

While it is not suggested that free trade is the answer to all the world's ills, nor that broadcasting *Neighbours* or *Seventh Heaven* into every home on the planet would prevent hostility rooted in cultural misunderstanding from erupting into conflict, defiant economic and cultural isolationism is surely the wrong posture to be taking at this time. Such an approach is contrary to the spirit of the GATT, and is counterproductive in a world which now, more than ever, needs all the unity it can get.

CONCLUSION

All this is not to be taken as suggesting that the objectives of cultural protectionism are not noble and admirable in and of themselves. What is suggested is that in view of uncertainty as to the benefits flowing from protectionist measures, and the present pressing need for the global stability which instruments such as the GATT were specifically designed to foster, the costs of putting such measures into practice far outweigh the benefits derived from them. In the current environment, an exception to the principles on which the GATT is based cannot be countenanced.

1 For "Cinematographic Films"

2 Jackson J., *The World Trading System*, 2nd ed., 1997, Cambridge, MIT Press, p.13.

3 *Ibid* pp.11-20.

4 See note 1, *infra*.

5 "US Urges Free Worldwide Trade in Movies, Radio Programs During Uruguay Round Talks", 7 *International Trade Report* (BNA) No. 36 at 1369 and more recently, "Communication from the United States: Audiovisual and Related Services", WTO S/CSS/W/21, 18 December 2000 available at www.wto.org.

6 These ideas have been taken so seriously that they have been enshrined in a series of international treaties. The principal instruments are the Universal Declaration of Human Rights, art. 19, GA Res 217A UN Doc. A/810 (1948) and the International Covenant on Civil and Political Rights, art 19, GA Res 2200, UN GAOR, 21st Sess., Supp. No. 16 at 55, UN Doc A/6316 (1966)

7 Brown C.V. & Jackson P.M., *Public Sector Economics*, Cambridge, MIT Press, 1991, p.28.

8 The classic example of a private good is a hamburger. It is excludable, because only one person can consume it at a time, and rivalry subsists over it because once it is consumed it cannot be consumed again.

9 Owen B.M. et. al., *Television Economics*, Lexington, Lexington Books, 1974 p.57.

10 Picard R., *Media Economics*, London, Sage, 1989, p.52.

11 Transaction costs may be defined as anything which reduces the incentive to trade with another rather than produce oneself; hence, "transaction costs comprise all those costs that cannot be conceived to exist in a Robinson Crusoe (one-man) economy." Cheung, "On The New Institutional Economics," in Lars Werin and Hans Wijkander (eds), *Contract Economics*, Oxford, Blackwell, 1992 at 366.

12 Owen, p.20.

13 C.E. Baker, An Economic Critique of Free Trade in Media Products, (2000) 78 *North Carolina Law Review* 1357 at 1384

14 Ming Shao W., "Is There No Business Like Show Business? Free Trade and Cultural

Protectionism," 20 *Yale Journal of International Law* 105 at 137-138.

15 In fact, dumping is a particular form of anticompetitive price discrimination where product is sold at a loss (at a price below the marginal cost of supply) on overseas markets with the purpose of driving out competition. Not all price discrimination amounts to dumping, and the test for determining whether dumping has occurred is complex and is beyond the scope of this discussion.

16 It is to be noted, of course, that the practice of price discrimination is the subject of some controversy amongst proponents of free trade in cultural products. It is arguable that it is not consistent with economic models of workable competition. This controversy is part of a wider debate about the competition issues which arise with respect to territorial exclusivity in intellectual property licensing, which is, again, outside the scope of this paper. Mention should be made, however, of the fact that an international effort to encourage the abolition of territorial exclusivity practices and the permitting of "parallel importation" is being undertaken in the name of freer trade. The recent amendment of the *Copyright Act* to permit the parallel importation of audio compact discs is an example of this.

