free to air services, while delivering few benefits of its own.

3. Farce and Flux 1991-1995

At the beginning of 1990 it seemed as if the moratorium on pay TV could keep on being extended indefinitely. At that time, the networks were suffering from the mix of their self-imposed high debt levels during the takeover spree and the recession which had brought a downturn in advertising. So the moratorium was indeed extended for another year until October 1991.

The key factor that changed the situation was telecommunications reform. After the Hawke Government won re-election in 1990, the key policy challenge for its new term was seen to be micro-economic reform. Prime Minister Hawke set for the incoming Minister for Transport and Communications, Kim Beazley, a wide-ranging agenda, which included the introduction of competition into telecommunications. This created great conflict in the cabinet between Beazley who favoured introducing a duopoly and Treasurer Keating who favoured a three player model with more competition. Beazley prevailed.

His model involved pitting the single carrier – later re-named Telstra – against a single newcomer. The second player's scope to penetrate the market was still unknown – in practice, it was greatly helped by the growth in mobile phones. But one of its obligations would be to take over the Aussat satellite. Since the satellite's launch in 1985 it had run up a $100 million deficit. Although this was partly because of all the restrictions the government had placed on it, Keating called it a piece of 'space junk'.

Beazley was finding it difficult to persuade telecommunications companies to enter into the rather lop-sided competition against the incumbent Telstra with all its monopoly advantages. Only one definite bidder, the consortium Optus, had emerged, and if there were no other, it was likely to become the second carrier for a bargain price, which apart from anything else would have represented a considerable political failure for Beazley. A potential Hong Kong-based bidder, Hutchison, told Beazley they were only interested if the Aussat satellite came with exclusive rights to transmit pay TV services.

This put the government on the spot, and apparently induced Beazley's commitment to pay TV. Although the Cabinet deferred his first submission to introduce subscription TV services in March 1991, later in the year they agreed to a revised proposal. Until 1997 such services were to be exclusively delivered via Aussat. In sum, a positive commitment to pay TV came about as a by-product of seeking to introduce competition in telecommunications and the need to do something about the loss-generating satellite.

At the same time, Beazley was completing the most comprehensive overhaul of broadcasting policy ever. The Broadcasting Act of 1942 had been amended and added to so often in the intervening half century that it had become inchoate and unreadable. So after some years of drafting, the Government in late 1991 released a draft of a new Broadcasting Services Act, and eventually it was enacted the following year. The new Act generally moved towards a much lighter regulatory touch. However the aspect which most caught media and public attention was the commitment to introducing pay TV.

From this time on, the battle for the commercial networks was not if there would be pay TV, but when and how. It was now politically impossible to change the government's commitment that pay TV would one day exist, but there was great scope still for influencing its shape and timing. The most confused and inconsistent period of policy making was about to begin, one that would bring the government into considerable and well-deserved disrepute.

At around this time, two other momentous developments would change the way pay TV policy developed. One was that in the aftermath of the media ownership convulsions of 1987, internal family conflicts in the Fairfax family led to an irrational attempted buy-out from within the family. This resulted in huge self-imposed debts and a weakening of the company's competitive position. [9] Eventually it led to the loss of family control of the company after about 140 years of continuous involvement. This vacuum led to an auction for ownership of Australia's premier quality newspapers. A consortium involving Kerry Packer and Conrad Black was one of the principal bidders. Although Packer's involvement was designed to meet the legal requirements of cross-media ownership laws, the bid attracted great protest by those who saw a further concentration of media ownership as a threat to Australian democracy. Large public rallies were held and former prime ministers Gough Whitlam and Malcolm Fraser, once bitter opponents, joined together to oppose the bid. In the end Packer was forced to withdraw.

It meant that media ownership issues were at the forefront of public attention when pay TV policy was being developed. Ownership was such a sensitive issue because coming into the 1980s Australia had one of the most concentrated media ownership structures in the democratic world. Packer's bid for Fairfax had brought a much greater public mobilisation and united a broad political coalition on a media policy issue than ever before.

The other extraneous development which impinged on pay TV policy was that a long-running leadership battle within the Labor Government came to a climax, and Keating replaced Hawke as Prime Minister. The conflict between these two had dominated the government over the previous months.[10] Although once the very bitter leadership transition had been resolved, a remarkable degree of harmony returned to the government, the change did mean a new allocation of ministerial portfolios.

