Network Ten Pty Ltd

Submission to Senate Environment, Communications, Information Technology and the Arts Committee Inquiry into the Broadcasting Services Amendment (Media Ownership) Bill 2006 and Related Bills

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- Ten strongly supports the *Broadcasting Services Act (Media Ownership) Bill 2006*.

- Changes to the current media ownership rules have now been under consideration for more than ten years. In that time, technology has rendered these artificial restrictions well and truly outdated and obsolete.

- The reforms contained in this bill will increase the efficiency, competitiveness and flexibility of Australia's media sector while maintaining diversity of opinion by giving small and medium sized media companies a chance to effectively compete with the two dominant players, PBL and News Limited.

- Without change, these players (who, with the largest telecommunications company, Telstra, already control a strengthening monopoly in pay television) will continue to entrench their dominance at the expense of smaller media players, with diversity and quality of content in metropolitan and regional markets suffering as a result.

- The Government has stated that this package is designed to facilitate a transition period in the Australian media landscape, particularly as Australia moves from analogue to digital broadcasting.

- Ten agrees with that approach and urges legislators and policy makers to consider the considerable benefits that 50 years of broadcasting regulation have delivered to Australian viewers, for free, when making decisions about the future of television in particular.

- The anti-siphoning regime is a critical part of the package as it ensures that the most popular sporting events in Australia are shown on free TV, unlike in the UK and New Zealand where viewers have to pay. Despite the campaign of misinformation currently being propagated by the pay TV monopolists, Ten broadcasts all sporting events for which we own the rights.

- In order to create a competitive framework that delivers real consumer choice while maintaining the current high standard of local content, these bills can only go through as a total package.

Introduction

The Ten Group Pty Ltd ('Ten') owns and operates Network Ten's five capital city television stations.

Ten welcomes the opportunity to comment on the *Broadcasting Services (Media Ownership) Bill 2006* and related bills.

Ten's submission will focus on the impact of changes to the cross-media ownership laws which have now been under consideration in this country for ten years.

This submission is made in addition to that provided by Free TV Australia. Ten fully supports the positions outlined in that submission.

The Government has stated that this package is designed to facilitate a transition period in the Australian media landscape, particularly as Australia moves from analogue to digital broadcasting.

Ten urges all those involved in the process of setting the policy and regulatory framework in this area to be mindful of the excellent service and the substantial benefits that 50 years of broadcasting regulation have delivered to Australian viewers for free. That system cannot be dismantled, even in part, without careful consideration of the consequences for television and other media over the next five to ten years.

Media ownership and control

Ten strongly supports the proposed changes to cross-media ownership rules which will increase competition and efficiency within the Australian media marketplace while maintaining adequate protections on local content and diversity of opinion.

As a medium sized media company with a single free-to-air television channel to market, Ten would have concerns about the potential for the changes to allow Australia's largest media companies to increase their dominance, particularly if an open slather regime was put in place without the appropriate checks and balances.

However, we are reassured by the Government's approach of balancing cross-media ownership reform with new competition and content safeguards to ensure diversity.

For companies like Ten trying to compete with the dominant players, the alternative of leaving the rules the way they are is far worse.

Without access to capital and resources and without the ability to create scale, Ten will not be able to provide real competition to Australia's media giants, particularly in an increasingly fragmenting media market.

Reform of cross-media restrictions will enable Ten to grow and compete in a number of ways.

The traditional media sectors of newspapers, commercial television and radio are one of the few remaining areas of Australian industry with a high degree of structural regulation. This impedes the aggregation of capital and non-editorial management skills across different parts of these sectors.

Currently each newspaper, television and radio organisation operates separately from other organisations in the same area. Change to the current rules offers the opportunity to reduce unnecessary duplications without impacting on editorial independence. For example, cross-media ownership could allow non-editorial management functions, administrative functions and support services to be merged. This could occur through cross-media acquisitions, but could also occur through joint ventures, strategic partnerships and other arrangements. The current prohibition on any form of cross-media control, combined with the very wide definition of ‘control’ prevents such arrangements.

Such a structure need not diminish the independence or influence of either company. Rather, it ensures that each company has access to high quality management expertise and extra capital as needed. This in turn has the potential to allow companies to devote more resources to producing quality news and information services as well as local content.

Australia is regarded as a leader in the media sector due to our high standard of technological development, the high quality of our content and outstanding production and technical skills, and strong management skills. However, it will be increasingly difficult for Australian media companies to stay at the forefront of global developments unless media companies can aggregate skills across a range of media sectors.

In making these changes, however, it is vital that protections on competition, diversity of opinion and access to a diverse range of news and information sources are enforced.

Protections against over-concentration and loss of diversity

Ten acknowledges concerns that a wholesale removal of cross-media restrictions could pave the way for increased dominance by established players, and an over-concentration of media, with diversity suffering as a result.

