

## Media Diversity and Cross-Media Regulation

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**ABSTRACT** *Proposed changes to the Australian cross-media regulation prohibiting common ownership of commercial free-to-air television and radio services and daily newspapers in the same market and their likely impact on diversity of opinion are evaluated in this paper. The analysis indicates that the replacement of the cross-media rules with a minimum number of voices rule will lead to increased concentration of main media and reduced diversity. There is little evidence that the Internet and other new media are significantly displacing traditional media as independent sources of opinion in the domestic market. Also, the proposed number of voices rule is assessed as a largely ineffective and inefficient regulation. Consequently, the paper concludes that while abolition of the cross-media rules might be an appropriate objective in the longer term, the proposed changes are likely to have undesirable effects on diversity of opinion in the immediate future.*

**Keywords:** media regulation; cross-media rules; media diversity.

### Introduction

Abolition of cross-media ownership restrictions has been explicit government policy for several years. Previous proposals for change, going as far as the introduction of the Broadcasting Services Amendment (Media Ownership) Bill 2002 in Parliament, however, were not implemented because the Government lacked sufficient support in the Senate. With the Government now enjoying a majority in both Houses of Parliament, securing passage of the necessary legislation to change the existing media ownership rules seems to be a foregone conclusion. Proposed changes to media ownership controls were recently detailed in a Government Discussion Paper,<sup>1</sup> which followed closely proposals outlined in a speech at the National Press Club by the Minister for Communications, Information Technology and the Arts.<sup>2</sup>

Many countries have implemented cross-media and other ownership restrictions to prevent excessive concentration of media assets and thus promote a diversity of sources of opinion. Analogous to the concept of competition in economic markets,

diversity of sources of opinion in the so-called 'ideas marketplace' is generally deemed to be in the public interest. Consequently, many countries have adopted special measures to protect and maintain media diversity. These measures are typically much more intrusive than competition laws and usually ban combinations of prescribed activities under common ownership irrespective of whether or not they would be allowed by the normal application of competition laws.

Historically the imposition of media ownership regulation has been largely justified by technical and other constraints limiting the number of operators that were able to be accommodated in a given geographical area. Such a justification, however, has been increasingly undermined by technological developments, which are rapidly expanding the range of sources of information available to the public.

The aim of this paper is to examine the purpose and functions of the existing cross-media ownership rules and the likely consequential impact of the anticipated reform. The primary focus will be on the likely impact of the proposed reform on diversity of opinion. The paper begins with a brief overview of the development of cross-media ownership regulations. It then presents discussions on the concepts of diversity and economic markets as background to the subsequent evaluation of the effects of the proposed reforms. Finally, the paper draws some conclusions on the desirability of the proposed reforms.

### **Development of Cross-Media Regulation**

Cross-media ownership restrictions are imposed by the *Broadcasting Services Act 1992* (BSA) as part of the measures seeking to give effect to several of the important objectives listed in Section 3, including:

- to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information;
- to encourage diversity in control of the more influential broadcasting services;
- to ensure that Australians have effective control of the more influential broadcasting services; and
- to encourage providers of commercial and community broadcasting services to be responsive to the need for a fair and accurate coverage of matters of public interest and for an appropriate coverage of matters of local significance.

In essence, the ultimate goal is to provide audiences with a sufficient level of diversity of opinion and programming. Other important contributors to this goal include the national broadcasters and the licensing of the various types of broadcasting and narrowcasting services.

The possibility that the media's power to influence public opinion could become undesirably concentrated has long been a concern of legislators. Restrictions on the ownership of broadcasting licences were first introduced in 1935 to prevent the development of 'radio monopolies' under the control of newspaper interests.<sup>3</sup> The regulation prohibited the ownership of more than one radio station per licence area (market) and set strict limits on the aggregate number of stations that could be held by a single entity in any one State and nationally.

When television was introduced in 1956, a similar regulation was imposed to limit an entity's control to no more than one station per licence area (market) and to no more than two nationally. Prohibition of foreign ownership or control of

broadcasting licences was also introduced in 1956. The concern here was that foreigners should not be given the power to influence domestic public opinion.

In 1987 the so-called 'two television stations' rule was replaced by an 'audience reach' rule, which permitted common ownership or control of television stations in different localities provided their aggregate audience reach did not exceed 60% of the Australian population. The permitted aggregate audience reach was extended to 75% with the passing of the BSA in 1992.

Partly to counteract the expected loss of diversity and more generally to promote greater diversity of opinion in the media, cross-media ownership restrictions were introduced concurrently with the relaxation of the two station rule. Initially, the cross-media rules prohibited the common control of a television service and a daily newspaper in the same market. In 1988 the rules were extended to radio and restricted a single individual to control of only one of the three media in any one market.

The promulgation of the BSA in 1992 liberalised then existing regulation on the ownership and control of radio. The limit on ownership of radio stations in any one market was increased to two and the restrictions on State/National aggregate ownership of stations were abolished. Restrictions on foreign ownership and control of radio stations were also abolished. The BSA also introduced limits on the ownership and control of subscription television licences.

In contrast to their support for ownership diversity through cross-media and audience reach limits, successive governments have banned the establishment of additional commercial free-to-air television services, which would have increased the number of different owners of television stations. The current moratorium on new commercial television services was an element of the digital television conversion decision intended to protect existing operators from additional competition and is effective until at least the beginning of 2007. However, it was not new, but followed a pre-existing moratorium on the establishment of such services that had been in place for several years.

In summary, the main current ownership controls are:

- *Limits on the ownership of commercial broadcasting services* that can be held by an individual. The existing provisions prohibit an individual owning or having a controlling interest (i.e. holding more than 15% of the shares in the licensee company) in more than one commercial television service per licence area. The aggregate reach of commercial television stations under common ownership or control cannot exceed 75% of the Australian population. Common ownership or control of commercial radio services is limited to two services per licence area. There are no limits on the ownership or control of subscription television services. Mergers or acquisitions of existing commercial broadcasting services are also subject to the provisions of the Trade Practices Act.
- *Cross-media ownership limits* prohibit common ownership of a controlling interest in two or more of a commercial television or radio service and a daily newspaper in the same television licence area. Ownership of a controlling interest in different media in different licence areas is permitted.

