September 25, 2006

Secretary (Media Ownership Bills Inquiry)
Senate Environment, Communications, Information Technology and the Arts Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Submission by APN News & Media to the Senate Committee Inquiry into Broadcasting Services Amendment (Media Ownership) Bill 2006 and related bills

1. Summary

APN News & Media (APN) supports in general the proposal for media reform outlined in the draft legislation. In the company's submission:

- The current media laws are outdated, inefficient and anti-competitive. The existing laws constrain further growth and development of the media sector.
- Australian media must be globally competitive, open to international investment and keep pace with technological change if the industry is to remain viable and relevant.
- Cross-media and foreign ownership restrictions should be liberalised as soon as possible. The experience in commercial radio in Australia, where foreign ownership liberalisation has seen the introduction of two new major competitors with significant overseas shareholdings, indicates that these laws are constraining potential development in other media.
- While the Government will retain the ability to control foreign investment through FIRB, its approach should be ‘light touch’. The Treasurer should issue meaningful guidelines outlining the circumstances in which foreign investment in media would normally be approved.
- The issue of diversity of ownership requires careful consideration of all the market influences present in a particular region. While APN supports the concept of a voices test in general, further thought needs to be given to what constitutes a voice. A ‘one size fits all’ approach – whether it be a number of ‘voices’ or a cap on the number of media types that can be owned by a single operator – risks introducing significant market inefficiencies and ultimately sub-standard outcomes for consumers.
- A significant possible constraint on the media sector will be the Australian Competition and Consumer Commission’s (ACCC) approach to market definition. The ACCC should be encouraged to release clear guidelines on media market definition. These guidelines should be easily understood and ultimately included in the legislation where possible.
- Localism in regional areas is understandably an issue of concern to the Government, and APN supports the concept of local content requirements for TV and radio licence-holders.
- The proposed reforms should be implemented as soon as possible.

2. Background

APN News & Media is listed on the Australian and New Zealand stock exchanges and is the third largest media company on the ASX. In Australia, APN publishes 14 daily newspapers and more than 60 non-daily titles, covering northern NSW and Queensland, from Coffs Harbour to Mackay. APN also operates the Australian Radio Network, which has 12 metropolitan radio stations, broadcasting the Mix and Classic Hits networks. APN is also the largest operator of outdoor advertising in Australia. In New Zealand, APN publishes that country's largest daily newspaper, *The New Zealand Herald*, as well as eight regional daily newspapers and more than 35 non-daily titles. It also operates The Radio Network, which broadcasts more than 100 radio stations across New Zealand, including the leading stations in Auckland, Wellington and Christchurch. APN is also the largest operator of outdoor advertising in New Zealand. APN's online division operates a number of websites across Australia and New Zealand, including nzherald.co.nz, search4jobs.co.nz and worksearch.com.au.

With its Australian and New Zealand businesses, APN operates under two entirely different regulatory regimes. In New Zealand, outside of competition issues overseen by the Commerce Commission, there are few if any regulations restricting media ownership. As a consequence, in New Zealand APN operates newspapers and radio stations in the same markets. In Auckland, the company has *The New Zealand Herald* as well as seven FM radio stations, including the leading news radio network *Newstalk ZB*. The radio network and newspaper are housed separately, and compete both commercially for advertising and editorially for news stories. Common ownership has not resulted in any diminution in local news coverage or affected competition over advertising rates. By contrast, the absence of ownership restrictions has allowed APN to invest with confidence in the New Zealand market. The result has been the recent launch of several new print products for consumers and the introduction of world-class radio programming that meets local needs. APN has been able to build strong brands, deliver quality products to consumers and create significant value for shareholders because of the clear and fair regulatory regime in which it operates.

In Australia, however, APN is prevented from owning newspapers and radio stations in the same market. APN is committed to its individual markets but regards the inability to own multiple media types as a significant impediment to maximising shareholder value and actively works against consumers' interests by failing to produce the best possible product. For example, the substandard nature of networked regional radio in Australia can be directly attributed to the current cross media rules, which have prevented the best local media operators from owning and developing those assets.

