

**SUBMISSION TO THE SENATE ENVIRONMENT AND
COMMUNICATIONS LEGISLATION COMMITTEE**

Broadcasting Legislation Amendment (Media Reform) Bill 2016

Submission by

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Summary

This submission is in two parts.

Part 1 is based on an assessment of all licence areas in Australia in which there is a newspaper associated with a commercial broadcasting licence. It is designed to test the statement concerning the repeal of the '2 out of 3' rule on page 18 of the Explanatory Memorandum (EM):

'In most licence areas, the 2 out of 3 rule is not in play as no single entity controls media assets from two of the three regulated platforms in these areas. If the rule is removed, the great majority of regional and remote licence areas of Australia would see little change as the retention of the 5/4 minimum voices rule would ensure preservation of existing levels of media diversity. Given the greater number of media outlets and levels of media diversity in metropolitan areas, consolidation in these larger markets may not raise particular diversity concerns.'

Part 2 critically examines the reasons advanced for media reform. It appears there is widespread agreement on the repeal of the '75 per cent audience reach rule' and possibly on the local content scheme. This submission addresses the possible impact of repeal of the 2 out of 3 rule.

This submission accepts that changes to media ownership laws are inevitable and, to the extent that they facilitate investment in local production, desirable.

However, the submission considers a different aspect of 'local' than that usually associated with media reform. Instead of focussing on regional content, it considers the role of news and analysis in broadcasting regulation and the importance of newsgathering capability and standards of practice within democratic society.

The conclusion, based on the licence area analysis in Part 1 and the consideration of regulation along with industry and community developments in Part 2, is that both the 2 out of 3 rule and the 75 per cent audience reach rule should be repealed in order to encourage a smaller number of stronger, local newsgathering operations. This should be accompanied by a shift to cross-media standards of practice in the gathering and presentation of news and analysis and a streamlined, industry-based system to administer them.

About the author

Derek Wilding works across the Faculty of Law and the Faculty of Arts and Social Sciences at the University of Technology Sydney on issues confronting the media and communication industry, its professions and the community.

He was previously the Executive Director of the Australian Press Council where he managed complaints and standards of practice for print and online media and contributed to the Council's policy responses to the Convergence Review, the (Finkelstein) Independent Media Inquiry and the Gillard Government's media reform bills of 2013.

Before that he managed regulatory activities at the Australian Communications and Media Authority, including media ownership and control during the media reform period of 2006-07 and the resulting transactions.

He was Director of the Communications Law Centre for five years in the early 2000s and before that worked for the Media, Entertainment and Arts Alliance and for the School of Media and Journalism at Queensland University of Technology.

Part One – Licence Area Analysis

Introduction

This analysis is based on proposed changes to the 75 per cent audience reach rule applying at a national level to commercial television and the 2 out of 3 rule which prohibits common control across all three traditional media platforms of commercial television, commercial radio and 'associated' newspapers within a single licence area.

Where relevant, the analysis also refers to the '5/4 minimum voices' rule which imposes a statutory 'floor' prohibiting transactions which further consolidate control in a licence area, as well as to the two-licence cap applying to commercial radio licences and the one-licence cap applying to commercial television.¹

The analysis considers the following transactions in commercial radio licence areas where an associated newspaper is present:

- (i) the acquisition by metropolitan commercial TV networks of their regional affiliates (i.e. Nine-WIN, Ten-Southern Cross Austereo, Seven-Prime);
- (ii) the merger of Fairfax Media with Nine/WIN and News Corporation with Ten/Southern Cross Austereo (SCA); and
- (iii) the acquisition of APN News and Media by either Fairfax or News.²

The analysis is based on the 43 commercial radio licence areas (of the 105 licence areas across Australia) in which there is an associated newspaper – i.e. the licence areas in which repeal of the 2 out of 3 rule could potentially have some direct impact. It also considers a further six licence areas in which the transactions would cause the number of points to fall below (or further below) the statutory minimum. The media operations in these licence areas and the impact of the nominated transactions are set out in the spreadsheet in the Attachment.³

The analysis is intended to be illustrative of permitted transaction, not a prediction of likely outcomes. This is why it is based only on mergers between metropolitan TV networks and their current affiliates and does not consider, for example, the combination of the Nine Network and SCA. In addition, the following assumptions have been made:

- Imparja will remain independent;
- the two radio licences held by WIN will form part of the Nine-WIN transaction;
- the SCA TV licences will be acquired by Ten, but the SCA radio licences will be retained by SCA.⁴

Impact of potential transactions

The following observations can be made.

¹ These rules are found in the *Broadcasting Services Act 1992*, as follows: s 53(1) (75 per cent audience reach rule); s 61AMA and s 61AMB (2 out of 3 rule, which uses the concept of an 'unacceptable three-way control situation'); s 61AG and s 61AH (5/4 minimum voices rule, which uses the concept of an 'unacceptable media diversity situation'); s 61AB and s 61AC (the points system which applies a floor of five points for metropolitan licence areas and four points for regional licence areas); s 54 (radio two-licence cap); and s 53(2) (TV one-licence cap).

² APN announced in late February 2016 that it would sell its newspapers. There has been speculation that they could be acquired by either News Corp or Fairfax. See, for example:

<http://www.theaustralian.com.au/business/media/apn-news--media-swings-to-loss-will-sell-regional-newspapers/news-story/9811160d393d6066937983d4c2e51bdf>;

<http://www.theaustralian.com.au/business/dataroom/news-corp-takes-good-look-at-apn-regional-newspapers/news-story/65cccd53562e83fabe546247c14ee344>.

³ The information in the spreadsheet has been compiled from the ACMA registers available at <http://beta.acma.gov.au/theACMA/broadcasting-registers-media-ownership-control-acma>. This was compiled without the benefit of ACMA software or verification and will not have the level of accuracy of the original source.

⁴ This is based on recent reporting. See, for example: <http://www.theaustralian.com.au/business/media/ten-squeezes-southern-cross-for-more-advertising-revenue/news-story/ec266bea07a00fb13c4fcd487442ed86>.

