Submission to Productivity Commission Review of Broadcasting Legislation

CanWest Pacific Communications Pty Limited 12 May 1999

OVERVIEW

Where markets offer both economic and social benefits, it is appropriate for governments to regulate to ensure that economic forces do not work against the social good.

However, regulation must be carefully targeted to limit unnecessary impacts on market forces.

CanWest supports the liberalisation of existing ownership restrictions in order to facilitate diversity and efficiency in Australian media, specifically:

i) Abolition of existing foreign ownership restrictions
and
ii) Abolition of existing cross-media ownership restrictions

Liberalisation will promote effective competition in Australian media, while continuing regulation of Australian content and standards will ensure the ongoing achievement of public interest objectives.

INTRODUCTION

CanWest Pacific Communications Pty Limited ("CanWest Pacific") is the Asia Pacific subsidiary of CanWest Global Communications Corp ("CanWest") - an international media company based in Canada.

In Australia, CanWest holds a 57.5% economic interest (including a 15% voting interest) in Network Ten.

In Canada, CanWest owns and operates the free-to-air Global Television Network and the Global Prime Cable Network, as well as a TV and film production, distribution and financing company - Fireworks Entertainment. The London-based CanWest Entertainment International is the international arm of CanWest's distribution and financing business. In New Zealand, CanWest owns and operates the TV3 and TV4 Television Networks and the More FM Radio Network. CanWest also has significant investments in the Republic of Ireland's new TV3 Television Network and Northern Ireland's Ulster Television.

Appendix 1 provides further information about CanWest's Australian and international investments.

CanWest welcomes the opportunity to contribute to this Inquiry. While recognising the broader scope of the Productivity Commission Inquiry, this submission focuses on issues relating to ownership of, and particularly foreign investment in, Australian media. Where relevant, the submission illustrates CanWest's policy positions with examples from our investment experience, both in Australia and around the world.

CanWest strongly supports a liberalised ownership regime for Australian media which will promote diversity of ownership, greater competition and increased efficiencies.

In a perfect market, competition results in industry efficiencies and consumer benefits. The media landscape, however, will never be completely unrestricted. There are certain social objectives that are costly and relatively inefficient, yet nonetheless essential. As a result, media regulation becomes a careful balancing act between opportunities and responsibilities.

For example, the quality and wide availability of free-to-air television has been made possible because of a regulatory balance between promoting competition and limiting the number of television licenses. In the free to air television market, Australia has a healthy mix, with three commercial networks and two government-funded networks. Any increase in the number of licenses could potentially result in reduced quality and reduced ability to service the public interest.

Most of Australia's public interest objectives are achieved through regulation of content. Reflection of community standards, protection of children from harmful programming material and development of a vibrant production community able to reflect many aspects of the Australian culture, are all promoted through content regulation.

However, some objectives cannot be so simply mandated. Equally important social objectives are the need for fair and accurate coverage of matters of public interest, and ensuring the availability of a diversity of views and opinions. It is in these areas that ownership regulation takes on key importance.

Diversity of ownership ensures that a variety of views and opinions may be found across the media spectrum.

The greater the number of owners, the greater the competition across media outlets to gain audience attention and interest. Where journalists, editors and producers have access to multiple employment avenues they are less likely to succumb to overt or assumed pressure on a particular issue or views.

However, the past decades have seen continuing concentration of ownership across the media spectrum, despite the existence of cross media restrictions for the most influential media. For this reason, ownership regulations require review.

In media ownership, as with markets generally, regulation should be carefully targeted to ensure the desired ends without unnecessarily impending market forces.

With the media, the goal should be to specifically target those areas of social need which would otherwise not be addressed, and allow the rest of the market to function competitively.

CanWest's view is that the best guarantee of a truly diverse and competitive media is in multiple ownership. Given Australia's limited capital base, this is only possible with increased opportunities for foreign investment.

Reducing concentration will serve public interest objectives and give new competitive impetus to the industry, placing it in the best possible position to gain the benefits offered by new technologies and new media forms. Increased foreign ownership will then facilitate easing of restrictions in areas such as the cross-media rules, thus ultimately reducing regulation and freeing up competition in the Australian media.

As we reach the 21st century, traditional commercial and technical barriers across countries are falling. Capital, content, ideas and expertise are all transportable across countries and around the globe.