The Communications Ministry went to one of Keating's most important political allies, Senator Graham Richardson. Richardson had long been an active player in media policy. He was known sarcastically as the Minister for Channel Nine and the Minister for Mates. Richardson had been an opponent of the introduction of pay TV, but now accepted it as inevitable. His tenure in the ministry he had coveted for so long proved to be short-lived. The following May he was forced to resign after a scandal involving exercising improper influence on behalf of a friend, who had been arrested in the Marshall Islands while pursuing a strange business scheme.

In the 13 months from when Beazley first announced the commitment to introducing pay TV, Labor went through five different policies. Each time, it changed its position on such sensitive issues as the number of services to be allowed; whether one technology would be anointed as the favoured mode of delivery; the rules about ownership, especially regarding the role of free to air networks, limits on foreign companies and a role for the ABC; whether digital technology would be mandated, and regulations about program content.

When Richardson took over from Beazley he immediately sent out cues that the previously announced policy no longer applied, and in particular sought a role for the existing networks. Then immediately after Richardson's resignation, Prime Minister Keating, seeking to regain the political initiative after the damage from the scandal, went on TV and made some dramatic policy proposals, one on airline reform and the other on pay TV. Another period of turmoil and uncertainty followed.

Late in 1992 parliament finally passed legislation on pay TV, introduced by the new Minister, Senator Bob Collins. The key features of the new scheme were that there would be ten new services with two commercial consortia controlling four channels each, and the ABC having two.

One of the features of the package was that it banned advertising from pay services for five years in order to protect free to air commercial TV. In other words, a mature billion dollar plus industry had to be protected against the impact of one which so far did not have a single subscriber, and where new entrants would have had to make enormously expensive investments in infra-structure and programming before they could attract any subscribers. This outrageous provision made it even more unlikely that the new industry would thrive in the short-term.

A genuine difficulty facing the policy makers was the issue of analogue versus digital transmission. At the time there was no digital transmission system operating anywhere in the world, and so no standardised equipment available for it. On the other hand, everyone knew that analogue would soon be superseded. However there were wildly varying estimates of the time before digital would be viable. Some said that pay TV should be forced to wait until digital was available, while others said analogue services should begin as quickly as possible. While there were good arguments both ways, a further delay would benefit the existing free-to-air commercial TV owners. In May 1992, Prime Minister Keating had decreed that subscription services must be digital, but this was later abandoned (and indeed only in 2004, is the main company digitalizing its services).

After all these policy somersaults, Labor's capacity to embarrass itself on pay TV was far from exhausted. While the policy chaos had been going on, there was a lot of commercial manoeuvering, both in lobbying government but also in positioning to take advantage of the new environment. The Act proclaimed itself to be technologically neutral, that it was not mandating one means of delivery. All the rhetoric from the government had been with the expectation that satellite would be the first and probably always would be the dominant mode of delivery. Most commentators thought that the roll-out of cable would of necessity be slow and prohibitively expensive.

While the eyes of the biggest players were on cable and satellite, a smaller company, Australis, headed by Steve Cosser, had been buying up all the licences for MDS (a microwave terrestrial system). MDS was considered an inferior technology. It only operated on line of sight and for short distances. In a topographically complex city like Sydney, it would be difficult to allow everyone to be connected. However it had some key advantages over the superior delivery systems of cable and satellite: it was ready to go immediately and it was cheap.

Cosser had caught the other players napping, and as a result he could potentially get a large enough slice of the market, which would make it difficult for others to become established later. He approached the others with the prospect of either buying his business or becoming partners within it. However the negotiations collapsed.

Then in an extraordinary and dramatic development, in late January 1993, just before the beginning of the 1993 election campaign, Prime Minister Keating intervened, and ruled out any MDS services being allowed. This was a reversal of all the government had been saying over the previous two years. Cosser mounted a vigorous advertising campaign against the government.

Against all predictions, Keating won the election. In the aftermath the opposition was very dispirited, but the one issue on which they were able to effectively attack the government was its pay TV policy. At the same time, Cosser mounted a legal suit against the Minister Bob Collins. But from its position of political dominance, the Government was able to brazen out all the embarrassments.

