

**SUBMISSION BY**

**WATTLE PARK PARTNERS**

**TO**

**THE PRODUCTIVITY COMMISSION**

**INQUIRY INTO THE**

**BROADCASTING SERVICES ACT 1992**

**JULY 1999**

**SUBMISSION BY WATTLE PARK PARTNERS PTY LTD  
TO THE PRODUCTIVITY COMMISSION INQUIRY INTO  
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**EXECUTIVE SUMMARY**

The convergence of technologies and services is irrevocably changing the nature and structure of the media market, rendering some traditional concepts and regulatory interventions obsolete.

In view of the uncertainty as to the final direction of these changes it would be inappropriate at this stage to take a regulatorily determinist position or to remove all regulatory safeguards.

However it may be appropriate to adjust the regulations to the extent that they impede the evolution of the industry and prevent Australian companies from participating in the benefits and opportunities that emerge.

An integrated set of adjustments to media and communications policy is recommended that focus on access to and capture of the eyes and ears of audience and apply those principles in a manner that is consistent with wider industry and competition policy. They include that :

- the decision to mandate HDTV be amended to give broadcasters the option to use the digital capacity to deliver multichannel services in standard definition format consistent with developments in Europe and elsewhere and that the distinction between datacasting and other service types be removed
- if the HDTV decision is amended and multichannelling permitted, consideration also be given to subsidisation of set top IRD's to accelerate transition to digital terrestrial television and access to the enhanced services that it can offer
- if a ceiling on foreign equity investment in Australian media enterprises is to be retained the number should be an aggregate 49% company interest, holding the equity level below an absolute majority which must, prima facie, deliver control
- to remain consistent with wider industry policy consideration could also be given to limiting individual foreign ownership to 14.99%. just below the threshold 15% that is currently deemed to place a person in a position to exercise control of a licence
- if, for reasons of national sovereignty, restrictions on foreign participation in Australian commercial television broadcasting are to be retained, the existing prohibition on control should also be retained

- regulatory oversight of foreign ownership and control provisions be vested with the Treasurer in consultation with the *Foreign Investment Review Board* operating under the provisions of the *Foreign Acquisitions and Takeovers Act*
- the Australian Broadcasting Authority or other suitable agency undertake further research to determine mechanisms to measure market share as a means to determine appropriate ownership and control thresholds within and across media
- the existing cross media limits in the *Broadcasting Services Act 1992* be replaced by sector specific provisions in the *Trade Practices Act 1974* that : provide regulatory guidance to the Australian Competition and Consumer Commission; establish threshold market shares for individuals and companies across market sectors; and adopt a wide market definition when considering matters affecting competition in the media communications market
- if it is decided to retain cross-media ownership limits the limit of a company interest permitted in any cross-holdings should be reduced from 15% to 5%
- the control provisions of the *Broadcasting Services Act 1992* be reviewed to ensure that they are robust and that they are consistent with other arms of contemporary commercial law
- the "associates" provisions of the *Broadcasting Services Act 1992* be amended to equate with the "associates" provisions currently pertaining in Australian Corporations Law and the "related party" provisions of Taxation law.
- a new "media communications market" be defined that embraces carriage and content provision including : carriage services provided by terrestrial television broadcasters, satellite operators, Pay TV broadcasters, MDS and other wireless infrastructure operators, telecommunications companies (fixed link and wireless), backbone network operators, distribution companies; and content services provided by TV broadcasters, Pay TV content service providers, newspaper and magazine publishers, radio services, production houses, sporting bodies etc
- responsibility for various aspects of media regulation be re-allocated between agencies including : ownership and control matters to the Australian Competition and Consumer Commission; foreign ownership limits and control issues to be administered under the *Foreign Acquisitions and Takeovers Act*; planning and licensing matters to the Australian Communications Authority; and content matters across all media to a restructured Australian Broadcasting Authority that incorporates the Office of Film and Literature Classification and the Press Council.

**SUBMISSION BY WATTLE PARK PARTNERS  
TO THE PRODUCTIVITY COMMISSION INQUIRY INTO  
THE BROADCASTING SERVICES ACT 1992**

**1. INTRODUCTION**

The Productivity Commission Inquiry arises from the Government's commitment to the States under the Competition Principles Agreement to review legislation for its anti-competitive effects. The Commission's terms of reference require it to advise the Government on practical courses of action to improve competition, efficiency and the interests of consumers in broadcasting services. The Commission is required to pay particular attention to balancing the social, cultural and economic dimensions of the public interest and have due regard to the phenomenon of technological convergence to the extent that it may impact upon broadcasting markets.

Wattle Park Partners is a Canberra based consultancy that provides strategic advice and analysis to the telecommunications and broadcasting industry. Its principal, Chris North, played a key role in formulation of Government reforms to broadcasting and communications policy and legislation in the early 1990's. He was head of the review team that developed the policy framework for the *Broadcasting Services Act 1992*. Wattle Park Partners is therefore well placed to provide informed comment on the rationale for and the shortcomings of the 1992 Act.

In proposing options for regulatory change Wattle Park Partners has been mindful of the need for those options to be

- **simple** to ensure understandability and acceptance
- **measurable** to ensure that they can be accurately quantified without ambiguity
- **technology neutral** to ensure that they are neither determinist as to future directions of technology nor distortionary in impact, and
- **flexible** to accommodate changing market conditions and technologies.

This submission does not seek to address all aspects of the BSA as they act to regulate the media. Rather it concentrates on those issues that are considered to be the key areas of economic regulation - market access, market definition, ownership, control - and the extent to which that regulation impacts on market structure, impedes competition and competitiveness and distorts market outcomes.

It puts forward a new paradigm for elements of media regulation comprising

- a redirection of regulatory focus towards infrastructure ownership and access issues to ensure economically efficient use of communications infrastructure, facilitate competition between content service providers and minimise the risk of excessive concentration of market power through vertical and horizontal integration
- changes to arrangements to implement digital terrestrial television in a manner consistent with international developments and that will accelerate the transition
- recognition of the changed media landscape by redefinition of the media market into a wider "multimedia" communications market that better reflects the changing nature of the industry where competition is for audience time and the market players embrace carriage and content dimensions including
  - : carriage services provided by terrestrial television broadcasters, Pay TV operators, satellite operators, MDS and other wireless infrastructure owners, telecommunications companies (fixed link and wireless), backbone network operators and program distribution companies
  - : content services provided by TV broadcasters, Pay TV content service providers, radio broadcasters, newspaper and magazine proprietors and production houses
- examination of mechanisms to identify market shares and establish thresholds for the participation of individual companies in the multimedia marketplace in order to encourage plurality and diversity
- strengthening of the concept of control through association
- revised roles for regulatory agencies to ensure consistency, transparency and better integration of regulations.

