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SYDNEY

12 May 1999

Professor Richard Snape
Deputy Chairman, Presiding Commissioner
Broadcasting Enquiry
Productivity Commission
Locked Bag 2, Collins Street East PO
MELBOURNE VIC 8003

Via Facsimile: (03) 9653 2305

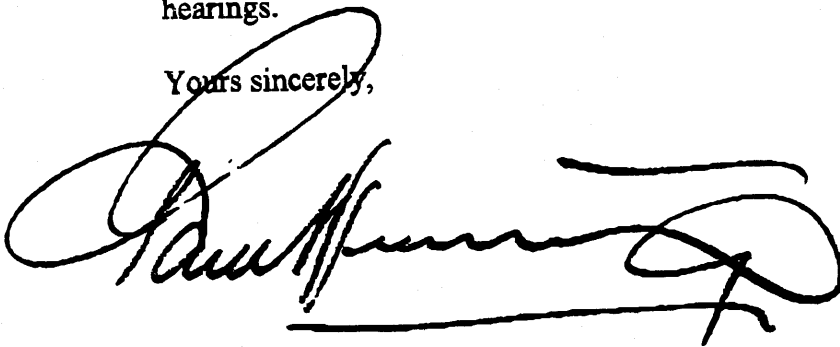
Dear Professor Snape,

Thank you for your letter of 31 March 1999 inviting me to make a submission to the Productivity Commission inquiry into broadcasting. I was grateful for your invitation.

I have enclosed a written submission addressing some of the issues that the Commission has been asked to examine (although, as I say in the submission, some of these seem to me also to involve questions of equity and culture that lie outside the usual ambit of the Commission's expertise).

If it can be arranged, I would also be happy to make a personal presentation to the inquiry. I should let you know, however, that I have commitments outside Australia between 25 May and the first part of June. Perhaps your staff could let Cheryl Griffiths in my office know what the arrangements will be for public hearings.

Yours sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'P J Keating', with a long horizontal line extending from the end of the signature.

P J KEATING

SUBMISSION TO PRODUCTIVITY COMMISSION ENQUIRY INTO BROADCASTING

The cornerstone of any democracy is a well-informed and interested populace.

People need to know what is going on.

They also need access to a wide range of views and to have the opportunity to absorb cultural experiences that they find enjoyable and enriching.

People cannot be the ultimate arbiter of authority if they are denied the opportunity to be fully informed.

Allowing the media to fall into the hands of a small number of individuals or corporate interests strikes at the very heart of a democracy because it weakens the power of the great body of individuals and concentrates it in the hands of the fortunate few who control media outlets.

There are enormous economies of scale with the media. Powerful economic forces will therefore always be at work, leading to growing concentration. This is particularly true in Australia where the market is small. Of necessity, there have to be rules to safeguard diversity and thereby to safeguard our democracy. The cross media rules are one simple way of increasing diversity.

In a rapidly changing world where proprietors are desperately trying to get entrenched in as many media outlets as possible the cross media rules work to ensure that the print and electronic media remain separate. There may, however, be a need to go further. The existing rules may need to be tightened. Other rules may also need to be considered if we find that diversity is in retreat.

The technological determinism now so unquestioningly underlying assumptions and comment about media and communication structures is being used by business to argue for multimedia combinations that maximise shareholder value.

The public has no obligation to accept, and every reason to reject, the argument that powerful media conglomerates know by their supposed technological savvy what is best for the public.

The public should reject the notion that anyone who dares to argue with, or stand in the way of, so-called convergent technology is ill informed, not in touch with technological reality or some kind of crank.

Meanwhile, in the absence of a view that vigilance is required to maintain plurality in the media, and that specific rules are needed to guarantee it, corporations will do all

that is possible to own and control as many media outlets as they can afford and are permitted to acquire or develop.

In Australia, important steps were taken to guarantee a certain level of diversity and plurality in the media and this legislation has served the public well.

It has been amended from time to time as circumstances and conditions have changed, with a view to giving the community a greater range of news and information.

To demonstrate what level of media concentration we would otherwise have seen in Australia, it is worth recalling the contributing elements that led the then government to introduce the cross-media restrictions in the 1980s.

The first was the example of other democracies. Such safeguards had been legislated in the US and placed under the jurisdiction of the Federal Communications Commission.

The second was that the arbitrary 'two station rule' governing ownership of television assets was to be replaced by the multiple ownership prospects for stations in the so-called aggregated zones of non-urban Australia .

