

PRODUCTIVITY COMMISSION INQUIRY: THE PBL VIEW

PBL gazes into the media crystal ball and finds outdated and anachronistic cross-media and foreign ownership rules.

Key features of the current regulatory regime for free television provide for high levels of sustainable competition in the industry, while also ensuring that the industry delivers programming which is relevant to, and valued by, Australians.

Free television has a unique and valued place in the lives of the Australian people. Australia's system of free television, which has developed over the last 40 years, is founded on a commitment from government and broadcasters to quality, diversity, responsiveness to audience needs and importantly, to Australian programmes. Australians have become accustomed to these high standards, and there is a public expectation that this service will continue.

Broadcasting legislation to date has recognised the important value given to free television by consumers, by limiting the number of available licences so that broadcasters can deliver the types of services consumers demand, including high levels of Australian content.

Free-to-air broadcasting faces serious challenges in the next decade. As it prepares for the expensive digital transition, it is also confronting a challenging and changing industry providing an expanded array of consumer services, such as pay television and on-line services, and proposed datacasting services. While these new services offer many benefits to those who have access to them, many Australians cannot afford new media. And most Australians would like to ensure that their free service is not compromised in any way.

The Productivity Commission should, in Publishing and Broadcasting Limited's ("PBL's") view, endorse those aspects of broadcasting regulation which preserve the current high quality, comprehensive, free television service with its benefits for Australian culture. In particular, the policy which limits the number of licences



to three in any licence area should be recognised as providing extraordinary public benefit, in terms of culture, quality and diversity.

In a small economy like Australia, advertising revenue is limited. There is fierce competition between free-to-air broadcasters for advertising revenue. The television market is mature and its aggregate audience is stable. The minutes of advertising per hour are limited by regulation, so the aggregate supply of advertising audience minutes is also stable. A new network would simply fragment the available revenue, causing serious loss for all networks. If profit margins decreased, broadcasters would have no choice but to cut costs dramatically. Expensive programming

such as drama, sport, current affairs and Australian content would be the first to be affected. Australians would be subject to a diet of low-cost imported programming.

Although free-to-air broadcasters are reviewing operations to take into account the new industry landscape, programming costs continue to rise. Local drama is appreciated by viewers, but can cost ten times the cost of its foreign equivalent. Broadcasters are also constrained by high regulatory costs, in the form of supertax licence fees and quota requirements. Pay television and on-line services are not subject to those burdens.

Both major political parties recently recognised these pressures, and

underlined their commitment to quality and local culture, when they legislated for a moratorium on new free-to-air broadcasting licences until 2007. This moratorium, and its effective enforcement (through appropriate limitations on proposed new datacasting services), is essential for the Australian broadcasting industry to maintain its current high standards.

THE BENEFITS OF DIGITAL BROADCASTING: A HIGH QUALITY FREE TELEVISION SERVICE

Free-to-air broadcasters are committed to introducing digital television, including high definition television, to Australian consumers. Preparations are underway for the transition, which will commence on 1 January 2001. Digital television will provide unsurpassed quality, and has the potential for many innovative new features. The legislation, including the moratorium on new licences, brings enormous public benefit, and is of central importance to the future of free television in Australia.

Free-to-air broadcasters should be encouraged to provide innovative features such as enhanced programming and high definition television, without regulatory limitations, so as to promote the speedy and smooth take-up of digital television. Pay television has been protected by restricting free-to-air broadcasters from providing multi-channelling and subscription services, unlike the USA where free-to-air broadcasters have complete flexibility. The transition from analogue to digital, with the added feature of high definition television, will be the most dramatic change for viewers since colour television, and will lay the foundation for free-to-air television for the next 50 years.

Datacasting services must be appropriately confined so that they do not amount to quasi-broadcasting services, in conflict with the moratorium on new broadcasting licences. Otherwise, audiences and revenue would be diverted from the free-to-air broadcasting industry, with adverse impact on Australian culture and quality.

ACHIEVING THE OBJECTIVES OF BROADCASTING REGULATION

Australia has the best broadcasting system in the world, with its balance of three commercial networks and two public broadcasters, all with national reach and commitment to Australian culture and quality. The services provided by free-to-air broadcasters to viewers are supplemented and complemented by scores of pay channels. The rules which limit the number of free-to-air broadcasters in each area, and some other policies, such as the anti-siphoning rules, which have ensured that consumers have the benefit of major sport on free television, are directed at preservation of the integrity and quality of this system in the public interest.

However, some other broadcasting policies require urgent re-evaluation as they have an adverse effect on consumer interest. These are: licence fee obligations imposed on free-to-air broadcasters; the system of Australian content regulation by way of inflexible "standards"; and pay television regulation.

CROSS MEDIA AND FOREIGN OWNERSHIP RULES

In recognition of a media landscape which has changed beyond description in the last few years, it is time for the cross media rules to be repealed, and along with them, the foreign ownership rules.

The cross-media rules are usually sought to be justified on the basis that the community needs access to a diverse range of information and viewpoints. This diversity is already assured through democratic principles, consumer demand, new technologies and services, and global participation.

The Australian consumer has access to a rich array of entertainment and information, with more services around the corner. The current range of media services providing news and information include commercial, public and community radio, national, regional and local newspapers, magazines, pay television, on-line services, data and information services and the five free-to-air television broadcasters. The availability of information sources will increase further when digital broadcasting is introduced. Datacasters base their business model on exploiting the conversion to digital broadcasting,

which will enable them to gain access to the home through the TV set in order to deliver their digital services.

