

APPENDIX G

FIRB MINUTE OF 5 DECEMBER 1991



TREASURER

PARLIAMENT HOUSE
CANBERRA 2600

Senator Richard Alston
Chair
Senate Select Committee on Certain Aspects
of Foreign Ownership Decisions in relation
to the Print Media
Parliament House
CANBERRA ACT 2600

20 APR 1994

Dear Senator Alston

I refer to your letter of 12 April 1994 raising a number of additional matters in relation to your Committee's work.

In view of developments, I now attach a copy of the FIRB's minute of 5 December 1991 to the then Treasurer. The decision to release this document reflects the special factors surrounding its status. Its release in no way erodes the reasons for it to be protected previously. Moreover, its release in no way affects the points underpinning the approach taken by the Government in relation to other FIRB documentation and information.

I advise that my direction to Mr Pooley in relation to his appearances before the Committee continues to apply. As you know, I have directed Mr Pooley not to provide to the Committee, whether orally or by way of provision of documents, information or advice provided in confidence by the Foreign Investment Review Board and the Treasury to the government on matters associated with 1991 and 1993 decisions on the Fairfax Group under the government's foreign investment policy, or information provided in confidence to the Foreign Investment Review Board and the Treasury on matters associated with the 1991 and 1993 decisions on the Fairfax Group under the government's foreign investment policy.

Similarly, my similar directions to some other witnesses before the Committee also continue to apply. I therefore reaffirm that I have, in effect, directed officials not to discuss the FIRB cases with the Committee.

I am puzzled by your request for a schedule of all internal working documents in relation to the 1991 and 1993 decisions. As advised in my letter of 9 March 1994, the list attached to my 9 March letter, the schedule attached to my letter of 10 February 1994 and the documents covered by Attachment A of Treasury's submission to the Committee, together comprise a full list of documents held by Treasury in relation to the 1991 and 1993 decisions. It follows that the Committee already has been advised of "a list of all notes to file following telephone conversations, a list of minutes of meetings of FIRB officers and a list of minutes of meetings between FIRB officers and clients relevant to the terms of reference".

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Ralph Willis', written over a light-colored background.

Ralph Willis

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FOREIGN INVESTMENT REVIEW BOARD MINUTE

The Treasurer

FOREIGN INVESTMENT POLICY
O'REILLY AND TOURANG PROPOSALS TO BUY FAIRFAX

FOR ACTION BY: In regard to O'Reilly, the deadline is 20 December. In regard to Tourang, there is no statutory deadline, but the parties are pressing for an early decision for commercial reasons.

PURPOSE

On 28 November it was announced that Mr Kerry Packer was withdrawing from the Tourang bid, and that his proposed shareholding would instead be placed with Australian institutions.

The Board is split on the two foreign investment proposals to buy Fairfax: two members recommend approval of both, and two recommend rejection of both.

BACKGROUND

Fairfax receivership

In December 1990, the banking syndicate (ANZ, Citibank et al) to the John Fairfax Group Pty Ltd (Fairfax) appointed Mr Des Nicholl (of Deloitte Ross Tohmatsu) as Receiver/Manager. As a consequence, there is now a management vacuum and much staff uncertainty at Fairfax.

The banks and Receiver are advised by Baring Brothers Burrows & Partners (Barings), who prefer for commercial reasons to sell Fairfax as a complete entity, rather than dispose of its individual assets (the latter would involve forgoing tax benefits and incurring additional stamp duty).

Fairfax owes amounts totalling around \$1.85 billion to:

- banks (senior lenders)	\$1.27 billion
- junk bondholders	\$0.55 billion
- other unsecured creditors	\$0.03 billion
	<u>\$1.85 billion</u>

While banks rank ahead of bondholders, the Fairfax group structure can only be sold as a complete entity with the bondholders' agreement. The bondholders - advised by Mr Malcolm Turnbull of the Sydney investment bank Turnbull & Partners - are suing Fairfax and the banks for some \$500m in principal and damages.

