

# Media Regulation in Australia and the Public Interest

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# Abbreviations

ABA	Australian Broadcasting Authority
ABC	Australian Broadcasting Corporation
ABCB	Australian Broadcasting Control Board
ABT	Australian Broadcasting Tribunal
ACCC	Australian Competition and Consumer Commission
AM	Amplitude modulation
BSA	Broadcasting Services Act 1992
BTCE	Bureau of Transport and Communications Economics
CEASA	Commercial Economic Advisory Service of Australia
DTC	Department of Transport and Communications
DTTB	Digital television terrestrial broadcasting
FM	Frequency modulation
FTA	Free-to-air television operator
HDTV	High definition television
kHz	Kilohertz
MDS	Multipoint Distribution System
MF	Medium Frequency
MHz	Megahertz
SBS	Special Broadcasting Service
UHF	Ultra high frequency
VHF	Very high frequency

# Preface

Much of the history of media regulation in Australia would make an excellent case study of the pursuit of private interests by powerful individuals and of the failure of governments to protect the public interest. Media policy-making has never been an easy task. Mixing together, as it does, potent ingredients such as powerful vested interests, political influence, social responsibility, rapidly changing technologies and market failures, debate on the issue is invariably explosive and constantly results in front-page headlines in morning newspapers and lead stories in main evening television news bulletins.

In this book, we adopt both a retrospective and a prospective approach to assess how well past and present policies have served the public interest. Our analysis was guided by the fundamental principle that regulatory intervention should be entertained only in situations where the market fails to deliver an efficient outcome and the benefits of intervention exceed its costs. Our conclusion is that many media regulations do not pass this simple test and that, more often than not, policy decisions have been driven by narrow considerations that tend to focus on the protection of private interests rather than safeguarding the wider public interest.

The effectiveness of traditional regulatory mechanisms is increasingly being challenged by rapid technological change. Because of convergence, what used to be distinct services with different delivery platforms are becoming indistinguishable in terms of their attributes and delivery. The Internet and other delivery platforms, such as satellites, are beyond the reach of national regulations. In such circumstances, great care should be exercised to ensure that regulatory mechanisms do not distort market incentives or hinder maximization of economic and social benefits. We make several suggestions for alternative policy directions that avoid some of the shortcomings we have identified and propose four guiding principles for the development of efficient regulation.

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**Robert Albon**

**Franco Papandrea**

# Chapter One

## Introduction

Media industries play an indispensable role in the life of modern societies. For most people, the products of media industries are the main source of information and entertainment. Because of their central and pervasive role, media industries have attracted and continue to attract much attention from policy-makers. For the electronic media, in particular, regulatory policy has been the main determinant of the historical structure and performance of the industry. Technological developments, however, are beginning to challenge traditional structures and policies and are likely to bring about fundamental changes to the future media landscape. It is important, therefore, that the development of future policies, although cognizant of the past, should not be bound by it, but should focus on approaches likely to guarantee efficient structures that best serve the public interest.

Every industry group has its peculiarities, and the media industry is no exception. The industry (principally free-to-air and pay television, radio, newspapers and magazines) uses a diverse range of electronic and physical means to deliver an even more diverse range of products (news, sitcoms, movies, feature articles, etc.). Economies of scale and scope are common in the production of media outputs, and most products have public-good characteristics. Some media, like free-to-air television and suburban newspapers, are delivered free of charge, and suppliers make their money by selling advertising. Commercial broadcasting and publishing are essentially profit-making activities. Two national broadcasting services are operated largely on a non-commercial basis and are funded by the Commonwealth.

The means adopted to finance broadcasting services may have the effect of changing the nature of the final product produced by them. All broadcasters, irrespective of their funding mechanism, deliver programmes for consumption by audiences. Commercial broadcasters, however, are also engaged in the delivery of advertising messages to

audiences. For such broadcasters, programmes are intermediate products that they use to attract potential audiences for paid advertising messages.

Competition occurs within each medium and, in some cases, between different media. Commercial radio (or television) services compete for audiences with each other and with non-commercial services operating in the same area. The level of competition is highest between commercial services whose programmes are directed to the same target audiences (in terms of demographic characteristics) but is less intense between commercial and non-commercial services. Commercial operators also compete with each other in the sale of access to audience to advertisers (advertising market). There is some competition between parts of the electronic media and parts of the print media. For example, both produce special-interest outputs such as fishing programmes and fishing magazines, and television news is reputed to have been the major cause of the demise of afternoon newspapers.

It is not surprising that such a complex and important industry has given rise to many public-policy issues. The current set of interventions reflects a variety of factors. In addition to typical policy interventions in response to genuine failings in the market, media policies have been influenced considerably by and reflect 'social responsibility' or paternalistic considerations as well as private interest politics.

### *Social Responsibility and Paternalism*

Australia's traditional approach to broadcasting was strongly influenced by the British 'social responsibility' model, which sought to ensure that a medium with substantial power over public opinion was used for 'the collective good of society'. Because of its immediacy and mass coverage, broadcasting was thought to have a powerful influence on society, an influence that conservative governments wanted to harness to foster cultural and educational values and to reinforce desirable social standards and traditional models of moral behaviour. This was thought to be particularly necessary because the limited number of available channels concentrated influence in the hands of a few people who could use it to pursue their own interests rather than the well-being of society.

Unlike the more liberal approach of allowing broadcasters to respond to individual preferences and choice, the social responsibility model prescribes reinforcement of established practices and exposure

to the best practices in culture, education and tradition. To promote this goal, the right to broadcast was assigned to national organizations operating in the public interest or to private individuals who were licensed to operate their stations as 'public trustees' of social ideals. However, as noted by the Bureau of Transport and Communications Economics (1991a:8-9): 'With commercial broadcasting, in particular, there may be some conflict between programming which responds to the tastes of the general audience and the controls which are designed to give the audiences what they "need" rather than what they "want".' Thus, extensive control and scrutiny by a public body was deemed to be necessary to ensure that private broadcasters lived up to their public trustee status.

Cultural enhancement and protection of good taste were the dominant concerns of government action related to programmes in the early days of Australian broadcasting (see Postmaster-General's Department, 1931). In 1942, the Joint Parliamentary Committee on Wireless Broadcasting (Gibson Committee) expressed the need for control of broadcasting to ensure that its powerful influence was used for the good of society. In the Committee's view, there was a need to regulate 'for at least some measure of public control of programmes in the general interests of the community, not only to prevent the service from being used for improper purposes, but to ensure that it will exercise a positive influence for good on the individual and national character' (Gibson, 1942:10).

The 1954 Royal Commission on Television adopted a similar approach for the preservation of good taste through positive programme standards 'in order to provide not only for the entertainment and enjoyment of viewers, but also for their education ... and enlightenment. The use of this new medium of communication must, in our view, be regarded, by commercial as well as national stations, as in the nature of a public trust for the benefit of all members of society' (Royal Commission on Television, 1954:144).

The public interest was also invoked to justify prohibition of foreign control of broadcasting licences on the ground that foreign interests are likely to diverge from the national interest of Australians. Many countries cite risk to national security as the reason for prohibiting foreign control of broadcasting. Such considerations were also prominent in Australia and were the main motivation for a Joint Resolution of both Houses of Parliament in 1951 that: 'In the opinion of this House, it is undesirable that any person not an Australian should have any substantial measure of ownership or control over any Australian commercial broadcasting

station, whether such ownership or control be exercisable directly or indirectly' (House of Representatives, 1951:2915).

To minimise the risk of abuse of their public trust, it was determined that broadcasters should be 'fit and proper persons'. Particularly, they were not to favour one political view over others and were to provide equitable access to all political parties. The magnitude of such power and of the consequential danger of any abuse grew rapidly with increasing concentration of ownership or control of broadcasting. It was argued, therefore, that the public interest would be better served by the diversity of views likely to ensue from diversified ownership of licences. The Gibson Committee, for example, was opposed to the idea that broadcasting should have the same freedom as the press because 'commercial broadcasting can be more easily controlled than newspapers and, in any case, there is no reason why the public should be asked to accept anything less than the highest possible ethical standard that can be attained by those who hold commercial broadcasting licences. Furthermore, broadcasting is a virtual monopoly, whereas the publication of newspapers is not' (Gibson, 1942:60).

The concept of the public interest continues to influence current media policy-making. In addition to concerns about excessive concentration of media power and influence, foreign control and cultural influence, current policies are also influenced by the concept of universal service and equitable provision of media services throughout the country. However, this traditional social responsibility role of broadcasting has come under steadily increasing scrutiny and has been found difficult to sustain in the face of, in particular, technological change, greater public accountability and more assertive consumers.

The expansion of broadcasting (including like services) is leading gradually to a private relationship between the programme supplier and the audience, where the exchange of programmes is similar to the exchange of other private services. Such developments are eroding largely, if not totally, the public-good nature of broadcasting and with it the justification for most of the traditional regulatory controls.

### *Private Interest Politics*

The public interest alone does not sufficiently explain the need for media regulation. As implied by the above discussion, a more realistic approach would seek to explain media regulation by politics as well as economics. For example, in his discussion of Australian media

regulation, Chris Trengove questioned the role of 'genuine paternalistic sentiment' and suggested an alternative explanation for regional monopolies, the failure to issue new licences, local content rules and various other restrictive practices. He argued that these sprang more from 'effective lobbying of particular producer groups' (Trengove, 1983:88) in pursuit of their private interests.

The private-interest approach to the political mechanism would cast much of the regulatory process in terms of the relative strength of consumer and producer interests. Whereas consumers are relatively weak with small individual interests and high costs of organization, producers have large individual interests and, being few in numbers, low costs of organization. Producer and other interests operate in a 'market for regulation'. To some extent governments and regulatory bodies can be captured by these interests.

In Australia's case, the early preoccupation with natural monopoly led to high concentration and high profits. Incumbents had much to protect, and existing operators have fought hard to protect their privileged positions from the threat of new licences and new technologies.

The history of Australian commercial broadcasting is littered with policies and regulatory actions designed to protect the commercial viability of incumbent broadcasters. Although no longer a major element of legislation or expressed regulatory policy, commercial viability of incumbents is often a primary consideration in government decision-making. The decision to ban new commercial television networks to facilitate the introduction of digital television by existing broadcasters is the most recent example of the continued application of this policy.

The justification for this anti-competitive policy instrument has often been seen as a quid pro quo for the obligations imposed by the 'public trustee' position of broadcasters and as a way of ensuring uninterrupted supply of services to consumers. Overzealous application of this instrument was the primary reason for the small increase in the number of radio services nationally and no increases in Sydney and Melbourne for more than four decades preceding 1976. It was also the primary reason for the moratorium on the introduction of pay television and for banning advertising on pay television when it was eventually introduced,<sup>1</sup> the ban on use of the sixth high-powered

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1 Although now permitted to carry advertising, subscription television broadcasting licences are subject to the condition that subscription fees will be the predominant source of revenue.

channel for commercial television, and the long-delayed introduction of FM radio services.

The high and rising value of broadcasting licences has been one of the more visible consequences of protecting the commercial viability of incumbent broadcasters. Commercial licences have always been eagerly sought and for many years they were seen as 'licences to print money'. Although new licences are now auctioned, continuing protection of the commercial interests of existing licensees provides them with further windfall gains. For example, the recent unexpectedly high auction price of \$36 million for a second regional television licence for Western Australia was thought to reflect the increased value of licences brought about by the ban on new networks imposed by the decision on the introduction of digital television.

### *Plan of the Book*

Although recent legislative changes have reduced significantly the level of regulation impinging on the industry, many aspects continue to be subject to regulation and broadcasting continues to be one of Australia's most regulated industries. The aim of this book is to describe, explain and evaluate Australian media regulation and offer some observations on potential improvements. The evaluation is undertaken on the basis of economic efficiency criteria augmented by broader considerations of the public interest.

Our evaluation begins with a discussion of the nature and development of Australian media regulation. This is done primarily in Chapter 2, but is complemented by the historical outline of media regulation presented in the Appendix. Chapter 3 describes the current structure of the Australian media industries and the factors that underlie intra- and inter-media competition. The issue and occurrence of market failure in media industries is discussed in Chapter 4. The discussion up to this point is intended to provide the background and context for the subsequent consideration and evaluation of the principal mechanisms employed to regulate Australian media. Licensing and media concentration issues are considered in Chapter 5 and ownership and control issues are taken up in Chapter 6. The challenges that technological developments pose to traditional regulatory mechanisms are addressed in Chapter 7. The book concludes in Chapter 8 with a discussion of proposals for more efficient media regulation.

## Chapter Two

# Australian Media and Its Regulation

In this chapter we consider the role of the media, describe the different elements of the Australian media industries and set out the main features of the existing regulatory structure. We provide the background and conceptual framework for the discussion and evaluation of regulatory instruments in subsequent chapters.

### *Role of Media*

Broadcasting services are probably the most important source of information and entertainment for most Australians. On average, adult Australians spend more than six hours a day watching television or listening to the radio. In some cases, and particularly for radio, consumption of a programme may be complementary to some other primary activity (such as reading a book or driving a car). Residents of the mainland State capital cities spend three hours and 13 minutes a day (slightly more in regional areas) watching television. Older people (55 years or more) spend considerably more time watching television with an average of four hours and 24 minutes a day (ACNielsen, 1998a, 1998b). Adult Australians (18 years or more) in capital cities spend an average of almost 24 hours a week (between 5.30 am and midnight) listening to radio (ABA, 1996). These figures clearly show that broadcasting services take up a large proportion of the available leisure time of a large part of the community.

Television and radio services are widely distributed throughout Australia. At present, all State capital cities except Hobart and regional areas in the eastern mainland States receive the national television service provided by the Australian Broadcasting Corporation (ABC) and three commercial television services. All other areas (other than remote) are served by the ABC and two (or soon to be two) commercial

services. Remote areas receive a single commercial service. In addition, the television service provided by the Special Broadcasting Service (SBS) reaches all State capital cities and most other major regional population centres. A variety of radio services provided by the ABC, commercial operators and community operators are available for reception in most centres. The number varies from locality to locality, generally reflecting the size of the population. Sydney and Melbourne, for example, receive more services than other centres. The SBS also operates ethnic radio services in Sydney and Melbourne with relays to some other centres.

The popular print media comprise the two distinct sectors of newspapers and magazines. The newspaper sector is dominated by the national and capital city dailies with an aggregate average daily circulation of 2.4 million on weekdays and 3.2 million and 3.4 million on Saturday and Sunday respectively. There are two dailies published nationally and two additional dailies in each of Sydney and Melbourne. In all the other State and territory capital cities, only one newspaper is published daily. There are also some 37 regional newspapers published daily with a combined circulation of approximately 630 000. The magazine sector comprises many diverse titles published on a regular basis. The circulation of the top 30 titles ranges from 80 000 to over one million per issue. Most of the top 30 titles are published monthly, but some of the highest-circulation magazines are published weekly (*Communications Update*, 1998).

### *Snapshot of Media Industries*

The structure of media industries in Australia is greatly influenced by regulations in the form of licensing and ownership controls. It also features the widespread provision of services funded from the public purse. In addition to the ABC and SBS television services, up to three commercial television services operate in each licence area. In total, 47 commercial television stations operate in Australia. No-one may own more than one commercial television station in the same market and the aggregate reach of multiple stations under common ownership must not exceed 75 per cent of the Australian population. Table 2.1 provides details of major television stations under common ownership. There are no limits on the networking of programming, most of which originates in Sydney and is distributed through syndication arrangements throughout the country.

**Table 2.1: Major Commercial Television Station Groups**

<i>Group</i>	<i>Stations Held</i>	<i>Population Reach (% of Australian population)</i>
<b>Seven Network Ltd</b>	5 metropolitan (Sydney, Melbourne, Brisbane, Perth and Adelaide), 1 regional (Queensland)	71.4
<b>The Ten Group Ltd</b>	5 metropolitan (Sydney, Melbourne, Brisbane, Perth and Adelaide)	64.6
<b>Nine Network</b>	3 metropolitan (Sydney, Melbourne and Brisbane), 1 regional (Darwin)	51.2
<b>Prime Network</b>	8 regional (NSW/ACT, Victoria and Western Australia)	25.0
<b>TWT Holdings Ltd</b>	5 regional (NSW/ACT, Victoria, Queensland and Tasmania)	22.7

Source: *Communications Update* (1998).

**Table 2.2: Major Commercial Radio Station Groups**

<i>Group</i>	<i>Stations Held</i>	<i>Population Reach (% of Australian population)</i>
<b>Austereo Ltd</b>	11 metropolitan, 3 regional	62.7
<b>Australian Radio Network</b>	8 metropolitan, 3 regional	61.3
<b>Lamb Family</b>	2 metropolitan	27.0
<b>RG Capital Australia</b>	1 metropolitan, 9 regional	25.5
<b>Southern Cross Communications Ltd</b>	4 metropolitan, 4 regional	24.9
<b>2KY Broadcasters</b>	1 metropolitan, 2 regional	21.7

Source: *Communications Update* (1998).

All centres in Australia receive at least one commercial radio service. Most receive two or more. The number of commercial radio services varies from market to market largely depending on population. Larger regional city markets have up to four commercial services and the number of services in mainland State capital cities ranges from five to nine. In total, 217 commercial stations are licensed to operate in different parts of Australia. Regulation limits ownership to no more than two stations in the same area (details of major ownership groups are provided in Table 2.2). Up to four ABC national network services are available in most population centres. Additional, but more targeted, non-networked ABC services are available in capital cities and large regional centres. SBS has two stations, one each in Sydney and Melbourne, and a network service to larger population centres. Community radio stations operate in State capital cities and many regional centres.

Although the print media are not subject to direct regulatory controls, they are indirectly influenced by cross-media ownership rules that prevent individuals from owning a major daily newspaper and a television station or a radio station serving the same market. The major daily press is highly concentrated in two dominant groups (News Ltd and Fairfax group) which together control ten of the 12 capital city and national daily newspapers. Because of its high level of concentration, major changes in the ownership of the daily press are typically subjected to scrutiny by the Australian Competition and Consumer Commission (ACCC) and on occasion by parliamentary committees.

All sectors of the print media are highly concentrated. The national and capital city dailies and Sunday newspapers sector is dominated by News Limited. It publishes one of two national daily newspapers (Monday to Saturday), six of ten capital city daily newspapers and six of the ten Sunday newspapers. The second largest group, Fairfax, publishes one national daily, two capital city dailies and two Sunday newspapers. West Australian Newspapers Holdings Limited and Stokes publish one daily and one Sunday newspaper each.

Currently, 37 regional newspapers are published daily. Of the regional dailies, 14 are published in New South Wales, 14 in Queensland, six in Victoria, two in Tasmania and one in Western Australia. The ownership distribution is summarized in Table 2.3.

There are over 150 suburban newspapers in circulation in major cities including 41 in Sydney, 61 in Melbourne, 22 in Brisbane, 18 in Perth and 11 in Adelaide. Of these, 77 are published by News Limited and 20 by the Fairfax group.

**Table 2.3: Summary of Regional Daily Newspapers Ownership**

<i>Group</i>	<i>Number of Newspapers</i>	<i>Aggregate Circulation</i>	<i>State Distribution</i>
<b>O'Reilly</b>	13	192 617	NSW (4), Queensland (9)
<b>J.B. Fairfax</b>	8	93 209	NSW (5), Queensland (1) Victoria (1), Tasmania (1)
<b>News Ltd</b>	5	143 211	Queensland (3), Victoria (2)
<b>Fairfax Group</b>	3	92 901	NSW (2), Victoria (1)
<b>Others</b>	8	104 856	NSW (3), Victoria (2), Queensland (1), Tasmania (1), Western Australia (1)

Source: *Communications Update* (1998).

A great variety of magazines is published regularly. Many have a small circulation and appeal to a specialized (minority) readership. The more popular magazines have a relatively large readership. *Women's Weekly* and *Woman's Day*, for example, have a circulation of around one million copies each. The largest magazine publisher is Publishing and Broadcasting Ltd (owned by Kerry Packer) which controls 11.5 of the top 30 titles and approximately 47 per cent of the aggregate circulation of the top 30 titles.<sup>2</sup> The second largest owner is PMP Communications, which publishes 7.5 of the top 30 titles and accounts for 24.9 per cent of the aggregate circulation.