APN supports the liberalisation of media ownership to allow for a more efficient flow of investment capital in the Australian market. APN does not believe that separate regulations for metropolitan and regional markets are justified. The ACCC is the right arbiter for questions of media industry concentration, as it is for all other industries in Australia.

3. Foreign Ownership

APN has a particular interest in foreign ownership restrictions, as it is a company with a significant foreign shareholding through a major international newspaper group, Independent News & Media. It is also a 50% owner of Australian Radio Network, with its joint venture partner Clear Channel Communications of the US and a 50% owner of radio stations in Brisbane and Perth with Daily Mail and General Trust Group (DMG).

The case for relaxation of foreign ownership restrictions on Australian media is overwhelming. For example, in commercial radio foreign ownership relaxation has seen the creation of both ARN and DMG, now two of the major forces in Australian radio. Between them, these groups have invested well in excess of a billion dollars in Australia. The multiplier effect on employment, the advertising market and through it, promotion of trade in goods and services, has been enormous. Most importantly, the creation of these groups has transformed the Australian radio market, both commercially and in terms of the quality of broadcasting, making it extremely competitive in a way that would not have been possible without that investment.

In New Zealand in the space of a decade, one of the smallest and most regulated media sectors in the OECD has been transformed, primarily through the abolition of foreign ownership restrictions. In addition to APN, major overseas investors in New Zealand have included Australian companies such as Fairfax, Prime Television and PBL. Canwest, the Canadian media company, has also invested in television and radio assets. Foreign investment has made New Zealand one of the most competitive media markets in the world, delivering high quality services to consumers.

APN has invested approximately NZ$1.5 billion in New Zealand through the acquisition of Wilson & Horton and The Radio Network, as well as the extension of APN's Outdoor advertising businesses. As a result of this investment, APN has market leading positions in publishing, radio, outdoor advertising and online. Fairfax has also invested approximately NZ$1.8 billion through its acquisition of Independent Newspapers Limited, Trademe, Rodney Times and The Independent newspapers.

The investment by these two companies alone is enormous; the total New Zealand advertising market attracted approximately NZ$2.2 billion of advertising revenue in 2005. Local content has not suffered in the New Zealand media market as a result of a large amount of non New Zealand ownership.

Media of its nature is a sector requiring specialised knowledge and skills, as well as access to major sources of capital. Australia's foreign ownership restrictions are depriving the Australian media market of that access and, consequently, depriving Australians of the benefits of such ownership. Those restrictions should be relaxed as soon as possible – irrespective of the outcome of other media policy deliberations.

The Government will retain the capacity to regulate foreign ownership through FIRB policy. APN acknowledges that the Government would wish to retain an overriding discretion to consider foreign investment on a case-by-case basis. Nevertheless, it will be important to maintain a "light touch" approach, in order to maximise the benefits of overseas investment in media.

Major international investors require regulatory certainty, in order to assess potential investments within the limited timeframes that individual investment opportunities usually arise. APN therefore submits that the Treasurer should issue guidelines as soon as possible, outlining the circumstances in which foreign investment in Australian media would normally be approved. The starting premise of those guidelines should be that, in the normal course, foreign investment up to 100% would be approved unless an investor poses a real risk to Australia's security, economic or political interests. The Treasurer's discretion should be used to veto an investment only on very rare occasions.

4. Cross-Media Issues

APN considers that diversity in all its forms is the outcome of a healthy competitive environment and supports the measures that will preserve media diversity.

APN notes that the Minister's proposals seek to preserve diversity through ownership restrictions, with a floor of five media voices in metropolitan areas (defined as mainland state capital cities) and four in regional areas. Media voices have been defined as entities with the ability to control a commercial television or Radio licence or an Associated Newspaper, which are the entities currently subject to the cross-media rules.

