

## CHAPTER 5

### BARRIERS TO ENTRY TO THE PRINT MEDIA INDUSTRY

---

#### **Introduction**

5.1 'Barriers to entry' to a market are legal, technical or economic obstacles confronting new entrants to a market. Barriers to entry are not just absolute obstacles to a new publisher 'trying its hand' but include factors which make it difficult for a new entrant to establish a viable and competitive presence in the market.

5.2 Where there are no or low barriers to entry to a market, that market is said to be contestable. In a perfectly contestable market, there is a discipline on incumbent firms - and even on a monopolist - to produce efficiently, to maintain customer or readership loyalty, and to price at a level which will not encourage potential entrants to make their move into the market.

5.3 The purpose of looking at barriers to entry to print media markets is not simply to assist forecasting the likelihood of new entrants improving the competitive situation in print media markets at some time in the future. More than this, it is an examination of the strength of the threat of new entry as a current constraining force on the activities of powerful proprietors in the market.

5.4 In evidence and submissions presented to the Committee, several significant barriers to new entry to print media markets were identified, suggesting that at least some segments of the print media industry are not really contestable. Three principal barriers stood out:

- (i) the need for new publications to build up a sizeable circulation to secure economies of scale necessary for effective competition with established publishers:

economies of scale apply to virtually every facet of newspaper production, including the gathering and reporting of news, advertising sales, printing and distribution;

per copy distribution costs show a marked decline as volume increases, particularly for daily newspapers.

- (ii) the need to overcome strong reader and advertiser loyalties to established mastheads;
- (iii) the need to commit large amounts of capital, which will be forfeited if the market challenge fails.

5.5 These three factors are inextricably interrelated. Until a new entrant achieves economies of scale, its average (per copy) cost of production and distribution will be substantially higher than that of its established competitors. However, the new entrant will find it difficult to

build up readership and circulation because of established reading habits and loyalty to particular mastheads. The high risk of failure flowing from these economic factors becomes a serious barrier if a new publisher can only challenge for market share by committing large amounts of capital to specialised equipment and facilities (for example, printing presses), which cannot be adapted easily to alternative uses and thus will be lost in the event of failure.

5.6 Other factors identified as providing significant, but less important, barriers were concerned with equitable access to newsprint supplies, information services and established distribution arrangements. These matters will be discussed in the following chapter.

#### **Impact of Barriers to Entry on Different Market Segments**

5.7 The obstacles to entry to the print media are not the same for all sectors. Evidence presented to the Committee suggested that the largest obstacles would be faced by those attempting entry into metropolitan and national daily newspapers. For suburban and regional newspapers the obstacles appear to be much less substantial, although there were conflicting views on this point, and for magazines the barriers to entry are much lower.

5.8 Mr Cowley said that:

If people want to start a suburban newspaper, or a paper in some of these growing regional areas, and are experienced and they thought it through and were intelligent about it, I think you

could establish a newspaper. ... The barriers are high for national or metropolitan newspapers. I think that is about where it is limited to. (Transcript pp. 460-61)

5.9           However, other evidence warned the Committee that there were difficulties facing aspiring, or even experienced, suburban publishers, particularly given the involvement of the major publishing groups in suburban newspapers. Mr Isaacson explained his company's decision to close its successful Melbourne Sunday paper when News Limited and David Syme & Co. Ltd launched their own Sunday papers, in terms of his company not having the financial resources to compete against the major publishers. He suggested that the same thing could happen with suburban newspapers:

The problem is that, although there are a number of independent newspapers in Melbourne - and I can speak only for Melbourne - from my point of view and personal experience, there is a tendency for the larger proprietors to move into competition with what few independents are left or what few independents have started up. This was emphasised in the last eight to 10 weeks.

There is a newspaper in Melbourne that has been very successful in the inner suburbs called the *Melbourne Times*. It is not one of mine but, just for the record, we jointly own another newspaper with it. The *Melbourne Times* has been a successful, well managed and editorially good newspaper circulating in the city of Melbourne, north Melbourne, west Melbourne and east Melbourne for many years. It has a circulation of about 70,000. It held the market on its own ... . Recently, News Limited decided that this was an area in which it was not established and publishing, so it established a newspaper in competition with the *Melbourne Times* called the *Melbourne Leader*.

If one studies the newspaper, one can see that News Ltd can draw, and has drawn, in - whether paid for or free - advertising from a wide area because it has 23 other newspapers around the city of Melbourne. It has great economies of scale for production and editorial purposes. So it can start newspapers or move the circulations of its current newspapers into areas which are presently well serviced and adequately serviced by independent newspapers. That is one of the dangers that I see in the suburban newspaper area if newspapers are allowed to proliferate without any restrictions. (Transcript pp. 1056-57)

5.10 Mr Suich forecast that, over the next 15 or 20 years, an increasing number of people would produce small newspapers and magazines - and suburban newspapers in particular. (Transcript p. 1261) However, he also saw that established publishing groups could be in the best position to exploit growing market segments:

One would guess that in the future south east Queensland might provide an opportunity because of its rapid growth. News Limited is even better positioned in that market than Queensland Newspapers under the Herald and Weekly Times was to prevent somebody coming in.

I would not say it is the last chance, but one of the last good chances of coming in would be to get hold of the Brisbane Sun and that has been pretty neatly avoided by the arrangement that now exists. In twenty years time, you might have a go again or they might be able to build something out of one of the papers that O'Reilly has to come in from Ipswich or Noosa. But the Gold Coast is sewn up, the suburban newspaper group is sewn up, the two city dailies are sewn up. In Adelaide it is even more remarkable because there almost every suburban is owned. It is almost impossible to get into the Adelaide market. (Transcript p. 1277)

5.11 Mr Suich, cited by others as an example of a successful new entrant to newspaper publishing, explained that he had designed his product to overcome the real barriers to entry which existed:

... I am a small circulation , high cover price monthly. I have had the normal difficulties that all small business has, particularly in this economic climate. But I said earlier that there is a big distinction in launching either metropolitan dailies, national dailies or weeklies. I have chosen a monthly precisely to get around the barriers, which are for me, being a small businessman, capital shortage. I cannot have 50 per cent of a business if I am going to have to come up with \$10 million. So I have actually designed a product to get around those barriers. But the barriers are real. There is no question about that.

...

I said earlier that they (the barriers) are essentially distribution, marketing, capital intensive nature and size of that capital investment, and the fact that there are no obvious markets being unexploited at the moment. (Transcript pp. 1276-77)

5.12 Independent Newspapers PLC gave its view that, while, in the smaller categories of the print media, barriers to entry are being lowered by the evolution of desktop publishing technology; in the production of large newspapers, the barriers to entry are rising due to the increasing level of capital intensity required. (Submissions p. 230) Mr John Reynolds, Chief Executive of Australian Provincial Newspapers, gave evidence of new regional newspapers 'cropping up' in Northern NSW and Queensland all the time; and considered niche publications to be 'very much the coming thing in the nineties'. (Transcript p. 412) Yet Mr Reynolds and other executives

representing Independent Newspapers PLC also gave evidence on the difficulties of breaking into the metropolitan broad-appeal newspaper market.

### **Economies of Scale**

5.13 In the remainder of this chapter, the discussion of the major factors which may inhibit competition in the print media will be mainly from the perspective of metropolitan daily newspapers (i.e. where the effect is the greatest). Although the other market segments will not be discussed at length, they will be included in the discussion whenever appropriate.

5.14 Economies of scale are cost advantages which accrue to a firm because of its size or the quantity of its output.<sup>1</sup> With respect to the print media industry, there are two major types of economies of scale:

- those occurring due to technical, production and distribution efficiencies; and

- those arising from the simultaneous production of a number of similar or complementary products (economies of group ownership).

---

<sup>1</sup> The existence of fixed costs (e.g. the costs of plant and equipment) means that firms can achieve lower average (per unit) costs as their output expands.

## **Technical, Production and Distribution Efficiencies**

5.15 Scale economies arising from technical and production efficiencies are particularly pertinent to high volume daily newspapers because of the high capital expenditure and start-up costs involved. The equipment and facilities necessary for newspaper production are essentially the same whether a small or large number of copies is produced. Furthermore, all the news collection, editorial, composition, layout and other costs in bringing a paper to the point where it is ready for printing are incurred before the first copy is produced, and are sometimes referred to as 'first-copy' costs. As the number of copies printed increases, and overhead and first-copy costs are spread over more units of output, the cost per copy declines rapidly.

5.16 Such economies of scale act as a barrier to entry because a new paper will be producing at a cost disadvantage relative to established competitors until it can build its circulation to a 'critical mass'. According to Dr Brown, the author of a book and articles on Australian commercial media:

All other things being equal, for any two newspapers competing for the same readers in the same market, the paper with the largest circulation will have a cost of production advantage over the smaller rival. The larger the difference in circulation, the greater the advantage to the larger paper in terms of per unit production costs. (Submissions p. 117)

Because of such advantages, an incumbent with a large circulation will be able to maintain low cover prices which would be uneconomical to competitors with a low circulation but which would nevertheless enable it to make a profit from its sales.

5.17 In any case, price competition is less likely to be on the basis of cover price than advertising rates. As newspapers obtain most of their revenue from advertising their success will depend largely on their ability to attract advertisers. Generally, advertising rates increase as circulation increases. The disadvantage of the smaller newspaper is accentuated by the fact that the higher circulation or bigger audience of the 'most popular' paper usually attracts a premium.<sup>2</sup> A new entrant to the market with low circulation will be at a distinct disadvantage because it will earn lower advertising revenue but will incur comparable, if not higher, costs than its competitor(s) on a per copy basis. Further, because some readers buy newspapers for advertising as well as news content, the higher advertising content in an established paper as compared to a new paper will make it difficult for the new paper to win readers, which, in turn, will make it more difficult to win advertisers. As Dr Brown pointed out, the combination of these factors largely explains the trend to unassailable monopoly in newspaper markets:

The concept of economies of scale in newspaper publishing thus largely explains why (a) there is only one (monopoly) paper published in most markets, (b) the monopoly of the existing

---

<sup>2</sup> Newspapers with an established reputation (e.g. *The Sydney Morning Herald* for classified advertisements) or with a homogeneous readership attractive to some advertisers (e.g. *The Australian Financial Review*) may also command a premium and/or may be able to charge rates which are higher than competitor newspapers with a larger circulation.

paper is usually unassailable against challenges from potential rivals, and (c) challenges by rivals to become the dominant paper usually do not succeed. It also helps to explain why it is usually easier for a publisher desiring to expand into a market to acquire the existing paper than to launch a new title in competition. ... (Submissions p. 118)

5.18 Dr Brown gave his further view in evidence before the Committee that:

... direct competition<sup>3</sup> between newspapers is simply unviable. It just does not last for any length of time. Direct competition between newspapers invariably leads to one of the papers - usually the challenger - going under. The incumbent paper has such a large inherent advantage, based purely on economic factors, over any new paper that its position is unassailable against any challenge.

...

My view is that the market is probably best able to establish how many newspapers there should be. My feeling is that the market has just about done that now in Australia, at least in relation to metropolitan and daily newspapers, on the assumption that the *Sun* will go in Brisbane and the *News* will go in Adelaide. Once that happens I think that probably we will have the number of newspapers that is consistent and compatible with the operation of market forces. (Transcript pp. 1019-20)

---

<sup>3</sup> Of course, one defence which a new entrant can set up against this head-on competition is to establish a distinct image and readership to segment the pool of readership and advertising revenue.

5.19 Other researchers, particularly in the United States of America have reached similar conclusions. (amongst others, Dertouzos and Trautman, 1990 and Wirth, 1986) For example, Stephen Lacy and Robert G Picard have said:

As a result primarily of these two processes (the circulation spiral and economies of scale), a city will likely end up with one daily. After the competing newspaper has closed, the advantages of scale economies, the connection between the information and advertising markets, and the high cost of just starting a newspaper result in high barriers to another daily newspaper entering that market. (Lacy and Picard, 1990, p. 35)

5.20 Mr Greg Taylor, Chairman, Executive Committee, John Fairfax Group and Managing Director, David Syme & Co. Limited, thought that Australia was following the USA experience in this regard:

If you look at most major American cities now, there is basically one newspaper in the market.<sup>4</sup> I think that, if you could look up the history books of the 1950s, at that stage there were eight daily newspapers in New York. Certainly, there were four afternoon papers in New York. Now you are reduced to the *New York Times*, which is doing very well; the *Daily News*, which has lost a fortune ... ; and the *Post*, which has been struggling for years and years. *News-day* is basically a commuter newspaper on Long Island . So if New York has only what I see as one successful newspaper at the moment - and Los Angeles

---

<sup>4</sup> Professor Busterna reported that, in the United States, there were 1 464 daily newspaper markets characterised by single newspaper monopolies or two newspapers owned by the same firm. There were joint operating agreements between pairs of daily newspapers in 21 markets; there were two or more truly independent daily newspapers still competing in 28 markets. One of the cities with competing (though differentiated) daily papers was New York, with the *New York Daily News*, *New York Post* and the *New York Times*. (Busterna, April 1988, pp. 6-7)

has basically one - I would not like to set up against any of the existing daily newspapers in Australia to try to make a (profit). (Transcript p. 1141)

5.21 Professor Peter Swan, consultant for News Limited, also referred to the United States experience:

In the United States, the number of cities with more than one competing paper and more than one newspaper is virtually zero now. There are certainly less than 15. That is just a fact of life. That is the market speaking. That is these very large economies of scale telling us that there are no entry barriers as such, but the marketplace is saying that there will only be a limited number of competitors actually in the market at a particular time. This was really dictated by increased competition from TV and a whole range of other areas. (Transcript p. 1253)

5.22 While there is general agreement that there are economies of scale in newspaper publishing, Professor Officer submitted that economies of scale would fail to act as a barrier to entry if the incumbent firm raised its prices beyond the benefit of the economies of scale. (Submissions p. 1562) In this situation, Professor Officer argued that '... new firms will enter without the need for achieving sales to the extent of achieving economies of scale'. He also argued that consumers would be no worse off if all the benefits of economies of scale went to the producer than if there were no economies of scale. Professor Officer concluded :

It is only when barriers to entry are greater than the benefits afforded from the economies of scale that the incumbent firm can raise its price and extract 'monopoly profit' beyond the benefits of the economies of scale. (Submissions p. 1562)

5.23 Professor Officer acknowledged that, when barriers to entry are greater than just the benefits afforded from economies of scale, a company may extract monopoly profits. So, while Professor Officer's reasoning may have general applicability in contestable markets, it is doubtful that it readily applies to metropolitan newspapers. Because of the high cost of entry for publishers of broad appeal, mass circulation newspapers and the extensive lead time for production to commence, an incumbent may well be in a position to take advantage of its monopolistic position without losing the flexibility to cut prices on the occasion of the entry of a new competitor to a level consistent with its economies of scale.

5.24 From the point of view of potential new entrants, the knowledge that incumbents can use their strength to combat direct competitors can act as a strong deterrent to entering a market.

5.25 Mr Brenchley, who was General Manager, John Fairfax & Sons, Broadway, at the time of the launch of *Business Daily*, referring to the reaction of *The Australian Financial Review* to the prospect of a rival, said:

We called in our advertising agency, our marketing people, our circulation people and our production people. We said, 'We are going to meet this challenge head on and we are going to knock these people off because they are a competitor'. To me, that is the way to go when you find a competitor. From the point of view of Fairfax, we did that; we mounted quite a large marketing campaign against *Business Daily*. We had a free subscription offer of some magnitude. Our strategy was that if *Business Daily* was going to pick up a reader whom you might position as being somewhat below the *Financial Review*, we would go in and try to scoop that market before *Business Daily* got there, and we did that. The marketing campaign was very successful.

We also upgraded our printing operations ... . When *Business Daily* folded, I think Fairfax quite reasonably took some of the credit. (Transcript p. 731)

5.26 Australian Independent Newspapers, the Melbourne initiated consortium chaired by Mr James Leslie, which bid for Fairfax, noted that existing market shares were, 'well entrenched and commercially defensible' and suggested it was no surprise that, 'not a single new competitor has successfully entered the Sydney or Melbourne metropolitan newspaper markets during the last two decades'. (Submissions p. 967)

#### Economies of Scale in Distribution

5.27 Economies of scale are also likely to accrue with respect to distribution arrangements. A truck delivering bundles of papers to a particular locality will incur only marginally higher costs than a similar truck delivering only one bundle. An established newspaper with a sizeable circulation would obviously distribute more copies in any given area than a new entrant with a small circulation serving the same market. Consequently, the paper with the larger density of distribution would benefit from scale economies and would incur a lower per unit cost of distribution than its competitor.

5.28 One way for metropolitan or national daily papers with a smaller circulation to reduce this relative cost disadvantage is to try to negotiate an arrangement to share the established distribution facilities of other newspapers. In some cases, this could lead to them becoming dependent on their competitors for distribution.

5.29 In evidence Mr Michael Gill, founder of *Business Daily*, who used the existing News Limited distribution system, said:

In some instances we were trying to use independent distributors. But the nature of the business is such that you really are relying on the big ones to do a newspaper. The nature of the business is that you are talking about bulk that goes to all sorts of spotty places, that has to be done quickly on deadline in order to meet the trucks. Independent distributors have difficulty with that. So, it may be the case but I am not aware that there is a network available of independent distributors. (Transcript p. 527)

5.30 Of course, suburban papers, which are distributed to all homes in a particular area, are able to reap economies of distribution densities.

5.31 Access to established distribution networks will be discussed in greater detail in the next chapter.

5.32 Because of the substantial economies of scale inherent in the production and distribution of newspapers, a new entrant would face a large cost disadvantage if the size of its operation was substantially smaller than that of a competitor. In part this explains the absence of new, totally independent entrants to the industry and why those entering the industry typically seek to take over an established title or add a title to an already established group.

## Economies of Group Ownership

5.33 Additional technical and production efficiencies may also arise when a publisher produces two or more publications simultaneously at the same or different locations. In such a situation savings may accrue from the sharing of operating and overhead costs between the publications. They may arise, for example, from the sharing of premises, computers, and facsimile, library and similar services and from increased utilisation of printing and distribution facilities.

5.34 Mr Noonan told the Committee that in Sydney, *The Australian Financial Review* shares the available presses and the distribution system with *The Sydney Morning Herald*:

There are six presses there and usually we use one. There is one ready and one under repairs on a rotational basis and four are usually used for the *Herald*. ... in Sydney we have a common, shared distribution system. (Transcript pp. 876-77)

In Melbourne, printing is carried out on a similar basis with *The Age*, but separate distribution systems are used.

5.35 Professor Swan provided evidence of similar production and distribution economies of group ownership in News Limited, particularly as they affected *The Australian*:

Group ownership also greatly benefits the national daily, *The Australian*, which utilises existing production facilities in Melbourne, Brisbane, Adelaide, Perth and Townsville after having been sent to these cities by facsimile from Sydney.

Except for Melbourne & Perth, it is published along with the local product, saving cost in the overall shifts that would be required if both products were printed alone. The Sunday Telegraph is also printed by The Herald & Weekly Times in Melbourne in conjunction with their own Sunday Herald-Sun and Queensland Press in Brisbane prints The Sunday Telegraph along with The Sunday Mail.

Moreover, in Townsville The Australian shares facsimile equipment (recorders) with The Sunday Mail sent from Brisbane and in Adelaide at the new Mile End Print Centre facsimile receivers or recorders are shared with all locally produced News Limited papers as well as the independent The News. Facsimile receiving equipment planned for the new print sites in Melbourne and Brisbane will also be shared with The Australian.

...

On the distribution side, The Australian shares the use of delivery trucks with News Limited's local metropolitan dailies published in Melbourne, Brisbane & Adelaide. Adding The Australian to an existing delivery run is a negligible increase in cost due to the payment on the basis of mileage covered and hours worked rather than on weight as is the case with air freight. The Sunday Telegraph distributed in Melbourne and Brisbane also utilises the local motor freight system at a minimal increase in cost. (Submissions pp. 2930-31)

5.36 Mr Gill had sought to take advantage of economies of group ownership for his new paper, *Business Daily*, by establishing the paper as a joint venture with the Herald and Weekly Times; in fact, the new paper was 'just a marginal addition to the existing infrastructure of the whole group'. (Transcript p. 537) Mr Gill attributed the failure of *Business Daily* to the unavailability of the necessary communication and production facilities following the takeover of the Herald and Weekly Times group by News

Limited. (Submissions pp. 160ff) The various explanations for the failure of *Business Daily* offered to the Committee are examined in more detail at paragraphs 5.92 to 5.97 below.

5.37 Economies of group ownership may also arise from the sharing of managerial resources, such as accounting and legal functions, the sharing of editorial resources through the syndication of articles by staff writers, the bulk purchasing of inputs to earn discounts, and the sharing of a central advertising sales division to supplement the advertising sales departments of individual titles.<sup>5</sup>

5.38 Concern was expressed at public hearings and in submissions about the sharing of editorial resources flowing from press amalgamations. The Australian Journalists' Association (AJA) for example, raised some concerns about the use of shared copy, particularly amongst titles in a group. (Submissions pp. 777-84) The AJA analysed the content of News Limited's '24 hour papers' in Sydney and Melbourne on two dates, and found that there was a substantial use of shared copy in local stories, national stories, finance and business, features and international stories:

Obviously, the amount of shared copy will vary dramatically depending on news on a particular day. But the benefit(s) of sharing copy for a group are extensive. The benefits to the community are not so clear. (Submissions p. 784)

---

<sup>5</sup> The recent innovation by News Limited called 'Newsnet' - a facility whereby an advertising buyer can purchase space in all the group's metropolitan newspapers at a single point of contact, is an example. (Submissions pp. 354-55)

The AJA also expressed concern about pooling of editorial resources amongst papers in a group, for example, in the Canberra Press Gallery.

5.39 However, information provided by News Limited suggested that sharing of editorial resources amongst its papers is limited. (Submissions pp. 360-69)

5.40 News Limited has explained that its papers share staff copy and pictures at the discretion of individual editors who may wish to keep an 'exclusive', but only to the extent that papers circulate in different geographic areas. However, since Australian metropolitans prefer local stories, it is estimated that News Limited's Sydney and Melbourne papers carry less than five per cent shared copy per week. In addition, News Limited's papers have shared interstate bureaux in Sydney, Melbourne and Perth. In the Canberra Press Gallery, metropolitans - with the exception of the Hobart *Mercury* - have their own as well as shared correspondents.

5.41 International news is drawn from overseas correspondents in London, New York, Washington, Los Angeles and Tokyo, which News Limited estimates are maintained at an average cost of \$200 000 each per year. The overseas bureaux are organised to provide cover to all group newspapers except *The Australian*. Syndicated material from overseas newspapers is also available to group papers. Teams of News Limited correspondents travel to report overseas events - for example, the Olympic Games - for all the papers.

5.42 *The Australian* operates largely outside the copy swapping arrangements, with its own network of exclusive local and foreign bureaux, and its own syndication arrangements.

5.43 The Australian Centre for Independent Journalism pointed out that there is also a degree of copy swapping between *The Sydney Morning Herald* and *The Age*:

In addition (to syndication arrangements with overseas papers) the papers share copy on a straight swap arrangement. If one paper had spent a lot of money on a particular story, there would be some negotiation on cost sharing. Similarly, if a *SMH* correspondent overseas filed a story, which *The Age* wished to use *The Age* would be charged for the use, however, there is increasing use of shared foreign correspondents.

The basic rule is that there is a normal reciprocal arrangement between Fairfax owned papers, although there is frequently strong competition between reporters working for different publications within the group. If there is a dispute about the use of syndicated copy the *SMH* can instruct *The Age* not to run a story if there is a conflict. 'As Fairfax owns *The Age* we can instruct them however we wish,' Mr Allen (Manager for Features Services and Copyright and Syndication for the Fairfax group) said. (Submissions p. 1237)

*The Age* and *The Sydney Morning Herald* share full time staff bureaux in, for example, Moscow, Tokyo and Beijing. Robert Haupt reports from Moscow for both papers, and Peter Ellingsen's reporting of the Tiananmen Square massacre appeared in both papers.

5.44 There are also advantages in group membership of independent news services, particularly Australian Associated Press (AAP), and this will be examined in the next chapter .

5.45 It is possible for papers outside a group and circulating in different areas to achieve some of the benefits of group publishing through co-operative arrangements. For example, *The Age* takes a Western Australian news service from West Australian Newspapers. However, the limited number of independent titles outside the News (and Fairfax) stables could be expected to limit these opportunities for independent publishers.

5.46 Dr Brown argued that the inability of an independent paper to benefit from group economies means that its operational costs would be greater than if it were part of a group. This:

... makes each paper more profitable under chain ownership than under independent ownership and thus unlikely to be sold off separately. (Submissions p. 126)

5.47 In evidence, however, Dr Brown pointed out that the economies of group ownership are less significant than technical, production and distribution efficiencies gained:

So the real economies of scale are the economies that occur within individual city newspaper markets. As well as that, there are also what I call economies of group ownership, but they are much less significant than the economies of scale operating within newspaper markets. (Transcript p. 998)

5.48 Professor Swan concurred:

Although group economies may not be as substantial as those within particular metropolitan markets, they might nonetheless be quite substantial and significant overall. (Submissions p. 2930)

5.49 Group ownership may provide other significant benefits. A paper within the group may be able to rely on the group's resources rather than just its own resources to see it through a period of intense competition or a period of poor performance. Mr Suich saw this as a significant barrier to entry. He said:

When I was at Fairfax and we were sustaining *The National Times* under losses and, indeed, the *Sydney Sun* under losses, we could provide virtually free advertising in *The Sydney Morning Herald* or *The Age* or *The Canberra Times* for *The National Times*, or in *The Sun-Herald* for *The Sun* ... . That marketing assistance is extremely valuable. (Transcript pp. 1261-62)

5.50 Mr Isaacson also considered that the financial strength of a group gave group papers a considerable competitive advantage. Explaining his decision to discontinue publication of the Melbourne *Sunday Observer* when the Herald and Weekly Times and *The Age* terminated their agreement to publish a joint paper and both entered the market with (three) competing Sunday papers,<sup>6</sup> he said:

---

<sup>6</sup> The three new Melbourne Sunday papers were launched in 1989. The *Sunday Observer* closed soon after. This was despite the fact that the launch of the new papers resulted in a substantial increase in Melbourne Sunday newspaper circulation figures.

I could see that, with my financial resources, it was not going to be possible for me to compete with it (the new titles), although we had been in the business for many years. That indicates that an independent operator without very heavy financial resources would find it extremely difficult to either get established or compete against established proprietors that wanted to start up in competition with that operator. (Transcript p. 1056)

5.51 Arguing that newspapers can be established, nurtured and succeed where there is a demonstrated consumer demand, News Limited submitted that both News and Fairfax have, 'after decades of commitment, established successful national dailies. More recently, both companies have found a Sunday market in Melbourne where for years the common wisdom was that such publications could not succeed'. (Submissions p. 1544) Other publishers, without the benefits of group economies and group financial strength may not have been as successful.

#### **Reader and Advertiser Loyalty to Established Mastheads and Shrinking Market**

5.52 A number of witnesses and submitters saw the entrenched positions of established titles, the difficulty of breaking reading habits, and the reluctance of advertisers to support new publications, as a major barrier to entry to the industry. Consequently, prospective new entrants are more likely to seek to take over an established newspaper rather than attempt to introduce a completely new title. To a large extent, this is seen as a flow-on effect of a shrinking readership market.