## **2. CHANGING MEDIA LANDSCAPE**

Each decade of the last half of this century has seen major developments in the media - the most pervasive and persuasive of all has been the onset of television.

The 1950's saw the introduction of black and white television in Australia, to join newspapers and radio as the major media available to the public. The 1960's saw the onset of Australian programming, with our own home grown programs produced for the first time. The 1970's saw the arrival of colour television - 25 years

later more than 98 per cent of Australian homes have it, while more than 80 per cent have another 1970's innovation - video cassette recorders.

The 1980's and early 1990's saw the peaking of the dominance of television, with 70 per cent of Australians watching television as their sole source of daily news, and the arrival of Pay Television . After only three years the Pay TV market boasts 1 million subscribers or some 15% market penetration providing more than 70 English language and ethnic Pay TV channels, including six news channels – BBC, CNN, CNBC, Sky News, Fox News and Fox Sports News.

The market growth of Pay TV still has some way to go when compared to an OECD average penetration rate of 34.8%. In Australia subscription revenues comprise 25% of total television market revenues. That figure is as high as 46% in the USA with the OECD countries average running at 32% in 1997<sup>1</sup>. This shift in how we access and pay for our media is dramatically effecting spending patterns of consumers and advertisers alike, reinforcing substitutability between the mediums.

As the 90's draw to a close and the new millenium approaches we are witnessing the emergence of perhaps the greatest and most profound innovation of all - the Internet .

In Australia Internet use grew from 262,000 households or 4% of all households in 1996 to 1.3 million or 19% of all households in 1998. In 1997 an average of 172,000 people each day accessed the Internet via a home computer, spending an average of 75 minutes on-line.<sup>2</sup> According to the Australian Bureau of Statistics nearly 268,000 Australians used the Internet last year to make 1.4 million private purchases, with 83% also paying on-line and 64% per cent spending their money offshore - a trend that has significant long term consequences for some local businesses. While only \$14 million was spent last year on Internet advertising, according to Internet analyst, [www.consult](http://www.consult), it is expected to more than triple to \$40 million this year, and rise to \$160 million next year and \$405 million in 2001 – budgets that are being sliced from traditional media advertising. Trends in the USA are more pronounced where the Internet economy is currently estimated at \$US 300 billion and directly employing 1.2 million people.

The demographics of Internet usage provide valuable insights. For example, males under 25 years of age are now using the Internet during the evening more than aggregate time spent watching free to air television, listening to the radio and reading newspapers. The Ten Network that has focused much of its market strategy on attracting this demographic is currently experiencing the fallout of this trend through falling ratings and revenues. The generational shift in use of media and leisure time indicates that the pace of change will accelerate as the population ages, reinforcing the importance of an appropriate competitive environment.

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<sup>1</sup> *OECD Communications Outlook 1999*, OECD. Paris

<sup>2</sup> Australian Bureau of Statistics. *Australian Social Trends - Information Technology in the Home*. June 1999. Canberra.

Changes in the media market and its revenue sources are impacting on the budgets of all media proprietors and advertisers, not just the Ten Network. While Australian television broadcasting market advertising revenue increased by 4% between 1994 and 1998, its market share of total advertising revenue declined by 2.2% between 1995 and 1997 against an OECD average decline of 0.28%<sup>3</sup>.

Further compounding the pace and complexity of change, we are about to experience the introduction of digital broadcasting in television in 2001. The technology has the capability to carry an additional 40 new channels of television. This next step in the communications revolution has broken down the final barrier between the computer, the telephone and the television, creating a single broadcast/on-line vehicle for people of all ages and finalising the process of convergence of technologies and services.

Newspapers are also being affected by these changes, with many publishers creating web sites and shifting key parts of their classified advertising to the Net. Radio is also moving towards digital broadcasting and narrowcasting using the FM band.

It is impossible to forecast what technologies, what services and which players will be winners and losers.

Alvin Toffler presciently coined the metaphor to best describe the current technology driven chaos in his book "The Third Wave" when he personified it as the outgoing wave of the industrial age colliding with the incoming wave of the information age. We are caught in the ebb and flow of these vastly different and powerful stages in human economic and societal development.

It is similarly impossible to accurately forecast the impact of these changes on the competitive landscape. Some extol the virtue of "abundance" in the digital age that render obsolete the need for ownership rules. They contend that, in a digital age and in global markets, there will be so many sources of information, so many methods of service delivery and so many media proprietors that regulation of ownership will become irrelevant.

However there is some evidence to the contrary. As discussed at Section 8 (Redefining the Market) below, in major markets key players are consolidating and the number of players diminishing rapidly as conglomerates seek to vertically integrate their operations to establish an "end to end" service to consumers where they control both carriage and content.

Some cite as evidence of plurality an increased number of radio and television licences, Pay TV licences, newspapers and magazine titles available in the Australian market. They do not address the ownership of those licences, an examination that discloses very few major players that have control of the eyes

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<sup>3</sup> *OECD Communications Outlook 1999*, p.119. OECD. Paris

and ears of the majority of audience. For example in Australia there are effectively only :

- 3 commercial TV operators (controlling all programming as regional operators are akin to franchisees)
- 2 newspaper groups
- 2 major national radio networks
- 1 Pay TV operator
- 2 film/theatre distributors.

There is a similar concentration of major sporting and gaming rights in one or two hands. These players are operating in a market for audience time, varying their product mix to optimise market reach and maximise market size. The plethora of titles and specific subject matter is a consequence of improved methods of production and distribution that has enabled a disaggregation of previously generic offerings (such as a TV broadcast schedule, a generalist newspaper or general interest magazine) into sub-components or niche interests. This disaggregation of content serves the consumer interest by enabling individuals to more readily access specific areas of interest or entertainment that suits their individual needs.

While no one can foresee the outcome of these changes many are gambling on what it might be. The feeding frenzy on Internet stocks is a case in point. The wiser analysts including Allan Greenspan and Warren Buffett are preaching caution. The wiser commercial heads are separating out those Internet related components of their business where the market continues to impute an inflated value and realising that value through IPO while prices remain unsustainably high. Even Bill Gates' private fortune is being invested not in high technology or Internet stocks but in agribusiness and oil.

