

**SUBMISSION BY**

**MEDIA, ENTERTAINMENT & ARTS ALLIANCE**

**TO**

**DEPARTMENT OF COMMUNICATIONS,  
INFORMATION TECHNOLOGY AND THE ARTS**

**REGARDING**

**MEETING THE DIGITAL CHALLENGE –  
REFORMING AUSTRALIA’S MEDIA IN THE  
DIGITAL AGE**

**APRIL 2006**



**The Media, Entertainment & Arts Alliance**

The Media, Entertainment & Arts Alliance (Alliance) is the industrial and professional organisation representing the people who work in Australia’s media and entertainment industries. Its membership includes journalists, artists, photographers, performers, symphony orchestra musicians and film, television and performing arts technicians.

The Media, Entertainment & Arts Alliance welcomes the opportunity to make a submission to the Department of Communications, Information Technology and the Arts (DCITA) in response to the discussion paper on media reform options, *MEETING THE DIGITAL CHALLENGE Reforming Australia's media in the digital age* (Discussion Paper).

During 2004 and 2005, the Alliance made submissions to a number of inquiries conducted by DCITA on matters that relate to the issues raised in the Discussion Paper.<sup>1</sup> Additionally, submissions were made to other inquiries that also relate to issues raised in the Discussion Paper.<sup>2</sup>

The Alliance notes that "The Government proposes to develop a Digital Action Plan in partnership with stakeholders to expedite digital conversion, bring the simulcast period to an end and achieve analogue switchover"<sup>3</sup> to be released this year. Given that the Government initially envisaged switching off analogue in 2008, it seems remarkably late in the day to only now be developing a plan. However, the Alliance notes that the Discussion Paper sets a series of preferred options that are likely to underpin the plan.

The Alliance also notes that some of the preferred options reflect the recommendations made in the recent report, *Digital Television: Who's Buying It?* tabled on 13 February 2006 by the House of Representatives Standing Committee on Communications, Information, Technology and the Arts following its inquiry into the Uptake of Digital Television in Australia. Others are in contrast to those set out in *Digital Television: Who's Buying It?* Many are not canvassed at all in the ECITA Committee report. Most notably, the ECITA Committee Inquiry did not address nor link reform of cross media and foreign ownership rules with the take-up of digital services.

In common with many commentators, the Alliance considers that the take-up of digital services to date has been slow and, in the absence of a plan that fosters competition and offers audiences enhanced diversity of content, is likely to remain unacceptably slow. For the reasons outlined in this and earlier submissions, the Alliance does not consider the preferred options identified in the Discussion Paper constitute a robust basis on which to build a Digital Action Plan.

Media ownership and control have been the subject of much debate throughout the past decade. The Alliance is of the view, for the reasons set out in this submission, that the preferred options set out in the Discussion Paper are not in the public interest, will serve to drive greater concentration of ownership, entrench incumbent players, reduce competition and reduce the diversity of voices able to contribute meaningfully to national debate.

The Alliance proposes the following digital action plan which would more than double the digital content available to consumers and drive the take-up of digital.

- Ending the moratorium on new commercial television licences and allowing for the allocation of a new licence for a commercial free to air service in the broadcasting services band spectrum.
- Keeping the decision-making power for the allocation of new commercial free to air television licences and for new services outside the broadcasting services band with the Australian Communications and Media Authority (ACMA).
- Allowing a national Indigenous television network on the second unallocated channel.
- Removing the requirement to simulcast in both HDTV and SDTV and requiring the free to air commercial television networks to use one of the two digital signals currently utilised for the HDTV quota and the SDTV simulcast as a multichannel with Australian content standards that currently apply being imposed on the multichannel service.
- Allowing the provision of data-casting services to be a commercial rather than mandated decision.
- Immediately removing the genre restrictions that are currently imposed on national broadcaster multichannelling and resourcing the national broadcasters in a manner that enables them to produce new Australian content for their primary and multichannel services.
- Continuing the imposition of licence conditions in key regional commercial television markets to provide minimum levels of content on matters of local significance.

---

<sup>1</sup> Submissions to DCITA are listed at Schedule A.

<sup>2</sup> Submissions to related inquiries are listed at Schedule A.

<sup>3</sup> *MEETING THE DIGITAL CHALLENGE Reforming Australia's media in the digital age*, March 2006, page 7.

- Ensuring genuine competition between regional radio licensees through a requirement that, if following the sale of a licence, the program format changes from broad appeal to more limited appeal, a new additional commercial licence can be granted.
- Monitoring local content in other television licence areas and on regional commercial radio services and where necessary extending licence conditions relating to levels of local content.
- Announcing a firm switch-off date and phasing in integrated digital tuners in all television sets and phasing out the sale of analogue sets.
- Maintaining the current media-specific foreign ownership rules in the *Broadcasting Services Act 1992* and the newspaper-specific foreign ownership restrictions in the *Foreign Investment Policy in the Foreign Acquisitions and Takeovers Act 1975*.
- Maintaining the current cross-media rules.

## 1. A Roadmap to Digital Conversion

In 2000, the Productivity Commission observed:

“Australian broadcasting policy is the result of ... tradeoffs over the years. The outcome is a complex set of broadcasting policy *quid pro quos*, whereby various regulatory arrangements compensate broadcasters for meeting policy objectives. Many of these arrangements are anti-competitive. The resulting regulatory framework lacks transparency.”<sup>4</sup>

Switching to digital provides an important opportunity to address the problems identified by the Commission and to put in place an appropriate broadcasting framework for the 21<sup>st</sup> century.

The transition to digital will free up valuable spectrum, allowing the Government the opportunity to pursue the key objects of the Broadcasting Services Act, namely:

- (a) to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information; and
- (b) to provide a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive of audience needs; and
- (c) to encourage diversity in control of the more influential broadcasting services; and
- (d) to ensure that Australians have effective control of the more influential broadcasting services, and
- (e) to promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity; and
- (f) to promote the provision of high quality and innovative programming by providers of broadcasting services; and
- (g) to encourage providers of commercial and community broadcasting services to be responsive to the need for a fair and accurate coverage of matters of public interest and for an appropriate coverage of matters of local significance ...<sup>5</sup>

Excessive media concentration and influence are a threat to diversity of views and are consequently a danger to democracy. The transition to digital offers the possibility of a future where many more voices can be heard. Seizing the opportunity to allow new entrants in the broadcasting market will deliver a genuine good for all Australians.

In 2000, the Government implemented a digital action plan that has demonstrably not worked.

Without a comprehensive digital conversion plan, Australia is in danger of falling behind the rest of the developed world. Without a plan that drives digital take-up and drives it quickly, Australia will be subjected to increased competition from overseas content currently being created to feed the proliferation of channels that are coming on line. Australia risks becoming an even smaller creative content player internationally than it already is. For example, the digital action plan in the United Kingdom has enabled the BBC to become the twelfth largest media player in the world. And without a robust digital conversion plan, Australians will be denied the benefits of the digital revolution.

---

<sup>4</sup> *Broadcasting Report*, Productivity Commission, March 2001, page 55.

<sup>5</sup> *Broadcasting Services Act 1992*, s3.

It is not plausible that any one factor will drive take-up of digital services. Rather, a combination of factors will be needed if digital take-up is to reach market penetration at levels that will be necessary to allow for analogue services to end.

The Alliance considers that access to more content than is available on analogue free to air services will be crucial. When triple casting was mandated, the Government assumed that the enhanced picture and sound quality of digital services would be a key driver in the take-up of digital. This has not transpired as the take-up levels attest.

