

2.2.2 Ownership and control of Australia's media

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The rules restricting ownership and control of Australia's media were extensively debated in the federal parliament in 2003. The vehicle for this debate was a Bill which would have removed restrictions on foreign ownership and control of television broadcasters and allowed exemptions from existing cross-media restrictions in certain circumstances. The Bill passed the House of Representatives but not the Senate, although the removal of foreign ownership restrictions was supported by a majority of senators.

This paper explains the existing limits on ownership and control of Australia's media, the origins of those limits, their impact, foreshadowed changes to the rules and their administration, and the recent debate.

2.2.2.1 The rules

Australia has many laws restricting the ownership and control of media enterprises. Some apply generally across the whole economy. Others are specific to certain kinds of media and communications enterprises.

Laws about competition and foreign investment apply across the whole economy. Sector-specific limits are imposed, or are able to be imposed, by laws about broadcasting, radiocommunications and telecommunications, and by guidelines made under foreign investment law.

Restrictions on the ownership and control of media and communications enterprises are directed at three policy goals – diversity of control within local areas, diversity of control across the whole nation, and limited foreign participation. Some of the restrictions are prohibitions, while others give discretionary powers to regulators.

Local area limits

Competition law is set out in the *Trade Practices Act*, which applies to all trading corporations, including those holding media assets. It prohibits the misuse of market power and mergers likely to have the effect of substantially lessening competition in a market. A vital issue in applying these provisions is the definition of relevant markets. In recent years, a particularly contentious question has been whether free-to-air and pay TV services are part of a single market.

The Trade Practices Act is administered by the Australian Competition and Consumer Commission (ACCC). It can ‘authorise’ mergers which would otherwise have the effect of substantially lessening competition where it believes there is sufficient public benefit in doing so. It can also accept undertakings from corporations to do or refrain from doing certain things. For example, the ACCC accepted undertakings from the parties to a set of content-sharing agreements among the main pay TV operators in Australia about access to infrastructure, subscriber management services and the ownership of channels. As a result of these court-enforceable undertakings, the Commission decided not to oppose the content sharing agreements, which it had concluded would have breached the legislation in their original form.

TV broadcasting and datacasting

The Broadcasting Services Act imposes a ‘one-to-a-market’ rule for commercial television. A person must not be in a position to exercise control over more than one commercial TV broadcasting licence in the same licence area. Licence areas cover major metropolitan centres like Sydney, Melbourne and Brisbane or large non-metropolitan regions, like Queensland, Victoria, Southern New South Wales and Northern New South Wales.

‘Cross media rules’ are also imposed under this legislation. A person must not be in a position to exercise control over more than one of the following in the same area: a commercial TV broadcasting licence, a commercial radio licence or a major newspaper. Major newspapers must be published at least four times a week and have at least 50% of their circulation within the licence area of the relevant TV or radio licence, so weekly magazines and national newspapers are not included in the cross media limits.

As part of the introduction of digital television into Australia, a new category of service called ‘datacasting’ was created. It includes many forms of television programming but not the most commercially attractive genres like sport, drama and most news. A person must not be in a position to exercise control of a commercial TV broadcasting licence and a ‘datacasting’ transmitter licence.

‘Control’ is defined very broadly and requires the regulator to examine all the circumstances surrounding any allegation of its exercise. Shareholdings of 15% or more are deemed to place the holder in a position to exercise control of a company.

Similar limits are imposed on multiple directorships.

The Federal Court has held that a particular aggregation of interests permitted by the *Broadcasting Services Act*, such as two commercial radio licences in an area, may still be found to breach the general competition law in the *Trade Practices Act*.¹

In addition to the limits on control, the *Broadcasting Services Act* prevents the allocation of more than three commercial television licences in an area before 31 December 2006. This restriction was formalised in 1998 as part of the conversion to digital television, providing a further period of restricted competition for existing networks during the start-up phase of the new digital services.