### *Subscription Broadcasting*

Section 16 of the *Broadcasting Services Act* 1992 (BSA) defines subscription television broadcasting as a service providing programmes that appeal to the general public and are made available only on the payment of subscription fees. Services can be provided by any means chosen by the provider. Licences for either satellite or non-satellite services are issued by the Australian Broadcasting Authority (ABA) on the basis of one licence per service. Until 1 July 1997, the ABA was permitted to issue only three satellite licences, two of which (licences A and B) were allocated for commercial use (each of four channels) and the third (with two channels) was allocated to the ABC. A licence does not carry the right of access to any particular means of delivery, which must be organized separately by the licence holder.

Following the demise of the subscription operator Australis Media in early 1998, there are now three major service providers supplying different parts of the country. The two metropolitan-based operators, Foxtel (linked with Telstra) and Optus Vision, distribute their programming mainly via broadband communications cables established and operated by the related communications carriers. Both Foxtel and Optus Vision are currently planning the introduction of satellite delivery for their services in areas not covered by their broadband cables. The estimated subscriber bases of Foxtel and Optus Vision are 300 000 and 195 000 respectively. Austar, the third major operator in the industry, has an estimated 225 000 subscribers and operates satellite and multipoint distribution services (MDS) in regional centres of all mainland states (except Western Australia), the Northern Territory and Hobart. Smaller independent operators include

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<sup>2</sup> *TV Week* is jointly owned by Publishing and Broadcasting and PMP Communications. Its circulation has been attributed equally to the joint owners.

Northgate Communications with a cable network in Ballarat, and a second network under construction in Geelong (both in Victoria), and Neighbourhood Cable currently setting up a cable service in Mildura, also in Victoria.

**Table 2.4: Major Subscription Television Operators**

<i>Operator</i>	<i>Number of Subscribers</i>	<i>Service Areas</i>	<i>Major Owners</i>
<b>Foxtel</b>	300 000	Mainland State Capital Cities: Regional NSW, Qld & Vic	Telstra & News Ltd. Joint Venture
<b>Optus Vision</b>	195 000	Adelaide, Brisbane, Melbourne & Sydney	Optus Communications
<b>Austar</b>	225 000	Regional NSW, Vic, Qld, SA, & NT; Newcastle, Wollongong, Hobart & Darwin	United International Holdings
<b>Northgate</b>	Several hundred	Ballarat (Vic) Under Construction in Geelong (Vic)	Northgate Communications
<b>Neighbourhood Cable</b>	Under Construction	Mildura (Vic)	

Source: *Pay TV News* (1998).

## *Regulation of Broadcasting Media*

The media industries have been subject to wide-ranging government regulation of private providers and some direct government provision in most countries, and Australia is no exception. While these regulations have changed considerably over the years (see historical outline in the Appendix), there are still some common threads in the present regulatory structure. These relate particularly to restrictions on entry, controls on ownership and regulation of content.

The principal legislative instruments governing the broadcasting industry are the *Broadcasting Services Act 1992* (BSA), the *Radiocommunications Act 1992*, the *Australian Broadcasting Corporation Act 1983*, and the *Special Broadcasting Service Act 1991*. The last two specifically deal with the operations of the national broadcasters, while the BSA deals with all other aspects of broadcasting services and provides the legislative basis for the functions and operations of the ABA, the broadcasting industry regulator. The *Radiocommunications Act* deals with the allocation of spectrum for use by broadcasters.

The principal areas of regulation of broadcasting services are:

- planning and licensing of services;
- ownership and control of services; and
- operating conditions including programme standards.

### **Planning and Licensing**

As part of its planning function, the ABA is required to determine an overall strategic plan for the use of the broadcasting bands of the radiofrequency spectrum and the deployment of the available channels throughout Australia. This is in the form of a frequency allotment plan setting out the priorities for each part of the frequency spectrum assigned to it by the Australian Communications Authority. Before preparing the plan the ABA is required to undertake extensive public consultations.

Having prepared the frequency allotment plan, the ABA is then required to prepare licence area plans in accordance with the planning criteria established by the BSA. The plan for each licence area determines the number and characteristics, including technical specifications, of the services to be established. The minister retains the power to give specific directions to the ABA about how the priorities of the frequency allotment plan are to be met. The Minister is also required by the Act to notify the ABA of the capacity (number of channels) to be reserved for national and community broadcasting services; and that capacity cannot be used for other purposes. Commercial broadcasting licences are allocated on the basis of a price-based system determined by the ABA.

While this process represents a considerable advancement on earlier planning and licensing arrangements that gave considerable protection from entry competition to incumbent broadcasters, its impact on the structure of the broadcasting system is unlikely to be substantial, at least in the short term. Much of the structure, of course, has already been determined by earlier planning decisions and technical standards. It also remains to be seen to what extent the ABA and the government will allow the market to determine the timing of introduction of new services to fill the available channels. For example, new commercial television stations are banned until 31 December 2006.

### **Ownership and Control**

The BSA provides for Australian control of all commercial television services as well as limits on the number of commercial broadcasting services that may be controlled by an individual. For television, an individual is precluded from controlling more than one licence in the

same licence area or an aggregate number of licences whose combined licence area populations exceed 75 per cent of the population of Australia. A foreign person must not be in control of a television licence or have company interests in a television licence exceeding 15 per cent. Further, two or more foreign persons must not have combined company interests in a licensee exceeding 20 per cent. For radio, an individual must not be in a position to control more than two licences in the same licence area. There are no foreign ownership or control limits for radio licences. Cross-media rules apply to radio, television and daily newspapers and prohibit the control of more than one of the three media in the same geographic market.

### **Specific Obligations**

In addition to the 'standard' licence conditions that spell out the specific obligations imposed on licensees by the BSA, licensees are also required to comply with ABA programme standards and industry codes of practice. For television, in particular, programme standards are quite extensive and include Australian content (type and quantity) of television programmes, children's programmes, Australian content in advertising (80 per cent must be produced in Australia) and limits on time devoted to advertising (maximum of 13 minutes an hour in prime time and 15 minutes an hour at other times).

### **Regulation of Subscription Television**

Subscription broadcasting is not constrained to a service area and may be transmitted unchanged anywhere in Australia. However, a separate licence is required whenever the content of the service changes from one area to another. There are no domestic ownership or cross-media limits imposed on subscription television except that major daily newspapers, commercial free-to-air television licensees and telecommunications carriers are prohibited from controlling or holding more than two per cent of the shareholding of the 'class A' satellite licence. Foreign ownership is limited to 20 per cent of a licence for an individual and an aggregate of 35 per cent for two or more foreigners. Applicants for a licence must be Australian companies and will be deemed to be suitable to hold a licence provided the ABA is satisfied that there is not a significant risk the company will commit an offence under the Act or the related regulations and licence conditions.

Although advertising is permitted, a subscription licence is subject to the condition that subscription fees will continue to be the predominant source of revenue. Under the programme 'siphoning'

provisions, a licensee cannot acquire the rights to an event on the siphoning list determined by the Minister until the rights have been acquired by a free-to-air broadcaster. Subscription television services that predominantly provide drama programmes must ensure that at least 10 per cent of programme expenditure for each year of operation is spent on new Australian drama programmes.

### *Summary*

The media industries principally comprise free-to-air and pay television, radio, newspapers and magazines. They use a range of electronic and physical means in providing a variety of products (news, sitcoms, movies, feature articles, etc.). Some media, like free-to-air television and suburban newspapers, are delivered free-of-charge, with suppliers getting revenues by selling advertising. Commercial broadcasting and publishing are essentially profit-making activities. Two national broadcasting services are operated largely on a non-commercial basis and are funded by the Commonwealth. Pay television involves a more direct link between supplier and provider. The means adopted to finance broadcasting services may have the effect of changing the nature of the final product produced by them. This issue is taken up in the next chapter.

Australian broadcasting has been subject to regulations in three main areas: control of entry through licensing, restrictions on foreign and broad ownership and control of content. The print media were not subject to special regulation until the cross-media ownership rules were introduced in 1987. The regulations affecting the media industries have evolved over the years in response to new technologies, changing consumer demands and the decline of the 'social responsibility' approach. This evolution is given detailed treatment in the Appendix.



# Chapter Three

## Media Competition

In order to formulate a policy position on media markets it is necessary to know how they function and with what outcomes. A crucial question is this: How does the market perform in serving the public interest with respect to the media industries? To the extent that desirable outcomes can be achieved by leaving the market alone, there is no need for government intervention. On the other hand, to the extent that the market fails to serve the public interest there is a *prima facie* case for government action to achieve better outcomes. In this chapter we consider the nuts and bolts of the media industries as a background to the following chapter's treatment of market failure and its implications for public policy.

### *Characteristics of Media Markets*

Mass media industries share many characteristics. They supply at least one of two linked products, namely, content for information or entertainment, and advertising. Content is either sold or provided free of charge to consumers and is generally used to generate audiences or potential markets for the delivery of paid advertising messages on behalf of advertisers.

The degree to which the sale of advertising is used to generate revenues varies widely. Some sectors such as commercial free-to-air broadcasting and suburban newspapers depend entirely on the sale of advertising for their revenue. Others, such as daily newspapers, magazines and subscription television, depend on both the sale of content to consumers and advertising for their revenue. The relative importance of each varies. Daily newspapers raise about 30 per cent of their revenue from content sales and about 70 per cent from advertising. Magazines, depending on type, can range from about equal proportions of revenue from both sources for popular wide circulation

magazines to about 70 per cent or more from content sales for glossy specialist magazines. Subscription television raises most of its revenue from subscription fees.

The geographic availability of media products and services also varies. For example, a suburban newspaper is available in a small portion of a city while daily newspapers are available throughout major cities or even nationally. Similarly, while a local radio station may reach only an area within a few kilometre radius from the station, a major station may reach a whole capital city or region and, through syndication, some of its programmes may have even wider coverage.

Effective competition between media services requires a high level of substitution between them. Within broadcasting, consumers may regard two programmes broadcast at the same time on two television stations with the same coverage area as being highly substitutable. Where it is available, pay television is substitutable with free-to-air television. Similarly, radio stations in the same area may also be highly substitutable with each other.

Within print media, major daily newspapers in the same city are substitutable with each other. Similarly, national newspapers are substitutable with each other. However, city-based daily newspapers are less substitutable with national ones. Substitutability may also be high between some magazines but not others. The level of substitutability between newspapers and magazines is generally weak.

Although the outputs of different media have some common characteristics, their differences tend to be greater than their similarities. Radio and television programmes, for example, may be suitable substitutes for news but not necessarily for entertainment (television has supplanted radio as the main evening family entertainment medium). Also, radio is convenient to use in conjunction with some other activity (e.g., driving a car, reading) while television is less so. Similar factors also limit the level of substitutability between print and electronic media. Currently, substitution between television and daily newspapers is relatively weak. However, the introduction of television with a main evening news bulletin is reputed to have been a major cause of the decline and eventual demise of afternoon daily newspapers in Australia (Windschuttle, 1985).

### *Aspects of Competition*

All commercial media are primarily in the business of selling access to audiences to advertisers. This is true not only of the broadcast media

that give away entertainment and information to attract audiences, but also of media such as newspapers that are sold to consumers. For example, the business function of a newspaper was unambiguously stated in a submission to the House of Representatives Select Committee on the Print Media (1992) by Independent Newspapers PLC as follows:

A newspaper must never forget that, **as a business**, its purpose is to deliver an audience to advertisers in the most effective way possible, subject to the dictates of honest journalism and a respect for the dignity of the individual. (p. 54; emphasis in original)

In performing their business function, all media compete with each other and with other activities to attract audiences and simultaneously compete with each other for advertising expenditure. At any given time, the degree of competition between two media for both audiences and advertising expenditure depends on how well the attributes of the products offered by each meet the specific needs of consumers and advertisers.

Although media products share some attributes, the various media appeal to audiences for different reasons and are used differently by them. Someone with a broad general interest in current affairs may regard radio and television news bulletins as substitutes, but someone seeking more in-depth information on a particular story is unlikely to regard either of them as satisfactory substitutes for a newspaper. The circumstances in which a medium is used will also affect its substitutability. A jogger is unlikely to consider reading a newspaper as a substitute for listening to radio while jogging. Similarly, someone wanting to watch a television show is unlikely to regard a radio broadcast of the same show as a suitable substitute. These types of differences in media products indicate that the media do not constitute a single homogenous market but may be fragmented in a series of sub-markets reflecting the unique properties of each medium, and the specific needs that each medium is required to satisfy.

Operators using the same medium to reach similar audiences compete strongly with each other. Two daily newspapers in the same city compete directly with each other for both readership and advertising. Similarly, radio or television stations operating in the same licence area will compete directly for audiences and advertising. Media operators in direct competition with each other try to limit the level of competition between them by differentiating their outputs. Daily newspapers, for example, may adopt a different format (broadsheet

versus tabloid) and present reports in ways that may appeal to different classes of readers. Radio stations also adopt different formats (such as fine music, rock music, talk, etc.) and try to appeal to different age or demographic groups. Competitive television stations also try to differentiate themselves by focusing on different types of programming (sport, drama, etc.) and demographically different audiences.

Subscription television services provide consumers with an expanded range of services with attributes similar to those offered by free-to-air services, but with the obvious difference that consumers face a direct charge for access. In markets where both services are available, the similar products offered by subscription and broadcast television would make the two services highly substitutable. The audiences of subscription television channels are small relative to those of free-to-air television because of the limited reach of subscription services and their low take-up rate in the areas where they are available.

The level of competition between subscription and free-to-air television is high in homes where both services are available. After subscribing to a pay television service an individual would be indifferent to the source of the programming. For such an individual, therefore, the two services are highly substitutable and compete with each other for the individual's attention. To retain the subscriber, the subscription service needs to provide a level of viewer benefits that ensures renewal of subscriptions. Simultaneously, free-to-air television, whose revenue is directly proportional to its audience, needs to compete strongly to limit erosion of its audience and advertising revenue base.

Experience in other countries indicates that subscription television has been in direct competition with free-to-air television for audiences. For example, in the United States, the share of households viewing basic cable networks increased from 7.2 per cent in 1982 to 31 per cent in 1996, whereas viewing of broadcast television stations decreased from 86.3 per cent in 1984 to 69.9 per cent in 1994. More particularly, in households connected to cable television, the combined prime-time ratings of the cable networks are about the same as the aggregate ratings of the three major broadcast networks. Indeed, they surpassed the aggregate ratings of the broadcast networks for the first time in the third quarter of 1995 (Carrol & Howard, 1998). These findings suggest that audiences tend to use subscription television to increase the choice of programmes available to them. Thus, new or renewed subscriptions depend on the value audiences place on the additional choice and not necessarily on whether the benefits derived from subscription

television exceed those derived from free-to-air television. However, while their audiences remain small, subscription services are unlikely to be effective substitutes for free-to-air television advertising.

Similar factors also affect competition within the print media, for which the nature of the medium and its primary geographic market are the principal determinants of the level of competition. For example, while national newspapers and national magazines have the same geographic market, their different content and publication frequency limit the extent to which they can be thought of as substitutes for readership. However, depending on the demographics of their readership, they may be substitutable for advertising.

Readership competition between print media products requires both content substitutability and availability in the same geographic market. While a national newspaper overlaps with the geographic market of a metropolitan newspaper, it has a different focus and a different level of local content. Similarly, advertising competition is likely to be limited. An enterprise operating only in the Sydney market is unlikely to consider a national newspaper as an effective substitute for a Sydney daily newspaper.

### *Competition for Advertising*

Generally advertisers seek to deliver their messages to audiences with particular demographic characteristic in areas coinciding with their markets. The medium they choose must be able to deliver the message cost-effectively to the desired market and audience. The type of advertisement may also determine the choice of medium (e.g., classified advertisement versus advertisements for household detergents). To maximize the benefits they derive from their advertising expenditure, advertisers seek the most effective medium or combination of media for their particular needs. In assessing the effectiveness of a medium, an advertiser considers how well the characteristics of the medium's audience match those of potential consumers of the product to be advertised. Having made a choice of medium, the advertiser then seeks to reach the largest possible audience with any given expenditure. The audience's response to a medium is another important consideration. Advertisers often use more than one medium in an advertising campaign because of the different responses the same audience is likely to have to different media. Advertisers tend to be indifferent between two media or two combinations of media that are likely to generate similar benefits for similar levels of expenditure.

Each medium has unique characteristics giving it special advantages for particular types of advertising. For example, a local independent supermarket is unlikely to seek to advertise to the large and widely dispersed audience of a television station, most of which would be well beyond the catchment area for its customers, but may find a local suburban newspaper ideal for its advertisements. On the other hand, a manufacturer of widely distributed products such as household detergents is likely to regard large television audiences to be essential for its advertising.

Television is the most preferred medium for national advertising expenditure. The latest available advertising expenditure data (CEASA, 1998) show that television now accounts for 52.4 per cent of national advertising and 30 per cent of all advertising expenditure in main media. Although newspapers account for only 20.4 per cent of national advertising revenue, their 36.8 per cent share of total advertising exceeds that of television and highlights their dominance of non-national advertising with a 52.6 per cent share of the total. Television's share of non-national advertising is only 7.9 per cent of the total. Of the other main media, magazines (including business publications) account for 15.4 per cent of national and 4.3 per cent of non-national advertising, and radio for 7.1 per cent of national and 7.3 per cent of non-national advertising. Classified directories are an important medium for non-national advertising and account for a 23.9 per cent share of the total.

Because of their different characteristics, the various media are unlikely to be highly substitutable. Advertisers may not find them interchangeable because their audiences may differ widely in terms of their interest in the product or service being advertised, and in their geographic, demographic and psychographic characteristics (Picard, 1989). In addition, the characteristics of the media themselves may make them particularly well suited for some types of advertisements and not for others.

When considering this issue, the House of Representatives Select Committee on the Print Media (1992:63) concluded that 'while the media may be substitutable to a degree, (they) are not fully interchangeable'. In particular, the Committee noted the assessment of the Trade Practices Commission that:

in terms of news and information there is some substitutability between print and electronic media, and that for advertising of certain products there is substitutability. However, (the Commission's) market place inquiries, particularly of major

advertisers, has tended to indicate that competition is limited, and that there are substantial core markets for print and electronic media separately.

Studies such as Busterna (1987) and reports by the Bureau of Transport and Communications Economics (1993, 1996) also suggest that the main media are likely to have low substitutability. An indication of the likely level of substitutability between media may be gauged by the media's dependency on a particular type of advertising for their revenue. Data on the relative dependency of the main media on national and non-national advertising are provided in Table 3.1.

**Table 3.1: Proportion of National and Non-National Advertising for Main Media**

	<i>National</i>		<i>Non-national</i>		<i>Total</i>	
	<i>\$'000</i>	<i>Per cent</i>	<i>\$'000</i>	<i>Per cent</i>	<i>\$'000</i>	<i>Per cent</i>
<b>Television</b>	1 949 080	86.7	299 299	13.3	2 248 379	100.0
<b>Radio</b>	261 848	48.5	277 906	51.5	539 754	100.0
<b>Newspapers</b>	752 653	27.4	1 993 703	72.6	2 746 356	100.0
<b>Magazines<sup>a</sup></b>	568 429	77.7	163 439	22.3	731 868	100.0

Note:

a Includes business publications

Source: CEASA (1998).

The data in table 3.1 indicate the relative importance of national and non-national advertising to each of the main media. They suggest that both television and magazines are highly dependent on national advertising. In contrast, newspapers as a group are highly dependent on non-national advertising. For radio, the two sources of advertising appear to be equally important. In terms of competition between media, the more dependent a medium is on one of the two types of advertising, the more strongly it is likely to compete for it. For example, television is likely to be a much stronger competitor for national than for non-national advertising. Thus, the relative dependence of two media on national and non-national advertising is likely to be indicative of the level of competition between them.

### *Competition for Inputs*

The supply of information and entertainment to audiences is a key feature common to all the entities operating in media industries. Irrespective of whether the supply of information and entertainment to audiences is an intermediate or the final step in the production

process, each entity aims to maximize the audience attracted by its products. For commercial media, audience maximization is a prerequisite for profit maximization. Although publicly-funded media may follow different programming strategies from those of their commercial counterparts, their programming choices are also driven by audience appeal. It would be very difficult to justify continued funding of programming that nobody or only a few want.

