11 Communications

The communications sector, embracing telecommunications, broadcasting and postal services, is vital to the efficient operation of the Australian economy. Business users and household consumers depend on these services. It is important, therefore, that the communications sector is not encumbered by legislative restrictions on competition that are not in the public interest.

The Commonwealth Government is responsible for legislation relating to the communications sector. Relevant legislation includes the *Broadcasting Services Act 1992*, the *Radiocommunications Act 1992*, parts XIB and XIC (relating to telecommunications competition regulation) of the *Trade Practices Act 1974* (TPA), and the *Australian Postal Corporation Act 1989*. Some of this legislation imposes competition restrictions that have been reviewed against national competition policy (NCP) considerations. These reviews have identified the competition implications of legislative restrictions and recommended alternative approaches to upholding the statutory objectives.

Regulation and technological change

The communications sector is a large and fast-growing part of the Australian economy — although growth is uneven among the sector's constituent parts. In 2001-02, Australia Post's domestic mail volumes increased by just 0.5 per cent while the overall volume of letters and parcels declined by 0.3 per cent (Australia Post 2002, p. 15). Pay television companies have also experienced low growth, partly reflecting the impact of government 'antisiphoning' regulations that give free-to-air broadcasters preferred access to major sporting events. The Commonwealth Government mandated that there will be no new free-to-air television broadcasters before the end of 2006 and that both standard and high definition digital services, and both analogue and digital services, should be 'simulcast' (which leaves little spectrum available for transmitting new digital services). Many commentators believe that these policies have contributed to the low uptake of digital television. The fast-growing segments of the communications market include mobile telephony and Internet services. Annual revenue growth in telecommunications averaged around 13 per cent between 1997 and 2000 (PC 2001b, p. 74).

The communications sector is subject to rapid technological change which is creating new industries and, in some cases, new competitors for large participants in the sector. Australia Post is experiencing slowing demand for its traditional postal services as e-mail and other forms of electronic transmission allow people to communicate and to pay bills in alternative ways. Australia Post is responding by diversifying into bill paying, travellers

cheques, banking and logistics services. In another sector, mobile telephony providers are supplying an alternative product to fixed telephony, although the 'local loop' owned by Telstra remains central to telephony services.

Technological developments will inevitably lead broadcasting companies to play a role in providing Internet services, because households will be able to use their televisions to access the Internet. This is an example of the convergence between the various parts of the communications sector. Some major companies appear to be positioning themselves across sectors for the commercial opportunities that technological change will allow. Examples are Telstra's 50 per cent holding in the pay television company Foxtel, and Australia Post's diversification into electronic bill paying.

Broadband technology will contribute to greater convergence of broadcasting and telecommunications. It will promote the capacity of companies to sell television, telephone and Internet services. Government regulations, however, can hold back the spread of broadband and some other technologies, impeding the efficiency of the communications sector and affecting the availability and cost of services to consumers.

The pace of technological change in communications, along with the difficulty of predicting developments and emerging market opportunities, complicates the regulatory task. Regulations introduced to deal with issues in a particular area may have unintended adverse impacts for another area. They may, for example, relate to technologies that are becoming obsolete, thus hindering the adaptation of producers and consumers to technological change by distorting the decisions that they make. In this way, regulation can reduce competition and market entry, and hinder market growth possibilities and the efficiency of the communications sector. In particular, government policies need to be 'technologically neutral' and not lock in particular technologies or design standards. As the Productivity Commission noted:

> *Regulation should apply only to areas where there are clearly identified problems and where regulation is an effective remedy. It should be transparent, predictable, accountable, consistent and fair.* (PC 2001b, p. 4)

Consideration of these impacts is central to the Competition Principles Agreement (CPA) clause 5 guiding principle that legislation should not restrict competition unless it can be demonstrated that the benefits to the community as a whole outweigh the costs and that the objectives of the legislation can be achieved only by restricting competition.

Legislation restricting competition

Broadcasting Services Act

The Broadcasting Services Act embodies regulation that the Commonwealth Government has established on an *ad hoc* basis over time. The restrictions on competition include the following policies.