Infrastructure once the sole province of domestic governments is being globalised. Industries formerly protected or solely government owned are now opening up to foreign investment and competition. For example, privatisations in the transport and telecommunications infrastructure have resulted in foreign investment in Australia's airports, telecommunications, roads and rail systems, all to the benefit of Australians.

Consumers themselves are changing. With increased choice has come increased consumer assertiveness. Consumers are also becoming shareholders, investing in new technologies and keen to benefit from the economic returns possible in a liquid, competitive market.

Despite these changes in media and communications, important public interest objectives still remain. Access to news, entertainment and diversity of views provide the key pillars of the media policies of democratic countries like Australia.

FOREIGN INVESTMENT BENEFITS

Foreign investment in media offers benefits to all Australians - consumers, shareholders and industry employees.

Foreign investment promotes diversity of ownership.

The important social benefits of diversity of opinion are best preserved through plurality of ownership. History has shown that there are very few Australian investors willing or able to take on ownership of the mass media. Foreign capital is the most effective defence against concentration of media ownership.

Foreign investment provides much needed capital for a sector where growth is large-scale and capital intensive.

Despite Australia's rich intellectual and natural resources, the country has limited capital within its borders to optimise investment and growth. Australia is not alone in facing this challenge – capital markets the world over are recognising the importance of attracting and retaining foreign capital.

In Australia, without the CanWest consortium, there would have been no revival of Network Ten. The CanWest consortium, and the management expertise provided by all the investors, led to the revival and viability of a fully competitive commercial broadcasting network. Today, Ten is a first-class operation with a secure future, making a significant contribution to the production and airing of Australian domestic programming, and providing a neutral, fair and balanced news alternative.

In New Zealand, unrestricted foreign investment in broadcasting has created diversity of media outlets and healthy growth for the domestic advertising and production market. For example, annual advertising industry turnover for television increased from $352 million in 1991 (when foreign investment restrictions were increased) to $478 million in 1997.[1]

Following its turnaround of commercial network TV3 in New Zealand, CanWest has now established a new commercial television network (TV4), which now offers young, urban New Zealanders increased choices and new local programming.

Elimination of the foreign ownership restrictions in New Zealand created an environment that led to the development of a pay television service, enabled the rescue and development of TV3 - New Zealand's first private television station - and the introduction of two new free-to-air services, TV4 and Prime TV (owned by Australia's Prime TV). Investment in the industry during this development period exceeded NZ$1 billion and has resulted in new choices for New Zealand viewers.

[1] New Zealand Ad Agency Association, *New Zealand Advertising Industry Turnover March 1997 Year*, 14/7/97.

In Ireland, CanWest acquired a 45% interest, management and board control in a company that would launch Ireland's first privately owned national free-to-air television service, known as TV3. The promoters of the business had tried unsuccessfully for almost ten years to launch the service but it was foreign capital and management expertise that was needed to finally get the project off the ground. With CanWest's investment and management expertise, TV3 in Ireland is now providing a new outlet for local advertisers, a new free viewing choice for the public and an important outlet and funding for the Irish independent production community.

In addition to providing much needed capital, foreign investors offer new technologies and expertise to the local media industry.

In 1991, CanWest invested in New Zealand's bankrupt TV3. Under a formal contractual management agreement, CanWest appointed a new management team drawn primarily from its Canadian operations. The CanWest team implemented its successful operating and marketing strategies, and the foundering TV3 began to reverse its fortunes.

In 1997 - the same year CanWest gained full ownership of TV3 - the last of CanWest's Canadian executives departed New Zealand, having recruited and trained a first class group of New Zealand executives to operate the network.

Foreign investment can bring new international opportunities for the companies involved, as well as opportunities for Australian performers, writers, producers and broadcasters.

The turnaround of Network Ten not only protected existing jobs, but also promoted the development of a vibrant independent production industry, which benefited from increased outsourcing of local programming. Several of these locally produced programs, such as *Big Sky*, *Breakers* and *Heartbreak High* have gained acceptance with foreign audiences, providing important export revenue to the Australian economy.

Network Ten has also benefited from the opportunity to participate in international joint ventures, for example, its involvement with CanWest, Scandinavian Broadcasting Systems and SelectTV in a consortium bidding for Britain's new Channel 5 commercial television licence.

Foreign investment does not threaten cultural values.