If implemented the current Government proposal is to permit cross-media ownership in the same market provided that eventual mergers do not result in there being less than five commercial media groups in mainland state capital cities and less than four groups in regional markets. The proposed changes do not affect other existing ownership controls, namely:

- prohibitions on ownership of more than one television licence and more than two radio licences in the same area;
- audience reach limit of commonly owned television licences restricted to 75% of the national population; and
- although the legislated moratorium on new commercial television stations will not be extended, the Government has ruled out the issue of any new commercial licences at least until conversion to digital television is completed (not expected to occur before 2012).

### **Plurality and Diversity of Views**

There is a general consensus in democratic societies that plurality and diversity of opinion and sources of information are needed to sustain a healthy democracy. Plurality in the means by which information and opinion are delivered to society, however, tends to be limited by the attributes of the mass media and considerable barriers to entry to the media sector.

There are several dimensions to, or features of, the principle of diversity as applied to mass media policy. Because of its many dimensions, there is also little agreement on how diversity should be defined and measured, and on appropriate policies for its promotion. In a detailed examination of the diversity principle in communications policy, Napoli<sup>4</sup> places ‘the diversity principle within the larger context of the “marketplace of ideas” ... that has historically guided policymakers and the courts’ and argues that it has three primary components (with numerous sub-components), namely: source diversity; content diversity; and exposure diversity.

The US Federal Communications Commission<sup>5</sup> in its *Biennial Regulatory Review* identifies five different concepts of diversity likely to be pertinent to media ownership policy:

- viewpoint;
- programme;
- outlet;
- source; and
- minority and female ownership.

Each of these concepts was reviewed recently by the FCC in the context of media ownership policy.

Viewpoint diversity relates to the availability of a diverse range of media content reflecting a variety of perspectives. The availability of an extensive range of views is widely regarded as essential to democracy and healthy public debate. Rules limiting concentration of media ownership are generally seen to be in the public interest because they limit the potential of individual owners to influence public opinion. The influence on public opinion can be both direct, in the form of editorials or stories promoting a particular point of view, or indirect, in the form of self-censorship by journalists and editors who avoid or soften stories that do not support the owners’ views or financial interests. Historically, diversity of media ownership has been regarded as the best way to promote viewpoint diversity.

The FCC Biennial Regulatory Review reaffirmed the importance of viewpoint diversity as a US policy objective. According to the FCC:

... owners of media outlets clearly have the ability to affect public discourse, including political and governmental affairs, through their coverage of news

and public affairs. Even if our inquiry were to find that media outlets exhibited no apparent 'slant' or viewpoint in their news coverage, media outlets possess significant *potential* power in our system of government. We believe sound policy requires us to assume that power is being, or could be, exercised. (Emphasis in original.)<sup>6</sup>

Programme diversity refers to the availability of a variety of programming formats and content. In an open media market with free entry, competition can generally be relied upon to promote programming diversity. However, in broadcasting media markets where entry may be constrained by natural or artificial scarcity, there is a tendency for media operators to pursue similar formats that appeal to large audiences. The promotion of programming diversity is usually a primary objective of content regulation prescribing the supply of a range of programmes.

Outlet diversity (the presence of multiple independently-owned broadcasters) was regarded as a means to achieve diversity of viewpoints. The FCC<sup>7</sup> review concluded that 'regulating the ownership of outlets to achieve those goals is far preferable to attempting to engineer outcomes directly, because ownership regulation reduces the need for ... subjective judgements about program content'.

Of the remaining two concepts, source diversity (availability of media content from a variety of producers) was not considered by the FCC to be a relevant goal for broadcast ownership regulation. Minority and female ownership diversity, on the other hand, was seen as a desirable social policy goal in terms of both giving voice to minority views and providing economic opportunities for minorities.

In the Australian context, diversity appears to be primarily identified with the concepts of viewpoint, programme and outlet diversity. Promotion of viewpoint and outlet diversity is pursued primarily through a combination of planning and licensing, and ownership regulation. Outlet diversity is also pursued with planning and licensing provisions for the allocation of broadcasting licenses for specific types of outlets including community broadcasting and narrowcasting. Programme diversity is promoted through a combination of licensing of different types of services and programming obligations. In addition, one of the most important functions of the publicly-funded, national broadcasting services (ABC and SBS) is to enhance all three forms of diversity.

Diversity of control of broadcasting services (outlet diversity) is highlighted in the BSA. The Explanatory Memorandum of the Broadcasting Services Bill 1992 states that the BSA seeks to encourage diversity of control of the more influential broadcasting services 'by allowing a greater number of services ... under the planning and licensing regime, supported by the O&C [ownership and control] limits relating to commercial broadcasting ...'. Only commercial services are subject to the ownership and control provisions and there is an implicit view in the BSA that the Provisions of the Trade Practices Act (TPA) are not sufficiently effective to regulate concentration of ownership and control in their regard. In contrast, the explanatory memorandum explains that 'concentration of ownership and control of narrowcast services is ... regulated by the relevant provisions of the TPA ...'. In other words, the BSA sought to safeguard a higher level of outlet diversity in commercial broadcasting than could be expected to result from the application of the relevant provisions of the TPA alone.

### **Regulating for Diversity**

Government intervention has been considered necessary for the protection of diversity of information to society and to prevent undue concentration of the power to influence the public. Legislators have always been concerned about the power of the electronic media to influence public opinion. The Joint Parliamentary Committee on Wireless Broadcasting (1942), for example, was of the view that 'no medium of entertainment, whether it be stage, cinema or literature has such a powerful influence for good or evil as broadcasting'. With respect to foreign owners, the perceived risk is one of alien influence on the domestic culture and political system.