17 Witness the comment by former French Prime Minister Edouard Balladur during the Uruguay Round of GATT negotiations in 1993: "[The French] cannot accept everything related to the fundamental values of our tradition, our culture, our civilisation being treated like ordinary traded goods." Qtd in K. Auletta, "Television's New Gold Rush," *New Yorker*, Dec. 13, 1993, p.88.

18 Kymlicka W., *Multicultural Citizenship*, Oxford, Clarendon Press, 1995, pp. 84-5.

19 Jackson, p.17; see note 2 *infra*.

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Internet Dumping and Regulation of the Audiotex Industry

John Corker examines the risks associated with using 190 and 0011 services and some possible solutions.

Internet Dumping occurs when a user's modem is disconnected from their usual dial-up number and reconnected to an international (0011) or premium rate phone number, such as 190 numbers (without their knowledge). Most commonly it occurs on adult sites. In many cases people are not aware that they have been dumped until they receive an unusually high phone bill.² Some consumers have reported having received "international phone bills for thousands of dollars"³.

Internet Dumping has occurred in Australia at least since mid 2000⁴. As at June 2000 about 2 users a week registered

complaints with the Telecommunications Industry Ombudsman (TIO). However the average number of complaints for the 9 months to end of September 2001 is about 80 complaints a month. The total of Internet Dumping complaints received by the TIO to end September 2001 is close to 1000.⁵ Complaints to Telstra are understood to be higher than this.

THE AUDIOTEX INDUSTRY

The Audiotex or Telemedia industry provides access to a range of recorded information and interactive services (speech, facsimile or data) via premium or international telephone lines. In

Australia premium rate services were initially provided by Telstra in the mid '90s using the 0055 prefix. This prefix was phased out in August 1998 and replaced by the 190 prefix. Cable and Wireless Optus also provided Telephone Information Services at premium rates from 1995-2000 but no longer offers the service.

In the US use of 0011 numbers for access to adult services first appeared in the late 1980's and operated without any form of regulation⁶. It has grown as an industry and now provides access to a range of recorded information and interactive services (speech, facsimile or data). The

international Audiotex or Telemedia industry is said to be valued at between US\$2-6bn a year globally and calls alone account for around 2-4% of outbound international traffic for those Network Operators who participate.⁷

HOW DOES DUMPING OCCUR?

In most cases the re-connection of a computer to a 190 or 0011 line occurs when a redialler program is downloaded from a site, disconnects the user's modem from their ISP, and reconnects them to the internet via the 190 or 0011 number. This connection then allows access to a 'private internet area' where the particular content is found. Some adult sites offer this method of access as an alternative method of payment to an online credit card payment.

Once the user has completed their visit to this area, a number of things may happen. There may be an automatic disconnection when the user leaves the area. To resume access to the internet the user has to reconnect through their own ISP. However in many cases the user may leave the adult site and continue to surf the net still incurring premium rate or 0011 phone charges. Many users have claimed that they are unaware at any stage at all of being connected to a 190 or 0011 line.

Many users say they are not aware that they have downloaded a redialler. Some websites refer to the redialler as a 'registration tool', 'drop dialler' or simply software that provides 'free membership to various adult sites'. Recent research by the International Audiotex Regulators Network (IARN)⁸ shows that there are just a few manufacturers offering these programmes and most of them have no 'uninstall' facility.

THE TIO'S ROLE

The TIO administers the telecommunications complaints scheme for carriers and carriage service providers in Australia. ISPs are required to participate in the scheme by reason of being considered carriage service providers. The TIO has acknowledged⁹ that a major difficulty in investigating internet dumping cases has been to

establish whether or not a user was in fact notified of call charges. Through extensive investigation it has found that in all cases where it has been able to visit the disputed websites there was some form of notice on the relevant website advising the user that higher call charges could be expected. One key issue that has been raised by their investigations is the adequacy and visibility of these notices.