- The number of commercial free-to-air broadcasters is restricted to three in any geographic area until the end of 2006. The scope for new radio stations is also restricted.

- The commercial free-to-air television broadcasters are prohibited from multichannelling (although this policy will be reviewed by the end of 2005).

- The multichannelling restrictions are intended to protect pay television operators from direct competition, but these operators in turn are not allowed (under the 'antisiphoning' rules in the Broadcasting Services Act) to broadcast major sporting events that free-to-air broadcasters wish to show. The antisiphoning rules protect a major source of advertising revenue for the free-to-air television operators.

The Government mandated that television broadcasters simulcast both standard and high definition digital services. Standard definition has been considered satisfactory in other countries. Broadcasters are also required to simulcast analogue signals (which use a great deal of the available and valuable spectrum) and digital signals for several years. The simulcasting leaves little spectrum for new digital services, thus discouraging consumers from purchasing expensive set-top boxes to receive digital signals (PC 2000a, pp. 221–43).

The Broadcasting Services Act restricts the ability of datacasters to compete with broadcasters.[1] Under Schedule 6, datacasters are not allowed to transmit several types of programs, including drama, sports, music, lifestyle, documentary or quiz programs. The restrictions on the programs that datacasters can provide contribute to the dominance of broadcasting by the free-to-air stations and pay television operators.

[1] The Broadcasting Services Act defines a datacasting service as one that delivers content as text, data, speech, music or other sounds, visual images or any other form to persons having equipment appropriate for receiving that content, where the delivery of the service uses the broadcasting services band.

Radiocommunications Act

The Radiocommunications Act is the primary legislation governing the use of the radiofrequency spectrum. Radiofrequency spectrum is required for broadcasting and telecommunications services, and for community safety services such as those provided by country fire authorities, aviation, maritime and land transport safety bodies, and the Bureau of Meteorology. The wide range of spectrum users means that there are competing demands for this limited resource. The Australian Communications Authority conducts auctions for those parts of the spectrum that are particularly valuable to users. It also needs to ensure sufficient spectrum is available for noncommercial organisations that fulfil a public good role, such as the defence forces and the community services described above.

The Radiocommunications Act provides for the Australian Communications Authority to manage spectrum through:

- the issue and resumption of tradeable spectrum licences (which have a 'life' of 15 years);
- the issue of tradeable apparatus licences that allow people to use particular transmitters and/or receivers to provide specific services without interfering with each other;
- the issue of class licences that allow shared access to parts of the spectrum (typically for low power transmitters such as remote control devices that do not interfere with other users); and
- the reallocation of parts of the spectrum.

Australian Postal Corporation Act

Australia Post has a dominant position in the postal services market, reflecting its statutory monopoly in the provision of certain key 'reserved' services under the Australian Postal Corporation Act. These reserved services are:

- the collection and delivery of letters within Australia — the protection of Australia Post's position is provided by s. 30 of the Act, which defines the reserved service as applying to carriage of a letter up to 250 grams and for a fee that is up to four times the rate of postage for a standard postal article carried by ordinary post; and
- the delivery of incoming international mail.

While Australia Post is experiencing increasing competition from new technologies (such as e-mail and the Internet) for its traditional mail services, the statutory reserved services represent a major restriction on competition.

The Commonwealth Government has sought in recent years to address the competition implications of the Act, including:

- the reserved services;
- the delivery of the universal service obligation (USO), whereby Australia Post is required to make the standard letter service available at a single uniform rate of postage for all Australians. The principal NCP issue associated with the USO is its funding, with Australia Post funding the USO internally at an annual cost of around A$90 million. The Council of Australian Governments (CoAG) agreed in November 2000 that governments should directly fund community service obligation (CSO) payments; and
- competitive neutrality and access issues.

Review and reform activity

Broadcasting Services Act

In its 2000 review of broadcasting, the Productivity Commission (PC) described the regulatory arrangements as a legacy of inward looking, anticompetitive and restrictive 'quid pro quos'.

