# Wattle Park Partners Pty Ltd

Prof. R J Snape
Commissioner
Productivity Commission
LB2 Collins Street East
MELBOURNE VIC 8003

RECEIVED
- 9 FEB 2000
Productivity Commission

Dear Professor Snape

**BROADCASTING INQUIRY**

As undertaken, attached is a further submission to the Commission's Inquiry into Broadcasting regarding the concept of the multimedia- communications market. It includes the charts that seek to plot the breadth of commercial interests across this market that are held by Telstra, News Ltd and PBL.

The research is being undertaken in the context of seeking to define the rapidly aggregating market in which television and radio, pay TV, newspapers, magazines, production houses, telecommunications, Internet and other services now operate. My argument is that while an operator in any particular market segment may not, under current Australian competition law, be regarded as dominant in that segment, the accretion of power and influence bestowed by operating in a number of these market segments may deliver such power as to deliver a dominant market position. The network and tipping effects that can result will act to severely limit competition.

This is still a work in progress but is provided now to hopefully assist in your final deliberations. Please let me know if you require any further information or clarification.

My thoughts are with you as you finalise your report. I appreciate only too well from my own work heading the Government's review of broadcasting in 1988-92 the minefield in which you tread.

Kind regards

pp.

Chris North


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# Submission to the Productivity Commission Hearing into Broadcasting

## Market Definition in Broadcasting

Markets are not defined as an end in themselves, but as a tool for analysing the state of competition in particular sectors of the economy. They assist in the identification the area of real concern under the Trade Practices Act - the presence and use of market power.

From the Trade Practices Act point of view, market definition is an "essential first step ... but a first step" in the assessment of the state of competition.[1] Competition itself is a flexible concept - valued for many reasons as serving economic, social and political goals. Further:

> *Competition is a process rather than a situation.*[2]

Players are included or excluded from the market definition by reference to whether they significantly constrain another's power to "give less and charge more".

The process of market definition is useful only in so far as it helps identify competitive concerns. In the broadcasting area there are a number of features of the market which impact upon this analysis. As the draft Productivity Commission Report identifies, what we are essentially talking about in the broadcasting area is information and images - the market for ideas (page 179). The difficulties of identifying the boundaries of the market in this area point to an arbitrariness in market definition. Instead of drawing tightly defined markets whose boundaries pre-determine the analysis of competitive forces in the industry it is better to focus on the aspects of the marketplace which impact upon competitive behaviour of the players in it.

The importance of not being too prescriptive in tightly drawn market boundaries is especially important at a time when there is convergence of the different elements of the value chain. Not only is there convergence of technology, there is increasing "cross-fertilisation between sectors, telecommunications and broadcasting for example" leading to "convergent services".[3] The phenomenon of convergence raises challenges for competition analysis and market definition. These include issues arising from conglomerate joint ventures and mergers, rapidly changing markets, standards, and standardisation and the redefinition of relevant markets.[4] These challenges can be met by a return to the fundamental features of the industry which drive competitive behaviour.

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1 *Queensland Co-operative Milling Association* (1974) ATPR 40-012 at page 17,246

2 *QCMA* at page 17,246.

3 OECD, *Green Paper on the Convergence of the Telecommunications, Media and Information Technology Sectors, and the Implications for Regulation* (3 December 1997), 2.

4 Lang, *Media, Multimedia and European Antitrust Law*, found on the European Commission Competition Division website, <http://europa.eu.int/comm/dg04/index_en.htm>. As Lang notes, this also can be accompanied by increased specialisation and does not necessarily mean narrower market definitions.

**Features of markets in broadcasting**

1 Information demonstrates **network externalities**. The value of the information depends on how many users exist. Externalities arise not just due to technological changes but in the very nature of the product being broadcast. For example:

- Television programming, but sport in particular, is an experience good, that is you cannot assess its quality until it has been consumed. Further, the experience of seeing a match in an otherwise empty stadium and the experience of seeing one in which the stadium is full are very different. The value of television programs and the experience of watching them at home is also enhanced by the knowledge that others are watching the program, enabling social interaction with respect to that programming at a later time.
- Theatre and movies likewise gain from being consumed jointly by many consumers at the one time.
- E-commerce depends upon the inter-relationship of supply and demand.

2 There are strong **economies of *scale* and *scope***.

- The size of an organisation impacts significantly on the cost level which it faces.
- The larger the number of different segments in which it operates the larger the cost savings which can be made.

3 **Tipping effects** occur. In a network market, as a firm expands, the product of that firm should progressively become more attractive. Tipping occurs when a product subject to increasing returns generates sufficient momentum to dominate the market. Consumers will value one particular good, and avoid substitutes. Tipping effects have several advantages to a large player in the market:

- When a product has a small market share, network effects will work against an increase in market share.
- In order to displace a dominant product, the whole market must be displaced, making it more difficult to do so.

4 There are **first mover advantages**, for example in establishing the standards to which market players must conform. If you establish and control the standard the rest of the market must follow you. These advantages arise partly because of the presence of tipping effects. The dynamics of the industry require that players in the market obtain a critical mass (at least minimum efficient scale but this might be below the tipping point needed to establish yourself as the industry leader) as soon as possible. The timing of strategic moves is therefore critical, as is the prospect of customers locking in or being locked in to a particular standard.

5 There are **high sunk costs**. For example, the capital cost of broadcasting equipment is high. If there is a need to enter into long-term contracts to ensure supply of inputs or a secure customer base to justify the capital expenditure, this also might constitute a sunk cost for it amounts to a precommitment to legal liabilities in an uncertain environment. The presence of high sunk costs is a strong indication of the presence of entry barriers and hence the ability to earn monopoly rents if the critical mass is reached.

6 **Vertical integration** delivers significant competitive advantages:

- it delivers control over the content shown on the various media;
- a corporation has the ability to cross-sell and cross-market between the various vertical lines;
- the competitors of the vertically integrated entity may have to rely upon that entity for content at one end or output distribution at the other end of the value chain.

7 The industry is characterised by significant **partial ownership**. The network created in the industry is created without full ownership. This is significant because, without the cost of full ownership of companies in related industries, and without a legal control threshold being passed, the market players can:[5]

- assist in the foreclosure of opportunities for rivals who will be unwilling to either invest in or patronise a company which is owned partially by a rival in another market segment;
- assist in the acquisition of key strategic information about developments in other segments of the industry - positioning for a move into that segment in a more committed manner if strategic reasons dictate that this should occur;
- deter the companies in which the acquisition is made from pursuing competitive rivalry with a major but not controlling shareholder;
- form the basis of willing co-operation between the two companies.