Radio

The Broadcasting Services Act imposes a ‘two-to-a-market’ rule for commercial radio. A person must not be in a position to exercise control over more than two commercial radio licences in the same licence area. The cross media rules described in the previous section prevent a person being in a position to exercise control over a commercial radio licence and a commercial TV licence or a major newspaper in the same area.

1. *Austereo Ltd v. Trade Practices Commission*, (1993) 41 FCR 1.

Similar limits are imposed on multiple directorships.

Newspapers

The ownership and control of newspapers within an area is regulated directly only under the *Trade Practices Act*. However, the cross media restrictions in the *Broadcasting Services Act* indirectly regulate the activities of people in control of major newspapers. It is generally thought the *Trade Practices Act* would prevent the common ownership of the two major daily newspapers in the two largest cities, Sydney and Melbourne. These are the only two cities still with more than one major daily newspaper.

Radiofrequency spectrum

The *Radiocommunications Act* gives the Australian Communications Authority the power, following a written direction from the Minister, to impose restrictions on the acquisition of licences to use radiofrequency spectrum through ‘price-based allocations’ (auctions). These restrictions may limit the bandwidth acquired by one party, the area(s) or population reach to be served, or the number of transmitters. These powers have been used to prevent the largest two telecommunications companies in the country participating in an auction for spectrum in the 28/31 GHz band, to restrict the total bandwidth which could be acquired by any bidder or particular bidders in several auctions and to impose a ‘one-to-a-market’ limit on datacasting transmitter licences.²

Cable, satellite and telecommunications

There are no specific local limits on ownership or control of these kinds of enterprises.

National limits

A person must not be in a position to exercise control of commercial TV licences whose combined licence area population exceeds 75% of the Australian population. In practice, this means a person can control commercial TV licences for the major cities Sydney, Melbourne, Adelaide, Perth, Brisbane and some regional centres.

2. Grant, A. (2003) *Australian Telecommunications Regulation: the Communications Law Centre Guide* (Sydney: CLC), pp 226-9.

National limits on the number of commercial radio licences which could be jointly controlled were removed in 1992.

Foreign ownership limits

General foreign investment law is set out in the *Foreign Acquisitions and Takeovers Act*, which applies to all trading corporations, including those holding media assets. Under the Act, the federal government requires prior notification of proposed acquisitions by ‘foreign interests’ of ‘substantial interests’ in existing Australian businesses valued at more than A\$50 million, proposals to establish new businesses involving investment of more than A\$10 million and direct investments by foreign governments or their agencies. Tougher thresholds are set for investments in urban land and media. For media, all proposals for direct (‘non-portfolio’) investments in existing and new businesses, and proposals for portfolio investments of more than 5%, must be notified.³ Portfolio investments are investments by fund managers.

The Treasurer may prohibit proposed transactions which he believes are contrary to the national interest. He may also order divestiture where acquisitions implemented without prior notification are subsequently found to be contrary to the national interest.

In addition to this general law, there are specific laws limiting foreign participation in television broadcasting, newspapers and the former government monopoly telecommunications company Telstra.

Free-to-air TV

Under the *Broadcasting Services Act*, a foreign person must not be in a position to exercise control of a commercial TV licence. This means that a foreign person cannot be in a position to exercise actual control, or control 15% or more of the shares or other ‘company interests’. Two or more foreign persons must not have ‘company interests’ exceeding 20% in a company holding a commercial TV licence. Not more than 20% of the directors of a company controlling a commercial TV licence can be foreign persons.

3. The Treasury (2000) *Summary of Australia’s Foreign Investment Policy*. (Canberra: Australian Government, Treasury) (May), para 9: <http://www.firb.gov.au/content/_downloads/policysummary.pdf> (12 July 2004).

Pay TV

Under the *Broadcasting Services Act*, a foreign person must not have company interests of more than 20% in a subscription TV broadcasting licence. Two or more foreign persons must not have company interests of more than 35% in a subscription TV broadcasting licence. There is no restriction on foreign control of a subscription TV broadcasting licence.