> *Regulatory restrictions on datacasting, multichannelling, and interactive services will be costly to Australian consumers and businesses alike. They will delay consumer adoption of digital technology and deprive businesses of opportunities to develop new products and services for the world as well as Australian markets.* (PC 2000a, p. 15)

The Productivity Commission considered that Government policy was impeding the conversion to digital television, thereby inhibiting a greater number of broadcasters and increased choice for consumers. To effect a transition to digital television, the Productivity Commission argued that the Government should close down analogue services as soon as possible, end the requirement for high definition digital broadcasting, relax the restrictions on datacasting and multichannelling, and end the artificial distinction between datacasting and digital broadcasting.

Because analogue television is much less efficient than digital television in its use of spectrum, the existing broadcasters account for most of the spectrum. The antisiphoning rules deliver a substantial advantage to the existing broadcasters, who probably value the lack of significant competition and the relative stability of the industry structure. The Productivity Commission recommended that the antisiphoning rules should be relaxed.

The Productivity Commission also recommended that the Government separate spectrum access rights from broadcasting licences and convert broadcasting licence fees to spectrum access fees. It further contended that the Australian Communications Authority should sell access to spectrum through a competitive bidding process, and that all broadcasting licence holders should pay fees based on their use of spectrum rather than on their revenue. These proposals would free up spectrum availability and make it possible for more broadcasters to enter the industry. In this context, the Productivity Commission recommended removing the restrictions that prevent new broadcasters from entering before the end of 2006 (s. 28 of the Broadcasting Services Act).

The Commonwealth Government has made only a partial response to the inquiry report. On 5 August 2002, the Minister for Communications, Information Technology and the Arts announced a review of the roles of the Australian Broadcasting Authority and the Australian Communications Authority. This review will focus on, but not be limited to, arrangements for the management of broadcasting and telecommunications spectrum.

On 19 December 2001, the Minister released an issues paper and called for submissions to a Government review of datacasting services as specified in schedule 6 of the Broadcasting Services Act. The stated purpose of the review was 'to ensure that the legislative framework for datacasting services provides the maximum scope for development of new and innovative digital services while maintaining the moratorium on new commercial television licences' (Alston 2001).

The datacasting issues paper discussed options for change but reiterated the Government's commitment not to issue new commercial broadcasting licences before the end of 2006. The report of the datacasting review was released on 10 December 2002. It provided the Government's decisions as follows:

> *The Government has decided that there should be no change at this time to the rules relating to the content which can be provided under a datacasting licence; that datacasters should not be able to provide additional services such as open narrowcasting and subscription broadcasting or narrowcasting; and that no change should be made at this time to the arrangements relating to use of a datacasting transmitter licence from 1 January 2007.*
>
> *The Government has considered that … no other option for defining the content which datacasters can provide was likely to result in greater opportunities to develop a viable business case without, in effect, breaching the moratorium on provision of new television broadcasting services before 31 December 2006.*
>
> *… It was not considered appropriate to allow datacasters to provide narrowcasting or subscription broadcasting services.*

> *It is premature to be deciding on arrangements relating to the use of spectrum, in particular for commercial television broadcasting, from 2007.* (DCITA 2002, p. 7)

The Government's response to the datacasting review effectively involved little change to existing arrangements. The Parliament passed legislation relating to community broadcasting in November 2002, and legislation relating to foreign ownership of media and cross-media rules reached the Senate in October 2002.

Assessment

The Council considers that the Productivity Commission's recommendations accorded with the principle of the CPA clause 5. The Commonwealth Government's response, however, has been limited, continuing with datacasting arrangements that prevent datacasters from becoming digital broadcasters and not yet addressing the restrictions related to the number of free-to-air broadcasters, multichannelling, digital television, antisiphoning and spectrum allocation.

The Commonwealth Government has addressed neither the benefits and costs to the community from these restrictions nor whether its objectives in broadcasting could be achieved without these restrictions. The Council assesses the Commonwealth as having failed to meet its NCP obligations, because it did not consider the major restrictions of competition against the CPA clause 5 principle.

Radiocommunications Act

The Productivity Commission conducted an NCP review of the Radiocommunications Act and related Acts in 2001-02. Accordingly, its review report is framed around the guiding principles embodied in CPA clause 5. The Treasurer and the Minister for Communications, Information Technology and the Arts released the final review report on 5 December 2002.