## Shrinking Market

5.53 A graph provided by Professor Officer indicates that metropolitan and national newspaper circulations in Australia have been declining relative to population increases in major urban areas since the 1950s. (Submissions p. 1559) This graph is included at Figure 5.1 at page 134.

5.54 Various reasons have been given for the decline - including changing patterns of commuting to work, falling demand due to increased cover prices, the increase in content and quality of news and current affairs reporting on the broadcast media, decentralisation of the central business district, fewer commuters travelling by public transport, and changing work patterns (including more shiftwork). (Goot, 1979, pp. 17-22 and Submissions p. 1589)

5.55 Mr Cowley, in evidence, admitted that the price and method of launching a major metropolitan newspaper would be expensive and difficult:

... because newspapers themselves are finding it very difficult to sustain the profits they have been used to and also to sustain the circulations they have been used to. It is no secret that circulations of newspapers have shrunk<sup>7</sup> and the number of newspapers has shrunk since the entry of television. (Transcript p. 453)

---

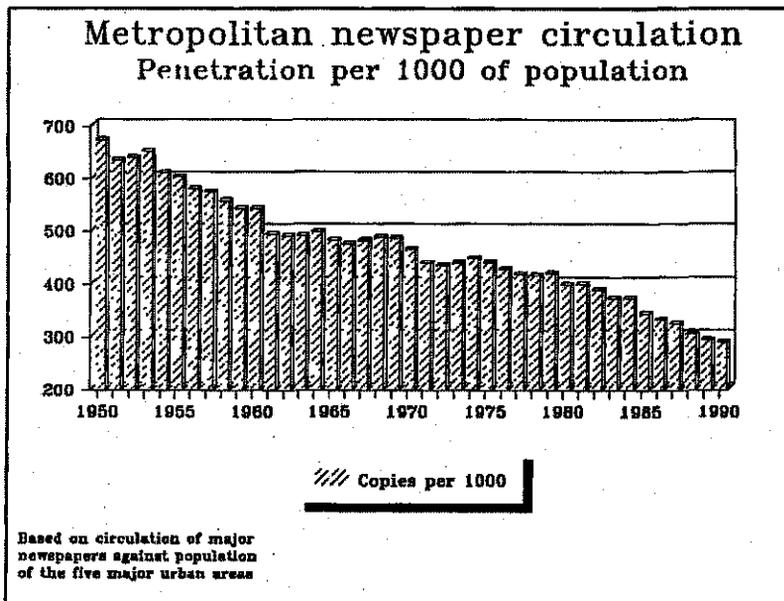
<sup>7</sup> The industry generally measures long-term trends in circulation as copies sold per thousand head of population - in other words, falling circulation is a relative decline in sales.

5.56 Even some News Limited papers have been discontinued or amalgamated with sister papers. In 1990, the Sydney papers *The Daily Telegraph* and *The Mirror* were combined, and the *Sun News Pictorial* and the *Melbourne Herald* were combined in Melbourne. This appears to have been a response to the weakening position of evening papers in particular. Those factors contributing to falling newspaper circulation (see paragraph 5.54 above) would be expected to have had a stronger impact on evening papers than on morning editions.

5.57 To capture market share, a new supplier of any consumer product must either 'grow the market' - by offering a product with special features or qualities, or steal market share from its competitors. As far as expanding the market (except in particular niches) is concerned, newspaper readership is in a steady decline as a result of changing social trends discussed above; even the market leaders are introducing features such as Bingo and school project segments to bolster circulation. Moreover, circulation is considered not to be responsive to discounting, although demand may be extremely price elastic to increases in cover prices.

5.58 Market forces militate against new entrants to newspaper publishing. Because of the inherent economies of scale, a new entrant is at a disadvantage in competing for readership and advertising.

Figure 5.1: Metropolitan Newspaper Circulation Penetration per 1000 of Population



Source: Submissions p. 1559

Note: News Limited advised that this graph had been based on total circulation of major metropolitan and national titles against population in major urban centres. While the graph is considered to reflect accurately general trends in the circulation of metropolitan newspapers, it should be qualified by the following points:

- Total circulation of major titles means circulation in both metropolitan and country areas, noting that up to 30 per cent of the circulation of a national or metropolitan title can be outside its primary market.

- Population figures relate to Sydney, Melbourne, Brisbane, Adelaide and Perth only.

- Major metropolitan titles excludes papers outside the five cities above (e.g. *The Canberra Times*) but includes the national titles.

## Brand Loyalty

5.59 A high degree of loyalty to existing brands (in this case, mastheads) is a major barrier to entry. Entry, in terms of the contestability of a market, means 'viable' entry - that is, establishing a foothold in the market. Ease of entry is not measured as the cost of putting the first issue on the streets. Capturing market share can require the outlay of high promotional costs to win readers and advertisers - these are 'sunk', that is, non-recoverable if the market assault fails.

5.60 The importance of established circulation is reflected in the bids for the Fairfax assets, which include a high price for the mastheads. One of the bidders, Australian Independent Newspapers, considered the fact that reading habits were well entrenched to be amongst what it saw as 'virtually insurmountable' barriers to entry to the markets in which Fairfax operated. (Submissions p. 967)

5.61 Mr Walsh, in evidence at a public hearing, told the Committee that it was harder to change reading habits for a daily newspaper than for a monthly magazine:

The situation is that the more frequent the publication, the more habitual it is. That is what we understand. Other than the *Women's Weekly* very few people have a habit about a monthly - it is a very attenuated habit. With a weekly like *The Bulletin* or something like that, there are a lot of people who buy the weekly every issue. With a daily paper it is a big decision to stop buying *The Telegraph* or stop buying *The Sydney Morning Herald*. People have that habit because that is the way their life is conducted; every morning they get the *Financial Review*,

every morning they get *The Australian*. Therefore when you start up something new you have got to break all those habits to get your newspaper up and running.

...

People can take an extra monthly on board and they are changing their patterns all the time, but changing their patterns for a daily newspaper is an incredible thing. That takes five or 10 years. (Transcript p. 1308)

5.62 It is not just readership loyalty to existing publications, but the unwillingness of advertisers to support a new publication. Mr Liam Healy, Chief Executive, Independent Newspapers PLC, gave the view that the principal barrier to entry was:

... inevitably the reluctance of advertisers to commit themselves to a new publication until that paper has reached a certain circulation figure. They will all say at the beginning, 'That is just what we are looking for and that is just the type of paper in which we would like to advertise'. They probably go into the first issue, but they will not allocate substantial money to it. Then they will say, the second and third week, 'Well, we will wait until you reach a certain circulation level and then we will come in'. These days, that inevitably creates a considerable strain on a new publication. (Transcript pp. 419-20)

5.63 The lack of a 'track record' in terms of readership means that an advertiser will need to take significant risks in backing a new publication - not just because the paper or magazine may not achieve projected circulation figures, but also because the new publication does not have a tested demographic profile.

5.64 Mr Allen of Advertising Investment Services explained how advertisers would regard a new publication:

Usually advertisers look for a discount or an incentive that puts them at a discount in entering a market to start with so that some of the element of risk is taken away. In addition, there are realistically some emotional responses - the confidence you have in the people that are presenting you with the product, the confidence you have in the people who are backing the organisation funding the new venture, those sorts of dimensions. When an organisation gets all the right credentials together, they can get pretty much instantaneous support. They can, but no-one has guaranteed that.

...

It is not automatically bestowed on any organisation that money will flow to them. They have to have a very finely pitched submission to advertisers - or a series of submissions - in order to start to win some market share from day one, and not many people get all those ingredients right. (Transcript pp. 1482-83)

5.65 This factor is more of a hurdle for newspapers which are much more dependent on advertising than magazines which rely on high cover prices as a major source of revenue. As Mr Walsh explained:

Newspapers are very hungry and they are very dependent on advertising. With magazines, as I said, two-thirds of our income is circulation. So even if for the first couple of years you are not getting a lot of advertising you still have got all that sales revenue coming in. With newspapers, if you do not have advertising you are stuffed, and you have therefore got to wait a long time. Therefore, it costs a lot of money. (Transcript p. 1309)

5.66 News Limited has submitted that there is confusion between ease of entry and guarantee of entry since the ultimate arbiter of the success or failure of any product in the print media market is the consumer, and that the reason new newspapers and magazines have failed is because consumers and/or advertisers have rejected them. (Submissions p. 1543) In evidence Mr Cowley observed: 'The markets themselves and the competition within the community force you to produce the best product you can, whoever owns it'. (Transcript p. 455)

5.67 It is because there is no guarantee of entry, and because existing publishers have too much capital invested to allow one of their papers to slide under without a fight, that there is a barrier to entry in the form of necessarily high up-front promotional costs at high risk of being 'sunk'.

### **Start-up Costs**

#### **General**

5.68 This section, and the section immediately following, will look at the major start-up costs for a newspaper, including the cost of printing presses and early trading losses.

5.69 One of the first decisions to be made by a new entrant to a market is to determine the size and form of its expected operation. The decision will be used to determine the amount of start-up and working capital required to set up and sustain the enterprise until it reaches profitability. The amount required will depend on whether an operation can

be started on a small scale and expanded gradually as demand for the output increases and on the degree of specialisation of the necessary plant and equipment.

5.70 Some of these costs, because of their nature, are not easily recoverable if a corporation fails and quits the market, and include the promotional expenditure for the failed brand, as well as specific purpose machinery that may not be able to be sold for its inherent value and cannot be converted to alternative uses. They are commonly referred to as 'sunk costs'.

5.71 In 1986, the costs of starting a daily newspaper in the United States were estimated, in consultation with five newspaper financial experts, to range from \$7 million for a newspaper with a circulation of 20 000, through \$17.4 million for a newspaper with a circulation of 65 000, to \$36.5 million for a newspaper with a circulation of 250 000. (Wirth, 1986 p. 425) These figures did not include the negative cash flows expected to be experienced by a newspaper publisher in its early years of operation.

5.72 *Business Daily* was budgeted on a cashflow deficit basis (involving \$5.7 million from News Limited - part equity and part loan moneys); there was no outlay on presses and other equipment. Mr Gill said in evidence:

We asked for the amount of money that the Herald and Weekly Times gave us because we assumed that that would be the amount of money that we would need to cover cash deficiencies over the 18 months that we initially budgeted for. (Transcript p. 533)

5.73 Later, Mr Gill explained that the paper's financial projections had been predicated on the use of the Herald and Weekly Times (HWT) facilities. (Transcript p. 537) *Business Daily*, to have operated completely independently, would have had to replicate the whole HWT system rather than just being a marginal addition to the infrastructure of the group, and this would have changed the economics of the whole proposal dramatically - with, of course, a severe impact on the viability of the paper.

5.74 In its submission, Australian Independent Newspapers stated that:

The barriers to entry into the newspaper markets in which Fairfax operates are virtually insurmountable. They include:

... costs (which) would be very substantial, taking into account the need for printing capacity and the long period required to obtain a viable market share ...

(Submissions p. 967)

5.75 Of course, high up-front capital costs would constitute less of a barrier if a new entrant could fail, quit, and recover most of its initial investment. The Trade Practices Commission has noted that:

The mere quantum of capital costs is not the only consideration in determining whether capital costs constitute a substantial barrier. Also important is the aspect of sunk costs. If a new entrant is unable to put new capital investment to an alternative use in the event of being unable to obtain a viable market share, then that aspect will enter into risk calculations and may be a deterrent to entry. (Submissions p. 455)

5.76 Another important factor in assessing whether or not capital requirements constitute a barrier is the question of whether, in the light of the high risk nature of the business, new entrants can obtain access to capital on equal terms as the established publishers.

5.77 In this context it is interesting to note that Mr Kerry Stokes, who did not have an extensive track record in newspapers, relied on News Limited's assistance to secure credit to buy *The Canberra Times*. In evidence Mr Cowley said:

I do not know whether we guaranteed it (the borrowing by Kerry Stokes that allowed him to purchase *The Canberra Times*) ... but we certainly assisted him at the time. ... It was to do with banking and allowing him to get some credit lines in place, and we certainly assisted. (Transcript p. 481)

News Limited subsequently provided further information to the Committee on the circumstances of the Stokes acquisition. News Limited submitted that:

At the time of the purchase by the Stokes Group of The Canberra Times, News Limited believed that it may ultimately be able to acquire an interest in that newspaper. Accordingly, News Limited agreed to make a loan available to Worrall (the company in the Stokes Group funding the purchase) to assist in the acquisition. In return, News Limited was given a conditional option to acquire the shares in North Aston (a Stokes Group company) which, if exercised, would have effectively given it an interest in The Canberra Times.

The option could be effectively exercised only if it would not cause any breach of the Trade Practices Act and foreign investment approval were obtained.

During the year ended June 30, 1991, a series of transactions was effected which resulted in the larger part of the News Ltd loan being repaid and the option agreements being terminated.

The only remaining involvement that News has with the Stokes companies is a \$4 million loan on commercial terms personally guaranteed by Mr Stokes. This loan has no rights attaching to The Canberra Times. (Submissions p. 1722)

5.78 Other witnesses spoke of the difficulty of raising loan funds in this high risk industry. Mr Gill said in evidence:

If you went to ask an investor in this (economic) climate to back something new as opposed to something like Fairfax that already exists, and you can see the worth of it, it is very hard to imagine that you could make a case that you wanted to be independent. It is quite likely, from my experience anyway, and I think my experience is representative of what you are likely to run into if you wanted to do anything substantial, that an investor would look at the climate and the environment of the industry and say, 'Forget it'. (Transcript p. 519)

5.79 The Australian Centre for Independent Journalism reported the difficulties faced by Mr Eric Beecher, former editor of the Melbourne *Herald*, when he attempted to establish a quality Sunday national newspaper in 1989. It was planned to use Rural Press printing presses in capital cities and News Limited distribution networks. The project was abandoned because of a failure to raise the necessary capital (\$20 million was sought), despite presentations being made to institutions, private investors and companies with media interests in Australia, Britain, and the United States. Mr Beecher is reported as recalling that:

The outcome was affected by the recession, which even by mid 1989 was on the horizon, the boom in the media had waned. The picture was clear, that unless we could get money committed by a big name or an institution we would not be able to raise the capital. It was a matter of getting someone to put in the substantial first amount, some one needed to lead, if that had happened there were a number of individuals and institutions which would have followed.

In a sense there was almost a fear by the institutions of the dominant publisher. They'd say things like, 'They'll screw you', 'Your papers will end up in the ditches', 'It'll be like competing with the Mafia'. (Submissions p. 1243)

Mr Beecher was said to have been confident of success had he been able to raise the capital.

### **Printing Presses**

5.80 A major sunk capital cost for a newspaper publisher is the cost of printing presses, which cannot be converted to alternative uses if the paper fails, and may not be easily sold to another publisher. For this reason it is important to determine the likelihood of a new publisher being able to have his publication contract printed, at least until it reaches critical mass, and the cost of installing dedicated presses for the new paper.

5.81 The cost of installing equipment can be onerous. Professor Officer has estimated the cost of installing printing presses to range from \$250 000 for the cheapest of press lines capable of producing a 16 page A3 publication at 15 000 copies per hour, to \$333 million for News Limited's new Westgate presses in Melbourne which will have the potential for full-colour reproduction at press speeds of up to 80 000 copies per hour.

(Submissions pp. 1564-65) A reasonable second-hand press capable of producing a 96 page A3 (tabloid) at 25 000 copies per hour would be expected to be purchased overseas for around \$1 million, whereas a new high-speed colour press capable of producing 160 A2 pages at 40 000 copies per hour could be expected to cost up to \$25 million.

5.82 It is likely that smaller publishers would be at a cost disadvantage in purchasing equipment, relative to the major groups. Professor Swan stated that News Limited received substantial 'bulk buy' discounts, totalling in excess of \$75 million, for the purchase of its new colour printing presses and associated equipment. (Submissions p. 2930)

5.83 It would be unreasonable to imagine that a publisher could compete with News Limited to any significant degree with second-hand superseded equipment. Mr Reynolds, representing Independent Newspapers PLC, in evidence to the Inquiry on what INP would do if it had won Fairfax, observed that:

We have to remain competitive with organisations such as News and it is clearly setting a fairly fast track on technological development and looking also for efficiencies. We would have to do that to compete. ... We do have a great belief in printing and publishing in the 1990s and we base that a lot on the improved technology that can be brought to bear in terms of productivity, in terms of quality and in terms of colour. So we would like to do it (install new technology) as early as is financially prudent and relate it to total market conditions and particularly the strategies adopted by News. (Transcript pp. 409-10)

5.84 Ownership of printing presses can be crucial for daily newspapers but optional for magazines and weekly newspapers which can be printed on someone else's presses 'off-peak' on contract. For daily papers, control of this critical factor of production is necessary so that publishers can determine their own priorities and set their own deadlines.

5.85 Professor Officer stated that:

Because the content of a newspaper is time critical, with set deadlines, they need to be produced in close proximity to the source of readership. Also, because of these deadlines there are significant advantages in having the editorial facilities in close proximity to a press line that is dedicated to a particular group. (Submissions p. 1564)

5.86 Inability to exercise control over dedicated production facilities is likely to spell doom for a newspaper.

5.87 Notwithstanding the loss of control inherent in non-dedicated production facilities, the prospects for the sharing of presses or contract printing of daily newspapers are not encouraging.

5.88 It would appear that opportunities for the sharing of printing presses for the production of daily newspapers are unlikely to arise in the near future. According to the AJA, all newspaper presses in Australia are owned by the publishers. (Submissions pp. 793-94) Mr Hank Spier, First Assistant Commissioner, Enforcement and Legal Division, Trade Practices Commission, observed that the Commission had asked publishers in Australia whether they saw themselves eventually sharing with others and,

'The clear answer has been no'. (Transcript p. 109) Mr Cowley explained that a proposal for Independent Newspapers PLC (if it won Fairfax) and News Limited jointly to develop and share printing presses in Sydney was found to be impractical because of the scale of equipment needed for the Friday night print runs.<sup>8</sup> (Transcript p. 476)

5.89 Even if sharing of presses were to be possible, the evidence presented to the Committee suggests that spare capacity is simply not available. For example, Mr Isaacson said that, in Melbourne, there is currently no spare press capacity available to start up an independent newspaper of any significance. (Transcript pp. 1062-63) He also pointed out that the alternative of acquiring presses would be beyond the means of many potential entrants to the industry. In his view: 'To buy presses today is just outside the realm of any totally independent person or company'.

5.90 The Chairman of the Trade Practices Commission, Professor Allan Fels, said in evidence that access to printing facilities would be unlikely to be covered by the *Trade Practices Act 1974* in its present form. (Transcript p. 104) That is to say, the Trade Practices Commission does not have the power to ensure publishers provide competitors with access to printing presses on fair commercial terms in the way that, for example, AUSTEL regulates access to the telecommunications infrastructure over which Telecom has a monopoly.

---

<sup>8</sup> In 1987, Mirror Australian Telegraph Publications (the Sydney arm of News Limited) informed the management of *Business Daily* that it could not print or distribute for another Saturday paper because of its commitments to its own Saturday papers. (Submissions p. 2515)

5.91 In overview, there is no certainty of a new entrant being able to negotiate contract printing, and there is a high capital cost for new presses.

### **The *Business Daily* Experience**

5.92 The launch and failure of *Business Daily*, a national newspaper which opened in August 1987 and closed some weeks later, is an important case study of how the barriers which have been discussed in this chapter impede entry to the national daily newspaper market. Many factors contributing to the paper's failure have been suggested to the Committee; it is neither necessary nor appropriate for the Committee to make a judgement on the basis of limited information before it. What is clear, and instructive, is that *Business Daily* was only launched on an understanding that it would be able to use the printing presses, distribution network and other facilities of the Herald and Weekly Times and its affiliates. That is, it was not even conceived as a completely independent venture, but as an add-on to an existing major publishing group.

5.93 Mr Gill attributed the failure of *Business Daily* in large part to the claimed failure of News Limited to fulfil the obligations it assumed when it acquired HWT, which latter company had been committed to assisting the launch of *Business Daily*. Conversely, News Limited submitted that the paper failed for purely commercial reasons, and suggested that Mr Gill may have expected a level of assistance from News Limited which was not in the original agreement with HWT.

5.94 According to Mr Gill, some of the major production and distribution problems faced by the new paper were that:

- . production facilities were not available in Sydney for a Saturday edition;
- . News Limited facsimile equipment was not made available to *Business Daily*, and the paper could not be printed in Perth, Brisbane and Adelaide as planned;
- . HWT management did not order newsprint stock as required under the agreement;
- . News Limited cut the *Business Daily* print run in Sydney (and stocks to newsagents) in the second and third weeks following the launch;
- . News Limited is alleged to have 'leaked' early *Business Daily* circulation figures to advertisers. (Submissions pp. 158-79 and Transcript pp. 518-58)

5.95 News Limited disputed that there was any breach of the agreement, certainly denied any sabotage, and saw the failure of *Business Daily* as being the result of purely commercial factors including public non-acceptance of the product (estimated to have sold less than 10 000 copies a day in its last week) and the response by *The Australian Financial Review* to the threat of competition. News Limited submitted, inter alia, that:

- . although HWT had agreed to use its best endeavours to secure production and distribution of *Business Daily* interstate, HWT could not bind these other companies; News Limited itself was not bound to provide its facilities and resources to *Business Daily* although Mirror Australian Telegraph Publications (MATP, News Limited,

Sydney) went to some trouble to put in place printing arrangements for the new paper;

MATP did not have the production or distribution capacity to handle a Saturday edition of *Business Daily*;

There may have been an assumption that *Business Daily* could use the existing facsimile network of News Limited; however, *The Australian* had facsimile equipment based on transmission from Sydney with receivers only in other States; since *Business Daily* was based in Melbourne it could not immediately tap into the News Limited facsimile network; a transmitter was installed in Melbourne prior to the closure of *Business Daily* but awaiting Telecom connection; similarly, installation of facsimile equipment in Sydney was delayed - in part due to problems associated with Telecom;

distribution to newsagents in NSW was cut following high return rates for *Business Daily* (72.3% in week 1, 72.6% in week 2, 82% in week 3, 70.2% in week 4, 72.9% in week 5); it is claimed that the reduction in supplies was in response to pressure from newsagents;

a letter to Australian Newsprint Mills (ANM) on 27 May 1987 confirmed an earlier oral order for 500 tonnes of Boyer White offset; however, by the time the stock was ordered, it was too late to secure supplies for the launch of *Business Daily*; however, unlimited supplies of other newsprint were made available immediately, and when *Business Daily* folded HWT held considerable stocks of Boyer White Offset. (Submissions pp. 2454ff)

5.96 In reply to News Limited's comments, Mr Gill further submitted that:

*Business Daily* had not failed in its duty to arrange interstate printing; it had negotiated an agreement with Queensland Press Limited (QPL); attempts to confirm a

verbal agreement for printing in Perth were denied (allegedly at the instruction of News management); *Business Daily* was having difficulty negotiating for printing in Sydney on terms consistent with the Heads of Agreement;

Mr Gill had not been given return figures for *Business Daily* in NSW;

Mr Gill observed that the facsimile equipment was never available to *Business Daily* - much less on the date agreed in the Heads of Agreement. (Submissions pp. 2921-26)

5.97 Although there may be some disagreement as to whom and what was to blame for the failure of *Business Daily*, it is clear that, for the new entrant, access to the production and distribution facilities of its established competitor was crucial. In effect, the paper was dependent on the goodwill of News Limited divisions, and on excess capacity being available. It is also clear that establishing the paper in this way meant the forfeiture of some degree of management control over production and distribution decisions. Furthermore, Mr Gill's suggestion - that HWT supported *Business Daily* because it did not have a national paper, but that News Limited feared competition between the new paper and *The Australian* - casts doubt on the prospects for new metropolitan or national papers in the future to obtain sponsorship from major publishers. (Submissions pp. 160-62, 165, 171 and 179)

### The Newspaper Preservation Act (USA)

5.98 The Committee's attention was drawn to legislation in the United States which allows the sharing of presses and distribution networks

by editorially independent papers. In 1970, the Newspaper Preservation Act was introduced in the United States to exempt from anti-trust laws the actions of joint operating newspapers subject to the approval of the Attorney General on certain conditions (basically, that one or more of the papers to any new joint operating agreement is a failing company). Joint operating arrangements eligible for consideration under the Act can provide for the sharing of production and distribution facilities, and for joint action on such things as advertising sales. However, there is to be no merger of editorial or reporting staff, and editorial policies of the different papers are to be independently determined.

5.99 This legislation has the effect, inter alia, of allowing papers in probable danger of financial failure to share presses. The AJA observed that the Newspaper Preservation Act in the United States had secured the survival of about 20 newspapers. (Submissions p. 755)

5.100 However, Picard has suggested that the history of the newspaper industry since the Act was introduced 'reveals the legislation has not helped save newspapers but is one of the greatest public policy failures ever enacted by Congress'.

Since 1970, more than 200 newspapers have ceased operation. Only five papers have been 'saved' by the act, and one of those repudiated its agreement and has again begun operating independently.

Papers that currently have JOAs are not safe from failure. This is because, when the agreements expire, the dominant paper can refuse to renew the agreement and the smaller paper will fold, as was the case of the *Columbus (Ohio) Citizen Journal*. Of the 20 JOAs currently in operation, the majority will expire in the

1990s and, given current advertising and circulation statistics, seven or eight of the agreements can be expected not to be renewed. (Picard, 1988, p. 28)

5.101 There is currently a Bill before the House of Congress to repeal the Newspaper Preservation Act, in order to:

... stop the Federal Government's practice of granting sweetheart monopolies to our Nation's newspapers. (Mr Pursell, *Congressional Record*, February 28, 1991, H1285)

5.102 The concern with the legislation appears to be that ultimate discretion to approve a joint operating arrangement lies with the Attorney General. Addressing the House on the reintroduction of a Bill to repeal the Newspaper Preservation Act, Mr Pursell said:

I am convinced that the JOA (Joint Operating Agreements) practice violates our first amendment guarantee of a free press. Intended to save failing newspapers, JOA applications are put in the compromising position of being dependent on the Federal Government for their financial survival.

Nothing, and I repeat, nothing could be further from the intent of the first amendment in establishing a free press - a free press which is to serve as the watchdog over the Government. (*Congressional Record*, February 28, 1991, H1285)

5.103 It is unclear that allowing papers to operate jointly would necessarily promote competition or diversity of views in the relevant market if joint papers have an interest in securing not only their own survival, but that of their rival, so they can continue to achieve production economies. In

fact, such a scheme to prop up failing companies could actually act as a barrier to the entry of enterprising new publishers. The Act has been criticised on economic grounds.

5.104 It appears that the continued existence in the United States of a small number of papers propped up by JOAs has been at a significant economic cost. The Newspaper Preservation Act in the United States was a product of particular historical developments in the newspaper industry in that country. The Committee is not convinced it is an effective model for Australia.

5.105 The Newspaper Preservation Act provides anti-trust exemptions for the activities of joint operating newspapers in the United States. In Australia, the authorisation procedure in the Trade Practices Act already provides for companies to apply for protection from litigation under that Act, for some potentially anticompetitive arrangements - including arrangements to share production facilities, but excluding price-fixing agreements.

