

Review of cross-media ownership

A background briefing

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Both the Prime Minister and the Minister for Communications (Sen Richard Alston) have acknowledged that the Government is prepared to repeal the foreign ownership and cross-media provisions of the *Broadcasting Services Act 1992* and to consider a comprehensive review of the rules. Laws placing specific restrictions on the ownership and control of media organisations have been increasingly criticised, particularly by the media and communications industry.

History of media ownership rules

The media business has always been recognised as unique and because of this Australia has had some limitations on ownership of mass media since the 1930s. From the introduction of television in the 1950s owners were restricted to a maximum of two television licences. There were substantial changes to broadcast ownership rules in 1987 with the abolition of the 'two station rule'.

In August 1985 the Minister for Communications, Michael Duffy, directed the Department of Transport and Communications to undertake a study of the ownership and control rules for commercial television. The *Ownership and control of commercial television: future policy directions* (August 1996) report proposed various options for imposing limits on cross-media ownership.

These proposed changes were introduced by the *Broadcasting (Ownership and Control) Act 1987* that amended the *Broadcasting Act 1942*. Under this legislation, a person owning a television licence could not own more than fifteen per cent of a newspaper which had more than fifty per cent of its circulation in the same area as that of their commercial television broadcast licence. The maximum population reach for a person in control of a commercial television licence was sixty per cent.

Further changes to cross-media regulation were made in the *Broadcasting (Ownership and Control) Act 1988*. This Act extended limits on cross-media ownership to radio licences. The owner of a radio licence could not own more than fifteen per cent of a television licence serving substantially the same market, and fifteen per cent of a newspaper which had more than fifty per cent of its circulation in the same area serviced by the radio licence. Similarly, the owner of a television licence was restricted to owning fifteen per cent of a radio licence serving substantially the same market, while a newspaper proprietor could own up to fifteen per cent of a radio licence.

Cross media laws under the *Broadcasting Services Act 1992* (BSA)

The *Broadcasting Services Act 1992* (BSA) was a complete rewrite of broadcasting legislation. The BSA imposed a new regime of regulation on the ownership and control of commercial radio and television broadcasting licences.

The rationale for special regulation of broadcast media is the social and cultural importance of broadcast services. The intent of the BSA is to prevent common ownership of newspapers, radio and television broadcast licences in the same region. The current rules are based on the licence area concept — the precise geographic area designated by the Australian Broadcasting Authority (ABA) as part of its broadcast spectrum planning process. A key principle in current structure of the BSA is that some media services are by their very nature inherently more influential than others.

The specific controls over media ownership in the BSA are as follows:

Free-to-air television — A person must not control a television broadcast licence whose combined audience reach exceeds seventy-five per cent of the Australian population or more than one licence within a licence area. A foreign person must not be in the position to control a licence and total foreign interests must not exceed twenty per cent.

Radio — A person must not be in the position to control more than two licences in the same licence area.

Subscription television — A foreign person must not have interests that exceed twenty per cent and total foreign interests must not exceed thirty-five per cent.

Cross-media control — A person must not control:

- a commercial television broadcast licence and a commercial radio broadcast licence in the same licence area;
- a commercial television broadcast licence and a daily newspaper in the same area; and
- a commercial radio broadcast licence and a daily newspaper in the same area.

Digital broadcasting

The *Television Broadcasting Services (Digital Conversion) Act 1998* was passed on 3 July 1998. The Act implemented the government's digital policy announced earlier in the year. The policy will have a major im-

pact on broadcast media diversity in Australia until at least 2006.

Commercial broadcasters have been 'loaned' seven MHz of spectrum free of charge to enable them to simulcast their existing analog services and digital format. The Government has also placed a prohibition on any new commercial television stations until December 2006.

As part of the package, available spectrum not required by current broadcasters was to be auctioned for the transmission of what is referred to as datacast services. Datacast services are subject to restrictions that prohibit them from providing services similar to broadcast services.

