



As part of its role in monitoring the cross-media rules, the ABA is seeking to establish whether recent share purchases by companies associated with Mr Kerry Packer has lead to any breach of the cross-media rules.

ABA considers information from Fairfax, PBL and Consolidated Press

John Fairfax Holdings Ltd (Fairfax), Publishing and Broadcasting Limited (PBL) and Consolidated Press Holdings Ltd (CPH) have responded to the ABA's requests for further detail about control of Fairfax.

Fairfax will be providing additional information to the ABA in the near future.

The ABA is considering the scope of the information provided to date to determine whether it has sufficient information to come to a view on whether Mr Kerry Packer or any associated person is in a position to exercise control of a commercial television licence and a newspaper that is associated with the licence area of that licence contrary to the cross media rules of the *Broadcasting Services Act 1992*.

The *Sydney Morning Herald* is associated with the licence area of TCN Channel 9 Sydney and the *Age* is associated with the licence area of GTV Channel 9 Melbourne. Mr Kerry Packer, PBL and a number of associated companies are all in a position to exercise control of both the TCN and GTV licences.

The ABA asked Fairfax for information about which persons are in a position to exercise control of Fairfax, the *Sydney Morning Herald* and the *Age* newspapers.

The ABA asked PBL for details of company interests held by Mr Packer and associated

persons in Fairfax and evidence that Mr Packer and associated persons are not in a position to exercise control of Fairfax, the *Sydney Morning Herald* or the *Age* newspapers.

Definition of control

The wide ranging definition of 'control' contained in the Broadcasting Services Act is fundamental to the operation of the ownership and control provisions.

The Act recognises that the concept of control can be a complex one. The ABA has been given a monitoring role over the broadcasting industry and suitable powers of investigation in order to reach a conclusion as to whether a person is in a position to exercise control or not.

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 or a newspaper.

The Act clearly envisages circumstances where more than one person may be in a position to exercise control over a broadcasting service licence or a newspaper.

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.

In the case of a newspaper, holding company interests is not the only way to be in a position to exercise control of the newspaper or a company which publishes the newspaper. Some other examples are where the person is the publisher, can control a significant proportion of the operations of the publisher or can control the selection or provision of a significant proportion of the material to be published by the newspaper (agreements for the supply of material are exempted from

this provision).

A person is also in a position to exercise control of a newspaper or a company if the person can, either alone or together with an associate, veto any action taken by the board of directors, 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 newspaper or company.

An employee of a publisher of a newspaper is not, except through an association with another person, to be regarded as being in a position to control the newspaper purely because of being an employee.