The third was that the former Herald and Weekly Times group was commercially unstable, with poor earnings, and was a likely subject for takeover by one of the three other media groups.

The fourth was the government's belief that the capacity to network the greater part of the country in television or to develop national synergies in separate print and radio businesses would bring investment and scale that would serve the public better than splinter interests within existing multi-media companies.

The cross media legislation introduced by the Labor government in 1986/87 succeeded in creating a level of media diversity in Australia that would have been drastically curtailed without it.

The three television networks, the Nine, Seven and Ten networks, are independent of the current or former newspaper groups. The Seven and Ten Networks were formerly part of newspaper groups. A wide range of diverse and specialised radio outlets exists that would, in some substantial part, have otherwise been owned by newspaper groups, as many were before 1987. And in newspapers, while there was by and large a transfer of the print assets of the old HWT group to News Ltd, save for - and importantly - the West Australian, the other media assets of the old HWT group were effectively dispersed and more vigorously managed by new owners.

Without the cross-media regulation there can be no doubt that most of the old HWT media outlets would have been concentrated within the Fairfax, Packer and News organisations.

Fairfax, while owning the most influential broadsheets, also owned television stations in Sydney and Brisbane. Fairfax had actually bought HSV7 in Melbourne to make the pigeon pair with ATN7 in Sydney. Under the legislation it was obliged to divest itself of it. Without the legislation, Fairfax would have had the most influential newspaper titles in the two largest cities and the Seven Network to go with it. News Ltd. already owned Channel Ten in Sydney and had an interest in Channel O in Melbourne through its holdings in Ansett Transport Industries. News would have bought, as it did buy, the main HWT titles, but it would also have had the O-Ten network to go with them.

The result of the introduction of the cross-media rules and the take-over of the Herald and Weekly Times by News Ltd. was the creation of sounder and more diverse structures in media assets than those which existed beforehand.

New and independent groups that have been focussed and well capitalised have brought with them better management and a stronger sense of corporate mission that has enabled them to serve the public interest more effectively. They have opened up career opportunities in journalism, production and management which have made the whole sector stronger. One measure of their strength is the value of these businesses on the public exchanges. But the greater measure of their strength has been their service to the community.

In response to claims that the cross-media rules and other aspects of broadcasting legislation are an inhibition to efficiency and competition, the government has provided this reference to the Productivity Commission. The Commission has been asked to advise, among other things, on the interests of consumers, with particular focus on balancing the social, cultural and economic dimensions of the public interest.

The first thing to say about this is that the Productivity Commission is not the appropriate place to consider questions of plurality, diversity and culture in the media. These are appropriately matters for the Cabinet, the Government and the Parliament. The Productivity Commission is generally charged with reviewing, and advising on, microeconomic policy and regulation and has served the country well in its various guises in discharging this responsibility. For it to reflect and report upon the social and cultural issues of the media places an unreasonable responsibility on it which institutionally it is not set up to discharge. It is arguably unfair to place such a burden on the relevant commissioners.

What drives the motivation for a reference of this character is the business claim that so-called convergence of technologies and transport renders the rules under existing legislation an impediment to economic efficiency at best and obsolete at worst.

The question posed by business is whether the advent of new multi-media technologies provides a comparative advantage if convergence is permitted to take place in a technologically efficient way. To this business question, business has its own reply: the media would be more efficient and competitive if unhindered by rules providing for diverse media ownership through the separation of various forms of media.

But this is the wrong question. The question should not be a business question, but a social one. 'Straw man' claims about business efficiency and the so called convergence of technologies mislead the community as to the risk of concentration of media power that would attend a dismantling of the cross media rules in the name of seamless technological and commercial convergence.

The notion that the Nine Network could only operate at maximum efficiency, and also serve the public interest, if it owned the Sydney Morning Herald or the Melbourne Age; that somehow carriage of Fairfax's news and classifieds would work better in the public interest if they were simultaneously delivered through some computer access or text business operated by Channel Nine, is one example. It is, of course, demonstrable nonsense. The Nine Network might well find commercial advantage and synergies in a business like Nine MSN, but by what flight of fantasy could it rationally be argued that its ownership of the SMH and the Age would make such a business more complete while at the expense of threatening the editorial diversity the public now enjoys?

Claims of this kind are simply an exercise in self-interest.