Within a medium, competitors keenly seek popular programming. A popular newspaper or magazine columnist can command a high price. Similarly, popular radio personalities or television programmes can command high prices because of the substantial effect they can have on the audiences and revenues of stations. The allegedly high fees paid by the ABC for the *Uncensored* series of interviews by Jana Wendt, much discussed in the popular press, are an example of the price that a well-known personality can command.

The production of 'content' is by far the most important activity of all media industries and can account for more than half of the total cost of a media enterprise. Although the contents of different media have some unique characteristics they also have some characteristics in common. All media, for example, produce news or information outputs whose production is to some extent dependent upon similar inputs. Media industries will tend to compete with each other to secure the resources necessary for the creation of their outputs. The level of competition is likely to be strong between companies operating in the same industry but less strong between companies operating in different media industries.

All media collect information for news and current affairs stories or for popular magazine-style columns or programmes such as cooking and travel which they then package in a form suitable for their audience. The research and writing skills used in finding and collecting information of this kind are likely to be similar irrespective of the medium for which the output is prepared. Journalists therefore often pursue careers that see them move from one medium to another.

### *Management and Distribution Skills*

Within a particular medium competition for inputs is likely to be very strong. In radio, for example, where programmes and audience appeal are highly dependent on 'personalities', individuals with the appropriate skills are highly sought after. The so-called 'golden tonsils' of radio personality John Laws is an indirect reference to both his value

to the station that employs him as well as the reputedly high fees paid to him. Personalities are also very important in some elements of television. A television newsreader can make a substantial difference to audience ratings and stations go to considerable lengths to differentiate each other by their choice of newsreaders.

Television programming comprises programmes produced in-house as well as those purchased from domestic and international sources. For in-house-produced programmes stations compete with each other for concepts, writers, directors, actors and other talents required to make programmes. With ready-made or commissioned programmes from independent sources they compete with each other for the rights to broadcast the programmes. Often long-term relationships are formed with producers. Competition for popular imported programmes tends to be strong. Broadcasters quite often enter into long-term 'output' deals with studios overseas whereby they commit to purchase the entire studio output to ensure continued supply of potentially popular programmes. Stations also compete with each other to secure long-term rights to broadcast popular sporting events.

In television, subscription and free-to-air television are also likely to compete strongly with each other for certain programmes. The anti-siphoning rules essentially eliminate competition for major sporting events. Distribution arrangements for other programmes are likely to reduce the level of competition between subscription and free-to-air television.

The nature of a programme may have a major influence on its distribution arrangements. Some programmes, such as drama and children's programmes, retain at least some of their appeal and value over time. This allows such programmes to be distributed to different media at different times and at different prices through a series of 'distribution windows'. The aim of this discriminatory pricing strategy is to exploit purchasers' willingness to pay to get as much sales revenue from distribution as possible. Given that costs are fixed once the programmes are produced, maximizing total revenue from programme distribution also means maximizing profits.

Because much of the value of news and sport programmes derives from their immediacy, there is little, if any, incentive for sequential release of these programmes in the different broadcasting windows. Consequently subscription and free-to-air broadcasters compete directly for the rights to such programmes or for the resources required to produce them.

## Networking

Networking of programmes for broadcasting by a number of stations in different geographic markets is a prevailing feature of Australian television but is not used as extensively in radio. Until the introduction of three competing commercial television stations throughout most of Australia, networking of programmes by commercial stations was limited to State capital cities which already had three competing stations. Ownership controls, which prohibited individuals from holding a prescribed interest in more than two television stations, were a major constraint on the formation of commercial networks. Similar controls preventing common ownership of more than four radio stations in any one State or more than eight Australia-wide were in place until the late 1980s and acted as a major constraint on the formation of radio networks.

The ABC, as a national service, has always had a substantial amount of networking among its stations. The amount of networking varies from service to service and ranges from networking of national news bulletins to the broadcasting of the same programme from all the stations connected to the ABC FM fine music radio network. On ABC television, news and some current affairs programmes have separate State editions for broadcast within each State while other programmes are broadcast nationally. SBS Television broadcasts the same programme from all its stations.

Commercial television networks are made up of directly-owned stations and independently-owned affiliated stations that carry networked programmes subject to long-term agreements. The relaxation of television ownership limits in the late 1980s and early 1990s and the introduction of competitive stations in regional markets appear to have been the prime catalysts for the formation of television networks. The relaxation of ownership rules led to the formation of capital city-based networks under common ownership. These networks became, *de facto*, the only viable sources of programming for regional stations. Before the introduction of three commercial television services in most licence areas, regional stations enjoyed a local monopoly in their service area and were able to purchase programming from all three capital city networks. With the change in policy, however, the lack of alternative sources of programming dictated affiliation with one of the three networks. Apart from minor variations to accommodate local daily news bulletins or other small amounts of local-interest programming, most regional television programmes are networked.

The lack of alternative sources of programmes means that the fortunes of the regional stations are tied to the success of the programme policies of network-owned stations.

Because of its more 'local' character and dependence on the personality of presenters, commercial radio is not as conducive to networking as television. This is likely to be a contributing factor in the almost total absence of commercial national networks even though the formation of such networks under common ownership or through affiliation is not prohibited by regulation. Nonetheless, certain aspects of radio can be networked successfully.

National news services are highly conducive to networking and are widely used by radio stations. A large component of radio programming is made up of music that can be packaged in a form suitable for wide distribution. While this tends to be more a syndicated programme packaging service rather than traditional networking, it serves similar functions and is widely used by radio stations. Other forms of syndicated programmes include the relay of talk back-style programmes by popular personalities. These types of programming arrangements are widespread in the radio industry (BTCE, 1993).

Networks offer substantial benefits to advertisers seeking to reach undifferentiated audiences in large geographic markets. For them an advertisement delivered simultaneously in all the licence areas of the stations making up the network would be more cost effective than arranging separate delivery of the same advertisement by each station. On the other hand, advertisers seeking to reach audiences with specific demographic characteristics or only in specific licence areas may find networks less appealing than individual selection of stations.

Networking of programmes may also involve opportunity costs to stations by reducing their ability to schedule programmes reflecting local rather than national audience preferences. In network stations, a local programme can be scheduled only by replacing a networked programme. Although network schedules tend to provide some opportunity for insertion of popular local programmes such as news, more substantial variations of network schedules to accommodate local tastes could erode some of the benefits of networking and are uncommon.

## *Conclusion*

All broadcasters deliver programmes for consumption by audiences. Commercial broadcasters, however, are also engaged in the delivery

of advertising messages to audiences so that programmes are intermediate products used to attract potential audiences for paid advertising messages.

Competition occurs within each medium and, in some cases, between different media. Commercial radio (or television) services compete for audiences with each other and with non-commercial services operating in the same area. The level of competition is high between commercial services, but is less intense between commercial and non-commercial services. Commercial operators also compete with each other in the sale of access to audience to advertisers (advertising market). There is some competition between parts of the electronic media and parts of the print media.

Networking is an important feature of Australian broadcasting, especially in television. It has always been important for the ABC, but regulations prevented its development in commercial television until the late 1980s.

# Chapter Four

## Market Failure in Media Industries

Media markets operate in unusual ways and it would be surprising if *laissez faire* always resulted in the best possible outcome. Various market failures, which give rise to a prima facie case for intervention, are among the important considerations of media policy. These are related to three features of media industries: public good characteristics of many media products where a particular consumer's use does not detract from that of others; natural monopoly stemming from one or both of economies of scale and scope; and the absence of an established link between demand and supply for some media. In this chapter these three categories of market failure are considered.

### *Public Good*

In common with other intellectual property products, media products and services have public good characteristics. Generally, all the cost of producing the content element of a media product like a television programme or newspaper article is incurred in making the first copy. Once the first copy is produced, the level of consumption has no effect on production costs, but, depending on the vehicle used to deliver it to consumers, has varying degrees of impact on distribution costs. Whether one or one million individuals consume a news story has no impact on its production costs, but its distribution cost, for example, depends on whether it is delivered to consumers via a newspaper or a broadcasting medium.

Distribution may also have public good characteristics. The public good characteristics of physical media products, such as books, newspapers and videotapes are limited but nonetheless exist. For example, a book or a newspaper may be read once or many times by

the same or different readers without any loss of content and their price is not related to the number of readers. The public good characteristics of electronically distributed products are more pervasive. Once a free-to-air or cable distribution system is established, the cost of distribution within the signal coverage area does not change with the number of consumers accessing the product.

The public good characteristics of media products have important implications for efficient levels of consumption and supply. For broadcasting services where the marginal cost of supplying additional consumers within the reception area is zero, efficiency requires free access. Obviously, private suppliers would not enter such an activity as a business unless they were able to recover their costs directly or indirectly. To overcome this problem, three different financing arrangements have been developed.

First, broadcasting services are funded from the public purse and are supplied free of charge to consumers (sometimes after payment of a levy or receiver licence fee).

Second, services are funded by the sale of advertising and are supplied free of charge to consumers.

Third, consumers pay an up-front charge for exclusive access to the signal (via cable or encrypted broadcast) and then pay nothing for actual consumption.

Actual funding schemes may involve combinations of these three arrangements. For example, SBS is funded from the public purse as well as advertising and pay television may be funded from subscription fees and advertising.

The capacity to restrict access to those who purchase them facilitates the private production of print media products. But efficiency considerations also affect their pricing. As noted above, suburban newspapers are usually supplied free of charge to consumers and are fully funded from advertising. For other print products, cover prices to consumers are kept low by the sale of advertising. Cover prices and advertising are inextricably linked. The lower the cover price, the larger is the readership and, in turn, the higher is the advertising revenue from advertisements sold on the basis of circulation. Consequently, in setting cover prices publishers will take account of their effects on circulation and will attempt to set prices that maximize the combined revenue from copy sales and advertising.

For broadcasting, in particular, where the supply of programmes to audiences is restricted through licensing of stations, funding through the sale of advertising may not maximize welfare. Advertising is sold

in the form of airtime and its price reflects both the amount of airtime and the size and characteristics of the potential audience for the advertising messages. For any given programme cost, therefore, broadcasters have an incentive to maximize the size of the audience. Because programmes generate different audiences, in terms of both size and composition, programme selection usually involves a trade-off between programme costs and the advertising value of the expected audience. Generally, the choice between two programmes to fill an available slot on a programming schedule is determined by the combination of cost and expected audience likely to generate the larger profit. A high-cost programme, therefore, would be preferable to a lower-cost alternative whenever its audience is likely to generate sufficient advertising revenue to outweigh the higher cost.

In a system where the number of broadcasting stations is not limited by either technical or regulatory constraints, all programmes capable of generating advertising revenue at least equal to their cost would be broadcast. If, however, the number of stations is limited, then the available slots on programming schedules may not be sufficient to accommodate all the available profitable programmes. In such a situation, broadcasters have a tendency to supply programmes that appeal to large audiences in preference to those that may be highly desirable to smaller audiences.

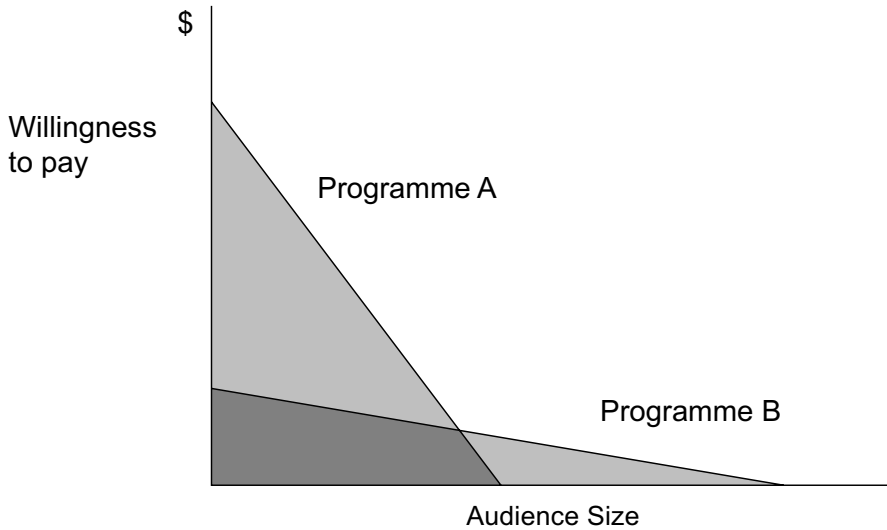
Intensity of demand for a service is usually measured by the price a person is prepared to pay for it. The total price is a combination of both the monetary cost and the opportunity cost of forgoing the next best available activity. Where no direct payment is incurred to consume a service (e.g., television), benefits to consumers cannot be assessed directly. However, it may be possible to assess them indirectly by valuing the activities that are given up to consume the service.

The intensity of demand, and consequently willingness to pay, varies from one individual to another. For example, individuals with a very high intensity of demand for a particular programme may be prepared to give up some other highly desirable activity in order to watch it. Others may be happy to record the programme and watch it later rather than give up the alternative activity, while a third group may be prepared to give up watching the programme altogether. In this sense, viewers may be thought of as having an implicit reserve price for a programme at least equal to the value of the benefits that would have been derived from the alternative activity. This reserve price is different for different individuals and for different programmes. Because of these differences in willingness to pay among individuals, it is possible that

a programme with a small audience may be valued more than one with a larger audience. The possibility is illustrated in Figure 4.1.

In Figure 4.1 it is assumed that two programmes A and B are available to a broadcaster at the same cost. The two programmes are provided free of charge (advertiser-financed) to the viewers and valued differently by their different size audiences. As shown by the respective demand curves, Programme A is highly valued by a small audience, whereas Programme B is less valuable to a larger audience. The consumer surplus derived from each of the programmes is represented by the shaded area under the respective demand curves (the area under the 'Programme A' curve is larger than the area under the 'Programme B' curve).

**Figure 4.1: Consumer Welfare and Audience Preferences**



While one programme may generate a higher level of consumer surplus than another, it does not necessarily follow that economic welfare is maximized by that programme. Economic welfare derived from broadcasting is maximized if the sum of the surplus accruing to producers and to consumers from the consumption of a given set of programmes is greater than that which could be derived from any alternative set of programmes. If in Figure 4.1 equal costs for both programmes are assumed, the larger audience (and thus larger advertising revenue) of Programme B would generate a larger producer surplus than that of Programme A. Because the broadcaster does not benefit from the larger consumer surplus of Programme A, it will always prefer Programme B. However, because of its much larger

consumer surplus, Programme A may generate a total surplus that exceeds that of Programme B. Consequently, from a welfare perspective, Programme A may be preferable to Programme B.

## *Natural Monopoly*

Natural monopoly is the situation where the total cost of providing a particular level of service (or bundle of services) is greater with more than one provider than with just one. Natural monopoly elements in media industries can be either or both of economies of scope or economies of scale.

### **Economies of Scale**

Economies of scale arise where there are fixed costs (i.e. costs that do not vary with output) in producing a particular good or service. When fixed costs are present, the average cost of producing each unit of output declines with the number produced. Where they are large relative to variable costs, the impact of scale on unit costs can be very important. The extent of economies of scale has a significant impact on the structure of an industry. Their presence in the media industries has been influential in determining their structure.

All media content products, whether produced in large or small quantities, have a common feature in that all the costs of producing the content are incurred in the making of the first copy. So even a small circulation newsletter displays some economies of scale in the sense that the average cost per copy declines with the production of the second and subsequent copies.

First-unit costs are a major feature of television and radio programmes. The cost of purchasing or producing a programme will be the same irrespective of the ultimate size of the audience. Thus the larger the audience, the lower the programme cost per unit of audience. Economies of scale are particularly evident in the distribution (broadcasting) of a programme. Regulation requires the broadcast of a signal of a given strength throughout the licence area irrespective of the number of people who choose to tune into the signal. That is, the transmission costs are independent of the size of the audience, or the larger the audience the lower the per-unit cost.

Economies of scale give large newspapers clear advantages over smaller circulation rivals. Not only does the production of a high-volume daily newspaper involve high capital investment and start-up costs, but all costs of news collection, specialist columns, editorial,

composition, layout, set-up and other pre-printing functions are incurred before the presses are turned on. Once printing has begun, the overall cost of the print-run does not change greatly. The marginal cost of additional copies is only a little more than the material cost of additional paper and ink. Also, as the print run increases, the average cost per copy declines rapidly as the large first-copy costs, print set-up costs and overheads are spread over the copies printed. A large print run enables a producer to undercut the price of a smaller rival newspaper. Alternatively, it enables the producer to improve the quality of the newspaper by increasing expenditure on desirable input factors which the smaller rival will not have the capacity to sustain.

A high circulation or a large audience also generates economies of scale in the sale of advertising. Advertisers pay a premium for single advertisements reaching a large audience because they are preferable to multiple advertisements in two or more publications or programmes reaching an aggregate audience of the same size. Multiple advertisements do not necessarily have the same reach, nor are they necessarily as effective as a single advertisement even though their aggregate audiences might be the same. This arises because of potential duplication of at least part of the smaller audiences and potential variations in audience demographics. Planning and administrative costs of multiple advertisements are also likely to exceed those of single advertisements. For the newspaper or broadcaster, the lower cost per unit of generating a larger readership or audience for sale to advertisers results in larger profits.

Another scale advantage of a large circulation newspaper arises from distribution. Because of the larger circulation, bundles delivered to distribution points will be larger so packaging costs per unit will be smaller. Also, transport costs on a given distribution round are likely to be related to the number of bundles rather than their size.

Economies of scale are also the main driving force for the formation of media groups. A television or radio network allows the spreading of the largely fixed cost of producing a programme across the aggregated audience of all the stations in a network. Management economies are likely to be present as well. In advertising a single sales force may be able to represent all the stations in the network. Benefits also accrue to buyers of advertising. For them, there may be considerable benefits in dealing with a single supplier for a number of markets rather than with different suppliers in each market.

Production of more than one newspaper using the same presses can lower overheads for each of the newspapers produced. Copy costs

can be lowered by sharing news stories and other content material among the related newspapers. Similarly, distribution costs may be lowered by using the same resources to distribute the related newspapers. Both buyers and sellers can benefit from the joint selling of advertising on related newspapers. In addition, newspaper groups may have improved purchasing power for key inputs such as newsprint.

Although ownership control limits prevent enterprises from growing beyond a certain size in television and to a much less extent in radio, large successful enterprises are a feature in each of these media industries. These indicate the likely presence of substantial economies of scale. They also suggest that ownership controls may be preventing full utilization of some economies of scale. For example, limits preventing the ownership of more than one television station or more than two radio stations in the same licence area would clearly limit the potential to benefit from some scale economies.

### **Economies of Scope**

Economies of scope occur where a single facility contributes to the production of more than one good or service. Economies of scope give rise to reductions in unit costs for particular outputs both through improved utilization of production facilities and through the addition of complementary outputs in the range of products produced by a firm. The use of common facilities to produce different products is prevalent in media industries. Major media groups engaged in diverse media activities include News Limited with interest in free-to-air television, subscription television, newspapers and magazines; Publishing and Broadcasting Limited with interests in free-to-air and subscription television and magazines; and APN Limited and Rural Press Limited both with substantial interests in radio, newspapers and magazines. The likely presence of scope economies is also suggested by examples of co-operative arrangements for sharing facilities and production of programmes, such as news, between commercial radio and television services in the same licence area.

Scope economies are also present within each of the media industries. Newspaper groups, for example, produce different types of newspapers (national daily, capital city daily, Sunday newspapers, regional newspapers and suburban newspapers) each different in some important attributes. Evidence presented by major newspaper groups to the House of Representatives Select Committee on the Print Media (1992) indicates that economies of scope can arise from the sharing of

operating and overhead costs, and from the sharing of premises, computers, facsimile, library, newsgathering, editorial resources, syndication of articles by staff writers etc., and from higher utilization of presses.

In television, economies of scope may arise from programme-sharing arrangements such as co-operative agreements between independent stations for shared subscriptions to overseas news agencies, sharing of studio facilities with programme producers and production of programmes for own use as well as for sale to other enterprises (e.g. news programmes for airlines and corporate videos).