Datacast licences were offered for auction early 2001, but a number of parties who had expressed interest in the licences withdrew from the process. Eventually the auction was cancelled. Potential bidders have expressed concerns that the current licence restrictions excessively limited the ability to develop a commercially sound datacast service.

The Government has since announced a review of the datacasting provisions. However they still remain committed to the prohibition of new television broadcast services until 2006.

Clearly this package represents a major victory for the established commercial television broadcasters. The rest of the Australian economy has been forced to embrace national competition policy, yet the Government has given an unwarranted 'free gift' to the networks. Not only have they gained free access to valuable spectrum, but they have also received a guarantee that there will be no new entrants (competition) until the end of 2006.

Productivity Commission

The Productivity Commission has completed a public inquiry examining the *Broadcasting Services Act 1992* and other broadcasting related legislation. The inquiry was about advising the government on practical courses of action to improve competition, efficiency and the interests of consumers in broadcasting services.

The Commission's inquiry into broadcasting was released in April 2000. The Commission recommended that the cross-media rules be repealed but only after the following conditions were met:

- the insertion of a media-specific public interest test in the *Trade Practices Act*; ►

- the removal of foreign ownership restrictions in the *Broadcasting and Services Act*, and
- the removal of regulatory barriers to entry into broadcasting, together with the availability of new spectrum for broadcasters.

New media access and media diversity

The media business has always been recognised as unique as commercial media companies have private interest but also have public responsibilities. Media property confers particularly significant power. The potential adverse consequences of the concentration of media ownership include: concentration of power; insufficient channels of expression of opinion; and diminished localism of content.

In a healthy democracy a wide range of opinions, different positions, values and bias are offered through the mass media. The problem with concentration of ownership is that it can stifle ideological diversity within our mass media.

The development of the internet and the introduction of pay television have added to the diversity of the Australian media sources over the last decade. It could be argued that this has reduced the need for the media ownership rules, which are designed 'to encourage diversity in control of the more influential media services.'

Although new media access is expanding, a closer examination of news sources available on the internet and subscription television indicates that they are controlled by the traditional media. The most popular Australian internet news sites are also controlled by existing media operators, Publish and Broadcasting Ltd (PBL), News Ltd, Fairfax and the Australian Broadcasting Corporation.

New media access is well below the near universal household penetration of free-to-air television and radio, and is still significantly lower than newspaper distribution. AC Nielsen has estimated that in 2001 around twenty per cent of homes have pay television subscriptions. The Australian Bureau of Statistics has estimated that in November 2000 thirty-seven per cent of Australian households had home internet access.

Australia's mass media is still largely owned by a small number of large organisations. This can be demonstrated by taking a look at one major player in each of the traditional media businesses.

Newspaper — News Limited has interests in more than one hundred national, metropolitan and suburban newspapers throughout Australia. News Limited circulation figures include 67.8 per cent of the capital city and national newspaper market. News Limited has a twenty-five per cent interest in the subscription television service Foxtel.

Television — PBL (Nine Network) has a television audience reach of 51.5 per cent of the potential audience, this is not including its programming arrangements with regional television. PBL also publishes over sixty national magazines and has a twenty-five per cent interest in Foxtel.

Radio — Village Roadshow controls Austereo which has eleven metropolitan and three regional radio licences with an audience reach of 62.5 per cent of the population.

Conclusion

The governments willingness to water down the cross-media and ownership rules would seem to be premature when Australia's media is still largely owned by a few large corporations. The traditional media in Australia is concentrated and could become more so if the cross-media rules are relaxed. Furthermore, the government's digital television and datacasting policy has only served to ensure that the present oligopoly in commercial television will stay in place until at least 2006.

What ALIA is doing...

ALIA will be preparing a submission to the inquiry into cross-media ownership legislation. We will keep members informed of our progress through regular columns in *inCite* and updates in the Associations regular ALIAnews broadcasts. ■

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