Ten shares this concern and as a smaller player in this industry would not support this legislation without the appropriate checks and balances being in place.

However Ten considers that there are adequate protections and limitations contained in this bill and related regulation to protect against a real loss of diversity. Changes in the face of the global media industry and the way consumers access news and information also act as protections on access to a diverse range of views.

Those protections include:

- The prohibition on ownership of more than one commercial television licence in a market – this restriction guarantees the continued existence of at least three distinct, separately owned television voices in almost all licence areas in Australia;

- The television reach rule which states that the aggregate of licence area populations controlled by a person cannot exceed 75% of the total population;

- The prohibition on ownership of more than two commercial radio licences in a market;

- The disclosure provisions of the bill which require a media organisation to disclose when it is reporting on the affairs of a cross-owned entity – a requirement which currently does not exist;

- The 5/4 independent voices rule which will guarantee a minimum number of independently owned players in each metropolitan and regional media market and will prevent any mergers from occurring in a majority of regional markets;

- The significant content obligations imposed on broadcasters through various regulatory instruments including local content and news and information quotas on television and radio licencees in regional and metropolitan markets.

  - These obligations ensure that broadcasters must produce a minimum amount of local content appropriate to the medium, despite any cross or foreign ownership;

- The Trade Practices Act and the ACCC's role in preventing mergers or acquisitions that substantially lessen competition in a market. In recent months the ACCC has been actively considering the impact of changes to cross media rules and media mergers and has already indicated that mergers in regional markets in particular will be thoroughly scrutinised;

- The provisions of the Commercial Television Code of Practice and the Commercial Radio Code of Practice which require news programs to be impartial, distinguish factual material from commentary and guard against bias and inaccuracy in news and current affairs reporting;

- Increased enforcement powers contained in the *Broadcasting Services Amendment (ACMA Enforcement Powers) Bill 2006* which will ensure that ACMA can enforce, among other things, the 4/5 voices test, compliance with commercial disclosure requirements, and compliance with licence conditions requiring the provision of local news and information and adequate and comprehensive services in a licence area.

  - In practice the high level of scrutiny of the media means that the risk of any cross-media breach is low. Commercial broadcasting licences are valuable assets which are unlikely to be put at risk by their owners and the broadcasting industry's record of compliance is very strong.

- The availability of the national broadcasters, the ABC and the SBS, which provide numerous television and radio services around the country and do not count as 'voices' for the purposes of the 5/4 rule;

- The availability of a number of community television services as well as myriad community radio services throughout the country which are not counted as 'voices' for the purposes of the 5/4 rule;

- The availability of pay television which is not counted as a 'voice' for the purposes of the 5/4 independent voices rule - subscription television services provide access to several international news and information channels;

- The fact that non-associated newspapers such as *The Australian* and *The Australian Financial Review* are not counted as 'voices' for the purposes of the 5/4 rule;

- The wider availability of news and information through the Internet and other new and emerging media platforms. Digital media has undoubtedly accelerated convergence between traditional media and online media. These services are now being offered by FTA television and radio operators as well newspapers around the country:

    - While many of the most popular news sites are operated by existing media groups, the Internet has facilitated wider access to those services, particularly in regional centres and smaller metropolitan capitals where consumers were previously restricted to their local daily newspapers, television or radio news sources. Those Australians no longer have to wait up to a week for a copy of a major metropolitan newspaper to be delivered as they now have instant online access to major metropolitan newspapers, as well as FTA news resources from around the country.

    - The availability of these new sources of information is particularly relevant for younger media consumers who are highly technology literate and spend given the take-up of Internet and broadband services, and the fact that the average Australian now spends on average one hour and 22 minutes online everyday.

- The far wider availability to Australians of international sources of news and current affairs through the new mediums outlined above;

- The allocation of the unallocated spectrum for new digital services which offers an opportunity for new players to enter the market;

- The anti-siphoning regime which ensures that viewers who cannot afford or choose not to buy pay television have access to Australia's most popular sporting events for free; and

- A sophisticated audience and strong consumer demand for unbiased, credible, sources of news and information produced to a high quality. This demand restricts media companies' commercial ability to cut back on resourcing of news and current affairs programming.

Without change diversity will suffer

While maintaining the current restrictions on media ownership offers a superficial promise of retaining or even increasing diversity and choice, in reality consumers may be faced with less. This will occur if content variety becomes more limited and broadcasters and other media outlets are forced to cut local programming and content investment because advertising revenue is drawn away and the opportunities to grow and increase scale to combat these changes are limited by outdated media restrictions.

Diversity is also likely to be threatened if the largest players in the Australian media sector are allowed to expand into sectors beyond the scope of the cross-media rules and increase their current dominance while smaller players are restricted from growing, particularly in the face of increased fragmentation and challenges to traditional media models.

