

From: David Howell
Ph: (w) 02 9928 7571
E-mail: davidjeh@hotmail.com
To: broadcasting@pc.gov.au
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INTRODUCTION

As set out in the terms of reference for the inquiry, the federal Treasurer notes that the Competition Principles Agreement "specifies that any legislation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs and if the objectives can be met only through restricting competition." The benefits to the community are listed as: "the protection of certain social and cultural values, encouraging plurality of opinion and fair and accurate coverage of matters of national and local significance, respecting community standards," and so on. The Treasurer also wishes the inquiry to have "due regard to the phenomenon of technological convergence."

This submission argues that it is overwhelmingly in the national interest not only to (a) strengthen rules preventing the increased conglomeration of ownership and control of Australian media assets by one or two major media players, which is the course Australia is now on, almost regardless of the *Broadcasting Services Act, 1992* and associated legislation; but also to (b) examine and recommend ways to establish legislation which will adequately prevent duopoly and monopoly, and which will pro-actively ensure a much greater diversity of media ownership and control than now prevails.

THE NEED FOR LEGISLATION TO ENSURE GREATER DIVERSITY OF MEDIA OWNERSHIP AND CONTROL

Currently, the Australian media is dominated in terms of ownership and control by companies associated with two of the richest families in the world. There is a very high and increasing concentration of media ownership and control, and this encompasses newspapers, television networks, pay television stations, magazines, internet operations, telephone companies, a news agency, a cinema chain, a movie studio and production and distribution companies, a casino, ticketing agencies, and so on. These proprietors also have a large range of other business concerns.

Such a high concentration of media ownership is unusual in comparable countries to Australia, and represents a growing threat to the free flow of unbiased information. This is especially the case in relation to the integrity of our newspapers, which are still the most authoritative sources of news and information, and are used as archives.

Perth, Adelaide, and Brisbane have only one major city newspaper each, which is owned by the Murdoch group of companies. Melbourne and Sydney have two each, one of which is owned by the Murdoch group. The other main newspaper in these cities is owned by the Fairfax group, which the Packer group substantially owns, including through a trust company. The chairman, who recently and suddenly became a major shareholder, is a former close associate of the Packer group, and as such is widely thought, along with certain other members of the board, to be sympathetic to the interests of the Packer group. Australia's only financial newspaper is owned by the Fairfax group. Australia's only national newspaper is owned by the Murdoch group.

A large number of local newspapers throughout Australia is owned by the Murdoch group. The vast majority of magazines available in Australia is owned by the Packer group. And on it goes, in other areas of media as well.

Recently, the Packer group appears to have acquired control of the large cinema chain, Hoyts.

There is a continual process by these two media groups of buying up Australia's media assets, further diminishing real competition, and further concentrating and horizontally and vertically integrating their ownership of our media.

In conjunction with this, there is an increasing and natural process of cross-promotion in such integrated media. Cross-promotion may be presented as objective information, or a *bona fide* community service, but often tends to be fraudulent to some extent. It tends to cut out any competition in the relevant area from other independent sources, in that it promotes a product from the same media group. For both reasons, cross-promotion, a concomitant of concentrated media ownership, is usually not in the public interest.

Diversity of information, and the fair and accurate coverage of matters of national and local significance, can only be ensured by the diversification of media ownership. One cannot somehow rely on the increased capacity of media technology to ensure the media acts in the public interest.

Any other regulatory mechanism tends to fail. The Australian Press Council, for example, is a self-regulatory newspaper monitor which lacks any serious disciplinary procedures. It is generally regarded to be ineffective at ensuring that fair and accurate content and coverage occur in our newspapers.

SOME SHORTCOMINGS OF THE BROADCASTING SERVICES ACT, 1992

One of the objectives of the *Broadcasting Services Act, 1992* (BSA) was "to encourage diversity in control of the more influential broadcasting services." Interestingly, diversity of ownership is excluded from this objective.

Also, this "diversity of control" only applies to the control of newspapers (but not magazines) and television and radio stations in the same market (or city). This is an unnecessarily weak attempt "to encourage diversity of control." It makes no attempt to cover other forms of media, such as pay TV, magazines, and so on.