- There are five licence areas where there is potential for common control across the three regulated platforms. These areas are Sydney, Melbourne, Brisbane, Adelaide and Wollongong.
 - In Brisbane and Adelaide it is the Ten-SCA-News transactions that produce this outcome, whereas in Wollongong it is the Nine-WIN-Fairfax transactions. In Sydney and Melbourne both sets of transactions have this result.⁵
 - There is no such outcome in Perth because there are no radio licences controlled by the print media owner, Seven-West.
- In Kalgoorlie, Devonport, Launceston and Darwin, where there is an associated newspaper, the points would fall below the statutory minimum (leading to an unacceptable media diversity situation, or 'UMDS').
 - In Kalgoorlie this is a result of the Seven West-Prime transaction; in the two Tasmanian licence areas it results from the Nine-WIN-Fairfax transactions; while in Darwin it is caused by the Ten-SCA-News transactions.
 - As the points would fall below the acceptable 'floor' in the BSA points system, the parties would require the ACMA's prior approval of the temporary breaches under section 61AJ and would be required to take action to stop the breach.
 - Assuming it is undesirable to divest an individual television licence that is part of a national network, action to stop the breaches may involve sale of *The Kalgoorlie Miner* by Seven West, *The Advocate* and *The Examiner* (Devonport and Launceston) by Fairfax, and the *NT News* by News Corp.
- The points also fall below (or further below) the statutory minimum in another six licence areas in which there is no associated newspaper.
 - As with the four areas noted above, divestments would be probably be required, mostly affecting Seven West-Prime, and probably requiring it to sell a radio licence in Bunbury, Geraldton, Karratha, Port Hedland and Remote Commercial Radio Service Western Zone.
 - Nine-WIN-Fairfax would likely be required to divest the WIN radio licence in Campbelltown on account of the UMDS resulting from the merger of Nine and WIN and also because of the breach of section 54 (the two-licence cap for radio) in the overlapping licence area of Sydney RA1-Campbelltown RA1.
- In another 12 areas, there is a reduction in points, but not below the statutory minimum.
 - Seven of these (Perth, Ballarat, Bathurst, Tamworth, Geelong, Maryborough VIC, Warrnambool), are a result of the major media mergers and another five (Gympie, Nambour, Grafton, Lismore, Ipswich) are caused by the acquisition of APN by News or Fairfax.
- There are 15 licence areas with an associated newspaper in which there could be a change in control of certain assets, but no reduction in the number of points within the licence area.
 - These areas are: Canberra, Albury, Dubbo, Newcastle, Orange, Mildura, Cairns, Gold Coast, Townsville, Broken Hill, Gosford, Wagga Wagga, Bendigo, Mt Gambier, Hobart.
 - Despite there being no reduction in points, there is some movement in how the points within a licence area are allocated. For example, currently in Albury there are seven separate media operations giving rise to five points as a result of the following control arrangements:
 - Fairfax (*The Border Mail*)
 - WIN (WIN TV)
 - Southern Cross Austereo (Southern Cross Ten, Star FM and The River)
 - Prime (Prime TV)
 - Ace (2AY).
 - With the transactions contemplated in this analysis, there would be a reduction of one point as a result of the combination of *The Border Mail* and WIN TV in the Nine-WIN-Fairfax media group, but the separation of the SCA television and radio licences would create an additional point, meaning the total number of points would remain at five. A similar situation would arise in Canberra, for example, even though there is an

⁵ Note that whereas the radio licences in the Nine-WIN-Fairfax group were acquired by Fairfax Media and WIN, the Nova radio licences are in the same controlled media groups as News Corporation as a result of Lachlan Murdoch being in a position to exercise control of both.

additional radio licence (part of a set of two radio licences controlled by Grant/Blyton) and despite the two SCA radio licences being held in a joint venture with ARN.

- There are seven areas in which the separation of SCA radio and television licences could lead to an increase in the number of points.
 - In two of these (Shepparton and Mt Isa) the increase would not be affected by any further transactions considered here, but in five of these areas (Bundaberg, Mackay, Maryborough QLD, Rockhampton, Toowoomba/Warwick) the points would drop back to the original level as a result of the acquisition of APN by News or Fairfax.
- The above analysis accounts for 49 licence areas in total. In the remaining 56 licence areas there will be no consolidation as a result of the change to the 2 out of 3 rule, and in some areas (Kempsey and Coffs Harbour in NSW as well as Atherton, Emerald, Kingaroy and Roma in Queensland) there would be an increase in points as a result of the split of the SCA licences.

Some complications

It is important to note that this analysis looks only at the overall outcome of the transactions and does not take into account their which could be crucial in some circumstances. This arises in those licence areas that are currently at the floor for regional areas (4 points), meaning that no further transactions are possible unless a separate event results in an additional point within the licence area. In Gosford and Hobart, an extra point will be created when Ten becomes the owner of the SCA TV licence and SCA remains the owner of the radio licences. Provided this precedes News coming into a position to exercise control of the TV licence (or, in reverse, Ten coming into control of the Nova radio licence in Gosford and the newspaper in Hobart), the licence area will not fall below the four point floor.

In Wagga Wagga and Bendigo, it is more complicated because Nine-WIN and Fairfax would benefit from, but could not initiate, the Ten-SCA transaction. If that transaction does not take place before the WIN TV licence and the Fairfax newspapers come under common control, the licence area will fall below the statutory minimum. It would probably be difficult for Nine-WIN-Fairfax to convince the ACMA to give prior approval of the breaches on the basis of action to be taken by another party, although it would be open for it to propose a divestment of the newspapers.

It should also be noted that if the SCA television licences were acquired as part of a larger transaction of SCA itself, including the radio licences, the points in a number of licence areas would fall below the statutory minimum – meaning either that the transaction could not proceed, or these breaches would need prior approval from the ACMA.

Outcome – consolidation of major media groups

Overall, the analysis demonstrates the following.

- All three converged major media groups will have some presence in 34 of the 43 commercial radio licence areas in which there is an associated newspaper.
 - In Sydney, Melbourne, Brisbane, Perth and (owing to the presence of one of the few remaining independent newspapers) Shepparton, there are three or more additional owners. In a further seventeen areas there will be two additional owners and in 12 areas, one additional owner.
- In seven licence areas where there is an associated newspaper (Mildura, Mt Isa, Kalgoorlie, Devonport, Hobart, Launceston, Darwin) there will only be two of the three major media groups present, and in two areas (Broken Hill, Mt Gambier) there will be only one of the major media groups. In all of these areas there will be two or three additional owners.
- Divestment of the newspapers in Kalgoorlie, Devonport, Launceston and Darwin could be a difficult prospect as the need for an independent owner means neither News nor Fairfax (both of which are already present in the area) could acquire them.

In conclusion, the statement in the EM that there would be little change in most licence areas as a result of the repeal of the 2 out of 3 rule is correct in the sense that, even if all these major transactions take place, there will only be five areas in which there is common control of print, radio and television.

It is also true that the 5/4 minimum voices rule would protect the overall number of independent operations in a number of licence areas, albeit by way of permitting transactions to proceed and then requiring divestment of other assets to restore the total number of points. Perhaps more importantly,

though, it is the licence area caps applying to commercial television and commercial radio which probably have the most significant impact as they have the effect of maintaining three separate major media groups across the country.⁶

Finally, it should also be remembered that at present there is no co-ownership of television and print, even though this is possible under the current rules. It is the repeal of the audience reach rule and the 2 out of 3 rule – taken together – which creates the environment for substantial change to the Australian media landscape. If the nominated transactions involving the metropolitan and regional TV networks and News and Fairfax proceed, there will be 27 licence areas in which there is co-ownership of television and print media. If APN is acquired by either News or Fairfax, there will be a further 10 licence areas with co-ownership of print and television.