The Australian Competition and Consumer Commission (ACCC) explained why:

“It is widely recognised that digital TV as a delivery platform offers a number of benefits to consumers in terms of sharper picture quality and better sound quality et cetera. However, it appears that these features in and of themselves have not provided a sufficient value proposition for Australian consumers to make the investment in switching to digital at this time in any great numbers ... the ACCC’s research ... tends to suggest that the uptake of digital TV will flow from consumers being offered new and innovative content and services which are able to meet their preferences and needs.”<sup>6</sup>

The success of Freeview in the United Kingdom, where viewers now have access to more than 30 channels, demonstrates the importance of diversity of content offerings as being a key driver to digital take-up. Penetration rates in the United Kingdom stand in stark contrast to those in Australia.

In addition to channel choice, the other key driver identified by the UK regulator, Ofcom, is the availability of low cost receivers able to deliver superior picture and sound quality to that available in the analogue environment.

The Alliance also considers that a firm switch-off date, known by the general public, will be an important driver. To that end, and in order to achieve switch-off, the Government should consider mandating a phase-in of integrated digital tuners in all television sets and phasing out the sale of analogue television sets. To date there has been remarkably little marketing of digital television in Australia, by the government, the broadcasters, the manufacturers or the retailers. An exception has been Foxtel which has cleverly and successfully advertised programs available only in digital on its analogue service.

Thus key drivers can be seen to be:

- Channel choice and greater diversity of content available on the digital spectrum
- Adequately resourced national broadcasters able to broadcast new Australian content in the digital multichannelling environment
- Reasonably priced receivers
- A mandated switch-over date
- Consumer understanding
- A mandated phasing-in of integrated digital tuners in all television sets.

## **2. Enabling a Digital Environment**

### **2.1.1 Fourth network moratorium**

On the one hand, the Discussion Paper proposes that the moratorium on new commercial television licences, which expires on 31 December 2006, will not be extended. On the other hand, the decision-making power of ACMA to allocate new commercial free to air television broadcasting licences will be transferred to the Government and not exercised. Rather, the Government will conduct a review prior to the end of the simulcast period to determine whether a new licence should be allocated.

---

<sup>6</sup> ACCC, transcript of evidence given on 10 August 2005 at the House of Representatives Standing Committee on Communications, Information, Technology and the Arts Inquiry into the uptake of Digital Television in Australia and cited in *Digital Television: Who's Buying It?* page 45.

The Alliance supports the end of the moratorium on new commercial television licences but is opposed to the transfer of decision-making power from ACMA to the Government.

The Alliance has argued in many submissions that what drives digital take-up is greater diversity of content.

Allowing for a fourth free to air commercial digital licence with Australian content standards imposed in line with those currently imposed on the three commercial free to air networks would be a key start in offering consumers more choice in the digital environment than is available in the analogue environment.

In 2000, the Productivity Commission found that achieving “a more competitive and contestable broadcasting industry requires not just that spectrum be made available, but that new players be able to obtain it to provide services.”<sup>7</sup> It found that the prohibition on new television services until the end of 2006 restricted competition and should be removed. Rejecting the networks’ arguments that restricted entry was justified, the Commission commented, “The industry has long justified restricted entry on the grounds that it is necessary to enable it to meet the higher costs of local content programming required for cultural policy purposes. The Commission is not satisfied that such compensation is justified; many industries incur higher costs in meeting government policy objectives, from health (pharmaceuticals) to environmental standards.”<sup>8</sup>

The Productivity Commission also found that concentration in media can provide incumbents with market power that “may allow them to raise prices above competitive levels (for example for cover prices, advertising rates or subscription services), or to be less sensitive to consumer demands ... may also give incumbents power over related markets ...[and] may also limit the range of ideas and information available to the community.”<sup>9</sup>

The ACCC reached similar conclusions in its June 2003 *Report to Senator Alston, Minister for Communications, Information Technology and the Arts, on Emerging Market Structures in the Communications Sector* (ACCC Report), finding that the entry of new services would increase competition, foster innovation and efficiency and lead to increased program diversity and choice for consumers.<sup>10</sup>

On the other hand, the incumbent broadcasters have argued that the introduction of a fourth network would adversely impact on levels of Australian content on television. Responding to the ACCC Report, the Nine Network and Network Ten argued that “Fragmentation of the mass free-to-air audience will inevitably lead to a decline in quality across free-to-air channels, including the primary service of each broadcaster” and went on to say that “Experience in the U.S. and the U.K. indicates that new free-to-air channels will not lead to an increase in free-to-air advertising revenue to offset their cost.”<sup>11</sup>

Others think differently. In 2004, John Singleton and his Macquarie Media consortium indicated they would be willing to be bid for a licence and had modelling to demonstrate it could sustain 100 per cent Australian content providing that such levels of content were made a condition precedent to the acquisition of the licence.

Media commentators have been almost brutal in demolishing the arguments of the incumbent networks. Dr Terry Flew, head of Media and Communications in the Creative Industries Faculty at the

---

<sup>7</sup> *Broadcasting*, Productivity Commission, March 2000, page 21.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> *Report to Senator Alston, Minister for Communications, Information Technology and the Arts, on Emerging Market Structures in the Communications Sector*, ACCC, June 2003, Section 5, available online at [www.dcita.gov.au](http://www.dcita.gov.au).

<sup>11</sup> *Comments to the DCITA in relation to the Australian Competition and Consumer Commission report to Senator Alston, Minister for Communications, Information Technology and the Arts on Emerging Market Structures in the Communications Sector*, Nine Network Australia Pty Ltd and Network Ten Pty Ltd, July 2003.

Queensland University of Technology, did not mince words when he concluded in July 2004 that “In every sense other than the calculus of political advantage from supportive media mates, the decision to go ahead with a fourth commercial free-to-air television licence should be a no-brainer.”<sup>12</sup>

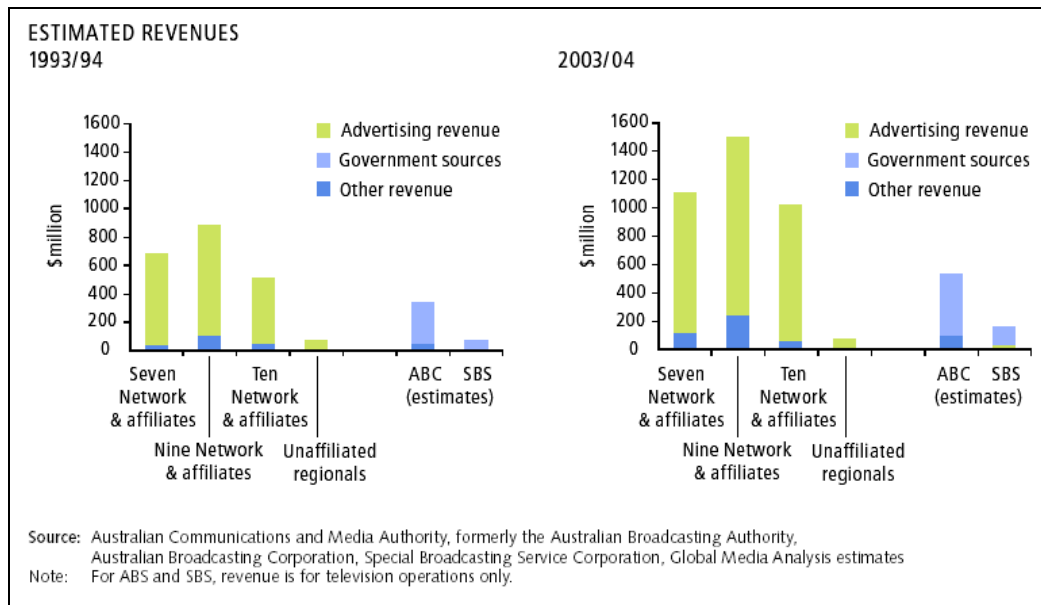
Those in favour of enabling new entrants argue that the commercial television advertising pie is not fixed and that comparisons with the United Kingdom and the United States are flawed in part because the markets in the three countries vary dramatically one from the other.