**Implications for market definition**

If an unnecessarily narrow definition of a market is adopted the inter-relationship between the various segments giving rise to these effects can be overlooked. If an overly broad definition is used, a simplistic analysis of the level of competition based solely on market shares can understate dramatically the level of market power able to be exercised.

There is another way of viewing markets and competitive forces in them. This is to explicitly recognise the network nature of the marketplace. It identifies clusters[6] of products and locations which are naturally grouped together.

The attached charts identify:

1 the many interests that each of PBL, News and Telstra have in the broader communications market;

2 the fact that their interests in the various entities operating within the sphere of this industry are not always wholly owned;

3 identifies the network effects which are able to be exerted by the creation of the web of interests in each of the elements of the broader communications market.

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5 Some of these effects are explored in the United States' antitrust literature, for example: Areeda and Turner, *Antitrust Law*, ¶1200ff; Hovenkamp, *Federal Antitrust Policy: The Law of Competition and its Practice* (1994), §12.9.

6 Michael Porter, "Clusters and Competition" in *On Competition* (Harvard Business School Press, 1998), 197-298 explores the concept of a cluster from the perspective of geographic space. The same concepts are applicable in product space.

These charts are not intended to represent the complete corporate structures and diverse interests of any of News Corporation, Publishing and Broadcasting Limited or Telstra. Their purpose is to highlight the ways in which the interests of these companies in publishing, broadcasting, filmed entertainment, pay television, telecommunications, internet and e-commerce are converging and blurring traditional market boundaries. Every attempt has been made to ensure that the information contained within them is correct at the date of printing, however much of the information has been taken from a range of sources including media reports and no warranty is given as to their ultimate accuracy. Where interests have not been represented as a percentage, the exact nature and extent of the interest held has not been able to be identified.

In industries with which this submission is concerned, viewing the competitive dynamics through the use of clusters rather than through more traditional groupings of companies, industries or sectors is more in-line with the true nature of competition and the sources of competitive advantage. "Clusters, broader than industries, capture important linkages, complementarities and spill-overs of technology, skills, information, marketing, and customer needs that cut across firms and industries. [S]uch connections are fundamental to competition, to productivity and, especially, to the pace of new business formation and innovation."[7]

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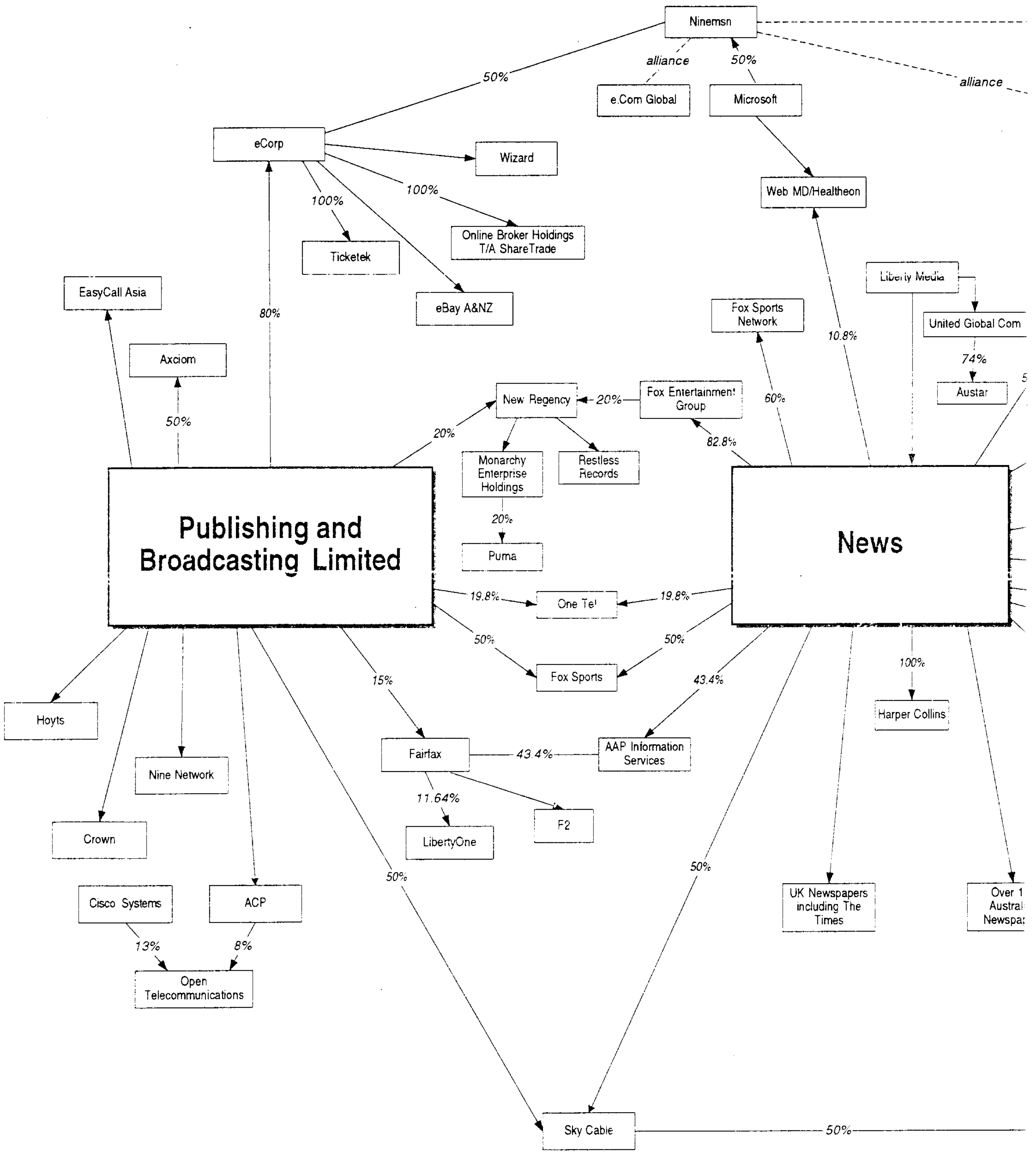
[7] ibid at p 205