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Barings has received proposals to buy Fairfax from:

- INP Consortium Limited (INP), controlled via Independent Newspapers PLC by the O'Reilly family of Ireland;
- Tourang Limited (Tourang), originally owned one third each by interests associated with the Australian Mr Kerry Packer's Consolidated Press group (Conspress, which is withdrawing), the Canadian Mr Conrad Black's Daily Telegraph, and the US based Hellman & Friedman investment house.
- Australian Independent Newspapers Limited (AIN), a Melbourne based syndicate, backed by AMP, National Mutual and other local institutions, which has now got back into the running by lifting its bid.

The bids have climbed to the outer limit that Barings thinks is attainable, in the region of \$1.5 billion. The capacity of the O'Reilly and AIN bids to complete a quick purchase is complicated by an exclusive agreement between Tourang and the bondholders, and less certain commitments by banks, institutions and underwriters (only Tourang can settle with the bondholders prior to mid-January, and without an immediate public float).

Fairfax group

The issued shares in Fairfax are held in the name of interests associated with Mr Warwick Fairfax and Lady Mary Fairfax, but are available as security against debt owed to the banking syndicate.

Fairfax is one of Australia's two major newspaper groups, the other being Mr Rupert Murdoch's News Corporation Limited (NewsCorp). Within the Australian national and metropolitan newspaper market, NewsCorp accounts for 62 percent of all papers published, and Fairfax for a further 20 per cent.

In metropolitan daily classified advertising, Fairfax accounts for 76 per cent of the market in Sydney and 73 per cent in Melbourne. In national daily display advertising, Fairfax accounts for 54 per cent of the market. National and metropolitan newspapers account for about 36 per cent - or \$2.3 billion annually - of total media revenue from advertising and cover prices.

Fairfax publishes:

- The Sydney Morning Herald (SMH) and The Sun Herald
- The Age and The Sunday Age
- The Australian Financial Review (AFR)
- the Business Review Weekly and related magazines
- the Newcastle Herald, and the Illawarra Mercury
- community newspapers in suburban Sydney and Melbourne
- various other magazines and newspapers.

The main Fairfax titles - SMH, Age and AFR - are market leaders in the high income, well educated segments of the Sydney and Melbourne markets. The SMH and Age dominate the Sydney and Melbourne print advertising markets, in both classified and display segments, and are regarded by many as among the top 20 newspapers worldwide. The AFR has the largest national newspaper display advertising market share of any newspaper.

Fairfax employs more than 5000 people (including some part-timers and casuals). It purchases newsprint - a major newspaper input - from Australian Newsprint Mills (ANM) and from overseas sources. ANM is owned by NewsCorp and Fletcher Challenge, and has a contract to supply Fairfax until 1998.

Although the main Fairfax titles generate sufficiently strong earnings for Fairfax to remain profitable at the operational level, the group has - since Warwick Fairfax's takeover in 1987 - incurred over \$600 million of losses as a result of having to service a large amount of acquisition related debt.

As at 30 June 1991, Fairfax had total assets of \$1.7 billion and total liabilities of \$2.1 billion (the deficiency being covered by the goodwill value of the main mastheads). In the three years to 30 June 1991, Fairfax made total profits before interest and tax of \$507 million, and total losses after interest and tax of \$607 million. Around 78 per cent of Fairfax revenue comes from advertising.

Bondholders

The junk bondholders are mostly US based institutions, many themselves financially troubled, which together hold Fairfax subordinated debentures totalling \$450m at face value (about \$550m with interest etc), and which are almost all represented by Malcolm Turnbull (who has now resigned from his other role as a Tourang director).

Some of the bondholders have commenced legal action in the USA and Australia against Fairfax and the banking syndicate in relation to the circumstances surrounding the sale of the debentures.

The bondholders have an exclusive, mutually binding agreement with Tourang which requires them to drop litigation against Fairfax and the banks if the Tourang bid succeeds, but which will expire in mid-January (subject to an option to renew, and a pre-emptive right to match any offers from the other bidders).

