Publishing and Broadcasting Limited

Submission in Response to the Productivity Commission's Draft Report on Broadcasting Regulation

December 1999

1. Introduction

PBL welcomes the opportunity to comment on the Productivity Commission's draft report prior to its finalisation in March 2000.

PBL supports the submission of FACTS dated the 8 December 1999 which dealt with a number of issues but not those raised in Chapter 8 of the draft report.

The draft recommendations PBL wishes to comment upon are:

- Draft Recommendation 8.1:

  "That foreign investment in broadcasting should be covered by Australia's general foreign investment policy. All restrictions on foreign investment, ownership and control in the BSA should be repealed"; and

- Draft Recommendation 8.4:

  "That only after the following conditions have been met:
  - removal of regulatory barriers to entry in broadcasting (see recommendations 4.4 and 7.1) together with the availability of spectrum for new broadcasters; and
  - abolition of restrictions on foreign investment, ownership and control in the BSA; and
  - amendment to the Trade Practices Act to provide for a media-specific public interest test to apply to mergers and acquisitions;

  the cross-media rules should be removed."

2. Summary of Submission

- As submitted in PBL's earlier submission, the cross-media rules in the *Broadcasting Services Act 1992* should be removed as they do not serve a public benefit. Diversity and plurality of viewpoints in the media is assured in Australia without the need for these rules.

- However, PBL does not support the Commission's proposal in draft Recommendation 8.4 for a phased approach to abolition of the cross-media rules:

  - firstly, it is not appropriate to address the issue of the removal of regulatory barriers to entry to broadcasting in conjunction with the issue of removal the cross-media rules;
  - secondly, it would be inequitable to Australian media companies endeavoring to compete in the Australian market with global media companies to abolish restrictions on foreign investment, ownership and control prior to abolition of the cross-media rules; and
  - thirdly, amendment to the Trade Practices Act to provide for a media-specific public interest test is unworkable and unnecessary.

- PBL supports the Commission's Draft Recommendation 8.1 that the current restrictions in the *Broadcasting Services Act* should be repealed and that foreign

investment in broadcasting should be covered by Australia's general foreign investment policy.

- However, the rules should not be repealed unless the cross-media rules are repealed simultaneously or alternatively, in PBL's submission, the cross-media rules should be repealed prior to repeal of the foreign ownership rules.

3. Cross-media ownership

3.1 Removal of cross-media rules

As submitted in PBL's previous submission, the cross-media regulation in the *Broadcasting Services Act* does not serve a public benefit and should be abolished. Diversity and plurality of viewpoints in the media is assured in Australia without the need for these rules.

The Australian consumer has access to a vast array of information and entertainment sourced locally and from overseas and the number, range and delivery mechanisms of this information and entertainment are increasing. Fitting to Australia's democratic tradition, variety has brought with it a wide range of opinions and ideas expressed in the media.

In PBL's submission, the common ownership of different forms of media would not affect this dynamic. Commercial imperatives guarantee that each form of media would retain its own style, presentation and content tailored to the particular form of media. Views and opinions would be at least as varied and diverse as they are now.

Each media business is necessarily focused on maximising its own returns by meeting the requirements of its own audience, which vary greatly between different forms of media. The advantages of cross-media ownership do not lie in homogenising media products but in providing efficiencies and hence enabling investment and growth.

3.2 Prior removal of regulatory barriers

In PBL's submission it is not appropriate to address the issue of the removal of regulatory barriers to entry to broadcasting in conjunction with the issue of removal the cross-media rules.