More recent public inquiries continue to express concerns about concentration of media ownership. The Inquiry into the Ownership and Control of Newspapers established by the Government of Victoria (Norris Inquiry) for example, saw two major dangers in concentrated ownership:

first, loss of diversity in the expression of opinion, and second, the power of a very few men to influence the outlook and opinions of large numbers of people, and consequently the decisions made in society ...<sup>8</sup>

The Report of the House of Representatives Select Committee on the Print Media<sup>9</sup> (Print Media Inquiry) accepted that economic forces, arising largely from economies of scale, inevitably favour concentration of newspaper ownership and expressed the view that competition and diversity of views are inextricably linked. It also was of the view that cross-media rules were justified by the imposition of regulatory barriers to entry into electronic media.

The Productivity Commission<sup>10</sup> noted the implications for competition and diversity that arise in Australia because traditional media are owned or controlled by few players and because substantial economic and regulatory barriers discourage or prohibit new entrants.

Enhancement of diversity is also central to the historical justification of media ownership regulation in the USA where the generally accepted view is that diversity of media ownership fosters diversity of viewpoints and advances First Amendment principles guaranteeing freedom of expression.

### **Media Markets**

Commercial mass media services operate concurrently in a number of markets. First, all commercial media services operate in the advertising market. In that market, the broadcasting media sell 'access time for exposure to their audiences', and print media sell advertising space for exposure to their audiences, to advertisers. The good sold to advertisers is a composite of either time or space and audience size. Thus the price to advertisers varies with both exposure time (or space) and the size of the audience. The characteristics of the audience also affect the price of the advertising. Diverse audiences tend to be valued less than homogenous audience.

Second the media also operate in the broader information and entertainment market. Here they either sell their product to consumers or secure the consumers' attention with free content. Some media (particularly print media, but also pay television) use a hybrid sale-content combination to secure audiences. In all cases, consumers are attracted by the 'content' offered by the media, but take account of



both the price and appeal of the content (including the advertising) in deciding whether to consume it.

Third the media also operate in the so-called 'marketplace of ideas', which, strictly speaking is not a market in the economic sense. Although some analogies tend to be made between the 'ideas market' and an economic market, the usefulness of the analogies is largely confined to the concept that just as antagonistic competition among a large number of suppliers in a product market leads to socially efficient outcomes, so too antagonistic competition among a large number of independent sources of information will lead to socially efficient outcomes in the ideas market. Antagonistic competition in the ideas market among a sufficiently large number of players will ensure that only those ideas that can withstand challenges from others will emerge as winners. In other words, in the ideas market benefits are maximised by the availability of the widest possible range of viewpoints for the consumer to choose from. However, in contrast to an economic market where competition is promoted by substitutability between differentiated products (the less differentiated, the greater the substitutability and thus the better the outcome), in the ideas market, the efficiency of the outcome increases with increasing differentiation among the competing ideas.

Notwithstanding the analogies between an economic market and the ideas market, it is important to recognise that the two are different and are likely to need different tools for adequate analysis. Diversity in the ideas market is a social policy concept and is not necessarily conducive to analysis using tools that are pertinent to analysis of economic markets. Consequently, Trade Practices legislation designed to address problems in the operation of economic markets are not necessarily appropriate for dealing with problems in the operation of the ideas market.

While the exigencies of both diversity of opinion and market competition would be best served by more, rather than less, independently operating players, more stringent criteria may need to be satisfied to sustain effective diversity of opinion than to sustain effective competition. Standard competition rules designed to deal with concentration of market power may not be able to deal with concentration of influence in the marketplace of ideas. In economic markets, the boundaries of a market are determined by the extent to which goods and services are substitutable and goods or services that are close substitutes are considered to be in the same market. Substitutability is determined by the extent to which an increase in the price of a good or service causes consumers to reduce their demand for it and increase their demand for an alternative good or service. Mergers of producers of substitutable goods or services likely to substantially constrain consumers in shifting their demand to substitutes in the event of a price increase could be anti-competitive under the terms of the TPA.

The Australian Competition and Consumer Commission (ACCC) has stressed on a number of occasions that the application of market definition principles to the media generally will often conclude that different media constitute separate markets with the effect that cross-media mergers or acquisitions will be likely to be sanctioned by the TPA.<sup>11</sup>

In its submission to the Productivity Commission's Inquiry into Broadcasting, the ACCC<sup>12</sup> illustrated the approach it would be likely to take in considering mergers of two companies operating in different media as follows:

... say, a merger between a television operator and a newspaper publisher was proposed. Applying market definition principles, the answer to whether or not

such an acquisition would be likely to substantially lessen competition is to ask whether the acquiring firm would be in a position to more easily increase its newspaper cover price or advertising rates. The answer is that this is unlikely. The capacity to raise newspaper prices is not made easier just because the owner of the newspaper happens to own a television station. It would be different if the acquiring firm owned another newspaper in the same market. In such circumstances, one of the major competitive constraints on prices could be removed. Likewise, television and newspaper advertising may not compete for the most part.

However, the ACCC also noted the importance of case-by-case assessment of the degrees of competition between different types of media for advertising revenue particularly in the light of technological change. Reduced distinctions between previously separate markets brought about by technical convergence as well as new advertising markets being created with new technology were seen as relevant considerations in this context.

Overall, on the basis of past experience, the ACCC's submission, concluded that while 'it might be argued that an acquisition of a newspaper by a television owner would reduce competition in the market for ideas ... it is unlikely in present circumstances to be relevant under the TPA which is concerned with "economic competition"'. It also noted that its 'primary concern in market definition is usually related to whether a merger between two firms would enable the merged entity to have market power sufficient for it to increase price unconstrained by competition'.

In practice, although the ACCC has acknowledged the existence of some substitutability between print and electronic media in the provision of news and information as well as for advertising of certain products, it has generally concluded that television and radio advertising have not been significant substitutes for newspaper classified advertising particularly of real estate.<sup>13</sup> It has also considered daily newspapers published in different cities as being in different geographic markets (and therefore not substitutable). Similarly, in examining consumers' consumption patterns of electronic media, it has generally concluded that other media 'were not close enough substitutes to be part of the same retail market in which pay TV are supplied'. While free-to-air TV was seen as the closest available substitute to pay TV, the Commission was of the view that they were not in the same market because of significant differences in their attributes in terms of programming (single channel versus multi-channels, and choice of programmes), the way they are acquired by consumers (free versus payment), and the different incentives they face in earning their income. The differences between the two are exacerbated by restrictions on the issue of new free-to-air broadcasting licences and existing bans on the use of digital spectrum for multi-channelling.