Ninemsn
alliance
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e.Com Global
Microsoft
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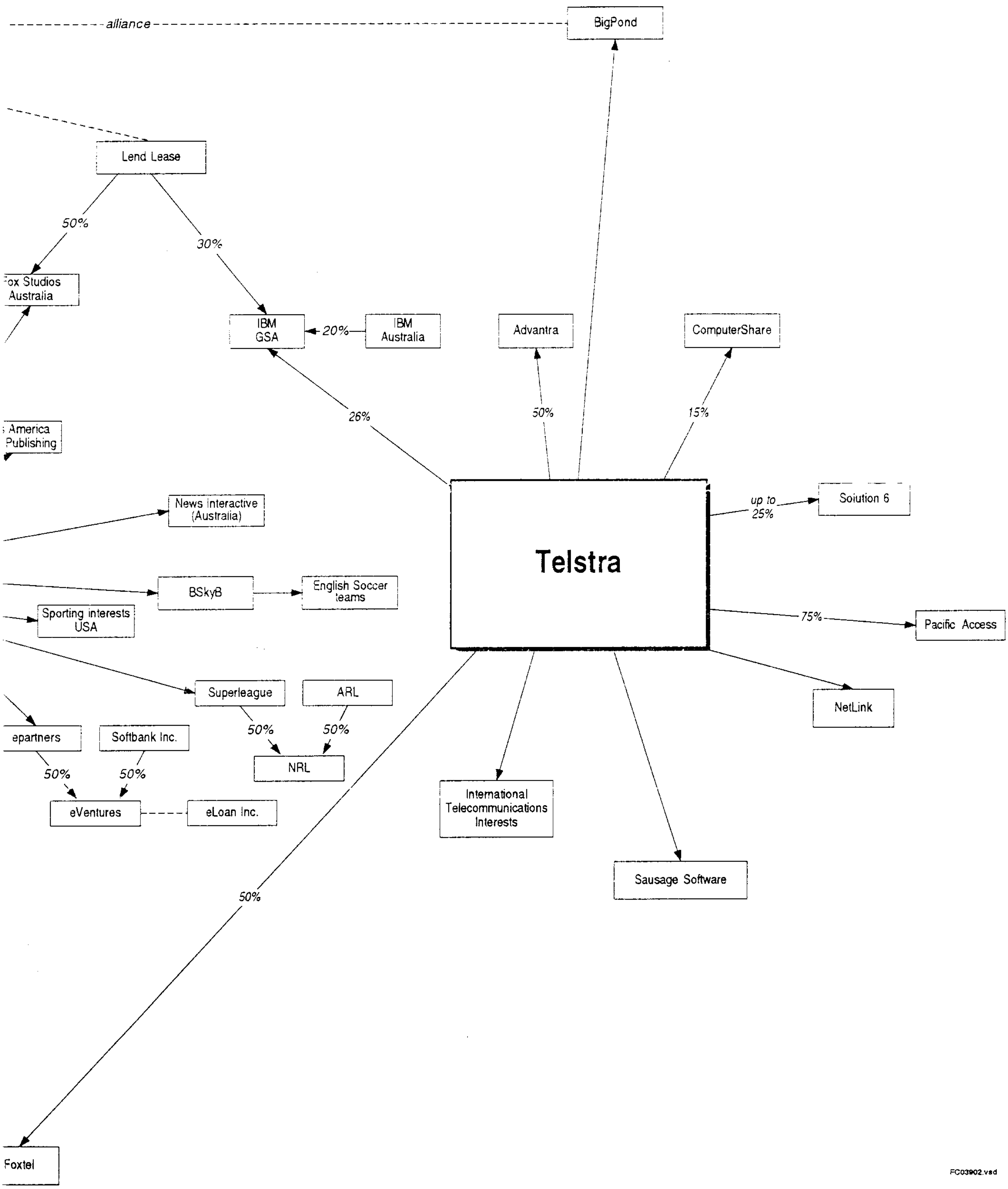
eCorp
Wizard
100%
100%
Online Broker Holdings T/A ShareTrade
Ticketek
eBay A&NZ
Web MD/Healtheon
EasyCall Asia
80%
Axciom
50%
Liberty Media
United Global Com
74%
Austar
Fox Sports Network
10.8%
New Regency
20%
Fox Entertainment Group
60%
20%
82.8%
Monarchy Enterprise Holdings
Restless Records
20%
Puma
Publishing and Broadcasting Limited
News
19.8%
One Tel
19.8%
50%
Fox Sports
50%
100%
Harper Collins
15%
43.4%
Hoyts
Nine Network
Fairfax
43.4%
AAP Information Services
11.64%
F2
LibertyOne
Crown
50%
50%
Cisco Systems
ACP
13%
8%
Open Telecommunications
UK Newspapers including The Times
Sky Cable
50%


alliance
BigPond
Lend Lease
50%
30%
ox Studios
Australia
IBM
GSA
20%
IBM
Australia
Advantra
ComputerShare
26%
50%
15%
America
Publishing
News Interactive
(Australia)
Telstra
up to
25%
Solution 6
BSkyB
English Soccer
teams
Sporting interests
USA
75%
Pacific Access
Superleague
ARL
50%
50%
NRL
NetLink
epartners
Softbank Inc.
50%
50%
eVentures
eLoan Inc.
International
Telecommunications
Interests
Sausage Software
50%
Foxtel