The Commission has expressed in its draft report, that it is concerned traditional media businesses are relatively concentrated and could become more so if the cross-media rules are relaxed with no corresponding compensating measures such as freeing up entry. This appears to be the basis on which draft recommendation 8.4 has been made and yet the Commission has noted:

> *"at least in television, that Australia's industry is no more highly concentrated than that in many other places. Australia (with three commercial networks and two national television networks) compares reasonably favorably with the United States (one public, four private), the United Kingdom (two public, three private but now with multi-channelling) and Japan (two public, five private) (OECD 1997). Many OECD countries had fewer television channels than Australia did in 1995."* [1]

[1] p 161

Although the Commission has noted that Australia is well served by the number of free to air broadcasters that service the country, the Commission has failed to fully appreciate the large number of services available in Australia to a relatively small population in comparison with the far larger viewing markets in countries like the United States, United Kingdom and Japan.

In PBL's submission, the Commission has failed to address the policy basis behind the restriction on the number of licenses and has failed to take into account the consequences of removal of regulatory barriers to entry to broadcasting. These are issues the Australian Government and the governments of a number of other countries have carefully addressed when formulating policy for free to air broadcasting.

The key regulatory measure of restriction on the number of licenses has been the basis of Australian commercial television policy since the 1950s. It was reviewed in the mid-1980's, 1992 and 1997 and renewed on each occasion.

Then in 1998, the Parliament considered the matter again in the context of the introduction of digital television scheduled for 1 January 2001. The specific prohibition of a fourth commercial license was extended to a general prohibition of new commercial licenses in any market until 2008.

In announcing the policy decision, the Minister for Communications Information Economy and the Arts said:

> *"The ban on new commercial TV networks will be extended until 2008, ……*
>
> *Australia has a world class TV system, with a strong local content component and a highly skilled production sector. This could be threatened if the existing networks had to battle a new competitor at the same time as paying huge sums to transfer to digital broadcasting, or if the pay-TV networks found themselves faced with significantly stronger free-to-air opponents while still trying to find their feet.*
>
> *This Government would normally welcome additional competition, in any industry, as healthy and likely to lead to benefits for the consumer. However, Australia's free-to-air and pay-TV industries, in these special circumstances, deserve a degree of special treatment, and the Government makes no apologies for this decision."* [2]

Recognising the expensive transition for the broadcasters to convert to digital and the public benefits in ensuring the preservation of the current high quality comprehensive free to air service for Australian viewers, the Parliament endorsed the policy of limiting licenses.

In FACTS' submission to the Commission in May 1999 extensive, evidence was supplied to support the proposition that maintaining the restrictions on the number of commercial licenses is essential to underpin local service and the range and quality of Australian programs.

In PBL's view, the Commission should endorse this aspect of the Government's broadcasting regulation.

[2] Digital: A Personal Message 24 March 1998

3.3 Phased removal of cross-media and foreign ownership rules

PBL does not support the Commission's draft recommendation for a phased repeal of the cross-media and foreign ownership rules as proposed in draft recommendation 8.4.

In Draft Recommendation 8.4, the Commission is effectively suggesting that the foreign ownership and control rules should be lifted immediately and the cross-media rules should be lifted some time in the future. This would be inequitable to Australian media companies endeavoring to compete in the Australian market with global media companies. It will produce the result that globalised multinationals created by the domestic laws of their own country of origin will be free to enter the Australian market unhindered and acquire significant local assets while Australian companies must sit out.

The cross-media rules have been detrimental to the capacity of Australian companies to compete with foreign companies. While cross-media rules have been in place, loose discretionary foreign ownership rules have facilitated a creeping foreign takeover of many local media assets.

To give foreign multinationals a head start in furthering their interests in Australian media would further tip the balance against Australian media companies. Australian companies should be able to compete with foreign companies in Australian media markets on a level playing field.

PBL has previously submitted that it supports the repeal of foreign ownership and cross-media rules but only if repeal is simultaneous. Indeed, if phased introduction of these rules remains under consideration, PBL maintains that the repeal of cross-media rules should precede repeal of the foreign ownership rules.

This order of phasing would provide local companies with opportunities to acquire the scale and scope obviously necessary to compete with giant multinationals intent on strategic acquisitions in the Australian market.