As a guest in another country, foreign investors pay particular attention to local cultural sensitivities, only too well aware they will be more scrutinised than local investors if there is a concern about content or views expressed.

The reality is that foreigners have less reason to interfere in local domestic affairs, because they are less likely to have a substantial range of other investments which could lead to the risk of conflicts of interest.

In addition, content is chosen on the basis of audience interest and regulatory requirements, neither of which have anything to do with a foreign investor's own programming interests.

The significant social objectives of Australian programming are protected through clearly mandated and monitored content requirements.

Australia's detailed content requirements are an important contribution to social objectives of broadcasting. Their existence ensures that regardless of ownership, Australian content and appropriate community standards will be retained.

Ten's Australian programming mix includes series such as *Neighbours* and *Medivac*, children's program *Totally Wild*, *Good News Week*, *The Panel*, and a continuing pipeline of miniseries and films.

In New Zealand, liberalisation of ownership restrictions has stimulated the local production industry. The overall amount of New Zealand programming on the free-to-air national television networks has increased from 2112 hours in 1988 to 6296 hours in 1998, particularly through increases in information, documentary and news programming.[2]

CanWest supports the retention and enforcement of rules governing the production and airing of domestically produced programming on television. In fact, CanWest has an operating philosophy which supports the independent production community rather than its own in-house production facility. The existence of content requirements, combined with the diversity of ownership made possible through increased foreign investment, will ensure achievement of the Government's media objectives.

FOREIGN OWNERSHIP ANOMALIES

Australia's foreign ownership rules vary widely across different media.

Australia's current foreign investment rules are more restrictive than comparable countries and the level of variance across media sectors adds to the complexity.

Foreign investment in a free to air television licence is limited to 15% of company interests for an individual and 20% in aggregate. For pay television licences, the 35% aggregate cap on foreign voting shareholdings only applies to the licensee companies themselves. Unlike free-to-air television, these are often separately owned with significant foreign ownership of the operating entities which, in fact, conduct the pay television business.

Investments in radio broadcasting, narrowcasting and major newspaper companies are subject to determination under the Foreign Acquisition and Takeovers Act and relevant foreign investment guidelines.

[2] NZ On Air 1998 Local Content report, April 1998

Australia's foreign investment restrictions are more stringent than comparable countries.

Despite the benefits of foreign investment, Australia continues to strictly limit it, preventing diversity of ownership in many media sectors. Other comparable countries however, have recognised the benefits and moved to attract foreign investment.

The United States, Canada, and the European Community have less restrictive regimes in place. While the EC retains some foreign investment restrictions, these do not apply to citizens of other EC countries, thus significantly increasing the available investment pool.

The principle that Australians must have effective control of the more influential broadcasting services is outdated and unnecessary.

The Broadcasting Services Act retains a requirement that Australians should retain control of the most influential media. This is an unnecessary restriction which ultimately will reduce diversity.

As previously discussed, those objectives easily and transparently measured – for example Australian content levels - should remain mandated through regulation. Other, less tangible objectives, such as diversity of opinion, are best ensured through diversity of ownership.

The current requirement also places certain media at a disadvantage relative to other media, as there are very limited numbers of Australians in a position to control influential media.

Ownership diversity through increased foreign investment provides substantial public benefits but this does not mean foreign domination over what is screened.

The national broadcasters ABC and SBS, which remain government-owned, provide an important counter to concerns that all media could be foreign owned.

The ABA can still determine that a person is not a fit and proper person to hold a licence, thus giving a further check to concerns about inappropriate ownership.

In addition, consumers are now more vocal and have more choices for their entertainment and information. Unsatisfied consumers will take their viewing time elsewhere and the advertising dollars will follow.

LIBERALISATION OF FOREIGN INVESTMENT RULES

CanWest recommends complete liberalisation of foreign investment restrictions

CanWest proposes that all existing restrictions on foreign investment in the Australian media be abolished.

Partial foreign liberalisation (particularly if the existing control restrictions are also retained) will severely limit the attractiveness of the Australian market.

In a global environment, capital will flow where it is encouraged and welcomed. Without additional capital and foreign participation, media ownership in Australia will continue to be concentrated.

Increased diversity through complete liberalisation of foreign investment will reduce the necessity of cross-media ownership rules.

Abolition of foreign investment restrictions will guard against media ownership concentration and promote diversity, thus paving the way for relaxation of the current cross media ownership rules.