The Alliance is naturally most concerned that the entry of a new player not result in the outcomes warned of by the networks.

However, the Alliance is increasingly of the view that, providing transmission quotas remain in place and apply with equal force to new entrants, the evidence in the Australian market indicates that the advertising pie for television is not fixed.

Free to air television’s share of total advertising expenditure continues to be second only to newspapers. In 2004, it accounted for more than 35 per cent - \$3.1 billion. “It is also the preferred medium of national advertisers, accounting for 53 per cent of all such advertising.”<sup>13</sup>

**Estimated Revenues for free-to-air broadcasters: 1993/4 and 2003/4<sup>14</sup>**



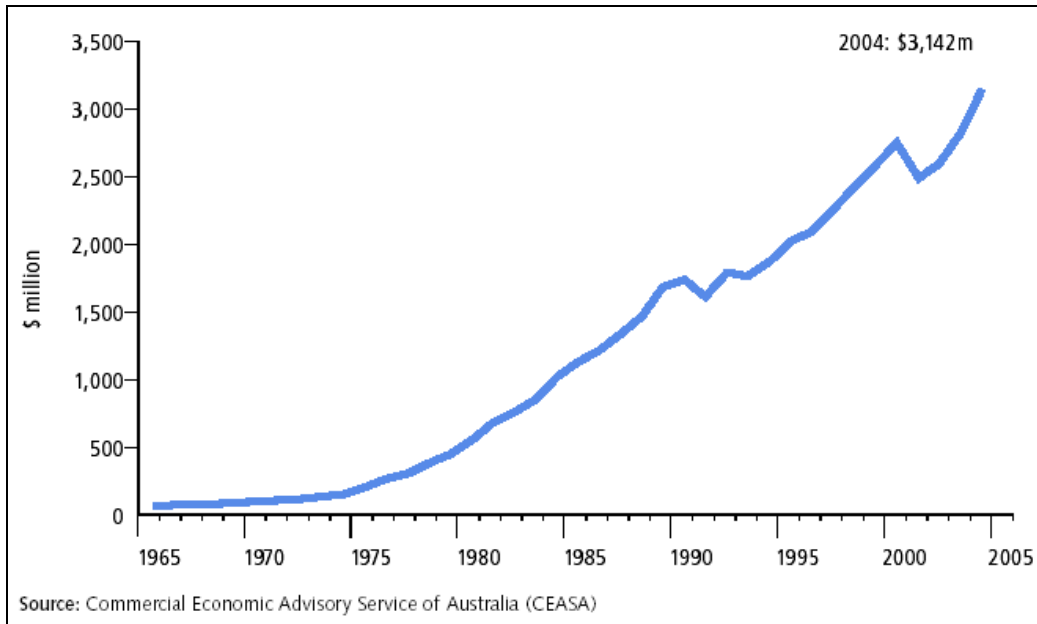
Apart from slight drops in 1992 and 2002, free to air commercial television’s share of advertising expenditure has grown steadily.

<sup>12</sup> *A fourth commercial free-to-air TV network? Should be a no-brainer.* Dr Terry Flew, On Line Opinion, posted 2 July 2004.

<sup>13</sup> *Australia’s Audiovisual Markets*, Australian Film Commission, page 48, available online at [http://www.afc.gov.au/gtp/pdfs/markets\\_ftv.pdf](http://www.afc.gov.au/gtp/pdfs/markets_ftv.pdf)

<sup>14</sup> *Ibid*, page 47.

### Advertising Revenue – free to air commercial broadcasters<sup>15</sup>



The Alliance is aware of modelling that indicates profitability of the incumbent networks would be seriously affected were a fourth network to enter the market. However, the Alliance is of the view that such modelling generally assumes a fixed advertising pie and, as the above tables indicate, that is clearly not the case. Such modelling also tends to assume the economy is fixed and GDP will not rise. Again, that is not the case.

As can be seen from the tables above, the launching of Network Ten in August 1964 into what was a much smaller media market did not see advertising expenditure on free to air television level out. Nor did the introduction of video recorders, the regional aggregation that followed the introduction of the legislation in 1987, SBS being allowed to seek sponsorship, the introduction of DVDs, pay television or the internet see advertising expenditure on free to air television flatten.

Further, although advertising figures for pay television have only been available since 2002, they too show a steady upward trend. In 2002, the sector secured \$67 million, \$93 million in 2003 and \$123 million in 2004.<sup>16</sup>

It is difficult to see why at this point in Australia's history a new entrant could cause the loss of program quality and the loss of profitability that some commentators are claiming.

Further, it flies in the face of the Government's intention to increase the number of services available to Australians that will require advertising (or in some sectors sponsorship) to underpin their business model, such as open narrowcast services, community broadcasting and datacasting services or to augment their business model such as subscription services.

Alliance submissions to the Review of the Provision of Commercial Television Broadcasting Services after 31 December 2006 in October 2004, the Review of High Definition Television Quota Arrangements in June 2005, the Review of the Duration of the Analogue Digital Television Simulcast Period in November 2005 and the Standing Committee on Communications, Information Technology

<sup>15</sup> *Australia's Audio-visual Markets*, Australian Film Commission, page 48, available online at [http://www.afc.gov.au/gtp/pdfs/markets\\_ftv.pdf](http://www.afc.gov.au/gtp/pdfs/markets_ftv.pdf)

<sup>16</sup> *Ibid.*

and the Arts Inquiry into the Uptake of Digital Television in May 2005 provide further commentary on the advisability of allocating a fourth free to air commercial.

In short, the Alliance considers that a further free to air commercial broadcaster will be a critical driver in digital take-up and that arguments for the continued protection from competition are flawed and contrary to competition principles.

### 2.1.2 New digital services on broadcasting spectrum

The Discussion Paper proposes that two reserved digital channels of terrestrial spectrum be allocated as soon as possible in 2007 “for new digital services” including subscription television services, free to air narrowcasting services and datacasting services but excluding a new free to air commercial television service.

Datacasting licensees can provide information only programs, educational programs, interactive computer games, content in the form of text or still visual images, parliamentary broadcasts, ordinary electronic mail and internet content.

The Alliance considers the continuing emphasis on datacasting services is misplaced. To date, successful commercially viable datacasting services have not emerged. The tightly prescribed definition of datacasting has resulted in underutilised spectrum rather than services that could have assisted in driving take-up of digital. Rather than prescribing a service in legislation that appears after a number of years to have no appeal commercially on the part of providers or interest on the part of viewers, the spectrum could be put to better use by allowing the allocation of a licence for a service that does look more like a normal broadcasting service, offering content of interest to audiences and advertisers.

A fourth free to air commercial service and resourcing national broadcasters to enable them to multichannel and offer new content will clearly be more attractive to audiences.

The Alliance sees no reason to continue the experiment in datacasting, an experiment that has demonstrably failed. Snappy terminology like “snack television” is unlikely to make any difference.

