Owners have their say

***CU** reviews selected submissions to the review of the cross-media ownership rules.*

Main stakeholders

News argued for the removal of both foreign ownership and cross-media rules and their replacement with a more flexible policy based upon principles of consumer choice, market efficiency and the prevention of concentration of economic power, and incorporating an expanded definition of the media market to include all commercial and non-commercial print, broadcasting and online services. Using this expanded definition, News conducted its own analysis of total time spent by the average consumer on 'individual media products', combined with information on media ownership. This approach resembles the 'share of voice' regulatory model posited by the UK government and rejected as unworkable. News' analysis concluded that the ABC was the dominant voice in the media. Although News has 67% of national newspaper readership, it emerged with just 3.3% of total media use, compared to the ABC's 16.4%. In this environment, controls on foreign ownership were rendered unnecessary: 'So great the number of media outlets, so insistent the demand for home-grown media products, that there is no chance of foreign domination of these industries'.

PBL argued for the abolition of the cross-media rules and the continuation of existing foreign ownership limitations. It stated that the proliferation of new distribution outlets - and the creation of new services, such as pay TV, exploiting these outlets - 'completely negated' the need for restrictions on cross-media ownership, other than general competition laws. Furthermore, 'the assumption that common ownership of different media sectors equates with common views being expressed across different sectors is anachronistic, paranoiac and simply, wrong'. With diversity assured, the policy objectives of the cross-media rules are now obsolete. Instead, the priority for media policy-makers should be the promotion of Australian companies capable of competing with conglomerates; however, cross-media rules force Australian companies to remain 'small and non-competitive' by preventing them from taking advantage of scale. As regards foreign ownership rules, PBL saw no nexus with the issue of cross-media regulation: 'Foreign ownership laws were designed to curtail foreign control and influence, and time has increased this need, rather than obviated it'.

Submissions reviewed

Australian Competition and Consumer Commission (ACCC)
Australian Press Council (APC)
Australian Provincial Newspapers Holdings Ltd (APN)
CanWest Global Communications Corp (CanWest)
John Fairfax Holdings Limited (Fairfax)
Grant Broadcasters Pty Ltd (Grant)
RG Capital Holdings (Australia) Pty Ltd (Grundy)
Hollinger, Inc (Hollinger)
News Limited (News)
Publishing and Broadcasting Limited (PBL)
Prime Television Ltd (Prime)

Fairfax argued for the replacement of the cross-media rules with technology neutral - and generally more flexible - regulation, proposing industry specific regulation to prevent any acquisitions 'substantially lessening diversity of editorial voice in a market in Australia'. In doing so, it opposed the argument that new forms of media had increased diversity (and thereby obviated the need for regulation) as a 'total exaggeration'. In fact, argued Fairfax, neither the Internet nor pay TV provide any significant new source of Australian news and analysis, and rely substantially on newspapers and television for their content. Fairfax also described as 'fallacious' the argument that the cross-media rules prevent Australian companies from becoming internationally competitive, pointing to recent international acquisitions by local television companies, and to the fact that News commenced its operations as a much smaller Adelaide based company. Existing cross-media restrictions should remain in respect of newspaper and television ownership until a new regime is developed and put in place. However, the radio industry, with its large number of franchises and lower costs of entry, should be excluded from the regime.

Fairfax also argued for the removal of fixed limits on foreign ownership levels. Instead, it should be brought within the general FATA (Foreign Acquisitions and Takeovers Act) regime, whereby applications for investments above 15% for individual holdings and 40% for aggregate holdings should be reviewed on a case by case basis by the federal Treasurer, who will take account of a mandatory report from the media regulator as to whether the application is consistent with the objectives of plurality, diversity and competition. If so, the application should be approved unless adjudged not to be in the national interest.

Hollinger (holder of a 25% interest in Fairfax) also supported the replacement of the cross-media rules with a more flexible scheme; and argued for the removal of fixed limits on foreign ownership of the media and its incorporation into the general FIRB regime.

Ten was the only metropolitan network to advocate the retention of the rules, albeit with the exclusion of radio. In its view, the 'share of view' model was too complex to evaluate. It also argued against the inclusion of other forms of media in the regime owing to their limited influence. However, it advocated the abolition of the 75% audience reach limit for commercial television, as well as for the removal of fractional tracing to assess levels of ownership. It agreed with Fairfax that a relaxation of cross-media rules is not necessary to ensure global competitiveness, noting that Ten held 20% stake in the UKTV consortium which bid for the new Channel 5 commercial television licence, and that Seven recently purchased MGM studios.

Ten recommended a liberalisation of the foreign ownership rules. With the professed aim of increasing investment opportunities while retaining control in Australian hands, Ten suggested the removal of restrictions on non-voting investments and an increase in available voting stock from 25% to 35%. However, it argued that these levels should be increased if the cross-media rules are eased or removed, on the basis that this would be a necessary counter-balance to the increase in concentration of ownership that would follow any such relaxation.

CanWest (holder of a 57.5% economic interest in Ten) supported Ten's view on the easing of foreign ownership limits, except in arguing a higher limit of foreign voting stock from 15% to 49.9%.

Other submissions

The **ACCC** argued that the existing 'arbitrary' restrictions on foreign ownership stifle competition and any reform of the cross-media rules will be undermined if these are left untouched. **Rural Press** argued for the extension of foreign ownership limits, since 'too much of Australian industry is already under foreign control'. **Grundy** argued for the extension of foreign ownership restrictions to radio (presently there are no limits).

The **APC** argued for the replacement of the cross-media rules with the 'share of voice' model (estimating News to occupy approximately 20% of the market) and liberalisation of the foreign ownership requirements.

Grant, owner of 6 commercial radio stations in regional areas of NSW and Victoria, opposed any relaxation of the rules, as it would lead to an increased concentration of ownership and a resulting reduction in the service and involvement of the media in regional communities. This was supported by **Rural Press**. **Prime** argued for a possible relaxation for regional players, but a retention for metropolitan interests.

Regulator

None of the submissions specifically advocated the retention of the ABA as industry regulator. The ACCC was assumed by many - including **Fairfax**, **APN**, **News** and **Telstra** - to be the appropriate body, even amongst those advocating regulation which extended beyond the mere application of trade practices legislation. Although **Ten** and **Rural Press** mentioned a 'separate media regulator', this could mean a body which reported to the ACCC on public interest or media-specific issues.

Radio

Radio continues to be regarded as the poor cousin of the regulatory triumvirate, with several submissions, including **Fairfax** (see above), **Ten**, and **APN** argued for the removal of radio from the cross-media rules. **Grundy** supported this approach, but advocated the retention of the 'two commercial stations to a market' rule. It argued that the ABA's planning process (which reserves licences for national, commercial, community and narrowcasting services in each area) ensured diversity.❑