TELSTRA'S ROLE

Premium rate calls are presently only available via Telstra. With the Telstra 'Infocall' service, the rate can be between 35 cents and \$5.50 a minute. Telstra state that entry to the industry involves a capital cost of up to \$150,000 for the purchase of specialised telecommunications equipment. There are presently only 39 Telstra premium call service providers. Telstra charges service providers about one third of every dollar generated in gross revenue from the caller¹⁰. The ACCC issued a preliminary view in July 2001 that portability for premium rate numbers should be mandated as soon as possible thus allowing other carriers to provide these services.

Generally, Telstra is unsympathetic to dumping cases and has been loathe to settle any disputed bills for telephone charges.

Telstra states on its website:

"Telstra does not know of any proven cases of fraud in relation to Internet 'dumping'. In all cases we know of, a person has actively accepted the terms and conditions of downloading the site using an Internet dialler and the lessee of the phone line is legally liable for the charges."

If an IDD charge is proven to be due to fraudulent activity, the fraudulent charges are reimbursed and the matter is directed to the police. If a customer suspects a fraudulent charge in relation to 190 numbers, they should contact TISSC."

TISSC'S ROLE

Australia's Telephone Information Services Standards Council Ltd (TISSC) is an independent regulatory body funded by the telephone information services

industry. The Council is made up of four community and four industry members (two from the service provider sector and two from the carrier sector), and an independent Chairman.

The TISSC Code of practice deals only with domestic premium rate services ie calls beginning with the prefix 190. Compliance with the TISSC code provisions is enforceable by being made a term of the agreement between the service provider and the carrier.

As of 1 July 2001, a new Schedule 12 to the TISSC code was introduced titled 'Internet Dialler Services'. It sets out prescriptive provisions that require service providers to display, in a separate fixed dialogue box, prior to connection to the service, a 16 point font message that provides the 190 number and the premium call rate and requires the user to click to accept before proceeding. A further dialog box requires the user to click on YES to indicate he or she is the bill payer or has the bill payer's permission to accept these charges.

The provisions also state that dialling and modem tones are not to be suppressed, a digital clock is to be displayed showing the time elapsed for the call and every ten(10) minutes a dialog box is to appear showing the time elapsed and displaying an OK button that when clicked on makes the dialog box disappear. At any point the user clicks on an EXIT box, the existing ISP default connection is to be maintained. Most of the rediallers examined by the TIO will not meet this last requirement.

The Code also states that Internet Diallers must not activate a premium rate service remotely without the intervention and informed consent of the user.

UK POSITION

In the UK, ICSTIS, the Independent Committee for the Supervision of Standards and Telephone Information Services, regulates the content and promotion of domestic premium rate telephone services but, similar to Australia, not international services. It is a non-profit body funded by industry but its committee members must be independent of the premium rate industry.

Three of the more relevant provisions of the ICSTIS code are as follows:

- All recorded services of a sexual nature must, as soon as is reasonably possible after the caller has spent £10.00, and after each £10.00 of call spent thereafter, do the following:

(a) inform the caller of the price per minute of the call,

(b) require callers to provide a positive response to confirm that they wish to continue the call. If no such confirmation is given, the service must be terminated.

- All services over £1.00/min and certain services at £1.00/min will require ICSTIS' prior permission before operating.
- All new live services require ICSTIS' prior permission before operating, regardless of cost.

PREMIUM RATE AND INTERNATIONAL SERVICES

There is a sharp distinction to be drawn between premium rates and international services. The charge to the caller for premium rate services is set by the service provider or promoter who may also be the information provider.

International services are however charged at standard IDD call rates. They involve an originating and a terminating carrier, a service provider and an information provider. The originating carrier based in Australia establishes the overall fee charged to a caller (**Collection Rate**) based on three factors: its own transport costs, the fee charged by the terminating carrier (**Settlement Rate**) and profit.

The terminating carrier pays a portion of the settlement rate to a service provider as a commission for generating minutes of telephone traffic. The service provider pays a portion of revenue received from the terminating carrier to the information provider. Rates paid will usually vary according to the volume of traffic generated.

In both models the information provider is dependent on the service provider for revenue but the fee paid by the caller is set, in the 190 model, on a sliding scale by the service provider and, in the 0011 model, at a fixed rate by the originating carrier.