Economies of scope may be realizable in the advertising market as well. Major advertising campaigns usually involve co-ordinated advertisements on radio, television and print media. A group able to offer all these outlets in one package to advertisers may have substantial advantages over competitors operating in a single medium. Advertisers may also gain by dealing with one group rather than having to negotiate separate purchases of advertising on different media.

The extent to which regulation hinders utilization of economies of scope is potentially more substantial than is the case with economies of scale. For example, prior to the introduction of cross-media ownership restrictions in 1987, common ownership of major capital city newspapers and television stations was a feature of Australian media industries. This is no longer possible, because cross-media ownership restrictions prevent control of different media in the same licence area. Thus, by preventing the common ownership of diverse co-located media, cross-media rules may be limiting the extent to which economies of scope can be pursued by media industries.

### *Lack of Nexus between Supply and Demand*

In free-to-air television and radio, where audiences do not pay to consume the programmes, consumers are unable to use the market mechanism to express their intensity of preference for particular programmes and thus exert a direct influence on the programming decisions of broadcasters. The options available to audiences are limited to choosing a programme presented by one of the competing services, or alternatively, choosing some other activity in preference to the reception of broadcasting programmes. The inability of audiences to influence directly the range and composition of the programming of advertiser-financed broadcasters manifests itself in the often-expressed

community dissatisfaction with the programme mix delivered by the broadcasters. Government has responded by regulating the programming of broadcasters, establishing its own broadcasting facilities, and (most recently) by allowing pay television. Conversely, some government actions appear to have exacerbated the problem by being too restrictive in licensing and by holding back new technologies too long.

### **CATERING FOR THE DIVERSITY OF TASTES**

In 1929 Harold Hotelling analysed the operation of spatial competition. This analysis has been applied to a number of spatial situations, including the political spectrum, scheduling of airline and other transport services, and the diversity of tastes for media products. A popular illustration of Hotelling's analysis is the example of two ice-cream vendors on a beach selling identical items at identical prices. Customers are equally dispersed along the beach, and seek out the nearest supplier. He showed how spatial competition would lead the two vendors to locate next to each other in the middle of the beach. When applied to the media in the circumstance where tastes are normally distributed, it suggests that if there is only a small number of profit-maximizing service providers they will tend to locate their programming so as to cater for mainstream tastes. One way of achieving greater diversity would be to allow more services, but this would eventually (perhaps quite quickly in smaller markets) run up against the natural monopoly constraint. Other ways of catering for minority tastes are through direct government provision, regulation of programming and allowing the ownership of multiple channels.

## *Conclusion*

The standard justification of intervention in the market is that the market fails in some respect and that the benefits of intervention exceed the costs. As discussed above, a free-market approach to media is likely to lead to three principal kinds of market failure: public good, natural monopoly (economies of scale and scope) and a 'gap' between consumers and producers. Each of those market failures provides a necessary condition for potential intervention in the market, but it is

not clear that interventions based on these failures have always led to improved social outcomes. Furthermore, the extent to which these market failures are a cause for regulatory concern has been lessened by technological developments. For example, broadcast signals can be encrypted and made available only to those prepared to pay to consume them. Similarly, cable technology prevents those who do not pay from accessing programmes.

# Chapter Five

## Planning and Licensing

Planning and licensing procedures have been the primary determinant of the number of services allowed to operate in the different geographical markets, of the types of new services that can be introduced and of the timing of their introduction. These controls can serve a useful purpose in the efficient management of a scarce resource, such as the broadcasting spectrum, and to enable orderly operation of broadcasting (e.g. by avoiding interference between stations). Although usually they are not controversial, there is a danger that they could be used as *de facto* economic controls of the nature and rate of development of broadcasting services. For example, establishing unnecessarily high technical standards and using them as the basis for planning can have a substantial impact on the number of services that can be licensed in any one area or overall. Similarly, licensing may be used for orderly allocation of available frequencies in response to market demand for services or for inappropriately restricting entry and competition.

This chapter considers the role and functions of planning and licensing and their impact on media structure and competition.

### *Frequency Planning*

Frequency planning is necessitated by spectrum scarcity and the need to avoid interference between broadcast services. The use of the radio frequency spectrum is governed by international conventions that designate specific bands for different purposes and by domestic policies on the number and type of services that are made available. Australia follows the international conventions on spectrum use and has set aside the following bands for broadcasting purposes:

- AM radio transmitters are allocated a 9 kHz channel in the 526.5 kHz to 1606.5 kHz portion of the Medium Frequency (MF) band;

- FM radio transmitters are allocated 200 kHz channels in the 87.5 MHz to 108 MHz portion of the Very High Frequency (VHF) band;
- Television uses both VHF and Ultra High Frequency (UHF) channels. VHF television transmitters are allocated 7 MHz channels in the 45-52 and 56-70 MHz (Band I) and 174-222 MHz (Band III) portions of the VHF band. UHF channels are also allocated 7 MHz each and are located in the 520-820 MHz (Bands IV and V) portion of the UHF band. Because of previous allocation policies a small number of long-established television services occupy channels in the VHF band now reserved for FM radio. Those stations are to be relocated to the UHF band either at the request of the operator or if the frequency is needed to accommodate FM radio services.

To avoid interference between services in different areas, the maximum number of channels available for use in a particular area is markedly less than the total number of channels in the bands. The number of channels available in any one area is determined by policy considerations on the distribution of services and by the technical criteria and methods adopted to avoid interference between services.

Broadcasting services using the same channel must be transmitted from sufficiently separated locations to avoid interfering with each other (co-channel interference). Without separation of the signals, it would not be possible for consumers to receive a wanted signal without interference from unwanted signals broadcast on the same frequency. Generally, the distance between stations using the same channel is determined by the power of the transmitter, the radiated pattern of the signal, the locations and heights of the transmitting antennas and the topography between the antennas. All these factors may be adjusted to maximize intensity of re-use of the same channels at different locations. Closer separation may also be achieved technically by offsetting the operating frequencies of stations away from the standard channel frequency and thus provide greater capacity for receivers to distinguish between the signals. The more often (or intensively) a channel is used in different areas, the greater the likelihood of interference. Typically, two television stations using the same channel are separated by a distance of about 600 kilometres.

Similarly, receivers are unable to distinguish between signals on adjacent channels with substantially similar coverage (adjacent channel interference). For this reason, wide coverage VHF FM radio and television channels in the same area have at least one clear (unused) channel between them and wide coverage UHF television stations at

least two.<sup>3</sup> Offsetting of frequencies can facilitate signal separation. Also, adjacent channel interference may be reduced by limiting the practice of co-siting transmitting antennas.

In general, frequency allotment and planning can be seen as a partitioning problem. For each service area, the planner seeks to choose frequency channel allotments for both transmitters and translators to accommodate as many services within that service area as possible, transmitter siting, and the signal's operating power and radiation pattern, having regard to the frequencies needed to support services in other areas.

The existing distribution of services largely pre-dates the ABA's responsibilities in this area (gained in 1992) and reflects past policies, priorities and practices. Currently, as part of its planning functions, the ABA is responsible for determining the number and disposition of channels in Australia taking account of differences in the level of demand in different areas. The BSA replaced earlier planning guidelines with a new approach whose focus is the development of an integrated national plan taking account of the criteria set out in the Act, namely:

- (a) Demographics;
- (b) Social and economic characteristics within the relevant licence area, neighbouring areas and Australia generally;
- (c) The number of existing services and the demand for new services;
- (d) Developments in technology;
- (e) Technical restraints relating to service delivery or reception;
- (f) Demand for radio frequency spectrum for non-broadcast uses;
- (g) Such other matters as the ABA considers relevant.

The BSA envisaged implementation of the ABA's spectrum planning function as a three-stage process. The first stage required the ABA to set priorities between different areas of Australia for the preparation of licence area plans. For this part of the process, the ABA divided the country into planning zones (22 for television and 23 for radio) and assigned each to one of five groups with different levels of priority for the preparation of licensing plans. Allocation of the zones to the different priority groups was determined on the basis of the variety of services already available in a zone. The fewer the services available in a zone, the higher was the priority assigned to it.

The second stage involved preparation of a national frequency allotment plan following wide public consultation by the ABA. The

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<sup>3</sup> It should be noted that some consecutively numbered television channels, such as 9 and 10, are not on contiguous frequency bands.

allotment plan determines the distribution of broadcasting spectrum throughout the country based on the number of channels reserved for the provision of broadcasting services in each of the planning zones. In preparing the frequency allotment plan the ABA assumed, as a matter of policy, that there would be no change to previous plans for six wide-coverage television channels throughout Australia, including regional and remote areas, and that there would be very limited scope for introducing additional AM radio services without re-planning of the AM band. For VHF FM radio, the ABA adopted the following targets for the distribution of services:

- 16 wide area coverage channels in mainland State capital cities;
- 12 wide coverage channels in 'main cities' such as Canberra, Hobart, Darwin, Gold Coast, Newcastle and Wollongong; and
- 8 wide coverage channels in regional and remote areas.

The third step of the planning process involved the sequential preparation of licence area plans based on the frequency allotment plan. A licence area plan details the number of broadcasting services, including national, commercial and community services, that can be made available within a specified area. It also details the characteristics of each service, including licence area coverage, channel frequency, transmitter site and technical specifications such as effective radiated power and radiation pattern. For each licence area, operators of transmitters are required to provide an 'adequate' minimum signal strength in communities of 1 000 or more people. As a matter of policy, however, the technical planning characteristics assume that communities with a population of 200 or more people are entitled to expect a service from licensed broadcasters.

## *Licensing*

Frequency allotment plans determine the number and type of broadcasting services to be made available in a particular area. The formal process for the assignment of rights to operate those services is known as licensing. Until 1977 the power to issue broadcasting licences was exercised by the responsible Minister who could act independently of advice from regulatory authorities. Although concerns that the licensing process was open to political interference or patronage had been one of the reasons for the establishment of the Australian Broadcasting Control Board in 1948, the Board was given only the power to make recommendations which the Minister was not bound to follow. The transfer of the licensing power to the Australian

Broadcasting Tribunal was intended to make the licensing process publicly accountable and to remove the potential for political interference. But even then, the government retained the power to determine the number of services that could be made available, with the Tribunal having the power only to determine who would be allocated the licence through a public inquiry process designed to identify the most suitable from among the applicants (commonly dubbed 'the beauty contest').

In 1992, the public inquiry process was abandoned in favour of a price-based system as the primary mechanism for the allocation of new commercial broadcasting licences. Section 36(1) of the BSA required the ABA to determine in writing a price-based system for allocating commercial broadcasting services. Current arrangements are detailed in the ABA's *Commercial Broadcasting Licence Allocation Determination No. 1 of 1998*. Applications must be accompanied by the required application fee and can be made only by Australian companies. If more than one application for a licence is received, the ABA is required to hold an auction-style sale and allocate the licence to the highest bidder. The successful bidder is required to make a deposit of 10 per cent of the bid immediately following the auction and to pay the balance between 45 and 47 days after the auction. Issue of the licence follows provided the applicant meets the requirements of the Act. If there is only one applicant for the licence, the ABA is required to issue the licence to that applicant at the pre-determined reserve price. Unless otherwise permitted by the ABA, successful applicants must begin a service within one year of being allocated a licence.

To comply with the requirements of the Act, a licence holder must be a company formed in Australia and the ABA must be satisfied that the issue of the licence to the successful applicants would not 'lead to a significant risk of' an offence against the Act and related regulations and licence conditions. In deciding the likelihood of such a risk, the ABA is required to consider (s 41(3)):

- (a) the business record of the company, and of each person who would be in a position to control it;
- (b) the record of the company, and that of each person who would be in a position to control it, in situations requiring trust and candour;
- (c) whether the company, or one of its potential controllers, has been convicted of an offence against the Broadcasting Services Act or the regulations made under it.

### **Restrictive Licensing Practices**

The power to grant rights for the operation of broadcasting services has always been exercised with considerable restraint. Initially, some restraint was justified by spectrum scarcity and the need to avoid interference between stations. However, expansion of new services continued to be unnecessarily constrained long after more intensive use of the spectrum and new types of services had been made possible by technological advances. As pointed out by Cole (1966), expansion of broadcasting services in Australia was prevented by highly restrictive policies designed to protect incumbents from competition rather than by technological constraints or insufficient demand for additional services.

The protection of incumbent broadcasters was thought to be justified by their role as 'public trustees' of the airwaves. The regulatory authorities were concerned that expansion of services could threaten the viability of incumbents and run the risk that programme quality would decline. Although the policy of protecting the commercial viability of incumbents was not formalized in legislation until 1977, its active application was acknowledged by regulatory authorities as early as the 1950s (ABCB, 1952) and is reputed to be the primary reason for virtually no growth in the number of radio services between the 1940s and 1970s.

Concern with the commercial viability of incumbents has been, and continues to be, a major reason for extensive delays in the introduction of new services. Although currently considerations of commercial viability are mandated formally only in the context of introducing digital television services in regional areas, their application in other areas does not appear to have abated. For example, the ban on the use of the currently unallocated sixth television channel for new commercial services as well as the ban on new commercial television services using digital technology until 2006 are specifically intended to shelter incumbents from competition (Alston, 1998). The much delayed introduction of pay television was also primarily the result of the application of the same policy.

### **Economic Features of Broadcast Licensing Systems**

The administrative system of spectrum planning and frequency allotment outlined above necessarily involves the use of arbitrary criteria and standards for the allocation of channels to particular areas. For example, the targets for the allocation of FM channels in mainland State capital cities seem to assume the same eventual demand in each

of the cities. While this allows the development of a symmetric allocation pattern, it takes little account of the highly different demand patterns likely to be generated by substantially different cities such as Adelaide and Sydney.

Spectrum allocation plans have the inherent problem that, once a channel allocation pattern has been set and services begin to be deployed on the basis of that pattern, reallocation of channels to accommodate changes because of increased demand or other reasons are difficult and expensive to implement. A good example of the difficulties and costs involved is provided by the delayed introduction of many FM-radio services because of the need to relocate television stations that had been previously allocated spectrum in the FM band. Similar problems may arise from other technical criteria used to develop plans, including criteria for such things as radiation power and pattern and separation of stations on the same frequency. For example, the technical criteria chosen in earlier years for the distribution of radio services are the primary reason for the inability of the Australian AM band to accommodate a much larger number of stations as has been achieved elsewhere.

The arbitrary requirement for the provision of an adequate broadcast signal throughout a licence area, although equitable in terms of providing the same service to all the residents of the licence area, is unlikely to promote efficient use of resources. Historically, to ensure over-the-air distribution of an adequate signal throughout the licence area planners have relied on the use of high-power transmitters or of supplementary transmitters and translators, each using a separate frequency channel, with little concern for the associated opportunity costs. Using high-power transmitters and supplementary transmitters or translators reduces the number of services that can be accommodated in the same licence area or elsewhere because of potential interference between services using the same or adjacent channels. In other words, there is a trade-off between the provision of an adequate signal throughout a licence area and the number of services that can be provided. The apparent focus of planners on a broadcast signal of minimum strength throughout a licence area, without consideration of other possible alternatives for satisfactory reception, may be costly to society. For example, the installation of high-gain antennas by relatively few residents in weak signal areas would release channels, otherwise needed to operate translators, for the provision of additional services in the same area or elsewhere. The benefits to society from additional services available to many people are likely to be much

greater than the costs that would be incurred by a few for the installation of high-gain antennas to improve their reception.

### **Determinants of Licence Values**

Usually the value of any asset is determined by the price at which its ownership changes hands in the marketplace. For broadcasting, the value of a new commercial licence can be determined from prices paid at auctions. Prior to the introduction of the BSA in 1992 virtually all the commercial licences were issued free of charge to applicants following a public inquiry by the regulator.<sup>4</sup> Subsequent owners have paid large sums to acquire the licences from the original owners. Both the money paid to acquire licences from previous owners and the preparedness of aspirant licensees to pay substantial sums for the right to be allocated a new licence indicate that significant value is attached to a broadcasting licence.

#### **THE VALUE OF CHANNEL 9 STATIONS IN THE LATE 1980S**

Paul Barry's (1993) account of the sale of Channel 9 television stations between Alan Bond and Kerry Packer throws some light on the value of capital city licences. At their meeting in early 1987, the sale price of Packer's Sydney and Melbourne Channel 9 television stations to Bond was determined in this way: Bond had claimed his Brisbane and Perth stations were worth \$400 million. 'Packer's response had been to tell the eager entrepreneur that at those prices his own big-city stations .... must be worth at least a billion dollars. ... Bond, amazingly, had taken the figure seriously, topping the asking price with an extra \$55 million. 'You only get one Alan Bond in your lifetime', Packer said later' (p. 389). In 1990 Packer bought all four stations from Bond for about \$200 million (p. 488).

The value of existing licences cannot be determined readily from market prices because licences are not usually sold separately from the other assets of broadcasting stations. It may be possible, however, to use market prices of stations to determine licence values indirectly. Theoretically, the value of a broadcast station, including its licence, may be estimated as the discounted present value of the future stream of advertising revenue, less the operating costs of the station during

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4 Some FM capital city stations allocated by auction in the late 1980s and early 1990s are the exception.

the period of currency of the licence. The value of the licence may then be calculated by subtracting the value of the tangible assets (studio, transmitter, etc.) and of intangible assets (exclusive of the broadcasting licence) owned by the station from the estimated value of the station. In practice, such estimates require details of the sale price of a substantial number of stations, as well as details of operating costs and values of the station's tangible and intangible assets. However, because stations do not change hands frequently and because most of them are privately-held companies from which accounting details are difficult to get, valuation exercises of this kind are likely to be difficult to perform.<sup>5</sup>

In broad terms, all factors that impinge on the revenue and operational cost of a station would have an impact on the value of its licence. The major factors likely to influence the value of a commercial broadcasting licence include:

- Expected growth of total market advertising revenue. Changes in attractiveness of competing media may influence total market advertising revenue. For example, newspaper closures or amalgamations might increase the demand of television advertising.
- Expected increases in station share of total advertising will increase licence values, provided that the increased rating is not captured by higher management fees or payments to programme producers. The allocation of additional licences or the introduction of non-broadcast competitive services is likely to reduce significantly an incumbent's licence value.
- Uncertainty surrounding future total industry or individual station revenue. For example, certainty that licences will be renewed, that few new licences will be granted (and then only following consultation with existing licensees), and expectations that the government will be politically unwilling to introduce further competition increase licence values.
- Relaxation of local content requirements or other programme or advertising restrictions that increase costs and constrain operational behaviour will increase licence values. Increased restrictions and other regulatory obligations of stations would have the opposite effect.
- Relaxation of ownership constraints likely to increase the set of potential future buyers would tend to increase licence values.

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5 For a more detailed discussion of licence values see BTCE (1991b).

Broadcasting licences represent a large proportion of all commercial broadcasting assets. The Nine Network, for example, recently revalued the licences for its Sydney, Melbourne, Brisbane and Darwin television stations from \$554 million to \$1.32 billion and the Ten Network revalued its stations (Sydney, Melbourne, Brisbane, Adelaide, Perth) from \$326.4 million to \$1.12 billion (Mathieson, 1998). These revaluations pre-date the recent government decision on digital broadcasting giving existing television operators exclusive rights to the new technology and placing a moratorium on competition until December 2006, which is likely to have further increased the value of the incumbents' licences. It is therefore important to understand the determinants of licence value in order to assess the impact of broadcasting licence regulations.

### **THE ALLOCATION OF THE THIRD COMMERCIAL TELEVISION LICENCE IN PERTH**

In the early 1980s Perth was about the same size as Brisbane and Adelaide, but had only two commercial television licences compared with their three. The issue of a third licence arose and the Australian Broadcasting Tribunal was obliged to conduct a public inquiry to weigh up the public interest and the private interest of existing television and radio licensees, including protection of their commercial viability. Parties giving evidence included the incumbent television and radio licensees and the two aspirants to hold the new licence. Estimates of the value of the new licence ranged from \$25 million to \$45 million. Both incumbents were prepared to pay \$2.5 million a year each towards a new non-commercial public television station (like Britain's Channel 4) in order to prevent the new commercial licence being granted. The new commercial licence was eventually granted, but the whole process took four years (1984-88) and vast resources were expended by all parties. There were 117 sitting days (conducted on a quasi-legal basis) and the ABT produced a huge two-volume report. The aspirants spent over \$1 million each on their cases. Incumbents probably spent even more. After the 'beauty contest' and the award of the prize, the lucky recipient sold the licence for an undisclosed sum.