O'Reilly Proposal

Independent Newspapers - controlled by the family interests of Dr. Tony O'Reilly - is incorporated and listed in Ireland, where it is the largest media group, publishing about 60 per cent of newspapers and leading the morning, evening and Sunday segments of the national market. It also publishes 'free' newspapers in England, and has non-core activities in outdoor advertising and the electronic media.

In Australia, the O'Reilly family - through Independent Newspapers and the O'Reilly Trust - operates an outdoor advertising business Buspak Advertising, Australia's largest transit advertising company, and a provincial newspaper group Australian Provincial Newspapers (APN) Australia's fourth largest print media group.

APN, acquired by O'Reilly family interests in 1988, has a print run of 250,000 copies through 13 regional dailies - and also publishes some non-dailies - along the northeastern seaboard from Coffs Harbour to Mackay. It is intended to float about half the stock in APN on the Australian Stock Exchange in 1992.

INP - incorporated in Australia solely to bid for Fairfax - is currently wholly owned by Independent Newspapers, which had total assets around \$A399 million and shareholders funds around \$A171 million as at 31 December 1991, and whose earnings before interest and tax in 1990 were about \$A37.5 million.

BT Corporate Finance for the O'Reilly bid has submitted a foreign investment proposal which provides for:

- the current senior lenders to Fairfax (the banks) to be repaid in full, and the junk bondholders to receive debentures with a face value of \$125m (convertible on sale to Australians);
- assuming most bondholders redeem their debentures, the approximate economic interests in Fairfax after a public share offer (underwritten by JB Were & Son) to be 20 per cent by Independent Newspapers, 6 per cent (non-voting debentures) by bondholders and 74 per cent by Australian portfolio investors (including 2 per cent by the family interests of Sir Vincent Fairfax);
- board members to be: Dr Tony O'Reilly (chairman of HJ Heinz and Independent Newspapers), Mr Liam Realy (CEO of Independent Newspapers), and 8 to 10 Australians, including Mr John Reynolds (CEO of APN, and former managing director of West Australian Newspapers), Mr John B. Fairfax (former deputy chairman of Fairfax), Mr Ted Harris (chairman of Australian Airlines), and Mr Greg Taylor (senior Fairfax executive);

- editorial policy - if the bid succeeds, the Charter of Editorial Independence proposed by Fairfax journalists to be signed and complied with - the Independent Newspapers philosophy is said to be consistent with the Fairfax culture and style;
- business plans - John Reynolds to be CEO, and Fairfax senior management to be restructured, drawing on the managerial expertise of the O'Reilly flagship 'The Irish Independent' - all the main Fairfax businesses to be retained (Newcastle Newspapers to be sold to Mr John B. Fairfax's Rural Press for \$34.4 million), and geographic coverage to be expanded - printing technology in Sydney to be upgraded at a cost around \$250 million by 1995/96;
- staff matters - subject to a review of the contractual terms of the senior Fairfax executives, all staff to continue to be employed on current terms and conditions, with all accrued employee benefits preserved - industrial relations to be managed so as to effect change (eg new technology) with minimum unrest and disruption;
- public benefits - the major Fairfax titles to be retained and professionally managed as a third force (to Conspress and NewsCorp) in the Australian print media - the management philosophy and experience of Independent Newspapers to be drawn on - editorial independence to be assured - the community links of the SMH and Age to be recognised in separate management structures based in Sydney and Melbourne respectively.

Tourang Proposal

Tourang Limited, incorporated in Australia solely to bid for Fairfax, was established by interests associated with Conspress (Mr Packer, who is now withdrawing), the Daily Telegraph PLC (Mr Black, of Canada), and Hellman & Friedman Capital Partners (Hellman & Friedman, of the USA). Prior to purchase, Tourang would be restructured to limit the voting foreign voting component to 20 per cent; in particular, the Hellman & Friedman interest would be converted to non-voting debentures.

Conspress, one of Australia's largest privately owned business groups, conducts the family business affairs of Mr Kerry Packer. While its core businesses are magazines and television, Conspress also has major interests in chemicals, ski-resorts, pastoral stations and real estate. The Nine network - which Mr Packer controls through a 38 per cent shareholding - inter alia operates TV stations in Sydney and Melbourne.