No new television program formats have emerged since the 1950s when television was first introduced – traditional television continues to rely on a menu of news and current affairs, sport, drama, sketch comedy, children’s programs, light entertainment, arts programs, science programs, documentaries, quiz shows, game shows, infotainment, “how to” programs (garden shows, cooking programs and so on) and reality television.<sup>17</sup> Running times might vary, but the genres have remained the same – some children’s television series have episodes as short as five minutes, others run for half an hour, yet others an hour. Soaps used to be broadcast once a week until *Bellbird* – the first weekly stripped series. Production values have improved. But soaps and children’s programs have continued to be soaps and children’s programs just as they were when the format migrated from radio to television. Whilst some reality television programs like *Big Brother* have utilised a level of interactivity – SMS voting and so on – and whilst interactivity capacity is likely to expand in coming years, such activity can be seen more as enhancements than the creation of new innovative services.

Other program types envisaged for datacasting have proved to be more readily suited to the internet. For instance, the popularity of the Department of Meteorology website puts into question the likelihood that a finance model could be found to underpin weather forecasts as content on a datacasting channel.

That being said, the Alliance notes that the Discussion Paper envisages datacasting transmitter licensees being able to offer free to air narrowcast channels such as “religious, ethnic, or home shopping channels, or subscription TV services ... in addition to the types of services which could be currently provided under a datacasting content licence.”

---

<sup>17</sup> Although often cited as a new genre, reality television programs have been around since *Candid Camera* which, like most television genre, started on radio. *Candid Microphone* started in the 1940s in the United States before commencing its long life on television in the 1950s.



National Indigenous Television (NITV), the organisation with carriage for the implementation of a new Indigenous broadcasting service, plans to build Indigenous production infrastructure building on Imparja's Indigenous Community Television satellite transmission. The Alliance understands that NITV is also interested in being provided with one of the two reserved digital channels of terrestrial spectrum and acting as a channel multiplex. The Alliance considers that this proposal is worthy of support.

The Alliance considers that the best use of the two unallocated digital channels would be to allow a fourth free-to-air commercial network and an indigenous network rather than limiting both channels to datacasting, narrowcasting and subscription television.

If the two unallocated channels are restricted to datacasting, narrowcasting and subscription television – all effectively catering for niche audiences where the content on offer does not have broad appeal – axiomatically, they will have substantially less capacity to drive take-up of digital than would the licencing of the channels to services with broad appeal.

The Alliance also notes that “The Government would consider what, if any, obligations or restrictions should be placed on operators of these new digital services and the manner in which the channels should be allocated” having regard to those imposed on the commercial free to air broadcasters. The Alliance supports this approach.

Spectrum is a public asset and access to this asset comes with obligations. The Government is rightly inferring that such obligations should not be confined to the incumbent free to air commercial broadcasters alone.

Were a fourth commercial free to air network allowed to utilise the available unallocated spectrum, the obvious answer would be to impose the same content obligations by way of transmission quotas as currently exist in respect of the incumbent networks. However, in the absence of knowing the shape of the services that might be allocated licences of the kind the Government has in mind, it is difficult to know what the most appropriate measures might be. Nonetheless, new Australian originated programming should be the priority in determining how obligations accruing from access to spectrum are imposed.

The Alliance notes the questions raised in ACMA's discussion paper, *Future use of unassigned television channels*.<sup>18</sup> In the interests of diversity of ownership, control and content, the Alliance considers the existing prohibition on free-to-air broadcasters controlling datacasting transmitter licences should remain. Similarly, no provider should be able to acquire both licences in any one area. The Alliance also supports the imposition of “use it or lose it” conditions, continuous use and minimum coverage areas. A very low cost channel broadcasting only intermittently or not at all will do nothing to enhance content diversity for consumers and would render a potential digital take-up driver ineffective.

### **2.1.3 New services on other platforms**

The Government proposes legislating to transfer the decision making power for the allocation of new commercial free to air commercial television licences delivered outside the broadcasting services band – wireless, satellite, broadband and so on – from ACMA to the Government.

The Alliance is strongly opposed to the plan for the Government to assume the regulatory and licensing functions of ACMA. ACMA is the statutory authority established at arm's length from Government to make such decisions. The Alliance does not consider that a case has been made to remove the licensing capacity from the communications and media regulator.

The influence that the major media organisations have had on the decision making of successive governments is a matter of record. In order to ensure transparency and due process in decision making, the powers that the Government proposes to assume must remain with the regulator.

What is a little unclear in the Discussion Paper is whether programs delivered over the internet are broadcasting services or not.

On 27 September 2000, the then Minister for Communications, The Minister for Communications, Information Technology and the Arts, Senator the Hon. Richard Alston, issued a determination relating

---

<sup>18</sup> *Future use of unassigned television channels*, ACMA, March 2006, pages 22 and 23.

to the definition of a broadcasting service, “making it clear that Internet audio and video streaming are not broadcasting services”<sup>19</sup>.

In her speech to the ABN AMRO Conference on 6 April this year, the current Minister, Senator the Hon. Helen Coonan confirmed that ordinary streamed services over the internet should not be regulated. However, she went on to say that some services such as Internet Protocol Television (IPTV) could be regulated citing “*now Broadband TV*” in Hong Kong. “Whether or not these services would be regulated in Australia as ‘broadcasting services’ does not depend on the platform by which the services are delivered, but the nature of the services themselves. ACMA, as the regulator, within the bounds of the Broadcasting Services Act, currently determines this distinction and there are no plans to change that. Whether or not something constitutes broadcasting and requires a licence will depend on the particular circumstances of the service being offered, whether it is via IPTV, satellite, terrestrial or some other platform. For example, if somebody wants to deliver a new subscription TV broadcasting service, regardless of what platform they choose to deliver it over, they will need the appropriate licence.”<sup>20</sup>

The Alliance supports this technology neutral approach to regulation.

Just what regulatory obligations might be appropriate will depend on the service.

In 2003, the Australian Film Commission released *Flexible Vision – A snapshot of emerging audiovisual technologies and services, and options for supporting Australian content*. The study canvassed 18 new forms of audiovisual content delivery: broadband websites, electronic program guides (EPGs), datacasting, personal video recorders (PVRs), digital film distribution, Internet via TV and walled gardens, digital film exhibition, narrowband Internet content, digital free-to-air multichannelling, peer-to-peer (P2P) networks, digital subscription television, satellite delivery, DVD/video hire and sale market, t-commerce, m-commerce and advertising, high-definition television, 2.5G and 3G cellular mobile services, interactive television, video-on-demand (VOD) and pay-per-view.

“Out of the 18 new delivery technologies, seven are currently regulated for local content purposes in at least one country outside of Australia. One other technology – digital film exhibition – is currently not regulated for content but is expected to have the same regulations imposed when the technology is eventually introduced. A further seven technologies are currently being examined by regulatory authorities in Europe, North America and Asia. Only three technologies – 3rd generation (3G) phones, digital film distribution, and peer-to-peer (P2P) networks – are currently unregulated to support local content or have yet to be examined as to regulatory options or support for local content.”<sup>21</sup>

The study identified the major ways in which Australian content can be supported in these new and emerging services. Namely, government funding, levies, content obligations such as quotas, “must carry” and content access regimes, and promotion and positioning obligations.

The Alliance considers that access to new Australian content must continue to be the preeminent consideration in the regulation of new services.

---

<sup>19</sup> *Internet video and audio streaming defined*, Media release, Senator Alston, 27 September 2000, available online at [http://www.dcita.gov.au/Article/0,,0\\_4-2\\_4008-4\\_15292,00.html](http://www.dcita.gov.au/Article/0,,0_4-2_4008-4_15292,00.html).