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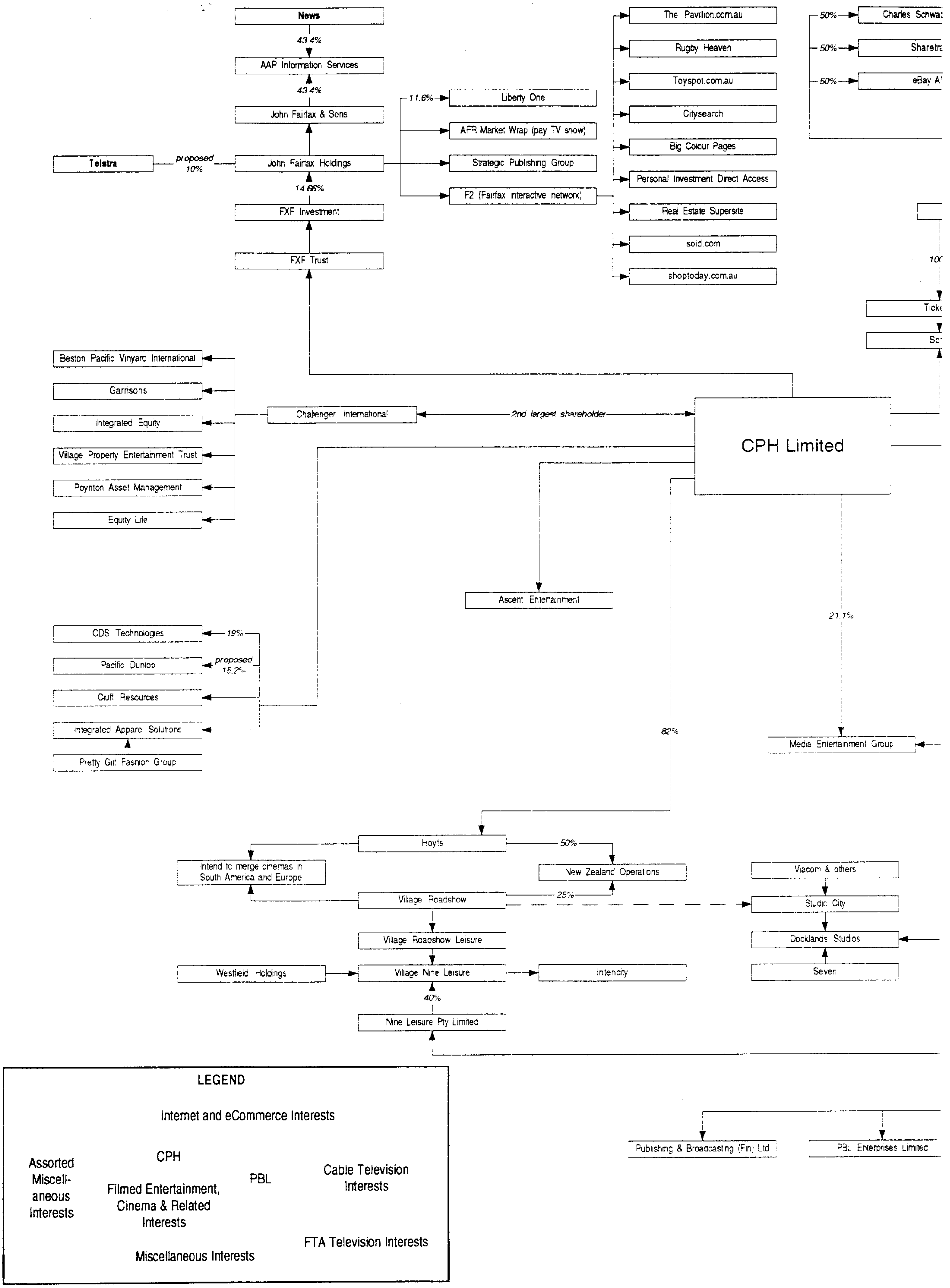
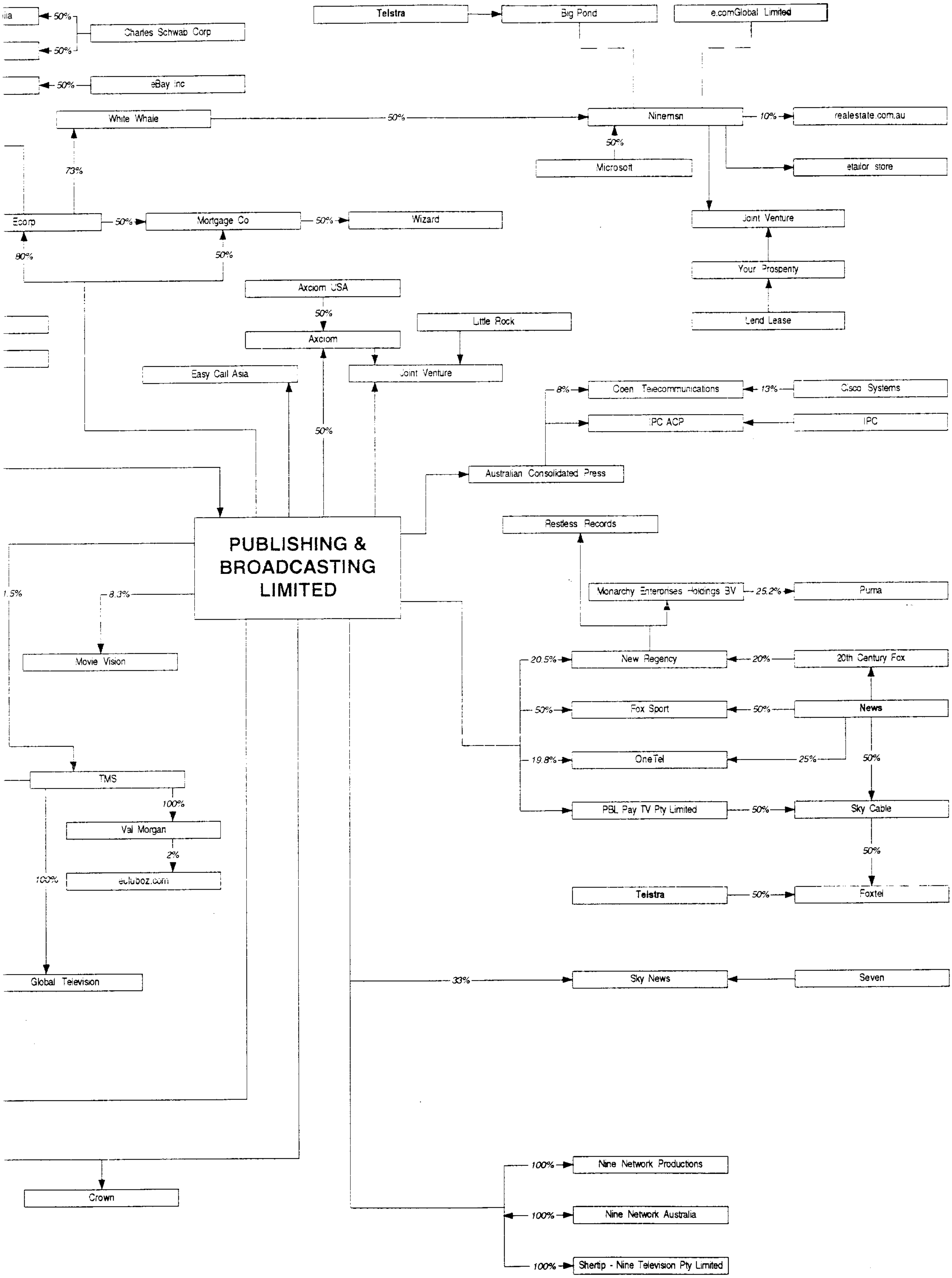