### **Effects of Licensing Arrangements**

The economic costs of the current licensing arrangements are difficult to measure. Their measurement would require an assessment of the additional social welfare that would accrue from additional radio and television services. Such an assessment could not be made without measures of the intensity, the level and the distribution of the demand for additional services and without estimates of the additional number of services possible under different licensing regimes. The related benefits consist of substantial protection from entry competition (e.g. no new commercial television licences until 2006, to assist introduction of digital television) and accrue mainly to licensees as higher returns on investment and as windfall gains from increased licence values. It should be noted, however, that other restrictions, such as those relating to programmes and licence fees, secure some of the benefits of restricted entry for the community at large.

An indication of the likely level of benefits accruing to incumbent broadcasters from licensing may be partially gauged from comparisons of the average revenue earned by capital city radio and television stations in 1996-97 (see Table 5.1). The current arrangements for licensing commercial television stations provide for an equal distribution of stations in most centres, and eventually, Australia-wide. While this has the appealing quality of being equitable in the sense that everyone in the country is provided with the same number of services, it is likely to be inefficient. Residents of larger cities, in particular, are likely to be able to support more stations than currently provided and are consequently denied the benefits of additional services and additional programme diversity. In addition, the current distribution of stations is likely to involve a substantial hidden cross-subsidy to maintain services in areas where this is unlikely to be

**Table 5.1: Average Revenue of Capital City Broadcasters, 1996-97**

	<i>Television</i>		<i>Radio</i>	
	<i>Number of Stations</i>	<i>Average revenue per station (\$m)</i>	<i>Number of Stations</i>	<i>Average revenue per station (\$m)</i>
<b>Sydney</b>	3	238.5	9	16.2
<b>Melbourne</b>	3	202.4	9	11.1
<b>Brisbane</b>	3	101.6	6	8.6
<b>Perth</b>	3	55.4	5	6.6
<b>Adelaide</b>	3	49.0	5	6.7

Source: ABA (1998a).

justified by current levels of demand. One of the effects of equal distribution of services in all areas is to confer considerable monopoly rents on incumbents in areas capable of supporting additional services.

For television, capital city stations of the main networks absorb a disproportionate share of programming costs. Currently, the average programming costs of capital city stations are equal to approximately 37 per cent of their average revenue. For stations in non-capital city, multi-station areas the proportion of programming costs to revenue is 21 per cent (ABA, 1998a). The capacity of capital city stations to continue to apply a disproportionate share of revenue to programmes, of course, would be diminished if additional stations were established in those cities. The licensing of additional stations on the basis of the cities' capacities to support them would also mean that programming costs for the stations in other areas would increase by the extent of the current cross-subsidies. Although the level of benefits accorded to television stations in the smaller capital cities cannot be assessed this way, the figures indicate that licensing controls confer substantial benefits to stations in the larger capital cities. The figures also suggest that both Sydney and Melbourne, for example, generate enough broadcasting revenue to support additional television services at revenue levels comparable to those in other cities.

A similar situation exists in radio. Although some stations in different areas have common ownership, cost-sharing arrangements, such as networking and programme syndication, are not widely used as stations tend to select much of their programming to suit the tastes of local audiences. The relatively much higher average revenue earned by the Sydney and Melbourne stations is, therefore, a good indicator that those cities would be capable of supporting additional stations and that the existing stations in those cities are accorded a relatively high level of protection from competition (see Parish, 1968).

Another indicator of the high level of benefits accorded to radio and television stations by restricted entry of competition is the prices paid to secure new FM radio licences. For example, in Sydney a total of \$17.5 million was paid for the right to convert two existing AM stations to FM (Commonwealth of Australia Gazette, 1991). Licences outside large metropolitan areas are also valuable assets and are eagerly sought. A recent auction of seven commercial radio stations in regional Queensland raised \$3.3 million. The lowest successful bid of \$325 000 was for a licence in Mackay and the highest of \$600 000 for a licence in Bundaberg (ABA, 1998b).

## *Conclusion*

Technical standards to avoid interference between channels and maintain desirable levels of signal quality involve a trade-off among several factors. For example, a given licence area may be served by a single high-power transmitter or by several low-power transmitters each covering only a small portion of the licence area. The trade-off here would be between the higher cost to broadcasters of installing and operating the several small power transmitters and increased channel capacity by more intense use of frequencies. Similarly, there is a trade-off between the cost of reducing interference between transmitters on the same frequency by installing directional antennas and more intensive use of the same frequencies at different locations.

While natural monopoly and spectrum scarcity have undoubtedly played a part, restrictive licensing policies aimed at protecting the financial viability of incumbent broadcasters appear to have been the primary determinants of the high concentration of Australian broadcasting. The excessive protection of incumbent broadcasters has constrained the choice of services to consumers and has delayed the introduction of services based on new technologies, with significant consequential loss of consumer benefits. A more liberal, market-responsive approach would most certainly have led to an industry with a substantially different size, structure and performance.

An indication of the high level of protection that has been afforded to incumbent broadcasters is provided by the value of television and radio broadcasting licences in particular markets and by the prices that aspirant broadcasters are now prepared to pay to enter the industry. These reflect the rents accruing to their holders and their presence is *prima facie* evidence of excessively restrictive entry to the industry. While the auctioning of new broadcasting licences ensures that at least some of these rents will accrue to the public purse, restrictions such as the current ban on new commercial television will act only to increase the rents to incumbents at the expense of consumers who would be better served by a greater choice of services.



# Chapter Six

## Restrictions on Ownership

Ownership of electronic media has been tightly regulated since the early days of radio. The regulations limit ownership of broadcasting services in a licence area and the overall breadth of media interests that may be held by an individual. While Australia imposes formal control on ownership of free-to-air and subscription television, there are no formal controls on foreign ownership of radio. Foreign ownership of newspapers is subject only to Foreign Investment Review Board guidelines and proposals are considered on a case-by-case basis. However, in recent years, attempts to increase foreign interests in the Fairfax Group above 25 per cent have not been allowed. Cross-media ownership restrictions are similarly based on the principle of limiting concentration of influence on public opinion.

Legislators have always been concerned about the power of the electronic media to influence public opinion. The Joint Parliamentary Committee on Wireless Broadcasting (Gibson, 1942), for example, was of the view that 'no medium of entertainment, whether it be stage, cinema or literature has such a powerful influence for good or evil as broadcasting'. With respect to foreign owners, Robert Menzies, the then Prime Minister, saw the issue as whether 'people who do not belong to this country' should be permitted to control 'the most intimate form of propaganda known to modern society' (House of Representatives, 1951: 2926).

Australia is not unique in this respect. Limits on ownership of electronic media are a common feature of media regulation around the world. Most countries also restrict foreign ownership and control of electronic media industries. In many countries foreign ownership of newspapers is also limited.

While ownership controls are intended primarily to promote diversity of influence on opinion, they also have substantial impact on industry structures and operational efficiencies. In essence,

therefore, the regulation is a trade-off between efficiency and the social objective of promoting diversity of influence on opinion. Similarly, while foreign-ownership limits ensure domestic control of influential media, they also reduce the pool of potential investors and may limit the scope for ownership diversity and competition. How well these restrictions serve the public interest when these factors are taken in account is considered in this chapter.

### *Regulation of Ownership and Control*

The first regulatory controls on ownership were applied to radio in 1935. Legislators acted to prevent what was then seen as the 'development of monopolies' by newspapers as there was 'little multiple ownership of broadcasting licences by other interests' (Gibson, 1942). That initial regulation, which continued to apply for half a century, restricted individuals from owning:

- more than one metropolitan station in any State;
- more than four metropolitan stations in the Commonwealth;
- more than four stations in any one State; and
- more than eight stations in the Commonwealth.

The same regulatory arrangements had been proposed for television (Royal Commission on Television, 1954). However, when television was introduced in 1956, the government imposed a stricter limit, permitting common ownership of a maximum of only two television stations located anywhere in Australia. Both the radio and television ownership limits were reduced progressively in the 1980s and 1990s.

Restrictions on ownership and control of media by foreign interests (initially defined as non-residents of Australia) were first introduced in 1956 to safeguard national sovereignty by preventing foreigners from gaining a position of influence on domestic opinion. The concern with foreign ownership of media was precipitated by the acquisition of several radio stations by British press interests and prompted Parliament to express the opinion that foreign control of radio stations was undesirable (House of Representatives, 1951).

Another important element of ownership and control provisions is cross-media limits which prohibit ownership of television and radio interests in the same market or the ownership of a radio or television station jointly with a newspaper associated with their service area. Although newspaper ownership of broadcasting media had regularly aroused concerns, prohibition of cross-media ownership was introduced only in 1987 with respect to television and newspapers and

television and radio, and in 1988 with respect to radio and newspapers. According to the then Minister for Communications, the cross-media ownership restrictions were needed 'in order to curb major expansion in television by existing newspapers or radio interests which already have considerable influence over the formation of public opinion' (Duffy, 1987).

### *Media Ownership Provisions*

The BSA limits the extent to which a person may control commercial radio and television licences, whether in terms of one medium or jointly, or control a broadcasting licence and an associated newspaper in the same licence area, and the extent of individual and aggregate ownership of broadcasting licences by foreigners. The specific limits set by the Act are as follows:

#### *Commercial television licences*

S.53(1) of the Act provides that a person must not control:

- more than one licence in the same licence area
- licences whose combined licence area populations exceed 75 per cent of the declared population of Australia.

#### *Commercial radio licences*

S.55(1) of the Act provides that a person must not be in a position to control more than two licences in the same licence area.

#### *Cross-media rules*

A person must not control:

- a television licence and a radio licence that have the same licence area (s 60(a));
- a television licence and a newspaper associated with the licence area of that licence (s 60(b));
- a radio licence and a newspaper associated with the licence area of that licence.

Equivalent restrictions apply to the holding of directorships of companies that control radio and television licences and newspapers.

For the purpose of the Act, a person is deemed to be in control of a company by holding, directly or indirectly or through associates, 15 per cent of the company's shares. The deemed control is held to apply in the absence of evidence to the contrary. Two or more persons may be deemed to exercise separate control of a company if each controls 15 per cent or more of the company's shares. However, a person is not deemed to be in control if another person holds more than 50 per cent of the shares in the company.

Shareholdings in licensee companies may be transferred or sold freely to another person.

### **Foreign Ownership Limits**

A foreign person is prohibited by the Act from controlling, either directly or indirectly or through associates, a television licence (s 57(1)) or have share interests exceeding 15 per cent in a company holding a television licence. In aggregate two or more foreign persons must not have company interests in a television licence exceeding 20 per cent (s 57(3)). Also, no more than 20 per cent of the directors of a company holding a television licence may be foreign persons. A foreign person is defined as either a person who is not an Australian citizen, or a company controlled by persons who are not Australian citizens.

In subscription television, a foreign person is prohibited from having share interests in a licensee company exceeding 20 per cent. The aggregate company interests in a licence held by a foreign person must not exceed 35 per cent (s 109). There are no restrictions on the interests foreign persons may have in radio licences.

### **Newspaper Ownership Restrictions**

Although the print media can also exert substantial influence on public opinion, it is not subject to controls on ownership concentration other than the provisions of the Trade Practices Act. This might be partly because the Commonwealth Government does not have the necessary powers. Cross-media provisions, however, were introduced partly in response to increasing concentration of press ownership reflected in the decline in the number of independent proprietors of metropolitan dailies from 10 in 1950 to two currently.

## *Impact of Ownership Restrictions*

### **Concentration Limits**

Ownership limits appear to have considerable influence on the structure of the commercial radio and television industries. Amendments to ownership limits, particularly for television, have generally been the catalyst for major and rapid changes to industry structures. The biggest restructuring that has taken place in the media industries, for example, is linked to the 1987 amendments which combined a major liberalisation of ownership of broadcasting assets with the introduction of cross-media rules.

For television, the changes replaced the two-station ownership rule with provisions permitting a single owner to hold any number of

television stations provided that the aggregate population reach of the stations did not exceed 60 per cent of the Australian population. The population reach limit was subsequently increased to 75 per cent. The changes were followed by major realignments of the ownership of media assets and led to the creation of three current capital-city television networks and other regional television groups.

For radio, the 1987 amendments increased the ownership limits to no more than 16 licences in Australia and no more than half the radio licences in any State. These limits proved to be quite liberal even for the then largest radio groups and generated little change in the concentration of radio assets.

The introduction of cross-media restrictions not only prevented the formation of large multimedia groups, but also led to the dismantling of existing groupings. Although the introduction of cross-media limits provided for the 'grandfathering' of existing cross-media groups for as long as the owners did not acquire new media interests, virtually all of them disappeared soon after as the major players moved to consolidate their position in the medium of choice for their future business interests. Some of the effects of the ownership regulation changes at the end of the 1980s are illustrated in Tables 6.1 and 6.2.

**Table 6.1: Characteristics of the Commercial Television Industry, as at 30 June 1986 and 30 June 1991<sup>a</sup>**

	1986	1990
<b>Number of stations<sup>b</sup></b>	50	43
<b>Number of owners<sup>c</sup></b>	29	16
<b>Television revenue earned by:<sup>d</sup></b>	<i>(per cent)</i>	<i>(per cent)</i>
<b>4 largest owners</b>	61	77
<b>8 largest owners</b>	80	90
<b>Television revenue earned by those with interests in:<sup>b</sup></b>	<i>(per cent)</i>	<i>(per cent)</i>
<b>television only</b>	12	59
<b>television and radio</b>	31	40
<b>all media<sup>e</sup></b>	57	1

Notes:

- a Ownership as at 30 June 1986 and 30 June 1991, financial data for years 1985-86 and 1989-90 respectively.
- b Excludes the remote commercial television services.
- c Owner is defined as the major shareholder in the licensee company or the major shareholder's controlling company.
- d As a proportion of total television revenue (including remote commercial television services).
- e Includes those companies with a combination of television-radio-newspaper and television newspaper interests.

Source: BTCE (1991a).

**Table 6.2: Characteristics of the Commercial Radio Industry, as at 30 June 1986 and 30 June 1991<sup>a</sup>**

	1986	1990
<b>Number of stations<sup>b</sup></b>	139	149
<b>Number of owners<sup>c</sup></b>	64	76
<b>Radio revenue earned by:<sup>d</sup></b>	<i>(per cent)</i>	<i>(per cent)</i>
<b>4 largest owners</b>	36	45
<b>8 largest owners</b>	56	59
<b>Television revenue earned by those with interests in:<sup>b</sup></b>	<i>(per cent)</i>	<i>(per cent)</i>
<b>radio only</b>	64	89
<b>radio and television</b>	6	10
<b>all media<sup>e</sup></b>	30	1

Notes:

- a Ownership as at 30 June 1986 and 30 June 1991, financial data for years 1985-86 and 1989-90 respectively.
- b Excludes the remote commercial radio services.
- c Owner is defined as the major shareholder in the licensee company or the major shareholder's controlling company.
- d As a proportion of total radio revenue (including remote commercial radio services).
- e Includes those companies with a combination of radio-television-newspaper and radio-newspaper interests.

Source: BTCE (1991a).

**Table 6.3: Structure of the Commercial Television Industry, February 1998**

<i>Ownership Group</i>	<i>Number of Stations</i>	<i>Audience Reach (per cent of population)</i>
<b>Seven Network</b>	5 metropolitan 1 regional	71.38
<b>The Ten Group Ltd</b>	5 metropolitan	64.60
<b>Nine Network</b>	3 metropolitan 1 regional	51.22
<b>Prime Network</b>	8 regional	25.02
<b>TWT Holdings Ltd</b>	1 metropolitan 4 regional	22.72
<b>Telecasters Australia Ltd</b>	5 regional	18.05
<b>Southern Cross Broadcasting Australia Ltd</b>	4 regional	15.36
<b>NBN Ltd</b>	1 regional	9.43
<b>Sunraysia Television Ltd</b>	1 metropolitan	7.05
<b>Broadcast Investments Pty Ltd</b>	1 metropolitan	6.86
<b>Others (3 groups)</b>	5 regional	Less than 1.00 per group
<b>Total (14 groups)</b>	15 metropolitan 30 regional	n.a.

Source: *Communications Update* (1998).

**Table 6.4: Structure of the Commercial Radio Industry, February 1998**

<i>Ownership Group</i>	<i>Number of Stations</i>	<i>Audience Reach (per cent of population)</i>
<b>Austereo Ltd</b>	11 metropolitan 3 regional	62.72
<b>Australian Radio Network</b>	8 metropolitan 3 regional	61.34
<b>Lamb Family</b>	2 metropolitan	27.02
<b>RG Capital Australia</b>	1 metropolitan 9 regional	25.47
<b>Southern Cross Broadcasting Australia Ltd</b>	4 metropolitan 4 regional	24.87
<b>2KY Broadcasters</b>	1 metropolitan 2 regional	21.73
<b>Radio Superhighways Pty Ltd</b>	2 metropolitan 2 regional	19.05
<b>Fusion Media</b>	1 metropolitan	18.08
<b>Radio 3UZ Pty Ltd</b>	1 metropolitan	18.08
<b>DMG Radio Investments Pty Ltd</b>	1 metropolitan 53 regional	16.01
<b>Queensland TAB</b>	1 metropolitan	7.97
<b>Broadcast Operations</b>	26 regional	5.06
<b>Grant Broadcasters Pty Ltd</b>	11 regional	4.86
<b>Others</b>	6 metropolitan 29 regional	Less than 3.00 per group
<b>Total (14 groups)</b>	39 metropolitan 142 regional	n.a.

Source: *Communications Update* (1998).

The BSA in 1992 increased the allowed population reach of commercial television stations under common ownership to 75 per cent. It also removed most of the controls on the ownership of commercial radio stations. Since 1992 there have been no limits on the aggregate number of radio stations that may be held by an individual, with the exception that no more than two stations may be held in any one licence area. Cross-media ownership limits were not changed by the BSA.

These changes allowed the formation of the Seven Network from the stations previously owned by Qintex (which had been placed in receivership in November 1989) and other assets, giving it a population reach of more than 70 per cent. The new arrangements for radio led to

major changes in the structure of the radio industry. Facilitated by the supplementary station licensing arrangements, common ownership of two stations in the same area has now become the norm in regional areas. It has also become a feature of radio station ownership in capital cities. Similarly, the removal of aggregate ownership limits has allowed the formation of relatively large groups of stations under common ownership. Austereo, with 11 metropolitan stations and three regional stations and Australian Radio Network with eight metropolitan and three regional are currently the largest radio groups (in terms of audience reach) in Australia. Details of the current ownership structures for the commercial television and radio industries are provided in Tables 6.3 and 6.4.

### **Localism**

The promotion of local ownership (localism) and programming has played an important role in broadcasting policy for many years. In the early days of television, for example, it was at the centre of a major difference of opinion between the Australian Broadcasting Control Board (ABCB) and the government. When considering the allocation of commercial television stations in Brisbane and Adelaide in 1958, the ABCB favoured a plan for the allocation of the licences to local interests in preference to other major applicants. The plan was rejected by the government. The ABCB (1958:26) saw local ownership as an important element of policy. It explained its position as follows:

The purpose of the legislation is clearly, on the one hand to prevent any trend towards concentration of ownership of stations, and, on the other hand, and as a consequence, to encourage the local ownership of stations. Indeed, it seems to be universally agreed that, having regard to the nature and function of television stations, in the broadest sense, they should be, to the extent to which it is practicable, owned by the people in the areas which they are designed to serve.

The principle of localism has proved difficult to implement particularly when it has been in conflict with other competing priorities. In commercial television it appears to have been set aside when the 'equalization' policy of providing three commercial services to regional areas was developed in the 1980s. The equalization policy together with the liberalization of ownership controls provided strong incentives for stations in different parts of the country to combine into networks for the distribution of programming. The effect is that most of the

programming on regional stations, with the possible exception of local news bulletins, now originates in Sydney.<sup>6</sup>

Localism continues to be an important consideration for radio. Although networking and syndication of programmes are possible, local programming is predominant on most commercial radio stations. Localism was boosted by the policy of allocating 'supplementary' licences permitting owners of existing services in small regional centres to operate a second service in the same area. Localism is also a major consideration for the licensing of non-profit community radio services. Typically, community radio licences are for low-power transmitters that allow signal coverage over small geographical areas.

