

NEWS LIMITED

Incorporated In South Australia
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**COMMENTS ON THE DRAFT REPORT
OF THE
PRODUCTIVITY COMMISSION
INQUIRY INTO
AUSTRALIA'S BROADCASTING
LEGISLATION**

FEBRUARY 2000

COMMENTS ON DRAFT REPORT OF PRODUCTIVITY COMMISSION ON BROADCASTING

1. News Limited (News) congratulates the Productivity Commission on its draft report. The report clearly acknowledges the rapidly changing nature and structure of the media and of related industries such as telecommunications, which is particularly significant as Australia heads into a global digital communications environment.
2. News agrees with most of the comments and recommendations made in the report. There are, however, a few issues on which we wish to comment specifically. These are set out below.

3. The Road to Digital Television

Draft recommendation 6.1

The objective of the conversion scheme should be to facilitate consumers' adoption of readily available and affordable standard definition equipment.

- *High definition transmission should be permitted but no longer be mandated.*
- *Additional audio standards should not be mandated.*

3.1. News has always taken the view that mandating HDTV as a sole transmission standard is anti-competitive and technology restricting and that it needs to be reformed. News supports the high definition and standard definition simulcast that has been selected by Cabinet. This simulcast will bring the maximum benefits, most quickly, to the Australian public.

3.2. If the HDTV mandate were to be removed, the basis of the free spectrum loan to each free-to-air broadcaster would no longer be valid. In this scenario (being the removal of the HDTV mandate), the spectrum not required for a standard definition digital and analog simulcast (excluding any enhancements) should be returned immediately for competitive assignment eg by spectrum auction.

Draft recommendation 6.2

Regulatory restraints on new digital services should be minimised.

- *Datacasting should be defined liberally. Datacasting services should not be constrained by a regulatory distinction between datacasting and broadcasting.*
- *Free to air multichannelling and interactive services by commercial and national broadcasters should be permitted.*

During the simulcast period, commercial and national broadcasters should not be permitted to offer subscription or pay-per-use services using spectrum provided to them under the digital conversion plan.

- 3.3. News does not wish to comment on the Commission's views on the definition of datacasting, our position on that is well known. We do wish to comment though on the multichannelling component of the recommendation.
- 3.4. In the context of the Cabinet's restrictive definition of datacasting, the Commission's recommendation regarding multichannelling should not be implemented. To implement the proposal would markedly increase the competitive advantages already enjoyed by the incumbent commercial free-to-air broadcasters who would be able to offer multichannel programming as well as enhancements and datacasting. It is too difficult for start-up narrow businesses to compete against incumbent one-stop shops.
- 3.5. Of course, during any period that multichannelling is prohibited, commercial and national broadcasters cannot use the rights to broadcast enhanced programming and limited enhancements (*expanded broadcasters' rights*) as a backdoor to multichannel. To ensure that this prohibition is effected, there would need to be limits placed on the type of content which can be offered within the expanded broadcasters' rights for example, time limits on streamed video, except if it is a different camera angle of a program being simulcast in analog and digital formats.

4. Ownership and control

The Commission seeks comment on the desirability of removing all media specific restrictions on foreign investment.

- 4.1. As stated in our previous submission, there are strong reasons to support the Commission's recommendations regarding the removal of all media specific restrictions including those on foreign investment, whether included in the *Broadcasting Services Act* or FIRB policy. This would significantly simplify the regulatory environment and streamline administrative processes thereby encouraging investment.
- 4.2. If this proposal were adopted, the Foreign Acquisitions and Takeovers Act would still apply to certain acquisitions of media assets and equity in media companies. Media-specific policy of FIRB however would no longer apply. Consequently, acquisitions of at least a certain size would need approval on a case by case basis. FIRB and the Treasurer would prohibit a proposal only if they were satisfied that the proposal is contrary to the national interest.

5. Cross-media options

A media-specific public interest test would be crucial to the success and practicality of this option. These test criteria should be legislated. The Productivity Commission seeks comment on the elements of a media-specific public interest test.

- 5.1. News does not agree that a media specific public interest test needs to be legislated. This is supported by two facts.
- 5.2. Firstly, we need to accept the important role played by new media such as the Internet in providing diversity in sources of information. The Commission may have undervalued this in its analysis. Consider the role of the Drudge Report in breaking the Monica Lewinsky scandal to the world. To the extent the Commission believes that the Internet is not accessible to enough people to elevate its influence to a sufficiently relevant level, consider that terrestrial digital transmission of Internet sites and material to television sets will increase the availability of that content dramatically.
- 5.3. Secondly, it is well within the ACCC's power to protect competition (ie diversity) in the supply market for information services. It is only necessary for the ACCC to recognise this broad market for it to exercise its existing powers to protect diversity. The ACCC is, above all, a regulator driven by the economics of a situation. Economic considerations made by the ACCC inevitably include the amount of choice presented to consumers. This is directly related to diversity. If choice and diversity are damaged and that damage is not outweighed by other economic benefits, the ACCC would not approve the proposal. Put simply, the ACCC's economic rationale already protects the public interest concerns.
- 5.4. Furthermore, cross-media restrictions apply today only to certain parts of the media industry namely free-to-air television, newspapers and radio. The same restrictions do not apply to magazines, subscription television and Internet services, as examples. The proposal to apply a new test for mergers across the entire industry would increase the regulation of the industry rather than decrease it. In our opinion this would be contrary to the general aims of the Productivity Commission.
- 5.5. Implementation of the test would be problematic also. The *media industry* is constantly changing. Consider as an example the merger between Time-Warner and AOL. Would the media-specific test be applied to the latter? Does the media industry include telecommunications companies and IT companies? Does it include other companies such as power companies that might provide infrastructure for content to be delivered into the home?

Draft recommendation 8.4

That only after the following conditions have been met:

- ***removal of regulatory barriers to entry in broadcasting (see recommendations 4.4 and 7.1), together with the availability of spectrum for new broadcasters; and***
 - ***abolition of restrictions on foreign investment, ownership and control in the BSA; and***
 - ***amendment to the Trade Practices Act to provide for a media-specific public interest test to apply to mergers and acquisitions;***
- the cross-media rules should be removed.***

5.6. The effect of the Commission's draft recommendation would be:

5.6.1. to prohibit, at least for some time, companies which have already been investing in Australia from expanding their capital base. This would, in turn, have allowed them to compete on a level playing field with multinational companies, both locally and internationally and to invest still further in Australia; and

5.6.2. to create a scenario which favours foreign companies wishing to expand into Australian media at the expense of those companies which have already committed to Australia.

5.7. Essentially this means that the already uneven playing field would become even more imbalanced. The imbalance would act against those companies, Australian and others, (eg PBL, News, and Fairfax) which have made and continue to make significant commitments and contributions to Australia. The beneficiaries would be foreign companies not yet owning significant media assets in Australia. This will not reflect well on Australia as a place to invest in the long term.

5.8. News believes that the only way to ensure a level-playing field is that all restrictions on ownership (foreign ownership restrictions, cross-media restrictions and restrictions as to audience/geography) should be removed simultaneously. This will ensure that no person is, or class of persons are, favoured to the detriment of any other person or class of persons.

6. Other comments

6.1. For the sake of completeness News would like to clarify some points made by the Commission in its draft report. In the section headed *Australian media businesses*, it says News owns 50% of Mushroom Records, when in fact it is 100%. Also, PBL has exercised the Fox Sports option so that it now owns 50% of Fox Sports.