Australia has not developed any global media corporations, with the conspicuous exception of News Corporation which changed domicile and based itself in the USA to do so. To be an effective player in globalisation, there needs to be a shift in policy to enhance international competitiveness. Australian media companies will only be able to compete effectively on a level playing field in the Australian media environment if they are able to obtain scale advantages from removal of the cross media rules. Economies of scale will enable Australian companies to expand domestically, provide high quality local services and expand internationally with benefits to the Australian economy.

Only on this basis would Australian companies be in a position to both participate in and survive in an environment where the foreign ownership and control rules have been completely removed.

3.3.1 World communications environment

Technological developments and the growth in delivery mechanisms have globalised the transfer of information and entertainment. To survive in this new environment, media companies have expanded and diversified.

In its submission to the Productivity Commission in May 1999, PBL described the global information and entertainment landscape in which Australian companies are relatively small participants. The submission set out how "giant foreign media

companies, with interests in a wide array of media holdings, are dominating international media, and are increasingly influential locally"[3].

This expansion continues unabated.

In the short time since PBL's May submission, Viacom has announced its intention to merge with the CBS broadcasting network. With the combined assets of Paramount Studios, Blockbuster Video and pay-TV networks Nickelodeon and MTV, Viacom was able to acquire the CBS radio and television broadcasting network in a transaction valued at $A59 billion.

But expansion is not isolated to the traditional media landscape dominated by the six global media corporations each with access to the output of a Hollywood film studio.

UK media giants Carlton Communications and United News and Media have recently announced their $US12.5 billion merger to create Britain's biggest commercial terrestrial television group covering fifteen million TV homes and convergence is seeing new technology companies diversifying and extending their reach worldwide. Australia is an integral part of the map.

Further expansion into the Australian media and converging technology markets has only been limited to date due to the remnant foreign investment ownership and control rules.

Since PBL's last submission, AOL and MCI Worldcom both with substantial interests in Australia have announced major acquisitions and partnerships.

In October this year Vodafone AirTouch Plc and Independent News & Media Plc entered into an agreement to provide mobile information services in the United Kingdom and South Africa, and will be exploring the potential to introduce these services into Australia and New Zealand. Vodafone is the third largest mobile telecommunications carrier in Australia. Independent News is the majority owner of Australian Provincial Newspapers and is a joint owner with the US' Clear Channel of the Australian Radio Network.

Under the agreement Independent News will provide Vodafone mobile customers with news and sports information, weather and live share price information. Vodafone will provide a short message service and transactional facilities.

There are three significant issues worth noting about this announcement:

Firstly, the agreement between a global media organisation and a global telecommunication company was made in the United Kingdom. Even though both these companies have interests in Australia, no Australian controlled company was involved in the development of this new convergent service planned for Australia.

Secondly, the investment required to develop such a service requires access to appropriate levels of capital and the ability to generate revenues from the service in more than one market.

[3] PBL Submission May 1999 Para 3.2

Thirdly, as both the Australian newspaper industry and telecommunications industry do not have the same restrictions on foreign ownership as the commercial television industry, their involvement in these global developments has been facilitated.

The following Table records a number of major consolidations and strategic partnerships that have taken place since May this year.