Hellman & Friedman is a US based limited partnership and investment house which, together with its sister partnerships, has in excess of \$US480 million in committed capital. A general partner (Mr Brian Powers) represents Hellman & Friedman on the Tourang board.

The Daily Telegraph, a British newspaper business controlled by Mr Black, publishes The Daily Telegraph (a major quality daily) and The Sunday Telegraph in the UK. Mr Black's worldwide newspaper interests include some 85 daily newspapers and 150 weekly publications.

While Tourang proposes to fully pay out bank creditors, a key element of its bid is the exclusive accommodation whereby bondholders would receive debentures worth \$125 million or 28¢ in the dollar at face value (long-term value unknown). It is expected bondholders would exchange about \$100 million of these debentures for cash, through sales to Australian institutions.

On completion, the approximate economic interests in Tourang via shares and convertible debentures would be:

- interests associated with Black	20%
- Hellman & Friedman (non-voting)	15%
- bondholders	4%
- Australian investors	61%

(the O'Reilly bid assumes the bondholders will hold 6%)

The 61 per cent of long-term capital to be held by Australian institutions would be underwritten by Ord Minnett Securities. Debentures held by Hellman & Friedman could be converted to shares only on sale to Australians. Shortly after completion, it is intended to partially float Tourang on the ASX (resulting in some reallocation of the Australian 61 per cent).

If the Tourang bid were to succeed, the board would comprise: Sir Zelman Cowen (chairman), Mr Conrad Black (deputy chairman), Mr Daniel Colson (Daily Telegraph), Mr Brian Powers (Hellman & Friedman), Sir Laurence Street, and up to five others yet to be announced.

The new CEO is as yet unknown (but preference will be given to Australian candidates), and the parties have indicated that high quality managers and journalists would be recruited from overseas. Overall staffing levels would be cut by 7 to 8 per cent over a 2 year period. Existing awards and redundancy agreements would be maintained.

Tourang would retain all the Fairfax titles, and says it is committed to restoring and enhancing the quality of the mastheads. The Fairfax papers would be able to draw on the expertise in printing technology and other areas of the Daily Telegraph in the UK. The Fairfax presses in Sydney would be upgraded in the medium-term. The Tourang position on editorial policy is set out at Attachment A.

ISSUES

Foreign investment policy

Under the Government's foreign investment policy guidelines, foreign investment in mass circulation newspapers is restricted: each application is examined on a case-by-case basis.

On 10 October 1991, Caucus resolved that:

Caucus supports Australian ownership and control of Australian media outlets. In regard to print media, Caucus notes that a House of Representatives Committee will consider these issues among others. Accordingly, Caucus would have the opportunity to consider any recommendation in this area after the Committee reports to Parliament.

In the context of the current bidding for the Fairfax Group, Caucus supports the proposition that any outcome should not extend foreign control of Australian media. Accordingly, it requests the Treasurer in considering any matters placed before him by the Foreign Investment Review Board to ensure such foreign control does not eventuate. As part of the process, Caucus opposes any level of foreign voting equity above 20 per cent. It further requests the Treasurer to keep Caucus briefed on developments in this matter.

This Caucus resolution, as with many others, is capable of several interpretations - we have taken the 20 per cent limit on foreign voting equity as the basic proposition, and the comment on not extending foreign control as a desirable objective.

Both bids are examinable under the Act, and could be blocked under the Act were you to decide that control of Fairfax would pass to foreign hands (essentially, Dr O'Reilly or Mr Black), and that this would be contrary to the national interest. If you were predisposed to reject either bid, the question of 'foreign control' assumes crucial importance.

Foreign voting equity in Fairfax would be 20 per cent in either case. Aggregate foreign economic interests (shares and convertible debentures) in Fairfax would be about 25 per cent under O'Reilly (ie, O'Reilly 20, bondholders 5) and about 40 per cent under Tourang (ie, Black 20, Hellman & Friedman 15, bondholders 5). On this basis, we cannot rule out the possibility that control of Fairfax would be shared Australian-foreign.