This domino effect will increase the opportunities for achieving efficiencies within the market as economies of scale and content are maximised. For example, in New Zealand, CanWest's TV3 and TV4 utilise the same studios to provide their varying content.

In the absence of cross media rules, foreign investment will be an important protector of diversity and competition.

There can be no relaxation of cross media rules until foreign investment rules have been liberalised.

Without increased foreign participation, any lessening of cross media restrictions will simply promote increased concentration.

FURTHER INFORMATION

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APPENDIX 1
CANWEST GLOBAL COMMUNICATIONS CORP.

CanWest's international operations span across Canada, Australia, Ireland and New Zealand.

CANADA

In Canada, CanWest owns and operates the free-to-air Global Television Network, Global Prime Cable Network and production and distribution arm CanWest Entertainment.

The Global Television Network broadcasts over-the-air via eight television stations in seven provinces, reaching 79% of the country's population. Through a program sub-licensing contract with WIC Western International Communications (in which CanWest also holds a 44% equity interest) in Alberta, CanWest's reach is increased to 88% of English-speaking Canada – about 20.4 million viewers.

The Network boasts strong ratings positions with hits such as *Friends*, *The Simpsons* and *The X-files* and a strong line-up of Canadian programming. In March 1999, Global stations won seven awards at the 26th Annual Can Pro Festival, showcasing Canada's premier programming and promotion productions.

In October 1997 CanWest launched its first cable broadcasting service – Global Prime, The service was launched as a 24-hour national network designed to appeal to adults over 35 years of age looking for quality entertainment and information programming. Programming includes award-winning dramas, lifestyle and current affairs programming, documentaries and movies.

The CanWest Entertainment division was launched in May 1998 to direct additional financing and support for Canadian productions and program exports. The strategy included CanWest's acquisition of one of Canada's largest integrated production, distribution and financing companies of television programs and motion picture films – Fireworks Entertainment Inc. In March 1999, CanWest Entertainment International was formed, offering Canadian producers an additional choice for the distribution of their creative works worldwide.

AUSTRALIA

In 1992, CanWest put together the consortium which purchased Network Ten out of receivership and created a viable television service that now contributes substantially to the viewing options available to Australians. CanWest has a significant interest in Ten - 15% of the voting shares and a 57.5% non-voting economic interest.

In Australia, Westpac was unable to find a local party willing to take on the risk of purchasing the company during the two years Network Ten was in receivership. Westpac approached CanWest to lead a consortium to purchase the company. The rescue of Network Ten saved over 1,000 direct jobs and several thousand more indirect jobs. Network Ten is now thriving, generating programming which is internationally exported.

NEW ZEALAND

CanWest entered the New Zealand market in 1991 when it purchased an initial 50% economic interest in TV3, New Zealand's first private commercial network, which had fallen into receivership within four months of its launch. In November 1997, CanWest completed a series of transactions which resulted in 100% ownership of TV3. TV3 reaches approximately 98% of the New Zealand population with a strong mix of top international programming and New Zealand productions.

In June 1997, CanWest launched TV4, New Zealand's second, privately owned network. Operating from the TV3 studios in Auckland, free-to-air TV4 reaches over 75% of New Zealanders, with an audience reach in excess of 2.4 million viewers. The upbeat television network is aimed at young, urban New Zealanders between the ages of 15 and 39. Programs which define its personality – comedy, lifestyle and entertainment – have shaped the Network's distinctive style. As a result, TV4 sometimes airs programs other networks are unlikely to show.

In June 1997, CanWest acquired More FM, New Zealand's top-rated commercial radio network.

IRELAND

CanWest made its initial foray into European television with the successful launch of TV3 Television Network in the Republic of Ireland in September 1998. CanWest is the largest shareholder in the new Network with a 45% stake. Other investors in the consortium include Ireland's leading private equity investment company, ACT Venture Capital, and three Irish founding investors.

Headquartered in Dublin, TV3 is the Republic of Ireland's first private sector national television broadcaster. The launch marks a new era in Irish television, offering viewers a quality alternative to the country's two state-owned networks.

TV3 has been one of the most successful television launches in the history of European television – within four months of the launch, TV3 had been seen by 90% of the 3.6 million people in the Republic of Ireland.

CanWest has also secured a 29.9% stake in Ulster Television, the ITV (Channel 3) television service provider to the people of Northern Ireland.