THE INTERNATIONAL TELEMEDIA ASSOCIATION (ITA)

The International Telemedia Association (ITA) is a self regulatory body based in London that comprises service operator, information provider and carrier members. It is concerned only with recorded information and interactive services available through 0011 lines. ITA claims a membership who between them account for an estimated 85% of all international telemedia traffic although the list of members on its website is rather limited. It includes originating and terminating carriers, fraud detection specialists and trade associations representing network and customer interests.

The ITA Code covers fair business practice, advertising and content and also the important area of fraud detection and prevention. Its code is much less prescriptive than those of the premium rate service regulators but includes these two key provisions.

5.2.11 - No caller shall remain connected to a programme or service for more than thirty (30) minutes. After thirty minutes any such call will be disconnected by the Telemedia Service Operator.

5.2.2 - All programmes shall normally be preceded by an announcement that:

- callers should be 18 years or over (adult services)
- international call charges apply

Complaints can be made online. ITA states¹¹ that where a violation of the Code is established, enforcement of ITA sanctions is provided in conjunction with the terminating carrier. ITA has the agreement of member carriers and non-member networks to enforce sanctions. Complainants are kept informed during the investigation process and notified of the case conclusion. A database is maintained on Code violations and cases of fraud. This information is available to regulatory authorities where a working relationship exists.

IARN

The International Audiotex Regulators' Network, IARN, was set up in 1995.

IARN has established guidelines for the minimum standards that may be expected to apply to not only domestic premium rate services but also cross-border (0011) and global premium international rate services (979) when provided between IARN member countries.

IARN has recently changed its name from EARN, the European Audiotex Regulators Network indicating its European origins but also its desire to be an international organisation. It has 17 members from European countries all involved in the regulation of, or setting standards for, content and promotion for premium rate telephone services (audiotex) in their own countries. The UK based ICSTIS is a member but its only member outside of Europe is TISCC from Australia. There doesn't appear to be any cross membership between ITA and IARN.

Its guidelines include the following:

- before commencing a premium rate service, the correct rate per minute or per call should normally be stated. Where technically possible, this rate statement should not be charged for. It must be unambiguous and clearly audible.
- price reminders should be given every five(5) minutes.
- service providers should take every possible precaution to ensure that minors do not gain access to inappropriate services such as adult services, dating and virtual chat.

The complaints handling provisions provide an interesting model for co-operation between member countries and are based on Art 3 of the European Union's E-commerce Directive which states that the service is subject to the law applicable in the country of origin of the service.

The regulator in the country of the complainant:

- is to be the first and main point of contact for any consumer with a complaint.
- must identify the country of origin of the service complained about and the relevant national regulator and then hand over the complaint to that regulator for investigation.

- must keep the complainant informed on progress and the final outcome of the complaint
- is responsible for chasing up the other regulator to ensure that the investigation proceeds.

INTERNATIONAL PREMIUM RATE SERVICES (IPRS)

The International Telecommunications Union (ITU) headquartered in Geneva, Switzerland is an international organisation within which governments and the private sector coordinate global telecom networks and services.

It has recently approved a Recommendation for a numbering plan for international premium rate services. These new 12 digit numbers, starting with a 979 prefix, have been available by application to the ITU since April 2001¹² although may take some time to appear commercially in Australia.

The operation and management of the IPRS service is provided on a managed basis by a Recognized Operating Agency (ROA) in the country of the information service provider in conjunction with an ROA in the country of the caller. An ROA is any individual, company, corporation or governmental agency that operates an international telecommunication service to carry public correspondence¹³. In Australia this is likely to be the carrier providing carriage services to places outside Australia.

The original 1998 ITU Recommendation for these services imposes responsibility on the terminating Recognized Operating Agency to notify the information service provider of the regulation in the country of call origination as follows:¹⁴.

