

# News and PBL at the Productivity Commission

*Sandy Dawson attended the Productivity Commission's public hearings in Sydney to hear the arguments presented by News Ltd. and Publishing & Broadcasting Ltd.*

**T**he News and PBL submissions and their presentations at the Productivity Commission revealed the unusual relationship between the two media giants. On the one hand, they are business partners in Foxtel, in which PBL holds a 25 per cent stake, and on the other they are "at war" and in "fierce competition" in newspapers and broadcasting. They both support the repeal of cross media and foreign ownership rules to allow regulation by:

- the market;
- the industry; and
- generic competition law which applies to all other industries under the watchful eye of the ACCC.

Some aspects of each corporate strategy are clear: PBL wants to increase its presence in the Australian market in partnership with a foreign partner, and News plans to add a free-to-air television channel to its media line-up and to establish a strong datacasting service.

The real area of dispute between News and PBL is over Australia's transition to digital television. Few would expect PBL to argue against the moratorium on new free-to-air licences, just as no-one would expect News to support it.

## News Limited

CEO Jim Blomfeld's overriding message to the Productivity Commission was that it is no longer a question of whether Australia's media regulation needs to be changed but rather, how. He said that News Ltd. supports three reforms:

- removal of the cross media and foreign ownership laws;
- replacement of the current content regulation scheme with an industry-based system of regulation; and
- removal of unique and anti-competitive features of the regulatory regime such as the restriction on granting a fourth free-to-air licence.

While News "recognises it is proposing a radically different regulatory regime", it maintains that in order to achieve its potential in the new technological environment, "...Australia must be proactive not reactive".

**Convergence:** the digital convergence phenomenon means that the landscape of the media industry changes dramatically. Several functions can be achieved by one device; geographic limits are increasingly irrelevant; and information and services can be delivered to consumers in different ways.

Blomfeld pointed out that News does not view digitisation as just

about digital television. The digital world is about interactivity and connectivity - greater access to information and services.

**Regulation in the new digital world:** the problem that convergence creates is for media regulators. As the services which industry participants offer begin to merge into the same delivery platforms, so too do the definitions of those services. For instance, when is a datacaster a broadcaster? Is a daily news service on the Internet a newspaper for the purposes of the *Broadcasting Services Act*? These sorts of questions provided part of the basis of News' argument for dramatic reform.

The thrust of the reforms was that excessive intervention by government should be avoided. The market should be the main regulator - competitors, whether foreign or local, in one form of media or several, will live or die by their ability to deliver what the consumers want. This should be backed by a system of industry self-regulation to ensure community standards, needs and concerns are met. And the conduct of industry participants will be subject to the general corporate and competition law which applies to other industries.

The market is the ideal regulator because while technologies may converge, News maintained that consumer preferences will not. The diversity that government and others opposed to opening up the media industry say is threatened will in fact be guaranteed by the fact that in the digital era competitors will not survive if they do not offer diversity. Part of that diversity is the inclusion of sufficient levels of Australian content.

Statistics show that Australians demand local content - another example of the market determining what is provided.

**The conversion to convergence:** News submitted that Australia's current plans for transition to the digital convergence phenomenon were inadequate and would leave Australia behind as the world embraced and surged ahead with the new technology. News asserted that current thinking would deny consumers the full benefit of convergence and leave the industry uncompetitive:

- Incumbent broadcasters are over-protected by the current legislation and are allowed to operate in an artificial environment until 2008 when the restrictions on new entrants to the Australian market will be lifted.
- The mandating of HDTV is unique to Australia and unnecessary. According to News, the high cost of HDTV devices and the associated ban on multi-channelling will severely restrict the availability and utility of new technology.
- Australia's approach is completely out of step with world thinking, which will isolate us from the global market.

**A fourth free to air channel?** Much time was spent at the Commission discussing the proposed fourth free-to-air television channel. While Blomfeld did not rule out a News purchase of an existing licence he said News' most likely entry into the market would be by taking up a fourth licence.

He stressed that News' intention was to provide a very different service than those offered, and that fears of "sameness" were therefore misplaced. He countered suggestions that there was not enough advertising revenue to support a fourth licence by pointing to the development of the FM radio market, in which substantial growth had occurred despite the same fears.

## Publishing & Broadcasting Limited

Nicholas Falloon from Publishing & Broadcasting Limited (PBL) appeared at the Productivity Commission to elaborate on PBL's position, which supports the continuation of limits on the number of free-to-air television services and the repeal of the cross media and foreign media ownership rules.

Everybody's welcome: the repeal of the cross media and foreign media ownership rules was put by PBL on the basis that the market would ensure diversity and plurality.

Foreign players in the Australian market would need to preserve high levels of Australian content in order to survive. Industry self regulation would safeguard appropriate levels and ensure community needs were met. Falloon said that foreign media ownership laws were ineffective as there were substantial foreign holdings in the radio and newspaper industries, in one free-to-air broadcasting network, as well as in the pay TV and online sectors.

A diversity of views already exists and common ownership of different media forms would not affect this dynamic as "commercial imperatives would guarantee this". Cross ownership would not result in "sameness" or homogenising various media products but would allow "both higher risk assumption and new investment and growth". In support of this submission, Falloon pointed to the track record of "different views" and "integrity" the Nine Network had maintained over decades of broadcasting.

PBL cast its submission that these laws should be repealed on the basis that one cannot occur without the other:

"Repeal of the foreign ownership and control rules without contemporaneous repeal of the cross media rules would produce the absurd result that foreign companies would be able to make further inroads into

major Australian media sectors while Australian media companies would be free only to look on."

The rules as they stand, according to PBL, restrict Australian players from building a capital base with foreign partners, which they need to have in order to compete in the global converging market.

**Acceptable regulation:** PBL advocated the application of competition law to the media industry, without the need for additional media specific provisions. Its submission said that the ACCC already played a significant role in the development of the pay television industry.

**No new free-to-air until 2008:** it is clear that PBL supports the restriction on new entrants in free-to-air television before 2008. That restriction should include regulation to prevent datacasters in that period becoming *de facto* broadcasters.

The main reason PBL put forward for this position is that this protection is required as there is simply not enough advertising revenue to support a fourth free-to-air licence. "A new network would simply fragment the available revenue". The resulting loss of revenue would force broadcasters to cut costs which would see the most expensive items of expenditure affected first. "Local content, quality drama, quality news and current affairs, and major sports".

The moratorium on new entrants would allow a smooth transition to HDTV, a standard PBL supported as necessary to ensure that Australia did not, in Falloon's words, end up with a "half-baked" system which did not take advantage of cutting edge technology.

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