



The ABA has concluded its investigation into CanWest and Fulcrum, finding CanWest not in breach.

ABA finding on CanWest and Fulcrum

The ABA has announced CanWest was not in breach of broadcasting laws via its dealings in Fulcrum Capital Corporation Ltd between June 1993 to May 1994.

At the time, Fulcrum was a substantial shareholder in Telecasters North Queensland Ltd which, in turn, has a shareholding interest of 40 per cent in The Ten Group Ltd (TGL). TGL controls commercial television broadcasting licences TEN Sydney, ATV Melbourne, TVQ Brisbane, NEW Perth and ADS Adelaide. CanWest also has a direct shareholding interest of 15 per cent in TGL.

'The ABA has to decide whether CanWest held additional company interests in TGL through Fulcrum in excess of the 15 per cent foreign ownership limit', said Mr Peter Webb, ABA Chairman.

At the time of CanWest's dealings in Fulcrum, the *Broadcasting Services Act*

1992 said a foreign person must not be in a position to exercise control of, or have company interests exceeding 15 per cent in, a commercial television broadcasting licence.

'This was the last remaining issue for the ABA's investigation into the possible control of TGL by CanWest. It was a complex legal matter which took some time to unravel. We found CanWest did not have "company interests" in Fulcrum and therefore did not exceed the foreign ownership limit,' said Mr Webb.

On 30 November 1995, the ABA reported that CanWest 'is not and has not been in a position to exercise control of TGL and that CanWest has company interests of 15 per cent in TGL'.

However, the ABA reported it was still inquiring into whether CanWest exceeded the 15 per cent foreign ownership limit by holding additional company interests in TGL through Fulcrum in the period June 1993 to May 1994.

The investigation

In March 1993, CanWest International Inc. (CII), a CanWest subsidiary, entered into a loan, trust and agency agreement with a Canadian investment

company, Gabtech Resources Inc.

CII advanced monies to an Australian company, John Mitchell and Partners Pty Ltd (JMP), to facilitate JMP's acquisition of shares in Fulcrum and Kanji Ltd, a shareholder in Fulcrum, on behalf of CII in its capacity as agent for Gabtech.

The shares were purchased in June 1993 and sold in May 1994. The loan, trust and

panies, CanWest would then have had company interests in the licensee companies exceeding 15 per cent between June 1993 and May 1994.

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agency agreements were terminated in June 1994.

CanWest would have been in breach if the arrangements conferred a company interest on CII. This is because they could have been traced through a chain of companies to the Ten licensee companies.

When added to the company interests held directly by CII in the Ten licensee com-

On the present facts the ABA found that a 'company interest' was not conferred on CII as such a right did not exist.

'This concludes the ABA's investigation into CanWest and TGL, however we will continue to monitor them in the same way that we have a responsibility to monitor the broadcasting industry as a whole,' said Mr Webb.