### **Foreign Ownership Limits**

Foreign ownership of radio and television stations has never been widespread. To a large extent, this may reflect prohibition of foreign ownership and control of the media. It may also indicate that the permitted levels of foreign ownership do not represent attractive investment propositions to foreigners. This is likely to be the case for commercial radio generally. Although foreign ownership restrictions of commercial radio were removed completely in 1992, foreign ownership of stations remains uncommon. In television, foreign ownership is restricted to the interests of CanWest Global Communications (CanWest) in the TEN Group owners of the TEN Network television licences.

The TEN Group was initially a consortium put together in December 1992 by CanWest (a Canadian company) to acquire television stations in Sydney, Melbourne and Brisbane from Northern Star which had been placed in receivership. Subsequently, it also acquired stations in Adelaide and Perth. To comply with foreign ownership limits, CanWest took a shareholding of 15 per cent in the TEN Group company and provided additional loan finance to the group in the form of 'subordinated and convertible debentures' equal in value to the subscribed equity in the company. Although this amounted to a financial interest of 57.5 per cent, a number of ABA inquiries had found the arrangements not to be in breach of the foreign ownership regulation.

In January 1997, through a separate Australian company, CanWest acquired an additional 37.49 per cent of the TEN Group shares, bringing its total shareholders' interest in the company to 52.49 per cent. The

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6 The recent decision that the sixth wide-coverage television channel available in most parts of Australia will be reserved for community television should increase opportunities for the development of local programming.

ABA found the new arrangements to be in breach of the foreign ownership regulation and ordered CanWest to divest itself of the excess shareholding. CanWest was also found to be in breach of the Act because it was in a position to secure the appointment of more than half of the directors of the Ten Group.

## *Efficiency Effects of Ownership Restrictions*

Media industries have been treated differently from other industries. Ownership controls impose much more onerous limits on media industry concentration than those allowed by trade practices legislation for industry in general. These are claimed to be necessary to ensure diversity of opinion and programming. But do these controls actually meet these goals? And, if they do, at what cost?

### **Effect on Firm Size**

The ownership regulations prevent the common ownership of more than one television station or more than two radio stations in a licence area. They also prevent a company from owning assets in more than one medium (television, radio or daily newspapers) in the same area, forcing companies to specialize in one medium.

In broadcasting, economies of size may arise both from standard processes whereby companies apply fixed overhead costs to larger size units and from the special characteristics of broadcasting programmes. A company with multiple broadcasting licences is likely to achieve economies of scale in management, administration, purchasing and other central office functions as well as in marketing and the sale of advertising.

Broadcasters have a strong incentive to maximize the size of the audience for a given programme. Networking of commonly-owned or affiliated stations is one way of achieving an increased audience. The advantages of networking come mainly from the operational savings associated with the programming function of stations rather than savings in programme costs. Programme costs usually take the form of rights to broadcast and are based on the size of the potential audience in the area in which they are shown. Consequently, for most programmes, the cost of the programme rights for a given audience reach is unlikely to differ substantially whether the programme is networked or separately distributed to stations. The benefit of networking arises from the centralization of the programme purchasing and scheduling functions. In a network, this function is performed once

for all the stations in the network whereas for independent stations each would have to perform those functions separately.

Second, a network also has advantages over independent stations in producing programmes and competing for independently-produced programmes. Because a network is able to spread production costs over all its stations it is able to undertake more expensive and more appealing productions than independent stations. Similarly, because it is assured a large combined audience, a network will generally be able to outbid independent stations for the rights to popular programmes produced independently.

Third, networks also have substantial advantages in the sale of advertising. This is particularly so for television where most of the advertising is sourced through advertising agencies and comes from national advertisers. Advertisers seeking large national audiences for their products are better off dealing with a network rather than singly for a large group of stations. Indeed, advertisers tend to pay a premium for large audiences. The network also benefits from having a single specialized sales force for all its stations and from the ability to promote the stations as a group.

However, as indicated in Chapter 3, many of the financial incentives that underlie the formation of networks arise from the nature of broadcasting rather than common ownership. Independently-owned stations could secure similar benefits by collaborating to form a network. For example, because of the limit on population reach for commonly-owned television stations, each of the current national networks comprises several affiliated stations not owned by the network. However, many of the affiliated stations are part of multi-station independently-owned groups such as the seven stations in the Prime Network and the five stations owned by TWT Holdings Ltd. This suggests that substantial economies of scale may also be gained from group ownership.

Our overall conclusion is that, although the current ownership limits do not necessarily preclude network-type economies from being achieved, they prevent the achievement of economies of size that could flow from the formation of single-owner national networks.

### **Effect on Formation of Multi-Media Groups**

Limits on cross-media ownership and on the ownership of multiple media outlets in the same service area are aimed at promoting competition between media outlets and ensuring diversity of opinion. While independent ownership is more likely than common ownership

to produce a diversity of opinion, this comes at a cost. Programming diversity is more likely under common ownership of outlets in one medium. Further, the regulation also prevents the formation of local media monopolies and could be potentially beneficial to advertisers.

Considering first programme diversity, the owner of multiple outlets would be likely to promote complementary rather than competitive programmes and thus satisfy the programming needs of a wider cross-section of the community. It is not possible, however, to assess whether the additional minority groups served by complementary programming value those programmes more than majority audiences value the choice provided by competitive programmes.

Considering advertising, competition between media outlets (both intra- and cross-media) allows advertisers to choose the best medium for their advertisements and to benefit from the price competition likely to exist between the outlets.

The limits on cross-media ownership prevent owners from maximizing administrative efficiencies and from minimizing their commercial risk by being involved in competing activities (rises and falls in demand for advertising in different media do not necessarily coincide). However, they do not necessarily prevent co-operative arrangements being developed between rival media groups or outlets where this is perceived as being in their mutual interest. Examples of such co-operation include radio and newspaper groups sharing advertising personnel and parts of their premises, and radio and television stations sharing local news gathering personnel, facilities and programmes.

The prohibition of common ownership of multiple broadcasting outlets has both negative and positive effects. On the negative side, particularly in relation to television, it promotes duplication of programmes appealing to large audiences. Minority audiences would be more likely to be catered for by owners of multiple outlets in the same service area who would have a financial incentive to broadcast complementary rather than competing programmes on the commonly-owned stations. On the positive side it enhances diversity of editorial opinion.

### **Foreign Interests**

Foreign ownership restrictions in broadcasting are intended to ensure that broadcasting remains essentially 'Australian', and that foreign individuals and companies are not in a position to exert effective control over any licensee company. The restrictions affect not only foreign

citizens and companies wishing to invest in Australian broadcast media, but also any foreign-owned creditors of licensee companies taking equity positions in those companies or directorships on their boards. They may also prevent locally-owned investment funds (including superannuation funds) managed by the local subsidiaries of foreign-owned financial institutions from acquiring substantial interests in licensee companies.

The effect of these restrictions on economic efficiency depends on the extent to which they alter patterns of ownership in the industry and limit the capacity of media companies to secure benefits of economies of scale and scope. By limiting the pool of potential investors in Australian media stocks they may also disadvantage existing and potential licensees and their shareholders. Specifically, they are likely to reduce the opportunities for licensees to maximize the profitability of their operations and the realizable value of their licences, and for foreign companies to diversify into Australian media assets.

The existence of networks at both the national and international level suggests that economies of scale and scope are possible in broadcasting and related activities. Foreign entities with existing media or entertainment interests are the most likely source of such economies. Among the benefits which might result from affiliation with foreign broadcast interests are access to lower-cost finance, reductions in some categories of operating costs such as satellite use and station facilities, and some management and administration outlays. However as long as programme regulations persist, so preventing Australian stations from operating merely as relay stations for foreign networks, these benefits are likely to be limited by the continuing need to operate Australian facilities and retain sales staff. Even if full integration with a foreign network were permitted, the need to take account of domestic tastes and preferences in programming would limit potential operational benefits, as would the need to sell advertising time to domestic advertisers. Ownership changes that may result in access to an improved range or lower cost of programmes could offer further potential benefits.

Another possible cost of the foreign ownership restrictions is a distortion of the debt/equity structure of broadcasting companies by favouring debt over foreign equity. However, it is not possible to measure the extent to which the restrictions distort the debt/equity structure.

Further, ensuring majority Australian ownership of broadcast media does not necessarily guarantee Australian control of its tone and

content. These are more likely to be determined by the programming. The choice between programmes depends on commercial imperatives such as the programme's price and attractiveness to audiences. If foreign programmes have a substantial advantage in these respects, the nationality of the owner, or indeed the programme manager, is likely to have little influence on programme choice. A more effective means of ensuring Australian control over tone and content is through regulations that address this directly; specifically through content requirements and restrictions on the source of programmes.

While the Parliament's concerns with foreign control of radio in 1951 were understandable in the context of that era, the continued validity of those concerns a half-century later is questionable. Today it is virtually impossible to prevent foreign media from influencing domestic audiences. Radio waves simply do not recognize national borders and may be propagated across borders by a variety of means. Similarly, technological change and the development of new media are increasingly undermining the effectiveness of regulations designed to limit the influence of media owners. For example, satellite transmission and the Internet provide access to sources of information that are beyond the reach of national regulation.

Furthermore, ownership of domestic broadcasting stations by citizens of a country does not guarantee that they will be less prone to use their influence to promote private, rather than public, agendas. The best protection against potential abuse of the media's power of influence is likely to be greater diversity of media outlets competing for the attention of audiences. In such a situation, sanctioning of foreign ownership would enlarge the pool of potential investors in media stocks, thus reducing media concentration and the need for domestic ownership and control regulations.

Apart from the populist sentiment in favour of keeping Australian media in Australian hands, it is difficult to see any continuing value in maintaining strict controls on foreign ownership. The inherent absurdity of the restrictions is highlighted by Rupert Murdoch's assumption of American citizenship in 1985. Although he had been living abroad for many years, he was deemed to be a resident of Australia for the purpose of the legislation and was able to retain ownership of television stations. However, on becoming a US citizen, even though nothing else had changed, he was no longer regarded suitable to own Australian television stations, but continued to remain suitable to own extensive Australian newspaper interests with a potentially greater capacity to influence public opinion.

### **RUPERT MURDOCH BECOMES AN AMERICAN**

Rupert Murdoch, founder of the Australian-based News Corporation international media conglomerate, took up US citizenship in 1985 to facilitate purchases of US broadcasting assets by The News Corporation. At the time Murdoch had been residing in the US for many years and made only infrequent visits to Australia.

Broadcasting regulations prior to 1981 prohibited control of television stations by non-residents of Australia. However, in 1979 the Australian Broadcasting Tribunal (ABT) approved Murdoch's takeover of TEN-10 (Sydney) by ruling that he was a resident of Australia for the purposes of the Act. Soon after, Murdoch's purchase of half of Ansett Transport Industries Ltd which held major interests in ATV-10 (Melbourne) was contested on the basis of his residency status, and the ABT eventually refused approval of the purchase. The News Corporation appealed to the Administrative Appeals Tribunal. One of the amendments to the Act in 1981 (colloquially referred to as the 'Murdoch Amendments') replaced the residency requirement with citizenship as the determinant of foreign control and enabled the purchase to proceed legally.

Ironically, the citizenship requirement that facilitated the ATV-10 takeover necessitated the sale of The News Corporation's television stations when Murdoch became a US citizen in 1985.

## *Conclusion*

Limits on the level of concentration and control of broadcasting have traditionally been considered to be in the public interest because they reduce the power held by any one individual and because the resultant wider spread of control generates a greater diversity of views. Similarly, the public interest is seen by many to be better served by restrictions on foreign ownership, on the basis that there may be a greater risk that the interests of foreigners might not be consistent with the national interest. However, the regulations addressing these concerns come at a cost.

A significant effect of the ownership and control limits has been to prevent the formation of single-owner national television networks and multi-media conglomerates and to restrict foreign involvement in

Australian broadcasting. The current provisions appear to act as genuine constraints on acquisition, with some owners declared in breach and required to divest assets in recent years.

Ownership restrictions reduce the range of potential operators and limit the development of industry structures reflecting the existence of economies of scale or scope. Businesses prevented by regulation from growing to their optimal size or from producing complementary products have higher costs and lower profits than otherwise. Cross-media rules are likely to be preventing the formation of multi-media groups and the realization of benefits of economies of scope likely to be associated with them.

Foreign ownership restrictions, in particular, do not appear to serve a useful function. They are based on outmoded concepts of national sovereignty and in an era of media globalization they have little effect on the capacity of foreign media to influence Australian consumers. Also, by reducing the pool of potential investors in Australian media, they are likely to encourage, rather than discourage, higher ownership concentration of media assets contrary to the objective of domestic ownership and control regulation.

# Chapter Seven

## Policies for New Media

The government has always exercised extensive and detailed control over the development of broadcasting services. Such controls can confer benefits such as uniformity in transmission and reception technologies and the setting of community priorities rather than those reflecting short-term commercial interests of suppliers. On the other hand, the same controls can clearly reduce the responsiveness of the industry to changing demand and supply opportunities and delay structural change. There is also the risk that they can be used to mandate inappropriate technologies and to protect incumbent operators from the introduction of competitive new products and services. As has been detailed in the previous two chapters, the history of broadcasting in Australia is littered with examples of misguided use of politically-expedient, technically-specific, policy instruments resulting in substantial reductions in net benefits to society. This chapter considers the policy challenges presented by technological change.

### *Record on Management of Technological Change*

Conscious of the dangers of rigid, technologically-specific rules, the Broadcasting Services Act 1992 sought to establish a technologically-neutral framework for the ongoing development of broadcasting. Section 4(2) of the BSA declares Parliament's intention for flexible regulation of broadcasting services including in a manner that:

- (b) will readily accommodate technological change; and
- (c) encourages:
  - (i) the development of broadcasting technologies and their application; and
  - (ii) the provision of services made practicable by those technologies to the Australian community.

The Explanatory Memorandum gives a more detailed explanation of the provisions of section 4 as follows:

Paragraphs (b) and (c) aim for accommodation of technological change (particularly in the provision and reception of broadcasting services) without the need for regular amendment of the Act, wherever possible. This paragraph recognises that in recent years there has been an acceleration in the development of technologies for delivering communications services. It is intended, as much as the regime set out in the Act will allow, that as those technologies come on-stream for general application, they be accommodated within the regulatory regime provided by the Act without the need for patch-up amendments as has been the case with the 1942 Act.

In practice, the concept of technological neutrality appears to have been ignored on a number of occasions since 1992. The government's decisions on the introduction of subscription television and digital broadcasting are the two most important recent developments where the concept of technological neutrality appears to have been cast aside. Both of these decisions have major implications for the structure of the broadcasting industry. For different reasons, both have imposed technologically-prescriptive solutions favouring particular interest groups rather than orderly market developments. Both initiatives also involved special amendments of the Act. The following is a brief summary of the two decisions.

### **Pay Television**

The introduction of pay television 'as soon as practicable' was recommended by the ABT in 1982. After lengthy delays the government eventually decided to impose a four-year moratorium on the introduction of pay television (from September 1986 to September 1990). According to the government, the moratorium was needed to facilitate further investigation of the issue and to protect the investments required by commercial broadcasters in response to the policy of introducing three competing commercial television services in regional markets. The issue was subsequently examined by reports prepared by the Department of Transport and Communications (DTC, 1989) and by the House of Representatives Standing Committee on Transport, Communications and Infrastructure (1989). The matter was further complicated by the financial difficulties then encumbering the three commercial television networks and AUSSAT (a government-

owned domestic communications satellite and a potential pay television carrier) and by the decision to deregulate the telecommunications industry.

As part of the package of telecommunications industry reforms in 1992, the government decided to dispose of the financially troubled AUSSAT. In order to make the sale more attractive, it decided that pay television would be introduced using the satellite as the carrier. Appropriate standards for digital broadcasting from the satellite were to be developed and agreed to by 1 March 1994. The BSA restricted licensing of satellite pay television to the three licences approved for the AUSSAT system. As a further protection of incumbent free-to-air broadcasters, the Act also prohibited pay television operators from selling advertising until 1997. A watered-down version of this latter protection continues today with pay television operators being required to raise their revenue predominantly from subscriptions.

No restrictions were initially imposed on the use of other technologies to deliver pay television services. Indeed, the Act provided a simple procedure for the ABA to issue non-satellite licences 'on application in writing' (s 97). Following the accumulation of Multipoint Distribution System (MDS) spectrum licences by an entrepreneur with the intention of delivering pay television services, the government moved an amendment to the BSA prohibiting such services until after the start of satellite services. The prohibition, however, did not extend beyond 31 December 1994. In the event, problems with the development of appropriate technical standards for satellite delivery delayed the start of satellite services until 1995. Another development undermining the 'approved' satellite pay television services was the roll-out of broadband communication cables by the rival telecommunications carriers, Telstra and Optus. According to a newspaper report, a former government minister stated that the cable rollout had not been anticipated by the government whose focus in 1992 had been solely on the satellite services (Maiden & Simpson, 1997).

The long delays in the introduction of pay television services deprived Australian consumers of a service that consumers in other countries had enjoyed for many years. The protection of the interests of incumbent broadcasters by delaying potential competition did nothing to prevent other factors from taking their toll of the financial viability of the three major networks at the end of the 1980s. Major ownership changes and other operational factors unrelated to changes in competitive pressures saw two of the networks go into receivership and a 'fire sale' of the third. All three networks subsequently returned

to sound financial management and profitability, thus demonstrating the power of the market to resolve competition problems satisfactorily without government intervention. Those changes were of a much greater magnitude than those that would have been associated with earlier introduction of pay television services. They suggest that the industry is likely to have been able to absorb the impact of earlier introduction of pay television without major difficulty.

### **Digital Broadcasting**

The digital broadcasting decision announced in March 1998 followed a period of concerted lobbying by incumbent free-to-air operators (FTAs), pay television interests and other groups seeking to enter the market for datacasting and other services. As acknowledged by the Minister for Communications in various media comments, the government's decision endeavoured to find a balance among the competing private and public interests as well as ensure a smooth transition from analog to digital services without undesirable disruptions to either broadcasters or consumers. The decision provided for the introduction of digital television, datacasting services and digital radio. The main elements pertaining to commercial broadcasters are as follows:

- FTAs are required to commence digital terrestrial television broadcasting (DTTB) in metropolitan areas by 1 January 2001, and in regional areas within the three years thereafter.
- FTAs will be loaned 7 MHz of spectrum free of upfront charge to simulcast their service in both analog and digital format for at least eight years.
- DTTB with minimum levels of high definition television (HDTV) must begin by the designated start date for the FTAs to avoid the risk of losing their loaned spectrum.
- FTAs are prohibited from using their digital spectrum to provide multichannelling or subscription television services (to be reviewed in 2005), but may use the spectrum to provide programme enhancements, such as separate broadcasts of different camera angles of the same sporting event.
- Available spectrum not required by the FTAs for digital conversion will be allocated competitively for the transmission of datacasting services starting concurrently with DTTB.
- Existing FTAs are precluded from bidding for the additional datacasting spectrum, but may use a portion of their loaned spectrum for datacasting and will be charged fees for providing the services.

- The existing prohibition on new commercial FTA entrants was extended to 31 December 2006.
- Planning processes have been put in place to allow the start up of digital radio services in 2001.
- A departmental review will be conducted in 2005 to assess whether the simulcast provisions, and the related multichannelling prohibitions, should be revised.

In announcing the decision, the Minister for Communications argued that while the government 'would normally welcome additional competition, in any industry, as healthy and likely to lead to benefits for the consumer', because of the special circumstances facing them, Australia's free-to-air and pay television industries 'deserve a degree of special treatment, and the Government makes no apologies for [the] decision' (Alston, 1998). The special circumstances cited by the Minister were as follows:

Australia has a world class TV system, with a strong local content component and a highly skilled production sector. This could be threatened if the existing networks had to battle a new competitor at the same time as paying huge sums to transfer to digital broadcasting, or if the Pay TV networks found themselves faced with significantly stronger free-to-air opponents while still trying to find their feet.