Any new legislation would have to apply rules relating to diversity of ownership and control across the entire continuum of the media, and not just certain areas (which may involve political considerations by the government of the day).

EXCESSIVE INFLUENCE AND POLITICAL INTERFERENCE DUE TO AN INCREASING CONCENTRATION OF MEDIA OWNERSHIP

The concentration of media ownership in Australia is among the highest of any country that is not effectively run by political “cronies”.

One issue which the inquiry could investigate is the enormous political power that has accrued and continues to accrue to the major media owners in Australia. This level of power has already historically tended to corrupt the political process.

This much has been acknowledged publicly by former Prime Ministers Malcolm Fraser and Gough Whitlam when they appeared together at Darling Harbour Convention Centre in 1992 to oppose the Packer bid to take over Fairfax.

This process has worsened with the further concentration of media ownership that various federal governments have allowed to proceed, often with only a pretence of serving the public interest. Governments have a tendency to change the media rules, or the interpretation of them, if it suits their interests at the time. For example, senior figures in the current federal government were very keen in 1996-7, and possibly now, to change the law to allow the Packer group to acquire Fairfax.

Most of the current members of the Australian Broadcasting Authority (ABA) were chosen by the current Minister for Communications, in accordance with the BSA. However, in so doing he did not renew any appointments, including that of the respected then chairman, and he appointed Mr David Flint as the new chairman.

Before his appointment, Mr Flint appeared on the television program *First Wednesday*, on ABC TV in 1997, where he made clear his very relaxed attitude to media ownership concentration. One could possibly assume that his unusual view on this issue, together with his generally permissive chairmanship of the Australian Press Council, may have contributed to his successful appointment by the current Minister, who has been keen to allow the Packer group to acquire Fairfax.

The ABA subsequently allowed the interests of Mr Packer, one of Australia’s two major media owners, to gain a substantial level of ownership and influence in Fairfax, through various means, and arguably in breach of the spirit of the cross-media rules. Fairfax is the one most significant media asset left in Australia that he was supposed to be barred from substantially owning or controlling under the Act, so long as he continued to own the Nine Television Network.

This is in part due to the various legal strategies that are especially open to one of the richest people in the world, but is also due in part to the ineffective operations of the current ABA. The ABA delayed the matter extensively, refused to hold any public hearings (despite numerous requests), did not demonstrated much transparency in its dealings on this subject, often preferring to remain virtually *incommunicado*, allowed the Packer group to read through and modify the ABA findings before releasing them, refused to officially record that it actually found the relationship between the chairman of Fairfax, Mr Powers and Mr Kerry Packer was not in accordance with the Act, and ultimately failed to restrain the Packer group in their progressive acquisition and control of the Fairfax group, despite the Packer group’s television holdings.

Thus, the current situation is such that the regulatory processes of the BSA and associated legislation, and the cross-media rules therein, may be said to have been rendered ineffective to a large extent. This outcome is a reflection of the immense power of the major media owners.

Over the years, various state and federal governments have undoubtedly done favours for the major media proprietors, especially the Packer and Murdoch groups. This has not necessarily been to the benefit of the community.

For example, it is on the record that, several years ago, the then Prime Minister and then NSW Premier handed over the ownership of the Royal Agricultural Society Showground in Sydney to the Murdoch group without tender, and at a very reduced price.

Also, last year in federal parliament, an unusual decision was made in relation to the allocation of potentially valuable digital broadcasting spectrum, which parliament could have decided to auction, with the funds going to consolidated revenue. Instead, parliament decided to give this spectrum away absolutely free of charge (with certain requirements) for a period of at least 3 years, to the current owners of the free-to-air television networks. These of course include the Nine Network (owned by the Packer group), and the Seven Network (which the Murdoch group hopes to be able to purchase in the near future, with a scrapping of the cross-media and foreign ownership rules). This could be explained as having been done to placate the major media owners, and so that neither major political party would possibly attract continual negative publicity or coverage as a result of taking perhaps a more appropriate decision in relation to the new broadcasting spectrum.