It would be inappropriate to take a regulatorily determinist stance at this point in time when technologies are evolving, markets are restructuring and society is adjusting. It would be similarly inappropriate to remove all regulatory safeguards when market outcomes are unknown. However it may be appropriate to adjust the regulations to the extent that they impede the evolution of the industry and prevent Australian companies from participating in the benefits and opportunities that emerge.

An integrated set of principles are needed for media and communications policy that focus on access to and capture of the eyes and ears of audience and apply those principles in a manner that is consistent with wider industry and competition policy.

### **3. DIGITISATION and ACCESS**

Any revision of ownership rules or structure in the media market must contemplate the transition to digital technology and the importance of access to



carriage services. Policy decisions taken to date have been technologically and structurally determinist and have put Australia out of step with world developments. Those decisions risk delaying uptake of digital terrestrial television in Australia, adding significantly to its cost to industry and consumers and inhibiting access by content service providers to the carriage services.

### *Digitisation and Convergence*

In Australia the process of conversion from analogue to digital technology has accelerated in recent years. By next year all mobile telephone services will be digital. The fixed line telephone network has undergone significant digital upgrades including installation of a digital, optic fibre backbone, conversion of switching systems to digital and introduction of Integrated Services Digital Network (ISDN), Asymmetric Digital Subscriber Line (ADSL) and other digital technologies that deliver a commensurate upgrade in the standard of service offered and system capabilities. Satellite Pay TV has been fully digital to the set top box since 1996 with digital radio and other music services also being offered via the satellite system. A standard for digital terrestrial radio broadcasting has been set and services will be progressively introduced over the next few years. The Hybrid Fibre Coaxial (HFC) cable networks deployed by Telstra and Optus are still carrying analogue Pay TV but are capable of digital upgrade to offer up to 300 TV channels, high speed Internet access (at 10 MBps) and digital cable telephony. The Internet is fully digital, except for the last link from modem to PC or TV and is streaming TV, radio, newspapers and data over the world wide web using the digital Internet Protocol (IP) format. The final link in the digital chain is conversion of terrestrial television transmitters and receivers to full digital operation beginning in 2001.

The result is that all communications technologies are capable of carrying voice, video and data services delivering the much vaunted phenomenon of "convergence"

- of technologies (cable, PC, satellite, telephone, television, radio, mobile phone) to deliver the same service thereby removing the inhibition of scarcity
- of services where each technology platform can deliver a number of different services including voice, fax, Internet, video, and data, placing pressure on service providers to better exploit or control delivery capacity
- of communications enterprises where each can no longer remain a telephone company, a newspaper proprietor or a television broadcaster as vertical and horizontal integration have become the key to market power.

## *Convergence and Access*

The convergence phenomenon, the importance of access and the need to take a wider market view in the new communications environment were central themes in the OECD's latest report *Communications Outlook 1999*, where it said in relation to carriage services that :

*"The substitutability between communications networks, as well as features of complementarity, implies a policy which allows bandwidth expansion and technological innovation in infrastructure to take place in a competitive environment which is commercially driven....."*

*If governments place high priority on the development and diffusion of electronic commerce and the creation of a large customer base, then the major challenge they face is to stop viewing the different communications network infrastructures as different sectors or markets. As far as electronic commerce and the Internet are concerned, an increasing number of OECD countries are beginning to debate whether policy needs to deal with communications infrastructure as part of a single communications sector where a specific relationship exists between services and networks.*

*Reformulation of specific regulations applicable to broadcasting networks and to telephone and data networks is difficult but necessary. The economic inefficiencies that often occur with limited competition in infrastructure can retard growth ..... Regulators ought therefore to review and examine how the process of market restructuring already underway in telecommunications can be extended and thus allow the development and integration of generic networks that can provide and support all types of services, including entertainment, telephony and electronic commerce."<sup>4</sup>*

Policy decisions taken to date to implement digital terrestrial television in Australia appear to be inconsistent with contemporary thinking within the OECD and with emerging market realities.

### *Digital Terrestrial Television Decision*

The *Television Broadcasting Services (Digital Conversion) Act 1998* sets out the regime for conversion to DTTB. The regime flowed from the 1997 recommendations of a Digital Terrestrial Television Broadcasting (DTTB) Specialist Group to, inter alia, :

- adopt a single system standard for DTTB

<sup>4</sup> *OECD Communications Outlook 1999*, p.42-43. OECD. Paris

- implement DTTB in Australia with digital high definition television (HDTV) capabilities available from the outset, and
- provide all existing licensed commercial and national television services with access to a full 7 MHz bandwidth DTTB channel.

These recommendations appear to derive from the traditional view of broadcasting as a unique and discrete industry and reflect a perception as to where DTTB may be heading in terms of technology and service delivery. As with most attempts to second guess the future, they risk being wrong and distorting market outcomes.

Digital television broadcasting transmitters have the capacity to transmit either a High Definition Television (HDTV) picture or to transmit multiple programs at the same time using the same amount of radiofrequency spectrum as used for analogue television. Digital television also allows any residual transmission capacity to be used to transmit data or information, either linked to programs or independently.<sup>5</sup>

HDTV requires a large amount of spectrum, limiting the capacity of service providers to multichannel or offer data services. HDTV has been available for more than a decade but has so far proven sufficiently uneconomic or commercially unattractive to not warrant large scale rollout. Australia is the only country to mandate HDTV. We have not learned the lessons of B-MAC (a unique outback satellite system mandated in 1984), satellite Pay TV and the HFC cable rollout by Optus where choice of unique technologies in a small market has put industry and consumers at an enormous disadvantage.

The decision to mandate HDTV was influenced by trends in the USA in the mid-1990's, although even the USA provided its broadcasters with flexibility to choose between service options. The case for HDTV in the USA is much stronger because of the relatively poor standard of existing television reception using NTSC analogue technology derisively described in industry circles as "Never Twice the Same Colour". There will be a quantum leap in picture quality when digital technology is introduced. However circumstances in the USA have changed in a very short time. Where commercial decisions between multi-channeling or HDTV have been left to the market, the trend is clearly to multi-channeling and interactive services.

Europe and the United Kingdom did not mandate HDTV and most EC countries have chosen not to introduce it in the medium term. They are developing standard definition (SDTV) systems, focussing on multi-channeling and the opportunity to provide enhanced services. This is expected to accelerate uptake

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<sup>5</sup> Broadcasters converting to digital will have the capacity to transmit additional audiovisual entertainment and datacasting services. However, this capacity is subject to specific limitations. Broadcasters may not commence other audiovisual or datacasting services until a date to be fixed by proclamation.

as consumers will be able to purchase a far cheaper set top box to access new services rather than replace their existing TV receiver.