Even the next stage of the process, the issuing of licences for satellite transponders, was marked by farce and political embarrassments. The Government had decided that these licences would be issued to the highest bidders in a blind auction. This was a method of allocating public resources which had become more popular with the government. It had also been done with the licence to be the second telecommunications carrier. Although subject to pitfalls, it is not necessarily an irrational way for governments to proceed in allocating privileged access to scarce and profitable resources. An auction was in contrast to the previously favoured model of holding public hearings to judge the best suitable applicant, what was scathingly referred to as a beauty contest. Such an approach had been used to allocate commercial television licences in Australia. The problems with the promissory approach were that it was time-consuming and afterwards there was little that could be done to enforce the promises that the applicants had made. Once licences were allocated, they were traded on the stock exchange in the usual way, and the new buyers did not have to undergo such public scrutiny or promise-making. The process was particularly discredited, when a third commercial licence was awarded in Perth in 1985 (much later than the other mainland capitals). The keenly contested licence had generated many weeks of public hearings. But in the ownership upheavals of 1986-87, the station was sold even before it had gone on air.

The peculiar aspects of the satellite licence auction were that it would be blind - no bidders would know who else was bidding or how much – and that bidders only had to make a small deposit to participate. Sometimes potential bidders had to post a deposit of five per cent of their bid, but in this one they only had to put in a $500 deposit. The successful bidder then had a period to put up the rest of the finance. The Department of Transport and Communications had not foreseen what then transpired.

Even though a coalition involving Packer, Murdoch and Telstra had announced they would bid, a move calculated to scare off several lesser players, two newcomers to media, who were acting in concert, UCom and Hi Vision, bid $177 million and $212 million in April 1993, far, far more than any of the other bidders. Neither could raise the finance for their most expensive bids. But they had calculated how to exploit the auction system, and had put in a series of cascading bids. So they could let this most expensive bid lapse, confident that their next highest bid would also succeed. In the event they obtained financial support for their second highest bids, but already there was widespread scepticism about whether they could succeed.

Meanwhile the relevance of this whole process was being potentially subverted by other developments. In November 1993, Telstra called for tenders to build a cable network offering 64 channels – a service which more than ten years later had not yet materialized, but which would certainly have raised doubts about the viability of the satellite pay services. From early 1994, a race between Telstra and Optus to roll out cable gathered great momentum.[11] So while all the policy focus had been on satellite, suddenly the commercial focus was on cable. During this time, Optus-Packer proposed that the country be divided into zones where each company would have a monopoly on cable. However the Government rejected this. It apparently wanted to encourage competition in the roll-out of infra-structure.

In February 1995, there was a spectacular falling out between Packer and Keating. There were several reasons for this. The political trend was clearly against the Government and Packer was probably positioning himself for a transition to a Howard Government. Moreover he was probably feeling under some commercial pressure, as Murdoch and Telstra seemed to be out-positioning him in pay TV. Provocatively Packer lifted his stake in Fairfax newspapers above what had previously been presumed to be the legal limit. But then he went on his own TV network and praised Opposition Leader Howard. Keating immediately charged that the two had made a deal. Then he attacked the Optus-Packer proposal for dividing the country into exclusive cable zones, comparing it to an outrageous criminal scam.[12] For the next year, until the March 1996 election swept Labor from power, it seemed as if each major party had an alliance with one of the two media moguls – Keating and Murdoch; Howard and Packer.

4. Commercial Disasters 1995-2002

The Keating rejection of the Optus suggestion for exclusive zones and his spectacular falling out with Packer marked the end of active government policy-making. From then on, the Government's public stance was to let market forces operate. The next several years were to see a series of disasters in pay TV, but the Government kept its distance.