One of the results of the very high concentration of media ownership can be seen, or not seen, in the way this decision has attracted very little coverage or discussion in the major media, even though it involved such an unusual decision by federal parliament.

As another example of this tendency, in 1997 the federal government's backbench communications committee had the integrity to raise the issue of the national interest being damaged in their opinion, by allowing the Packer group to acquire Fairfax, effectively turning Australia's media into a virtual duopoly.

It has been reported that many committee members were allegedly subjected to distinctly unpleasant remonstrations in an attempt to persuade them to change their minds. A similar episode is reported to have happened with a senior NSW politician at the time of the allocation of the licence for the Sydney casino. This alleged behaviour is hardly appropriate, and such conduct does not encourage one to feel hopeful that, given increasingly more power, the major media players would always act in the best interests of Australian democracy.

It was reported in 1997 that, according to some federal Liberal members of parliament, in South Australia "the position of News Limited's *The Advertiser* as a monopoly player has given it the power and influence to change political leaders on either side of politics 'almost at will'" (Glenn Milne, *The Australian*, May 5, 1997). It was claimed that *The Advertiser* played a critical role in setting up the conditions to remove Premier Mr Dean Brown, to be replaced by Mr John Olsen.

As a further example, Mr Packer has a large interest in the ownership of Melbourne's Crown Casino, which is managed by Mr Lloyd Williams and Mr Ron Walker. Mr Walker is prominent in the federal Liberal party. Both Mr Walker and Mr Williams have a close association with Mr Jeff Kennett, the premier of Victoria. Since Mr Kennett has made clear his intense dislike of Melbourne's Fairfax newspaper, *The Age*, there has been a suggestion by the above federal Liberal MPs (same source), that political interference may occur in the running of *The Age* were the Packer group allowed to fully own and control Fairfax.

Also, in 1997, at a time when many on the staff of Fairfax were expecting the company to be taken over by the Packer group, the editorial staff of *The Australian Financial Review* seriously interfered with the reporting of a major story on a list of the five worst run companies in Australia, according to a study. One of the five was PBL (the Packer company). The *AFR* mentioned four of the five companies in their article, but omitted to mention that PBL was on the list.

The Nine Network often completely failed to mention major new developments in the cross-media ownership debate that was very prominent in 1996-7. In contrast, there was much coverage in the Murdoch-owned media. However, it was the desire of the Murdoch group at the time not to change the cross-media rules.

There are many more examples of dubious occurrences involving excessive media power. Such a state of affairs as now exists would obviously only worsen with a further concentration of ownership and control.

TECHNOLOGICAL CONVERGENCE REQUIRES STRENGTHENED CROSS-MEDIA RULES

It has often been argued by the major media groups and their allies that technological convergence renders the regulation of the media unnecessary and obsolete. However, the phenomenon of convergence in Australia is tending to produce not only a media duopoly, but in certain areas, a tendency towards very close cooperation - where the two major media companies, who are supposed to be in competition, jointly form and/or own companies, and make arrangements to divide up sporting coverage, and so on. This has happened with the *One.Tel* telephone company, Sky TV, and arrangements for football coverage. Australian Associated Press (AAP) is jointly owned by the Murdoch and Fairfax groups (Fairfax being indirectly majority-owned by the Packer group), and so on.

There is no magic to emerging and converging media technology. The recent history of emerging technology being relentlessly taken over by the same two voracious media groups, shows that it can still be owned and controlled in a very similar manner to the older forms of media.

In this context, a recent study by Mr Kim Jackson, a researcher in the federal parliamentary library, has demonstrated that "Media ownership diversity would be halved, and the influence of existing proprietors doubled, if restrictions were abolished..." (The preceding and following extracts are from a report in *The Australian* newspaper, April 30, 1999.)

Mr Jackson's research "undermines a key argument used to support liberalizing media laws, concluding that new technologies - such as the internet and pay TV - have failed to diversify ownership in a highly concentrated industry.