Radio

The *Broadcasting Services Act* places no limits on foreign ownership or control of commercial radio licences beyond those imposed by the general provisions of the *Foreign Acquisitions and Takeovers Act*. The government has indicated that proposals for foreign investment in radio which fall within the scope of the *Foreign Acquisitions and Takeovers Act* will be considered on a case-by-case basis.

Telecommunications

The *Telecommunications Act 1997* gives the Minister the power to impose limits on foreign ownership of licensed telecommunications carriers. Policy under the general foreign investment law requires all proposals for investment in existing and new telecommunications businesses to be notified and approved where they exceed the notification thresholds. No foreign investment limits currently apply to carriers other than Telstra, and the government has indicated that proposals 'will normally be approved unless judged contrary to the national interest'.⁴

Foreign investment in the largest telecommunications company, Telstra, however is tightly restricted. The federal government owns 50.1% of the shares in the former public monopoly carrier, Telstra, following two rounds of privatisation in the late 1990s. The *Telstra Corporation Act* limits single foreign persons to a stake of 5% of the publicly-traded shares in the company (ie. a 2.5% stake in the company as a whole at present) and total foreign persons to 35% of the publicly trade shares (17.5% of the whole company). Telstras Chairperson and a majority of directors must be Australian citizens, and its head office, base of operations and place of incorporation must remain in Australia.

4. The Treasury (2000) *Summary of Australia's Foreign Investment Policy*. (Canberra: Australian Government, Treasury) (May), para 37: <http://www.firb.gov.au/content/_downloads/policysummary.pdf> (12 July 2004).

Newspapers

In administering the *Foreign Acquisitions and Takeovers Act*, successive governments have established more detailed policies for takeovers in the print media. Current policy limits direct foreign shareholding to 30% in national and metropolitan newspapers, with a 25% limit for any single foreign shareholder. Aggregate foreign direct shareholding in provincial and suburban newspapers must not exceed 50%.⁵

2.2.2.2 Origins of the rules

Media ownership rules were first introduced in the 1930s to restrict the numbers of radio stations which a single proprietor could control. When television was introduced in the 1950s, commercial operators were restricted to a maximum of two commercial television licences. The general law outlawing unfair and anti-competitive practices was passed in 1974, although it had little impact on the media and communications sector until the late 1980s. The general law limiting foreign acquisitions and takeovers was passed in 1975.

There were big changes to broadcast ownership rules in 1987. The two-station television limit was repealed, and replaced by a national population reach limit for commercial television (then 60%, now 75%) and the cross-media rules. National and regional limits on the number of radio stations which could be owned or controlled were liberalised and then repealed in 1992, along with specific restrictions on foreign ownership and control of commercial radio stations. The limits on foreign participation in Telstra were introduced as part of its partial privatisation in the 1990s.

During the 1990s, the general competition regulator, the ACCC, became much more involved in the regulation of media and communications ownership and competition issues, for several reasons. First, the new broadcasting law in 1992 gave it a small number of specific responsibilities in this sector. Second, responsibility for telecommunications competition regulation was transferred to it from the telecommunications regulator in 1997, as part of the

5. The Treasury (2000) *Summary of Australia's Foreign Investment Policy*. (Canberra: Australian Government, Treasury) (May), para 35: <http://www.firb.gov.au/content/_downloads/policysummary.pdf> (12 July 2004).

opening of the domestic telecommunications market. At this time, new telecommunications specific-provisions were inserted into the *Trade Practices Act* governing anti-competitive conduct, interconnection and access to networks and facilities. Third, a number of large mergers were proposed in the media and communications sector requiring ACCC consideration. It effectively blocked mergers between the largest two ISP's, the second and third-ranked telecommunications companies and two of the three pay TV companies. Finally, the competitive significance of assets such as premium content, set-top decoders and subscriber management systems grew, although they were not subject to any specific rules like those covering the ownership and control of broadcasting licences.