Company	**Interests in Australia**	**Expansionary developments subsequent to the May 1999 submission**
Viacom (US) (Market Cap: $A61.5 billion)	Pay-TV, TV programs, video stores	Merger with the CBS Broadcasting Network for $A59 billion
Vodafone (UK) (Market Cap: $A120 billion)	Mobile Phone carrier	Proposed $A154 billion acquisition of Mannesman Telecom in Germany
News Corp (US) (Market Cap: $A23.5 billion)	Newspapers, Pay-TV, Publishing	Acquired a 19% interest in Gemstar, the leading provider of on-screen program guides built into electronic devices in exchange for News Corporation's interests in America's TV Guide. The transaction was valued at about $A11.66 billion.
MCI Worldcom (US) (Market Cap: $A255 billion)	Ozemail, telco operator	Acquired US long distance carrier Sprint for $A198 billion.
AOL (US) (Market Cap: $A266 billion)	AOL Australia	AOL had announced partnerships with Direct TV, Hughes Network Systems, Philips, and Oracle Corporation's Liberate Technologies in which the hardware firms will provide advanced set-top boxes and satellite services for AOL TV Entered into a technology licensing agreement with Gemstar to develop AOL-TV electronic programming guides
Excite@home (US) (Market Cap: $A25.5 billion)	Excite Australia	**Excite@Home** is capitalised at $A25 billion (26% owned by AT&T) Launched directory service in Australia Joint venture with C&W Optus to provide content on new high speed cable modem service
NTL (US) (Market Cap: $A18.9 billion)	Owner of Australia's largest broadcast transmission Network	Acquiring the Cable & Wireless cable television operation in the UK for $A19 billion.
Clear Channel (US) (Market Cap: $A27 billion)	50% owner of Australian Radio Network	Acquired the US radio network AMFM to become the largest US commercial radio network with over 400 radio stations
Telstra (Aust) (Market Cap: $A35 billion)	Dominant telco in Australia	Considering partnerships with either Oracle (capitalised at $A155 billion) or Microsoft (capitalised at $A673 billion) to provide enhanced and interactive television services in Australia

Australian commercial television companies will not be able to effectively compete in this global environment until cross-media rules and foreign ownership and control rules are removed. This will enable access to the necessary capital to invest in these convergent technologies and to have an equivalent scale in the Australian market, as global convergent corporations.

3.3.2. Disadvantages suffered by Australian companies in the global environment

Australian companies need to be able to compete both at home and internationally to grow and survive. But the hidden cost of the cross-media rules has perpetuated systemic disadvantages of scale and scope vis a vis international competitors.

Unable to fully expand into other media interests, companies have had to remain small and hence fixed and static and unable to compete. Australian companies need to be able to better exploit scale opportunities that exist in Australia.

Foreign players who enter the Australian media market do so from a base of success in their country of origin, bringing with them scale and scope advantages. Both USA and EU companies have the advantage of huge audiences they are able to tap into at home to build their revenue base. In contrast, with Australia's relatively small population, the potential audience and hence revenue base is limited.

The economy is smaller, limiting the scope for investment in the media market, and competition from multinational transnational companies is intense. Commercial and shareholder expectation is that companies will not diversify into holdings without a synergy with a company's core business. The expectation is that media companies will expand and invest in the businesses in which they excel.

Without the ability to diversify, it is almost impossible for Australian companies to derive scale advantages and the difficulty is escalating as the revenue base of the traditional market is fragmenting with the introduction of new technologies.

3.3.3 Why scale is important

Australian companies should be able to grow and develop so they can more effectively provide their audiences with services. To be competitive with overseas players who are already in the media market (and whose presence will be increasingly permitted with removal of foreign restrictions) Australian companies need to be able to better exploit scale opportunities in Australia. Such opportunities are more easily tapped in the larger markets of the USA.

Globalisation of media when coupled with systemic scale disadvantages can lead to economic and cultural imperialism. As an English speaking country Australia is an attractive target for multinational companies (particularly those based in the USA) seeking new sources of distribution.

Australia has a small population and economy and Australian media companies can only counteract the dominance (of American culture) from overseas if they have something else to offer. Scale is important so that Australian companies can meet this challenge by being able to afford to commission and produce local programming and export it overseas. Australian culture can only be viable if it is operating on a level playing field.

There are a limited number of players in each media market in Australia and it is becoming increasingly expensive to remain competitive. Foreign shareholders with large cashflows derived from scale advantages from their home are increasingly present in each market. With suggestions that Telstra may enter the bidding for some of the AFL rights, we are also seeing non-traditional media companies entering the process. Australian companies need cashflow and leverage to compete meaningfully.