During this period of great losses, where the industry was struggling to establish public credibility and financial viability, there were many shifting alliances and much uncertainty over what services would be delivered with what technologies. It was a period in which several companies ran up huge debts for what they saw as positioning for the future. Both infrastructure and purchasing programming called for large investments, but the prospect for profits was still distant. In 1997, Australis reported a loss for the year of $297 million; Foxtel of $212 million and Optus Vision of $388 million.[13]

The first large battle was between Telstra and Optus. The second telecommunications carrier, Optus, with the odds stacked so against it in its competition with the dominant incumbent carrier, saw cable TV as a means of enticing consumers to its telephony services. Initially both companies had been reluctant to commit the huge resources needed to cable. But almost in synchrony, they both committed to it, and a vigorous battle to roll out the most cable most quickly began. After a bout of feverish activity by both companies, where both ran up enormous expenses laying cables, but while the great bulk of the country remained uncabled, 80% of the households with cable available had it available from both companies. Then almost as quickly it all finished, and no more cable was rolled out.

In terms of programming alliances and deals, Optus positioned itself well at this stage. Alliances were still fluid. Originally in 1993, Packer, Murdoch and Telstra joined together, but later Packer pulled out and joined with Optus. Murdoch and Telstra stayed together, and called their joint venture Foxtel. The Seven network also joined Optus for a period, and at the end of 1996, Optus Vision had a more attractive programming package than Foxtel, both in sports rights and in film and TV material from America. Its cable system, however, faced continuing technical problems, which diminished its potential to build upon its programming superiority.

Optus was also distributing via satellite. Australis was also operating via satellite under the name Galaxy, and it also had some distribution via MDS. Another company, later named Austar, also had a satellite operation concentrated in regional areas. Australis had paid a very large amount for American programming rights, but was having great trouble attracting and keeping customers. In mid 1995 it approached Foxtel for a merger, but this was refused by the Australian Competition and Consumer Commission (ACCC) on the grounds that it was anti-competitive. In May 1998 Australis was declared bankrupt. More than $650 million had been invested in the company since it began in January 1993, while the fire sale, following its demise, raised only $15 million. [14]

Another expensive war between the two giants of Australian media, Murdoch and Packer, erupted during this period. Murdoch had used buying exclusive rights to major sports as a means of enticing viewers in both America and England. He seemed stymied from this possibility in Australia by the anti-siphoning laws, and because the most popular sports already had medium-term exclusive broadcasting agreements tied up with free to air channels. Murdoch, however, decided to circumvent the rules by starting his own competition. He split the Rugby League competition, and using disaffected elements within the official body, started his own competition. This led to a huge bidding war for the best players, and for two years two rival competitions co-existed. Both Packer and the official Australian Rugby League and Murdoch and his new Super League were making huge losses, while the legal battles were often more interesting than the on-field games. Eventually a unified competition was re-established, and after a period of deep enmity between them, the Packer and Murdoch companies decided it was in both their interests to co-operate rather than compete. Westfield estimated that the Super League venture cost News Limited between $300 and $400 million. When Packer and Murdoch made peace, they agreed to have an equal share in pay TV, and Murdoch sold Packer a quarter share of Foxtel for the relatively cheap price of $160 million. [15]

This was a period where one commercial problem followed another. The roots of the problem were in the expense of cable infrastructure, but also in the reluctance of the Australian public to subscribe. Among those who did subscribe, the churn rate was substantial. At that time, there was little attractive product to offer. Pay TV was a premium service, but most of its offerings were inferior to free to air. Some movies were available before going to free to air TV; a few minor sports events; and some specialist channels. There was not even a good Australian news service, following Murdoch's veto on the ABC and Fairfax providing a news channel.

5. Consolidation and Monopoly 2002 -

It took deep pockets to survive the industry's infancy, and eventually the newcomers had fallen away. After the bruising battles between Telstra and Optus over the cable roll-out, and between Murdoch and Packer over SuperLeague, all the biggest players were seeking a more predictable and stable environment. From 1999 on, the three biggest players seemed more determined to make Foxtel work. With the appointment of a more vigorous Board and of Kim Williams, a very well known figure in Australian arts and film, as chief executive, Foxtel achieved a sense of direction and momentum for the first time.

The all but final step on the way to monopoly consolidation occurred in March 2002, when Foxtel and Optus reached deals about mutual access. Eventually with some further guarantees about access to other service providers, the ACCC approved this deal. It was welcomed as an inevitable stabilization by most of the economic and business commentators. A very common comment was that in such a small market as Australia, population 20 million, it was inevitable that there would be a monopoly in pay TV.

