timing. The existing rules tended to prevent the advertising of essential information about price and availability while sponsorship promoted alcohol products by giving them positive images of health, fun, sport, winning, the positive attributes of a team approach, and nationalism.

Overall the Authority found that there was more evidence that there was no strong casual link between advertising and consumption than there was to the contrary.

Evidence presented to the BSA showed that the amount spent on alcohol advertising in New Zealand, in inflation adjusted dollars, had increased significantly over the past decade, whereas the consumption of branded alcohol products, excluding home brew, had stabilised or declined. For the protection of children and young people the BSA decided there would be no alcohol advertisements permitted on television between 6 am and 9 pm. It did not want to restrict too severely the time when brand advertising was permitted as the effect may be to create a blitz of advertising for products which, because of the saturation of advertising, emphasised the products unduly.

The BSA is opposed to alcohol advertisements which show children or teenagers at all, even though they are clearly not drinking alcohol. Beyond that, the BSA endorsed the present industry rule that anyone shown in an advertisement must be over 25 and depicted as an adult.

Clearly concerned about public opinion the BSA decided to trial the new codes for a two year period with the first review after six months. The BSA was particularly perturbed about aggressive macho themes in recent sponsorship advertising and wanted to see a willingness to facilitate promotion of educated messages regarding moderation and the no-alcohol option. It rejected compulsory warnings and advertisements in favour of an agreement with the industry which has to produce and broadcast moderation messages of a similar quality and standard to alcohol advertisements.

Some problem areas have been foreseen. Advertising on radio stations targeted at a young audience was one. The BSA has accepted broadcasters' assurances that the new rules will be followed in the spirit as well as the letter of the law. That was not always the case under the old rules.

Warnings to industry

There are warnings for the industry: if there is an impression of saturation of liquor promotion, including sponsorship and programme credits, the BSA will impose restrictions on the number of liquor promotion messages per hour: liquor advertisements must not employ aggressive themes, nor portray competitive behaviour or exaggerated stero-typed masculine images in an overly dramatic manner; advertisements which feature sport must place emphasis on scenes typical of the sport and within the rules of the sport rather than the aggression of the participants especially in contact sports.

Sponsorships may feature hereos or heroines of the young participating in a sponsored event or engaged in conduct related to a sponsored event but such people are banned from advertisements except those advocating moderation in alcohol consumption or the non-alcohol option, provided there was no reference to a branded product.

Although the definition of advertisement under the code does not include the former *Broadcasting Act* definition which defines advertisements to include those for which payment is made indirectly, it appears that the BSA, at least during the two year period, will have a heavy influence on the attitude of broadcasters who want to maintain the new regime.

The BSA appears to have done a very good job in pulling a difficult area together into some coherent and sensible approach. Probably it was the only body which could take this role. Certainly politicians would have buckled under a very long-standing and successful industry lobbying ability (and may yet do so)

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C•O•M•M•U•N•I•C•A•T•I•O•N•S N•E•W•S

Recent developments in Australia by Ian McGill and in New Zealand by Bruce Slane

SECOND CARRIER OPTUS COMMUNICATIONS

On 6 December then Transport and Communications Minister Beazley announced that Optus Communications was selected to be the second Australian general telecommunications carrier. The announcement was made after the signing of formal contracts with the Federal Government for the sale of AUSSAT. At the signing, the Government accepted a deposit of $10 million in what will be a total payment of $800 million by Optus for the purchase of shares in AUSSAT.

Network rollout

The documents signed included an Optus industry commitment concerning telecommunications industry development in Australia, and a network rollout commitment in which Optus specified its confidential plans for a rival network to that of the merged Telecom/OTC. Signing of these documents now allows the final steps to be taken to enable Optus to take ownership of AUSSAT following repayment of AUSSAT's debt and the restructuring of lease arrangements associated with the acquisition and ownership of the AUSSAT satellites.

Future operations

In total, Optus plans to spend $1.6 billion over the next six years in building its own network. STD and IDD services will begin in Sydney and Melbourne in late 1992 and full competitive services will be available by 1997.