Although there are substitute technologies for some uses of spectrum — for example, cable television — mobile communication (and thus the spectrum) is the sole practical technology for many uses. This limitation contributes to the scarcity of the spectrum resource and the need for it to be used efficiently and in ways that do not restrict competition (PC 2002d, pp. xxxi–xxxii).

The Productivity Commission argued that noncommercial users who provide emergency and other essential community services that the private sector would not provide (that is, areas of 'market failure') should have access to parts of the spectrum. These users are not usually in a position to compete in spectrum auctions using their own financial resources. The Productivity Commission argued that they should not receive concessional prices for

spectrum; rather, they should be funded transparently from the Budget (PC 2002d, pp. lii-liii).

The Productivity Commission made several recommendations to enhance the role of the market in spectrum management. The Government accepted most of these recommendations. One exception, however, relates to the Productivity Commission's recommended repeal of the elements of ss 60 and 106 of the Radiocommunications Act that allow the Minister to impose limits on parts of the spectrum that any person may use. The Government rejected this recommendation on the basis that ss 60 and 106 are 'strongly pro-competitive' and work in harmony with s. 50 of the TPA.

Assessment

Although the Government has not completed its response to the Productivity Commission's radiocommunications report, it has accepted several significant recommendations that will benefit the community. The Government also released on 5 December 2002 its response to another radiocommunications report that an interdepartmental task force prepared as an NCP review and completed in June 2001. This review report made a number of largely technical recommendations, of which most do not appear to conflict with the Productivity Commission's recommendations. (In the one instance where they do, the Government's response deferred to the Productivity Commission recommendation). The Council assesses the Commonwealth Government as having made substantial progress towards fulfilling its NCP obligations in relation to the Radiocommunications Act and related legislation, but notes that the Government is still considering several recommendations. The Government has not yet met its clause 5 obligations because review and reform is incomplete.

Australian Postal Corporation Act

In 1997, the Commonwealth Government requested that the National Competition Council review the Australian Postal Corporation Act. The terms of reference for the review required the Council to consider the Government's commitments to maintain Australia Post in full public ownership and to provide a standard letter service to all Australians at a uniform price. The Council was also obliged to account for the Government's obligations under the CPA.

The Council's report was completed in February 1998. Its main recommendations were that:

- Australia Post continue to provide the Australia-wide letter service, with unprofitable parts of this USO treated as a CSO funded directly from the Budget;

- household letters remain reserved to Australia Post, with a mandated uniform rate of postage;

- open competition be introduced to the delivery of business letters, with Australia Post free to discount against a maximum charge set at the same level as the uniform rate for household letters;

- all international mail services be open to competition; and

- the Government regulate to ensure access on reasonable terms to Australia Post's CSO-funded services and post office boxes (NCC 1998).

In July 1998, the Commonwealth announced that it would reduce the scope of Australia Post's monopoly position. The Postal Services Legislation Amendment Bill 2000, however, was not introduced to Parliament until April 2000. The Government tabled an extensive explanatory memorandum with this Bill, which included regulatory impact statements.

The principal features of the Bill were:

- reductions in the scope of services reserved to Australia Post to encourage competition. Incoming international mail would no longer be a reserved service, and the protection afforded to Australia Post's domestic mail service would be reduced from 250 grams to 50 grams and from four times the standard postage rate to one times;

- the establishment of a postal services access regime under the TPA. The proposed new part XID of the TPA would help postal service competitors to access the services supplied by a strong market incumbent such as Australia Post; and

- the conversion of Australia Post from a statutory corporation to a public company under the Corporations Law, which would be consistent with the Government's competitive neutrality policy.

The Bill aimed to increase competition in postal services, encourage the long-term efficiency of the postal sector, and maintain the USO and the universal letter rate (McGauran 2000). The Government withdrew the Bill in March 2001, however, in the face of opposition in the Senate. It informed the Council in May 2003 that it is not intending to reintroduce the withdrawn legislation.