Whether this is a reason to object to the change to these laws is explored in Part 2.

⁶ This is only a numerical assessment. Further analysis is provided in Part 2.

Part Two – Critical Assessment

Introduction

The transactions included in the analysis above are illustrative of potential changes in ownership and control, as well as being based to some degree on media speculation. These transactions might not proceed; others might take place. The point of the analysis is not to predict a precise outcome, but to consider the potential media landscape if companies take advantage of the relaxed media laws.

The analysis shows that, if the nominated transactions proceed, Australia will have three major media groups, each based on the combination of the current metropolitan and regional television networks and each including significant print and online media assets. Other independent operators will exist in most markets.

It is important to acknowledge that the Bill does not remove all media ownership laws and that perhaps the most significant restrictions remain – namely, the caps applying to commercial television and commercial radio in individual licence areas and the prohibition on transactions that push the number of points in a licence area below (or further below) the floor of four or five points. Competition law would also continue to apply.

It is these laws which ensure that, in most licence areas, at least the three major groups must remain separate.

The question for this part of this submission is whether this level of diversity is sufficient.

To answer that question, it is useful to consider why we care about separation of media companies and what is behind regulation for diversity. The key to this is the role of news and analysis.

The importance of news and analysis

Australia's media ownership laws constitute what is usually referred to as 'structural regulation'. I will return to this concept later in considering whether there are viable alternatives in Australia. For now, it is sufficient to say that regulating for diversity by way of licence area caps, a national reach rule and a points system based on separately-controlled media operations is 'structural' in the sense that it does not consider the quality or content of these media services. This helps to explain why rules which might preserve certain levels of local content in regional areas – such as those set out in Schedule 3 to the Bill – might be considered important additions to the ownership and control rules.

At the outset, it is worth considering what the current structural regulation has achieved. If they are assessed solely on the criterion of maintaining separate news outlets, the ownership and control rules they have succeeded to a certain extent. Despite some content sharing arrangements between regulated players and joint ventures involving non-regulated players, the ownership rules have meant that the news capabilities of the television networks have remained separate from those of print media and their online outlets – and despite the repeal of the original cross-media rule ('one out of three') in 2007.

But ownership and control regulation is a proxy for diversity in the sense that broadcasting regulation is not directly interested in whether two media companies maintain separate operations, but in whether the licensed services fulfil certain obligations to the community.

This isn't entirely straightforward because the applicable objects in the Broadcasting Services Act do not directly link diversity to any particular outcome. The relevant objects are as follows:

(1) The objects of this Act are:

(a) to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information; and

[...]

(c) to encourage diversity in control of the more influential broadcasting services;

These objects are separate from the later object relating to content:

(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; and

And the objects of the Act are removed from the specific reference to news and current affairs in the later Part 9:

123 Development of codes of practice

(2) Codes of practice developed for a section of the broadcasting industry may relate to:

[...]

(d) promoting accuracy and fairness in news and current affairs programs; and

Nevertheless, it is well established in other jurisdictions that the real justification for diversity regulation hinges on the importance of news and analysis.⁷ We see this, for example, in the following sources:

- Ofcom's measurement framework for news and current affairs;⁸
- the House of Lords Communications Committee's view that the scope of plurality policy should be limited to news and current affairs;⁹
- the FCC's statement that this kind of programming is 'the clearest example of programming that can provide viewpoint diversity';¹⁰
- the conclusion of the Centre for Media Pluralism and Freedom at the European University that the Media Pluralism Monitor for the European Commission should be narrowed in scope to news and current affairs 'due to their key importance for the civic and political awareness of citizens and for democratic processes';¹¹
- the Australian Department of Communications' decision in its 2014 Policy Background Paper to focus on news because of 'the importance of the news genre, due to its importance to inform and shape community views in a democracy, particularly in regard to politics'.¹²

It is this element of civic awareness and the role of the media in democratic society which underpins the attention to news and analysis and supports some continuing level of ownership and control regulation. It is also the reason that competition law, which targets a reduction in competition in certain markets, will not be a sufficient regulatory mechanism. For example, in a response to the draft report of the Harper Review on competition policy, the then Secretary of the Department of Communications expressed the view that a proposed public interest test which would be used to identify appropriate cases for departing from a standard set of competition principles should include 'additional or alternative means' of describing the public interest so as to better take into account public policy objectives such as 'the wish to be informed' and 'the ability to participate in wider social and political debate'.¹³

The importance of news and analysis also explains why we consider media freedom to be something beyond the freedom of speech we expect as individual citizens, and why we give media certain entitlements and privileges (from rights of access to courts, Parliament and government through to freedom from certain obligations such as those arising under the Privacy Act 1988).

⁷ Although the term 'news and current affairs' is used in relation to broadcasting, 'news and comment' is more often used for print and online media. The term 'news and analysis' is used here in an attempt to bridge these domains. For an interesting discussion of the term 'analysis' and an explanation of his preference for 'interpretation', see Mitchell Stephens (2014), *Beyond News: The Future of Journalism*, Columbia University Press, New York, p 96.

⁸ Ofcom (November 2015), *Measurement Framework for Media Plurality: Ofcom's Advice to the Secretary of State for Culture, Media and Sport*, p 2.

⁹ House of Lords Select Committee on Communications (February 2014), *Media Plurality*, pp 11-12.

¹⁰ Federal Communications Commission, *2002 Biennial Regulatory Review*, cited in Philip M Napoli (2015), 'Assessing Media Diversity in the US: A Comparative Analysis of the FCC's Diversity Index and the EU's Media Pluralism Monitor' in Peggy Valcke, Miklos Sukosd and Robert G Picard (eds), *Media Pluralism and Diversity: Concepts, Risks and Global Trends*, Palgrave Macmillan, Houndmills UK, p 141.

¹¹ Centre for Media Pluralism and Freedom (2014), *Monitoring Media Pluralism in Europe – Testing and Implementation of the Media Pluralism Monitor 2014*, in Peggy Valcke, Robert G Picard and Miklos Sukosd (2015), 'A Global Perspective on Media Pluralism and Diversity: Introduction' in Peggy Valcke, Miklos Sukosd and Robert G Picard (eds), *Media Pluralism and Diversity: Concepts, Risks and Global Trends*, Palgrave Macmillan, Houndmills UK, p 7.

¹² Department of Communications (June 2014), *Media Ownership and Control: Policy Background Paper No.3*, p 4.

¹³ Drew Clarke, letter to Professor Ian Harper, 5 December 2014.