More recently, the Chairman of the ACCC, Graeme Samuel, has been indicating that the ACCC has been reconsidering its approach to the definition of media markets. According to Samuel, because of the effects of media convergence, the traditional approach of considering each main medium to be in a different market is now largely irrelevant. Although specific details of the new approach have not been provided, it is suggested that the ACCC 'might increasingly be focusing on markets such as classified advertising, maybe even markets as small as classified advertising for jobs, for motor vehicles, for real estate, display advertising'.<sup>14</sup>

Even with the suggested shift from media markets to media product markets, the ACCC's focus will clearly continue to be on economic markets as in the past.



The application of the Trade Practices Act is confined to economic markets and, as things currently stand, impact on diversity of opinion is not a primary, if relevant, factor in the ACCC's consideration of whether the merger should be allowed. In other words, protection of diversity in the ideas market will only be incidental to, rather than part of, the assessment of a merger's impact on competition in relevant markets. The extent of the impact will hinge on how narrowly the product markets are defined. Generally, the narrower the definition, the more likely that a merger between two media will be seen as having a substantial lessening of competition effect. However, it is not possible to make *a priori* conclusions that with more narrowly defined product markets the Trade Practices Act will adequately protect diversity of opinion. Nonetheless, there would be a presumption that the suggested approach to defining media markets would have a less adverse impact on diversity than the more traditional approach used thus far.

### **Effects of Current Ownership Controls**

The standard efficiency criterion is that a regulation is desirable only if it can clearly generate a net gain in social welfare. To be justified, the value of all the benefits (economic and social) generated by the regulation has to exceed the value of all the associated costs, including the cost of administering the regulation. Obviously, a regulatory instrument whose costs exceed its benefits would make society worse off and would not be in the public interest.

Evaluation of the costs and benefits of existing media ownership regulation, however, is particularly difficult because the regulatory instruments pursue intangible social benefits that do not lend themselves to economic quantification. In addition, as highlighted by the Productivity Commission,<sup>15</sup> media regulation has developed as a complex set of compromises and trade-offs between competing objectives. In such a situation, evaluation is further complicated by the interrelationships between the regulatory instruments particularly because some of the instruments were established to compensate, at least in part, for undesired side effects of others. Bans on the establishment of new television services, for example, impact adversely on diversity of ownership which is promoted by cross-media ownership restrictions. Consequently, assessments of the efficiency of individual instruments cannot be carried out in isolation from the overall regulatory structure and one needs to look carefully at all the related implications. This is not an easy undertaking.

Albon and Papandrea<sup>16</sup> adopted a useful approach to the evaluation of media regulation based on economic efficiency criteria and broader public interest considerations. Their approach was based on the following four guiding principles:

- Regulation should be retained or introduced only when correction of market failure is strictly necessary and justified or to achieve a clearly identified social goal whose benefits to society clearly outweigh all the costs associated with the regulation.
- Regulation should be based on a clear, well-defined, transparent and predictable framework.
- Regulation should be directed to outcomes and not to the way in which the outcomes are generated or delivered.
- Regulation should be neutral in its impact on delivery technologies and on services with substantially similar attributes.

The following discussion of the effects of the various instruments of media ownership regulation is presented primarily from the perspective of the central objective of ensuring sufficient diversity of opinion in the ideas marketplace. Each of the relevant instruments is considered in turn.

### *Restrictions on Entry*

The number of free-to-air radio and television services in Australia has always been determined arbitrarily with entry to the industries strictly controlled by licensing. Although the initial justification for licensing was based on spectrum scarcity, avoidance of interference between operators and orderly development of services throughout the country, controls on entry have been used primarily to insulate incumbent broadcasters from new competition. The current ban on new television services until 31 December 2006, for example, was intended to insulate incumbents from competition during the conversion from analogue to digital broadcasting.

There are strong indications that entry into free-to-air commercial broadcasting is highly sought, particularly in capital cities and other large population centres. Recent allocations of commercial radio licences have been auctioned for large sums of money. The strong interest to enter the industry is a clear indication that the existing restrictions are an effective constraint on the establishment of new players and on diversity of opinion. Removal of entry restrictions would promote increased diversity and thus reduce the necessity for alternative measures in support of diversity.

### *Audience Reach Limits*

The public good nature of television programmes generates strong incentive for broadcasters to maximise the size of the audience for a given programme. One way of maximising audience size is to transmit the same programme to a network of commonly owned or affiliated stations. Audience reach limits, however, prevent the extent to which networks can be formed under common ownership. In a network, centralised programme purchasing and scheduling functions can be performed more cost-effectively than the alternative of performing those functions separately for each station in the network. Networks also have advantages over independent stations in producing programmes and competing for independently produced programmes, because production costs can be spread over all the stations in the networks. Networks also enhance the sale of advertising, particularly for television where national advertising prevails and is placed mainly through advertising agencies. Advertisers tend to pay a premium for large audiences and incur lower placement costs by dealing with a network. Similarly networks benefit from having a single specialised sales force for all their stations and from the ability to promote the stations as a group.

The current limits on the population reach of television stations under common ownership has not stopped the formation of 'programming' networks with a population reach in excess of the limit. The formation of programming networks is brought about by two major factors, namely economies of scale from the ability to spread the cost of a common programming function and by the ongoing ban on the licensing of new commercial services. The latter ban means that unaffiliated stations have only one realistic programming choice and that is to affiliate with one of the three major networks. As a result the same programmes, with only minor

local variations, are broadcast throughout the country. In other words, the audience reach limits have essentially no effect on the delivery of diversity of programmes, particularly those such as news and current affairs that are likely to influence opinion. Under the circumstances, the effectiveness and value of the regulation is questionable. There would be little, if any loss in diversity if the regulation was abrogated. The supply of local news and current affairs programmes, if required, could be regulated more effectively as a licence condition.