2.2.2.3 The players

The table 1 sets out the sectoral holdings of the publicly listed Australian media and communications companies in the Top 150 in the country by market capitalisation and the two national public broadcasters.

It shows a high level of consolidation in the ownership of major media assets, but also two major impacts of the legal restrictions – the absence of cross-holdings of television, radio and print media interests other than in non-metropolitan areas (where newspapers tend to be published less than four times a week) and by national public broadcasters, and the heavy involvement of foreign companies in sectors where foreign investment is not restricted (radio and telecommunications). It also reveals two anomalies in the application of foreign investment limits – Rupert Murdoch's big share of national newspaper circulation despite the policy under the *Foreign Acquisitions and Takeovers Act*, and CanWest's large 'economic interest' in the Ten television network despite the limits on ownership and control in the Broadcasting Services Act.

Murdoch's case dates from 1986, when the government announced the overhaul of media ownership rules. Murdoch, who had just become a US citizen, launched a takeover of the Herald and Weekly Times Group, which owned TV and radio stations and newspapers comprising nearly 50% of metropolitan daily circulation. The Acting Treasurer used his discretion under the *Foreign Acquisitions and Takeovers Act* to approve Murdoch's acquisition. The competition regulator also allowed the acquisition to proceed, subject to the disposal of some newspapers.

CanWest's investment in the Ten Network was made in 1992, when the Network was in receivership. The new broadcasting regulator effectively approved the scheme through which CanWest took a substantial economic interest in the companies controlling the licences without acquiring more than 15% of the shares or votes, or breaching the limits on foreign directors, or putting itself in a position to exercise actual control of the licences. Some years later, a series of transactions was found to have placed CanWest in a position to exercise control of the licences. It was forced to restructure its arrangements to bring itself back within the law. In June 2004, following share trading activity, the broadcasting regulator again found that the level of foreign ownership of the Ten network stations had gone above the statutory limits. Ten was given six months to remedy the situation.⁶

2.2.2.4 Foreshadowed changes

A number of changes to these rules and their administration have been foreshadowed. The government has been trying unsuccessfully for years to repeal the foreign ownership and control restrictions in the *Broadcasting Services Act*, to repeal or substantially amend the cross media rules, and to complete the privatisation of Telstra. The debate about the first two of these issues is discussed in the next section.

In May 2004, a bilateral free trade agreement with the United States was signed which requires liberalisation of Australia's general foreign investment regime, though not the rules about foreign investment in the media. The same month, the government announced its intention to merge Australia's broadcasting and communications regulators. A number of reviews of aspects of the scheme for digital television are also subject to review in 2004 and 2005, including whether a licence for a fourth or further commercial television network should be granted after the end of 2006, and parts of the radio industry are pressing for new decisions about the introduction of digital radio.

6. Australian Broadcasting Authority, 'Notice to Ten licensees to remedy foreign ownership breach', News Release 64/2004, 18 June 2004.

2.2.2.5 Australia-United States Free Trade Agreement

The two governments hope this agreement will come into force on 1 January 2005. It has passed the domestic approval processes required in both countries, although there has been some discussion since the October federal election of US dissatisfaction with an amendment to Australian intellectual property laws agreed to by the Australian government under pressure from the Labor opposition, to secure the passage of the enabling legislation before the election.

The final text requires Australia to increase the general threshold for proposed foreign investments to be notified to Australia's Foreign Investment Review Board from A\$50 million to \$800 million. This will eliminate the need for most investments by US companies to seek prior approval from Australian authorities. The existing limits on investment in television broadcasting, newspapers and telecommunications can be retained, although they cannot be increased. Any reduction or removal of the limits will be irreversible. A side letter confirms the current governments 'long-standing commitment' to full privatisation of Telstra. This commitment is still opposed by a majority in the Australian Senate.