If these concerns about news and analysis are still with us, it is worth asking why we would consider change to the existing laws which have attempted to preserve as much as possible.

The challenges of the contemporary media environment

The EM presents a good outline of why media companies are facing fundamental challenges to their business models.

The EM neatly identifies the context for reform when it says 'The current media ownership and control framework was set in a time when traditional media companies dominated the *delivery* of audio, audio visual and news content to audiences and the opportunities for advertisers to reach those audiences' (p 8, emphasis added).

The EM also forcefully depicts the depletion of advertising revenue and subscription income, particularly for print media, at a time when new SVOD and streaming services operate without the constraints imposed by the BSA. The EM notes that from 2005 to 2014 newspapers' share of total Australian advertising revenue fell from 37.5 per cent to 15.7 per cent, while online media increased from 6.1 per cent to 36.2 per cent (p 9). It observes, 'The current media control and ownership rules constrain the capacity of Australian media operators to optimally structure their businesses to deal with change underway in the industry, through increasing the scale of their operations and providing new opportunities for growth and diversification into new services' (p 13).

This is not surprising since the ownership and control rules were designed to enforce separation and promote plurality of ownership which, it was thought, would assist in offering diversity of viewpoint. While there were always those who objected to the commercial limitations these rules imposed, in an analogue era there was at least a rationale for them.

Now, the industry has changed and, importantly, so have audience practices. It would be useful if the current inquiry produced some concrete evidence supporting the assertions that local newsgathering capabilities will be enhanced through cross-media mergers. Even without this, though, the failings of the current system are obvious – most significantly in the drastic reductions in numbers of journalists as newsgathering organisations lose revenue to the intermediaries that adapt and distribute their content.

That said, it is important not to confuse key aspects of these changes.

- It is true that conditions have changed, that local providers face challenges from overseas content suppliers and, perhaps more importantly, aggregators and social media operators who use local content to attract users without adequately investing in it themselves.
- It is not true that users have multiple, alternative content offerings that can be considered equal or adequate replacements for traditional news sources. Traditional media companies, to a large extent, still provide the content now accessed in a variety of ways, even though the economics of providing that content have changed dramatically. Nielsen Online Ratings for April 2015 showed that of the top 10 sites ranked by unique audience for news, 8 were sites operated by Australia's print and broadcast media, leaving only The Guardian and Daily Mail Australia which are themselves Australian offshoots of UK print media.¹⁴

This aspect of the consumption of online news sources from traditional media companies needs to be considered in the context of falling revenue, mentioned earlier. In changing media ownership laws, the risks of losing genuine, originating sources of local news and analysis need to be considered.

Assuming, as noted above, that we do not wish to remove all laws that support the role of news media in democratic society, the next question is what kind of laws we should have. This brings us back to the point about structural regulation, and whether there are any alternatives.

The limits of structural regulation

A weakness in the EM is that it positions structural regulation as the only tool for achieving diversity.

There now appears to be widespread agreement among scholars and policy makers in other jurisdictions that structural rules alone are insufficient to protect diversity. In the UK, both Ofcom and the House of Lords Communications Committee have rejected the exclusive use of caps on

¹⁴ See <http://www.nielsen.com/au/en/press-room/2015/nielsen-online-news-rankings-April2015.html>.

ownership and control. Thomas Gibbons describes the conclusions of both bodies as establishing that caps are 'crude, arbitrary and inflexible'.¹⁵ Ofcom itself has said that *consumption* should form the foundation of a plurality assessment because *availability*, while still relevant, offers only 'limited insight' and on its own is insufficient as a measure of plurality.¹⁶

In Australia, we *only* measure availability and we only do this as part of structural regulation associated with the services available to the populations of certain areas, particularly at times of mergers and acquisitions, and in separate regulation targeted at local content. Accordingly, there is none of what is referred to in work on the European Pluralism Monitor as 'normative' efforts at regulating for pluralism.¹⁷ This is about the cultural, political and geographic dimensions of pluralism as well as content and format.

In November 2015 Ofcom set out the measures it will use when providing advice to the Secretary of State on specific transactions. These include three quantitative measures (availability, consumption and impact) as well as the qualitative measure of 'contextual factors' which could include governance models, funding models, power over editorial control, internal plurality, market trends and regulation and oversight (see page13).

Here in Australia, in 2014 the Department of Communications released a discussion paper on media ownership and control which included consideration of concepts such as revenue, audience, influence, platform weighting and editorial control in determining the threshold for regulation.¹⁸ In this regard it was similar to the 2012 recommendations of the Convergence Review. These included a discretion on the part of the regulator to apply a 'minimum number of voices' rule and a public interest test for transactions involving nationally significant media operations.¹⁹

These recommendations were in part taken up by the former Gillard Labor government in 2013. The Broadcasting Legislation Amendment (News Media Diversity) Bill 2013 proposed to add to existing ownership and control rules by blocking a transaction involving a company which qualified as a 'news media voice' unless a public advocate was satisfied that (a) there was not a 'substantial lessening of diversity of control of registered news media voices' or (b) the event was likely to result in a benefit to the public which outweighed the detriment resulting from any lessening of diversity. This aspect of the scheme was certainly an advance in thinking about the role of news media in diversity regulation, though the package of bills had other flaws.

At this stage we need to ask whether alternatives forms of regulation should be adopted in place of the deregulatory approach set out in the current Bill.

My answer to that question is no – or rather, no and yes.

First, to object to the three-group scenario that could result from the current Bill, we need to be convinced that

1. these companies will be too powerful and will have too much influence over political decision-makers as a result of direct or implied threats about coverage; or
2. owners will interfere in editorial decisions or set agendas; or
3. the scope for separate, independent news reporting and ideas will be diminished.

It is possible that powerful and influential companies will become more powerful and influential. It is also possible that some owners may seek to use media outlets for the expression of certain views. But a robust system of industry standards should be able to address at least some of the problems arising from these first two objections. In addition, these concerns are not the same as a risk of

¹⁵ Thomas Gibbons (2015), 'What is "Sufficient" Plurality?' in Steven Barnett and Judith Townend (eds), *Media Power and Plurality: From Hyperlocal to High-Level Policy*, Palgrave Macmillan, Houndmills UK, p 15.

¹⁶ Ofcom (June 2012), *Measuring Media Plurality: Ofcom's Advice to the Secretary of State for Culture, Olympics, Media and Sport*, p 19.

¹⁷ See, for example, Valcke, Peggy, Robert G Picard and Miklos Sukosd (2015), 'A Global Perspective on Media Pluralism and Diversity: Introduction' in Peggy Valcke, Miklos Sukosd and Robert G Picard (eds), *Media Pluralism and Diversity: Concepts, Risks and Global Trends*, Palgrave Macmillan, Houndmills UK, pp 1-18.

¹⁸ Department of Communications (June 2014), *Media Ownership and Control: Policy Background Paper No.3*, pp 43-44.

