
THE TRADE PRACTICES COMMISSION
AND ITS APPROACH TO THE RECENT
MERGERS IN THE MEDIA

Address by W.J. Coad, Deputy Chairman,
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& Communication Law: Who Controls the
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The charter of the Trade Practices Commission ("TPC") on mergers comes from s50 of the Trade Practices Act ("the Act") which prohibits mergers resulting in one company's dominance in a particular market. The Act is not industry specific in this respect. It has general application to all industries. So that when the TPC came to look at the recent media mergers, more particularly the acquisition of the Herald and Weekly Times ("HWT") by News Limited, it was the test of dominance that the TPC was applying to the merger. It applied that test in the way it would in any other industry merger that might be of such significance that the question of dominance would be raised.

The application of the test of dominance is to measure to what extent a firm can operate independently of its rivals without them being a brake or check on the merged firm's pricing or other market behaviour. In the News Limited acquisition of HWT it became a factual question as to what checks there would be on the combined operations of HWT/News Limited in particular markets.

The TPC's likely concerns as to dominance in respect of television and radio were largely taken care of by the Broadcasting Act. That conclusion we drew from discussions with the Australian Broadcasting Tribunal early in the piece. The Broadcasting Act operates to limit the degree of concentration in respect of television and radio; in that respect it operates in a like direction to the Act. The rules under the Act are still subject to review but during the course of the HWT takeover we were never really faced with a situation where we were

likely to have concerns in terms of s50 in respect of television and radio. The TPC's considerations thus focussed more on newspapers.

The TPC made extensive enquiries in the various states paying particular attention to the states where the obvious impact of the HWT/News Limited aggregation would be - Queensland, South Australia and Western Australia. It noted that in New South Wales the position would remain substantially unchanged and in Victoria, News Limited would in effect become a substitute for HWT. The existing competition from Fairfax would remain in those states. Similarly in Tasmania The Examiner would remain in competition.

In respect of the other states - Queensland, South Australia and Western Australia - the TPC took the view that there would be breaches of the Act (s50) as HWT/News Limited would dominate the newspaper markets in those states or more particularly in the capital city metropolitan areas.

It is a matter of history then that a number of divestitures took place so that in the result in those states the following ensued:

- In Queensland, News Limited has disposed of all of its previous interests in major metropolitan dailies and has become the controller of the Queensland Press Limited's metropolitan daily and Sunday newspapers.
- A new competitor in metropolitan newspapers, Northern Star Holdings, has acquired former newspaper properties of News Limited - The Daily Sun and The Sunday Sun. When added to the expertise and interests which Northern Star Holdings already has in the print medium throughout northern New South Wales and country and regional Queensland, these acquisitions will make it a strong competitor in the Queensland press. The printing and distribution arrangements agreed to between Northern Star Holdings and News Limited will ensure its profitability and competitiveness.

- In South Australia News Limited has vacated its afternoon newspaper, The News, which has also been acquired by Northern Star Holdings; thus News Limited will replace the Herald and Weekly Times as controller of the Adelaide Advertiser. The strength of Northern Star Holdings in Queensland and its expertise together with News Limited will render it a competitive force in Adelaide.
- In Western Australia the Bell Group has replaced the HWT as the owner of West Australian Newspaper Limited and publisher of The West Australian, and the position of News Limited has not altered.

A wholly owned subsidiary of United Media Limited, a new competitor in metropolitan dailies, has acquired the afternoon newspaper, The Daily News, whilst the suburban newspaper company, Community Newspapers (1985) Limited, has strengthened as a result of its acquisition of the Bell Group's suburban weeklies. The interests of the Bell Group (through West Australian Newspapers) in Community Newspapers will have diminished in terms of voting and director representation such that in each situation a majority will rest with United Media. Other measures to be taken will strengthen the financial base of both United Media and Community Newspapers and their competitiveness.

The TPC takes the view that these changes mean that the requirements of s50 in respect of those markets were also met. In no capital city (save Darwin) is News Limited not confronted by a major competitor.

It has been argued that the TPC's approach was too narrow in looking at particular state markets and that it should have focused on the strength gained by News Limited in relation to newspapers Australia-wide.

The TPC enquiries indicated that:

- Although there are important national newspapers (sold

throughout Australia) they are relatively small.

- Demand (readership) is heavily oriented to local offerings, reflecting local interests.
- Supply factors including availability of printing facilities and access to distribution networks again reflect local history and developments. The TPC satisfied itself in the various locations that printing facilities were available and where they were not in the short term, that suitable print contracts were available. The TPC will be keeping the (newsagency) distribution system under review. It also satisfied itself as to availability of raw materials (notably newsprint) although it will be watching developments in respect of access to news sources.
- Although some advertising is dealt with on a national basis most advertising is dealt with on a state basis. Hence the state/state approach.

Focussing on News Limited's "national strength" in newspapers tries to aggregate these supply and demand factors and competitive relationships. We were not convinced that was proper and preferred to stay with the very real marketplace features we saw in the particular states. Much of the "national strength" argument was based on fears, and to us underestimated the entrepreneurial skills of the other proprietors including the new ones. To us the "national strength" argument moved somewhat away from the (perhaps mundane) economic realities and began to embrace a wider proposition that ultimately has a connection to a fear that News Limited editorially will have too great an influence in Australia.

In my view, if one started down that path in terms of s50 (which as I explained is a 'dominance' test not a 'public interest' test) it would not be long before it became almost irresistible that the market considerations might have to be widened to include other forms of media. And once

you are there the Government's proposed cross-media ownership limitations come into play to limit the degree of ownership concentration.

So that the new position on the ground appears to be as per the attached table. [For the sake of the argument I have betrayed my main theme

and aggregated the newspaper figures across state borders.]

Certainly, News Limited is prominent in newspapers that cannot be disputed. But it now has no presence in TV or radio. In view of that the picture of 'dominance' on that wider basis starts to fade.

1. STATE & TERRITORY CAPITAL CITY TV CHANNELS
(Commercial excl. ABC)

	<u>Prior to Acquisitions</u>	<u>After Acquisitions (March '87)</u>
HWT	2	Nil
News	2	Nil
Others	12 (run by 9 operators)	17 (run by 9 operators)
Total	<u>16</u>	<u>17*</u>

* Includes W0W10 Perth

[Note: News Ltd. now has no TV stations city or country]

2. RADIO STATIONS
(City and country but excluding ABC)

	<u>Prior to Acquisitions</u>	<u>After Acquisitions (March '87)</u>
HWT	7	Nil
News	1	Nil
Others	131	139
Total	<u>139</u>	<u>139</u>

[Note: News Ltd. now has no radio stations city or country]

3. MAJOR NATIONAL, STATE & TERRITORY CAPITAL CITY NEWSPAPERS

(a) Number of Newspapers	<u>Prior to Acquisitions</u>	<u>After Acquisitions (March '87)</u>
	<u>34</u>	
HWT	13))
News	11) 24) 18
Others	13	18

(Note: Joint ventures are counted twice - once for each partner - therefore the figures do not add up to 34).

(b) % Circulation

	<u>Dailies</u>	<u>Weeklies</u>	<u>Dailies</u>	<u>Weeklies</u>
HWT	48)	29)))
News	28) 76	47) 76) 58) 56

(Note: Circulation for joint ventures are counted twice)

[Note: Does not include weekly journals, e.g. "The Bulletin".]