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

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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?**