Prohibition of common ownership of multiple broadcasting outlets in the same licence area creates a conflict between programme diversity and providing greater scope for diversity of opinion. Independently owned stations competing with each other tend to duplicate programmes appealing to large audiences. Minority audiences would be more likely to be catered for by owners of multiple outlets in the same service area who would have a financial incentive to broadcast complementary rather than competing programmes on the commonly-owned stations. Whether audiences value programming diversity more than potential reductions in diversity of opinion is not known.

Even if the one station per market rule was not in place, mergers of existing commercial television services in a market would be unlikely to be approved under the provisions of the Trade Practices Act. As there are at most three commercial services in a market, any merger between the services would be likely to constitute a substantial lessening of competition in the market. For radio, however, where up to 11 commercial services currently operate in a market, greater concentration of ownership could not be precluded in the event of removal of the two-station rule. The likelihood of increased concentration would be greatest in the larger capital cities such as Sydney and Melbourne, each with 11 stations.

### *Cross-Media Rules*

Although cross-media ownership prohibitions do not necessarily guarantee diversity of views or programming (for example, owners are not precluded from entering into arrangements to share programming and related resources), the Productivity Commission observed that:

The likelihood that a proprietor's business and editorial interests will influence the content and opinion of their media outlets is of major significance. The public interest in ensuring diversity of information and opinion, and in encouraging freedom of expression in Australian media, leads to a strong preference for more media proprietors rather than fewer. This is particularly important given the wide business interests of some media proprietors.<sup>17</sup>

The FCC is more explicit in its assessment. In the report of its 2002 Biennial Review,<sup>18</sup> it states:

We adhere to our longstanding determination that the policy of limiting common ownership of multiple media outlets is the most reliable means of promoting viewpoint diversity.

Analysis of the economic effects of cross-media ownership has received little attention in the published literature. Competition for advertising has received some attention, but results have tended to indicate low-levels of substitutability

between main media.<sup>19</sup> More recently, there are some indications of Internet advertising making inroads in markets for classified advertising such as employment and real estate,<sup>20</sup> but there is little empirical evidence on the extent to which Internet advertising in those markets is a substitute (rather than a complement) for press advertising. With respect to consumers, a recent FCC research paper<sup>21</sup> found some evidence of substitution between main media, but could not fully resolve 'the question of whether substitution is sufficiently effective that all media should be considered substitutes for news and information purposes'.

As noted by Bureau of Transport and Communications Economics,<sup>22</sup> cross-media rules inhibit the formation of multimedia groups and thus constrain the capacity of firms to take advantage of the associated economies of scale and scope. These include the inability to maximise administrative efficiencies and reduce commercial risk by being involved in competing activities (rises and falls in demand for advertising in different media do not necessarily coincide). Under the current rules, the only way that media firms can pursue similar efficiencies would be to enter mutually beneficial cooperative or commercial arrangements with rivals. Examples of such co-operation might involve radio and newspaper groups sharing advertising personnel and parts of their premises, and radio and television stations sharing local news-gathering personnel, facilities and programmes.

The cross-media constraints, however, are unlikely to be causing a substantial loss in economic efficiency and their retention may be justified by the social benefits of greater diversity in media ownership. The Department of the Treasury<sup>23</sup> addressed this issue in its submission to the House of Representatives Select Committee on the Print Media and concluded in favour of retaining the existing cross-media restrictions:

[maintenance of] the existing cross-media restrictions would be unlikely to impose significant economic costs (though it would run the risk of good owner-managers in one medium being unable to apply their management skills in another medium, in a particular regional market). ...

Until further major TV or newspaper participants emerge, the prospect of cross-media ownership does appear to warrant community concern and the current cross media restrictions should be retained. Again, liberalising entry into the electronic media would ease these concerns as competition increased.

The number of main media players has not changed greatly since the above assessment by the Treasury, but there have been other significant changes in the supply of information services.

An argument regularly put forward in support of the abolition of cross-media ownership restrictions is that they are no longer necessary to protect diversity of opinion. Drawing attention to the emergence of new services such as pay television and the growth of the Internet since the restrictions were first introduced, it is argued that consumers have access to a large range of information sources that more than compensate for any effect the abolition of the restrictions would have. For example, in 2003 the then Minister for Communications, Information Technology and the Arts argued that media ownership rules had become irrelevant because they related to 'another time—a pre-Internet, pre-digital, pre-broadband Australia'.<sup>24</sup> That there has been extensive change to the media landscape since the cross-media rules were first introduced is not in question, but whether the

change has been such as to guarantee a satisfactory level of diversity in the ideas marketplace and make cross-media rules irrelevant requires closer examination.

A major change in the media landscape since the introduction of the cross-media rules is the introduction of pay television. Notwithstanding a slow start, in recent years pay television has experienced steady growth reaching a subscriber base of 23.7% of households in late 2005.<sup>25</sup> Current subscription levels, however, are still well-below the almost 100% reach of established broadcasting media. Also, pay television is more an entertainment than information medium and only one significant Australian news service is currently available to subscribers—and that news service is a joint venture of two existing free-to-air networks (Seven and Nine) and British Sky Broadcasting controlled by News Corporation. Consequently, pay television's contribution to diversity of opinion may be more apparent than real.

In radio, additional commercial services have been established in Sydney and Melbourne and some other capital cities. These have had a significant impact on competition for audiences and consequently on programme diversity in those markets. They have also contributed to potential diversity in the ideas market. Several community radio services and narrowcasting services have also been established. Because community and narrowcasting services generally cater for small audiences (and thus limited potential influence in the ideas market), they tend to be overlooked in the debate on diversity of services. In this sense, they are more like magazines catering to narrow interest groups which have traditionally been excluded from cross-media restrictions.