As an alternative, the Minister for Communications, Information Technology and the Arts announced on 14 November 2002 a package of postal reforms that could partly address the recommendations of the 1998 NCP review. The Government introduced the Postal Services Legislation Amendment Bill 2003 to Parliament on 19 June 2003. The Bill was referred to a Senate committee, which reported on 19 August 2003. This legislation will implement the partial reforms announced in November 2002. The Bill provides for the following measures:

- expanded powers for the Australian Competition and Consumer Commission (ACCC) to inquire into disputes about the terms and conditions relating to bulk mail interconnection arrangements;

- expanded powers for the Australian Communications Authority to cost Australia Post's CSOs and report on its quality of service and compliance with service standards;

- the introduction of accounting transparency for Australia Post (by giving the ACCC the power to determine record-keeping rules for Australia Post) to assure competitors that it is not unfairly competing by cross-subsidising its competitive services with revenue from reserved services.

- the 'legitimisation' of 'document exchanges' (businesses that provide mail collection and delivery services for professional businesses such as doctors and lawyers) and 'aggregators' (businesses that sort the mail of smaller companies so it qualifies for Australia Post's bulk mail discounts).

Assessment

The Government has yet to address the major restrictions in the Australian Postal Corporation Act because its proposed reforms in 2000 were blocked by the Senate. The restrictions relate to the monopoly that the Act accords Australia Post in the delivery of domestic mail and incoming international mail. The Government has not yet established that the reservation of these services to Australia Post yields a net public benefit or that it is the only way of meeting the objectives of the postal legislation.

The reforms introduced to Parliament on 19 June 2003 will have some pro-competitive impact. The Australian Communications Authority's monitoring of Australia Post's CSOs and service quality, however, does not compare with the enhanced quality of service that would be likely to arise if Australia Post were subject to competition in the delivery of standard mail and incoming international mail. Accounting separation will be helpful to competitive neutrality outcomes. The legitimisation of document exchanges will remove the risk of legal challenge to these entities; but it does not represent an increase in competition to Australia Post. Parliament's failure to pass the 2000 Bill or other reforms that comply with NCP obligations means that the Commonwealth Government has failed to comply with its CPA clause 5 obligations.

CPA clause 4 obligations relating to Telstra

Major reforms of Commonwealth Government legislation have contributed to increased competition in the telecommunications industry and delivered benefits for consumers in terms of price and choice. In 1991, Telecom (as Telstra was then known) lost its statutory monopoly position in the provision of telecommunications carriage services. The Government licensed Optus to be a second fixed network carrier, and Optus and Vodafone to be mobile telephone carriers in competition with Telstra. The Government allowed full competition in carriage services in the *Telecommunications Act 1997*, and there are currently around 80 carriers and 850 carriage service providers (who supply telecommunications services to the public on space rented from carriers' networks).

The Commonwealth Treasurer asked the Productivity Commission in June 2000 to review telecommunications competition regulation, but instructed it not to inquire into options for the structural separation of Telstra (in line with Government policy). The final inquiry report, released in December 2001, commented that Telstra's local loop is a natural monopoly owing to sunk costs and the fact that any-to-any connectivity is available only through the loop. While there are many carriers and service providers, Telstra and Optus dominate the fixed and local access market, providing around 70 and 19 per cent of the market respectively (PC 2001b).

Against this background, the Productivity Commission made recommendations that sought to improve the efficiency of the regime regulating access to telecommunications network facilities. Accounting for these recommendations, the Government introduced the Telecommunications Competition Bill 2002 to Parliament on 26 September 2002, and the legislation was proclaimed on 19 December 2002. This Act amends parts XIB and XIC of the TPA, the Telecommunications Act and the *Telecommunications (Carrier Licence Charges) Act 1997*. The second reading speech described the objectives of the legislation as:

- speeding up access to core telecommunications services. (The Act removes the 'merits review' of access arbitrations by the ACCC);

- facilitating investment in new telecommunications infrastructure. As a means of reducing uncertainty, potential investors will be able to make undertakings to the ACCC about access prices and terms and conditions that will apply to their prospective assets; and

- providing a more transparent regulatory market. The legislation requires Telstra's preparation of separate accounts of its wholesale and retail operations. The Government described the broad objective of accounting

separation as providing transparency to the ACCC and companies accessing the Telstra network.[2]