One example of the need for scale to compete is in relation to competition for programming rights. With higher levels of foreign investment in subscription television by entities with interlocking arrangements with production houses, sporting bodies and infrastructure providers, the bidding capacity of such entities is immense.

While the anti-siphoning rules seek to redress this imbalance in relation to sporting rights, there are no such rules that relate to non-sporting programs such as movies. Free to air licensees will become increasingly dependent on cashflow and leverage if they are to be able to continue successfully to acquire program rights.

The commercial television industry cannot be efficient and provide flow on advantages to its customers unless it is able to compete.

3.3.4 Australian companies' experience with scale

Globalised multinational media and communications companies have already established significant beach-heads in Australia but in contrast, Australian media companies, with only very limited exceptions, have struggled to establish beach-heads in other countries.

The lack of a sufficient capital base to fund international expansion has been a handicapping factor in some recent ventures.

The Ten Network was unsuccessful in a consortium seeking to be issued with a commercial UK television license where the Pearson Group was successful, and Prime Television has struggled with its investment in an Argentinean commercial television service. Prime's capacity to serve the capital needs of this venture have sapped its Australian operations, significantly weakening the company.

Experience has shown that without sufficient scale Australian media companies face considerable difficulties in competing with globalised multinationals. As has been demonstrated, the cross-media rules are a particular impediment to a company's ability to gain the scale needed. However, it is incorrect to assume that Australia's competition policy has always applied this same constraint.

The Productivity Commission's Draft report notes PBL's argument that the cross-media rules are impeding the opportunity for Australian media companies to achieve the scale and capital base necessary to participate effectively in a global environment. But in the same paragraph the Commission notes that 'News Corporation is an example of an Australian firm skilled in managing newspapers and television that became a major global player'[4].

This appears to imply that this success has been achieved notwithstanding the existence of the cross-media rules. This is not correct.

PBL merely makes the point that prior to the introduction of cross-media rules, the application of the competition rules enabled News Limited to acquire the Herald & Weekly Times group in the mid-1980's. The acquisition, which occurred when Rupert Murdoch was still an Australian citizen, prior to a change in domicile and base to the USA, gave News Limited sufficient domestic scale to give it the impetus to fund international acquisitions and compete globally.

In contrast, the acquisition of large domestic media scale from a commercial television base has never been possible, and was only ever available to the major print media groups.

[4] p 175

3.4 Media specific public interest test

While PBL supports the removal of the current cross-media rules, it does not support the Commission's draft recommendation that it is necessary to amend the *Trade Practices Act* to provide for a media-specific public interest test to apply to mergers and acquisitions.

The draft report concludes that "the *Trade Practices Act* should be amended to allow for a media-specific public interest test that would apply to all proposed acquisitions or mergers in designated media industries. Significant media acquisitions or mergers would not be permitted unless it could be demonstrated that the merger or acquisition was not contrary to the public interest. Each case would involve public consultation."[5]

The Commission considers this approach to be a more flexible alternative to the current rules under the *Broadcasting Services Act.*

In PBL's submission, the recommended approach has significant flaws both as to the legal formulation of the proposed public interest test and as to the procedure proposed.

3.4.1 Public interest test

The Commission proposes a test be inserted in the Act that addresses the public interest in promoting diversity of ownership and diversity in the sources of opinion and information. The report suggests that test criteria should be legislated. However, the Commission has not specifically addressed the proposed elements of such a test.

In Chapter 8, the Commission spends much time analysing the difficulties in measuring concentration in a cross-media world and in determining when a proposed transaction results in undue concentration. The report does appear to reach a resolution for these problems but side steps them by proposing a media specific public interest test for which it seeks comment on the necessary elements. As the Draft report acknowledges, it is possible to have conflicting elements each contributing to public interest e.g. the benefits through economies of scale and scope in opposition to diminishing plurality of ownership.

