

# Australian media sector reform

The Minister for Communications announced a broad package of reforms for the Australian media sector on 6 May 2017. The package is intended to assist Australian media companies to adapt to rapid and ongoing changes in this sector.

These changes are caused in large part by the evolution in demand for media services, as consumers seek more of their news from online platforms and abandon free to air television for online streaming services.

## Introduction

Although the Government has obtained industry support, it remains to be seen whether it will be able to implement all of the elements of the consolidated package. As the Australian Labor Party and the Greens have indicated that they do not support all of the media merger changes, the Government may need to rely on the support of other minor parties and independents in the Senate to pass the necessary legislation.

This support is by no means assured. For example, Senator Nick Xenophon has indicated that he believes new taxes should be imposed on Facebook and Google to reflect the advertising revenue these entities earn in Australia. Notwithstanding the gambling ad ban included in the package (which is strongly supported by Senator Xenophon), the Xenophon Party senators may therefore withhold support for the legislation necessary to implement this package if the Government

does not move to implement such changes.

The pressure on the Government to adopt more radical changes, such as a so-called “Google tax”, is likely to be increased given the recently announced Senate inquiry into the future of public interest journalism in Australia. This inquiry, which is largely constituted by opposition and independent Senators, will look at issues such as whether competition and consumer laws adequately deal with the market power and practices of search engines, as well as social media and content aggregators, and their impact on the Australian media landscape.

## Overview

The media reform package contains the changes as detailed below.

### Media ownership laws

The proposed changes are already incorporated in the Broadcasting Legislation Amendment (Media Reform) Bill 2016 (**Bill**) which is currently before the Senate and could

## Key issues

- The media reform package is intended to allow mergers to occur which will respond to the rapidly changing dynamics in the media sector
- Merger activity among free to air television companies is to be anticipated so as to allow those companies to respond to changing customer viewing preferences and online streaming in particular.
- While the Government has sought to address likely issues by Senators necessary to support the reform, passage is not assured

potentially be debated during the 2017 Winter sittings of Parliament. The Bill would remove the “75% reach rule” and the “2 out of 3 rule”. These rules provide that no person may be in a position to exercise control of commercial television broadcasting licences where the total licence area population exceeds 75% of the Australian population and prohibit any merger if it would involve a person

having control of media platforms in each of television, radio and associated newspapers in any market.

#### **Licence fees**

The removal of licence fees for commercial television and radio broadcasters (amounting to approximately \$130 million per annum in savings for those broadcasters).

#### **Spectrum charges**

A spectrum charge for broadcasters, based on spectrum transmitters used, will be introduced. This will result in revenues to the Government of approximately \$40 million per annum. Regional broadcasters, who might face an increase in fees as a result (even after taking the licence fee removal into account), will have the benefit of a 5 year transitional support package.

#### **Anti-siphoning scheme**

Limited changes to Australia's 'anti-siphoning' regime will be introduced. The list of events to which the scheme applies will be marginally shortened. The changes will include the removal of the restriction that prevents free to air broadcasters from televising the listed events solely on their digital channels and increasing the time at which an event is automatically removed from the anti-siphoning list to 26 weeks before the event.

#### **Content review**

An Australian and children's content review will be undertaken, looking at whether the measures in place to support the production and delivery of Australian and children's content remain fit for purpose. No timing for the carrying out of the review has been advised by the Government and it is unlikely that the review will be completed, or any changes

implemented, during the 2017 calendar year.

#### **Gambling advertisements**

Further bans on gambling advertising in connection with broadcasting and streaming live sporting events are intended to take effect from March 2018. These restrictions are intended to protect children, by prohibiting gambling advertising for the period starting 5 minutes before the scheduled start of play to the first to occur of 5 minutes following the conclusion of play and 8.30pm. The restrictions will not only apply to free to air television broadcasters (that is, the commercial broadcasters and SBS) but will also apply to commercial radio, subscription TV and online platforms. It is proposed that these changes will generally be implemented without legislation, but it is not yet clear how the online ban will be implemented.

#### **Niche sports**

A limited increase in financial support will be provided for subscription television to broadcast women's sports and niche sports that currently receive low or no broadcast exposure.

## **Conclusion**

The media reform package is intended by the Government to allow mergers to occur in a rapidly changing sector affected by changes in consumer viewing preferences and in particular online streaming services.

Even if the Government is able to pass these reform changes, media mergers will still however be subject to merger control under the *Competition & Consumer Act 2010 (Cth)* and *The Foreign Acquisitions and Takeovers Act 1975 (Cth)*.

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