



Ownership and Control: A Whole New Game

The march of telecommunications technology has been the key factor in the enormous spread of freedom that is the major distinguishing feature of recent years.

This technology has also, I must add (with maybe a tiny touch of regret), liberated people from the once powerful media baron.

... (T)here are more newspapers competing more vigorously to bring news ... to the public than ever before. Technology is racing ahead so rapidly, news and entertainment sources are proliferating at such a rate, that the old media mogul has been replaced by a bevy of ... media executives trying to guess at what the public wants. The consumer is in the saddle, driving the whole media industry...

Five of the world's biggest industries - computing, communications, consumer electronics, publishing and entertainment - are converging into one large dynamic whole.

Rupert Murdoch, 21 Sept 1993

A few farsighted people in broadcasting and communications saw convergence coming years ago, and called for legislation which would dispense with outmoded divisions and recognise that in the near future, it would be impossible to separate the means by which people would get their information, programs and telephony.

In the event, what Australia ended up with was a collection of Acts based on traditional divisions between broadcasting and telecommunications, and traditional views about media ownership and control. In this article, Michelle McAuslan, Principal Solicitor for the CLC, points out how inadequate this legislation is to deal with galloping convergence.

Rupert Murdoch may be right. Perhaps the day of the all-powerful media mogul is dead. Instead of a number of media moguls ruling their separate markets, we will have only one or two rulers of the communications universe.

Until recently, research and debate on concentration of ownership and control of communications industries followed the traditional separation of the industry into distinct markets such as broadcasting, telecommunications and the print media.

New technologies and convergence of existing technology and services dictate that we can no longer isolate these sectors when considering regulatory policy. This convergence, together with a high degree of both horizontal and vertical integration (coupled with significant barriers to entry in the form of both costs and technological advances) has in effect seen the merging of communications and information services.

We need to rethink what a 'market' is. Previously, we have considered the communications and information industry as a number of separate markets eg. the commercial television market; the commercial radio market; the residential and business telephone markets.

Telecommunications used to mean simply a telephone (and fax) service; it now provides access to unlimited shops, banks, the TAB - the world. It is time that we looked at the

communications and information industries as a single, albeit highly complex, market. Consideration of the industry as a single entity reveals just how extensive concentration of ownership is and that a coordinated approach to regulation and policy is required.

One of the frequently expressed concerns about the increase in new services is that if the control of those services is restricted or further restricted to a few groups or individuals, so too is the power to control the access to that information and to control the content of that information.

What the Law Can - and Can't - Do

The regulatory philosophy behind the new electronic communications legislation - the Broadcasting Services, Telecommunications, and Radiocommunications Acts - is that diversity and other objectives are to be achieved by the opening up of a formerly limited market through new technologies, new applications and new services, and allowing the market to determine whether the community wants and needs new services.

The Broadcasting Services Act, however, pays only lip service to concerns about concentration of ownership of communications. Limits on cross-media and intra-media ownership continue, but with significantly relaxed rules and limited application.

Neither the Telecommunications Act nor the Radiocommunications Act is designed to limit concentration (other than through a naive assumption that making the technology available on the open market will ensure diversity of participants). These Acts have very real potential to encourage increased concentration. In the end, the Trade Practices Commission through the Trade Prac-

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tices Act will in most instances be the sole regulator of competition.

At the same time, it is now almost impossible to compile an accurate and comprehensive account of media ownership and control in Australia, and it is difficult if not impossible to monitor concentration of ownership - particularly ownership of new services - because there is no systematic collection of this data.

The now defunct Australian Broadcasting Tribunal spent considerable resources in the collection of such information. This was possible through the universal requirement under the previous Act for service providers to obtain an individual licence, and for mandatory reporting of all changes in the interests held by owners and controllers. The new broadcasting regime has licences only for some categories of services, such as commercial broadcasters. Though both the TPC and the ABA have significant information-gathering powers, it will be difficult to monitor the industry effectively when there is no easy way (such as a licensing regime or mandatory reporting requirements as to who is in control) for the regulators to identify the players and the extent of their interests.

The adjoining box shows the implications of the current legislative situation. This may seem an extreme scenario, but it is perfectly possible under current industry specific legislation. It will be interesting to see how the Trade Practices Commission responds. The TPC's record to date in encouraging media diversity and barring concentration is not good: low points were its inaction on the sale of the HWT and Fairfax groups. The TPC had an opportunity to prevent what many saw as the death of diversity, but instead it left the outcome to chance, to the market, rather than undertake decisive intervention.

The TPC has been reluctant to view information and communication services as being in the same market. For example, even within the print media, several different markets have been delineated between the regional, national and metropolitan markets, the daily and weekly markets; magazines are different from newspapers and for the purposes of competition regulation based on purely economic indicators there may be valid reasons to do so. It is hard to see the TPC suddenly taking a more global and consolidated view of the communications and information market.

It is clear that current industry-specific legislation and general competition law and policy are seriously limited when it comes to ensuring that markets and technology can deliver a diverse, accessible and accountable communications industry. Given its central role in our society, these limitations give cause for grave concern. □

Michelle McAuslan

Who Could Own What: a frightening scenario

In effect, under current industry specific legislation one company could own or control in Australia, viz:

- A commercial television network with a reach of 75 per cent of the population;
- Up to 12 commercial radio stations reaching the other 25 per cent of the population;
- 15 per cent of newspapers in the same area as the commercial television or radio licences (or more if in different areas);
- Two per cent of the first satellite Pay TV licence (Licence A) and two per cent of Licence B (or significantly more of Licence B on its own);
- 100 per cent of the following:
 - pay TV channels delivered by means other than satellite (eg cable TV);
 - narrowcasting (or niche) television and radio services (eg ethnic broadcasters, broadcasters targeting any stratum or specific group);
 - community television and radio licences;
 - telephonic information services;
 - point to point data or information text services;
 - magazines;
 - book and other publishers;
 - film distribution and cinema outlets;
 - video outlets;
 - the access and encoding technology for subscription services;
 - the customer billing system for subscription services;
 - news gathering services such as AAP;
 - print and paper mills;
 - newsagents or other distribution systems.