



OFFICE OF REGULATION REVIEW

INDUSTRY COMMISSION

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Office of Regulation Review comments on the Cross-Media Review

Attached is the submission of the Office of Regulation Review (ORR) in response to the issues paper on the review of cross-media rules.

I also take this opportunity to draw to the attention of the department Cabinet's requirements for the preparation of a regulation impact statement (RIS). With submissions now coming in, this is the time to start preparing a RIS. It should be completed before any final recommendation is made on the future direction of cross-media rules, and subsequently attached to the Cabinet Submission. If the department wishes, a draft impact statement can be sent out to affected parties for further consultation.

The ORR would be pleased to offer advice on the preparation of the RIS. Given the importance of the issue, it may be useful to have a meeting sometime in the next few weeks. I will ring your department shortly to see if something can be arranged.

If you have any queries, please contact me on 240 3295 in the first instance, or Andrew Dolling on 240 3304.

Thank you for accepting our submission late.

Yours sincerely,

Sue Holmes
Director

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ORR Submission on Cross-Media Ownership Rules

The Office of Regulation Review makes the following observations regarding the review of cross-media ownership.

These observations are not aimed at addressing all the issues, or at providing answers. Rather, the focus is on raising some of the questions that the ORR considers need to be addressed during the review.

The nature of the problem and the Government's objectives need to be clearly spelt out

As with any problem the Government may wish to address, it is vitally important that the underlying problem is identified and its magnitude known so that appropriate solutions can be considered. It appears that apart from having a competitive industry, government wishes to ensure sufficient diversity of opinion in the media — the issue of plurality appears important only to the extent that diversity of ownership improves the diversity of views available to the community and the level of competition. This indicates that the two underlying problems, or potential problems, are the lack of diversity of opinion reaching the community and the lack of competition in the industry.

However, what is less clear is whether the government wishes to ensure that there is sufficient choice *available* with regard to the different views, or whether it is concerned that individuals actually *receive* a sufficient diversity of views. This is an important question as it has significant implications for the appropriate policy response. If the government is concerned only with access to different views, competition may achieve that, and regulations may not need to be specific for each different type of media. The focus of policy may then be on ensuring that prices to the various media are not so high as to prevent individuals being able to access their preferred sources of information and opinions.

Regulation should be aimed at outcomes rather than inputs

Regulation should be aimed at addressing the specific problems that have been identified. Where possible, this will mean that the desired outcome is specified in regulation, allowing individuals and businesses to work out the most efficient way of meeting those goals. Therefore, regulation should avoid specifying or differentiating between technologies or media — unless it remains the most effective way of achieving the Government's objectives.

In the current context this raises two issues:

- *the scope of the regulatory framework and whether it should be extended to include all forms of media and technology* — doing so would remove

existing distortions and ‘gaps’, and provide a more comprehensive and consistent approach to achieving the Government’s objectives; and

- *whether there is a need for licence holders of one medium, such as television, to be prevented from holding a licence in another medium, such as newspapers* — from an efficiency point of view, the community loses when businesses are prohibited from engaging in other activities, especially where economies of scope or size are involved. Cross-media ownership restrictions may not be essential to the achievement of diversity, and may well not be the most appropriate method. Therefore, they should be assessed against alternative means, especially those that directly prescribe outcomes in terms of diversity.

In order to reduce the regulatory burden, regulation should impose the minimum requirements necessary to achieve the Government’s goals. In doing so, a range of alternative ways to achieve diversity in opinion and culture need to be fully canvassed, and the impacts on various groups identified. These assessments will need to take account of the effect of vertical and horizontal integration, as well as the new media technologies which are emerging, such as the internet. The dynamic nature of these new technologies will also need to be considered.

Is diversity of ownership a good proxy for diversity of opinion?

This question needs to be answered because to the extent diversity of cross-media ownership is not a good proxy for diversity of opinion, then cross-media ownership rules will not be effective instruments. Total ownership rules across all media, or ownership rules within each medium, may be more appropriate than cross-media ownership rules. Even more broadly, there may be instruments which do not affect ownership but which do impact on diversity.

Competition rules may not be sufficient to achieve the Government’s objectives

Competition in the media industry is a worthwhile goal for several reasons, including:

- *it can provide incentives for increased innovation, lower production costs and lower prices* — which can benefit the community both in terms of overall economic well being and also in terms of access due to advanced technology being as affordable as possible; and
- *it can help the government achieve its goals of increased diversity of opinion* — it can be expected that competitors will offer different products and will be looking for gaps in the market which they can satisfy. Competitors’ search for product and service differentiation can play an important role in assisting the achievement of diversity.

Rules which aim to promote competition can therefore clearly play an important role in achieving the Government's objectives.

However, competition rules on their own will only assist in the achievement of competitive outcomes. In areas where there may be market failures not caused by market power, these outcomes may not be optimal from the community's point of view. In other words, there may remain insufficient diversity even if the market is competitive (given that competition is not necessarily judged by the number of competitors but by their ease of entry into the market).

This again points to the importance of understanding the Government's objective. If it is to satisfy consumer preferences and ensure choice is available, that is very likely to be delivered in a competitive industry. However, if specified levels of "cultural and multi-cultural" exposure and range of opinions are desired, competitive outcomes alone may not achieve them, in which case specific regulatory arrangements for the media industry may be necessary.

Moreover, despite the removal of barriers to entry and the use of other competitive rules, the achievement of competitive outcomes is not certain given the natural monopoly characteristics of the industry. And, to the extent there remains concentration in the industry there may be concerns regarding diversity which could require specific regulation.

Is equity or access relevant to the regulatory framework?

Equity and access are relevant to all government decisions. However, whatever the level of access and equity the government wishes to achieve, it is important that alternative means of achieving these are considered. Direct regulation is only one approach.

Government policy on related issues

To fully assess the optimal form of intervention to achieve diversity of information, opinion and culture, it is important that government policy with respect to the SBS and ABC be fully articulated. These are alternative sources of opinion and provide for wide cultural exposure. Consideration needs to be given to whether their existence provides for sufficient diversity of opinion, obviating the need for other restrictions on the media.

Summary

Broadly, the main points made in this short submission are:

- the development of sound policy will be assisted if there is a clear statement of the **problems** being addressed by the cross-media ownership rules (and

their alternatives) and of the **objectives**/outcomes being pursued through these rules;

- plurality in ownership appears not to be an ultimate objective but rather is seen as a means of achieving the objectives of diversity in opinion and culture, and of competition; and therefore it may be preferable not to treat this as a policy objective but rather to assess its effectiveness in achieving diversity in opinion and cultural expression and assisting competition relative to other alternative means;
- as well as the trends highlighted in the discussion paper, which are favourable to diversity and competition, there are other trends working against this, namely growing economies in scale and scope within and between media — relating to information gathering and transmission;
- while barriers to entry into the media may be removed because of competition policy, this may not result in the optimum level of diversity in opinion and culture as judged by the Government;
- in order to achieve the best policy and regulatory outcome it is important to fully canvass all possible ways to achieve the objectives — assessing all feasible alternatives is the best way to find the most effective and least-cost policy;
- where possible, regulations should focus on outcomes rather than inputs, and should be neutral between technologies and media unless it is clearly demonstrated that a different approach is the most effective way to achieve the objectives; and
- one way to achieve greater diversity is through the direct provision of broadcast services by the Government as is currently supplied via the ABC and the SBS, and consideration should be given as to whether this provides sufficient guarantee of diversity without further interventions.