Foxtel still failed to make a profit, and its accumulated losses were very considerable. Its owners – three of the largest corporations in Australia – were able to wear such losses for a longer period than most others. While no doubt they would have preferred it to be in profit, Foxtel was still serving their individual corporate interests despite its losses. For Telstra, the dominance of Foxtel had been instrumental in maintaining its monopoly in fixed line telephony. Optus had mounted a pay-TV-led strategy in trying to break into domestic telephone services, but after huge expense, it had failed to break Telstra's near monopoly on 'the last mile', joining residences to the main networks. For Packer and Murdoch, although Foxtel was making a loss, they were both selling their programming to the company at a very substantial profit. So other parts of their corporations were benefiting as suppliers to Foxtel. For all three, establishing a pay TV monopoly in the present laid the foundation for future profits, and a guarantee against newcomers ever being able to challenge their centrality.

While Foxtel's position in relation to Optus and to the small operator Austar was secure, in many ways the key issue had always been the degree of commonality of interest of its major shareholders. Few corporate entities can ever have had such strong centrifugal forces within them. One factor which secured greater cooperation between them was that Packer and Murdoch had been involved in a new mobile telephone company, One.Tel, which collapsed spectacularly in 2002, losing both companies hundreds of millions of dollars and making them look very foolish. After this collapse, neither company had a corporate interest which directly ran against Telstra.

Telstra faces another large expense in 2003-04, but what is also perhaps their largest marketing opportunity for some years. The digitalization of its services will allow it to provide many more channels, and is likely to attract many new subscribers. Perhaps that multiplicity will allow it to overcome the consumer resistance that has so far defied the optimistic forecasts of industry figures.

Conclusion

The introduction of pay TV into Australia was a chaotic process. There was little continuity and consistency in policy stances. Assumptions about desirable outcomes and likely scenarios could change abruptly. A change of ministers would often bring a radical change of approach. Most of the time pay TV was a low priority issue, and so decision-making about it was influenced by other considerations, most importantly telecommunications and the lobbying of free to air broadcasters.

It is also clear that governments suffered politically more from their actions than their inaction. The period between 1992 and 1995 was the most frenetic period of government activity, and the one when a series of embarrassments made headlines. In contrast, the long delay before 1991 in any positive commitment to pay TV did not bring those governments any embarrassment. Similarly the lack of further policy development after 1995 did not bring any political problems for the governments concerned. Even though in some ways the sins of omission could be judged to be more substantially important, they did not bring the political embarrassments and acute public attention that controversial or confused policy moves did.

When retrospectively examining the debates and decisions, what stands out is their unreality. None of the participants had much prescience about what would develop. Although the uncertainties of the timing of digitalization hung over the industry's development, there were, nevertheless, several issues especially regarding likely delivery systems where a clearer perspective was possible, and would have helped the industry develop less painfully. The lack of consumer enthusiasm for pay TV was partly testimony to its unappealing programming, but also a wariness about investing in products where a lack of standardization meant there was the possibility that their purchase could become outmoded or marginalized.

The result of the long and tortuous policy making was that despite the early talk of diversity, the pay television industry is now dominated by a single consortium, Foxtel, which is owned by the three biggest established players, Telstra (50%), Packer and Murdoch (25% each). Following the completion of agreements with the two much smaller companies still in the pay TV business, Optus and Austar, Foxtel's domination is unchallenged and probably unassailable. After the dramas and traumas of earlier years, industry rationalisation is all but complete, with a single clearly dominant operator. The situation has been greeted with little public criticism. The quasi-monopoly is talked of as if it is the natural order of things, or the inevitable outcome of market forces in a small country like Australia. Thus the existence of an effective private monopoly when there was so much talk of diversity and new entrants has not brought any great pressures on the government to try to reverse or unbundle the situation.

The outcome is testimony to the power of the three biggest players, which have emerged in control. Partly it is testimony to their commercial staying power. Their deeper pockets, and their existing capacities in cognate industries, were important in allowing them to prevail. However it is also testimony to their political influence. During the policy somersaults and confusions of 1991 to 1994, no one group always got what it wanted, the Murdoch and Packer groups had substantial veto power to stop developments of which they disapproved.

