



The ABA welcomes the Federal Court decision to dismiss the application for a review of its decision that CanWest was in breach of the foreign control provisions of the Broadcasting Services Act.

ABA welcomes court decision on CanWest

The Chairman of the ABA, Mr Peter Webb, has welcomed the Federal Court decision on 8 August to dismiss applications for review of its decision that CanWest was illegally in control of the Ten television network.

The applications, by CanWest Global Communications Corporation (CanWest), Donholken Pty Ltd and Selli Pty Ltd, were dismissed by Justice Hill in the Federal Court in Sydney.

'The ABA welcomes the Court's decision which vindicates its investigation process and findings,' Mr Webb said. 'The decision means that the ABA's original six month timetable remains undisturbed and continues to be due to expire in the first week of October. CanWest remains under an obligation to rectify the breach within this period.'

The ABA found that the Canadian company CanWest was in breach of the foreign ownership provisions of the Broadcasting Services Act by being in a position to exercise control of the Ten network television licences.

On 4 April, the ABA issued a notice, under section.70 of the Act, to CanWest requiring it to take action to remedy the

breach within six months.

The ABA was satisfied that CanWest had company interests of 52.49 per cent in The Ten Group Limited because it was in a position to exercise control of 52.49 per cent of the votes cast on a poll at a shareholders' meeting of The Ten Group Limited.

The investigation

In its investigation, the ABA examined share transactions which took place in November 1996 and January 1997. Shares in The Ten Group Limited which were previously owned by companies associated with Messrs John Singleton, Robert Whyte, Jack Cowin and others were sold to new companies whose purchase of the shares was financed by CanWest. These shares totalled 37.49 per cent of the issued shares of The Ten Group Limited.

ABA's conclusion

In reaching its conclusions, the ABA conducted a thorough examination of the documentation associated with and oral examination of the persons involved in the transac-



tions. The ABA considered the circumstances in which these transactions came about, the structure of the new companies and the commercial arrangements between the parties.

CanWest can apply for an extension of the period to remedy the breach. The ABA is not required to grant an extension, but if it does, the period of the extension cannot be more than six months.

There are significant penalties (\$2 million under section.72 of the Act) for failure to comply with a notice issued under section.70 of the Act.

On 29 August CanWest appealed the Full Federal Court the decision of Justice Hill that the ABA's decision should not be set aside. The appeal is expected to be heard before the end of the year. □

Erratum

The July 1997 *ABA Update* contained an article on the 1997 regulatory changes. That article erroneously suggested that the conditions imposed by the ABA under subsection 100(3) of the *Broadcasting Services Act 1992* only apply to satellite subscription broadcasting licences using the Optus satellites in operation before 1 July 1997. These conditions apply to all licences that use the Optus satellites in operation before 1 July 1997 whether or not the licences were allocated before or after July 1997 and whether or not the licences were allocated under section 93 or section 96 of the Act.