As is fitting for an advanced democracy, there is also a wide range of views, opinions and ideas, which are vigorously expressed in the media. Common ownership of different media forms, such as newspapers and television, would not affect this dynamic. Each media business would retain its own style, presentation and content, and views and opinions would be at least as varied and diverse as they are now. Commercial imperatives would guarantee this. The requirements of a newspaper audience, for example, are entirely different to the requirements of broadcast viewers. Consumers now have a wide range of choices open to them, and would exercise that choice negatively if there was a perception of media bias or blandness.

Free-to-air broadcasters, in particular, rely exclusively on differentiating their services on the basis of quality, such as accuracy and fairness in news and current affairs, and the provision of quality Australian programmes. Since broadcasters cannot differentiate their service on the basis of price, they can only gain audience loyalty by concentrating on quality. Any lapse in standards is rapidly penalised by viewers, who face zero switching costs in finding an alternative source of broadcast news.

Furthermore, independence of the media is a concept central to Australian democracy, and valued by journalists and producers of Australia's major media. Regulation, such as codes of practice, reflects high standards in broadcasting.

The advantages of cross-ownership do not lie in homogenising various media products, but in providing administrative and operational efficiencies, enabling both higher risk assumption and new investment and growth.

THE GLOBAL, CONVERGENT MEDIA INDUSTRY

The convergence of the media, computing and communications industries around the world has seen the emergence of new technologies and new media forms, and of huge transnational companies who have become active participants in globalised media businesses. These companies, such as AT&T, AOL, MCI Worldcom and Yahoo! have enormous capital bases, some with market capitalisation substantially in excess of

\$100 billion. These companies are continuing to grow bigger and reach deeper into converged media and communications businesses. An example is the recent merger of the cable networks and media businesses of AT&T and TCI in the USA.

Within Australia, there is a similar pattern of convergence. Telstra and Cable & Wireless Optus are owners of, and active participants in, the television, Internet services and communications industries. Foreign transnational corporations have become substantially involved in Australian media businesses, for example, pay television (including News Corp, UIH, Time Warner, Sony, Disney), and Internet services (including AOL, Yahoo! and MCI Worldcom).

In this global information and entertainment landscape, and within Australia, Australian media companies are relatively tiny participants. The cross media rules are impeding the opportunity for Australian media companies to achieve the scale and capital base necessary to participate effectively in this global environment.

In particular, as the traditional boundaries between industries disappear, broadcasters will struggle to compete against the much bigger and better capitalised telecommunications companies. The telcos have crucial bottleneck control over the "last mile" access to homes and businesses. For example, in Australia, Telstra and Optus control all of the broadband HFC cable; Telstra controls all of the copper wire, which can deliver high-speed Internet access through xDSL technology; AAPT controls all of the available LMDS spectrum. These methods of high-bandwidth data delivery will enable the telcos to offer content that is directly substitutable for that of the free-to-air broadcasters. Yet there is nothing to stop the telcos making whatever investments they feel to be appropriate for their shareholders. In contrast, television, newspaper and radio proprietors are prevented by regulation from making what might be sensible investments.

FOREIGN OWNERSHIP LAWS INEFFECTIVE

In the past, PBL has supported foreign ownership laws, but in 1999, it is clear

that these laws are not achieving their purpose. The rules apply unevenly and capriciously, and foreign participation in Australian media is a reality.

Foreign companies own substantial portions of the telecommunications, radio and newspaper industries and one free-to-air broadcasting network, and hold substantial investments in, or own outright, many of the operators in the pay television, online, and other media sectors. The justification of foreign ownership limitations based on levels of influence (as was intended to be the measuring stick) has become meaningless.

Further, even apart from questions of foreign ownership, consumers now have easy access to foreign sources of news. Online services deliver American newspapers, or British radio stations updated almost in real time. Pay television channels such as CNN are readily accessible. This means that the foreign ownership rules are not effective to prevent foreigners from exercising influence on the Australian populace.

REPEAL OF CROSS MEDIA RULES AND FOREIGN OWNERSHIP RULES WOULD CONFER ECONOMIC BENEFITS

Repeal of these rules would encourage efficiency by enabling local broadcasting companies scope to compete with "convergent" global media companies, both locally and on the world stage.

Local companies could build a stronger capital base for investment, and with it the leverage required for growth. Australian companies could trade their expertise and skills, and benefit from international relationships. Locally, infrastructure would improve, as would opportunities for development of content. There would also be increased export opportunities. The flow-on benefits for the economy of a competitive, efficient industry – creation of jobs, export opportunities, earnings – would be substantial.

Stronger media companies would have more capacity to meet public interest broadcasting objectives – high quality and innovative programming, diversity and Australian content. Community demand for services, competition in the provision of those services and competition regulation will ensure that Australians

continue to receive media products of high quality, range and diversity.

However, the foreign ownership and control rules should not be repealed unless the cross-media rules are also simultaneously repealed.

PBL is prepared to compete with foreign companies within the changing Australian media sector, but it does not believe that it can do so on a genuinely competitive basis unless the cross-media rules are repealed and PBL can grow its capital base.

Repeal of the foreign ownership and control rules, without contemporaneous repeal of the cross-media rules, would produce the absurd result that foreign companies would be free to make further inroads into major Australian media sectors, while Australian media companies would be free only to look on.

AUDIENCE REACH RULES ~ OUTDATED AND INEFFECTIVE

The audience reach rule in the *Broadcasting Services Act 1992* is another outdated rule of no practical application that should be repealed.

The rule was part of the package of 1987 legislation ostensibly designed to protect diversity of information outlets in the Australian community. It has never had any practical effect, other than to create a second tier of commercial television broadcasting companies beneath the major networks.

Networking arrangements between major networks and their affiliates, pursuant to which most Australians receive all three network services, have long rendered the rule moribund.

This is an edited extract of the submission by Publishing and Broadcasting Limited to the Productivity Commission inquiry into Broadcasting Legislation.