Optus Communications is a newly formed company, 51 percent owned by Australian investors including Mayne Nickless, AMP, National Mutual and the AIDC Telecommunications Fund. Overseas equity holders are Bell South of the US and Cable and Wireless of the UK.

Public mobile licences

Optus as second general carrier has also secured the second public mobile telephone licence. (The first to be held by the merged Telecom/OTC.) The third licence holder is expected to be selected towards the end of 1992.

OTHER TELECOMMUNICATIONS REFORM

National Transmission Agency

In October Mr Beazley announced the establishment of a new agency, to be called the National Transmission Agency ("NTA"), to operate the Commonwealth's broadcasting transmitting network and deliver, primarily, ABC and SBS services.

Transport and Communications amendments

On 25 November an omnibus *Transport and Communications*

Legislation Amendment Act was proclaimed. Amongst other things, this Act amends the *Telecommunications Act 1991* in relation to interconnection by carriers of networks and services of other carriers, and specifically gives each carrier the right to have other carriers supply telecommunications services to it for the purposes of it supplying telecommunications services. A distinction is also now drawn between domestic and international services for the purposes of the right to interconnection and the right of interconnection to network facilities, even if third parties also use or operate some or all of those facilities.

Telecommunications and Radiocommunications Statutory Rules

On 25 November a plethora of Telecommunications Regulations were gazetted which, among other things, permit the second carrier to engage in certain installation activities despite State and Territory laws, permit AUSTEL to allow another carrier to become a party to certain Telecom agreements, establish the financial mechanism for calculating the second carrier's fees, and detail how much each application to provide some form of telecommunication service will cost.

Radiocommunications Regulations were also gazetted, covering transmitter licences for public mobile telecommunications services and AUSSAT services, cordless telephone and public mobile telecommunications service licence. Further Radiocommunications Regulations were gazetted on 12 November which have eliminated some taxes, reduced licence fees, and provide new definitions of Multipoint Distribution Stations and other local systems.

New South Wales Government initiative

The New South Wales Government Telecommunications Bill 1992 has been enacted. It is an innovative method of achieving efficiencies for the State of New South Wales. The Act will permit the installation and maintenance of a Government network within 'designated land' (basically a corridor of land surrounding lines vested in a new Government Telecommunications Authority. The Act also centralises ownership of telecommunication infrastructure for the carriage of Government only traffic.

BROADCASTING SERVICES BILL

As reported in the last issue of this column, an exposure draft of the Broadcasting Services Bill was released on 6 November 1991. While the *Broadcasting Act 1942* has been profoundly criticised as a cumbersome relic, the draft Bill has also been rejected by a remarkable coalition of commercial broadcasting operators, the ABC, unions and public interest groups. The focus of opposition to the Bill is that it introduces too much competition too soon, and that could have undesirable effects on viability, Australian content and local productions.

A new regulatory framework

Commercial television faces not only pay-TV in a year but also the end of the three network limit in 1997. Radio faces immediate competition with the proposed abolition of foreign ownership limits and cross-media rules. Of greater significance is the abolition of all current barriers to industry entry and the doing away with of the 'commercial viability' test applied at the time of issue of new licences. Indeed, the new Australian Broadcasting Authority ('ABA') is specifically empowered to maximise the commercial use of the broadcasting spectrum. The Bill is also an attempt to reduce the amount of regulation of the broadcasting industry.

An avalanche of criticism

The ABC is opposed to those parts of the Bill that give the ABA any control whatsoever over it (eg complaints handling, pay-TV). Unions such as Actors Equity argue that the removal of barriers to entry will reduce the quality and local production.

The Bill's failure to recognise a basic disfunction between broadcasting diversity and quality television is perhaps its most serious weakness. The draft endorses both concepts which, on their own, are mutually inconsistent: more channels may produce diversity of viewing, but it will be mainly overseas programs as all channels will find it difficult to fund quality productions from their competition reduced revenues.

PAY TELEVISION

On 9 October the Federal Government cleared the way for the introduction of pay television in Australia, with the existing moratorium being lifted from 1 October 1992. Pay-TV would be delivered by at least four channels on AUSSAT satellites and an additional two AUSSAT channels would be available for the further development of pay-TV systems.