While Australia took its policy direction from trends in the US, it adopted the European Digital Video Broadcasting (DVB) technology standard to deploy HDTV. However as Europe is not going down the HDTV path, they will not be manufacturing HDTV sets to the DVB standard on a large scale. Access to equipment will therefore be limited. This problem will be compounded by our unique choice of bandwidth. Australia uses carriers with 7 MHz spacing whereas the US uses 6 MHz and the UK 8 MHz.

Digital reception equipment, whether it be in a set top box or integrated into the television receiver, will be unique to Australia. This will deny to Australia the economies of scale available in larger markets, will delay availability of chipsets and customer equipment, deny us access to export markets should any local manufacturers emerge and drive up the cost to industry and consumers. The decision to mandate HDTV should be undone before it is too late.

#### *A Better Path to Digital Terrestrial Television*

An alternative to mandating HDTV is to provide broadcasters with a discretion to either deliver digital Standard Definition digital TV (SDTV) with multichanneling to a uniform Integrated Receiver Decoder (IRD or set top box ) or to "go the full Monty" and provide full HDTV to a wide screen receiver. The regime should also remove the artificial definitional barrier between multichanneling, broadcasting and datacasting that only serves to distort market outcomes.

Both Telstra and Optus are denying access by potential competing content service providers to their cable and satellite infrastructure despite the access regime for telecommunications carriage services embodied in the *Trade Practices Act 1974*. The suggested approach to allow multichanneling would have the added benefit of providing a degree of competition to Pay TV that has developed into a virtual monopoly, or at best a duopoly with one very weak player.

#### **Recommendation 1 - Multichannelling vs HDTV**

**It is recommended that the decision to mandate HDTV be amended to give broadcasters the option to use the digital capacity to deliver multichannel services in standard definition format consistent with developments in Europe and elsewhere and that the distinction between datacasting and other service types be removed.**

There are economic benefits in accelerating the transition to digital terrestrial television. This could only be achieved by accelerating installation of digital reception equipment in the 6.9 million Australian television homes.

Decisions to date have imposed the cost of digital transition primarily on the commercial television service licensees. As a quid pro quo licensees receive an extended use of the spectrum for simulcasting until at least 2008 and restrictions on entry of further television services to the market until 2007. If a decision was taken to rescind the mandate of HDTV and allow multichannelling, the cost of required in-home equipment could drop significantly (to around \$A 250 on some estimates). The total cost of domestic conversion would drop to \$A1.7 billion. In view of the public benefit that would accrue, a mechanism could be devised whereby this cost was significantly subsidised by the Government in exchange for an earlier return of spectrum that is required for analogue simulcast to the government for resale for other purposes.

#### **Recommendation 2 - Accelerated Access to Digital Services**

**It is recommended that, if the HDTV decision is rescinded and multichannelling permitted, consideration also be given to subsidisation of set top IRD's to accelerate the transition to digital terrestrial television and access to the enhanced services it can offer. This could result in an earlier return of excess spectrum to the Government for resale for other purposes.**

#### **4. FOREIGN OWNERSHIP**

Foreign ownership limits are a feature of media regulation throughout the world. Their genesis was at a time when media markets were immature, when nations feared foreign incursion and concerns about the potential and motivation for foreign interests to subvert national sovereignty were high. Such concerns have diminished, if not become totally irrelevant, with the globalisation of markets, the advent of satellite and other methods of transborder broadcasting and the explosion of the Internet. Nonetheless restrictions still pertain in major OECD nations including Australia, Austria, Canada, France, Germany, Japan, Korea, Spain, Switzerland, Turkey, the United Kingdom and the United States.

Australian media companies must have access to foreign equity capital and foreign expertise if they are to survive locally, compete internationally and realise the benefits of economies of scope and scale. Without foreign equity we will occasion foreign debt. If politicians and policy makers continue to have concerns about foreign participation in Australian media that concern and attendant regulation should relate to control of, not sensible equity participation in, Australian enterprises.

The existing 20% ceiling on foreign ownership of Australian commercial television licences is excessive. It restricts economic efficiency by unduly limiting the investment pool available for Australian media stocks, thereby restricting opportunities to maximise the value of the licenses and hence the returns to domestic investors. It also limits the potential for access to low cost finance,

management expertise, technical specialists, technology transfer and reductions in operating costs. It is likely to encourage a higher concentration of media assets in the few Australian hands that have the expertise and the wherewithal to both acquire and operate them.

The 20% foreign ownership limit is arbitrary and inconsistent with other sectors of the media market, most notably radio (no limits) newspapers (25% limit on Fairfax while News Corp is 71% foreign owned under "grandfathering" provisions) and Pay Television. In the case of Pay TV where 20% individual and 35% aggregate foreign ownership limits pertain the Australian market and Australian investors have benefited significantly. Foreign investors bore the brunt of much of the losses occasioned in establishment of the industry (Australis Media's foreign investors alone lost some \$800 million) and the industry has emerged held firmly in Australian hands.

The use of subordinated debentures in relation to investment in the Ten Network and some Pay Television licensees, a concept that was developed in consultation with the Australian Broadcasting Authority, has demonstrated the value of, and the enthusiasm for, inflows of foreign capital into Australian media assets without ceding managerial or editorial control to foreign interests.

In the case of the Canwest investment in Ten, concerns were raised by the regulatory authority when the economic interest of the foreign investor exceeded 75%. Without examining the legalities, this concern would appear to reasonable if foreign control is to be unlawful. Canwest subsequently divested a portion of its equity through a public offering to Australian investors in order to comply with a ruling by the ABA.

The ABA decision in relation to subordinated debentures created some community concern and commercial uncertainty. This was due in part to the decision being taken in camera, not becoming public until the "eggs were scrambled" and being taken outside the normal decision making processes for foreign investment. The *Foreign Acquisitions and Takeovers (FAT) Act* and the *Foreign Investment Review Board* as advisers to the Treasurer are the traditional vehicles for consideration of such issues. The processes are known to and used by all major foreign investors. In the interests of regulatory consistency and transparency, regulatory oversight of foreign ownership should ideally be undertaken by those bodies.