The argument for assuming control of Fairfax would not pass to foreign hands rests on a literal reading of the figures: foreign voting equity would be 20 per cent in each case; foreign board representation would be at most 30 per cent (O'Reilly/Healy possibly supported by Reynolds, or Black/Colson possibly supported by Powers). Both syndicates have asserted that the prominent participants (O'Reilly and Black) would be in no position to dominate the respective boards.

The argument for assuming control of Fairfax would pass to foreign hands rests on the commercial reality that the bids were ultimately put together largely by Dr O'Reilly and Mr Black respectively, each of whom expects to significantly influence Fairfax strategic and senior management policy, at least initially.

In our view, the fact that the new Fairfax board would have majority Australian membership may not settle the issue, as we presume the directors and policies would be chosen on the advice of the foreign bidders with the requisite newspaper expertise. The benefits promised by the bids depend on them bringing foreign management, technology and journalism skills to Fairfax, which in itself might indicate effective foreign control. On balance, we would incline to the view that effective control of Fairfax would more likely be foreign.

Consultations

Mr Packer's withdrawal has effectively removed any national interest implications flowing from concentration and cross-media issues. The TPC said it does not oppose the O'Reilly bid, and now has no basis for opposing the Tourang bid (see Attachment B). The ABT said it had information which a priori would have raised cross-media concerns were Mr Packer still involved in the Tourang bid. We also consulted Attorney-General's on various aspects, but the withdrawal of Mr Packer made their advice unnecessary.

Media concentration

The major players in the Australian print media (newspapers and magazines) are Fairfax, NewsCorp and Conspress. In terms of circulation, NewsCorp and Fairfax together control over 80 per cent of metropolitan and national daily newspapers, while Conspress and NewsCorp together control 85 per cent of the 30 largest magazine titles.

In newspapers, NewsCorp and Fairfax operate in slightly different market segments: NewsCorp is stronger Australia-wide and among the lower to middle socioeconomic groups, while Fairfax is stronger in Sydney and Melbourne and among the upper socioeconomic groups. Conspress has no major newspaper interests.

Conspress is prevented by the cross-media rules from owning TV stations and newspapers in the same city, but controls about half the circulation of the top 30 magazines. In practice, since Mr Packer controls television stations in Sydney and Melbourne, he cannot under the cross-media rules also hold 15 per cent or more of a mass circulation newspaper in either city.

The O'Reilly bid would marginally raise concentration in daily newspapers, because APN owns 13 newspapers along the northeastern seaboard (accounting for 30 per cent of the regional market, but only one per cent of the national market). The Tourang bid would not increase concentration, because the Black group does not currently have newspaper interests in Australia.

Mr Packer will not now be a complicating factor in terms of media concentration for the Tourang bid. Further, were Mr Packer to subsequently acquire an interest in Fairfax on the stockmarket when the business is partially floated under any one of the three proposals, this would once again trigger investigation by the ABT in respect of the cross-media rules and any association between Mr Packer and the new Fairfax owners.

Editorial independence and management style

The O'Reilly team says its management philosophy is consistent with the Fairfax culture and style, and it will comply with the proposed editorial charters. Tourang does not believe in editorial charters; its editorial policy is outlined at Attachment A. In our view, both bids would bring valuable international expertise to Australia and result in higher quality journalism in the Fairfax newspapers.

Maintaining the Fairfax group

If the main Fairfax assets (SMH, Age and AFR) were sold to several different bidders - either now or down the track - the Australian mass circulation newspaper industry would lose the one countervailing force to NewsCorp: this would clearly not be in the public interest. In the event, both foreign bidders are committed to retaining the major Fairfax titles.

OPTIONS

You could: (a) approve both bids,
(b) reject both bids, or
(c) reject one and approve the other.

As to (a), both bids appear to comply with the basic Caucus proposition that not more than 20 per cent of the voting equity in Fairfax be foreign. Both bids would bring management and technology skills to Fairfax, and a willingness to invest in, and to upgrade, the standards of the papers.