With Murdoch no longer having direct TV interests in Australia, Packer's interests were much more directly at stake. His influence was seen most basically in the very long delay before pay TV was introduced, and then in the efforts to allow an ownership structure that allowed the free to air owners more of a role. It was probably most pronounced in Prime Minister Keating's interventions overturning previous policy in May 2002 and his intervention stopping MDS in January 2003.

All governments were also mindful of accommodating the wishes of Telstra. The period of pay TV policy coincided with great changes in telecommunications. Not only was some competition introduced, but there were moves to privatise the incumbent carrier. At present Telstra is 49% in private ownership, and both the Howard Government and Telstra management want it to be fully privatised. This hybrid beast has the independence of action of a statutory corporation, and acts consistently to increase its market share and its profitability. Yet it owes its pivotal position on the Australian corporate scene to its dominance of the telephone network and as an inheritance from the previous policy regime of a monopoly public service telecommunications operator. Yet no sense of community obligation has informed its behaviour in pay television, indeed the opposite.

The confusions over Telstra are symptomatic of a larger confusion by governments about their role in an era of economic rationalism. In the case of pay television, no government ever took an active role in regulating and directing the development of infrastructure. The government's initial stance of proclaiming its technological neutrality dissolved as soon as the major players objected to MDS. The continuing ambiguity about the relative role of satellite and cable probably slowed the development of pay TV. In particular the duplication of cable by Telstra and Optus was wasteful, while most of the population remained unconnected.

Government policy decisions and the talk of pay television being a natural monopoly betray a confusion between the provision of infrastructure and of services. Because of the government's failure to see its own role in ensuring the workings of market forces, the natural monopoly in providing infrastructure has been turned into a monopoly on providing services where none needs to exist. It could make cable or satellite a common carrier, where service providers for a fee can access the technology. Similarly consumers could pay a basic connection fee for access to the technology, and then fees for various channels or packages of services. Under such a model, it would be much more possible for a diversity of service providers to emerge. A minimal conception of government's role is not necessarily the best way to enhance the growth of markets.

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[1] The best account of Elliott's role in Liberal Party politics during the 1980s can be found in Paul Kelly *The End of Certainty* (Sydney, Allen and Unwin, 1992) p.406-417

[2] For the sake of clarity, where corporations had one dominant figure – Packer, Murdoch, Elliott – their companies will be referred to by that name. Company names of key players changed at several points with corporate re-structurings etc.

[3] John Button *As It Happened* (Melbourne, Text Publishing, 1998) p.227

[4] More on the changes can be found in Paul Chadwick *Media Mates: Carving up Australia's Media* (Melbourne, Sun Books, 1989); David Bowman The Captive Press (Melbourne, Penguin, 1988); and Rodney Tiffen 'Media Policy' in Judith Brett, James Gillespie and Murray Goot (eds) *Developments in Australian Politics* (Melbourne, Macmillan, 1994)

[5] Paul Barry *The Rise and Rise of Kerry Packer* (Sydney, Bantam Books, 1993)

[6] Quoted in Ann Nevile 'Politicians, Media Moguls and Pay-TV: Pay-TV Policy-making in Australia 1977-1995' *Australian Journal of Public Administration* 59, 2, June 2000, p.65.

[7] ibid

[8] Jock Given *Turning Off the Television. Broadcasting's Uncertain Future* (Sydney, University of New South Wales Press, 2003), p.204

[9] Gavin Souter *Heralds and Angels. The House of Fairfax 1841-1990* (Melbourne, Melbourne University Press, 1991)

[10] See eg Paul Kelly *The End of Certainty* (Sydney, Allen and Unwin, 1992)

[11] Mark Westfield *The Gatekeepers. The Global Media Battle to Control Australia's Pay TV* (Sydney, Pluto Press, 2000) p.111

[12] Rodney Tiffen 'The Packer-Labor Alliance, 1978-1995: RIP' *Media International Australia*, No 77, August 1995, p.20-34.

[13] Mark Westfield *The Gatekeepers. The Global Media Battle to Control Australia's Pay TV* (Sydney, Pluto Press, 2000) p.xiv

[14] Westfield p.374

[15] Westfield p.375