### **Recommendation 3 - Aggregate Foreign Ownership**

**If a ceiling on foreign equity investment in Australian media enterprises is to be retained, then in the interests of economic efficiency we recommend that the number should be an aggregate 49%, holding the equity level below an absolute majority which must, prima facie, deliver control.**

**Recommendation 4 - Individual Foreign Ownership**

To remain consistent with wider industry policy consideration could also be given to limiting individual foreign ownership to 14.99%, just below the 15% threshold that is currently regarded as placing a person in a position to exercise control.

**Recommendation 5 - Foreign Control**

If, for reasons of national sovereignty, restrictions on foreign participation in Australian commercial television broadcasting are to be retained, the existing prohibition on control should also be retained

**Recommendation 6 - Regulatory Oversight of Foreign Investment**

Regulatory oversight of foreign ownership and control provisions should be vested with the Treasurer in consultation with the *Foreign Investment Review Board* and operating under the provisions of the *Foreign Acquisition and Takeovers Act*.

**5. CROSS-MEDIA OWNERSHIP**

It is generally accepted in media regulation that there is a public interest in encouraging plurality of ownership. Pluralism has three key elements: restricting the influence of an individual or entity, guaranteeing access to consumers and fostering diversity of content. The focus of regulation to date has been to restrict influence by regulating a specific, permissible share of media market segments. It must go further to recognise the wider nature of the market and provide flexible tools to the competition regulator to establish the scope of the market and monitor appropriate threshold market shares.

*Measuring Media Market Shares*

The dilemma of encouraging pluralism through ownership limits without impeding the evolution of previously media-specific enterprises into contemporary multimedia organisations is not unique to Australia.

Considerable research has been conducted into media market measurement issues for television, radio, newspapers, magazines, and the Internet both within and across media. The task of defining thresholds for media ownership and concentration raises a fundamental conflict between the objectives of legal certainty and policy effectiveness. However degrees of difficulty should not dissuade us from attempting to define the thresholds since the consequences from undue concentration of media in a democratic society are dire.

To properly reflect a player's position in the changed market circumstances described at Section 2 it is necessary to measure both market share within a media sector and aggregation of market shares across all media sectors. Carriage and content services must be considered concurrently. The following media sectors have been identified as elements of the matrix to be considered in cross-media regulation

- terrestrial television
- terrestrial radio
- newspapers
- cable systems (including radio, TV, telephone and data services)
- satellite systems (including radio, TV, telephone and data services)
- telecommunications companies
- computer companies (hardware and software)
- content production houses
- content distributors.<sup>6</sup>

The accepted means of market measurement within the various media sectors are "counting", revenue and audience related.

Counting is the term used to describe the traditional regulatory mechanism applied in Australia. It places limits on audience reach and the number, location and type of licences in the media sectors over which a company may "*.. be in a position to exercise control*". Counting has the advantage of transparency and ease of measurement. However it is a blunt instruments that does not take account of holdings across several media or carriage services nor can it reflect changes in methods of content delivery (eg newspaper circulation figures do not reflect access to the publication via the Internet or cross-promotion of a story/position on Pay TV).

Revenue provides a common measure across all media sectors but compares "chalk and cheese" where revenue is derived from different sources (advertising, subscription, direct sales etc) and does not provide a relative measure of audience share and hence the degree of influence.

Audience measures are regarded as best reflecting plurality. Audience can be measured using "time" or "reach". Time is regarded as a better measure for TV, radio and the Internet as it reflects actual contact with, and therefore influence by, the media. Reach better reflects the influence of the press.

Once a measure is chosen calculation of a relative weighting of the influence of the different media sectors is required. If shares measured within media are not directly comparable, as is likely if the best measure for each media is chosen, then an explicit weighting scheme is necessary.<sup>7</sup> The choice of weighting is a

<sup>6</sup> European Publishers Council. *Media Regulation in the UK : The Facts, The History, The Anomalies*.1994. London.

<sup>7</sup> National Economic Research Associates. *Methods of Media Market Measurement*. August 1995. London.



matter of policy judgment and should be based on extensive research into and analysis of the various media sectors in the market.

It is acknowledged that there are difficulties associated with relinquishing traditional cross media limits in favour of a more sophisticated and more appropriate market measure such as "share of audience time". Those difficulties should not deter us from trying.

**Recommendation 7 - Determination of Threshold Market Shares**

**To assist in the development of regulatory guidelines for sector specific provisions in the *Trade Practices Act 1974* it is recommended that the Australian Broadcasting Authority or other suitable agency undertake further research to determine mechanisms to measure market share as a means to determine appropriate ownership and control thresholds within and across media.**

*Regulatory Oversight Through Competition Law*

Once those measures and thresholds have been established it is appropriate to replace outmoded cross-media limits with sector specific provisions administered under wider competition law by the Australian Competition and Consumer Commission. This could be done by incorporating sector specific competitive guidelines in the *Trade Practices Act 1974* similar to those inserted for telecommunications in the 1997 industry reforms. The guidelines would need to be supported by a wide definition of the market within which the various media now operate, as elaborated at Section 7 below.

**Recommendation 8 - Replacement of Cross Media Limits**

**It is recommended that the existing cross media limits in the *Broadcasting Services Act 1992* be replaced by sector specific provisions in the *Trade Practices Act 1974* that**

- **provide regulatory guidance to the Australian Competition and Consumer Commission as to the intent of the Parliament to foster plurality and diversity in the wider market for communications carriage and content services**
- **establish threshold market shares for individuals and companies across market sectors, and**
- **adopt the wide market definition outlined at Recommendation 12 when considering matters affecting competition in the communications market.**

*If Cross Media Limits are Retained*

Considerable opposition can be anticipated from various sectors to removal of current cross-media ownership and control limits in the *Broadcasting Services*

*Act 1992*. Hard numbers provide a degree of comfort and certainty for preservation of at least a semblance of plurality in Australia's increasingly concentrated media market.

Cross Media limits should not be removed without appropriate alternative mechanisms in place to protect plurality. Past behaviour in the Australian media market suggests that, in the absence of competitive safeguards, there would be a rapid consolidation of media assets in few hands. If, for "public interest" or other reasons, including concern at the difficulties associated with pursuing the "share of audience time" option outlined above, it is decided not to pursue alternate mechanisms, the existing rules must be strengthened.

Recent experience in Australia in relation to the Fairfax press, the Ten Network and Pay Television has demonstrated how a 15% "deemed control" limit on media holdings has the capacity to destabilise enterprises and, in conjunction with the inadequate "associates" provisions of the *Broadcasting Services Act 1992*, be used to subvert the regulatory intent. In the absence of a regulatory alternative, existing cross media limits should be strengthened by reduction of the permissible company interest from 15% to 5%. The definition of "associates" must also be strengthened in line with prevailing Corporations and Tax law.