¹⁹ Department of Broadband, Communications and the Digital Economy (2012), *Convergence Review Final Report*, p 18.

uniformity of information and opinion across media outlets, which seems to me to underpin arguments for preserving 'diversity' in a media market.

In the UK, Ofcom's approach is in part driven by the goal of reducing the risks of media owners' influence on the political agenda. This is to be achieved by ensuring that the share of consumption of any one source is not so high as to dominate out of all proportion. Ofcom stresses the need for 'a high level of overall demographics and users'. But Australia is a small market, with well-established levels of concentration. In Australia it is difficult enough to attract a high level of consumption for established sources.

It may be that the best way to offset the potential for that influence – as anticipated by the current Bill – is to nurture a smaller number of major commercial media organisations along with the public broadcasters – all newsgatherers, all held to standards of accuracy, fairness, privacy etc, and all with commitments to localism.

What interests me most, then, is capacity to provide news and analysis and quality of output, meaning the accuracy and fairness of what's presented.

The nub of this problem is in fact identified by the statement in the EM that 'regulatory frameworks originally designed to protect diversity are now impeding the capacity of local businesses to continue to provide *quality professional journalism and reporting*' (p.14, emphasis added). But whereas the EM and the Bill focus their attention, appropriately, on local, regional production, my concern is with the capacity of news organisations, staffed primarily by trained journalists, to continue to fulfil their crucial role in Australian society.

In short, we should not allow the 'public interest' to become an analogue ideal. This is a real possibility, however, if we do not develop and maintain an appropriate scheme for standards of practice that applies across media platforms.

(Self)-regulating news media

In Australia rules about accuracy and fairness are found in different codes of practice which apply to different sectors of the media. There are eight principal sources:

- Commercial Television Industry Codes of Practice 2015
- Commercial Radio Codes of Practice and Guidelines September 2013
- ABC Codes of Practice
- SBS Codes of Practice
- Subscription Broadcast Television Codes of Practice 2013
- Australian Press Council General Statement of Principles
- Independent Media Council Code of Conduct
- Journalist Code of Ethics.

There is no scope here to assess these codes, but it is worth noting that there are both similarities and differences in how they approach concepts such as 'material fact' and 'significant error'.

What concerns me most is the potential for dilution of these codes at a time when consolidation within the industry makes it crucial that the few remaining separate sources of news and analysis observe establish standards of practice. As an example of the deregulatory push, the Commercial Television code was revised last year, with the industry seeking to remove any rules relating to fairness in current affairs programs. A provision in the 2010 Code required that both news and current affairs programs 'represent viewpoints fairly' (4.3.1). In the version of the code submitted to the regulator for registration earlier that year, this requirement was replaced with a rule stating that news programs 'present news fairly and impartially' (3.3.6(a)). In other words, there was no longer a requirement for fairness in current affairs. Thankfully, the consultation process allowed for this issue to be raised and the version accepted by the ACMA for registration now includes a requirement that both types of program 'ensure viewpoints included in the program are not misrepresented' (3.3.1). Other protections were lost, including the requirement that corrections to even seriously inaccurate or unfair material do not need to be made on air or in the credits – they can be made on a website.

The 2Day FM 'Royal Prank Call' case is another example that shows these codes are not strong and, that they are becoming weaker.²⁰

Against this background, it does not seem unreasonable that a move to permit cross-media mergers be accompanied by the development of a cross-media standards scheme which combines – but does not dilute – the assortment of obligations applying to fair and accurate reporting in the various industry codes.

Importantly, this scheme should not be administered by a statutory regulator.

While it is not desirable to require the press to be part of a statutory system, it is reasonable to suggest that a person or company can hold a controlling interest in both a broadcasting licence and an associated newspaper, for example, *only* if they provide an undertaking to join a self-regulatory standards body that handles complaints and develops standards applying across all media sectors.

It is also reasonable to give existing and new operators (for example, new online news sites) an exemption from the Privacy Act and parts of the Australian Consumer Law on the condition they join a self-regulatory body. This idea to tie the granting of privileges to membership of the standards body has been raised by the Australian Press Council²¹ and was adopted as part of final recommendations of the Convergence Review.²²

Conclusion

Whether these or other approaches are considered, in this submission I am proposing that regulation be designed to address not 'diversity' per se, but the things diversity seeks to protect – most importantly, accuracy, fairness and privacy, as well as localism – while helping to shore up Australian newsgathering.

This necessarily involves an acceptance of the repeal of the 2 out of 3 rule as well as the 75 per cent audience reach rule, encouraging a shift to cross-media standards of practice in the gathering and presentation of news and analysis and a streamlined, industry-based system to administer them.

This is, in effect, a movement in the opposite direction from Ofcom and a number of media scholars. But plans for the UK and Europe do not seem right for Australia. It could therefore be time to move away from regulation designed to ensure 'diversity' or 'plurality' and towards a scheme based on the underpinning concepts of quality of information, ideas and debate in democratic society.

²⁰ For a discussion of the Royal Prank Call case, including the shortcomings of the Commercial Radio Codes, see Derek Wilding (2015), 'The Summer 30 Royal Prank Call: Outcomes for Australian Broadcasting Regulation', *The Journal of Media Law*, vol 7, issue 1, pp 92-107.

²¹ Australian Press Council (2011), *Submission to the Independent Media Inquiry*, pp 23-24.

²² Department of Broadband, Communications and the Digital Economy (2012), *Convergence Review Final Report*, p 51.

Impact of Media Reform

Table showing impact of the following transactions in commercial radio licence areas where an associated newspaper is present:

(i) acquisition by metro commercial TV networks of their regional affiliates (i.e. Nine-WIN, Ten-Southern Cross Austereo (TV only), Seven-Prime)

(ii) merger of Fairfax Media with Nine/10 and News Corporation with Ten/Southern Cross Austereo

(iii) acquisition of APN News and Media by either Fairfax or News

See Abbreviations and Assumptions below.