While Telstra no longer has a monopoly position in the telecommunications industry, CPA clause 4 matters remain relevant to any consideration of compliance with the CPA (see volume 1, chapter 3). In its 1999 NCP assessment, the Council noted that clause 4 'places a responsibility on the Commonwealth to have ensured prior to the partial privatisation of Telstra in 1997 that the telecommunications regulatory framework and Telstra's structure and commercial objectives facilitate competitive outcomes consistent with the community interest' (NCC 1999a, p. 360). At that time, the Commonwealth Government indicated that it would not pursue structural separation of the local fixed network, preferring to prohibit anticompetitive conduct by carriers or carriage service providers under part XIB of the TPA and to facilitate third party access to services provided by carriers or carriage service providers under part XIC.

The Council commissioned work by economic consultants, Tasman Asia Pacific, which it published in the 1999 NCP assessment. Tasman found that record-keeping rules would allow the ACCC to assess anticompetitive behaviour by carriers and carriage service operators, and would comprise a necessary first step to establishing a broader ring-fencing framework. It concluded, however, that a ring-fencing regime would not remove the sources of Telstra's market power and thus would not diminish the incentive for it to engage in anticompetitive behaviour. Tasman argued that the advantages of structural separation of the natural monopoly elements from the competitive elements of the telecommunications system would exceed the costs. The Commonwealth Government has not followed this course, preferring to rely on the effects of the 1997 measures that allowed full entry to the market by competitors to Telstra, and on the regulation of anticompetitive conduct and access arrangements. The legislative amendments to parts XIB and XIC of the TPA, as introduced in the Telecommunications Competition Act (and described above), are likely to enhance the effectiveness of this approach.

On 11 December 2002, the House of Representatives Standing Committee on Communications, Information Technology and the Arts announced that it had received a request from the Minister for Communications, Information Technology and the Arts to inquire into the structural separation of Telstra's core network from its other businesses. On 6 February 2003, the Minister

[2] The Minister for Communications, Information Technology and the Arts released a draft discussion paper on Telstra accounting separation for public comment on 19 March 2003. On 17 April 2003, the ACCC released a discussion paper that outlined proposed changes to the record-keeping rules that the ACCC applies to Telstra, Optus, Primus, Vodafone and AAPT. The changes are intended to complement the Government's introduction of an accounting separation regime for Telstra.

announced that 'there appears to be no valid reason for progressing this inquiry' (Alston 2003b) and the inquiry was discontinued.[3]

The Council remains of the view that achieving a competitive telecommunications industry capable of delivering substantial benefits to consumers may require the Government to further consider the structure of Telstra, including the option of the structural separation of the fixed network.

Competitive neutrality matters

Competitive neutrality measures seek to ensure significant government-owned businesses do not have an advantage over their private competitors simply as a result of their public ownership. They ensure significant government businesses face the same taxes, incentives and regulations as those facing private competitors, and that prices for their goods and services reflect the full cost of supply. Private companies that believe government-owned competitors are not applying appropriate competitive neutrality principles can raise a complaint with the competitive neutrality complaints body in their jurisdiction.

On 18 February 2000, the Conference of Asia Pacific Express Carriers lodged a competitive neutrality complaint against Australia Post with the Commonwealth Competitive Neutrality Complaints Office. It claimed that Australia Post enjoys an advantage in competing for business because it receives preferential treatment in Customs' screening charges. In particular, it argued that Australia Post is advantaged by:

- higher dollar thresholds for incoming and outgoing postal items before formal Customs screening requirements take effect; and
- exemption for postal items from recently introduced reporting and cost recovery charges for high volume, low value consignments.

The Commonwealth Competitive Neutrality Complaints Office investigated the complaint and recommended that:

- the value thresholds for formal Customs screening of incoming and outgoing mail be aligned for postal and nonpostal articles;
- the Government consider the feasibility of imposing cost recovery charges for informal Customs screening of incoming postal items; and

[3] This decision followed a statement by the Shadow Minister for Communications on the same day that 'the existence of the minority shareholding in Telstra and the cost and complexity therefore associated with such separation, make that an inappropriate strategy for reforming Telstra' (Tanner 2003).

