

Network Ten Submission to the Productivity Commission Broadcasting Draft Report

Executive Summary

The submission addresses issues raised in the Productivity Commission's Broadcasting Draft Report regarding concentration of media ownership, audience reach limits and foreign ownership restrictions.

Network Ten's views on other major issues covered by the Inquiry are contained in further submissions by the Federation of Commercial Television Stations (FACTS).

Media ownership rules

Ten supports the introduction of a media-specific public interest test which will ensure plurality of ownership and therefore support diversity of views and opinion.

Ten supports abolition of the existing one station per area rule, provided appropriate diversity protections are in place.

Foreign investment restrictions

Ten supports the Draft Report's recommendation to abolish media-specific foreign investment limits.

Ten calls for urgent action to address the limitations placed on foreign managed investment funds seeking to invest in Australian media.

Audience reach limits

Network Ten strongly supports abolition of the 75% audience reach rule as the change could potentially benefit both industry and consumers.

1. Media Ownership

(1) Network Ten welcomes the Productivity Commission's recognition of the strong public interest in promoting diversity within the "market of ideas".

(2) The media plays an important public interest role in provoking and reflecting views on social, political and cultural issues. The best protection against undue influence is to ensure that consumers have access to many opinions. Yet diversity of opinion is difficult to regulate for a number of reasons.

(3) Regulating for diversity of views at the broadcast or print level is problematic as the required measures are neither objective nor reliable. For example, measures of editorial independence or "numbers of opinions" within a particular media outlet would be subjective and transient. At its worst, such regulation of content could act as a form of censorship, thus contradicting the initial objectives of the legislation.

(4) On the other hand, regulation which promotes plurality of ownership is the most effective and efficient way of creating an environment to support diversity of views. Diversity of ownership will help promote an independent journalistic culture, additional employment paths for journalists, and most importantly, will guard against the creation of an environment where the power of influence may be misused.

(5) For these reasons, Network Ten supports the Draft Report's finding that "diversity of opinion and information is more likely to be encouraged by diversity in the ownership and control of the more influential media" (page164).

(6) Whatever the final form of regulation to ensure diversity in media ownership, the following general principles should apply:

(7) *The rules should prevent:*

- *Actions which increase ownership concentration beyond a designated threshold*

(8) *The rules should enable:*

- *Plurality of ownership in influential media*
- *Innovation by new and existing players in new media*
- *Ongoing monitoring to ensure that the regulatory regime reflects changes in levels of influence*

(9) *The regulatory mechanism must operate objectively and transparently.*

1.1 Public Interest Test

(10) Network Ten supports the inclusion of a media-specific public interest test under the Trade Practices Act to be applied to consideration of media acquisitions or mergers. The aim of such a test is to promote plurality of ownership in Australian media.

Defining ownership/control for the purposes of the public interest test

(11) For the purposes of applying the public interest diversity test, the present definition of control contained in the Broadcasting Services Act should be used to identify ownership of the relevant media entities.

Defining the media market

(12) The media market should be defined to include both content providers and distributors. As a result, the market would be defined to include free to air and pay television, newspapers, radio, internet sites established in Australia, internet portals targeted at Australian users, datacasting services and magazines.

Elements of the public interest test

(13) In order to facilitate objective, transparent regulation, the test elements should be clearly quantifiable wherever possible. While it is difficult to avoid all subjective criteria, for the most part the measures listed below can be measured objectively. For example, while not deemed sufficient on its own, share of advertising revenue can nevertheless operate as a useful indicator of influence, when considered in combination with other factors.

- (14) i) Audience share
- Percentage of national audience share
 - Percentage of audience share in the relevant geographic area

Size of audience share is an important indicator of potential influence, although not the only indicator. Both national and geographic tiers should be considered separately to assess influence at local and national levels.

- (15) ii) Relative influence
- Percentage of news, current affairs and editorial in content

It is important to attempt to identify the amount of material which is potentially able to exert influence on matters of public significance. These areas include media in which there is an opportunity to editorialise the news, particularly with newspapers, current affairs programs and radio.

- (16) iii) Potential to exercise market power across media niche segments
- Share of advertising revenue

While an economic market issue, rather than relating to the market for ideas, share of advertising revenue is another indicator of concentration in a particular geographic area (or nationally). It is not sufficient to leave this area to general competition law as the ACCC has previously indicated its position that each media niche is a separate market.

- (17) iv) Alliances which may increase level of influence
- Partnerships, joint ventures or understandings which may increase scope of influence

Partnerships which affect content should be differentiated from those activities purely focused on operational matters, for example, sharing back office facilities to improve efficiency.

1.2 One Station Rule

(18) The Draft Report recommends abolition of the rule prohibiting ownership of more than two radio stations in any licence area. The report seeks further comment on the rules prohibiting ownership of more than one television station in any licence area.

(19) As technology blurs the barriers between media, telecommunications and other infrastructure industries, regulation in these areas must focus on the outcome, rather than the technical medium, if it is to be effective. Abolition of the one station rule would be in keeping with the goal of developing technology-neutral regulation, which does not automatically distinguish between different methods of delivery.