<sup>20</sup> *Address to the ABN AMRO Conference*, Senator the Hon Helen Coonan, Minister for Communications, Information Technology and the Arts, 6 April 2006,

<sup>21</sup> *Flexible Vision – A snapshot of emerging audiovisual technologies and services, and options for supporting Australian content*, Australian Film Commission, November 2003 available online at [http://www.afc.gov.au/downloads/policies/flexible%20vision\\_final.pdf](http://www.afc.gov.au/downloads/policies/flexible%20vision_final.pdf).

## **2.2 Expanding Service Options for Existing Free to Air Broadcasters**

### **2.2.1 Consequences of analogue switchover**

#### **2.2.1.1 Multichannelling – commercial broadcasters**

The Discussion Paper flags that the current restrictions on the free to air commercial broadcasters being able to multichannel will continue until the end of the simulcast period with the caveat that the Government will reserve the right to reconsider the timing of the relaxation of these restrictions.

The Alliance considers that this flexibility is essential as it is likely it will need to be exercised in order to give audiences enhanced channel choice as a driver to the take-up of digital.

Similarly, the Alliance is pleased that the Government will explore appropriate regulatory arrangements including the introduction of Australian content and captioning obligations.

The Government will be somewhat constrained in the extent to which content obligations will be able to be imposed, given the concessions made in the Australia United States Free Trade Agreement (AUSFTA). However, if the Government restricts the extent to which a broadcaster is able to multichannel, an appropriate outcome should still be possible. For instance, if the multichannels are limited to the two channels currently used for HDTV and SDTV, the Government would be able to impose the same content obligations on one of the two additional channels.

The Alliance is aware that the current free to air broadcasters have differing views about wishing to multichannel.

However, given that access to a very valuable public asset like spectrum appropriately carries with it obligations and given how its use impacts on take-up of digital, the Alliance supports the Government requiring the free to air commercial broadcasters to utilise one of the channels currently used for simulcasting to be operated as a free to air multichannel with content obligations reflecting those on their primary channel.

#### **2.2.1.2 Multichannelling – national broadcasters**

The Alliance strongly supports the proposal to immediately abolish the genre restrictions that currently apply to national broadcaster multichannelling.

The Alliance is of the view that the national broadcasters would be the most effective drivers of digital take-up if they are resourced in a manner that enables them to multichannel broadcasting new Australian content across the full range of genres.

Whether they will be able to do so will depend on access to increased funds. New Australian drama broadcast by the ABC fell from 82 hours in 2001-2002 to three hours in 2004-2005, and the 82 hours in 2001-2002 was down from 260 hours of drama programming in 1996-1997.

In its submission to the DCITA ABC Funding Adequacy and Efficiency Review in November last year, the Alliance argued that the ABC is not currently adequately resourced to fulfil its charter obligations and unless this situation is rectified as a matter of urgency, it will have repercussions that could last for generations.

The ABC provides a comprehensive national television and radio broadcasting and online service on a budget approximately two-thirds that of the average Australian commercial free to air television station.

Its budget has declined by approximately 25 per cent in real terms over the past two decades.

In a study of public broadcasting released in 2001, the OECD found that “In terms of dollars per head of population, for example, the BBC’s budget was about 2.5 times the ABC’s”<sup>22</sup> with the ABC ranking second lowest in terms of revenue per capita of the 17 countries surveyed.

Unsurprisingly, the ABC has had to respond to budget constraints by producing less of those programs that are the most expensive to produce, specifically drama programs.

Notwithstanding the financial constraints within which the ABC operates, the Australian community rates its services very highly. About 74 per cent of Australians consider that ABC Television does a good job in terms of the number of shows it provides that they personally like to watch, compared with 47 per cent in respect of the commercial television broadcasters.

Of those who use the ABC’s website, 93 per cent rate it as good and only two per cent rate it as poor. The figures speak for themselves: Australians value their ABC.

The ABC must be resourced to take a leading role in digital free-to-air broadcasting. Without new funds it will be unable to do so. This was amply demonstrated by the short-lived *ABC Kids* and *Fly* and can be seen in the very low level of new programming on ABC2.

Were the ABC able to take a leading role in digital television and offer audiences a diverse range of new Australian programs not elsewhere available free to air, the ABC would be able to play a key role in driving the take-up of digital services.

In 2002, the Macquarie Bank found that additional funding of between \$200 and \$700 million per year was needed to bring ABC funding in line with its international peers. Since that time the BBC, for instance, has received further increases in its funding to accommodate the financing of additional programs for its range of digital services.

The BBC has played a central role in driving digital take-up in the United Kingdom. In so doing, it has become one of the largest audiovisual producers in the world, creating an enormous catalogue of intellectual property that it can exploit internationally.

The ABC should be supported so that it too can play a central role in driving digital take-up.

### **2.2.2 High Definition Television**

The Discussion Paper proposes that the current HDTV quota of 1,040 hours per year be retained until the end of the simulcast period. However, as an interim measure the Government might remove the requirement that the HDTV version of a digital television service be a simulcast of the SDTV service commencing from 1 January 2007.

The Alliance supports the proposal to end the simulcast nature of the HDTV service from 1 January 2007. It would, as the Discussion Paper notes, “effectively allow FTA TV broadcasters to run one multichannel in HDTV in advance of switch-off”.

Importantly, it would provide enhanced channel choice for consumers and assist drive digital take-up. The Alliance does, however, consider that whilst there should be a digital simulcast of the analogue channel, it should be the commercial decision of the networks whether the one multichannel service be HDTV or SDTV. In the event that the Government does determine that utilising one channel for multichannelling is required to drive digital take-up allow each free to air broadcaster to run one multichannel, Australian content obligations that apply to their primary channel should be imposed from the outset.

Indeed, the Alliance considers that the Government should require the commercial free to air broadcasters to use one of their two digital channels as a genuine multichannel from 1 January 2007.

## **2.3 Media Ownership and Control**

<sup>22</sup> OECD Communications Outlook 2001 cited in *How Australia Compares*, Rodney Tiffen and Ross Gittens, Cambridge University Press, 2004, page 187.

### **2.3.1 Foreign ownership**

The Discussion Paper proposes that:

- the current media-specific foreign ownership rules in the Broadcasting Services Act be removed,
- the current newspaper-specific foreign ownership restrictions in the Foreign Investment Policy (FIP) under Foreign Acquisitions and Takeovers Act 1975 (FATA) be removed,
- the media be retained as a sensitive sector under the FIP, and
- proposals by foreign interests to directly invest in the media, irrespective of size, remain subject to prior approval by the Treasurer.

The Discussion Paper points to the United Kingdom, New Zealand and Germany as countries that do not have sector-specific restrictions on foreign investment in broadcasting or print.

The Alliance does not consider that the media landscape in these countries is comparable with Australia. In the United Kingdom, for instance, a very well-resourced BBC dominates the broadcast industry in a way that the public national broadcasters are unable to do in Australia. Levels of British content on the BBC stand in stark contrast to levels of Australian content on commercial free to air television and in even starker contrast to levels of local content on the ABC.

New Zealand, on the other hand, has woefully low levels of local content on television. Importantly, today there is not one significant commercial media player in New Zealand that is not Australian based.

The Discussion Paper then points to three countries that do restrict foreign ownership, namely the United States, Canada and France.

Rather than explaining why it is preferable to follow the lead of countries that do not regulate than those that do, the Discussion Paper simply concludes that given the existing safeguards in the FATA and FIP, the current television and newspaper specific foreign ownership restrictions be removed.

The Alliance does not believe a case has been made to do so.