Programming

Strict syphoning rules would ensure that important programs, including national and international sporting and cultural events, would continue to be available on free to air television. The licence for the multi-channel national service will require the owner to develop a local industry package to maximise the involvement of Australian industry in the development of pay-TV. Mr Beazley said that the Australian Broadcasting Authority established under the Broadcasting Services Bill will be asked to consider appropriate Australian content requirements for pay-TV services.

Equity limits

No owner of a television licence will be permitted to own more than 25 percent of the national pay-TV licence, and a 25 percent limit on equity participation would also apply to the carriers of pay-TV signals. Mr Beazley said that the Federal government would ensure that there was a majority Australian ownership in a national pay-TV service, and would also give further consideration to an appropriate level of cross media participation. There will be no advertising on pay-TV for the first five years of operation.

OTHER BROADCASTING REFORM

Six TV channels?

On 6 December it was announced that a Federal Parliamentary Committee will shortly begin a national inquiry to investigate the potential for non-commercial use of the vacant sixth television channel. Public television groups have been seeking access to this channel for years and the potential for delivery of educational services via television is becoming increasingly recognised by educational institutions. The channel could also be used as an outlet for Australian independent film productions and for televising Parliamentary proceedings. The Committee has called for submissions to be in by the end of February 1992 and is planning to hold public hearings in March.

(Further) Broadcasting Amendments

On 6 November the Broadcasting Amendment Bill (No. 2) 1991 was introduced to Parliament. The amendments contained in this Bill to the *Broadcasting Act 1942* will define the term 'commercial viability' for the purposes of the licensing provisions of the Broadcasting Act and limit the circumstances in which commercial viability is considered by the Australian Broadcasting Tribunal when conducting certain licence grant inquiries.

It will also enable supplementary radio licences to serve an area smaller than that served by the related commercial radio licence when it would not be viable to serve the greater area. It will further allow a supplementary radio licence to be separated from the related commercial radio licence any time from two years after the

commencement of the commencement of the supplementary service.

This Bill also reduces fees payable by new services commencing on the FM radio band, and it will transfer provisions relating to the calculation of fees to the *Radio Licence Fees Act 1964*.

Equalisation

More than 1.5 million television viewers in northern New South Wales and regional Victoria will soon be able to tune in to two additional commercial stations under the Federal Government's TV Equalisation plan. TV Equalisation began in southern and central New South Wales in 1989 and was extended to regional Queensland early in 1991. Viewers from Cairns to Portland will soon have the same choice of commercial TV as capital city viewers. Preliminary planning is underway to extend Equalisation to Tasmania.

POLITICAL BROADCASTS AND POLITICAL DISCLOSURE BILL

On 5 December, legislation forcing television networks to provide free political advertising for political parties during elections passed the Senate, after 3 days and one full night of debate.

Political Free Time

The Bill will have the effect of amending the *Broadcasting Act* to provide for the creation of units of 'free time'. The Australian Broadcasting Tribunal must grant those units of free time in certain proportions to the various political parties. The Tribunal then allocates the units of free time that it has granted to those political parties to the broadcasters. Broadcasters who have been allocated these units of free time must make those units of time available to the person to whom it was granted for the purpose of making an election broadcast, free of charge. In return they are entitled to an amount of additional broadcasting time determined in accordance with regulations.

Television advertisements would be run simultaneously across all television stations in three two-minute spots a night, according to divisions decided by the Tribunal on a State-by-State basis. The advertisements will run for 15-22 days from the day nominations close to the Wednesday before an election, when a total blackout will apply. During State election campaigns, two two-minute blocks will be put aside for political broadcasting, while local Governments miss out on free time.

Democracy safe?

Not surprisingly debate over the merits of the Bill has been intense. The Federal Government, which has been pushing for legislation of this kind for the past 4 years, has said that the Bill is in conformity with many democracies throughout the world. Opponents to the Bill have attacked it on the grounds that it is contrary to freedom of speech and a challenge, on the grounds that the Bill is in breach of Section 51(xxxi) of the Constitution which states that compulsory acquisition of property must be made on just terms, is possible.