#### **Recommendation 9 - Retention of Cross Media Limits**

**If it is decided to retain cross-media limits, to remove the scope for avoidance and ensure effectiveness of those limits, the limit of a company interest permitted in any cross-holdings should be reduced from 15% to 5% and the revised definition of "associates" at Recommendation 11 applied.**

## **6. CONTROL**

Control remains the central but most difficult concept in media regulation. If cross-media and foreign ownership restrictions are to be applied then the concept of control is fundamental to their efficacy. Unfortunately satisfactory definition and quantification of control of a licence in a manner that is enforceable and provides industry with certainty continue to elude policy makers and legislators.

The *Broadcasting Services Act 1992* embodied its justification for cross media and foreign control limits in the objects of the Act, in the following terms :

- to encourage diversity in control of the more influential services (s.3(c)), and
- to ensure that Australians have effective control of the more influential broadcasting services (s.3(d)).

The Act made a valiant and innovative attempt to provide a degree of legislative certainty by combining some regulatory guidance with defined statutory limits. The Act incorporated at Schedule 1 an "essay" on *"Control and Ownership of Company Interests"* coupled with some definitive rules and deeming provisions. In the interests of certainty company interests of 15% were deemed to be a controlling interest. Various formulae and tracing equations were documented to assist the regulator, the ABA, to determine the level of actual company interests held and whether they amounted to control.

To provide the ABA with some latitude in its decision making process, the BSA couched its provisions in terms of a person being "... *in a position to exercise control ...*". A most important element in determining whether a person is in a position to exercise control is the application of the "associates" provisions that are defined in some detail at s.6 (1).of the Act and discussed and further defined at Schedule 1.

The most important recent test of the adequacy of the control provisions and the associates clauses was the ABA *"Investigation Into Control by Brian Powers, Kerry Packer and James Packer of John Fairfax Holdings Ltd"*. A pivotal consideration during these deliberations was that of the associations between Mr Powers and other parties, including other Board Members and Messrs. Kerry and James Packer.

The ABA noted significant interaction between various parties without concluding an association in the context of the *Broadcasting Services Act 1992*,, although i , in the event that it did not find Mr Powers in a position to exercise control of Fairfax it did not proceed to a conclusion as to whether Mr Powers and Mr Packer were "associates" for the purposes of the control provisions of the BSAct.

The control provisions in the *Broadcasting Services Act 1992* were modeled on the provisions that pertained at the time in the Corporations Law and the related parties provisions of the Taxation Act. Since 1992 those control provisions have been strengthened significantly in both Corporations and Taxation Law to take account of avoidance mechanisms that developed over time and to ensure that the intent of the law is fulfilled. Similar amendments have not been made to the *Broadcasting Services Act 1992*.

#### **Recommendation 10 - Control**

**It is recommended that the control provisions of the *Broadcasting Services Act 1992* to be reviewed to ensure that they are robust and that they are consistent with other arms of contemporary commercial law.**

### **Recommendation 11 - Associates**

**In conjunction with Recommendation 10 it is recommended that the "associates" provisions at s.6(1) of the Broadcasting Services Act 1992 and the explanatory and definitional provisions at Schedule 1 of that Act be amended to equate with the provisions currently pertaining in Australian Corporations Law at Division 2 Sections 10 to 17 and the related party provisions of Taxation law.**

## **7. REDEFINING THE MARKET**

Market definition is fundamental to consideration by the ACCC of competition issues in the communications industry . It establishes the parameters within which the Commission can analyse those issues and the impact of the behaviour of participants on the defined market. The current narrow approach to market definition is inappropriate and must be changed.

### *The Current ACCC View*

Decisions taken by the Commission to date suggest that it sees competition in a market as primarily a matter of market structure. It adopts the traditional view that where the market structure gives rise to market power competition suffers. The structural factors giving rise to market power include the height of barriers to entry (the most important factor), the level of market concentration, the degree of import competition, the extent of vertical relationships and the nature of any horizontal relationships between market participants.<sup>8</sup>

This position is consistent with the traditional view that fair competition between many service providers provides the optimum environment to establish an effective marketplace for media goods and a democratic marketplace for ideas. The intent of licensing arrangements in the *Broadcasting Services Act 1992* and attendant cross media and foreign ownership limits was to encourage fair competition through defining market structure and limiting market concentration.

### *Recent Experience in the UK*

More recent literature on competition policy has challenged the assumption that structure is the principal determinant of market behaviour. Geroski<sup>9</sup>, London

<sup>8</sup> Australian Competition and Consumer Commission Merger Guidelines, 1996 and Re Queensland Co-Op Milling Association Ltd & Defiance Holdings LTD (1976) ATPR 40-012 at 17,246.

<sup>9</sup> Geroski, P (1991) *Market Dynamics and Entry*. London. Blackwell.

Economics<sup>10</sup> and others in the UK concluded during that country's recent debate on media policy that, while regulated industry structure may influence the options open to industry participants they are at best a temporary constraint to anti-competitive behaviour. It is the decisions by market players and the barriers to entry that they can erect that ultimately determine industry structure.

It was suggested to the UK Office of Fair Trading that regulatory policy should therefore focus on identifying and addressing such behaviour. The competition regulator becomes paramount in such circumstances if a competitive environment is to be maintained. Market definition becomes the fundamental building block since "*...to identify barriers to entry to a market we need to be clear about the boundaries of that market ...*"<sup>11</sup>.

In the UK some analysts accepted this position but noted that "*... competition policy lacks sensitivity to problems posed by media enterprises which compete in several markets but are dominant in none.*"<sup>12</sup> Some went on to advocate prescriptive regulation for cross media ownership as a remedy for regulatory inadequacy in competition law.

However this approach adopts, in effect, artificial limits that are avoidable and distortionary. An alternate and preferable approach is to "sensitise" competition policy through adoption of a wider market definition that contemplates the vertical and horizontal integration of media enterprises that is underway. This could be given effect and reinforced by incorporating industry specific provisions in the *Trade Practices Act 1974* similar to those that were enacted for the telecommunications sector in 1997.

### *The Pay TV Experience*

The regulation and market evolution of pay Television in Australia provides a stark and contemporary illustration of the validity of the UK view as to the importance of strategic behaviour of market participants, the need for a wider market definition and the need for competitive safeguards.