As to (b), were you to conclude that control would become foreign contrary to the national interest, you could reject both. You could take the view that, while you had no objection to 20 per cent foreign voting equity, foreign control was per se undesirable and against the national interest.

You could also argue in support of option (b) that the Australian AIN bid was potentially sufficient to pay out the senior creditors in full (and the junk bondholders in part), so that rejecting the two foreign bids would not disadvantage the creditors.

The arguments against option (b) are that:

- after all the Caucus debate etc, rejecting the foreign bids on the basis of a tighter policy than Caucus required would signal to foreign investors that the Government was inconsistent in the sense of not sticking to its stated policies;
- Fairfax would likely benefit from the injection of management and skills that both foreign investors have demonstrated they could and would bring to Australia. AIN has no newspaper experience, and we are not aware of any plans by the syndicate to acquire expertise comparable to that available to Dr O'Reilly and Mr Black. We would expect the Fairfax press to be more competitive were one of the two foreign bidders to get control;
- rejecting the foreign bids would leave Fairfax in receivership unless and until the AIN bid proved satisfactory to the Receiver (AIN is not presently in a position to quickly close a purchase). Also, blocking the foreign bids might encourage AIN to reduce its bid to the substantial detriment of the Fairfax creditors; and
- should a foreign controlled Fairfax press publish editorials unacceptable to the nation, this would doubtless be ignored or result in a loss of sales.

As to option (c), it would be possible to reject Tourang and approve O'Reilly, or vice versa. There may seem to be a stronger case for rejecting Tourang than for rejecting O'Reilly, given the difference in foreign economic interest (40 per cent versus 25 per cent respectively), and since the probability of Fairfax being foreign controlled would be greater with Tourang than with O'Reilly.

However, it would be harsh to discriminate between them when both bids appear to comply with the basic Caucus proposition, and when their respective economic benefits are similar. Also, at this stage, only Tourang can deal with the junk bondholders, and rejecting Tourang could leave Fairfax in receivership, its creditors unpaid and its staff demoralised for many months to come (the logistics for putting new arrangements with the bondholders in place are apparently not simple, and substantial delays would make all the bids more vulnerable to a stockmarket downturn).

CONCLUSION AND RECOMMENDATION

Both bids would bring a new major player (replacing the Fairfax family) and valuable newspaper expertise to the Australian media. While there is some community concern about foreign ownership of local newspapers per se, each bid is consistent with the key proposition of the Caucus resolution, and would at least maintain the existing degree of competition and diversity.

The Tourang bid has the advantage from the Receiver's point of view of its exclusive agreement with the US bondholders and its firm institutional and underwriting backing. However, this is ultimately a commercial (rather than national interest) consideration.

Two members of the Board - Mr Ken Stone and Mr Des Halsted - consider that foreign control of the Fairfax press should not be allowed. They believe it likely that both bids would result in foreign control. Accordingly, they recommend you reject both proposals.


The Chairman, Sir Bede Callaghan, and the Executive Member consider the prospect of foreign control to be outweighed by the benefits of foreign newspaper expertise, such as higher quality journalism and more modern technology. They therefore recommend in each case that you authorise advice to the parties that there are no objections to the proposal under the Government's foreign investment policy.

A decision to approve both bids could be easier to justify, providing of course that you are satisfied that they are consistent with the Caucus proposition.

If you reject both bids, we would need to discuss with you whether this should be done under the Act or the policy guidelines (we cannot predict whether the parties would challenge a rejection under the Act in court; they could claim you were mistaken in concluding control would be foreign, and your decision was thus wrongly based; you would need to show control would be foreign and against the national interest).

Whatever decision you take will be criticised, and a press release would be desirable (we will send a draft for consideration when you come to a conclusion).

I have not given this minute wider Ministerial circulation.


F.G.H Pooley
Executive Member
5 December 1991

O'Reilly proposal: approved/rejected

Tourang proposal : approved/rejected

signed: / /91

ATTACHMENT A

EDITORIAL POLICY

1. Support for the AJA Code of Ethics

Tourang fully endorses the AJA Code of Ethics. Moreover, Tourang proposes that this Code of Ethics should be treated as part of the terms of employment of all journalists employed by Fairfax and the Board will expect the editors to ensure the Code is rigorously complied with in every particular.