"The three pay TV companies offer 56 channels, but only one of these is an Australian news channel - Sky News Australia'...[T]his channel is jointly owned by News Limited [Murdoch], PBL [Packer] and television's Seven Network [which Murdoch hopes to be allowed to own].

"The internet's main contribution to media diversity has been to increase the possible influence of the print media by improving its household access.

"This could be seen as a reason for retaining the cross-media rules rather than abandoning them.'

“Some 30 of the top 100 most popular internet sites are controlled by one of the two big newspaper groups (News Limited [Murdoch] and Fairfax [indirectly majority-owned and possibly controlled by Packer, who hopes to openly own and control it in the future], one of the three main commercial networks (Nine [Packer], Seven [hoped for by Murdoch] and Ten), or the ABC [starved of adequate funding by the current federal government], Mr Jackson’s research shows.

“...[A]ll 9 news and media sites in the top 100 [Australian internet sites] [are] in the hands of the same 6 media groups.

“Mr Jackson rejected the increasingly popular claim that, as the boundaries blurred between traditional media and new technologies, the current ownership restrictions were rapidly outdated.

“According to Mr Jackson, ‘The distinctions between current internet services and broadcasting are still quite clear - the former are delivered interactively through a unique connection to an individual household, while the latter are broadcast to anyone who has the necessary receiving equipment,’ he said.

“The fact that television broadcasters may gradually move into the household data market is not in itself a reason for abandoning the cross-media rules.

“The abolition of the rules would reduce possible media ownership diversity by an average of 53 per cent or, to put it in simpler terms, it could double the influence of the existing proprietors.”

“THE RESTRICTION OF COMPETITION”

It is also often argued by the major media groups that the removal of media ownership regulations would no longer restrict competition, and would allow for a “level playing field” where, supposedly, the free operation of the market would act in the best interests of the community.

Unfortunately, the historical experience has been the opposite to this theory.

The Australian media is very much a special case.

The removal of ownership barriers in the media marketplace as it now stands, would result in the accrual of massive, unassailable power and wealth to the major players, with all the political power that entails, together with the potential for further self-serving restrictions and distortions on the free flow of information (especially in our newspapers of record).

As an example, the Murdoch-owned *Star TV* satellite television service broadcasting over China, removed its BBC News coverage solely to placate the Chinese government. The BBC News is of course one of the most highly regarded and objective news sources in the world. It is not hard to envisage a scenario in Australia where a media duopoly/monopoly could refuse to allow the broadcasting of certain objective, important and reliable information for reasons of self-interest.

This is quite possible, not only because of the precedent of *Star TV*, but also because of the very inadequate funding of the ABC and SBS by the current federal government.

At this time, the ABC cannot afford to digitize its television signal, and it still looks unlikely that it will be funded to do so. One wonders where this will leave the ABC, which is widely regarded as Australia’s most respected source of news and information (both as a broadcasters and netcaster), if the two major media groups tighten their grip on the Australian media.

If the law were to be changed to allow foreign competition into Australia in order to try to improve competition, in conjunction with the removal of the cross-media laws, then the most likely result would be the association of the Packer group with a large foreign media owner in the role of a silent partner. (Such an outcome was possible in 1992 with the bid for Fairfax by the Tourang consortium, which proposed the then long-time Packer associate, Mr Trevor Kennedy, as the managing director of Fairfax.)

The resulting company would probably come under the control of the Packer group, because of their local experience, and would of course not improve the diversity of ownership and control, nor the level of competition in the media.

Another issue in relation to foreign media entry in Australia is the vast concentration and agglomeration of media assets that is occurring worldwide, especially in the USA.

In his book, *The Media Monopoly* (1997 edition), Ben Bagdikian relates the following statistics: In 1983, 50 interlocked corporations owned more than 50 per cent of the media in the USA (these corporations include defence and weapons manufacturers). In 1997, only 10 corporations owned more than 50% of the US media. Such corporations include New Disney, Time Warner-Turner, and the huge telephone companies. This situation is worsening quickly and dramatically.

One can see the inherent conflicts of interest, especially of weapons manufacturers owning substantial media assets. Some would claim this has influenced the coverage of recent US military actions (for example, the general lack of coverage by the US media of the continuing US and British bombings in Iraq since last December), and even the actual government policy itself.