One of the key objects of the Broadcasting Services Act is “to ensure that Australians have effective control of the more influential broadcasting services”. It does so for a very good reason. Removing the foreign ownership restrictions will lead inevitably to greater global concentration of media ownership. New Zealand is a good example. The absence of foreign investment media rules has meant the majority of programming is foreign, with increasing reliance on foreign news sources. Some countries have greater inbuilt protection from foreign programming by virtue of language barriers. But particularly in English language countries, media organisations are more vulnerable to take over by media organisations from larger countries. For New Zealand, it was Australia. For Australia it has been Canada and will more likely be the United States or the United Kingdom.

Any measures that lead to greater concentration of ownership and control rather than to greater diversity of voice are not in the national interest.

### **2.3.2 Cross-media transactions**

The Discussion Paper proposes that the cross-media rules be amended to allow cross-media transactions to occur subject to there remaining a minimum of four commercial media groups in regional markets and five in mainland capital cities. Existing limits on broadcasting licences would be retained – a maximum of two commercial radio licences in a radio licence area, one television licence in a licence area and no more than 75 per cent national television reach. Public disclosure would be required when a media outlet reports on the activities of a cross held entity.

The Alliance believes that proposed changes to the cross-media rules are not in the public interest.

The Discussion Paper observes that “[t]he protection of diversity in the control of commercial broadcasters and newspapers remains an important regulatory objective of the BSA. However, despite

the proliferation of new media which has created additional sources of information and opinion, commercial broadcasters and newspapers remain the most widely used and influential media sources.”

The Alliance agrees. Consequently, it is difficult to understand why the Government wishes to implement changes that would lead to great concentration.

Bob Peters of Global Media Analysis has pointed out that there are currently 101 separate radio markets in Australia, namely 5 metropolitan markets, 93 regional markets and three remote markets with 58.5 per cent, 39.1 per cent and 2.4 per cent of the national population respectively. “Among those 101 radio markets, consolidation can occur in each of the five metro markets and 39 of the regional markets. Those 44 radio markets account for the 83% of the national population.”<sup>23</sup>

Peters found that with the new floor of four media owners, there is no potential for mergers in small sized regional radio markets.

### Example A: Small-Sized Regional Radio Markets

| Commercial Media Ownership in Small-Sized Regional Radio Markets |                      |                 |                 |                 |                    |                    |              |                 |
|--|----------------------|-----------------|-----------------|-----------------|--------------------|--------------------|--------------|-----------------|
| Market Rank  | Market               | Owner 1<br>TV 1 | Owner 2<br>TV 2 | Owner 3<br>TV 3 | Owner 4<br>Paper 1 | Owner 5<br>Radio 1 | Total Owners | Potential Deals |
| 81   | Mudgee, NSW          | PRT             | WIN             | SBC             |                    | BO                 | 4            | 0               |
| 82   | Esperance, WA        | PRT             | WIN             |                 |                    | MRR                | 3            | 0               |
| 83   | Scottsdale, TAS      |                 | WIN             | SBC             |                    | MRR                | 3            | 0               |
| 84   | Karratha, WA         | PRT             | WIN             |                 |                    | WAN                | 3            | 0               |
| 85   | Merridin, WA         | PRT             | WIN             |                 |                    | MRR                | 3            | 0               |
| 86   | Katanning, WA        | PRT             | WIN             |                 |                    | MRR                | 3            | 0               |
| 87   | Roma, QLD            | IMP             |                 | SBC             |                    | MRR                | 3            | 0               |
| 88   | Bridgetown, WA       | PRT             | WIN             |                 |                    | MRR                | 3            | 0               |
| 89   | Longreach, QLD       | IMP             |                 | SBC             |                    | RO                 | 3            | 0               |
| 90   | Charters Towers, QLD | PRT             | WIN             | SBC             |                    | MRR                | 4            | 0               |

Source: *Commercial Implications of the Discussion Paper on Media Reform Options*, Bob Peters<sup>24</sup>

By contrast, Peters demonstrates the potential that exists for consolidation in medium sized regional radio markets.

<sup>23</sup> *Commercial Implications of the Discussion Paper on Media Reform Options*, a presentation by Bob Peters, Director, Global Media Analysis, delivered to Network Insight, *The Coonan paper on media reform: information session*, 12 April 2006 available online at [http://www.networkinsight.org/verve/\\_resources/NII\\_Peters\\_12April06.pdf](http://www.networkinsight.org/verve/_resources/NII_Peters_12April06.pdf)

<sup>24</sup> Ibid.

### Example B: Medium-Sized Regional Radio Markets

| Commercial Media Ownership in Medium-Sized Regional Radio Markets |                 |         |         |         |           |         |         |              |                 |
|---|-----------------|---------|---------|---------|-----------|---------|---------|--------------|-----------------|
| Market Rank   | Market          | Owner 1 | Owner 2 | Owner 3 | Owner 4   | Owner 5 | Owner 6 | Total Owners | Potential Deals |
|   |                 | TV 1    | TV 2    | TV 3    | Paper 1   | Radio 1 | Radio 2 |              |                 |
| 41  | Bega, NSW       | PRT     | WIN     | SBC     |           | Grant   |         | 4            | 0               |
| 42  | Dubbo, NSW      | PRT     | WIN     | SBC     | RUP       | BO      | MRR     | 6            | 2               |
| 43  | Griffith, NSW   |         | WIN     |         |           | MRR     |         | 2            | 0               |
| 44  | Mandurah, WA    | PRT     | WIN     | 3 Perth |           | WC      |         | 6            | 2               |
| 45  | Devonport, TAS  |         | WIN     | SBC     |           | MRR     |         | 3            | 0               |
| 46  | Tamworth, NSW   | PRT     | WIN     | SBC     | RUP       | BO      |         | 5            | 1               |
| 47  | Horsham, VIC    | PRT     | WIN     | SBC     |           | ACE     |         | 4            | 0               |
| 48  | Burnie, TAS     |         | WIN     | SBC     | RUP       | MRR     |         | 3            | 0               |
| 49  | Mildura, VIC    | PRT     | WIN     |         | Lanyon    | MRR     | Elmie   | 5            | 1               |
| 50  | Deniliquin, NSW | PRT     | WIN     | SBC     | McPherson | RR      |         | 5            | 1               |

Source: *Commercial Implications of the Discussion Paper on Media Reform Options*, Bob Peters<sup>25</sup>

Considerably more consolidation would be possible in the largest regional radio markets.

### Example C: Largest Regional Radio Markets

| Commercial Media Ownership in the Largest Regional Radio Markets |                     |         |         |         |         |         |         |         |              |            |              |                 |
|--|---------------------|---------|---------|---------|---------|---------|---------|---------|--------------|------------|--------------|-----------------|
| Rank   | Market              | Owner 1 | Owner 2 | Owner 3 | Owner 4 | Owner 5 | Owner 6 | Owner 7 | Owner 8      | Owner 9-11 | Total Owners | Potential Deals |
|  |                     | TV 1    | TV 2    | TV 3    | Paper 1 | Paper 2 | Radio 1 | Radio 2 | Radio 3      | TV4-6      |              |                 |
| 1  | Newcastle, NSW      | PRT     | WIN     | SBC     | FXJ     |         | AUE-MRR | BO      |              |            | 6            | 2               |
| 2  | Gold Coast, QLD     | PRT     | NBN     | SBC     | NCP     | NCP     | MRR     | HT      |              | 3 Bris     | 10           | 6               |
| 3  | Sunshine Coast, QLD | PRT     | WIN     | SBC     | APN     | NCP     | MRR     | QMI     |              | 3 Bris     | 10           | 6               |
| 4  | Canberra, ACT       | PRT     | WIN     | SBC     | RUP     |         | AUE-ARN | CAP-GRT |              |            | 6            | 2               |
| 5  | Geelong, VIC        | SEV     | PBL     | TEN     | NCP     | 2 Melb  | GRT     |         | 6 Melb       |            | 13           | 9               |
| 6  | Gosford, NSW        | SEV     | PBL     | TEN     |         |         | MRR     | DMG     |              |            | 5            | 1               |
| 7  | Katoomba, NSW       | SEV     | PBL     | TEN     | NCP     | FXJ     | ARN     |         | 7 Sydney     |            | 12           | 9               |
| 8  | Wollongong, NSW     | PRT     | WIN     | SBC     | FXJ     |         | WIN     | GRT     |              |            | 6            | 2               |
| 9  | Hobart, TAS         |         | WIN     | SBC     | NCP     |         | MRR     | GRT     |              |            | 5            | 1               |
| 10   | Murwillumbah, NSW   | PRT     | NBN     | SBC     | APN     | NCP     | BO      |         | 3 Gold Coast | 3 Bris     | 12           | 8               |

