

ABA INVESTIGATES CANWEST-TEN

As part of its continuing investigation into control of the Ten television network, the ABA on 18 November requested documents on a range of issues from Canadian company Canwest Global Communications Corp (Canwest) and The TEN Group Ltd.

This follows enquiries made by the ABA of Mr Mike Lattin, former program director at the Ten network.

Canwest has a 15 per cent shareholding and a 58 per cent economic interest in The TEN Group Ltd which controls the Ten network television licences in Sydney, Melbourne and Brisbane.

Under the *Broadcasting Services Act 1992*, a foreign person must not be in a position to exercise control of a commercial television licence or have company interests in a commercial television licensee that exceed 15 per cent.

OWNERSHIP LIMITATIONS

The wide ranging definition of 'control' contained in the *Broadcasting Services Act* is fundamental to the operation of the ownership and control provisions. All of the ownership and directorship limitations contained in the Act are couched in

terms of whether a person is 'in a position to exercise control' of a licence.

The provisions relating to control are paraphrased below. Please note, in a legal context, this paraphrasing should not be considered a substitute for the full terms of the Act.

Control is intended to cover various formal and informal arrangements, including trusts, agreements, understandings and practices under which a person comes to be in a position to exercise control over a broadcasting service licence.

Normally, if a person has company interests exceeding 15 per cent, the person is regarded as being in a position to exercise control of the company unless there is proof to the contrary. This rule does not apply if another unrelated person has company interests in the same company exceeding 50 per cent.

Holding company interests is not the only way to be in a position to exercise control. Some other examples are where the person is the licensee, can control the licensee or can control the selection or provision of a significant proportion of the programs broadcast by the licen-

see (program supply agreements are exempted from this provision).

A person is also in a position to exercise control of a licence or a company if the person can veto any action taken by the board of directors, can appoint, secure or veto the appointment of at least half of the board of directors or can exercise direction or restraint over any substantial issue affecting the management or affairs of the licensee or company.

In the case of a non-licensee company, a person is in a position to control that company if the person can control a significant proportion of the operations of the company.

An employee of a licensee or non-licensee company is not, except through an association with another person, to be regarded as being in a position to control a licence or a company purely because of being an employee.

Persons are not associates if the ABA is satisfied that they do not act together in any relevant dealings relating to a licence or a company and neither of them is in a position to exert influence over the business dealings of the other in relation to that licence or company. ☐

TELEVISION GROUP SEEKS PUBLIC COMMENT

The Confederation of Australian Subscription Television (CAST) has invited public comment on its draft codes of practice. The deadline for submissions is 6 January 1995.

Among the matters covered by the CAST codes are program classification, presentation of news, subscriber issues such as fault repair, billing and credit management and the handling of complaints.

In developing its codes, CAST is required to consult with the ABA and to take account of any relevant research. Staff of the ABA's Program Services Branch have held discussions with CAST on a

number of occasions, including research briefings on issues relevant to the codes. CAST and the ABA will meet again after public consultation is complete. The ABA will register the codes once it is satisfied that the CAST codes meet the requirements of the *Broadcasting Services Act 1992*, in that they are endorsed by the majority of service providers in that sector of the industry, they provide appropriate community safeguards for the matters covered by the codes and the public has been given adequate opportunity to comment on them.

As some pay TV operators may be commencing operations before the codes are finally implemented, CAST has undertaken that its members will operate in accordance with the draft codes until the codes are registered by the ABA.

Copies of the draft codes are available from: CAST Secretariat, PO Box 203, Surry Hills NSW 2010. Telephone (02) 319 7538. ☐

CBA TO MEET

The Community Broadcasting Association of Australia (CBA) is holding its 22nd National conference at the Manning Clark Centre, ANU, Canberra, 2-4 December.

Keynote speaker is Kunda Dixit, the Asian Regional Director for Inter Press Service, an international news and features agency. Other sessions include a hypothetical on economic rationalism, a copyright workshop and a future directions session with reports on multimedia, aboriginal groups, community television, aspirant groups and digital broadcasting.

Forum topics will include innovative fundraising, talkback programming, codes of practice for community television, networking and localism and grant applications.

For further information contact Melanie Coombs, Conference Co-ordinator at the CBA at (02) 310 2999. ☐

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