[illegible]

Regional Licence Areas - above minimum points										
6	Ballarat	6	• The Courier (Fairfax) • WIN • Southern Cross Ten • Prime • 3BA FM + Power FM (Grant) • Radio Sport 927 (JV Camplin/Byton)	• WIN • The Courier	• Southern Cross Ten	• Prime	• 3BA FM + Power FM (Grant) • Radio Sport 927 (JV Camplin/Byton)	5	Reduction in points but no UMDS or U3	
7	Gympie	6	• The Gympie Times (APN) • WIN • Southern Cross Ten • Seven QLD • 4GY (Super Radio Network) • Zinc 96.1 FM (Grant)	• WIN [• The Gympie Times]	• Southern Cross Ten [• The Gympie Times]	• Seven QLD	• The Gympie Times (APN) • 4GY (Super Radio Network) • Zinc 96.1 FM (Grant)	6 [5]	Reduction in points with APN acquisition but no UMDS or U3	
8	Nambour	6	• Sunshine Coast Daily (APN) • WIN • Southern Cross Ten • Seven QLD • Sea FM + Mix FM (SC Broadcasters) • Hot 91 (Grant)	• WIN [• Sunshine Coast Daily]	• Southern Cross Ten [• Sunshine Coast Daily]	• Seven QLD	• Sunshine Coast Daily (APN) • Sea FM + Mix FM (SC Broadcasters) • Hot 91 (Grant)	6 [5]	Reduction in points with APN acquisition but no UMDS or U3	
9.	Canberra	5	• The Canberra Times (Fairfax) • WIN • Southern Cross Ten • Prime • Hit 104.7 + Mix 106.3 (JVs SCA/ARN) • 2CC + 2CA (JVs Grant/Byton)	• WIN • The Canberra Times	• Southern Cross Ten	• Prime	• Hit 104.7 + Mix 106.3 (JVs SCA/ARN) • 2CC + 2CA (JVs Grant/Byton)	5	No impact	
10.	Albury	5	• The Border Mail (Fairfax) • WIN • Southern Cross Ten • Prime • Star FM + The River (SCA) • 2AY (ACE)	• WIN • The Border Mail	• Southern Cross Ten	• Prime	• Star FM + The River (SCA) • 2AY (ACE)	5	No impact	
11.	Bathurst	5	• Western Advocate (Fairfax) • WIN • Southern Cross Ten • Prime • B-Rock 99.3 FM + 2BS Gold (Camplin)	• WIN • Western Advocate	• Southern Cross Ten	• Prime	• B-Rock 99.3 FM + 2BS Gold (Camplin)	4	Reduction in points but no UMDS or U3	
12.	Dubbo	5	• Daily Liberal (Fairfax) • WIN • Southern Cross Ten • Prime • Star FM (SCA) • Zoo FM + 2DU (Super Radio Network)	• WIN • Daily Liberal	• Southern Cross Ten	• Prime	• Star FM (SCA) • Zoo FM + 2DU (Super Radio Network)	5	No impact	
13.	Grafton	5	• The Daily Examiner (APN) • Nine (NBN) • Southern Cross Ten • Prime • FM104.7 + 2GF (Super Radio Network)	• Nine [• The Daily Examiner]	• Southern Cross Ten [• The Daily Examiner]	• Prime	• The Daily Examiner (APN) • FM104.7 + 2GF (Super Radio Network)	5 [4]	Reduction in points with APN acquisition but no UMDS or U3	
14.	Lismore	5	• The Northern Star (APN) • Nine (NBN) • Southern Cross Ten • Prime • ZZZ FM + 2LM (Super RN)	• Nine [• The Northern Star]	• Southern Cross Ten [• The Northern Star]	• Prime	• The Northern Star (APN) • ZZZ FM + 2LM (Super Radio Network)	5 [4]	Reduction in points with APN acquisition but no UMDS or U3	
15.	Newcastle	5	• The Herald (Fairfax) • Nine (NBN) • Southern Cross Ten • Prime • KO FM + NO FM (SCA) • New FM + ZHD (Super Radio Network)	• Nine • The Herald	• Southern Cross Ten	• Prime	• KO FM + NO FM (SCA) • New FM + ZHD (Super Radio Network)	5	No impact	• Note: Maitland Mercury (Fairfax) is associated with NNSW TV1 but not Newcastle RAL.
16.	Orange	5	• Central Western Daily (Fairfax) • WIN • Southern Cross Ten • Prime • Star FM + 2GZ (SCA) • Easy Listening 1089 (Super RN)	• WIN • Central Western Daily	• Southern Cross Ten	• Prime	• Star FM + 2GZ (SCA) • Easy Listening 1089 (Super Radio Network)	5	No impact	
17.	Tamworth	5	• The Northern Daily Leader (Fairfax) • Nine (NBN) • Southern Cross Ten • Prime • FM92.9 + 2TM (Super Radio Network)	• Nine • The Northern Daily Leader	• Southern Cross Ten	• Prime	• FM92.9 + 2TM (Super Radio Network)	4	Reduction in points but no UMDS or U3	

Regional - above minimum points (cont)											
18.	Wollongong	5	• The Illawarra Mercury (Fairfax) • WIN • Southern Cross Ten • Prime • i98FM (WIN) • Wave FM (Grant)	• WIN • The Illawarra Mercury • i98FM	• Southern Cross Ten	• Prime	• Wave FM (Grant)	4	U3	• U3 for Nine-WIN-Fairfax only - requires repeal of 2/3 rule	
19.	Geelong	5	• Geelong Advertiser (News) • Channel 9 • Channel 10 • Channel 7 • KROCK + Bay FM (Grant)	• Channel 9	• Channel 10 • Geelong Advertiser	• Channel 7	• KROCK + Bay FM (Grant)	4	Reduction in points but no UMDS or U3	• Note: Geelong and Melbourne are overlapping licence areas, but this only applies to licence area caps and cross-media (not points)	
20.	Maryborough (Vic)	5	• Bendigo Advertiser (Fairfax) • WIN • Southern Cross Ten • Prime • Easy mix (Grant)	• WIN • Bendigo Advertiser	• Southern Cross Ten	• Prime	• Easy mix (Grant)	4	Reduction in points but no UMDS or U3	• Note: overlaps Bendigo RA1, but no implications	
21.	Mildura	5	• Sunraysia Daily (Elliot) • WIN • Prime • Ten Mildura [MDV] (UV WIN-Prime) • Star FM + 3MA FM (SCA) • Easy mix (Grant)	• WIN • Ten Mildura [MDV] (UV Prime)	• N/A	• Prime • Ten Mildura [MDV] (UV WIN)	• Sunraysia Daily (Elliot) • Star FM + 3MA FM (SCA) • Easy mix (Grant)	5	No impact		
22.	Shepparton	5	• Shepparton News (McPherson) • WIN • Southern Cross Ten • Prime • Star FM + 3SR (SCA) • RSN (3UZ)	• WIN	• Southern Cross Ten	• Prime	• Shepparton News (McPherson) • Star FM + 3SR (SCA) • RSN (3UZ)	6	Increase in points		
23.	Warrnambool	5	• The Warrnambool Standard (Fairfax) • WIN • Southern Cross Ten • Prime • Coast FM + 3YB (ACE)	• WIN • The Warrnambool Standard	• Southern Cross Ten	• Prime	• Coast FM + 3YB (ACE)	4	Reduction in points but no UMDS or U3		
24.	Bundaberg	5	• Bundaberg NewsMail (APN) • WIN • Southern Cross Ten • Seven QLD • Sea FM (SCA) • 93.9 HITZ FM + 4BU (Grant)	• WIN • Bundaberg NewsMail	• Southern Cross Ten • Bundaberg NewsMail	• Seven QLD	• Bundaberg NewsMail (APN) • Sea FM (SCA) • 93.9 HITZ FM + 4BU (Grant)	6	Increase in points prior to APN transaction, then no impact		
25.	Cairns	5	• The Cairns Post (News) • WIN • Southern Cross Ten • Seven QLD • Sea FM + Hot FM (SCA) • ZINC 102.7 + 4CA (Grant)	• WIN	• Southern Cross Ten • The Cairns Post	• Seven QLD	• Sea FM + Hot FM (SCA) • ZINC 102.7 + 4CA (Grant)	5	No impact		
26.	Gold Coast	5	• The Gold Coast Bulletin (News) • Nine (NBN) • Southern Cross Ten • Prime • Sea FM + Gold FM (SCA) • 1029 Hot Tomato (Torv)	• Nine	• Southern Cross Ten • The Gold Coast Bulletin	• Prime	• Sea FM + Gold FM (SCA) • 1029 Hot Tomato (Torv)	5	No impact		
27.	Ipswich	5	• The Queensland Times (APN) • Channel 9 • Channel 10 • Channel 7 • River 949 (Grant)	• Nine • The Queensland Times	• Channel 10 • The Queensland Times	• Channel 7	• The Queensland Times (APN) • River 949 (Grant)	5	Reduction in points with APN acquisition but no UMDS or U3		
28.	Mackay	5	• The Daily Mercury (APN) • WIN • Southern Cross Ten • Seven QLD • Sea FM + Hot FM (SCA) • Zinc 101.9FM + 4MK (Grant)	• WIN • The Daily Mercury	• Southern Cross Ten • The Daily Mercury	• Seven QLD	• The Daily Mercury (APN) • Sea FM + Hot FM (SCA) • Zinc 101.9 FM + 4MK (Grant)	6	Increase in points prior to APN transaction, then no impact		
29.	Maryborough (QLD)	5	• Fraser Coast Chronicle (APN) • WIN • Southern Cross Ten • Seven QLD • Sea FM + Mix FM (SCA) • Radio TAB (Radio TAB)	• WIN • Fraser Coast Chronicle	• Southern Cross Ten • Fraser Coast Chronicle	• Seven QLD	• Fraser Coast Chronicle (APN) • Sea FM + Mix FM (SCA) • Radio TAB (Radio TAB)	6	Increase in points prior to APN transaction, then no impact		