#### **Conclusions on the Evidence of Barriers to Entry to the Print Media Industry**

5.106 The conclusion drawn from the evidence presented to the Committee on barriers to entry is that the mass market end of the print media industry is not contestable. That is, major existing newspaper publishers are unlikely to be threatened - either in their pricing or editorial policies - by the potential entry of new publishers. The primary barriers to entry are:

- the substantial economies of scale and scope which allow the established publishers to operate more cheaply than new entrants;
- the danger of being unable to win readers to a new masthead; and
- the very high risk involved in such a market assault - due to high sunk capital requirements.

5.107 It is recognised that there are other constraints on major publishers - for example, the very real threat of readers and advertisers abandoning print for other media - but this is different to direct and immediate competition from a rival with a like product, for the reasons set out in Chapter 3 earlier.

5.108 There was overwhelming acceptance that barriers to entry to print media markets exist. These barriers are very high for metropolitan and national daily newspapers, and significant for regional and suburban papers. Nonetheless certain points were raised with the Committee to challenge the view that barriers to entry to newspaper markets are insurmountable, and that these markets are not contestable.

5.109 Given that entry for smaller newspaper publishers was considered by many to be feasible, it was suggested by some that niche publications could exert a competitive constraint on major publishers. For example, Mr Kennedy described how the *Real Estate and Community Times*

in Canberra emerged 'when *The Canberra Times* got too greedy in relation to real estate advertising'. Mr Kennedy saw this as 'a fair warning to anybody else who wants to handle their customers aggressively'. (Transcript p. 13)

5.110 The possibility of a new publisher entering a niche market with severely limited potential for expansion does not negate the existence of barriers to entry into mass circulation newspapers. Any competition between such a new entrant and a major publishing group could only be at the margin - both in terms of influencing public opinion and affecting price and quality.

5.111 The Committee has previously noted that it sees loyalty to established mastheads and economies of scale as barriers, precisely because these factors will lead to a new paper being abandoned by advertisers and readers.

5.112 The established publishers should not be assumed to be passive observers of market challenges to their respective positions. In fact, because they can reap the advantages of economies of scale and scope, they are in a strong position to engage in cut-throat competition to eliminate any new rivals which threaten their profitability.

5.113 No one has suggested that it is feasible to enter on the scale of one of the major print media groups, except by making a takeover bid for an existing group.

5.114 An examination of the competitiveness or contestability of any Australian market should include an examination of the import possibilities. In the print media industry, the very nature of the product militates against imports being able to capture a major share of the market. Daily newspapers are time critical - headlines and news items can change only hours before the papers hit the streets; moreover, newspapers are extremely bulky low unit value items which means that transport costs must be kept to a minimum. Off-shore printing of newspapers is thus out of the question. In the case of magazines where deadlines are not as tight, the freight component will still be a consideration. Although there are certainly a number of successful international magazines which have managed to gain a foothold in the Australian market (many in particular niches), the proven importance of local editorial content will reserve the major share of the market to local publishers. It is interesting in this context that two major international news magazines - *Time* and *Newsweek*, are now printed and distributed in Australia by Australian publishers - *Newsweek* as an inclusion in an Australian magazine.

5.115 While the Committee is convinced that the collective effect of the barriers discussed in this chapter militates against the likelihood of a successful new metropolitan or national daily being established, entry to other segments of the print media industry has been shown to be not as difficult. In particular, entry to niche markets is possible, although it should be recognised that, by virtue of the economic factors explored in this chapter, the existing major publishing groups are in the strongest position to exploit lucrative gaps in the market, to fight off challenges from newcomers and, subject to Trade Practices legislation, to acquire existing titles when they come up for sale.

5.116 Although the prospect of entry to magazine publishing and suburban and regional newspaper publishing is less daunting than for metropolitan dailies, nonetheless, in these market segments, the predominance of the major publishing groups will see enterprising new publishers entering at a distinct disadvantage.



## CHAPTER 6

### VERTICAL INTEGRATION IN THE PRINT MEDIA INDUSTRY

---

#### Introduction

6.1 The Committee's terms of reference direct particular attention to the effect of vertical integration on entry to, and competition within, print media markets. Vertical integration occurs when successive stages of the production process are brought under the control of a single firm. In the case of the print media industry, this refers to companies having shareholdings in the companies which manufacture newsprint, operate information gathering services, and distribute publications (at the wholesale or retail level).

6.2 There are many reasons why a company may become vertically integrated: a desire to ensure security of supply, a desire to dispense with an intermediate profit margin in the production process, a desire to participate in a lucrative business in a related market.

6.3 Vertical integration may give a company a competitive advantage over rivals if the shareholding carries with it a right of preferential access to scarce supplies or supply on specially attractive terms.

6.4 Australia's only newsprint manufacturer is half owned by News Limited. Australian Associated Press (AAP) - Australia's main independent news source - is owned by News Limited and Fairfax (43.4 per cent each), West Australian Newspapers (8 per cent), and the Harris and Rolph publishing groups.<sup>1</sup> (Submissions p. 54) The major publishers also have a significant degree of control over the distribution of their products and this will be detailed later.

6.5 Concern was expressed in submissions and at public hearings that vertical integration in the print media industry acted as a barrier to entry for new publishers. For example, the AJA, at the end of its overview of vertical integration in the Australian print media industry, concluded that:

... any new player would be reduced to colonial status, forced to duplicate an entire structure, or exist only as a de facto subsidiary at News group's pleasure. (Submissions p. 796)

6.6 The Committee examined the potential for unintegrated publishers, and potential new entrants, to obtain access on non-discriminatory terms to:

- . supplies of newsprint (magazine paper is largely imported);
- . information services; and

---

<sup>1</sup> Publishers' shareholdings in AAP attach to particular mastheads, and transfer to the new owners when the mastheads are sold. However, because the AAP Articles do not permit any one publishing group to hold a controlling interest in the company, News Limited was required to divest some of the AAP shares it had acquired with the HWT mastheads.

the distribution system for newspapers and magazines.

### **Supplies of Newsprint**

#### **Background - The Australian Newsprint Industry**

6.7 Australian Newsprint Mills Limited (ANM) was formed in 1938 and commenced newsprint production in Boyer, Tasmania in 1941. This coincided with World War II shortages of newsprint for Australian publishers. The original shareholders were the Tasmanian Government, eager to promote industrial development and employment in the wake of the depression, and the major Australian publishers at that time.

6.8 ANM is still Australia's only domestic newsprint manufacturer. It is now owned by associates of News Limited (50 per cent) and Fletcher Challenge Limited (50 per cent). Fletcher Challenge is the second largest newsprint producer in the world and owns ANM's main competitor - Tasman Pulp and Paper Company Limited (New Zealand) as well as paper interests in Canada, Chile, Brazil, the UK and the USA. (Transcript p. 1026) Prior to the Fletcher Challenge acquisition, prices to the publisher owners of ANM were set on a cost-plus basis. The price of Australian newsprint is now tied to the New York list price by a set formula. At present ANM gives customers a rebate to match the prices of its overseas competitors. Any customer can buy from ANM at this going rate. (see paragraph 6.23 below)

6.9 Since News and Fletcher Challenge became the joint owners of ANM, substantial new capital has been invested in the company. The Boyer

No 3 paper machine was upgraded at a cost of \$43 million, and the company is presently upgrading the Boyer No 2 machine at a projected cost of \$66 million. The introduction of modern equipment at the Boyer plant has been accompanied by improved work practices and lower employment levels. The Boyer plant has begun planned diversification into higher value added and specialty grades of newsprint, such as high brightness offset and telephone directory paper. A further \$35 million has been spent on environmental projects and plantation development, and ANM has announced proposals for a \$100 million wastepaper recycling plant for the Albury mill. (Submissions pp. 887-90)

6.10 Given the economies of scale in newsprint production, the high capital outlay involved in setting up a newsprint mill<sup>2</sup>, and the fact that a significant part of the customer base is tied up<sup>3</sup>, it is unlikely that another newsprint manufacturer will enter the Australian industry in the foreseeable future.

6.11 ANM supplies around two-thirds of newsprint used by Australian newspapers.<sup>4</sup> (Transcript p. 1031) The largest source of imported

---

<sup>2</sup> Professor Officer has estimated that a new world-scale newsprint mill would cost at least \$500 million to operate on an economic scale. (Submissions p. 1555)

<sup>3</sup> ANM has long term supply arrangements, extending to 1998, with major Australian publishers for a large percentage of their newsprint consumption. (Transcript p. 1028 and Submissions p. 887)

<sup>4</sup> However, in the last financial year this proportion has moved closer to 70 per cent. (Transcript p. 1027) Although ANM's output has been relatively constant, its share of the market fluctuates according to demand. In the weak market of 1983, ANM's share was as high as three-quarters of total supply. In 1989, the growth in newsprint demand taken up by imports resulted in ANM's share dropping back to 54 per cent. (Submissions p. 893)

newsprint is Fletcher Challenge from its New Zealand subsidiary, Tasman Pulp and Paper, and from Canada. Newsprint has also been imported over the last two years from other Canadian suppliers, Finland, Norway, Korea and Holland. (Submissions p. 1553) The vast bulk of magazine quality paper - coated mechanical paper - is imported. The Australian company, Associated Pulp and Paper Mills, sold an estimated 9 000 tonnes out of 124 000 tonnes of this paper consumed in 1990. (Submissions p. 891)

6.12 There are no tariff or other duties on imported newsprint and the greatest protection afforded Australian mills is transportation costs and the time that it takes overseas suppliers to deliver orders to Australia.

#### Availability of Newsprint for Newspaper Publishers

6.13 Newsprint demand is highly cyclical and is currently at its lowest level in four years in both North America and Australia. (Submissions pp. 886-87) At the same time, there is an oversupply of newsprint because of an overhang in capacity as producers introduce new machinery without closing the old capacity down. (Transcript p. 1027) In 1990 the estimated surplus newsprint production around the world was three million tonnes. (Submissions pp. 886-87)

6.14 Because of the cyclical nature of demand, it is common for newspaper publishers to enter into long-term supply contracts (5-10 years) and to source from at least two suppliers to ensure security of supply. The long-term supply arrangements with ANM typically commit publishers to sourcing a large percentage of their newsprint consumption from ANM. This, of course, guarantees ANM a domestic market for most of its output.

In evidence, Mr Graham Ogilvie, Managing Director of ANM, said that about 90 per cent of ANM's newsprint production is under contract. (Transcript p. 1028) Without a stable demand for its production, which is guaranteed by the News and Fairfax contracts, the viability of ANM would be altered dramatically.

6.15 Because of the current relatively low demand by local publishers, ANM has an output surplus and exports some of it to South East Asia; it would prefer to sell this surplus to a domestic customer. However, in the medium- to long-term most of the output could be tied up by contractual obligations to publishers. In evidence, ANM's Finance Director, Mr David Skelton said:

(When negotiating a term contract with a potential customer) ... we would have to be mindful of the volume obligations under those other contracts to ensure that we did not commit ourselves to greater than 100 per cent of what we make. So we would give thought to that.<sup>5</sup> (Transcript pp. 1051-52)

6.16 In the long-term, ANM could develop more capacity. However, in evidence, Mr Skelton said that it would not be possible to increase output from existing machinery but that ANM saw itself as the natural owner of the next newsprint machine in Australasia - 'when that market is big enough for that 240 000 tonnes, say ...'. In the meantime, 'our (ANM's) machines have

---

<sup>5</sup> Mr Skelton also noted that, as far as contract customers were concerned, if ANM, for some reason could not meet their requirements, it would seek to find supply elsewhere and supply under the ANM name unless the inability to supply was due to a force majeure event. (Transcript pp. 1052-53) So those major publishers now under contract to ANM have some advantages in terms of security of supply of newsprint.

a certain capacity and we just cannot put ten more people on and put more widgets out the door'. (Transcript p. 1045)

6.17 Mr Reynolds observed that:

... there is a surfeit of newsprint available on the world market at the moment, and one is probably in a preferred position not to be tied into any form of contractual arrangement so that one can take advantage of any spot prices that might be available on the world market. (Transcript p. 419)

6.18 A long-term guarantee, however, may be valued more highly than a short term financial advantage. Mr Reynolds, having explained the benefits of not being tied into contracts at the moment and being able to take advantage of attractive prices on the spot market, also acknowledged:

... there is a balance between the short term advantage - there is a surplus of newsprint at the moment, where you have got suppliers who would attempt to give you preferential treatment - and having to safeguard that. We would tend to be looking at something like a 60 to 70 per cent long term formalised commitment but trying to buy 30 to 40 per cent on a shorter term and taking the risk on that. (Transcript p. 434)

6.19 Furthermore, there are other disadvantages in using imports. These include the need to hold bigger stocks to ensure continuity of supply, and the reduced flexibility for changing orders, especially if they are already on the ship, in response to unexpected circumstances. ANM submitted that there has been a distinct trend away from Australian publishers sourcing paper from northern hemisphere suppliers, as selling prices (for imported newsprint) in Australia have been unattractive compared to rising costs of

manufacture and transportation - the exception being the Canadian West Coast producers who, together with Tasman Pulp and Paper (NZ) have managed production costs with relatively modern equipment. (Submissions p. 893) South Africa was a competitive supplier to Australia before sanctions were imposed and could be expected to return once sanctions are lifted. ANM also pointed out that Australian publishers have also been seeking improved service such as the ability to vary orders and reduce inventory levels, which is obtained with low lead times thus favouring suppliers close to Australia.

6.20            However, Mr Isaacson gave evidence that he had not had difficulty in obtaining newsprint on the open market:

I have never had any problems with my own newsprint on the open market. It came mostly from Tasman. We have never had any problems. A long time ago, one did have problems in getting newsprint from Australian Newsprint Mills. But since Tasman has had plenty of newsprint, we have had no problems. (Transcript p. 1058)

6.21            Mr Richard Sinclair said that the majority of newsprint for the independent papers in this group, that is, those not owned by one of the larger publishing groups, was purchased from Tasman in New Zealand, and that there had been no difficulties in obtaining newsprint except in the mid-1970s when there was a worldwide shortage. (Transcript p. 814)

## Cost of Newsprint

6.22 Newsprint comprises 20 to 40 per cent of the cost of producing a newspaper. (Transcript p. 1038) For this reason it would be a barrier to entry if some producers were unable to obtain newsprint except at a significant cost disadvantage or on unfavourable terms vis-a-vis established publishers.

6.23 ANM pointed out that the price of its standard grade newsprint is tied to the New York list price and that this price is not influenced by ANM, Fletcher Challenge or News Limited. (Submissions p. 897) Special grades of paper produced by ANM, such as Boyer white offset, are competitively priced. ANM also noted that the price, payment and delivery conditions are the same to all customers regardless of volume ordered or the existence of shareholding<sup>6</sup>. However, because ANM accepts that the New York list price has been trading abnormally high in recent years, ANM has provided a rebate to its customers to reduce the net selling price in Australia to match the prices of its overseas competitors. Virtually any customer can buy newsprint from ANM at the set price with the prevailing rebate - spot purchasers as well as contract customers. (Transcript p. 1035)

6.24 Mr Ogilvie, explaining why rebates had been given on ANM contract prices, said in evidence:

---

<sup>6</sup> This was confirmed in evidence given by Mr Sinclair, who rejected the suggestion that regional dailies owned by News Limited were given any advantage by ANM over other regional papers: 'Whether you are a small publisher using 2 000 tonnes or a large publisher using 100 000 tonnes, the price of newsprint is the same. No differentiation has been made because of large quantity volume purchases'. (Transcript p. 816)

Since late 1989-90, we have kept our contract at price (tied to the New York list price) because that is the sanctity of the contract we want to preserve. But we have faced commercial reality and introduced a rebate. We have done that. Over time, the rebate has been \$30, \$60, \$30 and now \$45. So we have moved that to keep ourselves competitive. Even though they are contracted customers, those contracts will finish one day and we do not want our customers waiting for the day when they will get out of their contracts. We want them to be confident that they are getting a fair deal. So we do have market pressures on us. (Transcript p. 1036)

6.25 In evidence Mr Ogilvie also explained that ANM did not give News Limited special treatment:

... there are very strong clauses in all the contracts that we have to treat all customers that are under contract even-handedly and that there can be no price or quality differentials in that treatment.

...

It would be counter-productive to alienate the other half, of course, given that News Limited takes only about half our volume. So, as well as the ownership change focusing the contracts that way, it is in ANM's self-interest not to prejudice that in any way. (Transcript pp. 1031-32)

### Conclusions on Newsprint

6.26 The advantage that News Limited enjoys in purchasing newsprint from ANM is security of domestic supply. This is available to other customers under long-terms contract to ANM. This advantage is not from News Limited's part-ownership of ANM but from its size and importance as an ANM customer. Smaller publishers and new entrants would be

disadvantaged in times of tight supply because the major publishers are under contract to ANM for the major proportion of that company's output (as explained in paragraphs 6.14 and 6.15 above). Other publishers would then rely on imports.

#### **Access to Information Services**

6.27 Independent information services are particularly important for new entrants whose circulation levels may not be high enough to allow a comprehensive network of in-house reporters and correspondents to be utilised on an economic scale.

6.28 Wire services usually complement other more important sources of news and information. For example, Professor Officer stated:

The majority of domestic news stories and features arise from the efforts of staff journalists on each paper. In the first instance, these are the only 'exclusive' source of news. Subsequently such staff initiated stories can be 'lifted' by other papers and bureau sources with relationships to the paper concerned.

Other sources of news in order of importance relate to press releases from government and private enterprises, tip-offs from the public, leads from other media sources such as radio and television, copy from overseas agencies and papers (the ability to source such information depends on an existing contractual relationship between the papers and the source), copy from Australian Associated Press and, finally, freelance journalists. (Submissions p. 1567)

6.29 AAP submitted that its existence results in better coverage of news:

Metropolitan dailies have been able to more effectively use journalists to provide in-depth coverage and analysis and to seek out additional material and specialist stories, knowing they can rely on AAP for an independent, accurate cover of key events.

Australia's regional dailies have been transformed since the seventies when AAP began providing a comprehensive cover of national events, and are now in a position to compete with the big metropolitan dailies circulating in their region, regardless of ownership. (Submissions p. 50)

6.30 It was suggested to the Committee that access to the wire services may on unfavourable terms for new entrants because AAP is owned by certain of the established publishers. For example, Mr Gill believed that he could only obtain AAP services at a preferred price because he was sponsored into the arrangements as a Herald and Weekly Times, subsequently News Limited, paper. (Transcript p. 542) AAP, on the other hand, informed the Committee that shareholders and non-shareholders are supplied with the same services on the same terms. However, there are savings to be made for additional papers in a publishing group which take the AAP service in the same city as another group paper, and this would explain Mr Gill's experience.

6.31 In evidence before the Committee, Mr Peter Brown, Editor-in-Chief, AAP, and Mr Geoffrey Want, Sales and Marketing Manager, AAP, outlined the company's pricing policy. (Transcript pp. 888-98) There is one set formula in the Articles of Association for pricing of the 'master package' to metropolitan daily newspapers. This

package includes the international news service, the Australian general news service and the world photo service. A set figure for each metropolitan city is established based on the population of that city. For example, there is a higher rate for Sydney than for Adelaide. If there is only one subscriber newspaper publisher in a city, then it pays 100 per cent of this fee. If there are two, they pay 50 per cent each; if there are three, 33⅓ per cent and so on. If a proprietor publishes more than one metropolitan daily title then it pays a full share of the capital city figure for its first paper and a half share for its second paper. For example, if there were two publishers in one city, and one of those publishers put out two daily papers, then the city rate would be divided between the publisher with two papers and the publisher with one paper in the ratio of 60 per cent/40 per cent respectively. However, each metropolitan daily publisher taking the AAP service in a particular city is not charged an additional fee to publish a Sunday paper. The two national papers, *The Australian* and *The Australian Financial Review* are regarded as Sydney papers under the AAP Articles.

6.32 Other metropolitan (non-daily) papers, or regional papers, or other media negotiate a separate rate with AAP for whatever services they wish to take. The pricing for regional newspapers was negotiated many years ago with industry associations or groups in different States, which apportion fees amongst their members. AAP submitted four testimonies from the editors of regional newspapers to the effect that the availability of AAP services to their papers enabled them to compete with the metropolitans in their own particular region of circulation. (Submissions pp. 70-73) A small independent regional could negotiate with AAP directly if it so wished. In evidence, Mr Richard Sinclair said:

Australian Associated Press is in business to sell its services. Over the years I would think that there has never been a difficulty of anyone obtaining a news service. (Transcript p. 815)

6.33 In addition to the news service, there are other specialised services and packages which are subject to a pricing formula. These services include the finance and business service, racing information or form guides, graphic services, the regional news service, the world and national sports service etc.

6.34 In effect, AAP's pricing policy for the supply of the basic news service to metropolitan dailies generates further economies of scale and economies in group ownership. This is not to say that the AAP subscription rate should be based on circulation figures to help new entrants; it is simply a recognition that the practical effect of the existing pricing formula is:

- to reduce the costs of the news service to established publishers when they are challenged by new entrants in the same city; new papers are in a comparatively weak financial position because of the need to meet high start up costs yet it is the incumbent which gets the cost-saving bonus from AAP when a new entrant utilises AAP's service;

- to make it less expensive for a major publishing group to start up a new additional title in a particular city than for an independent to launch a new title in that city (since additional titles of a

publisher in a particular city are charged at half the applicable rate);

to generate further economies of scale for an established paper with a high circulation, over a new entrant with a small circulation in the same city, since both papers pay the same amount to AAP in absolute terms but the bigger paper can spread this cost over more copies, resulting in lower per copy costs for the higher circulation paper.

6.35 It is interesting in this context to look at the way in which news services in other countries charge member publishers for the service. The Committee sought information from Associated Press (of America) and Agence France-Presse.

6.36 Associated Press of America (AP) bases its members' basic assessments for the provision of the news service on circulation figures of member newspapers. A newspaper can publish morning, afternoon and weekend papers in one or several cities - all that matters is total weekly circulation figures (taken from the latest annual audited figures available by July 1 each year). For each circulation bracket, there is a fixed charge plus a rate per thousand; the rate per thousand progressively decreases with movement into higher circulation brackets, but the fixed fee increases for higher circulation papers. The fixed fee ensures a continuing increase in rates as the circulation of a paper increases. Each newspaper multiplies its weekly circulation by the applicable rate for the circulation bracket in which it is placed, then adds the fixed fee to arrive at its weekly assessment. There

are additional charges for transmission of data, and special services such as Laserphoto, stock exchange data and so on. The rate structure is considered by AP to provide a way to treat everyone fairly. The current charging formula replaced the original rate structure in the mid-1980s; the old formula was based on city population figures (potential readership or area of opportunity).

6.37 Agence France-Presse advised that in France papers take a domestic and foreign news package. The rate is set individually per publication, the basis being circulation and circulation only. There is no difference between national and provincial pricing for text but there is for pictures, with national papers paying proportionately more for pictures.

6.38 Although there are other news services available in Australia, it is difficult to see that a new independent newspaper proprietor would be in a position to negotiate favourable contracts with an international news service and a host of domestic correspondents, to match the coverage provided by AAP, at a competitive cost.

6.39 One possible source of Australia-wide information for a new metropolitan paper is to negotiate for the provision of a news service by papers in other capital cities. This is what *The Independent Sun* did when it entered the Perth market in the early 1970s. It took an Eastern States news service from *The Age*. That is, until its competitor, *The West Australian*, which was providing *The Age* with its WA news service, threatened to cut off the service if *The Age* continued to assist the *Independent Sun*. (Submissions p. 295-96) The new paper, unable at that

stage to provide a comparable service, ceased to take a news service from *The Age*.

6.40 Thus, there needs to be some caution in identifying theoretical possibilities for new entrants to find a way around dependence on AAP.

6.41 The conclusion is that, although not an absolute barrier to entry to the industry, the AAP pricing policy does not encourage new entrants, and provides for existing operators to gain an advantage on the entry of competitors. This is a policy set by the Board of AAP which is dominated by representatives of Australia's two major metropolitan daily newspaper publishers - News Limited and Fairfax.<sup>7</sup> Furthermore, the pricing policy provides absolutely no incentive for AAP to encourage use of its services by new metropolitan papers since AAP earns the same assessment regardless of the number of clients in each capital city. It must be questioned whether AAP would adopt such a pricing policy if it were completely independent of all publishers.

---

<sup>7</sup> The AAP Board membership comprises Mr Lyle Turnbull, Chairman AAP Information Services (AAPIS); Mr Lee Casey, Chief Executive AAPIS; Mr Ken Cowley, Chief Executive, News Limited; Mr Greg Taylor, Managing Director, David Syme & Co. Limited; Mr Keith MacDonald, Chief Executive, Queensland Newspapers Pty Ltd and Chairman, Queensland Press Limited Group; Mr John Alexander, Editor-in-Chief, Sydney Morning Herald; Mr Jerry Austin, Group Chief Accountant, John Fairfax Group Pty Ltd. (Submissions pp. 76-82)

## **Distribution**

6.42 This section will look at the system of distribution of publications at two different levels - distribution from the presses to retail outlets, and retail distribution to consumers.

6.43 The system of distribution is different for different categories of publication. For example, metropolitan dailies are loaded onto delivery trucks as they roll off the presses and are delivered straight to newsagents for early morning home-delivery or agency sales. Suburban 'free' papers are typically dropped to regions by contract carriers, then delivered to homes by 'walkers'.

6.44 The distribution of magazines to supermarkets and department stores as well as newsagents, is handled by special distribution companies such as Gordon and Gotch, (owned by Independent Newspapers NZ, which is 49 per cent owned by News Limited<sup>8</sup>), Network Distribution Company (a subsidiary of Australian Consolidated Press), and Newsagents Direct Distribution (owned by Eastern Suburbs Newspapers, which owns the magazine publisher, The Federal Publishing Company Pty Ltd).

6.45 Mr Colin Grinham, Chairman of the Australian Newsagents' Federation, gave evidence that magazine distribution companies were fiercely competitive and eager to carry new titles; newspaper distribution was not a problem at the retail (newsagency) level:

---

<sup>8</sup> News Limited advised that Gordon and Gotch uses Mirror Australian Telegraph Publications as a carrier on a sub-contract basis. (Submissions p. 3033)

... within Australia there are distribution companies which specialise in taking from the printer the magazines and distributing them through the newsagency networks. That is very fiercely competitive. Companies are continually sending representatives overseas to get new titles, continually touting to the owners of the magazines for them to enter their stable for distribution. It is highly competitive.

Those distribution companies know jolly well that, if they do not do a good job or if they will not distribute the total number that the publisher wants distributed, somebody else will do it to get the contract. ... From the newsagency end, if somebody produced a newspaper and went to a major competitor and asked, 'Will you distribute my newspaper?', that would be commercially foolish. However, there is nothing to stop that newspaper coming into the newsagency network as a product for sale at the retail level. (Transcript pp. 637-38)

6.46 As the distribution of daily newspapers is recognised as the area where distribution presents the greatest problems for new entrants, the discussion below will concentrate on this segment of the market.