It is true that the internet can provide access to newspaper content. It is also true that the internet will in future feature even more fully than at present video news and entertainment. But while the internet provides connections at the edges, and thus opens up information to many, it also holds the substantial threat of concentrating power at the centre.

It is not at all clear that the packet-based convergent technologies will break the stranglehold which the media wholesalers and retailers already enjoy. On the contrary, the wholesaling organisations see the opportunity of further concentration via digital systems and are brazen enough to argue that national governments should remove impediments that stand in the way of the compatible technologies, thereby streaming influence and revenue to their corporations.

The concentration of commercial power through the internet is likely to be profound. This accounts for the enormous market values that are attaching to companies like Amazon.com. It is entirely possible, for instance, that the bookshops of Sydney and Melbourne which garner their staple income from best sellers, and even those that depend on expensive specialised publications, will find their core income eroded by internet companies like Amazon.

The case for what the technology is capable of is not necessarily the case for what is in the community's best interests, especially when it comes to protecting diversity in the widely available media.

The available technologies notwithstanding, the social question has to be: should the nation receive its news and current affairs information through one or maybe two media organisations? Should the country simply go with the flow? Just because the technologies permit convergence and concentration should public policy, in a technologically determinist way, simply allow the funnelling of now-diverse streams of information and income into a rich and powerful oligopoly.

It is worth noting that pay television or cable companies can, under the existing rules, be associated with, or owned by, a telephone company and either one can be associated with, or owned, in whole or in part, by a free to air television network. In other words, the existing rules are flexible enough to cope with broad changes to the structure of television.

Alliances that exist, or may exist, between newspapers and free-to-air television and radio stations do not invalidate the case for the separation of ownership of these media. Such separation is the only guarantee – however imperfect – of editorial and content independence.

The Nine Network advertises each evening that "more Australians get their news from Channel 9 than any other source". This is true. How much truer and how much more alarming would it be if the owner and controllers of the same network had control of the Sydney Morning Herald, the Melbourne Age and the Australian Financial Review, as well as the NineMSN web site.

The boundaries between media are becoming more blurred but the nation should not accept a position where technological determinism renders one media organisation, or one controlling family of media, the principal providers of the news most people in the country watch or read.

Under the existing Broadcasting Services Act a limit of fifteen per cent obtains on any prescribed holding by a media company in a related media vehicle.

The proposal originally before the former Government was for a limit of five per cent to cover the tail of a holding in a second or third company (in which X owns a part of Y which owns a part of Z). The five per cent limit was proposed to deal with this.

Media interests at the time argued that this provision should be widened to fifteen per cent. Fifteen per cent is a very influential holding in the hands of one interest in a broadly owned company. Such a holding will have a strong say at board level and may be sufficient to effectively control the company.

I believe that the cross media rule should be tightened to five per cent to maintain effective separation while facilitating tail end holdings. This would overcome any threat of the exercise of de facto control or undue influence.

Another area of policy under reference is the question of foreign ownership of the media, and whether special limits on foreign ownership should apply to television, radio and newspapers.

While Australian control of media outlets is desirable to achieve a closer coincidence of editorial view with the national interest, in practice the globalisation of news media is likely to mean that no particular bias or supra-national view will impose itself through a foreign controlled media organ or outlet in Australia.

The greater problem for the Australian community is not the possible dissemination by a foreign corporation of material biased against Australia's national interests, but a lack of diversity and plurality of views among the mainstream outlets.

We have already seen a substantial foreign holding by the Hollinger Company in John Fairfax and Sons and by Canadian interests in Channel Ten without any undue foreign influence in content and coverage. The case for a reasonably open policy of ownership of Australian media by foreign news corporations is easier to make following this experience.

There is the question of the economic rent that will accrue to foreign companies operating in our media. But that will be taxed as are other forms of foreign economic activity in Australia.

There are many other issues that the Commission has raised in its letter of invitation including local content and its importance, and product for children and education.

These are all important issues. Local content is especially important because it is one of the ways our culture is understood and adapted. In the Uruguay Round of the GATT Australia took a strong position in an unlikely alliance with France to preserve certain independent rights for audio visual products. This was resisted greatly by interests associated with Hollywood and various US Special Trade Representatives at the time sought to make inroads into the local content industries of other countries, especially English speaking countries.

Australia has already set high standards in film and television and major film projects are being undertaken in Australia for world wide distribution. It is therefore important that a premium is placed on our own content industry and our capacity to disseminate it.