(20) Ten supports abolition of the existing one station per licence area rule, providing an appropriate regulatory regime is in place to promote diversity of media ownership

(21) In the absence of the one station rule, media diversity would still be protected through the existing provisions of the Trade Practices Act and the introduction of a media-specific public interest test as outlined above.

2. Foreign Investment

(22) Network Ten supports the Draft Report's recommendation to abolish media specific foreign investment rules.

(23) These would include the limits contained in the Broadcasting Services Act and those contained in the Foreign Acquisitions and Takeovers Act and foreign investment guidelines.

(24) In keeping with the goal of technological neutrality, the abolition of media specific foreign investment rules should also include the abolition of existing restrictions for investment in Australian newspapers.

Benefits of foreign investment

(25) As outlined in Ten's previous submission, foreign investment provides much needed funds to promote growth, innovation and expansion in our local media. Foreign participation can also assist Australians to compete in the global marketplace, through access to international expertise and capital.

(26) Foreign investment also increases liquidity and depth in the media market, which is of benefit to all Australian shareholders.

(27) The most important public benefit arising from increased foreign investment will be its contribution to diversity. In our relatively small market, too few Australian companies or individuals have the scope to be primary investors in large-scale media such as broadcasting. As a result, plurality of ownership will continue to be difficult to ensure without increased foreign investment opportunities.

Major investments will continue to be scrutinised

(28) The abolition of media specific foreign investment rules will not result in an automatic green light for all foreign investments.

(29) General foreign investment policy requires prior approval for acquisitions of substantial interests in existing Australian businesses over \$50 million or new businesses involving a total investment of \$10 million or more.

(30) As a result, major media investments would still be subject to Government scrutiny to ensure the national interest is served.

Cultural benefits

(31) In the absence of media specific foreign investment rules, promotion of cultural objectives will continue to be served by other mechanisms, whether these be market driven (consumer demand) or policy-related (such as codes of conduct).

(32) Indeed, increased foreign partnerships may provide new sources of production funding and facilitate the export of Australian culture through international sales opportunities.

2.1 Foreign managed funds

(33) Network Ten strongly supports legislative amendment of the Broadcasting Services Act to allow for unrestricted investment of Australian sourced funds managed by foreign managers.

(34) Network Ten urges that action be taken as soon as possible to facilitate this investment, regardless of the outcome of other foreign investment recommendations.

(35) Significant policy changes, such as the abolition of all media specific foreign investment restrictions, are likely to require a considerable process of consideration and consultation by Government on receipt of the Commission's Final Report.

(36) However, the amendments relating to foreign managed Australian funds have several precedents and are relatively straightforward.

(37) For that reason, Network Ten urges the early introduction of the required legislative amendments.

3. Audience Reach Rule

(38) The Draft Report seeks further evidence on the effects of the audience reach rule on local programming and network efficiency.

(39) Network Ten advocates the abolition of the audience reach rule for the following reasons.

Digital technology will change business strategies

(40) The transition to digital television will offer new flexibility in broadcast operations but will impose a substantial cost burden on broadcasters.

(41) The new technology offers new ways of servicing national and local markets. For example, the technology could enable certain content to be sourced locally and packaged nationally, offering programming flexibility.

(42) However, many potential efficiencies will only be achievable following substantial capital investment in the new technologies.

(43) These considerable capital costs associated with the introduction of digital television will be particularly significant for smaller operators with fewer opportunities for realising economies of scale.

(44) In a rapidly changing industry, an arbitrary limit on investment may ultimately limit the options available to regional broadcasters facing the challenges of a new era.

The presence of regional operators does not guarantee more local content.

(45) The presence of a regional operator does not guarantee local news content, as regional operators take different strategic approaches in different areas.

(46) For example, Telecasters Australia Limited (TAL) screens local news in north Queensland through its Townsville bulletin but provides no local news bulletin in south Queensland and northern NSW.

(47) Southern Cross Broadcasters produces no local news bulletins for country Victoria and the news services for rural NSW is produced out of Canberra.

(48) As TAL explained in its submission to the Productivity Commission (No. 32), "local content is only currently provided where it is commercially justifiable."

(49) Regardless of the size of the broadcaster involved, decisions on content will continue to be made on the basis of audience interests, community standards and commercial considerations. However, given the capital costs involved in the transition to digital television, the larger networks may ultimately have more resources to direct to local programming than regional operators struggling with transition costs.

Potential benefits for consumers

(50) The abolition of the rule may in fact benefit consumers, as major networks lead the way in exploring new opportunities for digital television.

(51) Regional broadcasters will face continued cost pressures over the digital transition period. In fact networks with greater resources may in fact provide a better service to local communities due to greater resources and new technologies that may allow increased localism via centralised technology.

(52) For example, while the major networks will have the capacity to roll out new interactive services across Australia, regional operators may have less capacity to offer new services to rural consumers, given the substantial costs and low economies of scale.

Abolishing the rule will not automatically result in the overall change to industry structure

(53) The abolition of the audience reach rule would not automatically change current industry structure.

(54) While Ten believes in the benefits of economies of scale, other broadcasters may take a different approach. For example the Nine Network has chosen not to buy into Adelaide or Perth, despite the fact that the Network has not reached the 75% limit.