Each of the Commission's proposed approaches to such a public interest test require the determination of the relative influence of different types of media. This highlights the difficulty on a basic quantitative level of equating measurements of circulation (for print media), audience hours (for radio/television/some Internet services), subscriber numbers (subscription radio or television or Internet services) and number of hits (Internet services). Having sought to determine the quantitative question there exists the even more difficult question acknowledged by the Draft report as to the relative influence of the information or opinion source which will be a separate question again to the question of the relative influence of the form of media itself which conveys the opinion.

By comparison, the current test under section 50 of the *Trade Practices Act*, which examines the effect or likely effect of substantially lessening competition in any market, does have the width and confers upon the ACCC the power to determine whether the market structure resulting from the proposed transaction would deliver

[5] p 196

less diversity than consumers would desire in a competitive market. Traditional formulations of what is tested under section 50 cover aggregation of market power, which results in the supplier delivering less in terms of a quality or element of a service as well as charging more for such service. Therefore, upon receiving a request for informal clearance of an acquisition, the ACCC would test in market inquiries whether consumers considered the respective media services the subject of a proposed transaction as substitutable and whether one of the elements of the service valued by consumers is the diversity of opinion source. The test therefore:

- has the power to protect this interest;
- would test the degree to which, from time to time, this interest is of significance to consumers;
- has the flexibility to respond to change; and
- has methods of determination, which are known and applied across all sectors of the economy.

In PBL's submission, the Commission should note the weaknesses in a public interest test approach the ACCC noted in its preliminary submission to the Commission.

The ACCC commented that that by introducing a further public interest test solely for media mergers, competition law would treat one industry differently to others - which would appear to conflict with the goal of national competition policy: to apply as far as possible, universal and uniform rule of market conduct to all participants.

The ACCC also commented that it might be thought that it is an unsuitable body for adjudicating on decisions made according to broad public interest analysis.

PBL also notes the Commission's reference to a market place of ideas. As the Commission has itself commented, such a concept is "very wide and very porous". PBL has two concerns with the Commission's discussion with such a concept.

Firstly, this definition would be so imprecise to be vague and hence unworkable and secondly, the concept of the market for the purposes of the *Trade Practices Act* should necessarily be determined by the ACCC in accordance with its traditional economic approach. A "market" for the purposes of the *Trade Practices Act* is an economic concept. It is a place where buyers and sellers meet to exchange products within a particular geographic area, and it can function at a wholesale or a retail level. The notion of a "marketplace of ideas" is fundamentally different. It is a social or cultural concept which cannot be precisely defined, nor effectively regulated by a government agency. PBL submits that it would be misleading, logically inconsistent and counterproductive for such a concept to be imported into the economic regulation framework established by the *Trade Practices Act*.

3.4.2 Procedure of a public interest test

The Commission proposes the following procedure:

- mandatory notification requirement for all proposed acquisitions or mergers in designated media industries;

- prohibition on the acquisition or merger proceeding unless it is demonstrated that the merger or acquisition is not contrary to the public interest;
- each case would involve public consultation.

This proposed procedure differs fundamentally from the current procedure applying to mergers and acquisitions under section 50 of the *Trade Practices Act*.

Under section 50 there is no requirement for compulsory notification. Such a compulsory requirement was considered at the time of the amendments to section 50 which introduced the "substantial lessening of competition" test and such a requirement was rejected.

However, there is currently an informal clearance procedure, which has been adopted by the ACCC. Under this procedure parties to a transaction who wish to ascertain the view of the ACCC prior to the transaction informally notify the ACCC. The ACCC reviews the transaction, usually conducts market inquiries, and then informs the parties to the proposed transaction of the ACCC's view as to whether or not it proposes to intervene in respect of the transaction.

On the other hand, there is a current authorisation procedure under the *Trade Practices Act* for transactions which seek authorisation despite having the effect of substantially lessening competition. This authorisation does adopt a formal public procedure. This requires a formal application and is a public process involving a register of publicly available information and the opportunity for third parties to participate in the public evaluation by the ACCC. As a matter of course such a procedure involves limited ability to maintain confidentiality of information, particularly information which goes to the core aspects of the decision making, and also involves substantial time periods for meaningful consultation.