News
43.4%
AAP Information Services
43.4%
John Fairfax & Sons
Telstra
proposed 10%
John Fairfax Holdings
14.66%
FXF Investment
FXF Trust
11.6%
Liberty One
AFR Market Wrap (pay TV show)
Strategic Publishing Group
F2 (Fairfax interactive network)
The Pavillion.com.au
Rugby Heaven
Toyspot.com.au
Citysearch
Big Colour Pages
Personal Investment Direct Access
Real Estate Supersite
sold.com
shoptoday.com.au
50%
50%
50%
Beston Pacific Vinyard International
Garrisons
Integrated Equity
Village Property Entertainment Trust
Poynton Asset Management
Equity Life
Challenger International
2nd largest shareholder
CPH Limited
Ascent Entertainment
21.1%
CDS Technologies
19%
Pacific Dunlop
proposed 15.2%
Cluff Resources
Integrated Apparel Solutions
Pretty Girl Fashion Group
82%
Media Entertainment Group
Hoyts
50%
Intend to merge cinemas in South America and Europe
New Zealand Operations
Village Roadshow
25%
Viacom & others
Studio City
Village Roadshow Leisure
Docklands Studios
Westfield Holdings
Village Nine Leisure
Intencity
Seven
40%
Nine Leisure Pty Limited
Publishing & Broadcasting (Fin) Ltd
LEGEND
Internet and eCommerce Interests
Assorted Miscellaneous Interests
CPH
Filmed Entertainment, Cinema & Related Interests
PBL
Cable Television Interests
FTA Television Interests
Miscellaneous Interests



ilia
50%
Charles Schwab Corp
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50%
eBay Inc
White Whale
50%
Telstra
Big Pond
e.comGlobal Limited
Ninemsn
10%
realestate.com.au
50%
Microsoft
etailor store
73%
Joint Venture
Ecorp
50%
Mortgage Co
50%
Wizard
80%
50%
Your Prosperity
Lend Lease
Axciom USA
50%
Axciom
Little Rock
Easy Call Asia
Joint Venture
50%
8%
Coen Telecommunications
13%
Cisco Systems
IPC ACP
IPC
Australian Consolidated Press
PUBLISHING & BROADCASTING LIMITED
Restless Records
1.5%
8.3%
Monarchy Enterprises Holdings BV
25.2%
Puma
Movie Vision
20.5%
New Regency
20%
20th Century Fox
50%
Fox Sport
50%
News
19.8%
OneTel
25%
50%
TMS
100%
PBL Pay TV Pty Limited
50%
Sky Cable
Val Morgan
50%
2%
100%
ecluboz.com
Telstra
50%
Foxtel
Global Television
33%
Sky News
Seven
100%
Nine Network Productions
Crown
100%
Nine Network Australia
100%
Shertip - Nine Television Pty Limited