6.47 Because daily newspapers have a short 'shelf life' of less than 12 hours, metropolitan newspaper publishers are highly dependent on efficient and timely delivery to newsagents. Distribution costs have similar characteristics to first-copy costs in that they involve a significant up-front fixed cost irrespective of the size of a paper's circulation, e.g. a truck making a distribution run over a given geographic area will incur almost the same costs when fully or partially loaded; the average distribution cost decreases substantially as volume increases. This presents a hurdle for smaller publishers of newspapers who cannot sustain such distribution on an economic scale.

6.48 Professor Officer submitted that, while the distribution of newspapers to newsagents is typically handled independently by the major publishers, the economies to be earned from sharing distribution networks ensure that the major publishers will carry the product of independent publishers, provided there is excess capacity. (Submissions p. 1571) In fact, News Limited could not distribute a Saturday edition of *Business Daily* in Sydney because there was no excess distribution or printing capacity after it had fulfilled its commitments to its own papers. (Submissions p. 2515) Professor Officer, in a subsequent submission, explained that excess distribution capacity does not simply mean 'empty space'; if the demand existed, it could be that the distribution network could put on bigger trucks to service a long-term contract, thus achieving further economies of scale. (Submissions p. 2973) The question which then arises is whether or not the distribution network will assess a new entrant's chances of success, and the commercial attractiveness of handling the higher volume, as being great enough to justify the investment in increased handling capacity.

6.49 A number of witnesses and submitters to the Inquiry saw distribution as a major potential hurdle to be overcome by new entrants. For example, Mr Warren, when asked to expand on the AJA's suggestion that existing newspaper publishers be required to give access to other publishers at equitable rates, and that magazine publishers also be given access to existing distribution systems, said:

There is a bit of history of this in the United States where there have been a number of anti-trust cases on distribution. In fact, in one case it was found to be a trust activity to set up your own distribution system.

...

In terms of magazine distribution, you have the three largest magazine publishers - News Limited, ACP and Federal Publishing - running through three main distribution mechanisms. People need to be guaranteed that they can get access to those distribution mechanisms without having to duplicate the distribution as well. (Transcript pp. 192-93)

6.50 Mr Gill of the *Business Daily* suggested that there was a need for a restructuring of the print media industry to free up those services, including distribution, which would allow new entrants to test the market. (Submissions p. 163) In evidence Mr Gill agreed that access to the distribution system was the most important factor for new entrants:

... because we are a very widely dispersed country. Even our cities are pretty widely dispersed. To set up an effective system for distributing a daily newspaper is not likely to happen for people without a sole purpose interest in it.

...

The lesson from the start up of the *Independent* in London, which was able to do these things because the newsagency system and the distribution system over there are independent, is that you do not go in with a disadvantage. (Transcript p. 540)

6.51 Mr Brenchley saw distribution problems as the main barrier to entry for new newspapers:

Right now in Australia there are means by which a new magazine entrant could have its product distributed - there are several magazine distribution companies, as you have heard in evidence. There is no newspaper distribution company. A new entrant would either have to ask Fairfax or News to distribute

for them - and that would be a very interesting question to pose to those companies - or they would have to start their own distribution system. That is a very expensive exercise when we look at the geographic spread of cities such as Sydney, Melbourne, Brisbane and so on.

...

Right now there is very little, if any, incentive on either of the major newspaper companies to distribute a competitor. That is the single most important barrier to entry into the newspaper market. It would be relatively easy for a new newspaper competitor to contract printing and to buy all the relevant pre-press, which is fairly accessible, easy and relatively cheap under electronic publishing these days. There is a fair spread of printing press capacity in Australia. The distribution is the real killer as a barrier to entry. (Transcript p. 709)

6.52 Mr Suich was able to have *Independent Monthly* distributed by Fairfax and Syme, but he considered that this would not have been possible if his paper had been a daily paper:

Fairfax and Syme do it (distribution) for me and they do it extremely well. They do it competitively and economically - not cheaply but economically. My point would be that I doubt that they would (do) that if it were a weekly and I am certain they would not do it for a daily. That is the distribution barrier. Specifically, one of the reasons it is a monthly is to make sure I do not have to meet competition head on and find myself setting up a rival distribution system. (Transcript p. 1262)

6.53 Even if new newspaper publishers are able to negotiate distribution arrangements with the existing publishers, there still remains a question as to whether or not they may be disadvantaged relative to the primary users of the system. For example, by having to meet earlier print

deadlines in order to get their papers on the trucks, they run the risk of missing important news items which 'break' late. Mr Noonan, having explained that *The Australian Financial Review* shares the distribution system in Sydney with *The Sydney Morning Herald*, observed:

So when the truck heads off to Bullamakanka with the *Herald*, if we are not printed, the good residents of Bullamakanka do not get the *Financial Review*. (Transcript p. 877)

6.54 From the point of view of the existing publishers, it may be commercially attractive for them, or their contractors, to carry the publications of smaller new entrants, to achieve improved economies of scale. News Limited informed the Committee that it carries at least 77 titles, including *Il Globo*, *The Truth*, *La Fiamma*, *Sing Tao*, *Novosti*, *Australian Chinese Daily*, *Computer World* and *Trotguide* alongside its own titles. (Submissions p. 379) On some country routes trucks carry both News Limited and Fairfax publications. (Submissions p. 376)

6.55 On the other hand, it may not be an attractive commercial proposition for the existing distribution networks to carry other publishers' product, especially if it necessitates increased investment in bigger trucks (see Professor Officer's comments at paragraph 6.48 above). While it could be the case that an independent distribution network would be more conducive to new entry, such a network has not evolved. The existing publishers have had to set up their own networks; they may now ask why others cannot do the same.

## **The Newsagency System**

6.56 At the retailing level, distribution of newspapers and magazines through newsagents is organised on a State basis, and there are differences from State to State. However, in all States but Tasmania, the system of distribution is largely under the control of a Newsagency Council which is run by representatives of the major publishers.<sup>9</sup>

6.57 The Newsagency Council determines territories within which authorised newsagents may operate, approves the sale/transfer of authorised newsagents, and appoints sub-agents and/or street sellers (news stands) within defined territories. The Council also controls some aspects of newsagency operation - particularly in relation to home delivery and hours of agency opening which, of course, are of vital interest to publishers who are concerned to maintain their circulation figures; newsagents are required to carry out timely home deliveries for the delivery fee set by the Council.<sup>10</sup> The Council also acts as the body responsible for hearing complaints against the newsagents. Appeals Tribunals in each State can review certain decisions of the Council. (Submissions pp. 654-56)

6.58 Newsagents with defined territories must home deliver the publications produced by publishers on the Newsagency Council. Publishers

---

<sup>9</sup> For example, in NSW the Newsagency Council comprises one representative each from John Fairfax, News Limited, ACP and Newsagents' Direct Distribution (Eastern Suburbs Newspapers) and a representative of the newsagents. (Transcript p. 629)

<sup>10</sup> In South Australia, the home delivery fee is set by a special committee; newsagents and publishers have equal voting rights and the casting vote is held by the member of the Newsagency Appeals Tribunal.

on the Newsagency Council are also, by virtue of their membership on the Council, in a stronger position to ask that newsagents stock a full range of their products. There are no restrictions placed on newsagents regarding the other publications they may sell, and smaller publishers who are not members of the Council may have their products stocked in newsagencies; however, it appears unlikely that such publishers could force agents to carry any, let alone a complete range, of their publications, nor could they compel agents to home-deliver their titles.

6.59 Regular home deliveries reinforce established reading habits as opposed to counter sales where there is more chance of an impulse buy. For this reason, home deliveries are extremely important to the circulation of major newspapers. Home deliveries account for in excess of 50 per cent of sales in Queensland. (Submissions p. 15) Mr Reynolds, representing Independent Newspapers PLC, referred to home deliveries as 'the bedrock of all metropolitan daily newspapers'. (Transcript p. 418) Home deliveries are subsidised in some areas by counter sales. (Transcript pp. 618-20)

6.60 Membership of the Council carries with it some definite commercial advantages to publishers, namely:

- . assurance of home delivery of publications; and
- . more influence in having a full range of publications stocked by newsagents.

The Queensland Newsagents' Federation Ltd submitted that newsagents made customer base details available to the individual publisher

representatives on Council to assist the marketing exercises of publishers in that State. (Submissions p. 35)

6.61 It is important to look at whether or not the newsagency system disadvantages new publishers. In evidence Mr Isaacson stated that, when his company was publishing the *Sunday Observer* in the early 1980s:

... the newsagents were governed by two Melbourne newspaper proprietors - David Syme and Co. Ltd and the Herald and Weekly Times. The agreement under which the newsagents had a monopoly on the distribution of newspapers in their area was determined by an agreement which they had with those two newspapers. The agreement stipulated that the newsagent would open and close his shop at such times determined by the principals and that he would deliver newspapers at such times determined by the principals.

...

The proprietors did not require them (the newsagents) to open on a Sunday and did not require them to deliver newspapers on a Sunday. We felt that this was inhibiting the sale of the *Sunday Observer* - and of the other Sunday newspaper (which was a joint venture between the two major publishers) ... (Transcript p. 1077)

Later, when the two major publishers each decided to bring out their own Sunday papers, newsagents were then required to open and deliver on Sundays. (Transcript pp. 1077-78) It appears that Council members can influence newsagents to conduct their businesses to the benefit of the publishers; publishers outside the Council must rely on being able to persuade newsagents that stocking their publications is in the newsagents' commercial interest.

6.62 Mr Suich, when asked if he had had any trouble getting newsagents to stock his paper, the *Independent Monthly*, replied:

Only in the nature of newsagents, in the sense that few newsagents - sensibly enough - are interested in low turnover products. They see their stands, rightly, as places to actually turn that product over and make as much cash flow as they can. Broadly, they have (been) good and cooperative. (Transcript p. 1262)

6.63 If there are advantages to publishers in being on the Council, then it would be a matter for concern if there were obstacles to a new publisher taking up such membership. According to Mr Grinham, admission of additional members to the Newsagency Council in NSW requires the unanimous consent of the existing members. (Transcript p. 631) Newsagents Direct Distribution was recently admitted to the Council.

6.64 It may be that the breakdown of the system of territorial monopolies for newsagents could disadvantage small publishers since retailers would choose to stock only the high volume titles and not a complete range of the publications that are now sold in newsagents. Mr Grinham observed:

You would find that once you start to fragment the market, the supermarkets, the corner shops, the mums and dads, the convenience stores, do not want, for example, *Dance Australia* (No. 100 in a recent profile of best selling magazines) - they want the high volume titles. That erodes the ability of the newsagent to stock that five or six copies of *Dance Australia*, or whatever it might be, within his newsagency. (Transcript p. 616)

6.65        However, there is no doubt that the current newsagency system provides definite competitive advantages to the incumbent publishers who are members of the Newsagency Councils.

6.66        When the Trade Practices Act was introduced in 1974, participating publishers and newsagents sought authorisation from the Trade Practices Commission for the newsagency systems in each State, recognising that the arrangements might otherwise be in breach of the Act. Authorisation by the Commission gives potentially anticompetitive conduct protection from litigation under the Act.

6.67        In 1979, the Commission issued a draft determination proposing to deny authorisation to the system in NSW and the ACT. The Commission found the system to be highly anticompetitive, and could not identify offsetting public benefit. The Commission was unable to accept that maximising circulation was, in itself, a public benefit.

6.68        The Minister for Business and Consumer Affairs, on behalf of the Commonwealth Government, made a submission to the Commission's authorisation inquiries on the NSW newsagency system. As the Commission pointed out in its submission to the Print Media Inquiry:

The Government asserted that there was, in a democratic society, a public benefit in securing a low cost efficient method of distribution that would lead to the widespread availability of publications both in terms of home delivery and sales over the counter. (Submissions p. 470)

The Commission gave special weight to the Government's submission and made a final determination authorising the system, a decision which formed the basis for the Commission's consideration of the newsagency systems in other States except South Australia. When the Commission came to examine the South Australian system several years later it decided, in the first instance, not to authorise that system; the parties came back to the Commission with an amended system which was eventually authorised in 1988.

6.69 Mr Christian Jose, Supervising Project Officer of the Trade Practices Commission's newsagency study, gave evidence that:

In handing down its determination on that matter (the arrangements in South Australia), the Commission recognised it was taking a different approach to what had been adopted in all of the States other than South Australia. It announced that it would conduct a study into the distribution of newspapers and magazines nationally. ... Essentially, the study was aimed to inform the Commission of how the (authorised) systems were operating ... (some eight years) after they had been considered in detail in NSW and the ACT ... but also to inform the industry of what the Commission saw at that time were some significant issues that the industry should consider itself in terms of the efficiencies that were gained from the distribution arrangements and the effects on the retailing side of business. (Transcript pp. 92-3)

6.70 The Trade Practices Commission distributed an issues paper in connection with its study; one outcome of this was an indication by the Victorian parties that they would be prepared to explore with the Commission possibilities for change to the system to lessen the anticompetitive effect. This process is still continuing. If the Commission is

unable to achieve reform of the system by negotiation, the options open to it include revocation of the original authorisations if it can establish that there has been a material change in circumstances since the newsagency authorisations were granted.

### **Conclusions on Vertical Integration**

6.71 Vertical integration by the major proprietors - into newsprint, information services, distribution and printing, places new entrants at a competitive disadvantage.

6.72 In relation to production and distribution facilities new entrants have three options:

- . replicating the complete system (at massive capital cost and/or with little or no hope of operating these facilities on an economic scale);
- . tapping into their competitors' systems, perhaps again at a marked cost disadvantage (always provided that there is excess capacity to begin with, and keeping in mind that there is always the risk of being 'dumped' if the integrated publisher needs to expand);
- . finding a way around the existing systems (which is likely to have cost disadvantages and is

administratively difficult, if indeed it is possible at all).

These three options place new entrants at a competitive disadvantage.

6.73 In relation to the supply of newsprint by ANM, the evidence indicated that there was no price discrimination. A large percentage of ANM's current production was under contract to major publishing groups, including ANM's part-owner, News Limited; however, it should be noted that this situation is to the benefit of ANM, not simply its contract customers. Imports of newsprint were considered to be a viable alternative source of supply.

6.74 With respect to information services, AAP's pricing formula for the basic news service to metropolitan papers increases scale economies in the production of newspapers. However, there was no suggestion that anyone had ever been denied access to the service. The Committee noted that AAP has adopted a pricing policy whereby an established metropolitan publisher is given a discount on its AAP assessment on the entry of a competitor, and where it is less costly to add a new title to a group than to set up a new independent paper.

6.75 In evidence, Mr Gill said:

... if Australian Newsprint Mills, AAP and a distribution company existed in isolation, they would have an interest in promoting (more papers). ... If they were owned independently, they would have an interest in encouraging them (new entrants).

It is much more likely in those circumstances that people would appear to try their hands. (Transcript p. 556)

6.76           Conversely, it needs to be recognised that the commitment and involvement of the major publishing groups underpins the very existence of the newsprint mills, the information services, the distribution networks and, of course, the press capacity. Integrated publishers may now reap advantages from their shareholdings in these ventures, but they have been prepared to put up the risk capital in earlier times. For this reason, ensuring fair access to the facilities of established publishers involves a delicate balancing of interests.

6.77           The Committee was urged to consider ways of ensuring access for new publishers to the integrated facilities of major publishers, particularly the newspaper distribution network. Yet, as the *Business Daily* experience showed, such a relationship is dependent very much on the cooperation and goodwill of the company providing facilities or services, and also on excess capacity being available; it is not a relationship which could easily be enforced. Indeed, enforcement of such a relationship would be inequitable to a company which has outlaid the necessary capital for production and distribution facilities.

6.78           It is not suggested that vertical integration by the major publishers has been set up deliberately to discourage new entrants. Like economies of scale, vertical integration is a feature of the industry which inhibits new entry.

## CHAPTER 7

### IMPROVING COMPETITION AND DIVERSITY

---

#### Introduction

7.1 A recurring theme in many submissions to the Committee was the need for action to increase competition and enhance diversity of print media, particularly daily newspapers. The necessity for intervention was generally based on the premise that the current level of ownership concentration was the result of market failure, was not conducive to effective competition and was a threat to the free and fair presentation of views. Consequently, corrective action was considered to be necessary to reduce the level of ownership concentration or, at the very least, ensure that it does not increase further.

7.2 A few submissions put forward the alternative argument that the current level of ownership concentration reflected the commercial imperatives underlying newspaper publishing. The operation of these commercial imperatives inexorably leads to increased concentration and group ownership especially with declining sales and the tougher economic environment for newspapers. Diversity, however, does not necessarily decline with increased concentration. It is possible that a more viable, stronger newspaper would be able to devote a higher level of resources to editorial content and presentation of diverse views within its pages. Indeed, these witnesses argued it would have to present diverse views to continue to

attract a broad readership. Furthermore, they said newspapers should not be considered in isolation. The electronic media compete strongly with newspapers for both audiences and advertising and help provide the community with access to a diverse range of views and opinion.

7.3 The following discussion examines these views and assesses the proposals to improve competition and diversity of opinion.

#### **Desirability of Strong Competition**

7.4 Competition is generally considered to be in the public interest. In the case of newspapers it has an additional dimension in that it provides scope for a better informed society. Ownership concentration, on the other hand, can act against effective competition and may reduce diversity of information and opinion.

7.5 The Norris inquiry considered ownership concentration to be undesirable. In its view:

The two major dangers associated with the concentration of ownership are, first, loss of diversity in the expression of opinion and, second, the power of a very few men to influence the outlook and opinions of large numbers of people, and consequently the decisions made in society ... . (Norris, 1981, p. 217)

7.6 The AJA supported this view. In its opinion:

Concentration of ownership in the media threatens the diversity of information necessary for the practice of democracy at the level of the individual, the community, the nation or the world. (Submissions p. 743)

7.7 Mr Cowley contended that:

... ownership does not impact on the success of a newspaper or the quality of what is in a newspaper. It is the health of a newspaper and the quality of the people working in it (that do). ... So I do not think that having more owners is going to make newspapers better or more honest or more diversified than they are. (Transcript pp. 454-55)

7.8 Professor Peter Swan and Dr Gerald Garvey for News Limited disputed the conclusion reached by the Norris inquiry. They were of the view that 'concentration in the media business, both in terms of large newspapers and of large owners, is a natural and desirable outcome of the competitive process'. (Submissions p. 2123)

7.9 According to them, equating diversity with the number of available newspapers as Mr Norris had done '... is quite the wrong way to approach the subject of diversity of views'. Since the viability of a newspaper depends on its appeal to a broad readership, to survive even a monopolist newspaper will need to present a range of views reflecting the non-homogenous nature of the society's views. This is so because:

It always pays a monopolist to offer as appealing a range of product characteristics to consumers as possible. ... In general ... we would not expect to see a greater range of 'views' in a competitive situation compared with a monopoly situation. (Submissions p. 2112)

7.10 Professor Swan and Dr Garvey further argued that diversity of views are unlikely to be constrained by ownership concentration. Their submission refers to Hotelling's analogy on the location of competing ice-cream sellers in the middle of a beach rather than at a distance from each other. Hotelling's theory was aimed at explaining why two competitors in a specific market will tend to become almost indistinguishable in terms of the products or services they provide. Professor Swan and Dr Garvey argued that the analogy is applicable to newspapers:

... if the severity of scale economies limits a proprietor to only one title, that title will adopt editorial policies to appeal to the average (or in this case median,) newspaper reader. He will also locate in the middle of the beach. Since he has to attract readers from both ends of the beach who are not compelled to buy his, or for that matter, any newspaper, the range of views offered will be as wide as possible. (Submissions p. 2117)

7.11 This line of argument confuses the range of stories and information contained in a newspaper with diversity of views. It may well be that the range of stories and the amount of space devoted to them is not substantially affected by concentration of ownership. Indeed, given the economics of newspaper production this should not be surprising. Two competing newspapers not only cater to substantially the same wide audience, but also rely on largely the same sources for stories (exclusive syndication arrangements would be an exception) and use similar practices

to gather them. If one of the papers closes down, the continuing need to cater to the same audience essentially necessitates continued coverage of a similar range of stories by the remaining newspaper. The relevant issue, therefore is not whether the range of stories or categories of information presented is affected by concentration, but whether the interpretation of the stories is more likely to vary when newspapers are independently owned.

7.12 The need for a wide circulation daily newspaper to offer a broad range of views to retain its appeal to a large audience, however, does not diminish the dangers identified by Mr Norris. The existence of competitors provides the checks and balances against potential misuse of the power of concentrated ownership. Although such a function may be undertaken to some degree by other media, it is likely to be more vigorous when direct competitors engage in 'watchdog' roles against each other.

7.13 The value of this latter function was highlighted by the Hon. James Kennan, QC, MP, Attorney-General of Victoria. In his evidence to the Committee on the impact of ownership concentration on media ethics, he said:

It is very common, for instance, in the United Kingdom, where you have a range of quality papers, for the inadequacies of one paper to be savagely attacked and exposed in another paper. You have seen it historically in papers such as the *Telegraph*, the *Times*, the *Guardian*, and now the *Independent*, often taking delight in exposing the foibles of another paper. In a sense, that strengthens the journalistic comment and culture and, to paraphrase a phrase used about politicians, it helps keep one another honest. That is something that you do not see much in the Australian media, and as a general principle,

obviously you are not going to see it if there is a greater level rather than a lower level of media ownership (concentration). (Transcript p. 562)

7.14 In the view of the Committee, competition and diversity of views are inextricably linked. More sources of information are more likely to offer readers wider diversity than fewer sources. While the range of views offered by a wide circulation newspaper has to be necessarily broad, it is unlikely that it will offer views which appeal to minorities but which may offend the sensitivities of other readers. Also, it is likely that two newspapers will regularly interpret the same stories differently.

7.15 As discussed earlier in the report, the pervasive economies of scale in newspaper publishing both at the individual newspaper and group level would invariably favour a monopoly. If the economies of scale were pursued to the fullest possible extent, without concern for social impact, they would be likely to lead to a single group controlling and publishing all the newspapers in Australia. While monopoly newspaper owners may pass on some of the scale benefits to readers, the Committee is concerned that a further increase in concentration of newspaper ownership would be damaging on both economic and social grounds.

7.16 Newspapers, qualitatively, are not like other products. They serve both an economic and an information function. Diversity of views is more likely to be available under conditions of diverse ownership of media outlets. The possible stifling of variety of opinion, which may flow from ownership concentration, would be a serious loss to society. In the words of the second UK Royal Commission on the Press:

... the real danger may not lie in the active propagation of one-sided views, but in the conscious or unconscious suppression of shades of opinion which ought to have a voice<sup>1</sup>. (September 1962, Cmnd. 1811, p. 19)

7.17 The issue which remains to be addressed then is what level of competition is desirable. Evaluation of this issue will highlight whether current arrangements are adequate for the purpose or whether Government intervention is necessary to secure a more competitive environment in the print media.

#### **Competition Law**

7.18 The main law governing competition in Australia is the *Trade Practices Act 1974*. The underlying principle of the Act is that restrictive trade practices are, by their very nature and effect, against the public interest. The Act applies to business conduct in general including the conduct of print media corporations. There are no specific provisions in relation to print media. The Act is administered by the Trade Practices Commission (TPC).

7.19 The major provisions of the Act relating to competitive conduct are:

Section 45 which prohibits arrangements and understandings which substantially lessen competition and exclusionary provisions.

---

<sup>1</sup> The passage from which this is taken was quoted in full at Chapter 2 paragraph 2.12.

- . Section 45A which outlaws collusive price-fixing.
  
- . Section 45D and 45E which prohibit secondary boycotts resulting in substantial lessening of competition or the exclusion of people from markets by reason of anticompetitive agreements.
  
- . Section 46 which prohibits a business with a substantial degree of power in a market from taking advantage of its market power for the purpose of eliminating or substantially damaging a competitor, preventing entry of a person into any market, or deterring or preventing a person from engaging in competitive conduct in any market.
  
- . Section 47 which prohibits anticompetitive exclusive dealing.
  
- . Section 48 which prohibits resale price maintenance.
  
- . Section 49 which prohibits anticompetitive price discrimination.
  
- . Section 50 which prohibits mergers or takeovers which would result in a corporation being in a position to dominate a substantial market for goods and services in Australia or in an Australian State

or Territory, or which would substantially strengthen an existing position of dominance. Section 50 is the key provision relating to ownership concentration.

7.20 Parties whose conduct would or may contravene some of the sections of the Act may seek immunity from prosecution by applying for authorisation. Most conduct caught by sections 45, 47 and 50 of the Act could be exempted by authorisation.

7.21 The authorisation process includes examination of the likely effects of the relevant conduct by the Commission in a public forum. Generally, submissions are called from parties likely to have an interest in the matter in question. Authorisation essentially involves balancing the public benefit and public detriment flowing from the conduct and is unlikely to be granted unless the benefit outweighs the detriment.

7.22 In its submission to the Committee the Trade Practices Commission stated that in the context of authorisations:

(It) had accepted a variety of benefits as benefits to the public.  
For instance:

- . fostering business efficiency;
- . industry rationalisation;
- . expansion of employment in efficient industries;
- . assistance to efficient small business;
- . enhancement of the quality and safety of goods and services.

(Submissions pp. 449-50)

7.23 Authorisation is an option available to merging parties and is exercised solely at their discretion. The Commission cannot force or demand an application for authorisation. Usually, the Commission advises the acquiring corporation that the merger could be in breach of the Act and suggests that authorisation should be sought. The acquiring corporation is not bound to accept the Commission's advice and could well choose to proceed with the merger. If that happens, the Commission, if it considers that a particular merger breaches the provisions of the Act, can only oppose the merger in the Federal Court. The Commission outlined this situation as follows:

For instance, if an acquisition was proposed and it was felt by the party(ies) to the acquisition that the acquisition may be caught by s.50 of the act then the acquirer could apply for authorisation. If authorisation was not sought and the Commission was of the view that the acquisition would be likely to contravene the Act it could institute proceedings in the Federal Court. (Submissions p. 449)

7.24 The Commission stressed that the broader public benefit considerations would not be part of court proceedings where the test is strictly confined to the likelihood of dominance occurring or being strengthened by a merger:

In the context of an application for authorisation matters such as editorial independence, diversity of opinion and diversity of ownership would be relevant issues that the Commission would have regard to when considering the public benefits/detriments of an application. As a matter of law, however, public benefit issues such as these can not be taken into account by the Commission (or the Federal Court) in considering, for instance, whether there has been a breach of s.50. (Submissions p. 450)

7.25 The Committee concluded that the process (as distinct from the criteria) for ensuring competition and thus encouraging diversity of opinion is adequate. However, whether the application of this process ultimately leads to adequate levels of competition and diversity depends entirely on the criteria on which the process is based. The two most important criteria in this regard are the appropriateness of the dominance threshold and the definition of the appropriate market. (The economic characteristics of the print media market were discussed in detail in chapter 4.)