2.2.2.6 Australian Communications and Media Authority

In May 2004, the government announced the merger of the broadcasting and communications regulators.⁷ Expected to take effect from 1 July 2005, the new Australian Communications and Media Authority (ACMA) will regulate telecommunications, broadcasting, radiocommunications and online content. The proposed merger responds to the proliferation of digital technologies which allow 'previously distinct sectors to compete across increasingly convergent markets using a range of different delivery platforms', and is intended to 'enable a coordinated regulatory response to converging technologies and services and to the long-term management of spectrum'. The government also argued that a single regulatory body would be 'better placed to respond to the outcomes of the statutory reviews of the digital television framework required in 2004 and 2005'. Although the establishment of the new agency is not intended to be accompanied by changes to the existing regulatory and spectrum planning frameworks for telecommunications and broadcasting, the legislation will need to pass the parliament.

7. The Hon Daryl Williams (Minister for Communications Information Technology and the Arts) 'Australian Communications and Media Authority', Media Release, 11 May 2004.

2.2.2.7 The debate

The government's latest attempt to repeal the foreign ownership and control restrictions in the *Broadcasting Services Act* and to repeal or substantially amend the cross media rules was rejected by the Senate in mid-2003. As introduced, the *Broadcasting Services Amendment (Media Ownership) Bill 2002*⁸ would have removed the restrictions on foreign participation in free-to-air and pay TV broadcasting and allowed exemptions from the cross-media restrictions which currently prevent a single media organisation controlling more than one of the major media outlets in an area. It would also have imposed a new condition about local news coverage in country areas.

Introducing the Bill, the Minister said the twin changes to cross-media and foreign ownership rules were needed to 'modernise' Australia's media ownership laws:

The communications environment is experiencing a period of rapid change. Existing and potential media operators are forging new commercial strategies to maintain or establish their position in the new marketplace. Consolidation and diversification have brought about the emergence of substantial global communications groups [...] The regulatory framework in relation to the ownership and control of Australian media assets is out of place in such a dynamic environment. The current restrictions impede commercial flexibility and access to capital for infrastructure and content investment. They hinder the ability of Australian media organisations to succeed in the new market environment.

A number of interrelated arguments were presented in favour of the changes:⁹

- **changing consumer tastes:** 'Consumers are no longer confined to the traditional media of radio, free-to-air television and newspapers available in their local area';

8. For comprehensive documentation relating to the legislation, see <<http://www.aph.gov.au/bills/index.htm>>.

9. Senator Richard Alston, 'Modernising Australia's media ownership laws', Media Release 59/02, 21 March 2002; Senator Peter McGauran, House of Representatives, 21 March 2002.

- **convergence:** ‘[M]edia businesses are being driven by the imperative of delivering readily adaptable content across multiple platforms [...] Media convergence encourages existing players to take strategic positions in the marketplace and to strengthen their competitiveness through better use of economies of scale and scope’. The current rules restrict the commercial flexibility available to media companies to meet this imperative;
- **capital:** ‘Technological convergence [...] has resulted in increasing pressure on media operators to invest in digital technologies. Digitisation of production and transmission could enable new types of interactive services to be offered and reduce the cost of producing content. However, investment in digital technologies requires large capital outlays. Giant media companies which own both content and the means of delivery have emerged in the US and Europe’;
- **capacity to compete globally:** ‘Like other sectors of the economy, Australia’s media industries are under pressure to become more global in their technology and equity links [...] Preventing increased foreign investment in Australia restricts the capacity of Australian media enterprises to access technology and managerial expertise and be in a position to compete on an equal footing’;
- **domestic media competition:** The removal of foreign ownership restrictions will ‘increase the pool of potential media owners and act as a safeguard on media concentration’;
- **international precedent:** The US, UK and other comparable countries were all considering liberalising their media ownership rules. Since then, the UK *Communications Act* has come into effect and the FCC has announced changes to ownership rules which have been successfully challenged in the courts.

The Bill, as amended in the House of Representatives, proposes changes to the *Broadcasting Services Act* in three areas.