Commercial experience establishes that the diminished ability to maintain confidentiality of information, and substantial time periods required before a transaction may be brought to finality and "a deal struck" will mean that many possible mergers or acquisitions which would be subject to such a procedure and test will never commence, let alone proceed. The imposition of such a procedure which is weighted in its design to a negative rather than facilitating outcome will mean that most such transactions will not proceed.

To use such a formal procedure of prior notification and prior presumption of offending the public interest will be, in practice, as inflexible as the current prohibition on the transactions in the *Broadcasting Services Act*. And if it is intended that the scope of media industries to which the test is to be applied is broader than the current industries covered in the cross-media rules, it would be likely to prohibit more transactions than the current rules.

To facilitate genuine transactions, with the desired flexibility, removal of the current cross-media restrictions should be accompanied by adoption of the same procedure as the current informal clearance procedure which applies to section 50. The $A10 million sanction for contravention of section 50 and the divestiture remedy provides a sufficient disincentive for parties who would otherwise choose to take a risk on whether the transaction complies with the *Trade Practices Act*.

4. Foreign ownership and control

PBL supports the Commission's Draft Recommendation 8.1 that the restrictions in the *Broadcasting Services Act 1992* should be repealed and that foreign investment in broadcasting should be covered by Australia's general foreign investment policy. Investment in the industry should be considered on a case by case basis.

However, as outlined in our submission the foreign ownership and control rules should not be repealed unless the cross-media rules are repealed simultaneously. Alternatively, in PBL's submission, the cross-media rules should be repealed prior to repeal of the foreign ownership rules.

As stated in our previous submission, although PBL has in the past supported the principles of foreign ownership and control laws, as a result of increasing globalisation and convergence of the media industry, it is increasingly clear the laws are not achieving their purpose and should be repealed.

The rules have been successfully subverted over the years and their notional counter-balancing effect on the cross media rules has been made redundant.
The current rules are inconsistent and ineffective.

Concern about foreign ownership and control of broadcasting services has not been carried through to any of the other influential mass media sectors despite the high and increasing availability and use of other forms of media. And it is clear that technological, service and market developments that have led to this expansion of opportunities to provide information to Australians will continue to grow in coming years.

No other sector of the media industry has imposed upon it restrictions in the form of foreign control (as opposed to ownership) and specific ownership restrictions only apply to newspapers or pay television. Radio and new forms of media including the internet have no specific restrictions beyond the Foreign Investment Review Board provisions.

The result is considerable foreign participation in radio, newspapers, pay television, the Internet, telecommunications, book publishing and content provision.

The inconsistent application of foreign restrictions suggests that some media services are more influential than others and warrant stricter foreign restrictions, and yet many influential forms of media exist, with less or no restrictions.

For example, radio talk back and newspapers are considerably influential on community views and opinions. Use of the internet by Australians to access information is high and growing and communications companies are increasing providing new data and information services.

Equally, the ownership and control restrictions do not support a desire by the Government to ensure that shareholder's dividends remain substantially in Australia. This is demonstrated by the experience of CanWest Global Communications' investment in the Ten Network. With no less than 57% economic interest in the network, CanWest has repatriated significant levels of dividends to Canada in recent years.

With increasing foreign participation in the numerous media sectors, the broadcasters should also have the ability to create alliances with foreign entities. This will assist in maintaining a competitive and efficient Australian broadcasting industry.

Using existing mechanisms, the Foreign Investment Review Board and Treasury should review foreign investment in the media sector.

The foreign ownership and control restrictions have been ineffective, but repeal of these specific restrictions is needed to ensure that foreign investment both between the Australian media sectors and between the media industry and other industries is handled on a level playing field. This will facilitate further investment in the media sector.