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MEDIA@LSE
Department of Media and Communications

Communications regulation for user benefit: learning from experience in Australia and the United Kingdom

Gerard Goggin g.goggin@unsw.edu.au

Journalism and Media Research Centre, University of New South Wales

Claire Milne cbm@antelope.org.uk

Antelope Consulting and LSE Department of Media and Communications

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Outline of paper

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Why look at regulating for consumers?

- It is increasingly recognised that:
 - The ultimate purpose of communications regulation is consumer benefit.
 - Through searches and decisions, consumers play a vital role in making competitive markets work.
 - Consumers also have productive functions in modern communications markets.
 - We must address the **‘full spectrum of consumer needs — to choose, use, understand and create’** (Communications Consumer Panel 2009).
 - Specific regulatory measures are needed to ensure that benefits for users are indeed delivered, and to safeguard users’ interests.
- As the market changes and these perceptions grow, such specific measures and implementing structures are constantly changing, adapting and being added to.
- Range of approaches adopted in Australia and UK (who often refer to each other) – comparison of interest to each; and also to others?

Some features of Australia and United Kingdom

| | Australia | United Kingdom |
|---|---------------------------------|---------------------------------|
| Population | 22 million | 62 million |
| Area | 7,617k sq km | 243k sq km |
| Initial liberalisation | 1991 | 1984 |
| Full liberalisation | 1997 | 1991 |
| Disability Discrimination Act | 1992 | 1995 |
| Telecoms market size 2007 (OECD) | USD 35 billion (3.7% of GDP) | USD 78 billion (2.8% of GDP) |
| ICT Development Index 2008 (ITU) | 6.90 (15 th) | 7.07 (10 th) |
| ICT price basket 2008 (ITU) | 0.86 | 0.57 |
| Mobile market concentration (HH Index) 2007 (OECD) | 3271 | 2286 |
| New entrant fixed market share 2007 (OECD) | 2.2% | 32% |

Consumer regulatory landscape in the two countries

| | Australia | United Kingdom |
|--|---------------------------------------|--|
| Converged communications regulator | ACMA | Ofcom |
| Leading generalist consumer bodies | ACA | Consumer Focus, Which? |
| Leading communications consumer bodies | ACCAN | CCP, 5 advisory committees |
| Self- and co-regulatory industry bodies | Communications Alliance | MBG, ISPA, DMA and others |
| Lead body for communications for people with disabilities | Formerly TEDICORE (now part of ACCAN) | ACOD (Ofcom advisory body), PhoneAbility |
| Alternative dispute resolution bodies | TIO | Otelo, CISAS |
| Internet content control bodies | DBCDE, ACMA | UKCCIS, IWF |

Communications for users with disabilities

- **Confronting disabling telecommunications in Australia:**
 - 1991 universal service implementation left disability provision to Telecom Australia's discretion.
 - (Failed) attempt to exclude telecommunications from 1992 Disability Discrimination Act because of supposed excessive cost.
 - Successful discrimination suit *Scott v Telstra* by a Deaf consumer led to 1997 Act requirements for consultation and equivalent provision.
 - 2009 feasibility study of independent disability equipment fund.
- **Evolution of arrangements in the United Kingdom:**
 - Effective lobby groups and changing climate of opinion (expressed in 1995/2005 Disability Discrimination Acts).
 - 2003 General Conditions of Entitlement laid disability obligations on all relevant communications providers (not just on universal service providers as before).
 - Industry members increasingly understand importance of this growing market segment, in both commercial and brand image terms.
 - Still far to go in making technology serve those whom it can most help.

Second-line complaints handling

- **In Australia:**
 - Independent Telecoms Industry Ombudsman (TIO) set up in 1993.
 - Since 1999 all communications providers (but not broadcasters) must belong to TIO. TISSC deals with fixed premium rate services.
 - TIO feeds information to Communications Alliance on codes of practice, and other issues to ACMA, ACCC and Privacy Commissioner.
- **In the United Kingdom:**
 - Communications Act 2003 permits any number of approved dispute resolution procedures (ADR).
 - A General Condition requires all communications providers to belong to an approved ADR body. Phonepay+ deals with premium rate services.
 - Currently there are two ADR bodies (Otelo and CISAS), both largely run by their members.
 - Available data on complaints is not comparable between the two bodies and does not identify companies complained about.
 - A recent Ofcom review suggests shorter timescales, better awareness, etc; and moots basic standards for complaints handling.

Internet content control

- **In Australia:**
 - **Online Content Scheme set up in 2000 (under ACMA) to protect consumers, especially children, from exposure to illegal or harmful material (extending existing content classification scheme to internet).**
 - **Reacting to complaints, according to approved codes of practice, ISPs take down prohibited material (or block it if not hosted domestically).**
 - **Scheme recently extended to mobile content.**
 - **Scheme criticised at home and abroad as heavy-handed censorship.**
- **In the United Kingdom:**
 - **Internet content regulation was expressly excluded from the Communications Act 2003.**
 - **The self-regulatory Internet Watch Foundation sticks strictly to its brief of identifying and notifying ISPs to remove illegal content.**
 - **Consumers have ambivalent attitudes to internet content control.**
 - ***Can we keep our hands off the net?* Parliamentary report suggests a variety of next steps.**

Tentative conclusions

- **Works better in Australia than UK:**
 - Unified complaints handling provides better policy feedback.
 - Unified self-regulatory body makes consumer representation easier; co-regulatory buttressing of codes of practice gives them force.
 - Well-funded external consumer representative body can be forthright.
- **Works better in UK than Australia:**
 - Stronger competition (with usual accompanying problems).
 - Stronger, longer established statutory regulator.
 - Mobile premium rate services regulation.
 - Adaptive ad-hoc approach to internet content control.
- **Works about the same in both countries:**
 - Direct contacts of disability advocates with industry have proved more powerful than regulation.
 - Precautionary regulation, to prevent problems for consumers, is rare.
 - Provision of consumer information is largely left to market forces.
 - No “one-stop shop” for communications consumers with problems.

Future challenges

- **Increasing pervasiveness of electronic communications points to needs in these two countries for:**
 - **More “joined up government” across all sectors using them to reach consumers.**
 - **Alliances between communications regulators and departments that have not previously worked together.**
 - **Unified interfaces for consumers (eg complaints handling) across telecommunications and broadcasting.**
 - **Broader gathering of evidence to get early warning of consumer concerns.**
- **Wider investigation and application of these ideas:**
 - **More Australia / UK case studies and more rigorous analysis of outcomes and underlying reasons for them?**
 - **More systematic study of communications regulation for consumers in other countries?**