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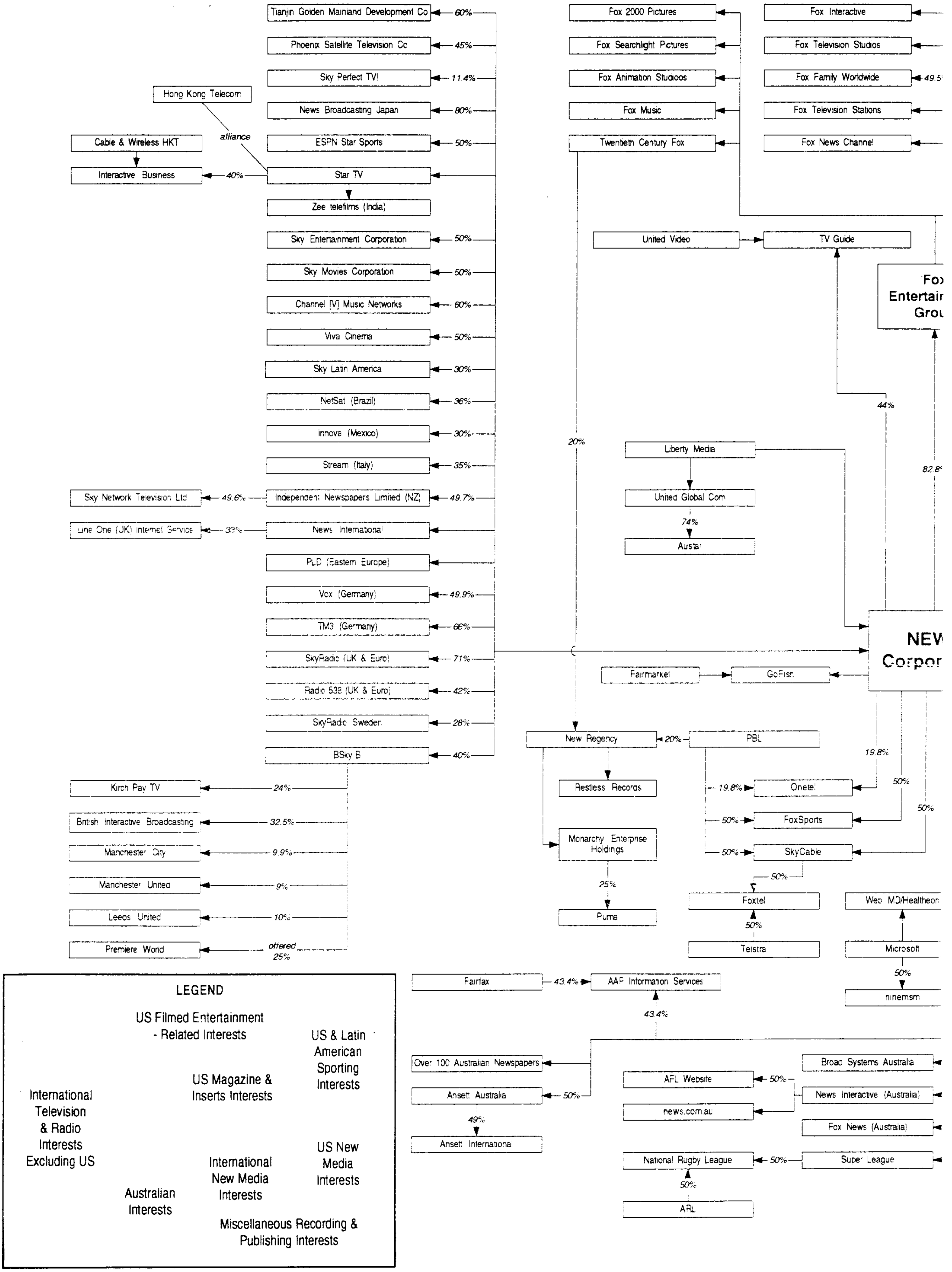
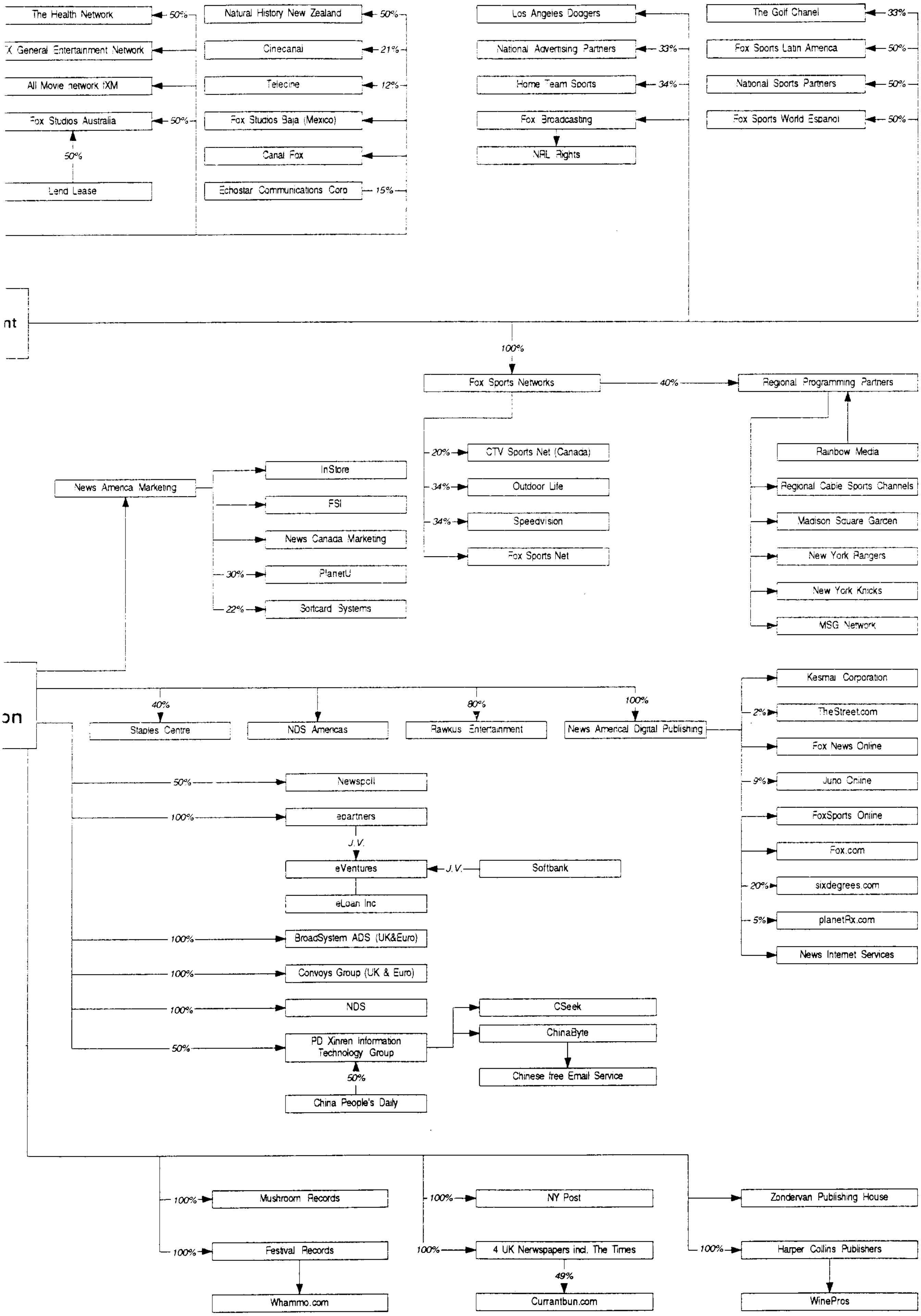


Tianjin Golden Mainland Development Co
60%
Phoenix Satellite Television Co
45%
Sky Perfect TV!
11.4%
Hong Kong Telecom
News Broadcasting Japan
80%
Cable & Wireless HKT
alliance
ESPN Star Sports
50%
Interactive Business
40%
Star TV
Zee telefilms (India)
Sky Entertainment Corporation
50%
Sky Movies Corporation
50%
Channel [V] Music Networks
60%
Viva Cinema
50%
Sky Latin America
30%
NetSat (Brazil)
36%
Innova (Mexico)
30%
Stream (Italy)
35%
Sky Network Television Ltd
49.6%
Independent Newspapers Limited (NZ)
49.7%
Line One (UK) Internet Service
33%
News International
PLD (Eastern Europe)
Vox (Germany)
49.9%
TM3 (Germany)
66%
SkyRadio (UK & Euro)
71%
Radio 538 (UK & Euro)
42%
SkyRadio Sweden
28%
BSky B
40%
Kirch Pay TV
24%
British Interactive Broadcasting
32.5%
Manchester City
9.9%
Manchester United
9%
Leeds United
10%
Premiere World
offered 25%
Fox 2000 Pictures
Fox Searchlight Pictures
Fox Animation Studioos
Fox Music
Twentieth Century Fox
20%
Fox Interactive
Fox Television Studios
Fox Family Worldwide
49.5
Fox Television Stations
Fox News Channel
United Video
TV Guide
Fox
Entertain
Grou
44%
82.8
Liberty Media
United Global Com
74%
Austar
NEW
Corpor
Fairmarket
GoFish
New Regency
20%
PBL
Restless Records
Monarchy Enterprise Holdings
25%
Puma
19.8%
Onetel
19.8%
50%
FoxSports
50%
50%
SkyCable
50%
50%
Foxtel
50%
Telstra
Web MD/Healtheon
Microsoft
50%
ninemsm
Fairfax
43.4%
AAP Information Services
43.4%
Over 100 Australian Newspapers
Ansett Australia
50%
49%
Ansett International
AFL Website
50%
news.com.au
Broad Systems Australia
News Interactive (Australia)
Fox News (Australia)
National Rugby League
50%
Super League
50%
ARL
LEGEND
US Filmed Entertainment - Related Interests
US & Latin American Sporting Interests
US Magazine & Inserts Interests
International Television & Radio Interests Excluding US
US New Media Interests
International New Media Interests
Australian Interests
Miscellaneous Recording & Publishing Interests