7.26 According to the TPC: 'Definition of market is crucial in determining whether conduct is or is likely to be caught by the Act'. (Submissions p. 451) The Commission argued that the relevant market in print media mergers does not extend to electronic media. It said:

The Commission certainly accepts that in terms of provision of news and information there is some substitutability between print and electronic media, and that for advertising of certain particular products there is substitutability. The Commission remains of the view, based on its market enquiries, that there continue to be substantial core and separate markets for print media and for electronic media. (Submissions pp. 452-53)

7.27 Another important aspect of defining a market is its geographic boundaries. Essentially the Commission limits the geographic boundaries to the primary markets in question. In its submission it indicated that when considering the News Limited takeover of the Herald and Weekly Times it found that for metropolitan daily newspapers 'there were a number of discrete print media markets which were effectively confined to particular metropolitan areas'. (Submissions p. 453)

7.28 The Commission also pointed out in its submission that it 'is only able to analyse the effect of media mergers in terms of their effect on particular markets as provided for in the provisions of the Act'. (Submissions p. 453) The Act, of course, deals primarily with economic aspects of markets and competition. Consequently, it may not easily capture or give due consideration to the social benefits flowing from the broader role of newspapers to disseminate information and influence public opinion.

7.29 The influence of newspapers, it is argued, extends well beyond their readership. The Friends of Fairfax, for example, submitted that:

*... the print media's record of breaking news, specialised commentary and ability to explore complex subjects ... (gives) it such an influential role and makes it in Australia the agenda setting media'. (Submissions p. 1161)*

They added that the broadcast media, particularly television, are constrained in the amount, type and depth of coverage of news stories they present and to a large extent depend on print media for leads. They indicated, for example, that a typical television news program carries between 14 and 20 stories with an average length of about 90 seconds.

7.30 A number of submissions to the Committee, for example CLC, AJA, Friends of Fairfax, Victorian Government and the ACIJ argued that ownership concentration has severe adverse effects on the important social role of newspapers. Furthermore, many of the proposals for reform presented to the Committee aimed at correcting the perceived adverse impact of ownership concentration. The view that concentration of

newspaper ownership in Australia is excessive raises the issue of whether competition laws, by themselves, are capable of protecting and fostering the availability of a diversity of views.

7.31 As noted by the Treasury submission, diverse and widely disseminated information is essential for our social and cultural enrichment, for the democratic process and for the efficient working of the market. The submission argued that diversity relates both to ownership and content and consequently:

... it is difficult to formulate policies expressly directed towards promoting diverse content, policy is normally directed towards at least ensuring diversity of ownership and control, i.e., not allowing a single firm to unduly dominate a market.  
(Submissions p. 2817)

7.32 The Committee has considered at length whether the provisions of the Trade Practices Act, and particularly s.50 dealing with mergers and takeovers, adequately foster competition in the print media and whether it is sufficient to guarantee a diversity of information to our society. In addition to the substantial volume of evidence received in this regard, the Committee has also had the benefit of the extensive examination of issues relating to mergers in the reports of the House of Representatives Standing Committee on Legal and Constitutional Affairs, *Mergers, Takeovers and Monopolies: Profiting from Competition*, May 1989 (Griffiths Report), and of the Senate Standing Committee on Legal and Constitutional Affairs in its report, *Mergers, Monopolies & Acquisitions: Adequacy of Existing Legislative Controls*, December 1991 (Cooney Report).

**7.33**        **The most important issues with regard to mergers and takeovers are:**

•        **whether the current merger test which prohibits mergers resulting in dominance or a strengthened position of dominance is appropriate for the print media; and**

•        **whether any change to the merger test is likely to produce the desired outcome on its own or whether it should be augmented by other measures such as limits on the ownership of newspapers.**

**It is to these issues that the discussion now turns. The Committee reviews the evidence it received on these issues in the two sections immediately following. The Committee's assessment of the need for action is presented in the concluding section of this chapter.**

#### **Dominance Test For Mergers**

**7.34**        **The current 'dominance' test has its origin in amendments to the Trade Practices Act introduced in 1977. Prior to that, section 50 of the Act prohibited mergers or acquisitions which resulted in substantial lessening of competition in a market for goods and services. When introducing the amendments, the Hon. John Howard MP, Minister for Business and Consumer Affairs, stated that:**

The Government has decided that the categories of merger to be subject to the Act should be quite limited. There should be no unnecessary impediment, legislative or administrative, to the attainment of rationalisation of Australian industry. It is in Australia's best interest to achieve economies of scale and improved international competitiveness. (House of Representatives, *Debates*, 3 May 1977, p. 1478)

7.35 The TPC's submission to the Committee provided guidance on the meaning of dominance. It said:

A dominant firm is characterised as having such a degree of market power that competitors or potential competitors are unable or unwilling to offer any significant competition.

Mere possession of a substantial market share in a particular market does not necessarily indicate that a particular firm is dominant. The characteristics of the structure of the particular market need to be carefully examined before an assessment of dominance can be made. For example, if a particular firm with a major market share attempted to increase its prices significantly and as a result new entrants absorbed a significant market share then it would be difficult to argue that the original firm was dominant. Similarly if in response to an attempt to increase prices by the original firm customers exerted countervailing power and were able to negotiate reduced prices, then the original firm could not be said to be dominant. (Submissions p. 454)

7.36 The Commission pointed out that the factors which the courts consider to be relevant for the assessment of market dominance are:

- . the number and size distribution of independent competitors;
- . the height of barriers to entry;
- . the extent of product differentiation;

- the character of vertical relationships with customers and suppliers and the extent of vertical integration; and
- any factors which restrict the independent operation of competitors.

Of these factors the courts have emphasised that the single most important individual factor is the height of barriers to entry. If barriers to entry are high a firm is potentially capable of acting in (a dominant) manner without regard for potential competition. (Submissions p. 455) The Committee notes that another factor taken into consideration by the courts is the capacity of the merged firm to determine prices for its services without being consistently inhibited by other firms.

7.37 The Commission considers that the present dominance test:

... sets a very high market threshold and as a consequence has allowed concentration to develop to high levels in a number of industries, including the print media industry. The Commission's view is that the dominance test which is said to assist mergers in the traded sector has provided a shield for mergers in the non traded sector. Although the Commission acknowledges that increased concentration does not necessarily always mean less competition, it is concerned about the fact that increased concentration may lead to higher barriers to entry. There have been a number of mergers examined by the Commission where the market dominance threshold has not been met but where competition has been substantially lessened. For example, the News Limited/Herald and Weekly Times acquisition would have been considered in a different light by the Commission had a substantial lessening of competition test applied ... . (Submissions p. 472)

7.38 The Treasury's assessment of whether the merger provisions of the Trade Practices Act should be strengthened led it to conclude that:

It is clear that in industries such as the print media where import competition is not strong and entry/exit costs are significant, the potential of mergers leading to anti-competitive effects may be quite high.

The potential anti-competitive effects may better be avoided by preventing mergers than by applying other sections of the TPA (and other legislation) as they may be difficult and costly to detect and act against.

This suggests a case, in principle, for a degree of tightening of the merger test as it applies in industries where domestic or import competition is weak and barriers to entry are high (such as the newspaper industry). An example of such a tightening would be an appropriately interpreted substantial lessening of competition test.

Moving to a substantial lessening of competition test could, however, provide a signal that the Government has decided to take a substantially more intrusive approach to merger policy than hitherto. This is particularly so because, for better or worse, the original substantial lessening test was replaced by the dominance test in 1977. Any change in the legislation would probably be accompanied by considerable uncertainty as to its effects on mergers and, hence, aspects of business behaviour, for some years. This uncertainty would gradually be reduced as cases were heard in litigation and the courts' interpretation became increasingly settled. (Submissions p. 2828)

7.39 The Rt Hon. Malcolm Fraser, former Prime Minister, supported a return to the substantial lessening of competition threshold for mergers which applied until the introduction of the dominance test in 1977. In his evidence to the Committee he said:

The 1977 legislation for which my Government was responsible has been a total and absolute disaster. Without that legislation the takeover of the Herald and Weekly Times could not have taken place and a great move forward in terms of media dominance was undertaken. The legislation was written in terms of dominance instead of a reduction of competition. (Transcript p. 906)

7.40 Support for a reversion to a substantial lessening of competition test was extensive and included the ACTU, AJA, CLC, Friends of Fairfax, Mr Brenchley, Mr Noonan, Australian Press Council among others. Some submissions went further and proposed stricter control of newspaper mergers either by imposing limits on ownership or by introducing special public interest criteria against which such mergers would be judged.

7.41 The Australian Press Council recommended adoption of a substantial lessening of competition test because it would remedy a number of difficulties contained in the current test. According to the Council:

The principal difficulty with Section 50 is that it directs the application of Section 50 to a given market and not to competition as such. The market is in practice defined by three boundaries. These are those established by the functional market, the geographic market and the product market.

...

The functional market has less application to the press than to other sectors of the Australian economy.

...

The geographic market limits a consideration of a takeover of a corporation to a consideration of the area in which the relevant newspaper principally circulates.

...

The view (which has prevailed) in the Trade Practices Commission that newspapers are a distinct product market and that the wider media is not the market. (Submissions pp. 1357-58)

7.42 Other submissions argued against a change to the dominance test. Professor Officer contended that 'there is nothing in economic theory that tells what is the difference (between dominance and substantial lessening of competition). It could well be that you need to be dominant before you cause a substantial lessening of competition'. (Transcript p. 1250) He also disputed the need for special treatment for the print media:

... what distinguishes the print media from other forms of industry that you need to give it special attention? We have heard and ... seen vague assertions that it is different. Well, wheat is different, bread is different. It is important. So are wheat and bread and steel and a whole host of other things. What is different about it? As I said in my introduction, basically from an economic point of view the major difference with the print media is that it is dealing in information, and information is a commodity or a good that is hard to establish a property right over ... (that) is certainly not an argument to pull it outside the Trade Practices Act and to give it special attention. (Transcript pp. 1254-55)

7.43 Professor Swan was of the opinion that the TPC had:

... a very limited role in the newspaper market. (The TPC) admit that themselves, because they correctly point out that in Australia it is not a national market for newspapers. Therefore, in their terms, there was nothing uncompetitive about News, for example, acquiring the Herald and Weekly Times. They might have marginally increased concentration nationally, but there is

no national market. ... They also admit that there is likely to be only one supplier. So it is not going to make any difference, in the case of media, which particular test you use. That is why I agree with (Professor Officer) that it is inappropriate for them ... to want to introduce some very vague, unspecified grounds for intervention which are not spelt out. (Transcript pp. 1253-54)

7.44 Mr George Masterman QC argued that:

It is well recognised that newspaper mergers involve special considerations different from ordinary mergers. Recent recognition is found in Article 21(3) of the Merger Regulation of the European Commission which came into effect in September 1990. Article 21(3) exempts from the general exclusive control of the European Commission mergers affecting the 'plurality of the media'. It was recognised that member states might wish to have their own individual merger legislation in the special fields of 'public security, plurality of the media and prudential rules'. (Submissions p. 2740)

7.45 At the public hearings, another economist, Dr Brown, in response to the question 'why is media, or print media in particular, different from perhaps other groups having a dominant position in their markets?' said:

My feeling is that it is mainly an economic issue as to whether the steel industry is a monopoly, the washing powder industry is a monopoly or the widget industry is a monopoly, but newspapers, because of their very nature, their social importance and their implications for the operation of democracy, newspapers need to have special consideration. The implications of having monopoly media markets, I suggest, have a dimension that most other markets do not have. (Transcript p. 991)

7.46 Dr Brown's view partly reflects the views expressed by various inquiries that, because of its capacity to influence public opinion, the print media's output has dimensions which extend beyond those of typical economic commodities. (see discussion of Other Inquiries in Chapter 2)

7.47 Professor Baxt, former Chairman of the TPC, disputed the need to change the merger threshold test. He was of the view that:

There is inadequate evidence, in my view, for a change from dominance to substantial lessening of competition as the relevant benchmark. To rely on work being done by overseas economists which have no direct relevance to the Australian economy, in the absence of Australian research to the contrary and in the face of the fact that the current provisions do work, would be to make such a significant change to our law one which Australia would pay for dearly both in the short and long term. However, it is my view ... that mergers involving the media ... should be subject to a public evaluation by the Trade Practices Commission. Indeed, it would be my view that such mergers should be required to go through a similar process to the authorisation process which is currently available in the Act to deal with anti-competitive mergers and other anti-competitive practices and agreements. (Underlining in original) (Submissions pp. 1756-57)

7.48 In his evidence to the Committee, Professor Baxt further explained his proposal. Essentially, unless there were to be a mandatory requirement for public evaluation of proposed sensitive mergers, such a merger would be able to proceed if it did not breach the dominance threshold contained in section 50 of the Act. As the Act now stands, assessment of the public benefit/detriment would come into play only as part of considerations to determine whether mergers exceeding the dominance threshold should be authorised. (Transcript pp. 1447-51)

7.49           The Attorney-General's Department also argued:

... so far as the general merger test is concerned, those who are suggesting that there be a change from the present test to a lower test need to make their case ... our view is that unless a change can be justified the present merger test, which is one of dominance, should remain. ... We see nothing wrong with a special regime which may apply to particular industries if the Government and the Parliament think this is desirable.

In summary, we believe that the general merger test should apply to all industries but, if for good reasons there is a need for some special treatment of a particular industry, that should be the subject of specific industry legislation which addresses the needs of that industry. (Transcript pp. 154-55)

#### **Divestiture and Ownership Limits**

7.50           A number of individuals and groups were of the view that general competition laws would be ineffective with regard to newspapers and saw the need for the introduction of specific ownership limits and/or enforced divestiture to ensure competition and diversity of views.

7.51           In his evidence Mr Fraser stated that he opposed 'dominance by local or foreign media proprietors' and suggested divestiture without compensation. He said:

I do not want anyone's views to be dominant. I want there to be a lot of media ownership. In relation to the media ... we should adopt a good old-fashioned American private enterprise competitive principle and establish a program for divestment - the way they did for oil companies and for AT&T because they thought they were too large and too powerful.

...

I would provide no more compensation than the American Government did to AT&T and Standard Oil - a brass farthing. (Transcript pp. 917 and 921)

7.52 According to Dr Brown, reduction of ownership concentration 'is likely to be achieved only by divestiture of some existing newspapers within the provisions of amended trade practices legislation'. (Transcript p. 989) He was of the view that 'exclusive focus on s.50 of the Trade Practices Act really is missing the main issue'. (Transcript p. 992) In his submission to the Committee he concluded that:

Even (the current) highly concentrated ownership structure is unlikely to be maintained without federal government regulation. In the absence of regulation it is probable that the continued effect of economies of scale and the 'drive towards growth' will at some time in the future, bring about further concentration of newspaper ownership with the acquisition, by News and/or Fairfax, of the Bell and Stokes papers. (Submissions pp. 125-26)

7.53 The Communications Law Centre (CLC) argued in support of ownership limits and divestiture and presented two options for achieving less concentrated ownership. Its proposals were based on conclusions including:

- i. Concentration of ownership and control of the print media is unacceptably intense.
- ii. Barriers to entry are unacceptably high.
- iii. The operation of market forces alone will neither cure nor appreciably ameliorate the situation. On the contrary, worsening concentration has been one of the consequences of market forces in the print media industry. ... (Submissions p. 1035)

7.54 The two options proposed by the CLC involved the imposition of ownership limits either through legislation or through determination by the TPC or an appropriate regulator. The first option proposed limiting newspaper ownership by a person or corporation to no more than one each of metropolitan daily newspapers, national daily newspapers and metropolitan weekly (usually Sunday) newspapers. The limits would apply only to existing titles with no ban on starting new papers in metropolitan markets other than the one in which the existing metropolitan daily is held. In regional and suburban markets two tiers of limits would apply with an individual or corporation being precluded from holding more than 25 per cent of the total circulation of regional daily newspapers in any state or territory (except where the limit is exceeded by the circulation of a single title) and 25 per cent of the aggregate circulation of regional daily newspapers throughout Australia. The same formula would apply to regional non-daily newspapers. In addition, common ownership of regional daily or non-daily newspapers in adjoining circulation areas would be prohibited. A similar 25 per cent circulation limit was also proposed for suburban newspapers in any capital city and aggregate Australian circulation. For magazines, a 25 per cent limit on aggregate Australian circulation was proposed. (Submissions pp. 1039-41)

7.55 The Committee estimates that implementation of such a proposal would result in News Limited being broken up into at least 17 different groups (see Appendix 9 for details). Such a course of action would raise serious doubts about the continued viability of some of the resultant groups.

7.56 The second CLC option would allow the regulator to determine allowable limits. Those exceeding the limits would be required to divest the 'excess' titles or circulation within five years or at the time of any change in the effective control of a corporation occurring within that period. The CLC also proposed a special print media section within the Trade Practices Act or 'separate purpose-built press diversity legislation'. (Submissions pp. 1042-44)

7.57 The AJA presented a similar proposal involving ownership limits, divestiture within a period of five years, and a special print media section in the Trade Practices Act providing for referral of all print media takeovers or mergers to the TPC. Under the proposal, the TPC would also have the power to refuse print media mergers which would lessen competition. The proposed ownership limits, which were to apply only to existing, rather than new titles, were:

- . one daily newspaper in one city except where common ownership is necessary to prevent closure;
- . two metropolitan and one national daily newspaper with no more than one daily in Sydney or Melbourne;
- . three regional dailies which must not be circulating in adjoining areas;
- . prohibition of common ownership of metropolitan and suburban newspapers in the same city;

prohibition of dominance of the suburban newspaper market in any metropolitan city;

prohibition of common ownership of newspapers and magazines. (Submissions p. 821)

7.58 Other witnesses in support of ownership limits and/or divestiture included the ACTU, Friends of Fairfax, Mr David Bowman, Mr Cratis Hippocrates and Dr Stuart Cunningham.

7.59 The idea of ownership limits or divestiture was opposed by the Swan and Garvey submission on behalf of News Limited. They argued that:

*... fundamental economics implies ... that a severe cost would be imposed on both newspaper owners and readers from enforced diversity of newspapers. Diversity in terms of newspaper titles, while perhaps desirable in itself if the price is not excessive, implies circulations lower than they would otherwise be. In turn, a smaller circulation implies a newspaper with less advertising and editorial content and probably also less expenditure per page of editorial content. The cover price will also tend to be higher.*

Even when readers differ greatly in their socio-economic status or preferences, there is no reason to expect them to be willing to meet the high cost associated with diversity of newspaper titles. This is because diversity in terms of titles says nothing about diversity in terms of newspaper content. (Submissions p. 2097)

7.60 Professor Swan and Dr Garvey pointed out that: 'Very considerable economies of scale underlie expansion by a single newspaper, or a group of newspapers sharing a printing press, in a particular region'.

(Submissions p. 2086) They contend that the incentive from these economies of scale 'rather than some plan by media barons to dominate, lies behind high levels of concentration in terms of newspapers'. (Submissions p. 2086) Consequently, they conclude that 'it would be disastrous to contemplate (say) divestiture of newspapers sharing common facilities in a city such as Sydney or Melbourne'. (Submissions p. 2087)

7.61 The submission by Professor Swan and Dr Garvey also addressed the question of 'why ... newspaper barons or magnates exist'. According to them, one of two possible explanations<sup>2</sup> is that:

... successful newspapers require one of those rare individuals who are willing and able to back their own judgements and create an 'empire'.

...

The basic idea is that tightly controlling, even 'messianic' owners are critical to the success of a newspaper.

Furthermore, such owners are rare and thus should be 'spread out' over more than one newspaper. (Submissions pp. 2101 and 2103)

7.62 They then concluded that 'large and "hands-on" ownership is in fact critical to the running of a print media enterprise. Performance would be substantially impaired by an external attempt to forcibly "deconcentrate" ownership of such businesses'. (Submissions p. 2104)

---

<sup>2</sup> The other is that 'control over a newspaper chain provides the proprietor with "power or influence" which can be used to promote activities other than newspapers'. (Submissions p. 2101)

7.63 The Treasury argued against ownership limits and the enforcement of diversity by divestiture because such action 'may inevitably reduce economies of scale and raise the costs of publishing newspapers, thereby reducing the affordability of newspapers and the number of people who could read them'. (Submissions p. 2831)

7.64 Mr Brenchley was also opposed to divestiture. His main argument was that it would be inequitable to force companies to divest when their current holdings had not contravened Government policies or regulations when they were acquired:

Those companies have made their investments against the background of government policy. It is not fair to wound them commercially for their adhering to government policy. (Transcript p. 683)

#### **Subsidies**

7.65 Subsidies, grants, taxation concessions and other forms of financial assistance have been used, on occasions, as additions or alternatives to regulatory intervention in a market. With respect to print media, some overseas countries have long-established mechanisms to subsidise production of newspapers and other publications. Also, many countries provide postal concessions for the distribution of publications. In Australia, apart from postal concessions to registered publications, the only form of industry specific subsidy at present is support for small circulation cultural magazines.

7.66 The Committee considered suggestions for extending subsidies, low interest loans and tax concessions to encourage new publications and thus foster more diversity. In general, support for subsidies was not strong. Other proposals, while receiving some support, were canvassed by relatively small numbers of submissions.

7.67 The Communications Law Centre supported subsidies, low-interest loans and other assistance for smaller publications 'provided that applicants can demonstrate adequate business plans, a target audience not already well served and appropriate accountability for funds used'. (Submissions p. 1049) However, when Mr Chadwick appeared before the Committee on behalf of the CLC, he said:

Our concern is that there is nothing in principle wrong with some public subsidy of greater diversity. It is better though to allow the market to generate that diversity for all sorts of reasons, including the ability of government to punish or reward by the use of the subsidy tool. (Transcript p. 359)

7.68 Support from other witnesses was also limited. The Australian Centre for Independent Journalism (ACIJ) noted:

It may well be that some form of state intervention is needed in the developmental phase to remove or reduce the barriers to the establishment of new publications, and to ensure that a greater diversity of views is made available through the print media. (Submissions p. 1247)

7.69 At the public hearings, Professor Julianne Schultz, Director of the ACIJ, expressed support for a tax concession mechanism to assist new entrants and thought that:

Implementing some sort of subsidisation scheme along those northern European lines is not really within the recent experience that we have had in this country. As such, it would be likely to be resisted with some seriousness. (Transcript p. 391)

7.70 Other submissions were opposed to subsidies or other financial assistance through taxation concessions. The Press Council thought that suggestions for such measures were misguided and was opposed to them. (Submissions p. 1366) Mr Brenchley opposed subsidies and low interest start up loans (Transcript p. 733) and Mr Cowley said that he does not 'agree to the principle that some media operators would be subsidised and others would not'. (Transcript p. 484)

7.71 Mr Warren on behalf of the AJA said that 'the market has developed to such an extent that the subsidies would have to be enormous to enable a new daily newspaper to be established in any city ...'. (Transcript p. 221) Dr Brown thought that: 'The argument for subsidising papers in direct competition (with an existing paper) ... is pretty hard to sustain'. (Transcript p. 1019)

7.72 Of the small number of witnesses who discussed postal subsidies all supported them. For example, the AJA recommended that Australia Post maintain its registered publication rate. (Submissions p. 741)

7.73 Mr Peter Moylan, Industrial Officer, Australian Council of Trade Unions (ACTU), argued for the retention of Australia Post's Registered Publication Service. The service was important, not only for the distribution of union journals, but also for a 'number of small and more independent publications ... and various other professional journals. ... The publishers of those, journalists who add to the diversity of media publications in Australia, should not be lumbered with heavy increases in postal charges, such as to effectively price them out of the market potentially, or force them back into smaller publications'. (Transcript p. 1367)

7.74 The Registered Publications Service, a traditional concessional postal service, has been available to publications published at least four times a year, devoting at least 25 per cent of their content to news and information and with a maximum cover price of \$5.00. Registered publications are classified into two categories (A and B) attracting different concessions. Category A (attracting approximately 30 per cent concession) is restricted to certain country publications and the publications of religious organisations, certain relief or welfare organisations and to retired service person organisations. Currently, there are over 3 000 such publications. Category B (attracting 25 per cent concession) includes publications serving commercial purposes or for special interest groups of various kinds ranging from small clubs to unions, employee and professional organisations. There are more than 9 000 such publications.

7.75 The Registered Publication Service has been operated at a loss for many years. In 1990-91 it incurred a loss of \$21.3 million of which approximately two-thirds related to Category B publications. In an effort to

eliminate the loss, Australia Post plans to phase out the service and replace it with a commercially priced 'PrintPost' bulk distribution service. Since 2 January 1992, publications are being advised, at the time their annual registration expires, that they will lose their entitlements after 12 months if they are registered in Category B, or 24 months if they are registered in Category A.

7.76 The Committee considers that the postal concessions have provided a valuable contribution to the distribution of information to large sections of the community. Some of the publications benefiting from the concessions have small circulations and would be unlikely to have access to alternative distribution arrangements. Removal of the concession could well affect the viability of some of them. However, the Committee recognises that some large volume commercial magazines, whose viability would not be impaired by the loss of the concession, also receive substantial benefits from the service.

7.77 In the interest of promoting diversity of opinion the Committee calls on Australia Post to review its decision to remove the subsidy for Category A publications, especially those with low circulations.

#### **Research**

7.78 The Committee has already noted the lack of official statistics on the print media industry and has recommended regular collection and publication of appropriate data by the Australian Bureau of Statistics. The Committee was also dismayed at the paucity of applied economic and social research into the operations, structure and performance of the print media

and its impact on society. Regularly, throughout the Inquiry both witnesses and the Committee were forced to rely upon overseas research studies to evaluate the Australian situation. Clearly, such a state of affairs is undesirable and should be rectified. Therefore it would be valuable if more research into the print media were conducted by such bodies.

7.79 The Committee notes that applied economic research with an industry focus is conducted by various Commonwealth Government research bureaux. However, none of them has responsibility for research into the print media industry.

7.80 In the Committee's opinion, a body such as the Bureau of Transport and Communications Economics should have the specific responsibility to undertake and publish research on matters of importance to the print media industry.

### **Conclusions**

7.81 The Committee is convinced that the print media industry has special characteristics flowing from its role in delivering information and ideas to society about itself. A well informed democracy should have access to a wide range of opinions and information. An excessive level of print media ownership concentration can be a potential threat to maintaining the diversity of sources of information.

7.82 The provision of information, however, cannot be shielded from economic forces. The available research, mainly from overseas, strongly suggests that head-on competition for the same market segment between

newspapers in the same primary market eventually leads to dominance by one of the competitors. While competition law may prevent a newspaper in a market from taking over a competitor, it cannot prevent the effect of the economic forces which may render one of the competitors unviable.

7.83 The economic forces favouring group ownership of newspapers are not as strong. Economies of group ownership are significant, but are not critical. *The Canberra Times* and *The West Australian* are good examples that group ownership is not necessary for viability.

7.84 The arguments in support of group ownership are similar to those which oppose cross-media ownership restrictions and limits on ownership of radio and television stations. When radio and later television were introduced in Australia, newspaper owners were among the first to acquire licences. They had the expertise, resources and economic incentives to establish stations. Indeed, it was concern about concentration of ownership of radio stations, mainly by newspaper interests, which led to the introduction of ownership limits for radio stations. Cross-media limits and limits on the ownership of broadcasting services are primarily motivated by a desire to foster a diversity of views. Although they may impose some economic efficiency losses, the public benefits arising from the limits are deemed to outweigh the likely losses (see discussion in Chapter 9).