This definition of media voices is tied to the historic method of regulating the media industry, i.e. by media platform. In her discussion paper, the Minister noted that emergence of new technologies and services have rendered the current regulatory framework redundant:

> *"the current, 'analogue' approach to media regulation, enshrined in the Broadcasting Services Act 1992 (BSA), is based on regulatory distinctions between different types of broadcasting. Digital technology enables new services to be offered and opportunities for additional sources of content for audiences from both new and existing players. In a converged environment, it will become increasingly difficult to regulate the emergence of new players and new services.*

Digital technologies blur the lines between the traditionally distinct telecommunications, broadcasting, print and IT sectors as they deliver an increasingly common range of services.

This shift has substantially impacted not only upon entertainment services, but also on sources of news, public opinion and information. For instance, use of internet-based news media has been growing rapidly. While many popular news sites are provided by traditional media companies, the emergence of weblogging, news via mobile phones and independent online news services means news and current affairs reporting has become more interactive."[1]

As a consequence of smaller audiences and higher costs, regional media markets have a lower level of diversity than the state capital cities. In nearly all cases, regional licence areas feature three (or two) regional television services, one or two jointly-controlled commercial radio services, and one or no Associated Newspapers. Accordingly, the majority of regional licence areas have five media groups where there is an Associated Newspaper and four or fewer where there is no Associated Newspaper. By example, of 33 commercial radio licence areas in New South Wales, Australia's most populous state, only 14 have an Associated Newspaper, and of those 14, only one has two Associated Newspapers. (That area is Katoomba, in respect of which, due to its proximity to Sydney, two Sydney newspapers are associated).

In regional markets, therefore, the scope for wide scale mergers will be necessarily limited under the current proposals. In many licence areas, cross-media transactions could occur only if media groups already present in a regional licence area divest television or radio licences or newspapers to new owners, thereby increasing the number of separately controlled media entities in those markets above the minimum number (proposed to be four for regional markets).

On this analysis, the 'four voices' is already likely to constrain cross-media investment in regional areas, if the test includes only newspapers on the Associated Newspaper Register and other traditional media platforms such as commercial radio and television. However, APN questions whether this is the appropriate approach. Indeed, it seems unusual that legislation prompted by the arrival of 'new' forms of media should rely entirely on utilising 'old' forms of media in determining diversity by number of 'voices'. The Associated Newspaper Register was introduced specifically to create the third 'leg' of the cross-media rules. It was never intended to measure the number of local media voices within smaller regional communities. There are many local newspapers and other publications that are distributed free, or only on certain days of the week, which are very relevant to local political and social debate. Indeed, in smaller regional communities, these newspapers and publications have far more local content than (say) a regional television service broadcast to a wide range of cities and towns. Equally, national or industry-based newspapers that are not included on the Associated Newspaper Register compete vigorously for readers and advertisers in regional markets, yet are not counted as 'voices' in any assessment of diversity.

A growing and increasingly more important part of APN's publishing strategy is the launch of new gloss publications that would not be classified as traditional newspapers, yet are tailored to the needs of local markets and add an important dimension to the local community media infrastructure. These would be omitted from consideration as a media voice under the current voices definition.

In many areas of Australia, there are significant local community radio and television stations, which equally have an important part to play in the diversity of local media opinion and are not captured by the proposed voices test.

APN recommends that the Government considers a broader definition for determining media voices in any one market, bringing these newspapers/publications, community radio/television services etc into the 'voices' test. Online classified sites, print directories and search-based websites could also be considered as 'voices' under future reviews. This mechanism could be administered by the ACMA and reviewed on a regular basis, say every three years.

[1] *Meeting the Digital Challenge, Reforming Australia's media in the digital age,* March 2006. Page 3

In APN's submission, specific guidelines under which the ACMA will be monitoring the diversity provisions should be included in the media legislation.