The Health Network
50%
X General Entertainment Network
All Movie network (XM
Fox Studios Australia
50%
50%
Lend Lease
Natural History New Zealand
50%
Cinecanal
21%
Telecine
12%
Fox Studios Baja (Mexico)
Canal Fox
Echostar Communications Corp
15%
Los Angeles Dodgers
National Advertising Partners
33%
Home Team Sports
34%
Fox Broadcasting
NRL Rights
The Golf Chanel
33%
Fox Sports Latin America
50%
National Sports Partners
50%
Fox Sports World Espanol
50%
nt
100%
Fox Sports Networks
40%
Regional Programming Partners
20%
CTV Sports Net (Canada)
34%
Outdoor Life
34%
Speedvision
Fox Sports Net
Rainbow Media
Regional Cable Sports Channels
Madison Square Garden
New York Rangers
New York Knicks
MSG Network
News America Marketing
InStore
FSI
News Canada Marketing
30%
PlanetU
22%
Sortcard Systems
on
40%
Staples Centre
NDS Americas
80%
Rawkus Entertainment
100%
News America Digital Publishing
Kesmai Corporation
2%
TheStreet.com
Fox News Online
9%
Juno Online
FoxSports Online
Fox.com
20%
sixdegrees.com
5%
planetRx.com
News Internet Services
50%
Newspoll
100%
epartners
J.V.
eVentures
J.V.
Softbank
eLoan Inc
100%
BroadSystem ADS (UK&Euro)
100%
Convoys Group (UK & Euro)
100%
NDS
50%
PD Xinren Information Technology Group
50%
China People's Daily
CSeek
ChinaByte
Chinese free Email Service
100%
Mushroom Records
100%
Festival Records
Whammo.com
100%
NY Post
100%
4 UK Newspapers incl. The Times
49%
Currantbun.com
Zondervan Publishing House
100%
Harper Collins Publishers
WinePros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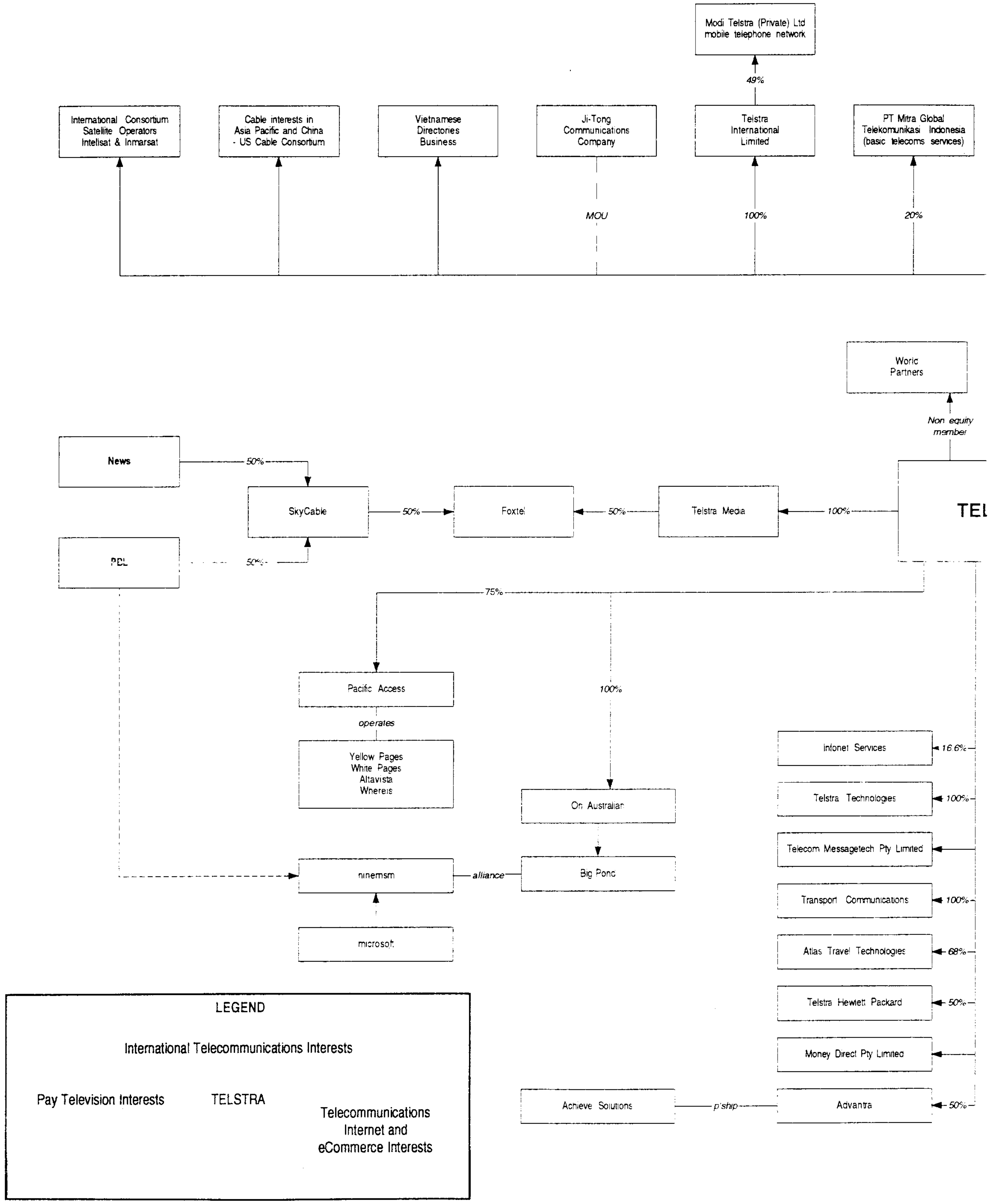
Modi Telstra (Private) Ltd mobile telephone network
49%
International Consortium Satellite Operators Intelisat & Inmarsat
Cable interests in Asia Pacific and China - US Cable Consortium
Vietnamese Directories Business
Ji-Tong Communications Company
MOU
Telstra International Limited