### **Public Examination of Mergers**

7.85 Increasing ownership concentration of Australian metropolitan dailies has been a feature of the domestic market for at least three decades and has led to a significant and growing level of community debate and

concern. The News Limited acquisition of the Herald and Weekly Times was a further major step towards the current situation. The TPC stated:

Although the Commission believed that the acquisition would have resulted in dominance in the metropolitan newspaper markets in Queensland and South Australia, it felt at that time that a more cost effective way of addressing this potential breach was to secure the divestment of the afternoon newspapers in Brisbane and Adelaide rather than taking action in the Federal Court. (Submissions p. 460)

7.86 The Trade Practices Commission has been criticised for its apparent preparedness to work out arrangements such as those which allowed News Limited to proceed with the Herald and Weekly Times acquisition rather than seek to force News Limited to demonstrate, at an authorisation hearing, that the proposed merger was in the public interest. Professor Baxt felt that the Commission could have examined the acquisition in a public way "by saying to News Limited, "Look, if you think you have got a merger that you want to proceed with, you seek authorisation. You show us why this is in the public interest". (Transcript p. 1446)

7.87 The Committee concludes that print media mergers involving major newspapers should be examined in a public forum which gives interested parties the opportunity to make submissions. In examining the Herald and Weekly Times acquisition the Trade Practices Commission should have been more aggressive and should have insisted that News Limited seek an authorisation. The Commission should benefit from its subsequent assessment of the final outcome of that acquisition and ensure that, in future, greater onus is placed on acquirers to apply for authorisation or defend their action in the Federal Court.

## Pre-Merger Notification

7.88 The Committee considers that print media mergers or acquisitions which are likely to raise community concerns should be subject to mandatory notification. Mandatory notification should provide the Trade Practices Commission with the opportunity to fully assess whether a merger should be opposed and whether the parties involved should be required to seek authorisation before proceeding with the merger. The Committee concludes that the parties to a print media merger should be required to notify the Trade Practices Commission of their intention to merge at least 10 days before the merger is to be effected. Such a requirement would be consistent with the current provisions of the Broadcasting Act which require parties acquiring interests in breach of the ownership, cross-media or foreign ownership limits to notify the Australian Broadcasting Tribunal at least 10 days before the breach is likely to occur.

7.89 We note that the Senate Standing Committee on Legal and Constitutional Affairs has made a similar recommendation proposing obligatory notification of all 'mergers or acquisitions of a substantial nature'. What constitutes a matter of substantial nature was not defined by the Senate Committee, but its recommendation proposed that it "should be limited so that undue burden is not cast on those who must comply." We believe that a threshold aimed at industry in general would be unable to capture all newspaper mergers likely to be of concern to the community. Because of the special characteristics of newspapers, we believe that a specific threshold is required to make this provision consistent with our proposal for print media mergers. However, because we share the view that

undue burden should not be imposed, we propose to limit mandatory notification to mergers involving national/metropolitan daily and Sunday newspapers and regional daily newspapers with a substantial circulation.

7.90 Clearly, not all mergers or acquisitions involving print media will fall into this category. For example, the acquisition of a newspaper by a corporation with no media interests would not affect ownership concentration. Similarly a merger involving two small independent suburban newspapers may be desirable if the outcome is likely to strengthen competition. Since the major concerns relate to daily newspapers the Committee proposes that notification be mandatory for all mergers involving any national/metropolitan newspapers, or regional daily newspapers with an average daily circulation of at least 30 000.<sup>3</sup>

### **Tighter Merger Test**

7.91 The current dominance threshold for mergers in the Trade Practices Act has failed to preserve a desirable level of competition in some sections of the print media, particularly metropolitan daily newspapers. High levels of ownership concentration have led to concern that there is a potential threat to diversity of opinion.

7.92 Supporters of newspaper groups point to the economic benefits of group ownership. They argue that the editors of the individual newspapers operate largely as independent units in competition with each

---

<sup>3</sup> Regional daily newspapers with a circulation of at least 30 000 include the daily newspapers published in major centres such as Newcastle, Canberra, Wollongong, Geelong, Townsville, Toowoomba and Launceston.

other. They also claim that the commercial imperatives of reaching a broad readership necessitate the publication of diverse news and opinions.

7.93 Although opponents of extensive group ownership were able to point to allegedly biased news coverage, the evidence before the Committee did not support claims of widespread editorial intervention by owners or corporate management. It would be naive, however, to suggest that owners and corporate management have no say. They not only set the general editorial direction for their newspapers, but they are also likely to have a significant influence through the financial and operational objectives they set for each newspaper. Copy swapping arrangements, desire to win approval from superiors, self-censorship by journalists, training arrangements for new journalists and the movement of journalists and editors within the group are also likely to affect the diversity of opinion throughout the group.

7.94 Some witnesses argued that newspapers 'set the agenda' for other media. While this may have been true in earlier periods, the significant growth of news and current affairs programs on radio and television over the past decade has considerably changed the situation. Although newspapers still retain some of their agenda-setting character, the available information suggests the existence of a cross-flow of ideas between the electronic and print media.

7.95 The introduction of cross-media ownership restrictions has in many ways balanced the effects of concentration in print media. Furthermore, the significant expansion of radio and television services in recent years has brought about increased access to a diversity of views throughout Australia. Most Australians have access to at least one ABC

radio service, the ABC television service, the SBS television service, at least one commercial television service and a commercial radio service. Those living in capital cities and other major population centres have access to up to five television services and a multitude of radio services.

7.96 The availability of a wide range of broadcasting services, however, would not justify further increases in newspaper ownership concentration. Newspapers play an important role in informing society which is quite distinct from that of the electronic media. Because of the importance of that role, the public interest requires the maintenance of an active and competitive newspaper sector. In the Committee's view, it is important, therefore, to ensure that relevant laws foster competition and diversity of opinions in newspapers.

7.97 Given the interpretation of 'market' with regard to the Trade Practices Act, it is unclear whether the present law would be able to prevent further concentration of ownership. It is questionable, for example, that other than in a marginal sense the present law would be breached by News Limited taking over a newspaper in a city (e.g. Perth or Launceston) where currently it does not own a daily newspaper.

7.98 The Trade Practices Commission has indicated that:

... there have been instances where there has been concern that acquisitions resulted in a detriment to the public particularly because of fears of a loss of diversity in available news and opinions and of a possible loss of editorial independence. The Commission has shared this concern but could not take action

because no contravention of the Act was involved (no potential dominance in a particular market) and no authorisation application had been lodged. (Submissions p. 458)

7.99 The dominance threshold for mergers, of course, would not be a problem if incumbent operators were exposed to substantial, actual or potential challenge by new entrants or faced a substantial level of competition from imports. As was noted earlier in the report there are considerable barriers to entry to some sections of the print media, particularly metropolitan daily newspapers. Furthermore, the characteristics of daily newspapers, such as the focus on local stories, the very short time between their production and consumption, and their bulk, prevent any significant import competition.

7.100 With high barriers to entry and no significant import competition, further decreases in competition would not be ruled out totally if the current merger threshold test were retained. Further concentration in the ownership of metropolitan daily newspapers is unlikely to be in the public interest. Consequently, the risk that it might occur should be minimised. In doing so, however, care should be exercised to ensure that unnecessary distortions to market forces are not introduced. A tightening of the merger threshold would satisfy these requirements.

7.101 Although the Griffiths Report recommended retention of the dominance threshold for mergers in general, it was 'conscious of, and sympathetic to, the heightened public expectations that appropriate levels of competition are maintained and, where possible, improved in the newspaper sector'. It was of the view that a then current TPC inquiry into

certain newspaper concentration issues, should have been broadened to examine and consider 'what, if any, special provisions are appropriate in relation to newspapers'. (Griffiths Report, p. 61)

7.102 The Committee notes that the House of Representatives Standing Committee on Finance and Public Administration in its report, *A Pocket Full of Change*, November 1991, recommended that the merger test for banking be tightened to a 'substantial lessening of competition'. We also note that the Senate Standing Committee on Legal and Constitutional Affairs has recommended a substantial lessening of competition threshold for all mergers in general. Its report concluded that arguments for a tightening of the merger threshold were particularly strong for industries not exposed to import competition or where high barriers to entry exist. We believe that tightening of the merger test for print media should proceed whether or not the Government tightens the merger test for other industries. Of course, if the Government adopted the Senate Standing Committee's recommendation, as well as our recommendation, it would have the added advantage of a uniform merger test for all industries.

7.103 Because of the special characteristics of the print media, the Committee considered the possibility of recommending a 'lessening of competition' test for print media mergers. Under such a test, most print media mergers would be likely to breach the test and require authorisation. While such an outcome would allow the public benefit of every merger to be examined by the TPC, the Committee was concerned that it may overload the Commission. The Committee was also attracted to the increased consistency offered by the substantial lessening of competition test because it also applies to other sections of the Trade Practices Act.

Furthermore, if the recommendation of the Cooney report is implemented by the Government, court rulings on the definition of substantial lessening of competition will also apply to print media.

7.104 On the basis of all these factors, the Committee concludes that there are very strong justifications for the adoption of a 'substantial lessening of competition' threshold for print media mergers.

### Consideration of Public Interest

7.105 The Committee acknowledges that a substantial lessening of competition test, on its own, will not dispel community concerns about the public detriments which may result from undue concentration of print media.

7.106 As noted earlier, the Trade Practices Commission has argued that 'had there been a substantial lessening of competition test or mandatory authorisation of media mergers the TPC would have been able to examine the (HWT) merger to a greater extent ...'. (Submissions p. 458) It also stated that: 'With a substantial lessening of competition test concentration trends in the media may be reduced with the resultant increased competition.' (Submissions p. 473)

7.107 However, the Trade Practices Commission acknowledged that the exclusive focus on anticompetitive effects of mergers has meant that 'there have frequently been other public detriments which have not been properly considered or debated'. (Submissions p. 473) To ensure adequate opportunity for public debate and consideration of broader social benefits the Commission suggested a two-pronged solution:

mandatory authorisation procedures for mergers exceeding a certain threshold; and

reserve power for the Government 'to refer to the Commission for report smaller print media mergers requesting special consideration to issues such as media diversity, cultural reporting and editorial independence.' (Submissions p. 473)

7.108 Diversity of opinion and truth and accuracy in reporting are of fundamental importance to the public interest. While no law will be able to totally guarantee these ideals, steps can be taken to ensure that any potential threat to them, which may arise from a merger or acquisition, is fully evaluated in a public forum which allows all interested parties the opportunity to air their concerns.

7.109 The Trade Practices Commission confirmed that the current merger authorisation process includes consideration of some of the special aspects of the media industry as part of the broader public interest. The Committee concluded that consideration of these matters in authorisations should be mandatory and not left to the discretion of administrators. The Committee, therefore, accepts that there is a strong case for the introduction of a special print media section in the Trade Practices Act to define the matters which must be taken into account in authorisation proceedings.

7.110 The Committee was presented with various arguments opposing the introduction of special provisions for print media in the Trade Practices Act. Essentially, the arguments centred on whether any such special provisions should be part of the Trade Practices Act or should be enacted

as separate legislation. In the Committee's view, the effect on print media mergers would be the same in either case. However, since the proposed additional consideration is intended to be part of the merger process and to be administered by the TPC, the Committee believes that it would be more appropriate for the special print media provisions to be incorporated in the Trade Practices Act.

7.111 The matters to be included in the special provisions for print media mergers should be adequately detailed and carefully defined. This will ensure that important matters of wide public interest are not left to be decided by administrative discretion. The principal objective of the provisions is to require the Trade Practices Commission to fully examine the likely impact of the proposed mergers on continued availability of a diverse range of views and opinion during authorisations of print media mergers.

7.112 The availability of diverse and widely disseminated information and opinion is essential for the democratic process and for the cultural well-being of our society. Because of the print media's key role in this regard, it is important, therefore, to ensure that print media mergers do not create situations likely to threaten free expression of opinion or fair and accurate presentation of news. There may be cases, however, where production of a publication is unlikely to continue unless a merger or acquisition is allowed to proceed. Under such circumstances the public interest may be better served by authorisation of the merger even though it may substantially lessen competition.

7.113 The Committee concludes that the Trade Practices Act should be amended to incorporate a new section on the print media requiring authorisations to examine and take account of the likely impact of a merger on:

- (i) free expression of opinion;
- (ii) fair and accurate presentation of news; and
- (iii) the economic viability of the publication if the merger does not proceed.

#### **Divestiture**

7.114 The proposal by the Committee to adopt a substantial lessening of competition test for newspaper mergers will not have an immediate effect on the current level of ownership concentration. An immediate reduction in concentration could not be achieved without some form of divestiture. After consideration the Committee decided not to recommend this drastic action since the tighter merger test will lead to increased competition over time. As noted earlier in the report, industry concentration is largely promoted by the substantial economies of scale and scope which exist within the print media industry. Regulation which prevents such economies could generate an economic loss and may well reduce the quality of the output. Such a loss could be justified only in a situation where the social benefits arising from the regulation outweigh the loss.

7.115 In addition to the argument that it is inherently unfair to enforce divestiture, it would be difficult to implement. As the evidence before the Committee points out, the operations of the major newspaper groups are

highly integrated. It is not uncommon for individual publications within a group to share production and distribution facilities. This could make satisfactory separation very difficult. The breaking up of a group would also raise questions about the continued viability of the resultant units. The elimination of scale economies would be reflected in increased production costs which, in turn, would have to be passed on to readers and advertisers. The impact may well be a reduction in circulation and appeal to advertisers.

7.116 The history of newspaper groups dominated by strong personalities both in Australia and overseas suggests that a group such as News Limited will follow the path traversed by similar empires and eventually will be broken up. Examples include the Syme, Fairfax and HWT groups in Australia, the Beaverbrook group in the United Kingdom and the Hearst corporation in the USA. In that eventuality, the Committee's proposals should ensure that subsequent ownership groupings will not reach the current level of concentration.

7.117 In the longer-term, therefore, the Committee's proposals for the print media industry are likely to achieve increased competition without divestiture. Eventually, the proposals should also have a substantial impact on the ownership structure of the Australian print media.

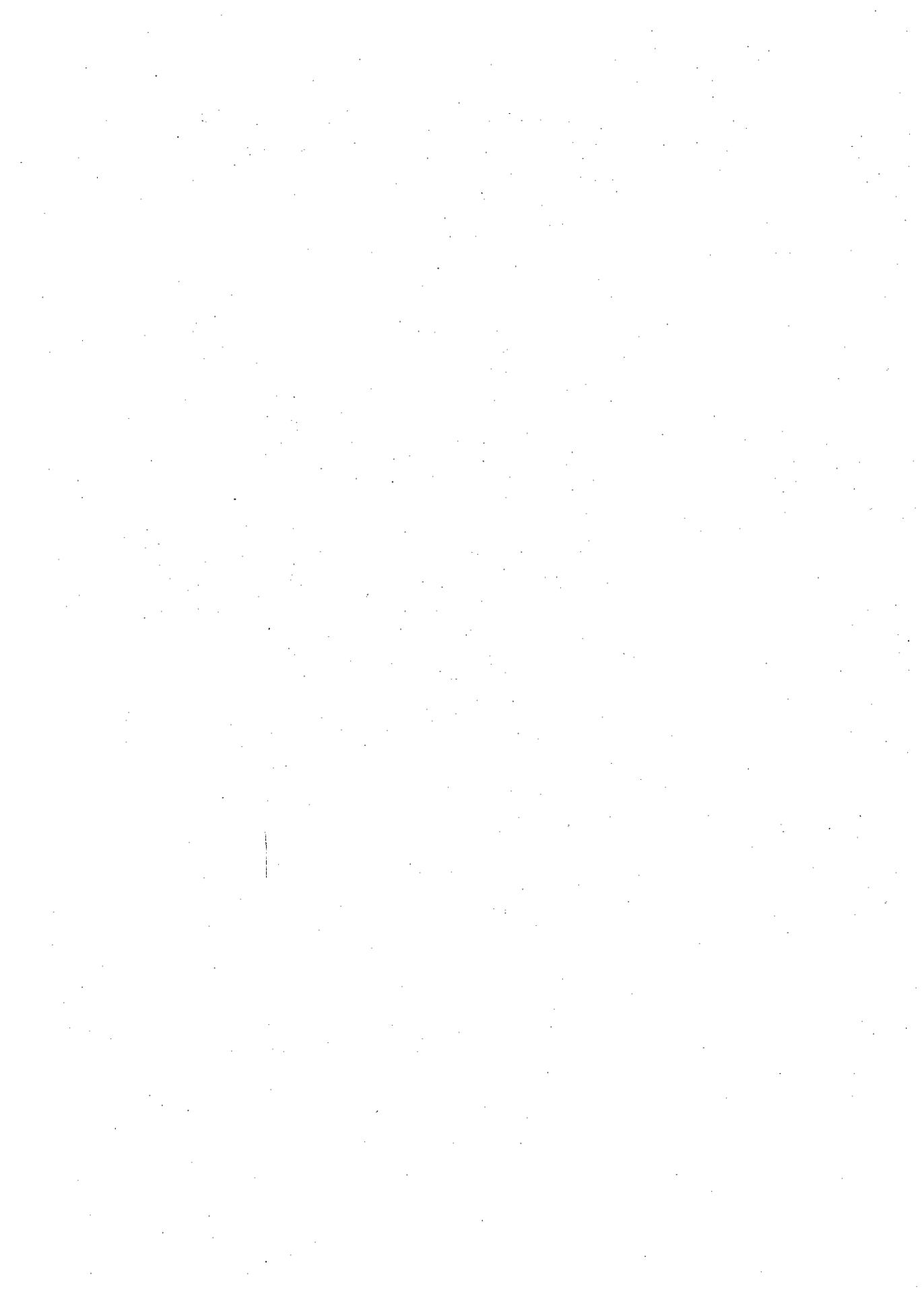
### **Recommendations**

7.118 The Committee is confident that adoption of its proposals for mandatory pre-merger notification, substantial lessening of competition test for print media mergers and a special print media section in the Trade Practices Act should prevent the occurrence of undesirable increased

concentration of newspaper ownership in Australia. The proposals should also allay the considerable public concern about print media and should ensure that the community will continue to have access to accurate presentation of news and to sufficient diversity of opinion.

**7.119 The Committee recommends:**

- . **adoption of the substantial lessening of competition threshold for print media mergers;**
  
- . **mandatory 10 day pre-notification of print media mergers involving metropolitan/national newspapers or regional daily newspapers with an average daily circulation in excess of 30 000 copies;**
  
- . **incorporation of a special print media merger section in the Trade Practices Act requiring authorisations to examine and take account of the likely impact of a merger on:**
  - (i) free expression of opinion;**
  - (ii) fair and accurate presentation of news; and**
  - (iii) the economic viability of the publication if the merger does not proceed.**



## CHAPTER 8

### EDITORIAL INDEPENDENCE

---

#### **Introduction**

8.1 The fifth term of reference asks the Committee to inquire into and report on 'the practicability of editorial independence between proprietors and journalists'. The issue of editorial independence is considered to be particularly relevant in situations where ownership concentration and barriers to entry are high. Since the underlying economic factors are promoting ownership concentration, there is concern about its effects on the plurality of viewpoints which some claim would have been provided by diversity of ownership. This concern has prompted calls for guarantees of editorial independence which will enable an editor to select and present news and views without interference or control by the proprietor or management.

8.2 Several reasons have been advanced to support editorial independence. One is to resist pressures that result from industry concentration. The 1977 British Royal Commission on the Press said this on the guaranteeing of an editor's rights:

We have recorded and take very seriously the possible dangers to diversity of opinion and expression which accompany the growth in concentration of ownership of newspapers. It can

generate pressures which only editors can resist. ... If editors are to be independent, we believe that they should be assured of their basic rights. (July 1977, Cmnd. 6810, pp. 154-55)

8.3 A similar conclusion on the effects of concentration was drawn in the report of the Canadian Royal Commission (the Kent Report) which said that the power exercised by newspaper chains in shaping the editorial content of its newspapers is pervasive. The Communications Law Centre drew the Committee's attention to the conclusion of the report which states that: 'To suggest that they (i.e. the chains) foster editorial independence is, as is said in French, to dream in colour'. (Submissions p. 1052)

8.4 A second reason advanced by those calling for guarantees of editorial independence is conflict of interest. In addressing the question of why the public should trust the judgement of the editor rather than the proprietor, The Age Independence Committee said that 'today's proprietor, however well intentioned, usually has financial interests that may well be affected, or may seem to be affected, by the editorial stance of the newspaper. The danger is that of real or perceived conflicts of interest'. (Submissions p. 217)

8.5 A third reason is the uniqueness of the print media. In discussing the question of why proprietors should give up power, Mr Paul Chadwick of the Communications Law Centre said that:

The justification usually offered is that because the products of a media outlet are news and opinions, it is uniquely more than a mere business. Its 'moral existence', being of critical

importance to the healthy functioning of a democracy, must be separated from the influence of its 'material existence' as a product from which owners derive profit. (Submissions p. 1089)

8.6 For these reasons, the key issue underlying editorial independence is the desirability of separating the legitimate rights of a proprietor or management to run a business for profit from the editorial process which includes the preparation and selection of news and commentaries on that news.

8.7 In this chapter the roles and functions of the major players - proprietors, editors and journalists - are discussed, together with a brief discussion of the training of journalists and a review of the corporate culture thesis. This is followed by an examination of the impact of ownership concentration on content, with particular reference to reporting of news on the business interests of a proprietor. The various mechanisms proposed to the Committee for supporting editorial independence, such as charters of editorial independence, codes of ethics and contracts for editors are then discussed. The role of the Press Council in handling complaints is then discussed briefly. In the conclusions to the chapter, the Committee reviews the main thrust of the arguments and makes a series of recommendations.

#### **Roles of Proprietors/Editors/Journalists**

8.8 During the course of the Inquiry, both formally through submissions and evidence as well as informally during inspections, the Committee heard from a number of proprietors, potential proprietors and managing directors about their roles in the running of newspapers. Their

comments, together with those of editors and journalists, have enabled the Committee to form a picture of the respective roles and interrelationships between proprietors, editors and journalists.

8.9 It is important not to view these roles in isolation. A close reading of the evidence makes it clear that good relationships between proprietors and editors on the one hand, and editors and journalists on the other, are crucial to the success of newspapers.

#### **Editor's Relationship with Proprietor/Management**

8.10 The well-being of all three parties - proprietors, editors and journalists - requires adequate profits to sustain the viability of a newspaper. Mr Taylor reminded the Committee that 'newspapers exist only if they can make a profit'. (Transcript p. 1117) The demise of many newspapers in Australia in recent times, particularly the afternoon newspapers, bears testimony to that statement. Mr Reynolds expressed the importance of profits differently when he said that 'at the end of the day the only ballot box that really counts for us is readership and circulation numbers - that is what we have to achieve'. (Transcript p. 424)

8.11 *Proprietors or management, and editors, cannot work in isolation.* Quoting Mr Conrad Black, Mr Trevor Kennedy, then Managing Director of Tourang Limited, said that one cannot 'build a Great Wall of China around the editorial section'. Mr Kennedy added that 'management has to reserve the right to protect their investment' by intervening if the editor is 'out of touch with his audience'. (Transcript pp. 37 and 39) Protecting their investment could also include decisions on the positioning

of the paper in the market which Mr Robert McKay, Managing Director of Australian Independent Newspapers Pty Ltd, said was 'very important' and where 'the connection between editorial independence and optimising financial returns is absolutely fundamental'. (Transcript pp. 310-11)

8.12 It is thus important to recognise the interrelationship between management and editors, and the managerial function of editors. Mr Brenchley said that 'while the editor is just the editor', the job of the editor 'is also to maximise the circulation of that paper'. Mr Brenchley continued:

If that is his job that coincides with the proprietor's aims, wishes and so on and with the commercial aims of the paper as well. An editor's job is not to destroy the circulation of a newspaper; it is to effectively enhance it as best he can. That should meet the same aims and wishes of the proprietor; it should not abrogate the proprietor's rights. (Transcript p. 725)

8.13 The managerial function of editors was also referred to by Mr Healy, who said that the editor uses a lot of the resources of the company 'so that particular aspect of his work falls within the company plan or the company activity'. (Transcript p. 423)

8.14 It was generally accepted across the industry that responsibility for the appointment of editors rests with proprietors, management and boards. Most witnesses confirmed that management should have the power to hire and fire editors. For example, Mr David Wilson, Chairman of The Age Independence Committee, said that the 'proprietor has the right to hire and fire editors, as editors have the right to hire and fire journalistic staff'.

(Transcript p. 277) This view was also shared by Mr Brenchley, who agreed with the proposition that 'the proprietor has the right to hire and fire an editor if he is unhappy with an editor's performance'. (Transcript p. 726) The reason given for the relatively infrequent changing of editors is, according to Mr Taylor, 'that management and boards appoint editors who they believe in general have many of the same values as they themselves have'. (Transcript p. 1117)

8.15           Whilst there was agreement on the proprietor's right to fire, the circumstances in which this could occur were qualified by Mr Alan Kennedy, Spokesperson for Friends of Fairfax, who told the Committee:

You would be disturbed if you thought an editor was going to be dismissed because the paper had written a story about a company that the proprietor was involved in. If a proprietor thinks the circulation of the paper is going down because of the news selection of the editor, that is another matter. (Transcript p. 133)

8.16           Overall, there are two very different views about the role of proprietors which extend to the industry itself. The first is that the principal responsibility of the proprietor or management is to the shareholders and the market will determine how effectively that responsibility will be discharged.