If amended in the Senate, the *Television Broadcasting Services (Digital Conversion) Act 1998* requires the Minister to formulate a 'Regional Equalization Plan' to facilitate the provision of digital television and datacasting services by commercial broadcasters in regional areas. The plan is required to have regard to several objectives, including:

- maximizing diversity of choice of television services;
- offering a range of television services similar to that available in metropolitan areas;
- maintaining the financial viability of the commercial broadcasting industry in regional areas;
- providing services relevant to local needs; and
- discouraging concentration of media ownership.

Some of these objectives appear to be in potential conflict with each other. For example, demand for information and entertainment services in regional areas may not be sufficient to support a range of services similar to that available in metropolitan areas. Yet such a range of services is to be pursued concurrently with maintenance of the financial viability of the industry in regional areas. It would seem, therefore,

that where demand is insufficient to support a wide range of services a trade-off between these objectives will be necessary.

In addition to the loan of the necessary spectrum, the regional FTAs are seeking an extensive range of assistance to convert their facilities to digital broadcasting. The assistance measures they are seeking from the government include rebates of licence fees for the implementation period to help fund infrastructure and equipment costs, exemptions from custom duties and sales tax on digital broadcasting equipment, and assistance to defray operational costs during the mandated simulcast period when both analog and digital signals have to be broadcast.

The government's decision was criticized by the media and commentators generally (e.g., Given, 1998; Jones 1998). In a strongly worded editorial, the *Australian Financial Review* (1998a) was of the view that the decision 'shackled the new information economy in the familiar old world of heavy government regulation and media-mogul politics'. It argued that the decision was designed to protect the interests of incumbent media operators by granting free use of spectrum to free-to-air operators as well as protecting them and pay television operators from potential competition.<sup>7</sup>

Some weeks later, another editorial in the *Australian Financial Review* (1998b) claimed that the decision was inconsistent with the alleged advice of government bureaucrats contained in a leaked cabinet submission. According to the editorial, key departmental advisers had argued the decision was inconsistent with 'the non interventionist approach which the Government had endorsed for developing the information economy', would 'result in inefficient use of valuable spectrum', would 'restrict consumer benefits from a wider range and flexibility of services', conferred benefits to commercial interests that 'already enjoy significant private benefits at public and community expense', and 'inadequately deals with a complex and important new technology which could have far-reaching implications for the future of Australia's communications sector and its impact on the community'.

The requirement to broadcast minimum levels of HDTV appears to be an implicit acceptance of the argument by FTAs that the availability of HDTV programmes would accelerate the take-up of digital television by consumers. However, apart from a view expressed by the ABA's Digital Terrestrial Television Broadcasting Specialist Group that

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<sup>7</sup> It should be noted that the Fairfax Group, the owners of the *Australian Financial Review*, had been lobbying for a decision more favourable to its own private interests.

'consumer demand for high definition programming will grow rapidly once this becomes available' (ABA, 1997), there are no detailed studies to suggest that consumers are ready to embrace HDTV. Indications from overseas suggests that HDTV sets are costly (currently more than \$5000) and the available systems are not yet fully tested in mass markets.

Whether Australian consumers are ready to embrace HDTV remains to be seen. In terms of benefits, consumers may have been better served by increased programme diversity, likely to result from an expansion of television services that would have been made possible by digital conversion. HDTV requires a full 7 MHz channel for transmission, as is currently required by analogue transmission. Alternatively, a 7 MHz channel is capable of supporting several standard definition digital services, of a higher quality than current analogue services, but not of the 'cinema-like' quality of HDTV.

The Australian decision to mandate at least a minimum level of HDTV differs from approaches taken in other countries. Closest to the Australian approach is the model adopted by the US for the introduction of digital television. There, television operators have been lent a full digital channel for use during the transition from analog broadcasting. However, while the broadcasters are expected to provide HDTV services, they are not compelled to do so. The choice of whether the channel is used to provide a single HDTV service or several multiplexed standard definition television services or a combination of television and other services, such as datacasting, is left to the operators.

In the United Kingdom, each of the existing free-to-air broadcasters is being provided with digital capacity to simulcast a standard definition signal. The additional digital capacity has been made available for additional standard definition services by new entrants. No provisions have been made for the introduction of HDTV services.

The Australian Government's decision prescribes the range and type of services that can be provided in the new digital environment rather than allow market processes to respond to consumer demand. A market-based approach would have led to a different outcome. Given that digital conversion is being mandated by the government, a reasonable case would exist for the allocation of a standard digital service capacity to incumbent broadcasters to enable them to transmit in both analog and digital formats during the transition period. The allocation of the additional spectrum capacity could then have been decided by the market on the basis of actual demand for particular

services. Auctioning of the available spectrum would have allowed bidders to make their own commercial judgements about the best combination of HDTV and standard usage television services and bid for the capacity accordingly. Not only would this have been likely to raise substantial revenue for the government but it would also have avoided the inherent danger that a prescriptive solution may not maximize social welfare.

## *Converging Technologies*

Ongoing developments in digital technology and computer software applications are rapidly changing the nature of information services, including those of media industries. Increasing adoption and use of the same technology by traditionally distinctly different services is rapidly eroding the boundaries between them. This means that previously dedicated platforms for the delivery of a single service are rapidly acquiring the capacity to deliver different services simultaneously. New delivery platforms are also emerging. The most prominent example of convergence in service delivery is the Internet, which can deliver information and entertainment services in a variety of forms, including audio, video and data.

Convergence has far-reaching implications for regulatory policy and for the development of innovative information services for the advancement of the economic and social well-being of society. Traditional technology-based regulation of what were essentially distinct services is ineffective and inefficient in an environment where essentially the same service can be delivered by a variety of means or simultaneously with other services that do not necessarily have similar attributes. Different regulatory treatment of essentially the same services on the basis of differences in delivery technologies can distort economic development and opportunities. Under these circumstances, while licensing is likely to remain a key tool for regulatory control of media industries, its aim should be to facilitate efficient development of services without endangering progress and innovation.

Convergence is also increasingly challenging national approaches to regulation. The global nature of Internet services, for example, means that national controls are virtually impossible to enforce. Internet users can source their services from almost anywhere in the world and can easily get around any restrictions or controls that are national rather than global. Satellite delivery of broadcast programmes is another example where national controls such as domestic content regulations

of television programmes cannot be enforced. The increasingly global nature of media industries can have major implications for economic development. National regulation that tends to be more restrictive than that applying in other countries may prove to be a significant incentive for media industries to migrate to countries with less restrictive regulation.

### *Impact of Convergence on Media Industries*

There are several elements of technological convergence that impact on the development and growth of media industries.

First, the development of the microchip has greatly facilitated ownership and use of personal computers. Combined with the growth of the Internet, this has brought access to a large range of information and entertainment services to large sections of the community. For example, the Internet is becoming an important platform for the delivery of audio and video broadcasting services (webcast radio and television). Traditional media services are thus finding their predominant position in the home being eroded and that they have to compete strongly with new services for the consumer's time and attention.

Second, the establishment of fibre optic cable networks with a capacity to deliver hundreds of television channels to the home spells the end of spectrum capacity constraints that have restricted the number of television channels that could be made available in any one locality. The availability of numerous channels erodes the potential influence of individual television channels and, thus, one of the principal bases for licensing of services and regulation of programming.

Third, another important technological development from the point of view of content regulation is the digitization of information signals. The process reduces all forms of information content to electromagnetic pulses, which greatly facilitates the storage, processing, transmission and retrieval of signals. The process permits rapid processing and exchange of information. Coupled with advances in computer technology and the ease of access to computer networks, consumers can avail themselves of remote access to diverse services and products. This means that individuals will increasingly be able to enjoy greater flexibility in sourcing information and entertainment products that best meet their needs and bypass traditional services and associated regulations. Most of the new services will be delivered by electronic means.

Fourth, the print media industry has also experienced extensive technological changes in the past three decades and these have had a substantial impact on production processes. Although the primary effect has been on production and printing activities, advances in electronic information services are also having a major impact on the nature and function of newspapers and magazines. Copy and advertising material can be prepared electronically and can be transferred from one end of the world to the other in seconds. The simplification of production and printing by eliminating typesetting and other time-consuming functions has shortened the printing timeframe of newspapers considerably and has improved their ability to compete with other media in providing timely in-depth coverage of breaking news stories.

Although improvements in newspaper production technology are expected to continue, the major challenges for newspapers are expected to come from other sources. With the growth of online information services the character of the newspaper of the future is likely to change. Some commentators are even forecasting the disappearance of printing. If printing is essentially the transmission medium for the carriage of newspaper content, more efficient carriage by electronic means may indeed supplant it. Furthermore, electronic carriage is more conducive to sorting automatically the stories of interest to an individual. If a hard copy of the stories of interest is required, it could be printed locally.

Newspapers are already accessible electronically on the Internet. Newspapers use their Internet accessibility as a complement to their printed outputs. It also provides them greater exposure to their advertisements.

### *Impact on Competition*

Availability of a vast range of interactive information and entertainment products will generate new competitive pressures on traditional media. Services based on mass audiences are likely to suffer most as there will be an increasing tendency for the new products to appeal to niche markets by providing services that match more closely the needs of consumers in those markets. Traditional mass media, therefore, are likely to see increasing fragmentation of their audiences.

Erosion of free-to-air television's audience will not only reduce its influence in the community, but will also reduce its earnings capacity. Advertising will become more competitive with the entry of new services. Online advertising can be much more targeted than that of

mass media. The demographics of Internet users, for example, are attractive to many advertisers. The placing of advertisements at popular Internet sites is increasing. It can also provide a tangible measure of the effectiveness of the advertisement for the advertisers. For example, Procter & Gamble is reported to have negotiated a deal with Yahoo! to pay only for the number of hits it gets on its home page via the Yahoo! site (Carveth, Owers & Alexander, 1998). Furthermore, as advertising is sold primarily on the basis of audience size, the erosion of traditional television audiences will lead to a commensurate decline in advertising revenue. The entry of new services will also result in increased competition and increased costs for the available programming. The twin pressures of reduced revenues and increased programming costs will weaken the capacity of traditional operators to sustain the continuing cost of programming regulation.

The way consumers use the media is also changing. The Internet, with its capacity to act as a major source of information, is both a potential competitor to established media as a source of information and entertainment and a potential ally in providing greater access to the established media. Newspapers, for example, may be accessed through the Internet; they thus extend their primary readership and provide a new vehicle for the delivery of advertisements to readers.

### *Implications for Media Regulation*

Historically, the broadcasting and communications industries supplied distinct services that facilitated the application of different regulations for different services. With changing technology, the same service can now be provided by a variety of means (such as over-the-air broadcasting, cable, microwave, satellite, etc.). The activities of firms also tended to be confined within one industry. This is changing particularly with telecommunication carriers increasingly expanding their interests in supplying content services such as pay television, and video, rather than just confining their activities to carriage of information. These and other potential changes to the structure and nature of media industries are likely to erode the effectiveness of current regulatory mechanisms.

The BSA was intended to be technologically neutral in its application to the delivery of services. Yet it still relies on different rules for different media or for differently defined elements of the same medium. Narrowcasting and broadcasting essentially perform the same functions but have a different degree of technical or audience reach.

Online information services are being integrated with newspapers, and subscription television services share many of their characteristics with point-to-multipoint services. As the boundaries between services become increasingly blurred, the application of different rules will become increasingly unsustainable and will increasingly distort industry structures and competition.

Technological change is also likely to generate new services that may be beyond the reach of domestic regulation. Satellite services originating overseas can be accessed in Australia. Similarly, video images and entertainment services are accessible through the Internet, and may originate anywhere in the world. Thus, the use of domestic regulation to achieve social objectives will become decreasingly effective over time, since it can be applied only to services originating in areas within the jurisdiction of domestic governments.

## *Conclusion*

Traditional media industries are undergoing extensive restructuring as a result of rapid technological changes. These changes are not only expanding the availability of existing services, but are also generating a massive expansion of new services likely to compete with or supplant traditional services. The changes are also blurring the boundaries between previously well-defined industries and services.

As recognized by the BSA, a necessary condition for efficient, non-distorting regulation is that its treatment of a service should be independent of the process by which the service is produced or delivered. Such equal treatment ensures that investment decisions are driven by market incentives and not by regulatory impact. The need for regulatory policy to avoid unequal impact on different versions of the same service is particularly important in an environment of rapid technological change when both services and delivery platforms are no longer confined to traditional and distinct structures. In such a situation, regulatory approaches that are not neutral in their effect on both delivery technologies and on substitutable services can greatly distort incentive structures, economic efficiency and development.

## Chapter Eight

### Improving Media Regulation

Australian broadcasting has long been subject to regulations in three main areas: control of entry through licensing; restrictions on foreign and broad ownership; and control of content. The print media were not subject to special regulation until the cross-media ownership rules were introduced in 1987. The regulations affecting the media industries have evolved over the years in response to various forces including the advent of new technologies, changes in consumer demands and the decline of the 'social responsibility' approach. While these changes have been broadly in the direction of greater liberalization, the media industries remain heavily regulated compared with most other industry groups.

In this study we have described, explained and evaluated Australian media regulations. The approach is both retrospective and prospective. The regulations have not always served well what we understand to be 'the public interest'. While characteristics of public good, natural monopoly and spectrum scarcity have meant that the market cannot be relied on totally to produce an efficient outcome, regulations have not always led to an improvement or, when they have, not to the maximum possible improvement. In this concluding chapter we canvass some possibilities for alternative regulatory directions that avoid some of the shortcomings inherent in the existing regulatory structure. The recommendations are based on four guiding principles:

1. Regulation should be retained or introduced only when correction of market failure is strictly necessary and justified or to achieve a clearly identified social goal whose benefits to society clearly outweigh all the cost associated with the regulation.
2. Regulation should be based on a clear, well-defined, transparent and predictable framework.
3. Regulation should be directed to outcomes and not to the way in which the outcomes are generated or delivered.

4. Regulation should be neutral in its impact on delivery technologies and on services with substantially similar attributes.

## *Specific Policy Implications*

### **1. Freer Entry into Broadcasting**

Regulation of entry into broadcasting has been overly restrictive, limiting the number of particular services in particular markets, and delaying the introduction of emerging services based on new technologies. Without these restrictions it appears that the present size, structure and performance of broadcasting services would have been substantially different from that observed. High licence values reflect the rents accruing to their holders and the presence of these rents is *prima facie* evidence of excessive restriction. There is also evidence that in the case of all new services based on new technologies (monochrome television, FM radio and pay-television in particular), introduction was unnecessarily delayed with consequent efficiency costs. Further, the combination of carriage (signal transmission) and content (programme production) in Australian broadcasting has been a source of regulatory difficulties and has restricted policy flexibility. There are several elements that could help establish a freer and more coherent approach to broadcasting licensing:

#### ***Reduce entry barriers***

We recommend much freer entry into broadcasting. The only 'public interest' grounds for limiting entry are those of natural monopoly (economies of scale or scope) and technical considerations such as spectrum scarcity. However, natural monopoly provides only a *prima facie* case for intervention (it provides only a necessary condition for restriction, not a sufficient one). New entry that duplicates investment in infrastructure is not necessarily wasteful. Its benefits such as greater programme diversity and choice to consumers or lower prices for advertising could well exceed the cost of the investment. Technological changes have greatly reduced spectrum scarcity constraints and new delivery platforms, such as the Internet and international satellite, are largely beyond the reach of national regulations. Increased adoption of these technological advances will continue to reduce the effectiveness of restrictive entry barriers and would make their retention increasingly questionable.

***Continue the auction system***

Where entry is to be restricted on public interest grounds, including spectrum scarcity, a market mechanism should continue to be used to allocate the available licences. However, there may be a case for consideration of alternative auction designs that facilitate a more efficient approach to market allocation and avoid some of the pitfalls experienced in recent years (e.g., allocation of satellite pay television licences).

***Separation of carriage and content***

There is a case for the means of carriage and the content of free-to-air broadcasting services to be licensed separately as is the case in the United Kingdom. This would be easy to apply to all new services immediately, but would be difficult for existing services. One approach for existing services would be a requirement that, after an appropriate period of notice, owners divest themselves of either the carriage or content element of their current licences.

***Limit licence periods***

Currently, although licences are issued for a nominal period, they are held virtually in perpetuity. Separation of carriage and content would help establish enforceable fixed licence periods. Unless completely free entry were justifiable, the content licences should be allocated initially, and re-allocated when they expire, by a market mechanism, such as an auction, to secure any scarcity value for the government. The government could also retain the right to impose obligatory content clauses and would then be free to amend them each time a licence is re-allocated. Owners of transmission facilities would not necessarily be excluded from holding a content licence. The effectiveness of this approach has been demonstrated in the United Kingdom where it is used to allocate programming licences for free-to-air television.

***Spectrum management***

Efficient use of the scarce radio frequency spectrum would require broadcasters to purchase spectrum rights in competition with users in other industries. It would provide broadcasters with the flexibility to choose alternative delivery mechanisms (e.g. cable, satellites) should they prove to be more commercially attractive. The introduction of a tradeable spectrum-access rights system would need to give special consideration to the terms and conditions under which existing broadcasters could continue to retain tenure of the broadcasting frequencies currently assigned to them.

### ***Technological neutrality***

The BSA sought to establish a technologically-neutral framework for the development of broadcasting. However, those intentions of the Act have not always been pursued in practice. In the short period since the enactment of the legislation the concept of technological neutrality has been overridden by two policy initiatives (pay television and HDTV), which have had major implications for the development of broadcasting services. Issues surrounding the management of new technologies were treated at length in Chapter 7. In brief, wherever regulation is justified, considerable care should be exercised to ensure that it is not distortionary in its application to different technologies. Our recommendation is that any such regulation should be applied to outcomes irrespective of the technology by which they are delivered.

### **2. Fewer Restrictions on Ownership and Control**

When evaluated on economic criteria, restrictions on audience reach, foreign ownership and cross-media ownership all have a number of adverse effects. In particular they have limited the development of industry structures exploiting economies of scale and scope, prevented the formation of multi-media groups, and given incentives to the creation of new financial instruments and other arrangements to avoid the regulations. At the same time, substantial diversification of the media industry has weakened the non-economic case for ownership restrictions, and, as the delivery of media services by non-traditional means becomes more widespread, the justification for continued restrictions on ownership of traditional media will be further eroded. In the case of restrictions on population reach, these have effectively been circumvented by television programming affiliation agreements. In the light of these considerations it is difficult to mount a case for continuing to restrict audience reach, foreign ownership and cross-media ownership.

### **3. Use More Efficient Means of Promoting Australian Content**

Programme standards in television are quite extensive and include requirements for overall Australian content (type and quantity) of television programmes, children's programmes, Australian content in advertising (80 per cent must be produced in Australia) and limits on time devoted to advertising (maximum of 13 minutes an hour in prime time and 15 minutes an hour at other times).

The discussion of programme standards in Papandrea (1997) considered the desirability and appropriateness of Australian content

requirements and found evidence that there was a willingness to pay for the additional cost of local content, but that the current means of delivery are inefficient. They distort broadcasters' programming decisions and provide a substantial, but hidden, level of assistance to drama production and employment.

Assuming that the current assistance is desirable, it would be possible to eliminate some of the current distortions and improve the efficiency of the scheme without significantly affecting its outcome. It is proposed that a direct and more transparent mechanism should be used to assist film and television programme production. A mechanism other than quota (e.g. a bounty or other direct assistance to production) which removed the relative price differential between Australian drama and foreign drama or other Australian programmes would allow programmers greater flexibility in choosing programmes on the basis of audience response.

### *Overall Conclusion*

Our broad conclusion is that, while there have been substantial improvements in the regulatory structure and its outcomes (especially with the BSA), there are still problems in the approach and results in the three major areas of regulation: licensing, ownership controls and content regulation. The traditional regulatory structure continues to be challenged by new technologies and the convergence of existing ones. The media industry needs to be managed very carefully to produce results that maximize the 'public interest'.