A High Court challenge

Various television licensees and the State of New South Wales have commenced proceedings in the High Court to have the Act declared unconstitutional. On 14 January, 1992 Chief Justice Mason refused to grant an interlocutory injunction to prevent the operation of the legislation in various elections. It is expected that the Full Court will hear full argument in mid-March. Prime Minister Keating has already indicated that the legislation may be reviewed.

TRIBUNAL INQUIRIES

Programme Classification Standards

The Tribunal has announced a two-stage inquiry to review classification standards for programs which have been in place since Australia's introduction to television in 1956, and advertisements on commercial television. The Tribunal would consider the portrayal of violence, sex, nudity, offensive language and drugs in relation to community attitudes. It will also examine advertisements about alcohol, betting, gambling and personal products. To encourage public debate standards, the Tribunal has published new research on community attitudes about classification which will be used in the inquiry.

Key search results indicate that there are high levels of concern about violence in particular, and concerned about how violence, abusive language, sex scenes and nudity were classified under the current regime. Any need to change the standards or create new ones will be handled during the inquiry's second stage.

Broadcasting regulation

The Tribunal has also released new research about community views on broadcasting regulation and broadcasters, which it claims indicates many Australians have a fairly laissez faire attitude to broadcasting as an industry but are concerned about its role in society. In general, the research shows that a very high proportion of radio users and viewers are satisfied with programs and with present levels of regulation, and there is no strong public support for deregulation, particularly in relation to content.

Half the respondents to the Tribunal's research agreed the broadcasting industry is quite responsible 'and should be left alone', but only a minority of people polled thought that control should not be imposed on broadcasters. Of significance is the fact that two-thirds of people polled agreed broadcasters can be manipulative and have too much power. The research involved discussions in June 1991 followed by a national telephone survey in July 1991 of 1,663 adults in city and country areas.

PORTRAYAL OF VIOLENCE ON TELEVISION

The New Zealand Broadcasting Standards Authority has declined to uphold a complaint about a TV3 broadcast of a newsitem about an Australian television talk show program where two men physically attacked each other. It was alleged that the item breached broadcasting standards relating to the portrayal of violence.. The complainant also alleged that Mr Leighton Smith, TV3's presenter, trivialised the horror of the violence portrayed by laughing at the item's conclusion.

The Authority concluded that Mr Smith's reaction was ambiguous and open to varoius interpretations. "His laughter could have been provoked by the sight of men making fools of themselves, as TV3 claimed. But it could also have been an indication he found the violence amusing, rather than deplorable ...". The Authority also noted that the other presenter Ms Joanna Paul, reacted in a manner which showed her disapproval of either the violence, or Mr Smith's reaction, or both.

However, the Authority did uphold a complaint about a promotion for a forthcoming progam stating that one of the fight's participants, Ron Casey, "Australia's heavy weight debating champ", would "step into the ring with the Ralston group". The Authority acknowledged "sadly but realistically" that this possibility may well increase viewer audience and thus the program's rating. However the Authority found the promo did not meet standard 22: "The gratuitous use of violence for the purposes of heightened impact is to be avoided." The Authority declined to uphold a complaint that the same broadcast breached standard 21 of the code: "Broadcasters have a responsibility to ensure that when violence forms an integral part of drama or news coverage the context can be justified".

N.Z. RADIO TENDER

An Australian broadcasting company that missed out on radio licences because it incorrectly filled in tender documents has applied

to the New Zealand High Court to stop the transfer of six licences by the Ministry of Commerce. Mr Justice Jeffries granted the Hobart-based Mirell an interim injunction. The company had tendered the highest amount for some licences in parts of New Zealand but was not awarded the frequencies because of errors in the tender document. It was reported that the lot numbers were not correctly stated. Nineteen licences were sold for about $216,000 but Mirell was reported as having bid $332,000.

NZ TELECOMMUNICATIONS LITIGATION

Telecom New Zealand has failed to get a High Court order to prevent the Commerce Commission from investigating the telecommunications industry under New Zealand's trade practices legilsation. Telecom alleged that the Commission was exceeding its powers, acting unreasonably and that the investigation could prejudice litigation between Telecom and Clear Communications.