8.17           The second view affirms consideration of the public interest. This view is based on the uniqueness of the media - previously referred to at paragraph 8.5. Mr Warren of the Australian Journalists' Association said that because newspapers are more than businesses and have community

responsibilities, 'the community has a right to believe and be assured that diversity is being guaranteed through the proper independence and proper ethical practice of journalism'. (Transcript p. 209)

8.18 Nobody suggested that the relationship between the editing process and the rights of a proprietor is an easy one, particularly as the proprietor has an unambiguous power over the editor, namely to remove the editor if he or she is not performing to the proprietor's satisfaction. The example of the removal of a magazine editor by Mr Kerry Packer was given by Mr Noonan who also pointed out that such a course of action may attract bad publicity for the proprietor. (Transcript pp. 845-46)

8.19 A former editor, Mr David Bowman, also indicated that the relationship was not always easy. An editor, he said, is 'something like the meat in the sandwich' and, whilst the editor is the 'proprietor's man', he believes that 'an editor's first responsibility is to the public ... . His second responsibility is to his staff, and then to his employer'. (Transcript p. 654) In this situation the question of loyalty arises. According to Mr Isaacson: 'Irrespective of his position, if he (the editor) is employed by us he has to show loyalty to us and not do anything that would affect the well-being of the company or its management'. (Transcript p. 1067)

8.20 Responsibility for editorial policy remains an area where editors and management must work closely together. Independent Newspapers PLC submitted that the editor should report to management, although the Board should have ultimate responsibility for editorial policy, and that 'there is no reasonable basis or necessity for interference in editorial matters by the

board or the proprietor(s) unless editorial practice over a period of time is inconsistent with the policy laid down by the board, or unless the editorial function is not being managed efficiently'. (Submissions p. 254)

8.21 One major area of difference, however, arises in the matter of who has responsibility for the final say in controlling the editorial policy - both the 'editorial' in the paper and the decisions about the selection and presentation of news and views. Most proprietors, editors and journalists acknowledged that proprietors do have the right to express a point of view about a particular issue in an editorial. However, there was disagreement even between journalists on whether a proprietor should make suggestions to an editor about stories. On the one hand, Mr Claude Forell of The Age Independence Committee had no problem with the idea of a managing director making suggestions as long as the editor has the power to decline those suggestions which he thinks are wrong, without fear of being sacked or disadvantaged in some other way. (Transcript p. 282) This view was supported by a number of other journalists and editors, such as Mr Alan Kennedy, Mr Bowman, Mr Brenchley and Mr Noonan, all of whom agreed that management does have the right to make suggestions to an editor about stories. (Transcript pp. 138, 670, 727 and 835 respectively) They all acknowledged, however, that the editor should have the final say. In the case of an editor objecting to a management suggestion on the grounds of proprietorial interference, both Mr Alan Kennedy and West Australian Newspapers noted that the 'ultimate sanction' which can be implemented by the editor is to resign. (Transcript p. 138 and Submissions p. 932) The submission from West Australian Newspapers put the whole issue of editorial independence into perspective when it said that:

Once the right to hire and fire is acknowledged, the editorial independence of the paper will clearly depend on the spirit of the proprietor and the strength of the editor. The ultimate sanction for the proprietor is that the firing of good editors and the hiring of bad ones will ultimately undermine the standards of the newspaper, its circulation and economic base. The ultimate right of an editor subjected to proprietorial interference is the right to resign. (Submissions p. 932)

8.22 On the other hand, Mr Warren of the AJA believed that proprietors should not make suggestions because of the potential of the weight of office to unduly influence an editor:

We say the proprietors should not make suggestions. The paper is independent and the editor is given that responsibility. With the best will in the world, when proprietors make the suggestion they are not making it as a citizen but as the owner of the paper; that clearly carries a weight. Even if it is just a throw away suggestion, it can unduly influence an editor. (Transcript p. 210)

8.23 Managers like Mr Cowley, Mr Taylor and Mr Reynolds all supported management's right to make suggestions to an editor, even to the extent of suggesting that the paper run an issues campaign, such as a campaign in favour of gun control. (Transcript pp. 445, 1118 and 425 respectively) The view of Mr Cowley was that suggestions such as these would be received by the 'weight of my ideas' rather than the 'weight of my office'. (Transcript p. 444)

## Editor's Relationship with Journalists

8.24 It is also accepted in the industry that the editor must have the right to hire and fire journalistic staff. This parallels the right of proprietors to hire and fire editors. However, unlike proprietors who, the Committee was told, tend to employ editors of like mind, the real test of an editor, according to Mr Brenchley, is whether the editor is prepared to 'tolerate strong-minded columnists and writers who present views that he or she disagrees with'. (Transcript p. 724-25) This proposal suggests that a good editor is one who can accommodate differences in points of view. Being able to ensure that there is dissemination of informed and diverse opinion on public matters is also seen by Mr Noonan as one of the important roles of an editor. (Transcript p. 845)

8.25 The work of an editor is, according to Mr Noonan, 'a combination of an intellectual stream and the management of a very complicated technical process in putting out a paper so that it flops over the front fence at 5 o'clock in the morning and has something in it'. (Transcript p. 844) He continued by saying that: 'Although editors like to pretend that they are omnipotent, the end product, which is a newspaper, is the result of a collegiate process in large part headed by an editor'. (Transcript p. 840)

8.26 In relation to the powers of editors, the general view of journalists and editors such as Mr Wilson and Mr Brenchley, who has also been in the position of General Manager for John Fairfax & Sons, Broadway, is that the control of the editorial content should be the editor's function 'absolutely'. (Transcript p. 717) Mr Wilson qualified his remarks by

noting that it has been the practice at *The Age* that, as a courtesy, discussions may be held with the chief executive about an editorial prior to its publication, but that 'the final decision on who publishes what rests with the editor, not the managing director'. (Transcript p. 241) This view was also shared by Mr Trevor Kennedy who indicated that editors should be able to run their papers as they see fit, providing that they meet the demands of their audience. Managers, he said, have the right to protect their investment: 'If there is an editor who is out of touch with his audience ... the management has a duty to intervene in that situation'. (Transcript p. 39)

8.27 In the preparation of a newspaper, decisions have to be made about the selection of news and articles for publication. The Committee was told by Mr Noonan that, in addition to seven million words of copy from various news agencies and news services, journalists at *The Australian Financial Review* produce up to 200 000 words per day; of this daily total, only 70 000 words are used in any edition of the newspaper. (Transcript p. 839) During an inspection of the News Limited plant, the Committee was informed that only five to ten percent of text prepared by journalists was published. This is not to suggest that there is any suppression of news, but simply that constraints of time and space require an editor to make decisions about what is included in a newspaper and what is not. Sub-editors too have to cull, refine and condense copy. Mr Noonan told the Committee that when rewriting, cutting or condensing is required, every effort is made to consult the journalist, but that ultimate responsibility rests with him, the editor. (Transcript pp. 841-44) The Committee notes that headlines can give a distorted view of an article or report and that this is not necessarily the responsibility of the journalist - sub-editors, and ultimately the editor, share responsibility for this.

8.28 As editors have responsibilities to the management which appointed them, journalists have a responsibility to the editors who may have hired them. They also, according to the AJA, have a responsibility to the public which reads their articles to ensure the facts are reported fairly and accurately. A problem might exist when a journalist believes that his/her reports are being altered, distorted or censored. Mr Trevor Kennedy emphasised that 'no proprietor has any right to tell a journalist to alter, distort or bring any prejudice or bias to factual statements'. (Submissions p. 1712)

#### **AJA Code of Ethics**

8.29 'Respect for the truth and the public's right to information' are the overriding principles for all journalists. Almost all of the journalists working in Australia today subscribe to the AJA Code of Ethics, which is included at Appendix 10.<sup>1</sup> The Code which was originally developed in 1944 and has been updated in 1984, was developed by the AJA to provide a framework within which journalists could operate in the knowledge that their responsibility to report the news fairly and accurately was accepted by those who employed them. Adherence to the Code is binding on all members, with judiciary committees set up in each state to deal with alleged breaches. These committees have the power to censure, rebuke, impose fines and/or expel members from the Association. (Submissions pp. 840-41) Although the Code does not specifically address the relationship between

---

<sup>1</sup> The AJA represents over 12 500 journalists, photographers and artists. Of these approximately 7 000 are employed in the print media industry. The remainder are employed on a freelance basis, in radio and television and in areas such as government departments.

proprietors and journalists, it does identify the role of the journalist in gathering, transmitting, disseminating and commenting on news and information.

### **Training of Journalists**

8.30 Journalists have a particularly important role in the gathering and dissemination of information and ideas. This important role is shared by editors and proprietors who, together with journalists, have the potential to exert a major impact on opinion.

8.31 Because of the importance of their role, journalists should be well prepared for their profession. The quality of their preparation and training matters as it directly impinges in their ability to write stories in a professional manner.

8.32 On the question of the competence of journalists, there is a perception in the community that journalists suffer from a credibility problem. Mr Paul Kelly, Editor-in-Chief and former chief political correspondent for *The Australian*, told the Committee:

I think one of the features of newspapers today is a concern on our part at what the public opinion polls show about our credibility problems. ... My personal view is that we have to do better. We have to improve our standards. (Transcript p. 504)

The AJA acknowledged that criticisms have been made about the Australian media, but attributed this to the failure to adequately train those involved in the industry. (Submissions p. 809)

8.33 Despite the existence now of a number of schools of journalism in the tertiary sector, and despite award restructuring initiatives which have tied higher salaries to training/education, the Committee believes that the importance of on-the-job training cannot be overemphasised. As Mr Noonan told the Committee:

Journalism is a fairly robust occupation and there is a lot of give and take between the process of collecting information, sieving it and finally producing a story that ends up being published in a paper the following day. ... I occasionally see copy coming through that I feel is tainted in some way and I will get hold of the journalists and take them through their stories and find out why they have constructed them in that way'. (Transcript pp. 831-32)

8.34 Similarly, Mr Kelly indicated that the major component of training which News Limited journalists receive is on-the-job. He explained:

The idea ... is to have experienced people in head office who can look at copy and go back to journalists to talk to them about their approach to ensure that stories or feature pieces are done according to proper professional standards. (Transcript p. 502)

8.35 The Committee considers that, because of the importance of the print media industry to society, suitable training of journalists is essential. The training of those who are the primary gatherers and disseminators of news needs to be recognised by the industry as a priority. The Committee, without being prescriptive about the types of training that ought to be provided, seeks the support of editors and managers to ensure that suitably qualified journalists are recruited and that, once recruited, they receive

appropriate on-the-job training which will raise the quality of journalism. The Committee also notes that all those working in the print media industry are subject to enormous pressures of time and other constraints, and that this is partly responsible for the mistakes and distortions which can occur. Staff who are well trained may be able to deal more effectively with the necessity to adjust copy and prepare appropriate headlines within those constraints.

### **Corporate Culture**

8.36 A number of submissions drew the Committee's attention to the influence of corporate cultures and the possible danger they present, in newspaper companies, to editorial independence and diversity of views. Corporate cultures are sociological phenomena which develop within a particular group, be it an industry group like BHP, a government department, a newspaper company or the AJA. Sociologists argue that a feature of corporate cultures is the way values are transmitted without the necessity for direct intervention from the owner, head or chief executive. American academics have made the observation that:

The general underlying concept of role theory is the effort of the individual journalist to satisfy various expectations about his or her role within each of these spheres of influence. *Role* as defined here means a set of behavioural expectations attached to a position within a social structure. Role definition is at the outset a socialization process that takes place through communication. Communication may be informal and personal, as when a superior comments on a subordinate's work, or formal and impersonal, as when a new employee receives an

orientation lecture or reads a company house organ. In either case, role cues can be delivered both intentionally and unintentionally. (Benham et al, 1988, p. 92)

8.37 The Australian Journalists' Association spoke of common approaches to issues in groups brought about by 'the development of a corporate culture that spreads across the group and that can predetermine the way particular issues are approached'. (Submissions p. 787; see also Transcript p. 212) Mr Bruce Grundy and others from the Department of Journalism, University of Queensland, stated that 'a proprietor can just as easily influence the content of a paper without ever issuing one direction or a single memo'. They say the process, widely recognised in the literature 'is that of osmosis - where the word simply seeps through the newsroom network'. (Submissions p. 299)

8.38 Professor Schultz claimed that there is 'a culture within News Limited where there is a fairly clearly understood set of editorial principles that are communicated either directly or indirectly' and that the 'development of a corporate culture which encourages a particular view of the world is communicated through overt and covert methods'. (Transcript pp. 382 and 384) Mr Bowman also indicated his belief that this process applies to the way the News Limited corporate culture works - see paragraph 8.50.

8.39 Mr Cowley and Mr Kelly both rejected the notion that a corporate culture exists at News Limited and that it affects the way

journalists prepare stories about the company. Mr Kelly added that he thought that there was 'a particularly unfortunate culture developing amongst certain critics'. (Transcript pp. 442 and 497)

8.40 The existence of a corporate culture may encourage journalists to constantly submit articles on their company. For example, the Fairfax takeover bid has been described by Mr Noonan as 'probably the most celebrated takeover bid and receivership that Australia has had in terms of lines of copy covered'. Mr Noonan told the Committee that: 'One of my difficulties at the moment is trying to keep the Fairfax story off the front page, because the journalists themselves ... have an inclination to see the Fairfax story as being worthy of page one treatment every day'. (Transcript pp. 832-33) Although he acknowledged the existence of a Fairfax culture, he went on to say that there was probably 'too much in the Fairfax media about Fairfax'. (Transcript pp. 860 and 836)

8.41 Another way in which the corporate culture can pervade the selection and presentation of news and views is in the political stance taken by a particular newspaper. In European countries, the political position of each paper is usually quite clear. In the Australian context, the political stance of each paper is sometimes less partisan, although, for example, Mr Kelly made it clear that *The Australian* has established itself in the marketplace as a newspaper that strongly supports 'economic libertarianism'. (Transcript p. 499) Mr Trevor Kennedy, referring to a memo written by Mr Suich in the mid-1980s, told the Committee about his understanding of the Fairfax stance, namely, that 'in its general dealings the paper would be a supporter of Christianity, free enterprise, the rule of law, parliamentary democracy and all of those good things'. These were to be 'the basic values

which would underlie the paper'. (Transcript pp. 43-44) If the corporate culture concept is applied to these papers, journalists working at those papers could be expected to slant their reports according to the political position of the paper.

8.42 The political stance of newspapers is often reflected in the editorials. An analysis of the political views expressed in editorials in Australian papers in the lead up to federal elections in recent decades was provided by News Limited in a supplementary submission. The analysis reveals that, with the exception of 1972 in particular, in the period 1955 - 1983 the majority of papers in all states tended to support the conservative view. In 1984, Labor received a great deal of support nationally, with the two national papers and all major papers in the eastern states running pro-Labor editorials. In the lead up to the two elections since then, the editorials in most states have been divided even within newspaper groups, for example, *The Australian* and *The Daily Telegraph Mirror*. The chart summarising the analysis is provided on the following page. (Submissions p. 3062)



# VOTING INDICATIONS EXPRESSED BY PRE-FEDERAL ELECTION EDIT

ELECTION DATE	NATIONAL		NSW				VICTORIA	
	THE AUST	AFR	SMH	SYD SUN	DAILY TELE	DAILY MIRROR	AGE	HERALD
10 DECEMBER 1955	Light Blue	Dark Green	Dark Blue	Dark Green	Dark Blue	Dark Blue	Dark Blue	Dark Blue
22 NOVEMBER 1958	Light Blue	Yellow	Dark Blue	Light Blue	Dark Blue	Red	Dark Blue	Dark Blue
9 DECEMBER 1961	Light Blue	Yellow	Red	Red	Dark Blue	Dark Blue	Dark Blue	Dark Blue
30 NOVEMBER 1963	Light Blue	Yellow	Dark Blue	Dark Blue	Dark Blue	Red	Dark Blue	Dark Blue
5 DECEMBER 1964 (Senate only)	Dark Blue	Dark Green	Dark Blue	Dark Green	Dark Blue	Dark Blue	Dark Blue	Dark Blue
26 NOVEMBER 1966	Light Blue	Yellow	Dark Blue	Dark Blue	Dark Blue	Dark Blue	Dark Blue	Dark Blue
25 NOVEMBER 1967 (Senate only)	Yellow	Dark Green	Light Blue	Dark Green	Light Blue	Yellow	Dark Blue	Dark Blue
25 OCTOBER 1969	Light Blue	Yellow	Dark Blue	Dark Green	Dark Blue	Dark Blue	Dark Blue	Dark Blue
21 NOVEMBER 1970 (Senate only)	Yellow	Yellow	Dark Blue	Yellow	Dark Blue	Dark Green	Yellow	Dark Blue
2 DECEMBER 1972	Red	Yellow	Dark Blue	Yellow	Red	Red	Red	Dark Blue
18 MAY 1974	Red	Dark Blue	Dark Blue	Dark Blue	Dark Blue	Yellow	Red	Dark Blue
13 DECEMBER 1975	Dark Blue	Light Blue	Dark Blue	Dark Blue	Dark Blue	Dark Blue	Dark Blue	Dark Blue
10 DECEMBER 1977	Dark Blue	Dark Blue	Dark Blue					
18 OCTOBER 1980	Dark Blue	Yellow	Dark Blue	Dark Blue	Dark Blue	Dark Blue	Yellow	Dark Blue
5 MARCH 1983	Dark Blue	Yellow	Dark Blue	Yellow	Dark Blue	Light Blue	Red	Dark Blue
1 DECEMBER 1984	Red	Red	Red	Red	Red	Red	Red	Red
11 JULY 1987	Dark Blue	Light Blue	Red	Red	Red	Red	Red	Yellow
24 MARCH 1990	Dark Blue	Dark Blue	Red	Light Blue	Red	Red	Red	Dark Blue

 NEUTRAL

 ALP

 LIBERAL

 ALP By a small margin

 LIBERAL By a small margin





8.43 Another way in which the corporate culture can influence articles is when the financial interests of the company are being reported.

Mr Brenchley told the Committee:

I think that News Limited, by and large, reports itself, but in a very favourable light. ... In a meeting of the News Limited company - I think it might have been the annual general meeting - shareholders raised questions about directors' fees. It was reported in the other press but the News Limited press reported it as 'profits on the uptake'. Over a period of my watching the News Limited papers, that seems to me the way they report themselves. I do not suggest there is any journalistic bias involved; I think it is part of the culture of the company. That is the way people think that the organisation would like to see itself reported - that is the way it is reported. (Transcript p. 684)

Mr Brenchley went on to say that 'Fairfax has had its ups and downs in this regard as well'. (Transcript p. 684)

8.44 The Committee recognises the existence of corporate cultures and views them as a natural sociological phenomenon in which the constituent parts of an organisation will have a perception that the corporate culture is there and has to be complied with; whether the corporate culture influences the newspaper product is a question which remains open.

### **Impact of Ownership Concentration on Content**

8.45 Many of the submissions and witnesses to the inquiry expressed fears and made allegations that the exercise of undue influence by proprietors, managers or editors is not uncommon. The AJA, for example, identified four main forms of direct management intervention including:

- . internal matters affecting that paper or group of papers;
- . matters concerning a broader conglomerate owning a newspaper;
- . social or political concerns of the individuals managing or owning the company owning a newspaper;
- . matters of whimsy or caprice. (Submissions pp. 784-89)

These examples were elaborated in their submission. The Printing and Kindred Industries Union (PKIU) also submitted evidence of examples of intervention by proprietors. (Submissions pp. 2206-09)

8.46 The concern of submitters like the CLC was that ownership concentration increases the risk of such abuse and that because the 'consequences of concentration are so seriously contrary to the public interest' appropriate mechanisms should be put in place to prevent it. (Submissions p. 1033)

8.47 Anecdotal evidence that intervention by proprietors was not uncommon in earlier periods engenders a fear that it will recur unless action is taken to prevent it. The Committee heard evidence, for example, of the significant level of intervention by Sir Warwick Fairfax and Sir Frank Packer.

According to Mr Bowman, Sir Warwick Fairfax intervened heavily in the lead up to the 1972 federal election when he orchestrated stories, headlines and an editorial to condemn the Labor party and support the Liberal party. (Transcript pp. 659-61) Mr Kerry Packer, in describing the activities of his father, Sir Frank Packer, said that he (Kerry) 'sat at home for year after year and heard him (Sir Frank) dictate editorials'. (Transcript p. 1198) Mr Richard Walsh, in commenting on Mr Packer's evidence, suggested that this was a 'rather gentle version of his father's involvement', claiming that his father obviously did more than write editorials for the Telegraph: 'His father was knee-deep in the editorial policy of the Telegraph. It was his life'. (Transcript p. 1345)

8.48 Mr Laurie Oakes described the Murdoch coverage of the 1975 election campaign in his book, *Crash through or Crash - The unmaking of a Prime Minister*. According to Mr Oakes, Mr Murdoch was 'committed to Whitlam's destruction', with the result that articles in *The Australian* and *The Daily Telegraph* were full of 'alleged information', 'startling claims' and 'exaggerated attacks'. Bitterness at the way the Murdoch press had slanted its news coverage against the Australian Labor Party before and during the election campaign caused journalists employed at *The Australian* to take industrial action in protest against the newspaper's biased coverage. (Oakes, 1976, pp. 284-89)

8.49 Similarly, the Committee heard evidence of intervention by senior management in the past. Mr Noonan told the Committee about how, soon after joining the *Financial Review* some years ago, he saw Mr Suich, then the editorial director, 'going through a story (about Fairfax), marking

up various parts of the print-out'. He concluded that the 'very direct involvement by senior management' was a 'very strong image'. (Transcript pp. 833-34)

8.50           The influence of owners extends well beyond direct intervention. A former News Limited journalist, Mr Bowman, was of the view that Mr Murdoch has virtually no need to interfere personally now because the corporate culture of the Murdoch establishment (referred to in paragraph 8.38 above) is so complete; he has been able 'to imprint himself, his ways, ideas, beliefs and philosophies upon all of his staff'. (Transcript p. 661) Mr Cowley, on the other hand, argued that editors at News Limited have full responsibility for editorial policy and act independently of Mr Murdoch or group management. As an example, he drew the Committee's attention to the fact that, when News ran a media campaign on gun control in their papers, Mr Murdoch did not share the view of the editor, yet the campaign was run. (Transcript p. 462)

8.51           In relation to some of the other current or recent proprietors, the Editor-in-Chief of West Australian Newspapers, Mr Robert Cronin, informed the Committee that, in the case of the *West Australian*, neither Mr Holmes a Court nor Mr Bond sought to intervene by influencing the editorial. (Transcript pp. 1408-09) However the Committee understands that, after purchasing the *West Australian* a new editorial team was appointed to the newspaper by the new owner/s. Many consider that it is through the appointment of like-minded editors and staff that a proprietor is able to influence a newspaper's direction. Mr Cronin, for example, as part of the new editorial team, was recruited and appointed by Mr Holmes a Court and retained by Mr Bond. (Transcript pp. 1388-89)

8.52 Mr Noonan informed the Committee that Mr Warwick Fairfax had little or no involvement in the editorial content of his papers. (Submissions p. 1267) However, the Committee is aware of some dissatisfaction which was expressed by journalists at *The Australian Financial Review* about the way in which stories relating to the commercial interests of Mr Warwick Fairfax were being changed. Mr Taylor told the Committee that he was 'not aware of it', whilst at the same time qualifying his statement by saying that 'I am not saying it did not happen'. (Transcript pp. 1143-44) He did draw the Committee's attention to the concern he was aware of, namely attempts by Mr Marty Dougherty, who was working for Warwick Fairfax at the time, to appoint a new editor-in-chief at *The Sydney Morning Herald* and a new editor at *The Age*: 'That caused some consternation around our place'. (Transcript p. 1144)

8.53 Mr Trevor Kennedy made it clear that Mr Packer does intervene in the publication of *The Bulletin*. He said that: 'From time to time things went into *The Bulletin* that I probably would have preferred did not go in. ... He wanted to get them in and so they were put (in) ...'. (Transcript p. 47) Mr Kennedy qualified this remark by also stating that, despite this form of intervention, Mr Packer did not suppress anything.

8.54 Mr Walsh commented on Mr Packer's proprietorship, when he confirmed that Mr Packer 'is not involved in any way in looking at material before it gets published' and that there was no special arrangement for vetting stories on the business operations of Australian Consolidated Press. He also stated that Mr Packer, who is an avid protectionist, 'grumbles about the fact that he owns these magazines and that they sometimes do not reflect his views on the world'. Referring to the film *Citizen Kane*, he

concluded that Mr Packer's reputation for being an interventionist proprietor 'fulfils people's ideas of what a proprietor should be like' even though he does not intervene. (Transcript pp. 1335, 1344, 1346 and 1345)

8.55 Despite such reassurances, the fears held by many that concentration of ownership increases both the risk and potential impact of intervention by owners or their managers have not entirely been dispelled. Diverse ownership is seen as providing checks and balances against abuse. Proponents of this view, like Dr Brown, suggested that the greatest diversity of news and views can best be achieved by diversity of ownership. In this way, the effects of undue intervention by proprietors would be diminished. (Transcript p. 1004) This view was shared by Mr Fraser, who told the Committee that:

I believe that, if somebody owns a newspaper, he has a right to influence its policies. But that is a belief that makes me want to have as many newspaper proprietors and as much individual ownership as possible. (Transcript pp. 908-09)

8.56 Professor Officer rejected the claims that high level of ownership concentration confers political influence to the detriment of society. He said that while the argument 'is difficult to categorically refute ... it is worth remembering that the strength of a newspaper lies in its circulation'. (Submissions p. 1578) In his evidence on this issue to the Committee, Mr Cowley stressed that the editors of each newspaper in the group was wholly independent in the management of the paper's affairs and particularly with respect to editorial policy. Mr Cowley stated: 'Each newspaper fights for its own dollars. Each chief executive operates in his own orbit ...'. (Transcript p. 451) This view was corroborated by Mr Kelly.

8.57 At present, while ownership of print media is highly concentrated, cross-media ownership restrictions constrain the extension of influence to other media by newspaper interests. They strictly limit common ownership of commercial radio and television services in the same area. Because consumers in general do not restrict themselves to a single source of information, the current enforced diversity of media ownership represents a substantial safeguard which increases the likelihood of the presentation of a range of views within individual markets.

8.58 Another major concern with concentration of ownership is the likelihood of biased reporting to protect the wider commercial interests of the owners or simply to suppress views which conflict with those of the owners. This is addressed below.

#### **Reporting the Business Interests of the Proprietor**

8.59 There seemed to be general agreement in the evidence to the inquiry that the editor should ensure that reporting of the business interests of the proprietor is done fairly. However, in a situation of increasing levels of concentration of ownership, the fear exists that this will not always be possible and that owners may increasingly be in a position to abuse their power of influence over public opinions and/or use their papers to protect their own business interests and the interests of important business associates. The Victorian Government made the observation that 'the more the ownership of the press is concentrated, the harder it becomes for the media to be critical of the interests of its proprietors'. (Submissions p. 1407)

8.60 The Committee took considerable evidence on this matter, with various organisations and individuals claiming that different proprietors/managements exercised different policies in relation to the reporting of their own business interests. This has attracted a good deal of comment in the evidence submitted to the Committee, particularly because of the potential use of power which a large newspaper group, such as News Limited holds. (Submissions p. 1864) For example, the ACIJ claimed that the management of News Limited has exerted a degree of interference in stories concerning the wider interests of the corporation. (Transcript pp. 382-84) Treatment by the Fairfax papers of Fairfax-related stories does not appear to have received such controversial mention, although, as Mr Noonan told the Committee, there can be 'a tendency to neutralism or favourable comment of the corporation that owns the paper'. (Submissions p. 1268 and Transcript p. 836)

8.61 One particular issue brought to the Committee's attention by Professor Schultz concerned the way in which News Limited papers covered the 1989 pilots' dispute. In her evidence, Professor Schultz told the Committee that: 'Our research pointed toward there being a particular sort of coverage of that dispute which was not incompatible with the corporate aims and the nature of News Limited, which owns part of Ansett'. (Transcript p. 383)

8.62 Mr Kelly rejected the general claims that its treatment of some issues reflects bias or a tendency to favour associated interests of the company and in particular rejected the claims made by Professor Schultz as being a 'slur on our professionalism'. (Submissions p. 1546 and Transcript p. 490) News Limited also provided the Committee with the results of a

study it had commissioned from Drs Penhallurick and Osborne which examined whether News Limited newspapers had been biased in their reporting of the pilots' dispute. The final report by Drs Penhallurick and Osborne concluded that in both news stories and editorial coverage there were no statistically significant differences between Fairfax and News Limited papers in their coverage of the pilots' dispute. (Submissions pp. 1702-11 and 2148-78)

8.63 The ACIJ was critical of the Penhallurick and Osborne study and provided the Committee with the findings of a research study conducted by Diane Powell on how News Corporation reports itself. (Submissions pp. 2633-97) The study queried the methodology employed by Drs Penhallurick and Osborne in their study of the pilots' dispute and argued that it was not an event whose coverage could be fairly compared, even though it was the ACIJ which had raised coverage of the pilots' dispute as an issue in the first place. However, Diane Powell's study went on to examine coverage of a number of other issues relating to News Corporation which have been reported in the press during the past 15 months. Ms Powell claimed that they provided a better indication of bias. The Powell study concluded that News Corporation in its publications reports news events related to its business activities more favourably than do other newspapers. It also concluded that '... there is some doubt about the objectivity and balance of the reports ...'. (Submissions p. 2673) In a subsequent submission, Drs Penhallurick and Osborne were similarly critical of the methodology and conclusion of the Powell study.<sup>2</sup>

---

<sup>2</sup> A subsequent reanalysis of the data by Dr Penhallurick confirmed that the accusation of bias against the accounts in News Limited papers in comparison with Fairfax papers, should be decisively rejected. (Submissions p. 2984)

8.64 The Committee noted with interest, however, comments by Mr Noonan that it had become something like 'folklore' that Ansett, for example, gets a better run in *The Australian* than it should do or does elsewhere. He said that he had 'kept a pretty close watch on it' and could not detect any such bias. (Transcript pp. 879-80) Being the editor of a newspaper in competition with those produced by News Limited, Mr Noonan presumably would have an interest in 'exposing' any such bias.