This leads us to reflect on how different the broadcasting landscape may have been with a more liberal, market based approach to the licensing of new services. Additional broadcasting services and new technologies such as FM radio, television and pay television would probably have been introduced much earlier. For instance, notwithstanding the invention of FM radio in the 1930s, its successful use overseas and in local test stations for decades, the existence of many unsatisfied applications for new radio services and 60 per cent receiver penetration by 1978 (Postal and Telecommunications Department, 1978), FM radio services were not introduced until 1980. The use of FM was prohibited by legislation in 1956 and the FM spectrum was allocated for use by television in 1961. Similarly, the introduction of television was delayed until 1956 even though the technology had been developed much earlier, and 20 applications for commercial television licences had been lodged as early as 1944

(Curthoys, 1986). The same pattern is repeated in the case of subscription television whose introduction 'as soon as practicable' had been recommended as early as 1982 in a report by the ABT (1982). The government ignored the report until 1986 and then decided to impose a four-year moratorium on the introduction of subscription television. The moratorium was extended in subsequent years and pay television was finally introduced in 1995. A similar pattern is also evident with the introduction of digital television. Of course, had the timely introduction of these technologies occurred in response to market demand, the community at large, rather than a select few, would probably have gained substantial social benefits and the present size, structure and performance of broadcasting services would be very different.

# Appendix

## Historical Outline of Media Regulation

Different media are subject to different levels of regulation. The principle of press freedom, for example, has ensured the development of a print media largely unconstrained by regulation. New electronic media, such as online services, are also largely unconstrained by regulation, but for different reasons. In their case, the technological developments that have made the new media possible have also led to the demise of effective regulation using traditional means. Regulation, however, has always been a feature of broadcasting and many aspects of the industry are subject to extensive controls. This appendix outlines the development of broadcasting regulation in Australia highlighting the factors that have a significant impact on the current structure of the broadcasting industry.

### *Early Development of Radio*

Experimentation with radio broadcasting attracted increasing attention in the years following the First World War. By 1920 radio stations were already broadcasting regularly overseas. The first regular radio service was established in Sydney in late 1923 and was quickly followed by the establishment of another service in Melbourne in early 1924. The Commonwealth Government used the powers of the *Wireless Telegraphy Act 1905* to license transmission and reception of radio signals and to set operational standards for stations. The initial regulations introduced in 1923 were concerned with: technical and financial aspects of broadcasting; prevention of interference between stations; ensuring availability of frequencies for services throughout the country; and establishing mechanisms for financial compensation of service providers.

Initially, to access the service of a radio station listeners were required to pay a subscription fee to the broadcaster, including a receiver licence fee collected on behalf of the government for the right to use a radio receiver permanently tuned to that station's frequency (referred to as a 'sealed' set). This arrangement was difficult to implement and control. Theoretically, listeners wanting to have access to more than one station were required to pay a separate fee to each station and to operate a separate radio receiver for each station. In practice, adjustments to a radio receiver to enable reception of more than one station were simple to carry out while enforcement of the sealed set arrangement was difficult. Also, many listeners quickly discovered that they could avoid payment of subscriptions to stations altogether by the simple expedient of purchasing an 'experimental' receiver licence which enabled them to operate an unrestricted receiver that could be tuned to the frequency of any station.

New arrangements to replace the 'sealed' set scheme were introduced in 1924. These authorized two types of stations, Class A, financed from receiver licence fees and limited advertising up to one hour per day; and Class B, financed solely from unlimited amounts of advertising. The establishment of a national radio service led to the government's takeover of the Class A stations as their licences expired in 1929 and 1930. Initially, programming for the national stations was contracted to the Australian Broadcasting Company, and then became the responsibility of the Australian Broadcasting Commission, later Corporation (ABC) when it was established in 1932. The legislation establishing the ABC incorporated most of the earlier established conditions of the programming contract assigned to the programming company (see table A.1 for details). Some, including provisions for programme diversity, adequate and comprehensive programmes, quality programmes, local content, and protection of good taste, are still clearly identifiable in the ABC's current charter.

Cultural enhancement and protection of good taste were particular concerns of the early programming controls imposed on radio stations. Programmes on the national stations were scrutinized for suitability by the Postmaster-General's Department prior to transmission and those of commercial stations were kept under observation. Authorities were also concerned with ensuring equitable treatment of political broadcasts during elections, and the provision of educational, children's and religious programmes.

Although the government was initially anxious to promote the expansion of commercial services, particularly in non-metropolitan

**Table A.1 Australian Broadcasting Company –  
Conditions of Programming Contract**

- (a) That the programmes, both in their compilation and rendition, shall be to the satisfaction of the Postmaster-General;
- (b) That they shall be of general interest and of sufficient diversity to cater for the reasonable tastes of the community as a whole;
- (c) That they shall contain news items and market reports suitable for the relevant localities;
- (d) That the Company will exercise its expert knowledge to the full and make the maximum use of all the facilities available for securing the greatest possible variety of items and subjects of merit and interest;
- (e) That the Company shall do all in its power to cultivate a public desire for transmission of educational items, musical items of merit and generally, for all items and subjects which tend to elevate the mind;
- (f) That the Company shall make all reasonable arrangements for the rendering of items provided by Orchestras, Choral Societies and organisations of high standing, and shall pursue a reasonable policy in inducing the establishment and maintenance of organisations devoting their talent to the rendering of high class compositions;
- (g) That the Company shall, so far as practicable, encourage local talent by utilising the services of persons who may possess attributes rendering them suitable for providing broadcasting items;
- (h) That the Company shall avoid monotony, tedious repetition of items and unduly prolonged use of an artist in a particular State;
- (i) That the Company shall ensure that no matter is broadcast which might be repugnant to good taste.

Source: Postmaster-General's Department (1931).

areas, demand for licences soon outstripped supply. By 1942, 99 commercial stations were in operation and 695 applications were unsatisfied. Increased ownership concentration of licences caused the government to become concerned about 'the inherent dangers of allowing the control of commercial broadcasting to become a monopoly

or a partial monopoly' and led to the introduction of ownership controls in 1935. However, the initial regulatory instruments were watered down within several weeks of their introduction following concerted action by the broadcasters (Gibson, 1942).

### *Gibson Committee*

In 1942, the Joint Parliamentary Committee on Wireless Broadcasting (Gibson Committee) completed a report to Parliament that was to have a major influence on Australian broadcasting for many years. The report led not only to the framing of the *Broadcasting Act 1942*, but also to the establishment of the Parliamentary Standing Committee on Broadcasting. Many of the provisions of the Broadcasting Act remained in force for more than half a century and the Standing Committee exerted considerable influence on the development of broadcasting regulations throughout the 1940s.

The Gibson Committee's report raised several concerns about the power and influence of broadcasters. The Committee was particularly concerned about the potential of broadcasters to influence the political process during election campaigns and recommended prohibition of broadcasts of political speeches in the 48 hours preceding election day. Although not proceeded with immediately, the recommended prohibition was introduced in 1949.

The Gibson Committee was also influential in the establishment of domestic content quotas for broadcasting stations to promote Australian culture and to assist the development and employment of Australian artists.

### *The Australian Broadcasting Control Board*

The introduction of limits on multiple ownership of radio stations in 1935 stimulated demands for the establishment of a statutory authority to regulate broadcasting at arm's length from the government. Subsequent events, such as the 1938 revocation of 2KY's licence for being critical of the Minister and the 1941 revocation of licences associated with Jehovah's Witnesses for allegedly obstructing the war effort, kept alive broadcasters' fears of undesirable government interference in their affairs. The government's reluctance to allow increases in the transmitter power of commercial broadcasters after the war rekindled the campaign for a statutory authority and eventually the Australian Broadcasting Control Board (ABCB) was established in 1948.

The principal functions of the ABCB were:

- planning of broadcasting services;
- determination of technical operating standards for broadcasters; and
- ensuring the provision of adequate and comprehensive programmes by commercial broadcasters to serve the best interests of the general public.

Although a statutory body, the ABCB was largely confined to making recommendations to the Minister who continued to exercise most of the major powers with respect to broadcasting. Lacking significant independent powers, the ABCB was careful to remain in accord with both the government and powerful commercial interests. It largely confined itself to issues such as standards for programming and technical operations of services. From its early days, the ABCB clearly saw commercial broadcasters as its constituents; and its actions were largely concerned with protecting their interests. For example, as early as 1952, the ABCB indicated that its policy for the granting of new licences included considerations of the commercial viability of incumbent broadcasters. The effect of that policy was that virtually no new stations were established for more than a quarter of a century.

Foreign ownership of broadcasting became a contentious issue in 1951 when British press principals acquired a controlling interest in the Macquarie Network. The acquisition was the catalyst for a resolution by both Houses of Parliament declaring foreign ownership and control of broadcasting stations to be undesirable. Controls on foreign ownership of broadcasting, however, were not introduced until 1956.

### *Introduction of Television*

To cater for the introduction of television, the principal legislation was amended and became the *Broadcasting and Television Act 1956*. The Act extended the pre-existing radio regulations to television, and gave the ABCB an enhanced role in licensing. The amended legislation required the ABCB to hold a public inquiry before the responsible Minister could grant, revoke or refuse to renew a licence.

The period immediately after the introduction of television was concerned primarily with the granting of television licences and with related ownership and control issues. Foreign interests were precluded from owning or controlling television licences and domestic interests were prohibited from controlling more than two licences. As was the case for radio thirty years earlier, ownership of television stations was

dominated by newspaper interests and revived the issue of the desirability of media concentration.

Television licences were very valuable assets in the hands of the lucky few who were allocated one. Each licence was allocated after a public inquiry by the ABCB to determine the best applicant for the licence (colloquially referred to as a 'beauty contest'). Because of their value, licences were keenly sought and the public inquiry process was quickly demonstrated to be ineffective in determining the ultimate ownership of stations. Unsuccessful applicants wishing to enter the industry simply bought out the beauty contest winners after the licences were allocated. Provisions to regulate share transactions in stations were first introduced in 1960 and were strengthened in 1965.

Programming controls in the form of local content requirements for television were introduced in the early 1960s. Initially they required the broadcast of locally produced programmes in much the same way as the Australian music content did for radio. Eventually, as stations sought to reduce their compliance costs by producing inexpensive programmes, such as game shows, specific requirements for the broadcast of Australian drama were introduced. Subsequent changes introduced additional specific requirements for children's programming and, more recently, for documentaries.

### *Turmoil in the 1970s*

By the end of the 1960s the broadcasting industry in Australia had settled into a cosy relationship with the regulatory authorities. Television services had been extended throughout the country. Licensing of new radio services was strictly controlled and very few new licences, particularly in capital cities, had been issued for more than three decades.

Responding to the increasing pressure for additional radio services, the ABCB finally recommended the introduction of FM radio in Australia. However, its recommendation was for the introduction of FM radio in the UHF band rather than in the VHF that was reserved internationally for FM radio because a previous shortsighted decision had allocated part of that band to television stations. The internationally unique effect of the recommendation caused much debate and opposition culminating in the government's establishment of an independent inquiry into the issue. The inquiry recommended the use of the international FM band for radio services and the relocation of television stations using that band. The first FM station was licensed

in 1974. Concurrently with the FM inquiry, the ABCB belatedly adopted 'new planning guidelines' which led to a major expansion of AM radio services.

The early 1970s also saw concerted campaigns by acting and television production interests for effective domestic content quotas, particularly drama, for television programming. The domestic content scheme for television programmes was amended several times during the following decade.

Several other public reviews or inquiries concerning commercial and other broadcasting were conducted during the 1970s and had considerable impact on the structure of broadcasting in Australia. A major report comprehensively reviewing the structure of the broadcasting system was conducted by the Secretary of the Postal and Telecommunications Department in 1976 (Green Report). The report favoured a less interventionist approach to some aspects of regulation and provided the basis for many legislative changes in 1976 and 1977.

One of the changes was the abolition of the ABCB and the establishment of the Australian Broadcasting Tribunal (ABT) to implement the new regulatory approach. The ABT was assigned the licensing, ownership and control powers that had been held by the Minister since the inception of broadcasting as well as the powers and functions of the ABCB (other than the planning and technical functions, which were transferred to the Postal and Telecommunications Department). In something of a contrast to the less interventionist approach in other areas, one of the amendments to the legislation formally incorporated protection of the commercial viability of incumbent broadcasters as a consideration in the granting of new licences.

Attempts to introduce different forms of self-regulation in broadcasting in the late 1970s and early 1980s were largely unsuccessful. The ABT's inquiry into self-regulation recommended greater public accountability by broadcasters in return for reduced regulatory intervention in programming. Although the government announced it had accepted the recommendations, the legislative amendments introduced in Parliament in 1980 bore little resemblance to them. The proposals would have replaced the existing programme and advertising standards with self-regulation. Although the proposals were supported by commercial broadcasters and advertisers, they were strongly opposed by other groups and were allowed to lapse in Parliament without becoming law.

## *The 1980s and Beyond*

Ownership and control and pay television issues were prominent throughout the 1980s. Two major amendments to ownership and control regulations were made during this period. The first, in 1981, removed the requirement for prior approval of the takeover of a licensee company (one of the amendments commonly known as the 'Murdoch amendments'). The second, in 1987, replaced the 'two-station rule' with a rule permitting ownership or control of any number of stations provided that their aggregate audience reach did not exceed 60 per cent of the Australian population (extended to 75 per cent in 1992).

Cross-media ownership rules were introduced for the first time in 1987 and prohibited common ownership of television stations and radio stations or newspapers with the same geographic coverage. The prohibitions were extended in 1988 to include common ownership of radio stations and newspapers with the same coverage area.

The 1980s witnessed the transformation of an early interest in cable and pay television into a saga prohibiting the introduction of such services. In 1980 the government announced that it had decided that cable television services should be introduced and the ABT was asked to inquire and report on the best way to introduce the services. The ABT's report of 1982 recommended introduction as soon as practicable but recommended against monopoly control by the telephony network operator. It also recommended against the operation of subscription television services by the ABC and SBS. The recommendations were opposed strongly by commercial television operators and other interests and no action was taken by the government of the day. After its election in 1983, the Hawke Government decided that introduction of cable television was unjustified. In 1986 it went further and imposed a four-year moratorium on the introduction of pay television services of any kind. The moratorium was later extended to 1992.

In 1982, licensing arrangements prohibiting the control of more than one licence in any one area were loosened with the introduction of supplementary licences. The purpose of supplementary licences was to enable radio and television station operators in areas with a single service to provide a second service. This mechanism was used primarily for the expansion of radio services. For television, the government decided that regional centres should receive three commercial television services, as was the case for large metropolitan centres. This became known as the 'equalization' policy. It was announced in 1985 and legislation to implement it was enacted in 1987. The equalization

policy was implemented by aggregating the licence areas of three adjacent regional areas, each receiving a single commercial television service, and allowing each of the incumbents to provide a service throughout the aggregated area.

The late 1980s saw the introduction of auctions for the allocation of FM radio licences in metropolitan areas. This was the first time that auctions were used to allocate broadcasting frequencies and related to the allocation of rights to convert some existing AM stations to FM and introduce new FM services.

### *Broadcasting Services Act 1992*

The BSA followed an extensive review of the existing broadcasting legislation and introduced major changes in the regulatory framework for broadcasting. It also provided for the establishment of the Australian Broadcasting Authority (ABA) to replace the Australian Broadcasting Tribunal. The new legislation represented a major step towards a more market based, less interventionist approach to regulation. For example, protection of the commercial viability of incumbents as a major consideration of the licensing of new services was repealed. The major changes instituted by the new Act included: the introduction of a price-based licensing system for new commercial radio and television services; a new broadcasting planning regime administered by the ABA; provisions for the introduction of new services such as subscription services and narrowcasting; and greater reliance on industry codes and standards.

### *Current Regulatory Structure*

As in the past the principal elements of the current regulatory arrangements relate to ownership and control of licences and programming requirements.

Various provisions of the Act restrict the extent to which an individual may own and control commercial broadcasting in Australia. These provisions include limits on the number of stations an individual or a corporation may own or control within a licence area and cumulatively in Australia. They also restrict common ownership of television and radio in the same area or the common ownership of either television or radio and a daily newspaper in the same area, and the extent of foreign ownership and control of television licences.

In the absence of proof to the contrary, a person is deemed to be in a position to exercise control of a licence if that person holds directly or indirectly 15 per cent or more of the shares except in the case where another person holds over 50 per cent of the shares.

In summary, the ownership provisions of the legislation are as follows:

- A person must not control more than one television station in the same licence area or a combination of stations in different areas whose combined licence area populations exceed 75 per cent of the population of Australia (s 53(1)).
- A person must not be in a position to control more than two radio licences in the same licence area (s 55(1)).
- A person must not control a television licence and a radio licence in the same licence area (s 60(a)).
- A person must not control a television licence and a newspaper associated with the licence area of that licence (s 60(b)).
- A person must not control a radio licence and a newspaper associated with the licence area of that licence (s 60(c)).
- A foreign person must not control a television licence or have interests in a licence exceeding 15 per cent of the shares. Two or more foreign persons must not have combined interests in a licence exceeding 20 per cent of the shares (s 57). There are no restrictions on foreign ownership of radio.

Parallel provisions restrict the holding of directorships in licensee companies.

Commercial broadcasting licences are issued for a period of five years. Renewal, at least 20 weeks before the expiry date, is virtually automatic on payment of the prescribed fee. Commercial licences may be transferred freely without prior approval of the ABA.

As part of its decision on the introduction of digital television, the government has banned the granting of new commercial free-to-air television licences before the end of 2006.

The principal controls on programming take the form of licence conditions, registered codes of practice drafted by the industry and standards defined by the industry regulator. Both television and radio are subject to detailed codes of practice, administered by the respective industry association, on matters such as fairness and accuracy in news services, protection of children and community morals and decency, programme classifications, advertising codes, and requirements for minimum levels of domestic programming. The domestic content requirement for radio takes the form of an industry code and relates

to the broadcast of minimum levels of music performed by Australians. The domestic-content requirements for television are administered by the ABA.

Reflecting the objective of the BSA, the ABA's Australian Content Standard states that its objective is 'to promote the role of commercial television in developing and reflecting a sense of Australian identity, character and cultural diversity by supporting the community's continued access to television programmes produced under Australian creative control'. The main programming obligations imposed by the current Australian Content and Children's Programmes standards require commercial stations to:

- Broadcast Australian programmes for at least 55 per cent of all programming broadcast between 6.00am and midnight.
- Broadcast sufficient first release Australian drama programmes between 5.00pm and midnight to score at least 775 points in each succeeding period of three years and at least 225 points in any year. The points are the product of a 'format factor' and the duration of the programme. The format factor takes three different values depending on the type of programme. Serials and series produced at the rate of more than one hour a week are assigned a format factor of 1; for those produced at the rate of one hour or less a week the format factor is 2; and, for feature films, telemovies, mini-series and self-contained drama of less than 90 minutes, the factor is 3.2.
- Broadcast at least 32 hours of first release children's drama in the appropriate time band in 1996. In addition, stations are required to broadcast at least eight hours of non-first release children's drama each year.
- Broadcast at least 260 hours of children's programming per year of which 50 per cent must be first release Australian children's programmes.
- Broadcast at least 130 hours a year of Australian pre-school children's programming. A pre-school children's programme must not be broadcast on more than three occasions in a period of five years.
- Broadcast at least 10 hours of first release Australian documentary programmes a year of not less than 30 minutes each.

Different regulatory arrangements apply to subscription television services. Subscription television operators are not required to comply with any overall transmission requirements for Australian programmes. However, predominantly drama channels are required to use 10 per cent of their programming expenditure to fund first release

Australian programmes. The BSA also imposes a special regime to prevent subscription television from securing exclusive rights to the broadcast of major events. Known as the 'anti-siphoning' provision, it empowers the Minister to issue a list of events whose broadcast should be available free to the general public. The list includes most major national sporting events.

The amount of advertising is also controlled. No advertising is permitted during prescribed pre-school programme times and no more than five minutes per half hour is permitted during other children's programming times. Advertising time is restricted to an average of 13 minutes an hour between 6.00pm and midnight, and an average 15 minutes an hour at other times. Between 6.00pm and midnight no more than 15 minutes may be used for advertising in any hour, and no more than 14 minutes an hour in any four hours. A maximum of 16 minutes is permitted at other times. Overall, Australian produced advertisements must be used for at least 80 per cent of the total annual advertising time broadcast between 6.00am and midnight. □□□□□□□□

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