The Internet has provided an enormous expansion of access to sources of information. With a penetration in excess of 60% of households, and theoretically an infinite number of sources of information, the Internet can potentially boost diversity in the ideas marketplace. Although there are some indications of a tendency among youths to use the Internet as a source of news in preference to traditional media,<sup>26</sup> the Internet does not appear to have yet developed into an effective substitute for main media. The most popular news sites are largely controlled by existing media operators. In itself, this is not a reason for concern. The popularity of the sites is simply an indication of their ability to provide services sought by consumers. The more important issue is whether consumers see the Internet as a substitute for established sources of information. The available data on this are not conclusive, but they do suggest that consumers tend to regard the Internet as a complement rather than a substitute to established sources of information.

A research study on the *Sources of News and Current Affairs* commissioned by the Australian Broadcasting Authority,<sup>27</sup> highlights the dominance of established media as sources of news and current affairs. The relative importance of various media in terms of the extent to which consumers rely on them as sources of news and current affairs identified in the study was as follows:

- free-to-air television is the most used source for news and current affairs with nearly 88% of people using it;
- radio and newspapers share second place with 76% of people using them as sources of news and current affairs;
- pay television is used by 10%; and
- the Internet is used by 11%.<sup>28</sup>

More recent data published by Roy Morgan Research indicate that old media dominate online sources of news, and that television was the main source of news

for 56% of the population, followed by newspapers (22%), and radio (18%). The Internet was reported as the main source of news by only 3% of people.<sup>29</sup>

Overall then, there is very little evidence suggesting that there should be less concern now than a decade ago with ensuring effective community access to an adequate range of opinions in the mass media. While the range of potential sources of information available to consumers has clearly widened, the available evidence suggests that the role and influence of the main media sources of information has not changed significantly. Consequently, a change likely to lead to a substantial reduction in the number of influential media sources might prove difficult to justify.

### **Effect of Proposed Changes to Cross-Media Ownership Rules**

The replacement of the existing bans on cross-media ownership with the proposed minimum number of voices rule will undoubtedly lead to increased concentration of ownership of main media with a likely significant consequential impact on diversity. An important element of the assessment of the desirability of a regulation is to compare the likely outcome under the regulation with the outcome likely to prevail in the absence of the regulation (the 'with-without' test). In Table 1, the current situation is compared with possible outcomes under the proposed new regulation and the likely outcome if media mergers were to be subject to competition rules only. Separate results are provided for each of the mainland State capital cities and for typical markets in other areas. Consumers in regional (not including remote) mainland markets typically have access to three television services, one local newspaper and two, three, or four radio services. In Table 1, Newcastle, Toowoomba and Parkes, respectively, are representative of the three different types of radio markets. In most regional markets with two radio services, both are owned by the same operator, largely as a result of a previous policy of issuing 'supplementary' licenses to existing operators. Tasmania is a special case in that only two commercial television services are licensed to operate there. Hobart is representative of that situation.

Several important observations emerge from the analysis in Table 1. First, in all markets, the effect of replacing the existing cross-media rules with the proposed number of voices rule will be a substantial reduction of the number of independently-owned media. The effect is greatest in Sydney and Melbourne where the number of independent media could decline from the current minimum possible number of 11 to six (a reduction of 45.5%).<sup>30</sup> In the other mainland State capital cities and in the regional markets, the reduction ranges from 20% in Hobart and Parkes to 37.5% in Brisbane.

Second, for Sydney and Melbourne, the minimum possible number of independent voices is the same with or without the proposed minimum number of independent operators/voices. This is due to the effects of the separate rules prohibiting common ownership of more than one television licence and two radio licences per market. In other words, for Sydney and Melbourne the proposed number of voices limit has no effect and is redundant. In the other mainland capital cities, the proposed number of voices limit will constrain some potential media mergers likely to be sanctioned in the absence of the limit. Similarly, in regional markets, the proposed minimum limit will constrain some potential media mergers, although the scope for such mergers is limited because of the small number of existing independent operators in those markets and the one television and two radio licences per market rules.



Table 1. Possible effect of changes to cross-media restrictions

Number of commercial media				Number of owners <sup>a</sup>			No cross-media rules <sup>b</sup>
Market	TV	Radio	Daily press	Current cross-media limits		Minimum voices limits	
				Actual	Possible minimum <sup>c</sup>	Possible minimum <sup>c</sup>	
Sydney	3	11	2	12 3 (TV), 2 (News), 4 (2Radio), 3 (1Radio)	11 3 (TV), 2 (News), 5 (2Radio), 1 (1Radio)	6 2 (TV+News+2Radio), 1 (TV+2Radio), 2 (2Radio), 1 (1Radio)	6 2 (TV+News+2Radio), 1 (TV+2Radio), 2 (2Radio), 1 (1Radio)
Melbourne	3	11	2	11 3 (TV), 2 (News), 5 (2Radio), 1 (1Radio)	11 3 (TV), 2 (News), 5 (2Radio), 1 (1Radio)	6 2 (TV+News+2Radio), 1 (TV+2Radio), 2 (2Radio), 1 (1Radio)	6 2 (TV+News+2Radio), 1 (TV+2Radio), 2 (2Radio), 1 (1Radio)
Brisbane	3	7	1	8 3 (TV), 1 (News), 3 (2Radio), 1 (1Radio)	8 3 (TV), 1 (News), 3 (2Radio), 1 (1Radio)	5 1 (TV+News+2Radio), 1 (TV+2Radio), 1 (TV+1Radio), 2 (1Radio)	4 1 (TV+News+2Radio), 2 (TV+2Radio), 1 (2Radio)
Perth	3	6	1	8 3 (TV), 1 (News), 2 (2Radio), 2 (1Radio)	7 3 (TV), 1 (News), 3 (2Radio)	5 1 (TV+News+2Radio), 1 (TV+2Radio), 1 (TV), 2 (1Radio)	3 1 (TV+News+2Radio), 2 (TV+2Radio)
Adelaide	3	6	1	7 3 (TV), 1 (News), 3 (2Radio)	7 3 (TV), 1 (News), 3 (2Radio)	5 1 (TV+News+2Radio), 1 (TV+2Radio), 1 (TV), 2 (1Radio)	3 1 (TV+News+2Radio), 2 (TV+2Radio)
Newcastle	3	4	1	6 3 (TV), 1 (News), 2 (2Radio)	6 3 (TV), 1 (News), 2 (2Radio)	4 1 (TV+News+2Radio), 2 (TV), 1 (2Radio)	3 1 (TV+News+2Radio), 1 (TV+2Radio), 1 (TV)
Bundaburg	3	3	1	6 3 (TV), 1 (News), 1 (2Radio), 1 (1Radio)	6 3 (TV), 1 (News), 1 (2Radio), 1 (1Radio)	4 1 (TV+News+2Radio), 2 (TV), 1 (1Radio)	3 1 (TV+News+2Radio), 1 (TV+1radio), 1 (TV)

