



RESEARCH NOTE

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Cross-Media, Takeover, Foreign Investment Limits

The matter of statutory limits for takeovers and the cross-media rules involve complex issues. Recent media reports have called for clarification of the rules. This Research Note identifies and briefly explains how some of those limits are applied. The percentage limits for ownership or takeovers specified in various Acts of Parliament are not meant to be definitive. They are usually a threshold limit which then activates a case-by-case examination of the circumstances of that particular case. The key limits are listed in the table, over.

Foreign Investment

Generally, the *Foreign Acquisitions and Takeovers Act 1975* establishes a system whereby foreign investors must notify the Treasurer [usually, via the Foreign Investment Review Board administered by the Commonwealth Treasury] when specified foreign investment reaches a threshold limit, or involves specified business activities. For example, all acquisitions of interests in urban real estate must be notified regardless of the percentage interest or value. Foreign investment in mass circulation newspapers is examined on a case-by-case basis. Foreign investment in television licences is governed by the *Broadcasting Services Act 1992*.

The Treasurer may, in the national interest, prohibit a foreign investment proposal. If the Treasurer does not take action, the proposal may go ahead. From time to time, the Treasurer issues guidelines indicating new threshold limits for approvals. It is important to distinguish between the threshold limit for *notification* (established by the Act e.g. 15%) and the threshold limit for *approval* (established by policy guidelines issued by the Treasurer). On 20 April 1993, the Treasurer issued a Press Release advising that the approval threshold limit for foreign investment in mass circulation newspapers had been lifted from 15% to **25%**.

Corporations Law: Takeovers

The takeover provisions in the *Corporations Law* operate to prohibit an acquisition of 20% or more of the shares or voting power of a company, unless certain procedures are observed (e.g. a formal public announcement via the stock exchange and the issue of a formal notification to shareholders). One reason for regulating takeovers is to ensure that minority shareholders are given appropriate notification and information concerning a bidder who wishes to take over the company in which those minority shareholders have invested.

The takeover provisions in the *Corporations Law* operate

irrespective of whether the takeover proposal is made by a foreign investor or an Australian investor. For publicly listed companies, the Listing Rules of the Australian Stock Exchange also apply.

Broadcasting Services Act 1992: Cross-Media Rules

The *Broadcasting Services Act 1992* has several threshold limits and the Act also contains the cross-media rules. Again, it is important to note that the 15% limit on cross-media ownership is a threshold and the Act contains a useful explanation of *Control and Ownership of Company Interests* in Schedule 1 to the Act. For example, a 15% interest in the votes or shares of a company may

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be very significant if the remaining shareholders are all small shareholders with no more than, say, 2% or 5% held by any individual. Alternatively, a shareholder with 20% or 25% is a significant shareholder but if there is another single shareholder with 51%, the majority shareholder has control.

The matter can be further complicated by a shareholder who, say, holds both voting shares and convertible debentures/notes (these are loans which are redeemed by the conversion of the loan to shares in the company). In addition, tracing ownership through a chain of companies is also important (as well as complex). The key issue to

note is that the 15% threshold creates a presumption of control, *in the absence of proof to the contrary*. Under the *Broadcasting Services Act 1992*, the Australian Broadcasting Authority has the power to give a binding opinion on the question of control in a particular case.

Statute	Limit	Activity
<i>Foreign Acquisitions and Takeovers Act 1975</i>	15% votes or shares	Notification by a foreign investor of investment in an Australian corporation. (Notification is required where total assets exceed \$5m (or \$3m if 50% or more involves rural land), but under policy guidelines proposals involving a company or business with total assets below \$50 million are not examined, they are automatically approved).
	40%	Two or more foreign investors or associates.
<i>Corporations Law</i>	20%	Company takeover: at 20% or above, further acquisition of shares is not permitted unless exempted by Part 6.2, e.g. a formal public announcement, or not more than 3% of voting shares in each 6 months (a "creeping takeover").
	90%	When a takeover bid has achieved an entitlement to 90% or above of shares in a company, the bidder may acquire the remaining shares.
	5%	During a takeover period, a person with 5% or more of the shares in the target company must notify the securities exchange of specified details.
<i>Broadcasting Services Act 1992</i>	75%	A person must not control a commercial television licence whose combined licence area populations exceed 75% of Australia's population; or more than one licence in the same licence area.
	-	A person must not control more than 2 radio licences in the same licence area.
	15%	A foreign person must not have more than a 15% interest in a commercial television station (two or more foreign persons must not have an interest which exceeds 20%); a foreign person must not control a commercial television station.
	15%	Cross-media rules are based on an assumption that a person with an interest of 15% or over in a company is, <i>in the absence of proof to the contrary</i> , in a position to control a company (see Schedule 1 to the Act).
	50%	A newspaper with a circulation of 50% or more of the population in the licence area of commercial television station or a commercial radio station falls within the cross media rules if there is common control of those various forms of the media.
	30%	Where an overlap occurs between television licence A and television licence B and that overlap comprises 30% or more of the population within the licence area, the two areas are treated as one.