The broadcasting legislative framework recognises both the important public benefits that free-to-air broadcasting delivers and the need for a strong free-to-air sector to deliver these benefits. Australia’s commercial free-to-air sector delivers a high level of diversity in the content offering across five free-to-air networks in all program genres including news, current affairs, documentary, drama, sport, light entertainment and comedy through a fully advertising funded model. Despite its relatively small size, Australia’s free-to-air market is highly competitive by world standards.

However, audience numbers are under pressure due to increasing competition from a monopoly pay TV sector, digital video discs (DVDs), personal video recorders (PVRs), the Internet, premium mobile and broadband services including a range of content-on-demand services. In combination, these factors have the potential to change the face of the media industry within five to ten years and to threaten the viability of the free-to-air broadcasters’ role as the backbone of the local content production industry.

The Australian media landscape is currently dominated by two media companies: News Limited and Publishing and Broadcasting Limited (PBL). Between them these two companies own major stakes in metropolitan and regional newspapers, commercial free-to-air television, pay television, online news and classified sites, cinema distribution, and magazine publishing.

News Limited owns 16 major Australian newspapers located in most capital cities. The circulation of these newspapers includes 68% of Monday to Friday capital city circulation, 61% of the capital city Saturday market, 78% of the capital city Sunday market and 23% of regional daily markets.

PBL owns three commercial television broadcasting licences in capital cities reaching 59% of the population. Together with Telstra, Australia's dominant telecommunications company which is currently unfettered by any media ownership restrictions and well on the way to becoming a dominant media player, News and PBL own 25% each of monopoly pay TV provider, Foxtel.

The threat to diversity from the increasing dominance of the pay television monopolist, Foxtel, cannot be understated - particularly as the access regime approved by the ACCC to limit the impact of the monopoly has failed Australian consumers due to its uncertainty, complexity and high costs.

The most profitable channels on Foxtel are those owned by The Premier Media Group, the Fox Sports channels, which are jointly owned by PBL and News Limited. News and PBL also own 33.3% of Sky News Australia.

Online assets owned by News Ltd and PBL include:

- News.com.au, Australia's second most visited source of online news
- 50% of ninemsn, a leading internet portal and third most visited online news source
- News Interactive which owns major online classified sites: truelocal.com.au, realestate.com.au, careersonline.com.au, carsguide.com.au, homesite.com.au
- 41% of Australia's number one online auto and trader classifieds site, carsales.com.au
- 25% of SEEK, the nation’s number one online employment classifieds business
- Major social networking site Myspace.com

Cinema and production assets include 50% of major cinema company Hoyts and the Fox Studios production lot in Australia. Magazine interests include the biggest magazine publisher in Australia, Australian Consolidated Press, with titles including *The Bulletin*, and News Ltd owns the major publishing company Harper Collins Australia.

The dominance of these companies is growing and will continue to grow, even without change to cross media rules. At the same time there are many commercial, financial and technological challenges ahead for the free-to-air broadcasting sector which will impact on the benefits that it delivers to Australian consumers.

To genuinely protect diversity, smaller companies need to be able to grow to a sufficient size to fund the investment required to exploit technological change and emerging consumer demand. Without such expansion, smaller companies will struggle to remain relevant and compete viably in an increasingly fragmenting media marketplace.

Protecting diversity in news and information sources

Removing cross media restrictions is not about threatening the quality of journalism or reducing the number of journalists working in Australian newsrooms, as some have suggested.

With the growing emphasis on a 24 hour news cycle the demand for news services is increasing, not decreasing.

Research conducted by the Australian Broadcasting Authority in 2001 found that the quality of information presented in a news report was the key determinant of whether people found news credible, no matter the media. This would strongly suggest that maintaining the quality of news content is vital to gaining a commercial advantage and being seen as a credible news source.

It is highly unlikely that media companies could meet this standard by relying on a newsroom of journalists multi-tasking across several mediums by simply reading newspaper reports on the radio for example. If anything the role of journalists in the different mediums is becoming more defined and distinct.

Journalists require different skills sets depending on the medium they are operating in. For example, with evolving technology in television there is far more emphasis on the production and technical skills of journalists. There is also more demand for live coverage in television news services rather than the in-depth analysis favoured in newspapers and magazines.

In Ten's experience there are few journalists that have successfully transcended the different mediums and even fewer who can operate successfully in more than one medium at once. In the past year Ten has employed several additional staff for the new *Early News* service and the re-purposing of news content for mobiles. None of these journalists came from the traditional print sector.

The consolidation of media companies could in fact provide far more opportunities for journalists and diversity as those companies are more likely to have the financial capacity and inclination to put additional news resources into new mediums such as online and mobile formats.

