



Change of government, change of rules?

The day after the Coalition swept into office, the media - which, after all, have the most to win or lose - were filled with speculation about a shake-up in the ownership of some of Australia's major media assets.

While there has been no official statement from the new Communications Minister, Senator Richard Alston, about the inquiry, he has hinted in media interviews that there will be a six-month inquiry looking at the cross media laws and the need for any restrictions between media and telecommunications. In a recent interview in the *The Sydney Morning Herald*, Senator Alston suggested the possibility of putting the inquiry into the hands of an 'eminent citizen'. That raises the obvious questions: which citizen and how would the public participate in such an inquiry?

Any inquiry would have to be credible and properly resourced. To ensure credibility, there would need to be a panel of at least three, qualified and experienced people who are given appropriate powers of inquiry. There would need to be public consultation on the inquiry's terms of reference. And to bring the cross media laws into the 1990s, it is essential that the terms of reference raise the question of whether telecommunications companies should be included in the media ownership regime.

Pre-election, Senator Alston indicated his support for the UK model for regulating ownership which measures media control by awarding points on a scale that considers the 'net audience reach' of each media outlet. Such a model translated to Australia would need to take careful consideration of our small and already highly concentrated media market as well as the vast geographic distances which make Australia's 'media pie' so different to Britain's.

Whatever happens, any legislative changes would need to negotiate the choppy waters of the Senate.

The Democrats, if anything, appear to have hardened their resolve against Packer getting hold of Fairfax. □

Cross media rules and other restrictions on media ownership

1. Cross media rules

Sections 59-61 of the Broadcasting Services Act (BSA) prohibit the simultaneous control and directorship of:

- (a) a commercial TV licence and a commercial radio licence, and vice versa;
- (b) a commercial TV licence and a newspaper with at least 50 per cent circulation in the licensee's area, and vice versa;
- (c) a commercial radio licence and a newspaper with at least 50 per cent circulation in the licensee's area, and vice versa.

A person is deemed to be in a position to exercise control if s/he has more than 15 per cent shareholding in the media outlet. Schedule 1 of the BSA discusses the issue of control relating to direct and indirect influence; board representation etc.

The Act recognises that a person with a smaller shareholding can still be in a position to exercise control and the Australian Broadcasting Authority (ABA) must monitor this.

2. Pay television

Under sections 104 -108 and 110 of the BSA, a person who exercises control of a newspaper with an Australian circulation greater than 100,000 is restricted to a 2 per cent interest in licence A. The same goes for a person in a position to exercise control of a commercial TV licence or telecommunications carrier. Licensees A and B are restricted to 2 per cent interests in each other. These licence restrictions expire on July 1, 1997.

The BSA does not place cross media limits on forms of pay TV delivery other than satellite. Consequently, there are no control and cross media rules governing cable-delivered pay TV. However, the Australian Competition and Consumer Commission (ACCC), recently blocked the proposed merger of the MDS/satellite company Australis by the cable company, Foxtel. The ACCC was particularly concerned about the 'first-mover advantage' which the new entity would gain through its control of pay TV delivery systems.

Under section 97 of the BSA, the ACCC must report to the ABA before allocation of any pay TV licence.

3. Foreign Interests

(a) Commercial TV: Foreign control of an Australian television station is prohibited. Foreign company interests are limited to 15 per cent for an individual and 20 per cent for more than one investor. Less than 20 per cent of directors are to be foreign. [Sections 57, 58 of BSA]

(b) Pay TV (cable, satellite and MDS): Foreign company interests limited to 20 per cent for an individual and 35 per cent aggregate [section 109, BSA]. These limits continue after 1997 when the cross media limits on satellite licences expire.

(c) Print media: Under the Foreign Acquisitions and Takeovers Act, the Foreign Investment Review Board advises the Treasurer when a foreign bidder seeks to acquire more than 15 per cent of a mass circulation newspaper. The FIRB guidelines say foreign ownership of such papers is 'restricted', but the Treasurer has complete discretion to determine whether a particular proposal would be 'contrary to the national interest'. The current defacto limit is 25 per cent.

4. Media concentration rules

Under the Broadcasting Services Act:

- a person or company is restricted to only two radio licences per licence area [section 54]
- a commercial TV licensee is limited to 75 per cent of the audience reach (allows five-city networks), and only one licence is allowed per person or in a licence area [s 53, 55].
- only three commercial TV licences are to be issued per licence area. This is to be reviewed before 1 July, 1997 in order to assess the national benefits that would accrue if more than three commercial TV licences were permitted [section 215].
- the ACCC is given a role under the BSA to monitor allocation and ownership of pay TV licences [sections 96 and 96A]. The ACCC asserts jurisdiction anyway under section 50 of the Trade Practices Act.