In the USA, new technologies, media convergence and aggregation has not resulted in more genuine competition, but much less. It has not worked in the public interest, it has allowed for the massive accumulation of media power, it has allowed conflicts of interest to occur in relation to the other substantial business interests of the corporations, and it has adversely influenced and distorted content.

The growing influence of the media is canvassed by Paul Virilio, the French writer on society, the media, politics and science. He has written (in books such as *Speed and Politics*, 1994) of the growing tendency throughout the world of the media and politics to be two sides of the same coin. He believes that the media is increasingly dictating to politics, leading progressively towards an autocratic arrangement. He sees a threat by the media to the proper functioning of politics, not only from the very powerful media owners (such as Mr Silvio Berlusconi in Italy), but also from the actual speed of the media compared to that of the political process. He compares the speed of the media's opinion polls compared to the speed of elections. For example, the recent decision by NATO countries not to send ground troops into Yugoslavia (rightly or wrongly) was clearly heavily influenced by considerations of how the media would react.

In this way, the proliferation of the media, including the emerging technologies, is making the issue of media regulation much more important than ever before. While no one would even want to try to restrain the development of media technology, which is an inert process in itself, one can quite rightly expect that media and political power will not be allowed by a democratic government to become progressively and massively concentrated in the hands of the very few.

It is relevant to discuss the Fairfax submission to this inquiry, as reported, especially the views of Professor Fred Hilmer, the recently appointed chief executive officer of Fairfax. Professor Hilmer apparently has had no media management experience prior to his surprise appointment by the board, led by chairman and long-time Packer associate, Mr Brian Powers.

In radio interviews in recent days (*The World Today*, ABC Radio, 11/5/99, and in an interview with Philip Clark, ABC Radio 2BL, 10/5/99) Professor Hilmer has displayed an seemingly naïve enthusiasm for the "phased removal" of the cross-media rules, in conjunction with increased open "access" to broadcasting markets, which he claims would bring about "a flowering and blossoming of competition" in the Australian media. Yet he has not convincingly explained how this would occur.

Opening access to media markets would not necessarily in itself lead to improved competition in this country, with its extremely high level of integration and aggregation of media, owned by two well-connected and very wealthy media groups.

Professor Hilmer talks blithely about how "anyone" should be allowed to take over Fairfax because "it's a free country." He even talks of Fairfax buying up other media assets if the cross-media rules were scrapped.

When it was pointed out to him that Fairfax would almost certainly be taken over by Mr Kerry Packer (who again made his intentions clear in an interview in the last few months) if the cross-media rules were scrapped, Professor Hilmer could only lamely reply that this was a matter for Mr Packer and the government. So much for "a flowering and blossoming of competition."

Professor Hilmer's speculation about a great new on-line future for Fairfax could suddenly end with the Packer group's open acquisition of it, followed by an aggregation of Fairfax with the Channel Nine/Microsoft on-line presence.

One could possibly form the opinion that Professor Hilmer has been employed by the now largely "Packer-friendly" board of Fairfax, in part because he has a prestigious name in competition policy, and is prepared to enthusiastically argue the following inconsistent case: (a) Fairfax and other smaller media companies would be able to thrive in a supposedly new enhanced competitive environment if the cross-media and foreign ownership rules were scrapped, and (b) it does not matter if the Packer group fully takes over Fairfax.

He seems to assume that concentration of media ownership and control is of little importance. He does not seem to appreciate the extremely high (if not impossible) barriers to entry in the newspaper market in particular.

Professor Hilmer stated that he believes the Australian Competition and Consumer Commission (ACCC) should be the arbiter of media acquisitions. However, the chairman of the ACCC, Professor Alan Fels, has stated many times that it is not particularly suited to monitoring an industry as complex, influential and sensitive as the media. The ACCC generally looks at competition as it effects economic matters, and usually on a market-by-market basis. In its present form, it is quite unsuitable to be the sole regulator of the Australian media.