Foreign ownership and control rules

If passed, the Bill would repeal the special foreign ownership and control provisions in broadcasting legislation. This would still leave the Treasurer with the power to reject particular proposals for foreign acquisition of Australian media enterprises. However, the broadcasting regulator would no longer have any role in this area. This section of the Bill was accepted by a majority of Senators and would have become law if the government had been prepared to separate it from the other provisions in a Bill of its own.

Some argued that the policy goals served by limits on foreign ownership and control are better served by other policy instruments, such as local content requirements, public service broadcasting and program subsidies. For example, in the Productivity Commission's broadcasting inquiry in 1999, CanWest argued that the 'significant objectives' of Australian programming were protected through clearly mandated and monitored content requirements, which it supported:

CanWest supports the retention and enforcement of rules governing the production and airing of domestically produced programming on television. In fact, CanWest has an operating philosophy which supports the independent production community rather than its own in-house production facility. The existence of content requirements, combined with the diversity of ownership made possible through increased foreign investment, will ensure achievement of the government's media objectives.¹⁰

The Australian Democrats (the second-largest Opposition Party) did not support the changes to foreign ownership rules, arguing 'Australian media companies must not become local outlets for global media conglomerates'. They preferred modifications to allow greater levels of passive portfolio foreign investment without sacrificing Australian control.

Cross-media rules

The Bill would not remove the cross-media restrictions. It would empower the broadcasting regulator to grant 'exemption certificates' to applicants proposing acquisitions of media

10. CanWest Pacific Communications (Asia Pacific subsidiary of CanWest Global Communications Corp) submission to Productivity Commission inquiry into broadcasting, 1999: <<http://www.pc.gov.au/inquiry/broadcst/subs/sub043.pdf>> (17 December 2002).

organisations which would otherwise result in breaches of the cross-media rules. These certificates could only be granted if the regulator was satisfied editorial decision-making for the commonly-controlled organisations would remain separate. The Government said it was:

committed to ensuring ongoing diversity of opinion and information in the Australian media. *It does not believe that diversity of ownership is necessary to achieve this.* [emphasis added] Nevertheless, the Government recognises the need to ensure that media owners do not exploit their co-ownership of media organizations in a way which prevents those organisations from exercising separate editorial judgments.

‘Editorial separation’ would be established where a media organisation could show :

- separate editorial policies for the commonly-controlled media outlets;
- appropriate organisational charts; and
- separate editorial news management, news compilation processes and news gathering and interpretation capacity.

‘Editorial separation’ would not prevent the commonly-controlled outlets sharing resources or co-operating in other ways to assist the common controller to achieve efficiencies.

Local news and information, radio station formats

The Bill would require broadcasters which were the subject of cross-media exemptions to transmit at least five news bulletins each week containing matters of local significance, to broadcast local community announcements and to maintain the ability to broadcast emergency warnings if and when required. It would also outlaw contracts or other arrangements which restricted the program format of a radio station where those arrangements conferred commercial advantage on another station in the same area. These provisions responded to two reports

published in 2001 showing significant declines in the amount of local news and information transmitted by regional commercial TV and radio broadcasters.¹¹

Critics of this part of the Bill argued that it addressed a real problem but aligned localism with cross-media ownership. Local news and information requirements would only apply where media outlets were the subject of cross-media exemptions, whereas the problem of inadequate local news and information already existed even without the relaxation of cross-media rules. They also argued the minimum requirements which would be imposed were too low. Although the legislation has not passed, the broadcasting regulator used its existing powers to impose a new condition on regional commercial TV licences, with effect from July 2003, requiring them to broadcast matters of local significance to meet a weekly points total.¹²

2.2.2.8 Responses to the Bill

While the broad aims of a more liberal ownership and control regime are supported by most major media companies, there has been considerable criticism of the Bill along three lines.