The terminating ROA has the responsibility of processing all applications received on behalf of the Information Service Provider and will notify the IPRS Information Service Provider:

- of the service/call charge and revenue options provided;
- of the local code(s) of practice in the country of call origination for information service providers, and that failure to comply may require the IPRS originating ROA to withhold or withdraw access.

The terminating ROA has overall control responsibilities to ensure the satisfactory completion of service orders for initiation, change, suspension and disconnection."

As the new 979 numbers become available, it seems likely that the Audiotex industry will move traffic to the new international premium rate services as it will provide greater flexibility with charging. The domestic premium rate industry may also seek to use these services if they are cheaper or less regulated.

AUSTRALIAN GOVERNMENT POSITION

On 12 July 2001, Senator Alston issued a media release indicating that the ACA will be directed to develop service provider rules under s.99 of the *Telecommunications Act 1997* so that internet premium rate adult services will be treated similarly to telephone sex services. That is, access to these services will only be available where the customer has agreed in writing to their telephone having access to telephone sex services and access is restricted through a Personal Identification Number.

New regulations will also give the ACA 'a range of flexible powers' to make service provider rules over a broad range of issues relating not only to 190 services but also 0011 services.

The Minister's media release indicates that new rules could include:

- requirements on carriers to notify customers where bills exceed limits.
- the establishment of a registration system for carriage service providers and content service providers involved in the supply of premium rate services.
- restricted access and call barring arrangements.

PUBLIC INFORMATION

In recent months the number of complaints about internet dumping to the TIO has remained steady. The TIO has taken the lead in providing public information and advice about how to minimise the risk of dumping and what to do when you receive a surprisingly high phone bill. Useful information has also been published by the Minister's office

and Telstra. However many Internet Service Provider sites seem only to have quite general information, if they have any information at all, about the risks of internet dumping.

The TIO indicates that users can help to prevent dumping by:

- barring access to international and 190 numbers
- reading carefully any windows that offer downloads
- putting long expiry dates on internet history files so dumped calls can be traced
- turning off computers and disconnecting a modem when not in use.

TROJANS

Internet dumping seems to be a problem unique to dial-up internet services. However for persons with a permanent connection the possibility of reconnection to a 190 or 001 service could occur through the use of trojan horses or trojans.

A trojan is a destructive program that masquerades as a benign application. Unlike a virus, trojans do not replicate themselves but they can be just as destructive¹⁵. Once installed a trojan may allow a person to take over a computer and "remote control" it.

The Consumers' Telecommunications Network report a trojan being brought to their attention and watching it silently reconnect a modem from a local call to a 190 number. However, neither the TIO or Telstra have found evidence of the use of trojans in reconnection disputes.

For Trojans to be operated for gain in this context, they would have to be operated by or on behalf of a particular service provider. This would involve the commission of criminal offences in Australia. For this reason, if this is occurring, it is more likely to be done by or on behalf of overseas service providers.

The Leech case reported in the SMH¹⁶ in March 2001 was said to have possibly been caused by a trojan but is still being investigated by the TIO.

The trojan type attacks are part of the wider issue of internet security. This is

still a major issue for personal users and the answer lies with the need for education about the risks of internet use and the benefits of using personal firewalls and anti-virus software.

CONCLUSIONS

The continued high incidence of the problem indicates that a lot more needs to be done to inform the public of the risks of internet dumping and how to minimise them.

Carriers benefit significantly from the provision of 190 and 0011 services to service providers. With media publicity of the problem in April 2001, Telstra provided some public comment and advice about the risks and implications of internet users being reconnected to a 190 or 0011 number but many seem to have not heard the message. There are new internet users every day and a much broader based information program seems to be necessary.

ISPs provide direct connection to the internet and arguably therefore have a legal duty of care to advise their subscribers of the risks associated with use of the internet. Big Pond notified its customers in an April 2001 bulletin of the risks and state in that bulletin that they also did this earlier in June 2000. Other ISPs seem to have published little detailed information about the problem anywhere at all. This may be due to the fact that the complaints about dumping go to Telstra and the TIO, not the ISPs and so most ISPs are perhaps not aware of the extent of the problem. However, being in a direct relationship with the customer for internet access it seems reasonable to suggest that they should advise their customers of the risks perhaps in their regular e-zines.