The Pay TV regime was not good policy. It was the product of confused political priorities, enormous pressure from competing commercial and political interests and the creation of a "regulatory floodgate" by imposition of an artificial ban on such services for over a decade - when the floodgates were opened the pent up market pressure wreaked havoc. The regulatory regime was determinist in relation to technology and market structure. It picked winners in neither.

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<sup>10</sup> London Economics (1994) *Barriers to Entry and Exit in UK Competition Policy*. Office of Fair Trading Research Paper no.2, London.

<sup>11</sup> Collins,R. & Murrioni,C (1996) *New Media New Policies*. Cambridge. Polity Press.

<sup>12</sup> Collins, R. & Murrioni, C (1996) *New Media New Policies*. Cambridge. Polity Press

The regulated market structure envisaged three satellite operators (a new player, an incumbent and the ABC) using the same set top box, a proliferation of MDS operators and any cable operator that wished to enter the market. The regime recognised the market advantage held by the satellite operators and concentrated structural regulation on that technology.

The initial satellite licensees were not able to capitalise on their considerable advantages of being first to market with the least cost and most ubiquitous and scalable delivery technology, even with the market advantage of control of all MDS capacity and the rights to key program material.

The strategic behaviour of incumbent players in the wider media market - the strongest television operator, the strongest newspaper proprietor, the dominant telecommunications carrier and the principal program providers, acting in concert and across traditional markets - resulted in the removal or diminution of other competitors. Those same players are now in the process of consolidation of the Pay TV market into what is effectively a monopoly in most areas (and a very weak duopoly in others) where a single dominant player has control over the key access technologies and content services<sup>13</sup>. They are simultaneously vertically and horizontally integrating their services into related enterprises including Internet applications, publications, gaming and mobile and fixed telephone services.

Consistent with the views of the CEO of Time Warner, Jerry Levin, (see below) distribution power combined with control of key content have been strategically applied to fundamentally and irrevocably change the market structure contemplated in the regulation and to erect potentially insurmountable barriers to entry to the Pay TV industry.

The ACCC is currently attempting to lower those barriers by declaring the cable networks as carriage services, thereby applying the access regime that was intended in the 1997 amendments to the Trade Practices Act to enable third party access. But it is meeting stoic resistance. The ACCC expects a protracted court battle to ensue following declaration before the matter is resolved<sup>14</sup>, during which time the incumbents can be expected to consolidate their position of market dominance and increase the height of the barrier to entry. Clearly regulatory reform is needed to enable swifter, more certain and more decisive intervention by the competition regulator if that regulation is to be effective.

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<sup>13</sup> Foxtel, owned by Telstra (50%), News Corp (25%) and PBL (25%), either owns or controls the Pay TV satellite platform, exclusive right of access to the Telstra HFC cable platform, the movie program rights of the five major Hollywood studios, exclusive rights to all major sporting events except the AFL and the Olympics and proprietary rights to the set top boxes that provide access to customers. Foxtel's parent companies also own or control the highest rating TV station, the only national fixed wire telephone network, national circulation newspapers and magazines, key strategic holdings in Internet and wireless telephone enterprises and gambling institutions. Austar is effectively a franchisee of Foxtel in relation to programming. Optus has 180-200,000 subscribers on its cable only network (no satellite platform) and a lesser program offering.

<sup>14</sup> Statement by Rod Shogren, Commissioner responsible for telecommunications at the ACCC during an interview at the ATUG Now '99 Conference, Sydney, May 1999.

### *The US Experience*

Recent market mergers and acquisitions in the USA highlight the extent of convergence and the consequent crossover of telecommunications, cable and television companies into other market segments as they seek to vertically (and horizontally) integrate their carriage and content businesses.

The former Ma Bell and now long distance telephone carrier AT&T provides a case in point. Following the FCC decision to allow cable companies to compete against the Baby Bells for telephony in the local loop, rather than build its own cable infrastructure AT&T acquired the cable operations formerly owned by the largest US Multiple System Operator (MSO) of cable networks, TCI, with 13 million cable subscribers, for \$US59.4 billion. AT&T subsequently outbid another cable company, Comcast, to acquire the US third largest MSO, MediaOne, with 5 million cable subscribers, for \$US62.5 billion. It also acquired a 25% stake in Time Warner's cable system with 12 million subscribers. These acquisitions have delivered to AT&T access to 30 million cable homes, or half of the available US cable market.

AT&T is acquiring cable companies and upgrading their networks to offer Pay TV, local, long distance and international telephony and Internet services on a single platform - the so-called Full Service Network (FSN). It has also formed alliances with Microsoft who has taken a 5% stake in AT&T, acquired @Home and 40% of Roadrunner, the ISP controlled by Time Warner, as well as several other media and internet related companies that help to maximise vertical and horizontal integration of its enterprise.

A competing Internet organisation, America On Line (AOL), had partnered Comcast in its bid to acquire Media One as AOL was concerned that its Internet browser would be marginalised in a cable market dominated by AT&T and Microsoft. When its bid was unsuccessful it was forced to seek FCC intervention, resulting in a directive to AT&T that it must provide open access on its cable infrastructure to other Internet operators. That directive is under challenge by AT&T.

The CEO of Time Warner, Jerry Levin, extolled the virtues of controlling both the program content and the carriage services to homes when he said recently:

*"Content may be king, but distribution is the power behind the throne."*

The players no longer have regard for the boundaries or divisions between markets. Controlling carriage has become as important as controlling content. They are staking claims in all market segments as they chase the elusive "killer application" that will drive consumer demand in the digital age. Telstra's Director of Regulatory Affairs, Deena Shiff summed it up in earlier evidence to the Commission when she said :

*"Telstra in all honesty doesn't know what the main game is. We don't know whether it's a PC, a TV, what technology, what type of service, very interactive, lazy interactive, not interactive at all. We're trying the lot, in a way, and seeing what customers like."*

A clearly defined media market no longer exists. The phenomenon of convergence has blurred if not erased forever the division between telecommunications infrastructure, broadcasting technologies and computer systems and between broadcasting services, data services and print media. Convergence has forced all major traditional media and telecommunications companies to contemplate mergers or acquisitions that enable them to become unified, vertically and horizontally integrated media entities. The laws that regulate those industry sectors must similarly adapt if they are to remain relevant.

If further concentration of ownership and consolidation of market power is to be avoided a paradigm shift is required by the ACCC, moving from its narrow definitions of segments of the media and telecommunications market to a holistic definition of the new "media market". Such a paradigm shift is essential if decisions on limits to competition, abuse of market power, predatory pricing etc are to contemplate and be applied to the real players in that market. Failure to move now will only facilitate further concentration of market power to a point where it may become too late to "unscramble the eggs".