Source: *Commercial Implications of the Discussion Paper on Media Reform Options*, Bob Peters<sup>26</sup>

In the two largest markets, the number of media owners could fall from the current 12 in Sydney to five and from the current eleven in Melbourne to five.

<sup>25</sup> *Commercial Implications of the Discussion Paper on Media Reform Options*, a presentation by Bob Peters, Director, Global Media Analysis, delivered to Network Insight, *The Coonan paper on media reform: information session*, 12 April 2006 available online at [http://www.networkinsight.org/verve/resources/NII\\_Peters\\_12April06.pdf](http://www.networkinsight.org/verve/resources/NII_Peters_12April06.pdf)

<sup>26</sup> Ibid.

## Example D: Metropolitan Radio Markets

| Commercial Media Ownership in the Five Mainland Metropolitan Markets |         |         |         |         |         |         |         |         |         |          |          |          |        | Total | Potential |
|--|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|----------|--------|-------|-----------|
| Market   | Owner 1 | Owner 2 | Owner 3 | Owner 4 | Owner 5 | Owner 6 | Owner 7 | Owner 8 | Owner 9 | Owner 10 | Owner 11 | Owner 12 | Owners | Deals |           |
|  | TV 1    | TV 2    | TV 3    | Paper 1 | Paper 2 | Radio 1 | Radio 2 | Radio 3 | Radio 4 | Radio 5  | Radio 6  | Radio 7  |        |       |           |
| Sydney   | SEV     | PBL     | TEN     | NCP     | FXJ     | AUE     | DMG     | APN     | SBC     | MRN      | BO       | TAB      | 12     | 7     |           |
| Melbourne  | SEV     | PBL     | TEN     | NCP     | FXJ     | AUE     | DMG     | ARN     | SBC     | PNW      | 3UZ      |          | 11     | 6     |           |
| Brisbane   | SEV     | PBL     | TEN     | NCP     |         | AUE     | DMG     | ARN-DMG | SBC     | UTB      |          |          | 9      | 4     |           |
| Perth  | SEV     | STV     | TEN     | WAN     |         | AUE     | DMG-ARN | ARN-DMG | SBC     | GB-CAP   |          |          | 9      | 4     |           |
| Adelaide   | SEV     | SBC     | TEN     | NCP     |         | AUE     | DMG     | ARN     |         |          |          |          | 7      | 2     |           |

- Multiple consolidation transactions can occur in each of the metropolitan markets
- Only 2 consolidation transactions can occur in Adelaide

Source: *Commercial Implications of the Discussion Paper on Media Reform Options*, Bob Peters<sup>27</sup>

In *Content, Consolidation and Clout: How will regional Australia be affected by media ownership changes?* Tim Dwyer, Derek Wilding, Helen Wilson and Simon Curtis examined the impact of media ownership changes in four regional areas – Wollongong, Townsville, Toowoomba and Launceston. They found that proposed floor of four media owners will not provide an adequate level of diversity in regional media, underestimates the importance of local daily newspapers and ignores the impact of media mergers on the local news culture. “In the markets we have examined it is clear that some mergers would result in a profound disruption to the news culture of those communities.”<sup>28</sup>

The Alliance also considers that the proposed minimum number of players test confuses journalism with media.

As Margaret Simons argues in *Crikey*, “Journalism and the media are not the same thing. Media are the means by which audiences are delivered to advertisers. Journalism is supported by and enmeshed with media but has a different and older function ... new media (like craigslist) can do the profitable things – sell ads – without bothering about the journalism. Meanwhile a thousand news and current affairs blogs bloom, but so far most are concerned with opinion rather than reporting ... New platforms do not necessarily mean more journalism.”<sup>29</sup>

The proposed minimum number of players could easily result in media organisations requiring their journalists to serve all platforms – print, television, radio, their websites – a reduction in reporting and an increase in repackaging.

And the new platforms for news and current affairs are already dominated by the current players – the ABC, Ninemsn, and Fairfax and the emerging Yahoo!7.

Further, there appears to be a reliance on the existence of news and current affairs websites providing increased diversity for consumers. But as the Minister rightly points out, despite the proliferation of platforms, television and print media remain the dominant sources for Australians.

The internet market research company Hitwise, compiles information on how people use the internet. Hitwise’s data for the week ending 18 March 2006 reveals that 9.7 per cent of website visits were to search engines with just 5.4 per cent to news and media websites. “But where do users go once they have conducted their searches? Shopping, very largely, and to networking and entertainment sites. When they go looking for information, the traditional media sites are only one of a number of sources. Wikipedia is right up there at number 17 in the top 20 of the most popular sites visited by Australians.

<sup>27</sup> Ibid.

<sup>28</sup> *Content, Consolidation and Clout: How will regional Australia be affected by media ownership changes?* Tim Dwyer, Derek Wilding, Helen Wilson and Simon Curtis, Communications Law Centre, 2005 reviewed in *Crikey* <http://www.crikey.com.au/articles/2006/04/04-1619.2509.print.html>

<sup>29</sup> *Will there be enough journalists?* Margaret Simons, *Crikey.com.au* <http://crikey.com.au/articles/2006/03/15-1439-1008.print.html>.



Meanwhile the top 'news and media' site was the Bureau of Meteorology – beating Ninemsn and *The Age* and *Sydney Morning Herald* online.”<sup>30</sup>

That greater media concentration will not occur if the proposed amendments are introduced flies in the face of the evidence. The media is currently continuing to consolidate to the extent it is able within the existing framework.

News Limited recently announced it was acquiring two of Queensland's independent Ipswich papers, the *Westside Weekly* and *Ipswich's Own* following approval by the ACCC and the Foreign Investment Review Board.

“The purchase adds to News's dominance in the Sunshine State when added to its dailies in Brisbane, Cairns, Gold Coast and Townsville and its Brisbane suburban Quest group. On the Packer side, Ninemsn – a joint venture between PBL and Microsoft – has just finalised the purchase of content provider HWW. The company produces mobile phone and other digital content, and is one of the largest third generation content providers to the Hutchison '3' mobile network. As companies like Telstra and Optus move towards utilising the 3G network – capable of carrying music, television and other multimedia – HWW is expected to become a valuable content provider. All this is great news for PBL, who now have the option of beaming Channel Nine content directly to mobile phones around the country, and News, whose domination of the Australian newspaper industry just increased by another (small) notch.”<sup>31</sup>

Meanwhile, Tim Hughes of the Macquarie Media Group, which already controls 86 Australian regional radio stations, making it the biggest holder of regional radio licences, in an interview with James Kirby, editor of Eureka Report, indicated MMG were looking to acquire more media outlets. “I think our regional radio stations, which are locally based, would fit very well with a regional television network, which is more of a national model.”<sup>32</sup> Although saying they are not actively looking at present, given how steep the prices currently are, a relaxed cross media regime is likely to see MMG taking advantage and building on its current base.