Competition in the Australian media can only exist by restriction on the concentration of ownership and control. The call by Australia's major media groups to remove ownership and control regulations to allow for more competition, would actually paradoxically result in much less genuine competition, to the detriment of the Australian community as a whole.

RECOMMENDATIONS:

1. SHARE OF MEDIA VOICE POINTS SYSTEM

2. PUBLIC BENEFIT TEST

3. INVESTIGATING AND DISCIPLINARY AUTHORITY

4. ADEQUATE LEGAL DEFINITIONS OF CONTROL AND OWNERSHIP

5. DIVESTMENT

The following are proposals which could lead to improvements in the regulation of broadcasting in Australia.

1. New regulations could include a **Share of Media Voice** points system, similar to the points scheme in the British government's *Broadcasting Act, 1996*. This points system would have to apply to all media, and would of necessity have to be clearly defined, legally unambiguous and not open to circumvention. It would be allocated according to the spread, penetration and influence of different media, including emerging media.

Limits would then be clearly set to prevent proprietors from increasing their ownership beyond a maximum. There would need to be the power to make judgements relating to corporate and other strategies designed to by-pass the rules.

Such a system would operate somewhat like the current cross-media rules, except that it would be much more comprehensive, even-handed and would provide the flexibility to suit emerging trends in the media. Together with a Public Benefit Test, it would also be much more concerned with ensuring the public interest is upheld, while still allowing some flexibility in the ownership of different media assets.

2. A **Public Benefit Test**, also a feature of the British *Broadcasting Act, 1996*, would be applied to any proposed major media acquisitions and similar developments (such as a creeping increase of share ownership). If necessary in the public interest, this would be able to override the Share of Voice points system, owing to the complexity and difficulty of such a scheme to always reach an appropriate result.

The Public Benefit would include, but not necessarily be limited to, such factors as the Objectives listed in the BSA, involving the diversification of media ownership and control, and the plurality, quality and integrity of sources of information as they impact on social, cultural, multicultural, political, economic, geographical and other considerations.

3. An **Investigating and Disciplinary Authority** (or authorities), similar to those in the professions, would need to be established for the purposes of (a) supervising the Share of Media Voice points system and (b) deciding on the need for, and conducting, Public Benefit Tests. This body would operate in an open and fair manner, so that justice could be seen to be done.

The "sticking point" for all such regulatory systems is the integrity and courage of the members of the relevant authority/authorities. This is widely believed to be lacking at the present time, in part due to the influence of major media owners.

Any relevant authority would comprise members of proven integrity from a diversity of backgrounds, reflecting the community as a whole. While expertise would be required to allocate and interpret the Share of Media Voice points system, this process would still need to be overseen in an even-handed and transparent manner.

4. **Adequate legal definitions of “ownership” and “control”**, as they relate to the modern media, would need to be written. These would have to be able to withstand the sort of highly complex manoeuvres and robust legal challenges one sees these days from media owners. They may also have to withstand attempts at opportunistic reinterpretation from the government.

5. New regulations should require the **divestment** of media assets by the two major media players, in the interests of genuine competition and, thereby, in the public interest. The extent of this divestment would be a matter for the Authority, after extensive research and public debate.

CONCLUSION

The current BSA and associated legislation, especially as it is interpreted by the current ABA, is becoming increasingly inadequate to restrain the further concentration of media ownership and control. It is not adequately serving the public interest.

This is in part due to the lack of application of the cross-media rules in the Act to large areas of the media. It is also in part due to the influence wielded by the major media owners in Australia.

It is vital in a democracy that important sources of news and information be held in different and competing hands. The ownership and control of an increasingly larger proportion of the Australian media, together with the deliberate diminishing of the ABC and SBS national broadcasters by the federal government, would over time become an increasing threat to freedom of speech, genuine diversity of information and opinion, and, ultimately, to the proper functioning of democracy in Australia.

This represents a threat to our way of life which would be very hard to address after the event of a loss of control over broadcasting ownership. The power, wealth and influence that accrues to such media owners would render them virtually unassailable, and would tend to lead the country irreversibly towards an undesirable and undemocratic status.