Regional - above minimum points (cont)

Regional - above minimum points (cont)										
30.	Rockhampton	5	• The Morning Bulletin [Rockhampton] (APN) • The Observer [Gladstone] (APN) • WIN • Southern Cross Ten • Seven QLD • Sea FM + Hot FM (SCA) • Zinc 927 + 4RO (Grant)	• WIN [• The Morning Bulletin + The Observer]	• Southern Cross Ten [• The Morning Bulletin + The Observer]	• Seven QLD	• The Morning Bulletin [Rockhampton] (APN) • The Observer [Gladstone] (APN) • Sea FM + Hot FM (SCA) • Zinc 927 + 4RO (Grant)	6	Increase in points prior to APN transaction, then no impact	• Note: both The Morning Bulletin and The Observer are associated with Rockhampton RA1. They are separate media operations but part of a single RCMG (i.e. 1 point between them) because they are both owned by APN.
31.	Toowoomba/ Warwick	5	• The Chronicle (APN) • WIN • Southern Cross Ten • Seven QLD • CFM + 4GR (SCA) • 4AK + 4WK (Super Radio Network)	• WIN [• The Chronicle]	• Southern Cross Ten [• The Chronicle]	• Seven QLD	• The Chronicle (APN) • CFM + 4GR (SCA) • 4AK + 4WK (Super Radio Network)	6	Increase in points prior to APN transaction, then no impact	• APN also publishes the Warwick Daily News which is associated with RQ TV1 but not Toowoomba/Warwick RA1.
32.	Townsville	5	• Townsville Bulletin (News) • WIN • Southern Cross Ten • Seven QLD • Hot FM + 4TO (SCA) • 106.3 FM + Zinc FM (Grant)	• WIN	• Southern Cross Ten • Townsville Bulletin	• Seven QLD	• Hot FM + 4TO (SCA) • 106.3 Fm + Zinc FM (Grant)	5	No impact	
33.	Broken Hill	3	• Barrier Daily Truth (Barrier TLC) • Southern Cross GTS/BKN [Seven programs] • Southern Cross Ten • Nine (SCA) • 2BH + Hill FM (Super Radio Network)	• N/A	• Southern Cross TV • Southern Cross Ten • Nine	• N/A	• Barrier Daily Truth (Barrier TLC) • 2BH + Hill FM (Super Radio Network)	3	No impact	
34	Gosford	4	• Nine (NBN) • Southern Cross Ten • Prime • Sea FM + 2GO (SCA) • Star 104.5 (Nova-News)	• Nine (NBN)	• Southern Cross Ten • Star 104.5	• Prime	• Sea FM + 2GO (SCA)	4	No impact	
35	Wagga Wagga	4	• The Daily Advertiser (Fairfax) • WIN • Prime • Southern Cross Ten • Star FM + 2WG (SCA)	• WIN • The Daily Advertiser	• Southern Cross Ten	• Prime	• Star FM + 2WG (SCA)	4	No impact	
36	Bendigo	4	• The Bendigo Advertiser (Fairfax) • WIN • Southern Cross Ten • Prime • Star FM + 3BO (SCA)	• WIN • The Bendigo Advertiser	• Southern Cross Ten	• Prime	• Star FM + 3BO (SCA)	4	No impact	
37	Mt Isa	4	• North West Star (Fairfax) • Imparja [9 programs] • Ten Central [SCA and Imparja JV] • Southern Cross TV Central (Seven programs) • Hot FM (SCA) • 4LM (Resonate)	• North West Star	• Ten Central • Southern Cross TV	• N/A	• Imparja [9 programs] • Hot FM (SCA) • 4LM (Resonate)	5	Increase in points	
38	Mt Gambier	3	• The Border Watch (Border Watch) • WIN [Nine programs] • WIN Ten • Seven (WIN) • Star FM + SSE (SCA)	• WIN • WIN Ten • Seven	• N/A	• N/A	• The Border Watch (Border Watch) • Star FM + SSE (SCA)	3	No impact	
39	Kalgoorlie	4	• The Kalgoorlie Miner (Seven West) • WIN • Ten West (JV Prime-WIN) • GWN7 (Prime) • Hot FM + Radio West (SCA)	• WIN • Ten West	• N/A	• The Kalgoorlie Miner • Golden West • Ten West • DIVEST: The kalgoorlie Miner	• Hot FM + Radio West (SCA)	3 points initially then 4 following divestment	UMDS	• 4/5 rule would prevent consolidation of Seven West and Prime in this licence area (or require divestment of The Kalgoorlie Miner)
40	Devonport	4	• The Advocate (Fairfax) • WIN • Ten Tasmania (JV WIN-SCA) • Southern Cross TV [7 programs] • Sea FM + 7AD (Grant)	• The Advocate • WIN • Ten Tasmania • DIVEST: The Advocate	• Southern Cross TV • Ten Tasmania	• N/A	• Sea FM + 7AD (Grant)	3 points initially then 4 following divestment	UMDS	• 4/5 rule would prevent consolidation of Fairfax and Nine/WIN in this licence area (or require divestment of The Advocate)
41	Hobart	4	• The Mercury (News) • WIN • Ten Tasmania (JV WIN-SCA) • Southern Cross TV [7 programs] • Sea FM + Heart FM (SCA) • HO-FM (Grant)	• WIN • Ten Tasmania	• The Mercury • Southern Cross TV • Ten Tasmania	• N/A	• Sea FM + Heart FM (SCA) • HO-FM (Grant)	4	No impact	