- the Government address concerns about charges for nonpostal items in high volume, low value consignments, as part of the broader issue of whether Australia Post should pay cost recovery charges for informal screening of incoming postal consignments (CCNCO 2000).

The Council's 1998 report on Australia Post raised the issue of differential Customs treatment. The Council recommended that the *Customs Act 1901* be amended so all postal operators are subject to a threshold of the same value. The Government introduced the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001,* which provides a modern legal framework for Customs' management of import and export cargo. The value thresholds for outgoing postal and nonpostal items were harmonised on 1 July 2002 when the first part of the Act commenced. The harmonisation of the value threshold for incoming postal and nonpostal items is expected to commence in June 2004.

The Commonwealth Government reported that it intends to introduce a charging regime for the full range of import entries as part of the international trade modernisation changes. Such a regime would address the second and third recommendations of the Commonwealth Competitive Neutrality Complaints Office.

Table 11.1: Review and reform of legislation regulating communications

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Broadcasting Services Act 1992* (including *Television Broadcasting Services [Digital Conversion] Act 1998*) *Broadcasting Services (Transitional Provisions and Consequential Amendment) Act 1992* *Radio Licence Fees Act 1964* *Television Licence Fee Act 1964*	Licensing, entry barriers, content, antisiphoning rules, simulcasting requirement, spectrum allocation, restrictions on ownership, conduct, multichannelling and datacasting	Productivity Commission review was released in April 2000. Review raised significant questions and made extensive recommendations for reform, including: • separating licences granting access to spectrum from content-related licences that grant permission to broadcast, and converting broadcasting licences to access fees; • selling spectrum for new broadcasters competitively; • converting licence fees for existing commercial radio and television broadcasters to fees that reflect the opportunity cost of the spectrum; • permitting multichannelling and the provision of interactive services by commercial and national broadcasters; • removing restrictions that prevent the entry of new broadcasters before the end of 2006; • freeing up spectrum by setting a final date for the end of simulcasting of standard and high definition digital television services, and by making the broadcasting of high definition services optional rather than mandatory; and • relaxing the antisiphoning rules.	The Government announced a review of the roles of the Australian Communications Authority and Australian Broadcasting Authority on 5 August 2002 (with a focus on arrangements for the management of broadcasting and telecommunications spectrum). A review of datacasting by the Department of Communications, Information Technology and the Arts was released on 10 December 2002. The Government announced that there would be no change to the rules on datacasters' broadcasting content.	Does not meet CPA obligations (June 2003)

(*continued*)

Table 11.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth (continued)	*Radiocommunications Act 1992* and related Acts	Licensing, spectrum allocation	The Productivity Commission commenced a review of the Act and related Acts in July 2001. The review was completed on 1 July 2002 (and released by the Government on 5 December 2002). The Productivity Commission recommended legislative amendments to: • allow encumbered spectrum to be sold; • facilitate the conversion of apparatus licences to spectrum licences; • allow spectrum charges to be based on opportunity cost; • facilitate better use of spectrum by broadcasters; and • allow the Australian Communications Authority to re-assign spectrum licences three years before expiry.	The Government accepted the Productivity Commission's recommendations on conversion of licences, selling encumbered spectrum and re-assigning spectrum licences, and it will consider the recommendations on broadcasters' use of spectrum.	Review and reform incomplete

(*continued*)

Table 11.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth (continued)	*Australian Postal Corporation Act 1989*	Legislated monopoly for Australia Post for activities including letter delivery and inward international mail	The Council completed a review in 1998, recommending reserving only household mail to Australia Post. The review also recommended (among other things): opening delivery of business letters and international mail to competition; funding unprofitable business associated with the USO from the budget; introducing access arrangements for post office boxes; and introducing accounting separation for Australia Post's retail, reserved services and CSO operations.	Amendment Bill (reducing Australia Post's monopoly protection from four times the standard letter rate to one times the standard letter rate, and the weight restriction from 250 grams to 50 grams; removing incoming international mail from the monopoly; establishing a postal access regime under the TPA; and converting Australia Post to a Corporations Law company) was withdrawn in March 2001 following Senate opposition.	Does not meet CPA obligations (June 2003)