The other end of the problem is with the service providers and website operators.

Different regulatory issues are raised by each of the 190, 0011 and the anticipated new international premium 979 services.

The TISCC code Internet Dialler provisions which commenced 1 July 2001 seem to address the consumer issues well for 190 services. These are:

- prominent notice to the user of the timed premium charges;
- a clear decision is required by the user to accept the charges;

- re-connection to the original ISP after use of the service is mandated; and
- notice to the caller of the length of time of connection to the premium service is provided every 10 minutes.

Nevertheless the TIO complaint figures for July to September 2001 show 190 dumping complaints about 190 numbers and 70 for International numbers. Because of the quarterly lag in phone bills, it may be too early to draw any conclusions from this data about the effectiveness of the new TISCC code provisions.

The TISCC code also prohibits activation of the service remotely thus indirectly making some reference to the use of trojans.

One issue it doesn't cover is the requirement for a reseller to have an uninstal capacity. Another issue that the TISCC code could not deal with is early notice to be given to phone account holders when their bill goes over a certain monetary limit. The latter is important to notify an account holder of an unauthorised use of their account, for example, use of the service by a child without the parent's knowledge, particularly when hundreds of dollars worth of charges can be incurred in a single connection.

The Government's response is useful in that it directs the ACA to address this issue and to look at both 190 and 0011 services. The ACA should also look at the new 979 services.

Regulation of international services is more complex than the 190 services.

Effective regulation will require the co-operation or coercion of the originating carrier, the service provider, the information service provider and the terminating carrier. 0011 services are subject to the limited provisions of the ITA code, the most important one being mandatory disconnection after 30 minutes, but many other issues are not addressed.

The industry self-regulation option is to have IARN adopt more prescriptive provisions in its guidelines and to go on a drive for new members. Its country co-operation, role and responsibility provisions provide a useful model for a global code.

Global codes are appropriate when addressing regulatory issues arising from transborder communications. However, many countries will not join an international regulatory regime unless there is a commercial incentive to do so. IARN and ITA still have some way to go before a global self-regulatory model could be considered adequate.

The ITA code contributes the idea of a co-regulatory model where the industry representative body is global but national governments can insist on particular matters. It does this by providing, alongside the common code provisions, country schedules that set out the specific provisions to apply in that country.

Australia has headed down a path of direct regulation with the Minister directing the ACA to develop appropriate service provider rules under s.99 of the Telecommunications Act 1997.

One option may be for the ACA to use the service provider rules to prohibit carriers carrying audiotex services unless:

- contractual provisions exist in the agreement between the originating and terminating carriers requiring the service provider to require the information provider to comply with provisions similar to Schedule 12 of the TISCC Code.
- the originating and terminating carriers follow complaints mechanisms similar to those set down in the IARN guidelines.

This would at least be enforceable by the originating carrier against the terminating carrier but not as against an overseas service or information provider. This approach would seem to marry the IARN approach, where primary responsibility for the relationship with the complainant lies with the originating carrier, and the ITU approach where primary responsibility for regulation lies with the terminating carrier.

However, the danger of too prescriptive domestic regulation is industry moving offshore and Australian users having less recourse against unscrupulous overseas operators.

22 TIO Media release, 6 March 2001.

3 Op. Cit 2

4 *Australian IT*, 27 June 2000, 'Criminals cash in on call scam' by Hayes S.

5 Figures provided by the Deputy Telecommunications Industry Ombudsman.

6 Jackson M, Director Carrier Relations, International Telemedia Association: "The Future of International Telemedia Services in a Deregulating European Market", 1999.