First, it was argued that it represented an inadequate response to the policy challenges facing Australia's media and communications industries because it failed to address other pressing issues like digital TV and radio policy and additional commercial TV networks. The Labor Party said it:

...accepts that the cross-media ownership laws that have been in place for 15 years are not perfect; in fact, it is impossible to legislate perfection. But we do not accept that there is substantial evidence to show that those laws do significant damage to our economy or our society. They are needed because we have a restricted market. We have a law in the *Broadcasting Services Act* that effectively prohibits any further TV networks until 2007, at the earliest. So we have an artificially restricted market and, in the other areas of the media, particularly in newspapers, very high economic barriers to entry. It is when you have an

11. House of Representatives Standing Committee on Communications, Transport and the Arts, *Local Voices: Report on Regional Radio*, Commonwealth Parliament, Canberra, 2001 (September):

<<http://www.aph.gov.au/house/committee/cita/radioreport.html>> (17 December 2002); ABA, 'Investigation into the adequacy of local news and information programs on commercial television services in Regional Queensland, Northern NSW, Southern NSW and Regional Victoria,' ABA, Sydney, 2002 (August) :

<http://www.aba.gov.au/tv/investigations/projects/regional_news/report/index.htm> (17 December 2002).

12. ABA, 'ABA requires increased broadcast material of local significance', NR 152/2002,; <http://www.aba.gov.au/abanews/news_releases/2002/152nr02.htm> (17 December 2002).

artificially restricted market with an artificially restricted number of players that you need to ensure you do not get excessive concentration of ownership, and you need special regulation to ensure that. In this case, because the media underpins the health of our democracy, you need very strong regulation to guarantee diversity of ownership.

Second, many have argued that despite the declared policy intention, the only result from the Bill would be increased industry consolidation. Many of the proposals for amendments were directed at allowing some liberalisation while preserving key elements in the current prohibitions – allowing common control of two but not three of the major media outlets or allowing three in regional but not metropolitan markets; allowing radio/newspaper or radio/television combinations but not newspaper/television combinations; a minimum-voices-in-a-market test; a maximum-share-of-advertising-revenue-in-a-market test. It was also suggested that any liberalisation of ownership limits might be accompanied by increased funding for national public broadcasters to fund the expansion of existing radio networks to country areas.¹³

Third, the editorial separation regime was strongly criticised by opposition parties, some media companies and consumer and public interest organisations because of the level of government intervention it would require in the day-to-day activities of media organisations. Labor thought it would allow the regulator ‘to harass media organisations in ways that...could ultimately lead to very serious interference in the affairs of the media and in the independence of the media’. According to the Communications Law Centre, it ‘does nothing to address the question of influence of ownership on editorial matters within any given organisation [and] is an inadequate means of addressing the spread of corporate culture across media holdings’. Perversely it would restrict editorial collaboration across commonly-owned media enterprises, which is supposed to be a key justification for the removal of the cross-media ownership restrictions in the first place. In response to the major arguments mounted in support of the Bill, the Labor opposition spokesperson on communications argued:

13. See Wilding, D. (2003) ‘The House, the Senate and the Media Ownership Bill: An “unacceptable three-way control situation”’, *Media International Australia incorporating Culture and Policy*, no 108 (August).

- ***changing consumer tastes:*** “[E]ven in the new world of the Internet, the old traditional media players like Fairfax and PBL are the dominant players through things such as f2 and ninemsn [news/information/entertainment/e-commerce sites]. But surveys show that the overwhelming majority of public opinion formation still occurs through the traditional media of TV, newspapers and radio and that they still dominate the marketplace for ideas and public opinion.”
- ***convergence:*** “I think the concept of convergence...is very exaggerated and yet to be demonstrated as the sort of powerful driver of change that is suggested. We ought to acknowledge that if Fairfax [the publisher of the two daily broadsheets in Sydney and Melbourne and the national financial daily, the *Australian Financial Review*] were to take over Channel 10, for arguments sake, you would end up with one company still essentially running two separate operations, with minor changes in configuration but ultimately one owner deciding the voice, the opinions and the decisions that actually permeate both organisations.”
- ***capital and capacity to compete globally:*** Labor is ‘comfortable with the idea of relaxing the very restrictive foreign ownership rules at the moment. We do not support open slather, but we do not have a problem with some degree of foreign ownership of our media. But [...] there [is] a need for protection on some fronts’ [eg. the issue of foreign *bureaux* being closed by a new foreign owner]. Labor members of the Parliamentary Committee which examined the Bill thought the removal of the restrictions would not only improve local media companies’ access to global capital, resources and expertise, but would improve possibilities ‘for Australian expertise to be promoted and advanced internationally’, and ‘lead to greater diversity in services and products for Australian consumers’ as a result of greater competition.
- ***domestic media competition:***
 - Far from encouraging competition and diversity, the Bill would encourage consolidation – it is highly probable that Australia would be left with three and perhaps only two major media groups – Labor related this to the concurrent and highly