History demonstrates that where regulation allows floors, the industry will default to the minimum. Thus a floor introduced to establish a minimum number of players will become the maximum.

Importantly, not all voices are equal. The Discussion Paper assumes that a radio station is as pervasive as say, the Seven Network, or News Limited or PBL. Obviously this is not the case and in arguing that the proposed floors will maintain diversity of voices the Discussion Paper has ignored the potential influence of the voices that will remain.

It is therefore difficult to see how dismantling the cross media ownership rules will lead to anything other than a further concentration of media ownership, and a substantial diminution in the number of voices in the media landscape. It is difficult to see how it can be in the interests of consumers rather than merely in the interests of media owners.

In its Television Equalisation Report of 1987, the Senate Select Committee considered ownership and control issues in these terms: “The commercial television industry has been traditionally guaranteed viability. However, there is a long-standing dispute over the exact meaning of this guarantee. The commercial television licensees have traditionally argued that ‘viability’ means ‘profitability’, whilst the regulatory authorities, including the Australian Broadcasting Tribunal, have treated viability as being the ability to operate in the market place – that is, to service a licence. According to this latter view, the object of protecting viability is to ensure the survival of the broadcasting system, not the survival of individual operators.”<sup>33</sup>

The Alliance concurs with the latter view.

---

<sup>30</sup> *Online content provision: still anyone's game*, Margaret Simons, *Crikey*, 29 March 2006,

<sup>31</sup> *Moguls keep buying as media reform debate rolls on*, Michael Newhouse, *Crikey*, 5 April 2006.

<sup>32</sup> *Macquarie's Media Man*, James Kirby, *Eureka Report*, 29 March 2006,

<http://www.eureka-report.com.au/iis/iis.nsf/pages/6680AF76A96EA1AFCA25713F00838A9A?OpenDocument>

<sup>33</sup> Television Equalisation, Report of the Senate Select Committee, March 1987, page 125.

As Professor Quiggan commented in *The Financial Review*, "Looking at the proposal in detail reveals that the big win for the industry is the removal of restrictions on cross-media ownership and on foreign ownership. Not surprisingly, there is an industry consensus in favour of these changes, which can only increase the value of existing media assets."<sup>34</sup>

Cross media ownership rules should have one key purpose – to foster diversity, choice and competition. They must provide a framework for viability but should not be drafted to enhance the profitability of a limited number of incumbent media owners.

### **Regional services protections**

The Discussion Paper proposes three protections for regional services:

- A legislated requirement for the continued imposition of licence conditions in key regional commercial television markets to provide minimum levels of content on matters of local significance.
- ACMA to ensure genuine competition between regional radio licensees through a requirement that, if following the sale of a licence, the program format changes from one of broad appeal to one of more limited appeal, it consider the allocation of a new additional commercial licence.
- ACMA and the Government will continue to monitor the provision of local content in other television licence areas and on regional commercial radio services. The Government may consider extending licence conditions relating to levels of local content to those markets if local content levels decline materially.

Whilst the Alliance supports the above proposals, they are not adequate to address the impact of consolidation of media players in regional areas for the reasons outlined above.

### **Timing**

The Discussion Paper sets out two options for the timing of changes to media ownership reforms – immediately following automatic changes to the regulatory framework in 2007 that would also allow new licences for digital services on reserved spectrum to be allocated, or linked with the end of the simulcast period, in line with the Digital Action Plan.

The Alliance, as set out above, is opposed to the proposed changes to media ownership. Whilst not seeing any necessary linkage between amendments to the media ownership rules and the Digital Action Plan, the Alliance does consider that in the event consideration is to be given to changes in the media ownership rules, then that decision should be deferred to the end of the simulcast period and the landscape revisited at that time. If the timing were deferred, the Government would be in a position to review the impact of new media on the overall media landscape. In any event, the proposed amendments will result in increased concentration of media ownership, entrenchment of incumbents and decreased competition. As the Government consistently acknowledges in other industry sectors, increased competition drives productivity gains and it is difficult to see why in this one sector, the Government is walking away from its own competition policies.

As noted above, it is not appropriate to introduce legislation that further protects incumbent players. Any changes to legislation and regulation should have as their overriding concern the interests of the general public and the Alliance considers that the general public are badly served by the proposed amendments.

In 2000, the Productivity Commission released its report on Broadcasting. It represented the most comprehensive review of broadcasting ever undertaken. Although recommending changes to foreign investment and cross media ownership rules, the Commission recommended a number of steps be taken, prior to implementing changes. Those steps included introducing a media-specific public interest test in the Trade Practices Act which "would apply to all proposed media mergers" to be administered by the ACCC and requiring the ACCC to seek input from the then Australian

---

<sup>34</sup> *Public missing out, again*, Professor John Quiggin, Australian Financial Review, 16 March 2006, and available online at <http://www.onlineopinion.com.au/view.asp?article=4274>

Broadcasting Authority “on social, cultural and political dimensions of the public interest” and the removal of regulatory barriers to entry in broadcasting together with the availability of spectrum for new broadcasters. In other words, the Commission was proposing changes only after the broadcasting market had been opened up and the barriers to entry for new players removed.

A decision to delay implementing any changes to foreign ownership and cross media rules to the end of the simulcast period would thus be more in line with the Productivity Commission’s recommendations. In other words, ensure that the landscape is right with barriers to entry removed before implementing change in a landscape that is not yet ready for such changes.

## **Attachment A**

The Alliance has made submission to a number of inquiries in the past two years relevant to the current Inquiry.

Department of Communications Information Technology and the Arts:

1. Review of the Provision of Services other than Simulcasting on Free To Air Digital Spectrum, July 2004
2. Review of the Regulation of Content Delivered over Mobile Communications Devices, September 2004
3. Provision of Commercial Television Broadcasting Services after 31 December 2006, October 2004
4. Review of the Viability of Creating an Indigenous Television Broadcasting Service and the Regulatory Arrangements that should Apply to the Digital Transmission of such a Service using Spectrum in the Broadcasting Services Band, October 2004
5. A Review of the Viability of Creating an Indigenous Television Broadcasting Service and the Regulatory Arrangements that should Apply to the Digital Transmission of such a Service Using Spectrum in the Broadcasting Services Bands, October 2004
6. Review of Broadcasting Services Bands Spectrum - Identification and Structural Efficiency, December 2004
7. Review of High Definition Television Quota Arrangements, June 2005
8. Review of the Duration of the Analogue Digital Television Simulcast Period, November 2005
9. ABC Funding Adequacy and Efficiency Review, November 2005
10. Proposed Reforms to the Broadcasting Regulatory Powers of the Australian Communications and Media Authority, December 2005

The above submissions are all available on the DCITA website.

Standing Committee on Communications, Information Technology and the Arts:

Inquiry into the Uptake of Digital Television, May 2005

Available online at <http://www.aph.gov.au/house/committee/cita/digitaltv/subs/subs58.pdf>

Senate Environment, Communications, Information Technology and the Arts References Committee:

Inquiry into the Australian Communications and Media Authority, January 2005

Available online at [http://www.aph.gov.au/senate/committee/ecita\\_ctte/acma/submissions/sublist.htm](http://www.aph.gov.au/senate/committee/ecita_ctte/acma/submissions/sublist.htm)