100%
PT Mitra Global Telekomunikasi Indonesia (basic telecoms services)
20%
World Partners
Non equity member
News
50%
SkyCable
50%
Foxtel
50%
Telstra Media
100%
TEL
PBL
50%
75%
Pacific Access
operates
Yellow Pages
White Pages
Altavista
Whereis
100%
On Australia
Big Pond
ninemsm
alliance
microsoft
Infonet Services
16.6%
Telstra Technologies
100%
Telecom Messagetech Pty Limited
Transport Communications
100%
Atlas Travel Technologies
68%
Telstra Hewlett Packard
50%
Money Direct Pty Limited
Achieve Solutions
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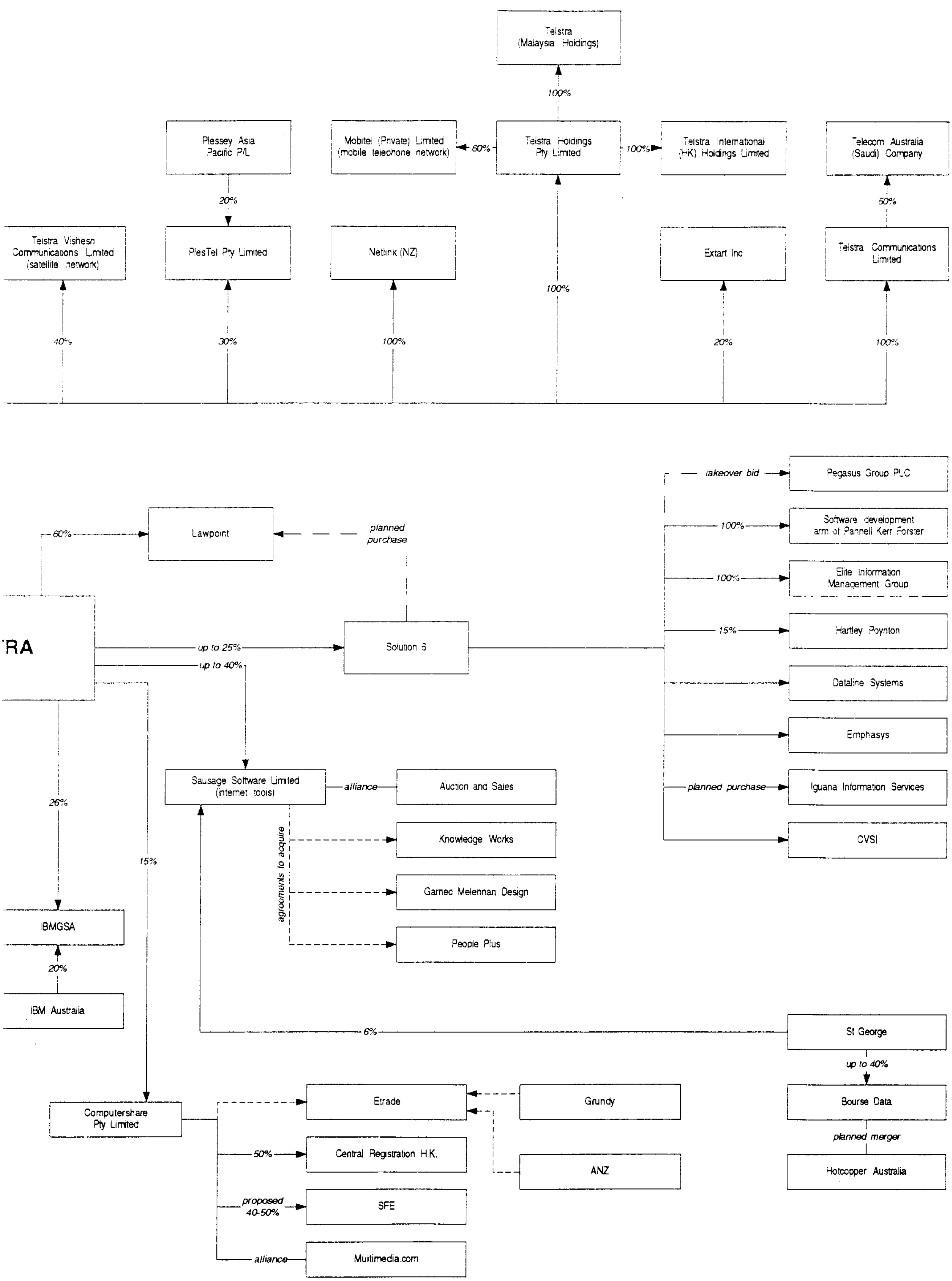
Advantra
50%
LEGEND
International Telecommunications Interests
Pay Television Interests
TELSTRA
Telecommunications
Internet and
eCommerce Interests



Telstra (Malaysia Holdings)
100%
Plessey Asia Pacific P/L
Mobitel (Private) Limited (mobile telephone network)
60%
Telstra Holdings Pty Limited
100%
Telstra International (HK) Holdings Limited
Telecom Australia (Saudi) Company
20%
50%
Telstra Vishesh Communications Limited (satellite network)
PlesTel Pty Limited
Netlink (NZ)
Extart Inc
Telstra Communications Limited
100%
40%
30%
100%
20%
100%
takeover bid
Pegasus Group PLC
60%
Lawpoint
planned purchase
100%
Software development arm of Pannell Kerr Forster
100%
Elite Information Management Group
RA
up to 25%
Solution 6
15%
Hartley Poynton
up to 40%
Dataline Systems
Emphasys
26%
Sausage Software Limited (internet tools)
alliance
Auction and Sales
planned purchase
Iguana Information Services
agreements to acquire
Knowledge Works
CVSI
15%
Garnec Melennan Design
IBMGSA
People Plus
20%
IBM Australia
6%
St George
up to 40%
Computershare Pty Limited
Etrade
Grundy
Bourse Data
50%
Central Registration H.K.
planned merger
ANZ
Hotcopper Australia
proposed 40-50%
SFE
alliance
Multimedia.com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