Communications Update

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Cross media rules at crossroads

COMMUNICATIONS Minister Michael Lee has asked the ABA to do a quick fix on the cross-media ownership rules. On 3 May Minister Lee put out a press release, noting that Cabinet had discussed the ABA's report into Packer's shareholding in the Fairfax newspaper group, and had accepted his recommendation to strengthen the rules.

'I have therefore asked the ABA to accelerate work on its section 158(n) report on the operation of the Broadcasting Services Act. I have asked the ABA to include ... advice on options for imposing an upper limit on cross media economic interests, with a view to implementing any legislative changes as soon as possible.'

Without any explanation, the release goes on to say: 'the Government will also ask the ABA for advice on what upper limit should in future apply to foreign interests in commercial television broadcasters.' It is worth speculating about what these two statements mean, and why they have been yoked together.

Takeover trigger

A persistent, and therefore probably 'impeccably sourced' story in the daily press is that Keating and Lee want to put a 20 per cent statutory cap on cross media holdings, to keep Packer from further incursions into Fairfax.

The foreign company interest cap also will be raised to 20 per cent, to make Murdoch's limit in Seven the same as Packer's in Fairfax. Perhaps this is designed to give the appearance of even-handedness? As a foreigner, Murdoch is currently kept to an absolute limit of 15 per cent in Seven, so can't emulate the Packer stalking strategy. The 20 per cent limit would bring cross-media rules into conformity with the Corporations Act trigger point for a full take- over bid.

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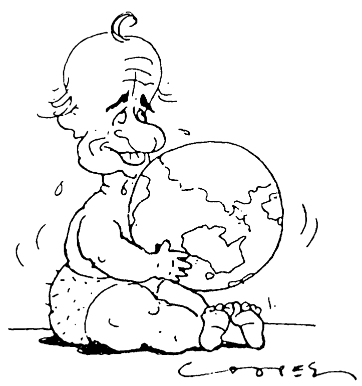

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As *CU* pointed out last month, setting the limit at the trigger point for a takeover bid sends all the wrong signals. It encourages media proprietors to take strategic positions, ready to pounce if rules or circumstances change. It acts as a magnet for strategic shareholdings.

It's hard to see how a limit which would allow Packer to increase his interests in Fairfax, and allow Murdoch to increase his in Seven, could possibly be sold as 'buttressing the control provisions' and 'strengthening the rules'.

No public inquiry

But don't rush to write to the ABA about it. Apparently, there is no time to call for public submissions on this supremely important matter, because the Minister wants his report by the time you read this. So, once again, complex policy questions are being decided on the run.

And in putting in the quick political fix, the Government is doing nothing about the yawning chasm in communications regulation - the absence of any rules governing common ownership of telecommunications, pay TV (other than that delivered by satellite), broadcasting and on-line information distribution.

Apart from limited trade practices law, there is nothing to restrain vertical and horizontal integration between and within these sectors of the converging communications industry. Trade practices law has no public interest criteria about diversity of sources of information to guide decisions. The only relevant criteria relate to 'substantial lessening of competition in a market' - and these markets are only just coming into being.

The great fear is that by the time there is a market for Allan Fels to regulate, the oligopolists will have tied up content and distribution.

UK media cake proposal

There might be something worth watching in the UK, where there are proposals for new cross-media regulation which treats the whole media market as one industry, and regulates the size of the slice of the pie any one proprietor can have. Writing in the *Australian Financial Review,* Fred Brenchley reports that the review of cross-media rules in the UK has been brought about by lobbying from Murdoch's newspaper and television competitors. They were repoortedly frustrated at being held in check by rules holding print proprietors to a maximum 20 per cent in UK television licences, while Murdoch's offshore BSkyB satellite pay TV service stays outside the rules.

Under the scheme apparentaly approved by the Major Government, individual proprietors would be held to 15 per cent of the national media cake, using a points system which weights shares according to share of advertising revenue.

Murdoch's alternatives

An alternative methodology for carving up the cake, apparently favoured by Murdoch, would measure 'share of voice' - that is, media usage, or the editorial impact on the reader, listener and viewer - rather than share of advertising. This would advantage Murdoch, whose News International scores only 10.6 per cent of the 'national voice' with five national newspapers and nine satellite channels, coming a distant second to the BBC, with its 19.7 per cent.

This difference in approach, and the difference in regulatory outcome, should sound alarm bells about the potential for manipulation of this sort of test; but the scheme does have the superficial advantage of focusing on domination by a few major players of commercial television, newspapers, radio, and pay TV, considered as part of a total media picture.

It looks like a policy about diversity in the supply of information which is something sorely needed in Australia. ❑

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