2. Support for the Australian Press Council - Statement of Principles

Tourang endorses the Australian Press Council Statement of Principles and expects that all editors and journalists will comply with them.

3. Objectivity and Integrity

Tourang believes that the Fairfax publications should be free from any party political bias or attachment to any sectional interest.

Fairness

Tourang believes that the Australian press (including Fairfax) regularly accords insufficient respect to the rights of persons who are written about or who hold views contrary to those expressed in the newspapers concerned.

Tourang believes that where the newspaper misrepresents a person or misstates the facts, a person affected should be entitled to adequate and appropriate correction. In particular, where a person is defamed, his or her vindication should not have to await exhausting and expensive legal proceedings. Where newspapers have gone wrong in such cases, they should promptly admit error and correct it.

To date, Tourang is not aware of any developed system of practices by Australian newspapers covering these matters and at this stage it is appropriate only to express our support for the general principles. We expect that the board of Tourang, when fully constituted will be able to develop these principles into a workable set of procedures that will make the Fairfax newspapers fairer and more accessible both to their readers and to those about whom they write.

5. Directors' Responsibility

Tourang does not subscribe comprehensively to the "Fairfax Newspapers" Charter of Editorial Independence. In particular, the Charter denies the board of directors any right or entitlement to express an opinion in the editorial pages of a newspaper. This is a long established proprietorial right which has been widely acknowledged and exercised. In exercising it, the board must observe a meticulous respect for the truth and honest statement. Tourang claims that entitlement.

10.00 FREE-TOLE SIDER

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Further, Tourang is completely committed to the continued improvement and editorial excellence of the Fairfax newspapers, to the assurance of accuracy, fairness, objectivity and comprehensiveness in their coverage of Australia and the world, and firmly believes the Board must maintain an ultimate responsibility for this.

TRADE PRACTICES COMMISSION

ATTACHMENT B

Proposed Acquisition of John Fairfax Group

As you may be aware the Commission has undertaken investigations in the market place to ascertain if any of the proposed acquirers may contravene the Trade Practice Act.

As the bids are currently structured, the Commission's investigations to date indicate that acquisitions by the present bidders is unlikely to contravene the Act.

The Commission's enquiries have been concentrated in Sydney and Melbourne. On the basis of those inquiries the Commission sought to establish -

- whether there is a market for classified advertising in the Sydney and Melbourne metropolitan markets;
- whether the Sydney Morning Herald and The Age dominated those markets; and,
- whether any of the bidders for Fairfax would be in a stronger position as a consequence of the acquisition.

In relation to both geographic markets the Commission is of the view that there is a market for classified advertising in both Sydney and Melbourne. In relation to the question of dominance, however, the Commission found the position to be different in Melbourne and Sydney. In Sydney the Sydney Morning Herald appears to be constrained by other publications such as the Telegraph Mirror, suburban newspapers, various specialised magazines and the Trading Post. The Age does not seem to be under the same intensity of competition and the Commission is inclined to the view that The Age may dominate the market for classified advertising in Melbourne, or at least some segments of it.

The Commission is aware that Australian Consolidated Press issues a number of specialised publications (for example, for the sale of cars, commercial vehicles and property) in both Sydney and Melbourne. If Mr Kerry Packer had remained a shareholder in Tourang the Commission would have needed to explore further whether such publications would have resulted in an enhancement of the position of The Age. However, with Mr Packer's withdrawal from the consortium the Commission does not propose to pursue this line of enquiry.

Market enquiries to date do not indicate that the position of other bidders will be strengthened.

On that basis the Commission raises no objection to the proposals.

If, however, the structure of the bids were to change or other relevant factors were to come to light, the Commission may need to look again at the matter.

In addition, I note that if the INP Consortium is successful there is a proposal to on sell the Newcastle newspapers, currently part of the John Fairfax Group, to Rural Press. If that were to eventuate we would need to investigate that proposal as it may have trade practices implications.