One of the main criticisms of the Government's diversity proposals is that the floor of four media voices will lead to unnecessary concentration of media in regional markets, thereby reducing competition in the areas of content and advertising. APN does not share this view; experience has shown that common ownership of major media in a market does not lead to less competition or reduced diversity of services.

The APN business model is based on localism and will continue to be focussed on local markets. The business model is linked to attracting local advertising revenue which in turn is aimed at local consumers to buy local products. It is only by providing a truly local service that APN can satisfy its audience and customers alike and to maximise its returns.

'Two from Three'

With regard to alternative proposals to restrict ownership in regional markets using a 'two from three' cap, APN argues that applying different regulatory regimes (number of 'voices' versus number of media types) for metropolitan and regional markets is fundamentally poor legislation. A two-tier regime set across arbitrary lines on a map is nonsensical and anti-competitive. This would be particularly so in the southeast corner of Queensland.

An additional 1 million people are forecast to live in the markets of Brisbane, Ipswich, Logan, Gold Coast and Sunshine Coast by 2026. [2] Already, the western corridor linking Brisbane to Ipswich is a 30km unbroken line of urban development, with no obvious distinction between 'metropolitan' and 'regional' markets. As the area continues to grow, this same 'fill-in' effect will be felt to Brisbane's north and south. Population forecasts predict a Los Angeles-style conurbation that will run from Coolangatta in the south to the southern boundary of Noosa Shire in the north and out to Ipswich in the west. Yet under proposals for a 'two from three' limit for regional markets, two very different regulatory regimes would operate within an hour's drive from the Brisbane CBD. This is analogous to two separate ownership regulations operating across the Sydney market, with one set applying south of the Spit Bridge and another to the North. This would place media owners in the so-called regional markets surrounding the Brisbane CBD at a distinct competitive disadvantage to those operating in the Brisbane metropolitan market. The outcome would affect investment in the regional markets and ultimately produce a sub-optimal offering to consumers in those markets.

As already suggested above, a more effective instrument to provide diversity of content and ownership is via the 'voices' test; however, where the definition of what constitutes a voice better reflects the competitive nature of contemporary markets.

5. Market Definition and the ACCC

While generally supportive of the proposed changes, APN has some concerns about the need to clarify the regulatory framework to be used by the ACCC under the proposed new system.

The ACCC has traditionally regarded free to air television, pay television, telecommunications, radio, newspapers and magazines as separate markets. However, the ACCC's Chairman, Graeme Samuel, has indicated that due to the vast changes that have taken place in the manner that media is distributed and consumed and traditional business models re-defining themselves, that a different approach to regulation of mergers and acquisitions will be necessary in the future.

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[2] *South East Queensland Regional Plan,* Queensland Government, June 2005. Page 5

He has commented that a media market might be defined by the content, such as, for example, classified advertising, or maybe even markets as small as classified advertising for jobs, for motor vehicles, for real estate and display advertising, rather than the medium used to convey the content. Any substantial lessening of competition in one market would raise implications under section 50 of the Trade Practices Act and be possible grounds for the ACCC to intervene. In other words, the previous approach of newspapers, radio and television being in separate markets may not apply.

APN believes there are potential challenges in the proposed new approach by the ACCC. We believe that even if the Government legislates to reduce cross-media ownership restrictions, there is the possibility that the ACCC's approach to markets could well result in de-facto cross-media restrictions being imposed by the Commission.

In APN's submission, the guidelines under which the ACCC will be operating should be included in legislation as far as is possible.

6. Timing

APN submits that reform is long overdue and should be implemented as soon as possible. The examples of foreign investment in Australian commercial radio and media in New Zealand underline the benefits of reform. Australia should not be deprived of those benefits by any further delay. Media reform will offer exciting new opportunities in Australia, which APN welcomes, and which will benefit Australian audiences and the Australian economy.

Brendan Hopkins
Chief Executive
APN News & Media