#### **Recommendation 12 - Wide Market Definition**

**It is recommended that a new "media" communications market be defined for application by the ACCC in its deliberations on market concentration and related competition issues arising in the communications industry. That definition should embrace carriage and content dimensions including :**

- **carriage services provided by terrestrial television broadcasters, Pay TV operators, satellite operators, MDS and other wireless infrastructure owners, telecommunications companies (fixed link and wireless), backbone network operators, distribution companies, theatre distributors and outlets where competition is for ideas and audience attention and the market players**
- **content services provided by TV broadcasters, Pay TV content service providers, production houses, sporting bodies etc**

**Adoption of the wide market definition and its application by the ACCC in matters relating to the ownership and control of media services and exercise of market power should obviate the need for imposition of specific cross media and other industry specific limits.**



## 8. THE REGULATORY AGENCIES

The traditional rationales for industry specific regulation of broadcasting have been undermined since the enactment of the Broadcasting Services Act in 1992 through

- technological development where digitisation, compression and deployment of alternate technologies such as broadband cable and satellite have removed the rationale of scarcity
- the advent of new carriage services, the consequent rebuttal of the concept of scarcity and the increasing sale of spectrum at public auction that have undermined the notion that spectrum is a public property that should be confined to uses that are purely of perceived public benefit
- changed direction in contemporary economic policy where, in the post-Hilmer context of a national, uniform, competition policy framework economic management of discrete industry sectors is considered to be inappropriate and susceptible to industry capture
- national competition policy has similarly challenged the *quid pro quo* rationale for media regulation where economic protection is exchanged for a range of social goods, particularly in circumstances where the Government can no longer guarantee that protection.

The rationales that remain valid are

- the imposition of rules to encourage plurality in order to restrict the influence of any one organisation or individual, to guarantee access to services and to foster diversity of content
- fostering of an Australian cultural presence in the media, although the focus here should be on production, perhaps through transparent subsidy, to ensure that Australian material can be produced on terms that allow it to compete with overseas material that is often dumped onto export markets at marginal cost
- protection of children from harmful and offensive material and incentives to encourage production of material that is appropriate to their intellectual and societal development.

These rationales for regulation have been given effect through a plethora of laws, regulations and regulatory agencies. Broadcasting services are subject to specific provisions in the Broadcasting Service Act 1992, Telecommunications Act 1997, Radiocommunications Act 1992, Trade Practices Act 1974, Copyright Act, Foreign Acquisitions and Takeovers Act 1975, Australian Broadcasting Corporation Act 1983, Special Broadcasting Service 1991, as well as numerous

subordinate legislative instruments and several related Acts that apply to industry generally.

There is also significant fragmentation and overlap of policy and regulatory oversight between at least five regulatory agencies including the Australian Broadcasting Authority, the Australian Communications Authority, the Australian Competition and Consumer Commission, the Department of Communications Information Technology and the Arts and the Office of Film and Literature Classification

When the *Broadcasting Services Act 1992* was enacted to replace the 50 year old *Broadcasting Act 1942* it was recognised that, given the rapidly changing industry circumstances, it was unlikely the Act would endure beyond 5 years. This was reflected in several legislative provisions including the 1997 "blow apart" of the highly determinist structural regime for Pay TV, the sunset clause on advertising restrictions, the requirements at s.215 to review by 1997 the national benefits accruing from restrictions on market entry to commercial television and of Australian content on Pay TV. It is both timely and appropriate to take those reforms several steps further.

The co-ordination of broadcasting, telecommunications, radiocommunications, information technology and cultural matters under a single policy umbrella within in the Ministry of Communications, Information Technology and the Arts has been a valuable first step in that process. The success of this co-ordination has been reflected to some degree in the greater cohesion and consistency between the various legislative instruments. However it has not been as apparent between the regulatory agencies where inconsistencies in decisions and overlap of regulatory intervention contribute to industry uncertainty and inefficiency.

If the recommendations in this submission regarding access, market definition, ownership and control are accepted further efficiencies and economies could be achieved by the following reallocation of responsibilities between agencies :

- responsibility for domestic ownership and control matters relating to all sectors of the media market to be transferred to the ACCC supported by
  - : specific provisions in the *Trade Practices Act 1974* governing broadcasting, newspaper, Internet, datacasting and other multimedia services in a single media market similar to those that were inserted for telecommunications in 1997 to cater for the "special" nature of that industry
  - : legislated policy principles to assist the interpretation of the wide market definition when dealing with issues relating to s.50 of the *Trade Practices Act 1974* prohibiting mergers likely to have the effect of "substantially lessening competition" in a market, s.47 that

relates to exclusive dealing and s.46 that deals with "misuse of market power"

- : revised "associates" definition and provisions that are consistent with the Corporations Law definition of associates and the Taxation Act definition of related parties
- foreign ownership limits and control issues to be administered by the Treasurer under the provisions of the Foreign Acquisitions and Takeovers Act and on advice from the Foreign Investment Review Board
  - : administering a transparent aggregate foreign ownership limit of 49% while not permitting foreign control on specified media services
- planning and licensing of the Broadcasting Services Band Spectrum to be undertaken by the Australian Communications Authority consistent with processes for all other spectrum allocations
- the role of the ABA be restructured to focus on service related content matters across all media (television, Pay TV, radio, newspapers, Internet, datacasting) including
  - : amalgamation with the Office of Film and Literature Classification to ensure consistency and transparency of classification principles and their application across all media
  - : amalgamation with the Press Council for similar reasons
  - : responsibility for research and statistical analysis of the industry as an input to the decision making roles of other regulatory agencies
  - : research into and development of a "share of audience" or similar concept as an input to a new approach to promotion of plurality and diversity without recourse to cross media regulation.

**Recommendation 13 - Regulatory Agencies**

**It is recommended that responsibility for various aspects of media regulation be re-allocated between agencies as follow :**

- domestic ownership and control matters relating to all segments of the multimedia industry be transferred to the Australian Competition and Consumer Commission supported by specific provisions in the *Trade Practices Act 1974* particularly relating to market definition and association**
- foreign ownership limits and control issues to be administered under the provisions of the *Foreign Acquisitions and Takeovers Act* with a 49% ownership limit and a prohibition on control for specified media market segments**
- planning and licensing matters to be undertaken by the Australian Communications Authority**
- content matters across all media to be administered by a restructured Australian Broadcasting Authority that incorporated the Office of Film and Literature Classification and the Press Council.**