Table 1. (Continued)

Number of commercial media				Number of owners <sup>a</sup>				
Market	TV	Radio	Daily press	Current cross-media limits		Minimum voices limits		No cross-media rules <sup>b</sup>
				Actual	Possible minimum <sup>c</sup>		Possible minimum <sup>c</sup>	
Parkes	3	2	1	5 3 (TV), 1 (News), 1 (2Radio)	5 3 (TV), 1 (News), 1 (2Radio)	4 1 (TV+News), 2 (TV), 1 (2Radio)	3 1 (TV+News+2Radio), 2 (TV)	
Hobart	2	3	1	6 2 (TV), 1 (News), 3 (1Radio)	5 2 (TV), 1 (News), 1 (2Radio), 1 (1Radio)	4 1 (TV+News+1Radio), 1 (TV), 2 (1Radio)	3 1 (TV+News+2Radio), 1 (TV), 1 (1Radio)	

Notes: <sup>a</sup>Assumes application of competition rules and existing limits on ownership of radio and TV licences in one area (two radio; one TV) will be retained.

<sup>b</sup> Assumes mergers resulting in less than three remaining operators will not be approved under competition rules.

<sup>c</sup> Other combinations are possible.

Third, the differences between the outcomes under the minimum voices limit and the 'no cross-media' case are deceptive. A numerical analysis such as that illustrated in Table 1 does not differentiate between media outlets and gives them all equal value (each is counted as a 'voice'). Even under the existing arrangements, the various media differ in terms of their influence on consumers and reach substantially different audiences. The differences are exacerbated under both of the reform options considered in Table 1. For example, after the reform, a multimedia group (say one composed of a television station, a daily newspaper and two radio stations) is counted as a single voice and is given the same weight as a single independent radio station without regard to the latter's audience size. The biggest incentives post-reform would be for the formation of multimedia groups, particularly combinations of television, newspaper and radio interests. In Sydney and Melbourne where there are two newspaper groups, the expectation is that each would merge with a television station and a two-station radio group. The third television station can then only combine with a two-station radio group. The remaining groups are made up of one or two radio stations each. Because of the existing media structure, the minimum number of voices limit will have disparate impact in Brisbane, Adelaide and Perth and regional markets.

Because only one local daily newspaper is published in Brisbane, Adelaide and Perth, only one multimedia group with a television station, two radio stations and a newspaper can be formed. In all three cases, it is also possible to combine a television station and two radio stations. A third group of a television station and one radio station is possible in Brisbane, but not in the other two cities because of the minimum number of voices constraint. The situation is exacerbated in regional areas. There a single group with television, radio and newspaper interests is also possible, but other operators would then be largely constrained to ownership of a single medium.<sup>31</sup> Overall, for the smaller mainland capital cities and regional markets, the effect of the limit is likely to be the creation and entrenchment of a powerful media player competing against weaker players, which have little capacity to grow to redress their competitive imbalance against their more powerful rival.

Fourth, the proposed minimum number of voices limit produces results that do not differ greatly from the potential outcomes that would be likely to prevail under competition rules. Numerically, a competition rules only regime would be likely to sanction a somewhat smaller number of players in markets other than Sydney or Melbourne.<sup>32</sup> However, the difference would be unlikely to lead to a substantial reduction in diversity of opinion in those markets. Nationally, diversity of opinion in the media is likely to be influenced primarily by the level of competition in the ideas market in Sydney and Melbourne. In the local markets, the presence of at least three independent operators, with less disparate market power than the slightly larger number of players under the minimum number of voices limit, would not be expected to lead to a substantially different diversity outcome. In addition, the presence of the national broadcasters (the ABC and SBS) throughout capital cities and regional areas, of course, would also ensure that any difference in the diversity outcome under the two options would be minimal. In terms of economic efficiency, the non-imposition of a minimum number of voices limit would lead to a more efficient, less distorted industry structure. More effective competition would be more likely to ensue among three operators, with less disparate market power than among a slightly larger number of players with one of the players having substantially more market power than the others. Under such circumstances it is doubtful that the likely minor benefit in increased diversity of

opinion produced by the slightly larger number of players under the minimum number of voices regime would be worth the loss of economic efficiency and the additional ongoing cost of maintaining the regulatory regime.

A fifth consideration is whether the existing cross-media rules are preventing 'Australian media groups from developing into globally competitive firms'. This is one of the justifications advanced by Senator Coonan for the proposed reform of the media ownership rules.<sup>33</sup> Evidence that cross-media ownership restrictions are preventing the development of globally competitive firms is difficult to find. While the restrictions constrain the capacity of existing players to pursue potential economies of scope, there is little evidence that such economies are critical to the formation of global media conglomerates. Indeed the interests of most of the existing largest media conglomerates tend to be concentrated in television (free-to-air, and pay), and production and distribution of films, music and other forms of entertainment.<sup>34</sup> While extension of their interests in book and magazine publishing is not uncommon, only a few have extensive newspaper interests and interests in radio are much less common. Most have grown from a single medium and, in most cases, they achieved a global status while their interests in their home market were subject to cross-media ownership restrictions.