<http://www.telemedia-ita.org/NEWS/>

7 Ibid.

8 <http://www.iam.org>

9 Op Cit 1.

10 The Infocall Service Information Pack, Telstra, Sept 2001, p.3.

11 <http://www.telemedia-ita.org>, Issue 25

12 www.itu.int/itu-t/bureau/circ/019E.doc

13 Definition from the ITU.

14 ITU-T Recommendation E.155

15 Definition from www.webopedia.com

16 Davies A, 'How a Family Ran up a \$700 Phone

Bill One Day When Nobody Was at Home', *Sydney Morning Herald*, 5 March 2001, p.3.

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Cross-Media Rules to be Revisited Again or Not

Raani Costello reviews the legislative and policy background of media ownership restrictions

Doing away with Australia's cross-media ownership laws is on the media policy agenda again following the Coalition's re-election to Federal Government in November 2001. The Coalition's election platform included the twin objectives of:

- giving media companies exemptions from the cross-media ownership restrictions if undertakings are given to maintain separate editorial processes and maintain existing levels of local news and current affairs; and
- abolishing the media-specific foreign ownership restrictions that apply to newspapers and television.

This article provides the legislative and policy background necessary to understand the present revival of this issue and why it may be difficult for the Government to achieve its policy objectives. Following his re-election, Prime Minister John Howard has made the comment that he is:

*"not going to bloody his nose on it if the minor parties in the Senate remain opposed"*¹

CROSS-MEDIA RESTRICTIONS

Over the last five years, the Coalition Government has unsuccessfully attempted to revisit and repeal the provisions of the *Broadcasting Services Act 1992* (Cth) (BSA) which prevent any single entity from controlling any two of the following in any geographic licence area:

- a commercial free-to-air television licence;
- a commercial radio licence; and
- a wide circulation newspaper.²

These restrictions were introduced by the Federal Labor Government in 1987 and the oft-quoted remark of then Treasurer Paul Keating that media proprietors

"may be princes of print or queens of the screen, but not both"

reflects the underlying policy intention of preventing a media company from controlling broadcast and print media in the same geographic area.

These restrictions have been criticised since their creation as stifling the growth of Australian media companies and have been a constant barrier to much anticipated changes in the control of the Fairfax newspaper group, publisher of the *Sydney Morning Herald*, *The Age* and the *Australian Financial Review*.

1996 REVIEW OF CROSS-MEDIA AND FOREIGN OWNERSHIP

In late 1996, the Coalition Government, through the Department of Communications and the Arts, commenced a review of the cross-media rules which it later abandoned without making any formal recommendations.

The Government also sought to review the media-specific foreign ownership restrictions. Australian foreign ownership policy is primarily controlled under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and associated policies (FATA). In summary³:

- all direct (ie, non-portfolio) proposals by foreign interests to invest in the media sector irrespective of size are subject to prior approval under the foreign investment policy. Proposals involving portfolio share holdings of 5% or more must also be submitted for examination;

- foreign investment in mass circulation national, metropolitan, suburban and provincial newspapers is restricted. All proposals by foreign interests to acquire an interest of 5% or more in an existing newspaper or to establish a new newspaper in Australia are subject to a case-by-case examination. The maximum permitted aggregate foreign interest (non-portfolio) investment/involvement in national and metropolitan newspapers is 30% with any single foreign shareholder limited to a maximum interest of 25% (and in that instance unrelated foreign interests would be allowed to have aggregate (non-portfolio) shareholdings of a further 5%). Aggregate foreign interest direct involvement in provincial and suburban newspapers is limited to less than 50% for non-portfolio shareholdings.

- aggregate foreign ownership of Telstra is restricted to 35% of the privatised equity (presently 49.9%) and individual foreign investors are only allowed to acquire a holding of no more than 5% of that privatised equity. Prior approval is required for foreign involvement in the establishment of new entrants to the telecommunications sector or investment in existing businesses in the telecommunications sector. Proposals above the notification thresholds will be dealt with on a case-by-case basis and will normally be approved unless judged contrary to the national interest.

The BSA also contains specific foreign ownership restrictions with respect to free-to-air and pay television licences, namely that:

- foreign interests in commercial free-to-air television licences are limited to a 20% company interest in