Mr Justice Gallen said Telecom could simply not take part in the Commission's investigation and that if the Court found in its favour after a full hearing which would take place in April 1922 then it would have lost nothing. Mr Justice Gallen said the Commission was not required to act in a vacuum and must be able to make investigations before performing its policing powers under the *Commerce Act*. Telecom had not been able to establish a case strong enough for an interim order to be granted in the absence of any evidence in rebuttal.

NZ TELECOM TRADE PRACTICES DISPUTE

Clear Communications Limited has to wait until June 1992 for the High Court to hear its trade practices claim alleging Telecom New Zealand was abusing its dominant position in the market place over local calling. The manager of Clear Communications, Neil Tuckwell, has been concerned about the amount of time it was taking to handle telecommunications issues.

"While the judiciary is of the view that these are important matters and require careful consideration — and we respect that — time is also of the essence. If we were to apply the amount of time it has taken for the Amps-A (cellular telephone) decision then we might not expect to see anything final until 1993 and then we would still have to negotiate inter-connection", he said.

In another set of litigation, Telecom has appealed to the Court of Appeal against a Commerce Commission decision that the addition of the "A" band of the mobile phone system frequency to the "B" band it already has, would increase its market dominance. The case was due to be heard by the Court of Appeal. On 10 December the High Court upheld the Commerce Commission's decision. The High Court judgment means the frequency would return to the control of the Ministry of Commerce which has to decide whether to re-tender the frequencies or offer them to the next highest bidder.

NZ TELEPHONE NUMBERING PLAN

The Commerce Commission has also expressed the view that Telecom's control of the telephone numbering plan should cease. Telecom determines the numbers which its competitors use, including the 050 access code phone users dial to use Clear Communication's rival toll network. The Commission said that gave a commercial advantage to Telecom and suggested control should be vested outside the market, as it is in Australia. "Competition can best develop if there is no difference in the dialing procedures and the time taken to place a call through competing networks," the Commission said. Its views were presented to the Ministry of Commerce which has since produced an interim report. It found ownership of the numbering plan which passed to Telecom when the company was corporatised in 1987 remained with it after privatisation. The Ministry of Commerce found that Telecom had bought the right to its own telephone numbers but did not acquire the right to allocate numbers to competitors and that if there was evidence that competition was blocked or severely diminished by numbering issues, the Government could still legislate on the issue.

NEGOTIATION OF NZ CONTRACTS

The Communications Minister, Maurice Williamson, still saw competition as the best regulator of the telecommunications market in his speech at a telecommunications seminar in Auckland in December 1991. He said there was "a lot of posturing and commercial rhetoric" from Telecom and Clear and not enough effort was being put in negotiating contracts. The Minister revealed that he had written to the Telecom chairman asking for confirmation of earlier commitments to fair and reasonable competitor practices.

Mr. Williamson said the government would tighten its control if the companies did not play by the rules. "The major message to the players is to go away and negotiate in good faith and use the courts, which are the most appropriate body, for making a ruling on the very difficult contracts issue."

One commentator at the seminar said, "The risk for government policy was that unresolved disputes would take many months to sort out and involve costly court battles. Shifting major competitive issues into the courts could also effectively stifle the attempt to create a unique regulatory environment."

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facilities' can be expected to shape one carrier's obligations to supply telecommunications services to the other.

On the other hand, an interpretation which leans too far in favour of requiring the provision of telecommunications services between carriers — the 'what's yours is mine' approach could have perverse results as far as consumers are concerned.

The motivation to innovate is largely conditioned in a competitive environment on the risk that the competitor bears that one carrier will provide services to consumers of a quality and type which the other cannot match. If a new carrier has recourse to all of AOTC's established network and services to build its own network and to AOTC's complete inventory of services for resale to third parties, these are two possible consequences. First AOTC, as the established carrier, will have a reduced incentive to innovate, as the new entrant can parrot offerings that achieve market acceptance. Second, the competitor will have a reduced incentive to differentiate its service offerings, particularly in areas of service quality less visible to the public (e.g. transmission capacity like fast packet switching).

In this way, consumers and service providers could be denied the full benefits of competition.

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