On the other hand, without change to the media laws, the impact of fragmentation will undoubtedly extend to the news market where competition for dispersed news audiences in both print and broadcast journalism will put pressure on standards and diversity of views.

Changes to foreign ownership provisions

Ten strongly supports the removal of foreign ownership restrictions. Removing these limits will encourage quality voices in the Australian media that can be backed by international expertise and resources.

It is critical that restrictions on foreign ownership and control of commercial television broadcasting licences are removed so that Australian media companies can successfully compete for global investment funds. The current 20% aggregate foreign company interest limit, and 15% individual company limit, acts as a brake on such investment.

Capital markets operate on a global basis. Lack of access to global capital impedes the growth of the Australian media and is unsustainable. This is particularly the case for foreign institutional investors who have a range of competing investment opportunities. Limited access to global capital is the modern day equivalent of geographical isolation.

Foreign ownership and control rules are outdated and do not reflect the reality of global investment flows or trans-national corporate structures. At present, a major foreign investment must be in the form of a 'passive' loan interest. This has led to Australian television networks seeking foreign equity through unnecessarily complex contractual arrangements. These arrangements significantly add to the cost and risk of investment in the Australian media, and make it unattractive for many foreign investors.

Removal of the current foreign ownership limits will mean that these complex non-equity interests will no longer be required to attract foreign investment. Improved access to foreign capital will strengthen the media sector, enabling it to continue to develop and expand.

Trans-national media groups are a growing trend through reciprocal investment, joint ventures and other arrangements. The current restrictions prevent Australian commercial television broadcasters from accessing the resources and expertise that these groups have been formed to provide.

The prohibition on foreign control of commercial television discourages joint ventures with foreign investors. Joint ventures are essential for creating new programming, upgrading technical infrastructure and maximising natural synergies between media companies around the world. They will be increasingly essential to fund high quality Australian content and to export that content to an international audience.

This issue is becoming increasingly relevant as media organisations which have developed expertise in specific broadcasting areas - such as sport, documentaries or movies - are rapidly becoming part of larger organisations providing packaged services. In future the ability to tap into specialist niche expertise is likely to depend on the overall relationship a broadcaster has with larger organisations. The relatively small size of Australian broadcasters and the inability to invest reciprocally with overseas organisations reduces the Australian media's ability to obtain content on favourable terms. Over time this will adversely affect the diversity and quality of content available to Australian audiences.

By restricting the creation of joint ventures the existing regime limits Australian television companies' ability to provide their considerable expertise to overseas media organisations. While the current restrictions do not of course prevent Australian investment in foreign media entities, many foreign groups prefer models which rely on reciprocal investments, joint ventures or other partnering arrangements.

Past experience indicates that removal of foreign ownership restrictions is likely to increase diversity in the Australian media, both in the types of services offered and the number of companies that offer those services. Removal of restrictions on commercial radio licences in 1992 benefited the Australian economy, increased competition in the radio market, and thereby increased the diversity of services offered.

Comment on the *Broadcasting Services Amendment (Digital Television) Bill 2006*, *Communications Legislation Amendment (Enforcement Powers) Bill 2006*, *Television Licence Fees Amendment Bill 2006*

Ten supports these bills subject to the following:

- The various bills can only be passed as a total package of reforms. Ten would not support enactment of the digital television amendments without the media ownership amendments as this would threaten Ten's ability to compete with dominant media players and maintain the quality of the existing free-to-air service over the coming years. In order to create a competitive framework that will deliver consumer choice and a competitive industry in the digital media age, the various media reform bills can only go through as a package.

- The impact of commercial free-to-air multichannelling on the take-up of high-definition digital TV and the ability to meet local content obligations in particular must be closely monitored in order to ensure that the benefits achieved for Australian viewers through 50 years of broadcasting regulation are not lost in the transition to analogue switch-off.

- Ten cannot comment on the detail of the proposals to auction the unallocated spectrum without seeing the amendments. However, the suggestion that the free-to-air networks should be the only companies in the world precluded from bidding for spectrum to provide a new mobile service when a range of other dominant companies including Australia's largest telecommunications company, Telstra, and Australia's monopoly pay TV provider, Foxtel, can bid, is ludicrous.

- The anti-siphoning regime is a critical part of the media policy framework as it ensures that the most popular sporting events in Australia are shown on free TV. Sports broadcasting is a critical part of Ten’s business. Ten broadcasts in excess of 440 hours of sport each year. Our coverage is consistently strong, and Ten shows every event on the anti-siphoning list for which we own the rights.

- International experience in the UK, New Zealand and South Africa shows that if important and popular sporting events, such as the AFL and Rugby World Cup, were not included on the anti-siphoning list they would be sold directly to pay television and Australians would be forced to pay to watch the sports they love.

- TEN fully supports the positions outlined in the Free TV Australia submission.