Sixth, the proposed changes appear to be sacrificing the broader public interest in favour of the interests of existing media owners. A major significant way in which public policy could advance the public interest and promote diversity of opinion would be to terminate the current ban on the licensing of a fourth television channel and the current restrictions on the establishment of new digital television-like services independent of existing owners. The anticipated changes to digital television policies are confined to a softening of the highly restrictive controls on the use of the datacasting spectrum<sup>35</sup> and to allowing multichannelling by existing television operators. Licensing of new commercial television services that would give a significant boost to ownership diversity has been explicitly ruled out. Multichannelling by incumbent television broadcasters will undoubtedly add to the range of programming available on digital television, but will have little effect on diversity of opinion. Similarly, the easing of restrictions on the use of the datacasting spectrum will provide little scope for the emergence of new voices in the ideas market. It is difficult to reconcile the proposed changes with 'protection of diversity' as implied in the Minister's speech to the National Press Club.<sup>36</sup> The claim seems to be no more than lip-service to the concept of diversity of opinion as the changes are clearly going to reduce, rather than enhance, diversity.

Seventh, the proposed changes would most likely fail the efficient regulation test. As discussed earlier in the paper, the cross-media rules do not impose large economic efficiency costs, but do provide substantial social benefits in the form of protection of diversity of opinion. Although it is difficult to place a value on the benefits likely to accrue from the protection of diversity, the many instances of rules to guarantee diversity in many overseas jurisdictions strongly suggest that the benefits are greater than the costs of imposing restrictions on media mergers. While it could be argued that the consequences of an easing of the rules can be a matter for judgement, the proposed changes are much closer to total abolition rather than easing of the restrictions. Furthermore, as noted above, the outcome of the proposed changes is unlikely to be substantially different from what would prevail under existing standard competition rules. The absence of an unambiguous increase in benefits—one of the two necessary and fundamental conditions for regulatory intervention—clearly undermines claims that may be

made to justify the change on economic efficiency grounds. The absence of unambiguous benefits calls into question the government's motivation to maintain a 'special' regulatory framework for the consideration of cross-media mergers in addition to standard competition rules. Its only purpose seems to be to provide some window dressing on an otherwise difficult to justify regulatory change.

## **Conclusion**

Repeal of foreign ownership and cross-media ownership regulation, without removal of other highly restrictive controls on new entry to electronic media, particularly commercial, does not appear to be justified. While it is possible to argue that repeal of foreign ownership restrictions will not have a significant impact on the industry even without change to new entry controls, the same cannot be said for repeal of cross-media ownership rules.

Repeal of the foreign ownership restriction will increase the potential pool of investors in the media market and will bring treatment of foreign investment in the media industry in line with the treatment of other industries. These are likely to induce greater attention by current owners to efficient performance in the industry to ward-off the risk of take-over by foreign investors. However, repeal will do little, if anything, to increase media competition or add to diversity of opinion. Competition and diversity of opinion are closely related to the number of significant suppliers in the industry and while removal of the foreign ownership restrictions may lead to changes in the identity of owners there is no scope in the short term at least for it to increase the number of owners (unless current media holdings are broken up into smaller holdings). Nonetheless, although the benefits of repeal are not expected to be large, retention of a regulation that provides little significant benefit to society is not desirable.

The case for the repeal of the existing cross-media rules appears to be based only on economic efficiency considerations with insufficient regard to the value of the social benefits currently accruing to society. The primary objective of the existing cross-media rules is to ensure diversity of opinion in influential media. Repeal of the rules will be likely to lead to a substantial reduction in the number of independent media owners in local markets and consequently to the likely level of diversity of views in those markets. Although increasing access to new media will compensate to some extent, the available data do not indicate that new sources of information and ideas have developed to a level of significant challenge to the power of established media players. Also, as the freeing up of entry to the media industry appears to be currently ruled out, there is no scope for additional diversity to emerge from new players. Until new media become effective alternative popular sources of information and new ideas and new players are allowed to enter the market, changes to the current cross-media rules are likely to lead to an undesirable net loss of social welfare.

While the proposed cross-media changes do not appear to be justified, it does not mean that reform of the cross-media rules is undesirable. As noted by the Productivity Commission, society would benefit if the cross-media rules were repealed in a manner that safeguarded desirable media diversity. If the government was really concerned with diversity it could do no better than adopt the Productivity Commission's prescription for change. According to the Commission,<sup>37</sup> 'facilitating entry of new players ... (and keeping) a careful eye on mergers

between existing players' are critical to the preservation of diversity. It recommended a gradual transition to the abolition of the cross-media rules preceded by the satisfaction of several important conditions, namely:

- removal of regulatory barriers to entry that prohibit more than three commercial television licences in an area;
- removal of economic planning criteria of section 23 of the BSA used by the ABA to determine the number of services to operate in a licence area;
- making spectrum available to enable new broadcasters to enter the industry;
- repeal of the foreign investment restrictions; and
- introduction of a media-specific public interest test in the Trade Practices Act to apply to mergers and acquisitions. The test would allow only mergers and acquisitions demonstrated to be in the public interest with regard to diversity of ownership and diversity of sources of opinion and information.

If the Government is serious about protecting diversity of opinion, it should heed the Productivity Commission's warning about the wisdom and dangers of selectively repealing foreign ownership and cross-media rules. Changes to the cross-media rules, in particular, should be entertained only after the removal of existing prohibitions on new commercial networks and other barriers to the development of new services. The establishment of new networks and new services would clearly act to enhance diversity and thus counterbalance the loss of diversity expected to follow the repeal of cross-media rules.

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30. Although the proposed rule sets a lower limit of five 'voices' in capital city markets, ongoing application of the two-station ownership rule for radio services in Sydney and Melbourne would prevent the number of ownership groups from declining below six.
31. Another possibility would be one group with television and newspaper interests, a second group with television and radio interests, and other operators with interests only in one medium (radio or television).
32. Competition rules only might result in greater concentration in Sydney, Melbourne, and Brisbane than indicated in Table 1, should the existing limit of no more than two radio stations under common ownership be lifted.

- 33. Coonan, *op. cit.*
- 34. See, for example, R. McChesney, 'The global media giants: we are the world', *Extra*, November/December, 1997, available online at: <http://www.fair.org/index.php?page=1406>.
- 35. The existing controls are so restrictive that planned auctions of the datacasting had to be abandoned because of a lack of interest by prospective bidders.
- 36. Coonan, *op. cit.*
- 37. Productivity Commission, *op. cit.*, p. 364.