8.65 In another case of alleged bias in reporting, allegations were also made by Mr Bruce Grundy and Mr Lawrence Apps that *The Courier-Mail* and *The Sunday Mail* were conducting a campaign to 'Save the Pineapple' in Queensland. In so doing, Messrs Grundy and Apps alleged that *The Courier-Mail* chose not to reveal its links with the industry during the campaign and suggested that the public had the right to wonder what the paper's motives were'. (Submissions p. 2705) Such allegations were vigorously denied by the Editor-in-Chief of Queensland Newspapers Pty Ltd, Mr Jack Lunn. In response to the submission, Mr Lunn claimed that Messrs Grundy and Apps had 'jumped to the wrong conclusions because they failed to understand the basic facts', for example, that pineapple sales from the Sunshine Plantation represented less than one per cent of Queensland Press group's revenue. (Submissions pp. 2784-85)

8.66 A further example concerns the publication by News Limited of an article taken from *The Economist* about News Limited. According to Mr Noonan, the version of the article which News Limited published was 'bowdlerised' in such a way as to present 'an image that is a little more favourable to News Corp'. Mr Noonan referred to the non-publication of a 'rather cruel caricature' of Mr Murdoch, the changing of headlines and 'cross

heads' and alterations to the body of the article. (Transcript pp. 836-38) Mr Kelly rejected Mr Noonan's comments, claiming that changes made to the article prior to its publication in *The Australian*, such as substituting the name of the company for Mr Murdoch's name, were 'correct editorial practice'. He concluded that *The Australian* covers 'the activities of our own company in the same way in which we cover those of other companies'. (Submissions pp. 1888-89)

8.67 The Committee will now examine mechanisms designed to support editorial independence, which might be capable of fostering accuracy of reporting and fair presentation of news and views. These mechanisms are in addition to the recommendations contained in Chapter 7 which deal with strengthening competition by amending the Trade Practices Act.

#### **Editorial Independence**

8.68 The Committee received a great deal of evidence on the subject of mechanisms designed to support editorial independence, with arguments being presented for and against a legislative approach. Those who favoured a legislative solution included the PKIU and the ACTU. For example, in order to overcome 'disturbing instances ... of editorial interference by proprietors', the PKIU requested the Committee to 'consider legislating for editorial independence as a requirement to owning companies in the print media in order to meet prescribed legislative criteria which does not interfere with freedom of speech'. (Submissions pp. 2206 and 194)

8.69 Others indicated that the guarantees of editorial independence should be included in articles of association. The ACTU, for example, indicated its support for 'the development of enforceable codes of editorial independence by ensuring that the articles of association of newspaper companies guarantee editors a proper degree of independence from the proprietor'. (Submissions p. 109) Australian Associated Press submitted to the Committee that it has included provisions in its Articles of Association which are designed to guarantee editorial independence. (Submissions p. 75)

8.70 Whilst not specifically recommending legislating for editorial independence, Mr Brenchley drew the Committee's attention to the situation in the UK where, under the Fair Trading Act, the Monopolies and Mergers Commission is specifically required to report on accurate presentation of news and free expression of opinion when considering mergers. He suggested to the Committee that: 'A similar section in the Australian Trade Practices Act could build in the desire for editorial independence, and the likely effects on independence of any merger'. (Submissions p. 147)

8.71 Those who opposed a legislative solution included The Age Independence Committee and the Communications Law Centre. Mr Wilson told the Committee that he did not think there was a role for the government in interfering with the press in any 'legislative fashion', such as forcing all newspapers to adopt a charter of editorial independence as a compulsory practice. He was similarly opposed to the suggestion to make charters binding by incorporating them in the articles of association of a company. (Transcript p. 272) He believed that a charter is much better 'as a document of goodwill, good faith and understanding'.

8.72 The CLC too is opposed to legislating for editorial independence primarily because of the difficulties of enforcement. Mr Chadwick told the Committee:

... the idea of editorial independence cannot be legislated ... . There is some doubt whether you could enforce it at common law. Our belief is that, with the best will in the world, it would be difficult for the staff to enforce a charter through contract law, company law or industrial law. (Transcript pp. 363-64)

8.73 Both the Free Speech Committee and the Press Council also expressed their opposition to legislating for editorial independence, the Free Speech Committee submitting that they are opposed to any legislation regulating the news and editorial content of newspapers and the Press Council submitting that it is inappropriate to impose charters of editorial independence by legislation. (Submissions pp. 1918 and 1370)

8.74 Several proposals put to the Committee included:

the development of cooperative systems of ownership and control, with 'democratically elected' management;

the development of codes of ethics for media owners, which may require, amongst other things disclosure of the business interests of the owner; and

the incorporation of guarantees of editorial independence in a company's Articles of Association.

However, the proposals which the Committee was most interested in exploring were charters of editorial independence, the AJA Code of Ethics and contracts for editors. These proposals are dealt with in turn below.

### **Charters of Editorial Independence**

8.75 Charters of editorial independence are relatively new in Australia, having emerged only since 1987 in the climate surrounding the takeover by Mr Rupert Murdoch of the Herald and Weekly Times when the AJA developed and circulated a model charter among proprietors. (Submissions p. 1086) Basically, they are written agreements between the newspaper's editorial staff, their editor, and the proprietor. According to The Age Independence Committee, charters are designed to ensure that responsibility for the reporting of day to day news, comment and opinion, is vested with the editor and the editorial staff and not with the proprietor. (Submissions p. 216)

8.76 The AJA, which developed a model charter for use by newspapers, has recommended to the Committee that each paper have a charter of editorial independence based on their model charter and agreed between the AJA members employed on the paper and the proprietor. (Submissions p. 844) One of the axioms of the AJA charter is that the chief responsibility of the proprietor and editorial staff is identified as being 'to provide news that is as accurate, fair and complete as possible and comment that reflects the diversity of opinion in the community'. (Submissions p. 843)

8.77 Despite the development of the AJA model charter in 1987, separate charters were also developed by journalists at the main Fairfax newspapers. The Age Charter was the first of the Fairfax charters to be proposed. It was developed in a climate of uncertainty following the purchase of the John Fairfax Group by Mr Warwick Fairfax in 1987. Because of financial troubles in the new Fairfax Group, there was widespread speculation that *The Age* would be sold and that the late Mr Robert Maxwell, a British based proprietor who had a reputation for intervention, was a potential buyer. In order to protect the editorial independence and integrity of the paper from this possible threat, The Age Charter was drawn up between the Managing Director, the Editor and staff. This version of the charter was subsequently publicly endorsed in mid 1988 when immediate attempts to sell *The Age* ceased.

8.78 Both the AJA and The Age Charters reflect a commitment to the concept of editorial independence by requiring the separation of commercial and management decisions from decisions relating to the editorial content of the paper. Under the charters, the proprietor retains responsibility for the former, whilst the editor has full control over the latter. Both charters acknowledge that editors have the right to hire and fire journalistic staff; both require signatories to adhere to the AJA Code of Ethics. A significant difference between the two charters is the AJA proposal for a board of trustees to settle disputes between a proprietor and an editor. The AJA Model Charter and The Age Charter are included in full at Appendices 11 and 12.

8.79 The arguments favouring charters of editorial independence were forcefully put to the Committee by such groups as The Age Independence Committee, Friends of Fairfax, the Australian Journalists' Association and others. For example, Mr Alan Kennedy, Spokesperson for the Friends of Fairfax, argued that the main value of charters is that they give strength to the editors to edit and to resist pressures and influences from elsewhere. Charters, he said, give a hope that the proprietor and managing director will not interfere with the content of the paper. (Transcript pp. 119-20 and 136) Enabling editors to edit without proprietorial interference is seen by supporters to be the most significant argument in favour of charters.

8.80 Others, like Mr Forell of The Age Independence Committee argued that charters lent credibility to a paper and that they are particularly important for 'quality' newspapers, rather than tabloids. (Transcript pp. 239 and 284)

8.81 *A further argument in support of charters was put by Mr Warren of the AJA who told the Committee that one of the values of having a charter is that it is a declaration of intent and that the importance of having the weapon of publicity if it is breached 'cannot be underestimated'. (Transcript p. 208)*

8.82 Whilst the groups and individuals whose evidence is referred to above were agreed on the desirability of charters of editorial independence, the methods proposed for implementing and enforcing editorial independence varied considerably. Some, like the CLC, argued against legislating for editorial independence. The CLC said in its submission:

Our study indicates that a workable system of editorial independence is probably not a matter for law, but for negotiation between owners and editorial staffs ... Reform is up to the journalists and the owners. (Submissions p. 1053)

8.83 By contrast the argument was put by Mr Bowman and others that charters should be encouraged, but that they could be more effective if 'legal force' was given to a carefully designed model charter or to individually negotiated versions. (Submissions p. 314)

8.84 Charters were not universally supported. The Committee also received a significant volume of evidence suggesting that charters are not desirable. In the words of Mr Trevor Kennedy, they are, at the very least, 'pretty meaningless' (Transcript p. 36) whilst Mr Kerry Packer regarded them as 'absolute nonsense'. (Transcript p. 1195) Mr Noonan also regarded them with a degree of suspicion, claiming they are 'motherhood sorts of statements'. He went on to say that they are ultimately subject to ridicule because they cannot be enforced. (Transcript pp. 840 and 870)

8.85 A number of witnesses argued that charters are impractical. As Mr Suich, a former senior manager in the Fairfax Group, told the Committee:

A good proprietor does not need an editorial charter and a bad one can just circumvent it by choosing editors of a particular kind that suit both proprietor and his or her objectives. (Transcript p. 1271)

8.86 This view was shared by Mr Gill who said:

... the practical reality is that, unless proprietors believe (in a charter), it is not going to be observed, and, if they do believe in that stuff, then you do not need the charter. (Transcript p. 550)

8.87 Mr Cowley indicated that charters have the potential to actually erode the authority of the editor. When questioned on this, Mr Cowley responded:

Simply because he (the editor) is the person who has to make the decisions every day about what goes in the paper. Anything that is an impediment to that, anything that he has to defer to ... I just think is worse than management. (Transcript pp. 442-43)

8.88 Mr Brenchley was similarly critical of charters, suggesting that the only way that the newspaper's independence will be guaranteed is if the terms of engagement of editors are 'nailed down very strongly' in a contract: '... it will not be done by a charter of independence'. (Transcript p. 725)

8.89 The usefulness of charters can perhaps be judged in the light of the claims made by the Victorian Branch of the AJA that the Editor-in-Chief of the *Herald-Sun*, Mr Piers Akerman, had conducted a campaign against the Victorian Government. (Submissions pp. 1964ff and 2437ff) Mr Akerman and other senior journalists vigorously denied these allegations in submissions to the inquiry. It should be noted that the Victorian Attorney-General, Mr Kennan, rejected the notion of a campaign to get rid of the Kirner government. He told the Committee: 'There have

been examples that we have felt have been anti-government or unfair reporting in that paper, and other examples that have not been'. (Transcript p. 603) Even if a charter of editorial independence had been in place, it would not prevent an editor running editorials critical of a particular party or highlighting stories that were embarrassing to that party, so long as the journalists were not required to breach their code of ethics.

8.90 The Committee suggests that the real value of charters in ensuring editorial independence and diversity of opinion may be questionable although staff at *The Age*, for example, found their charter valuable during the recent bidding for Fairfax. If proprietors and their staff develop them in a spirit of mutual cooperation and respect, that may be good for that particular company. However, if there is a lack of willingness on either side, then the presence of a charter would not prevent undue intervention anyway. The Committee believes that, despite the desirability of conduct and standards implied by charters, it does not recommend that newspaper proprietors be required by legislation to sign charters of editorial independence.

8.91 In addition to charters, two other solutions have been proposed to the Committee to improve editorial independence. They are codes of ethics and contracts for editors. A brief outline of each follows.

### **AJA Code of Ethics**

8.92 Whilst it supports the concept of charters of editorial independence and has recommended to the Committee that charters should be adopted by each paper, the AJA has also submitted that the most

important system of self-regulation is their Code of Ethics. Details about the Code of Ethics are included in paragraph 8.29 earlier in this chapter. Unlike charters of editorial independence, the Code does not specifically address the relationship between proprietors and editors. Rather the Code identifies behaviour of journalists in gathering, transmitting, disseminating and commenting on news and information, with 'respect for the truth and the public's right to information' the overriding principles for all journalists.

8.93           The AJA Code of Ethics is included in full at Appendix 10.

8.94           The AJA Code of Ethics was commended to the Committee by, amongst others, Mr Trevor Kennedy, who indicated that: 'I think that it speaks better than any charter that I have seen in relation to editorial independence and integrity'. (Transcript p. 38) Mr Packer also lent his support to the Code describing it as a 'first class set of rules'. He continued by saying:

There are a couple more rules I would probably put in there, but I believe the weakness is that the journalists are talking to their union and saying what they are going to do. I believe that that really should be between the paper and the journalists. (Transcript p. 1195)

8.95           The Committee considers that it would be desirable for proprietors and editors to join with journalists in agreeing to the Code as the overriding principle governing the performance of their duties and that there may be some merit in incorporating the terms of the Code into any contracts of employment which are exchanged between the parties. The issue of contracts for editors is addressed below.

## Contracts for Editors

8.96 The suggestion has been made to the Committee by Mr Brenchley and others that contracts for editors would provide some support for editorial independence. As Mr Brenchley told the Committee:

The only way that the newspaper's independence will be guaranteed is if those (terms of engagement) are set in such a way that the editor is guaranteed his or her independence in handling the daily production of the newspaper. (Transcript p. 725)

8.97 The terms of a model contract for editors were spelt out in the AJA submission to the inquiry. (Submissions p. 742) Under the suggested terms an editor's fixed term contract would include a comprehensive statement of principles for the conduct of the newspaper and indicate the full extent of the editor's powers within the statement of principles, including the right to hire and assign staff.

8.98 Support for the concept of contracts for editors was also expressed by Mr Padraic McGuinness, a journalist with *The Australian*, and Mr David Bowman, amongst others, who argue that a fixed term contract which spells out the terms of employment would be effective in guaranteeing the independence of editors. The 1977 UK and 1981 Canadian Royal Commission reports also supported the concept of contracts for editors and editors-in-chief. (July 1977, Cmnd 6810, p. 232 and Kent Report, 1981, pp. 248-49)

8.99 One of the difficulties with guaranteeing a fixed term of employment to an editor is when the working relationship between proprietor and editor breaks down due to falling circulation or differences over editorial direction. The Committee, nevertheless, sees merit in contracts for editors. Contracts could be particularly useful in clearly defining the roles and responsibilities of the editor thereby eliminating confusion over demarcation between management and editorial responsibilities. The Committee supports contracts for editors in principle, while recognising that it is a matter for individual proprietors and editors.

#### **Press Council**

8.100 There will always be some concern or dissatisfaction with the manner in which certain subjects are dealt with or indeed are not dealt with by Australia's print media. In order to provide recourse for people in this situation the Australian Press Council has been established to deal with complaints.

8.101 The Press Council is a self-funding, self-regulating independent body of professionals which was established in 1976. In their first annual report, the composition of the Council was given as being: six publishers' representatives, three AJA representatives and three members of the public. However since the AJA withdrew from the Council in 1987, there is now no direct AJA representation on the Council. The Council currently consists of an independent chairman, appointed by the Council, 12 representatives from publishers, two editors, two journalists and eight members of the public. The two journalist representatives are members of the AJA, but serve on the Council in an independent capacity. (Submissions pp. 1324-28)

8.102 The objects of the Press Council are to maintain and enhance both the freedom and responsibility of the press in order to ensure the right of the Australian people to be informed on all matters of general interest. As mentioned above one of the Council's functions is to provide a facility for the hearing of complaints. The Press Council believes that it is efficient and effective in hearing complaints and resolving them to the satisfaction of both parties. Further, Professor David Flint, Chairman of the Press Council, indicated to the Committee that there is a high degree of compliance by newspapers in the publication of adjudications of the Council. (Transcript p. 1087)

8.103 Support for the Press Council came from some submitters including News Limited which felt that it was doing a good job. Others were critical of the Council's performance, claiming that they would like to see it operate better. The 'lack of teeth' to enforce publication of its reports is one aspect critics mention. For example, Mr Grundy told the Committee: 'We do not see evidence that too many member organisations quiver at the prospect of running an adverse Press Council judgement'. (Transcript p. 959)

8.104 Mr Packer was even more critical of the Council, claiming that he had been attacked in newspapers for 20 years while the Press Council did nothing about it. He said: 'I think it is a complete and absolute piece of window dressing'. (Transcript p. 1171)

8.105 Mr Bowman too voiced his concern over the conduct of the Press Council when it failed to take action to redress a 'watered down' report of one of its judgements published in *The Sydney Morning Herald*. Mr Bowman described the action of the paper as a 'journalistic crime',

providing the Press Council with an opportunity to wrap the newspaper over the knuckles and make an example of it for distorting the Council's judgement; yet the Council apparently took no action over the incident. (Transcript pp. 673-74)

8.106 Perhaps the most telling criticism of the Press Council is that the AJA is no longer involved. As previously mentioned, the AJA withdrew from the Press Council in 1987 following the Council's failure to take action over the takeover of the Herald and Weekly Times. The AJA made the following comment on the performance of the Press Council:

... the decisions are marked by an inconsistency in applying principles, by a tendency to allow the big - and important - principle of a free press to override genuine complaints, and by a defensiveness that alienates complainants. (Submissions p. 832)

8.107 The Committee also took evidence on ways in which the performance of the Council could be enhanced. For example, the AJA submitted that the Council should be genuinely independent of both government and publishers. It suggested that an independent chair be appointed by agreement between the publishers and the AJA and urged that the Council be composed of equal numbers of representatives from the public, publishers and the AJA. (Submissions p. 833) The ACTU suggested increasing public participation in the Press Council so that there would be a majority of public members on the Council and so that the Council would be more accessible to the public. (Transcript p. 1370)

8.108 A further suggestion was that the complaints function could be separated from the function of looking after freedom of the press and newspaper standards, namely by the establishment of the position of a Press Ombudsman. Press Ombudsmen schemes are not new, having been established in Sweden since 1969. Individual papers in countries like Canada and USA employ Ombudsmen. In Australia *The Sydney Morning Herald* tried its own experiment to employ a press ombudsman to investigate and report on readers' complaints. This experiment does not seem to have been successful and has since lapsed. The reasons for the failure of the scheme appear to be twofold: according to both Mr George Masterman QC and the journalists, management did not seek the agreement of staff to the proposal beforehand; and the journalistic staff claimed Mr Masterman's approach was 'too legalistic'. (Submissions pp. 2757 and 2787-88 and Transcript pp. 1548 and 1551) Mr Masterman denied this, claiming that 'in-depth investigation of complaints against their activities' was justified. Mr Masterman told the Committee:

If you are investigating fairness and accuracy, you have sometimes to decide that a journalist has not been accurate and that involves a conflict of evidence. You have got to ask questions. I think this business about ... being legalistic is ridiculous in relation to the few cases that we did. (Transcript p. 1551)

8.109 The Australian Banking Industry Ombudsman provides a useful complaints handling model for consideration by the print media industry. This industry-funded position was created by the member banks in June 1990. It reports to a council comprised of equal numbers of consumer and banking representatives with an independent chair. Details of the outcomes

of ombudsman inquiries are conveyed to the banks concerned and published in an annual report. The Banking Ombudsman makes strenuous efforts to publicise his activities - through brochures, posters, seminars, talks to community groups, and media interviews. A significant feature of the public's access to the complaints procedure is that the complaints forms included with every brochure are pre-addressed to the particular bank and pre-paid. The brochures and complaints forms are available in every bank. Whilst the office prefers complaints to be in writing, if there is a problem with this the office will facilitate the lodging of a complaint by conducting an interview from which a written complaint can be developed. A copy of the complaints form from the Banking Ombudsman, is included at Appendix 13.

8.110 AUSTEL, the Australian Telecommunications Authority, also provides a useful model for the handling of complaints. AUSTEL encourage complainants to make their first contact by telephone. Often this contact is sufficient to determine whether there should be a formal written complaint and to direct the complainant to the organisation best placed to handle the complaint - the Commonwealth Ombudsman, the Trade Practices Commission or AUSTEL itself. The initial contact with either the Ombudsman or Trade Practices Commission would also be done by telephone.

8.111 The Press Council advises people to take their complaint, in the first instance, to the editor or other representative of the publication concerned. In the event that the complainant has been unable to resolve the matter with the individual newspaper, the Council then advises people to lodge a written complaint. The complaints form used by the Australian Press Council is included at Appendix 14.

8.112 Of those who made suggestions to improve the effectiveness of the Council, none wholeheartedly advocated a legislative solution because of concerns about government imposed regulation of the press. The ACTU, however, did identify advantages in a carefully considered statutory solution. (Transcript p. 1370)

#### **Press Council - Conclusions and Recommendations**

8.113 The Press Council has been the subject of two major criticisms during this Inquiry. The major areas of concern include the structure of the Council and the publishing of reports of Press Council judgements.

8.114 There is a perception that the current structure is not working effectively, particularly since the AJA terminated its involvement in 1987. The Committee considers that the Council should be restructured to include representatives of the AJA and that there should be equal representation of publishers, journalists and the public. An independent chair and the public members should be jointly appointed by agreement between the AJA and the publishers.

8.115 The Committee believes that a restructured Press Council should have as its primary aims making it easier for people to lodge complaints and providing a more effective mechanism to deal with complaints. The Committee is attracted to the ombudsman approach adopted by the banking and telecommunications industries - as outlined in paragraphs 8.109 and 8.110 above. *Their complaints handling procedures would be useful models for the restructured Press Council to consider.*

8.116 It should be noted, however, that although the Committee favours allowing the industry to develop an improved structure and improved mechanisms for handling complaints, a statutory body like AUSTEL provides a model which may have to be considered for the print media if the proposed self-regulation fails.

8.117 The second area of concern related to publishing of reports. The Committee is concerned that the reports are not being published, or that if they are, they are being 'watered down'. The Committee concludes that the Press Council should be more diligent in ensuring the publication of reports.

**8.118**      **The Committee recommends that:**

- **the Press Council be restructured;**
- **it be funded by the print media industry;**
- **the Council be adequately resourced to publicise its activities and deal with complaints;**
- **it be constituted by equal representatives of the public, publishers and the AJA;**
- **an independent chair and the remaining members of the public be appointed by agreement between the publishers and the AJA; and**
- **each publisher be required to publish in full in a manner determined by the Council any matter affecting a particular publication.**

**Further, the Committee recommends that the Minister for Transport and Communications convene a meeting of representatives of the publishers and the AJA at the earliest opportunity to discuss the implementation of this restructuring.**

## **Conclusions and Recommendations on Editorial Independence**

8.119 Editorial independence refers to the vesting of editors with the power or authority to select and present news and views without interference or control by the proprietor or management. Calls for editorial independence stem from the high level of ownership concentration of the print media industry and increase the risk that news may be distorted or suppressed.

8.120 Some members of the Committee concluded that there was a connection between the unprecedentedly high concentration of media ownership and the lack of diversity of information and ideas in the Australian press, and that the former is likely to be a significant cause of the latter. However, a majority of the Committee considered that there was insufficient evidence to conclude that the current high level of concentration in the Australian print media has resulted in biased reporting, news suppression or lack of diversity. All members agreed that concentration of ownership is potentially harmful to plurality of opinion and increases the potential risk that news may be distorted.

8.121 The key issue for the proponents of editorial independence is the separation of the legitimate business interests of the proprietor or management to run a business for profit from the editorial process of the fair selection and presentation of news. Such separation, however, may not be entirely possible. Owners and managers have a say in the general editorial direction of the paper, and select editors who in turn have responsibility to maintain or increase circulation figures.

8.122 Several alternative mechanisms to foster editorial independence were proposed to the Committee. The one proposed more frequently than others and on which the Committee collected a large amount of evidence was a charter of editorial independence. The other major alternatives proposed and considered by the Committee were codes of ethics and contracts for editors.

8.123 Charters of editorial independence may be a way of separating the business function from the editorial process. If proprietors and their staff develop them in a spirit of mutual cooperation and respect, that may be good for that particular company. However, if there is a lack of willingness on either side, then the presence of a charter would not prevent undue intervention anyway. The Committee reaffirms its belief that, despite the desirability of conduct and standards implied by charters, newspaper proprietors should not be required by legislation to sign charters of editorial independence.

8.124 Similarly, contracts for editors, like the proposal to incorporate editorial independence in articles of association, may also separate the business function from the editorial process. They are also matters for the different parties to accept through negotiation. The 1977 UK Royal Commission said that 'it is difficult to define the elusive borderline between the responsibility of a proprietor and an editor' and that 'in reality editorial and managerial decisions (are) inseparable and must be made in a framework which (gives) the editor freedom within recognised constraints'. (July 1977, Cmnd 6810, p. 155)

8.125 The AJA Code of Ethics seems to provide the most practical form of support for editorial independence. In setting out a framework within which journalists can operate, secure in the knowledge that their responsibility to report news fairly and accurately was accepted by those who employed them, the Code has application to their employers as well. For this reason, the Committee encourages proprietors and editors to join with journalists in agreeing to the Code as the overriding principle governing the performance of their duties. As previously mentioned, one way of encouraging the use of the Code is to incorporate it into any contracts which are negotiated between the relevant parties.

8.126 Editorial independence is desirable at minimum to ensure the fair and accurate presentation of news to enable Australians, living in a democracy, to make informed judgements about their society. The issue facing the Committee is not the importance of editorial independence, but whether it is possible to develop practical arrangements which are likely to guarantee it. Adherence to the AJA Code of Ethics by proprietors and journalists is one practical way to foster a guarantee of editorial independence by contributing to the fair and accurate presentation of news. Alleged breaches of the code can be handled by the relevant AJA judiciary committees and other cases can be appealed to the Australian Press Council.

**8.127** The Committee rejects calls for legislative requirements for mechanisms to support editorial independence and recommends that the Government convey to the print media industry the Committee's preference for the following:

- proprietors, editors and journalists are encouraged to subscribe to the principles of the Code of Ethics of the Australian Journalists' Association, especially in employment contracts;
- contracts for editors, whilst supported in principle, are a matter for individual proprietors and editors;
- a restructured Press Council should improve accessibility to the complaints handling process and require publication of their reports.