contentious issue of the sale of the government's majority stake in the former public monopoly telecoms company, Telstra.

- General competition law (without the 'media specific public interest' test recommended by a Productivity Commission inquiry in early 2000) would not prevent such consolidation.
 - There are many views in the community already which, 'although widely held and perhaps even reflective of a majority, do not get much of a run in our media today...[b]ecause the owners, the proprietors and the people who edit them have a different point of view'.
 - Further consolidation would reduce the bargaining power of advertisers and the number of prospective employers of journalists, and encourage a 'conspiracy of silence' among the remaining media players about each others' non-media interests.
- ***international precedent:*** The 'international trend' is grossly exaggerated and taken out of context. In particular, in the UK, the proposed relaxation is minor, the BBC is much better funded than the ABC, and many new free-to-air channels are now available through a more liberal digital terrestrial TV structure.

On the issue that media ownership is not a major determinant of media content – that journalists, not proprietors, decide what is published – Labor said 'The reality for most journalists is that they know what the corporate position is within their media outlet and they know that, if they buck that trend, their career will be damaged. So, yes, they have a certain degree of autonomy, but ultimately control exists with the owner and with people who exercise management power'. Labor cited a recent survey by the broadcasting regulator which found an overwhelming view amongst news producers that proprietorial interests do have a heavy influence on how news and opinions are conveyed. Canadian journalist Steve Kimber gave evidence to a Parliamentary Committee investigating the legislation about his experiences on the Halifax *Daily News*.

2.2.2.9 Next steps

The federal election in October 2004 greatly affected the outlook for changes to media ownership laws and the privatization of Telstra. The Liberal/National Coalition was returned with not only

an increased majority in the House of Representatives but, for the first time in nearly 30 years, a majority in the Senate as well. This means that when the new senators take their places from 1 July 2005, the government will be able to pass legislation through both houses without needing support from any minor party senators. It could even propose a more radical overhaul of media ownership laws than was contained in its original legislation. Before the new Senate forms, the minor party senators might be more prepared to negotiate amendments to the government's proposals.

The Prime Minister has indicated since the election that he sees changes to foreign and cross media ownership rules as 'a package [...] the two work together'. Asked about the government's overall legislative plans after the election, but before its control of the Senate was confirmed, he also said :

This issue [media ownership] is not as important for me as all the other things I've talked about this morning. I mean it's there. I think the current prohibitions are silly. I always have, and I would like to see change. But I'm not going to sort of perish politically in relation to this. I can assure you of that, it is not that important to me.¹⁴

This may be interpreted merely as a dampening of expectations about the scale of any changes. There has been a good deal of discussion of likely takeover activity in the media sector in the weeks since the election. The Chairman of the competition regulator has publicly discussed the need to re-examine the boundaries of relevant markets in considering any mergers which might occur after liberalisation of industry-specific ownership restrictions. This could include the markets for classified advertising, which has been greatly affected by the Internet, and television, where free-to-air and pay TV have previously been regarded as comprising separate markets

14. Transcript of Press Conference, Blue Room, Parliament House, Canberra, 22 October 2004 : <http://www.pm.gov.au/news/interviews/Interview_1136.html> (3 November 2004).