42	Launceston	4	• The Examiner (Fairfax) • WIN • Ten Tasmania (JV WIN-SCA) • Southern Cross TV • Chillil FM + 7LAA (Grant)	• The Examiner • WIN • Ten Tasmania • DIVEST: The Examiner	• Southern Cross TV • Ten Tasmania	• N/A	• Chillil FM + 7LAA (Grant)	3 points initially then 4 following divestment	UMDS	• 4/5 rule would prevent consolidation of Fairfax and Nine/WIN in this licence area (or require divestment of The Examiner)
43	Darwin	4	• NT News (News) • Nine • Darwin Digital (JV Nine-SCA) • Southern Cross TV • Hot FM + Mix FM (Grant)	• Nine • Darwin Digital	• NT News • Southern Cross TV • Darwin Digital • DIVEST: the NT News	• N/A	• Hot FM + Mix FM (Grant)	3 points initially then 4 following divestment	UMDS	• 4/5 rule would prevent consolidation of News and Ten/SCA in this licence area (or require divestment of the NT News)

UMDS IN LICENCE AREAS WITH NO ASSOCIATED NEWSPAPER

At minimum points										
44	Campbelltown	4	• Nine • Ten • Seven • C91.3 (WIN)	• Nine • C91.3 • DIVEST: C91.3	• Ten	• Seven		3 points initially then 4 following divestment	UMDS	• 4/5 rule would prevent consolidation of Nine and WIN in this licence area (or require divestment of the radio licence). In addition, the two licence cap (section 54) applying to the overlapping licence area Sydney RA1-Campbelltown RA1 would prevent this licence and the two Fairfax licences being controlled by the same person (without prior approval under s 67).
45	Bunbury	4	• WIN • Ten West (JV WIN-Prime) • GWN7 (Prime) • Hot FM + Radio West (SCA) • Spirit Southwest 621 (Seven West)	• WIN • Ten West (JV with Prime)	• N/A	• GWN7 • Ten West (JV with WIN) • Spirit Southwest 621 • DIVEST: Spirit Southwest 621	• Hot FM + Radio West (SCA)	3 points initially then 4 following divestment	UMDS	• 4/5 rule would prevent consolidation of Seven and Prime in this licence area (or require divestment of the Seven radio licence)
46	Geraldton	3	• WIN • Ten West (JV WIN-Prime) • GWN7 (Prime) • WA FM + Spirit 98.1 (Seven West)	• WIN • Ten West (JV with Prime)	• N/A	• GWN7 • Ten West (JV with WIN) • WA FM + Spirit 98.1 • DIVEST: WA FM or Spirit 98.1		2 points initially then 3 following divestment	UMDS	• 4/5 rule would prevent consolidation of Seven and Prime in this licence area (or require divestment of one of the Seven radio licences)
47	Karratha	3	• WIN • Ten West (JV WIN-Prime) • GWN7 (Prime) • WA FM + Spirit 1260 (Seven West)	• WIN • Ten West (JV with Prime)	• N/A	• GWN7 • Ten West (JV with WIN) • WA FM + Spirit 1260 • DIVEST: WA FM or Spirit 1260		2 points initially then 3 following divestment	UMDS	• 4/5 rule would prevent consolidation of Seven and Prime in this licence area (or require divestment of one of the Seven radio licences)
48	Port Hedland	3	• WIN • Ten West (JV WIN-Prime) • GWN7 (Prime) • WA FM + Spirit 1026 (Seven West)	• WIN • Ten West (JV with Prime)	• N/A	• GWN7 • Ten West (JV with WIN) • WA FM + Spirit 1026 • DIVEST: WA FM or Spirit 1026		2 points initially then 3 following divestment	UMDS	• 4/5 rule would prevent consolidation of Seven and Prime in this licence area (or require divestment of one of the Seven radio licences)
49	Remote Commercial Radio Service Western Zone	3	• WIN • Ten West (JV WIN-Prime) • GWN7 (Prime) • WA FM + Spirit WA Remote (Seven West)	• WIN • Ten West (JV with Prime)	• N/A	• GWN7 • Ten West (JV with WIN) • WA FM + Spirit WA Remote • DIVEST: WA FM or Spirit WA Remote		2 points initially then 3 following divestment	UMDS	• 4/5 rule would prevent consolidation of Seven and Prime in this licence area (or require divestment of one of the Seven radio licences)

ABBREVIATIONS

U3 = unacceptable three-way control situation (re cross-media prohibitions in ss 61AMA and 61AMB of the BSA)
UMDS = unacceptable media diversity situation (re prohibitions associated with 5/4 rule in ss 51AG and 51AH)
Metro = the five metropolitan licence areas under the BSA (Sydney, Melbourne, Brisbane, Perth, Adelaide)

ASSUMPTIONS

1. Scenario based on mergers between metro TV networks and their current affiliates (i.e. Nine-WIN, Ten-SCA, Seven-Prime). Assumes Imparja remains independent.
2. Assumes only SCA TV licences are part of transaction, with SCA retaining radio licences. Assumes the two radio licences held by WIN are included in the transaction.
3. Assumes abolition of 75 per cent reach rule in s 53(1), but retention of points system (4/5 rule) in ss 51AG and 51AH as well as one and two-licence limits for TV and radio in ss 53(2) and 54.
4. Assumes radio licence or newspaper will be divested in preference to a TV licence; assumes a set of two currently co-owned radio licences will be sold as the same set of two licences.
5. Split cells show overlapping licence areas - relevant for TV and radio licence caps and cross-media, but not for the points system.
6. Shows overall outcome only; does not consider issues of timing (e.g. where an additional point created by the separation of SCA radio licences could facilitate another transaction).