

Chapter 4

Summary and Conclusion

4.1 The committee considered all the evidence put to it regarding the many issues canvassed by the package of Bills.

4.2 With respect to reforms to cross-media ownership and foreign media ownership, the committee notes that there are few objections, so long as diversity and Australian content are protected.

4.3 It is the view of the committee that such protections are present in these Bills, and that taken as a whole, these reforms strike a balance between regulation of content and diversity and recognition of the fundamental changes in the technology of media.

4.4 The committee believes special provisions for the protection of rural and regional media are justified, given the unique economic and geographic challenges in those areas. However, additional regulation with regard to local content on regional radio could have a negative effect on media quality and diversity in rural and regional areas. Greater consultation with regional radio is required prior to any introduction of such regulation.

4.5 The reforms with regard to digital television recognise that uptake of digital television has not progressed as quickly as anticipated and provide for a more flexible approach to the eventual switching off of the analogue television service.

4.6 It is the view of the committee that the competing interests in the existing television market are balanced against the need for competition, new content and new services.

4.7 Some concern was expressed regarding the opportunity for access to the “Channel B” spectrum. The committee believes that this needs to be addressed to ensure diversity of content.

4.8 There is a demonstrated demand in the community to provide digital spectrum to community television broadcasters, which the committee believes should be met.

4.9 The committee accepts that control of the anti-siphoning list should remain with Minister, with clarification of the definition of “event” for the purposes of the anti-siphoning list, in particular with regard to multi-day and multi-round competitions.

4.10 Taken as a whole, these reforms provide for a more flexible, responsive and technologically advanced Australian media, while protecting diversity, local content and accessibility. It is the view of the committee that this legislation should be passed, subject to the recommendations contained in this report.

Summary of Recommendations

Reform of cross-media ownership rules

4.11 The Government Senators support the reforms as outlined by the Minister.

4.12 There was no significant opposition to these changes expressed in the submissions to the inquiry, with concerns revolving around the number and quality of media “voices” and levels of local content, rather than cross-media issues.

4.13 The consensus is that the advent of modern communications technology has blurred the lines between the various media forms to such an extent that the traditional distinctions are essentially meaningless.

4.14 Television broadcasters essentially provide print media through Internet sites and many newspapers now provide video and audio streaming through the Internet.

4.15 The ease of providing print, audio and video messages via the Internet, as well as through mobile phone services, and the ability to provide additional information through digital and subscription television, has made the artificial distinction between the traditional media of television, radio and press anachronistic and unnecessarily restrictive.

4.16 The committee recommends that the legislation, as it applies to cross-media ownership rules, stand as drafted.

Reform of foreign ownership regulations

4.17 The Government Senators support the reforms as outlined by the Minister.

4.18 There was no significant opposition to these changes expressed in the submissions to the inquiry, given that local content will remain protected and that foreign ownership of business generally is under the control of the Foreign Investment Review Board.

4.19 The committee recommends that the legislation, as it applies to foreign ownership regulations, stand as drafted.

ACMA regulation of local content plans

4.20 Many witnesses were concerned that there had been little or no consultation regarding the implementation of local content plans and the regulation and enforcement of these plans by ACMA.

4.21 In general, submissions from regional radio broadcasters indicated that they were committed to broadcasting local content, and that the majority were providing more than the suggested minimum hours of local content.

4.22 The major concern for regional radio broadcasters was that additional regulation would result in higher compliance costs and would, if anything, make local

news and current affairs more costly to produce, deterring new and smaller players in the market. It was also pointed out that there was no suggestion that similar local content requirements be applied to television and print media.

4.23 The committee recommends that the Minister review local content requirements and regulation for regional radio broadcasters, after full and intensive consultation with regional radio.

Regional media diversity test

4.24 While the committee supports the Government's proposed 4/5 rule for media diversity in metropolitan markets, the 4/5 rule has been criticised as insufficient to protect diversity of media in rural and regional markets.

4.25 However, many submissions supported a 2 of 3 rule for protecting media diversity in rural and regional areas. Put simply, this would permit an individual or corporation to own only 2 out of 3 media "voices" in any broadcast area, so long as an accepted minimum of 4 voices is maintained.

4.26 This acknowledges the need to remove the arbitrary distinctions between traditional media and allows for sufficient protection of media diversity.

4.27 Several witnesses suggested that there be some attempt to assess the nature and quality of media voices, rather than relying on a strictly numeric assessment of media diversity. There was however no suggestion of a reliable set of criteria or standards to enable this assessment to occur.

4.28 The committee recommends that the 2 of 3 test be used for maintaining media diversity in rural and regional markets.

Reform of anti-siphoning regulations

4.29 Many submissions were highly critical of the current anti-siphoning regime, arguing that it unfairly advantaged FTAs and resulted in many listed events not being shown at all, or shown as a delayed telecast.

4.30 While the argument that significant sporting events should be made available on FTA television is accepted, there is a compelling case for the 'use it or lose it' approach.

4.31 This approach strikes a balance between providing FTA live coverage of major sporting events and allowing for competition between subscription television and FTAs on the events not broadcast live.

4.32 However, given the varying popularity of individual sports and regular changes and additions to sporting competitions, the committee believes that enshrining the anti-siphoning list in legislation would be restrictive and result in an unresponsive framework.

4.33 There is also some confusion over what may constitute an 'event' for the purposes of anti-siphoning regulation, particularly with regard to multi-day and multi-competition events (eg. The Olympic Games, Tennis Opens). The committee believes the definition of 'single event' should be clarified.

4.34 The committee recommends that the Minister retain control over anti-siphoning regulations, and that clarification be made of the definition of 'event' for the purposes of the anti-siphoning list.

Injunctive powers of the ACMA to preserve media diversity

4.35 The committee notes that the proposed amendments to the *Broadcasting Services Act* do not extend to giving ACMA powers to enforce, by way of injunction or divestiture orders, breaches of the provisions aimed at enhancing greater diversity in media ownership. Nor are there suitable pre-existing powers in the *Broadcasting Services Act*.

4.36 The committee heard evidence that the matter could be dealt with under s. 50 of the *Trade Practices Act*. There are two problems with that approach. First, injunctions and divestiture orders to restrain or deal with breaches of s. 50 of the *TPA* may not be sought by the ACMA, but by the ACCC. The committee does not consider that the ACCC is the appropriate body to regulate media diversity, and does not favour industry-specific amendments to the *Trade Practices Act*.

4.37 Secondly, s. 50 only prohibits mergers which have the effect of 'substantially lessening competition'. It is perfectly clear from s. 50(3) (which defines the criteria according to which substantial lessening of competition is assessed) and s. 50(6) (which defines 'market' for the purposes of s. 50 as a market in goods or services) that the only relevant criteria are economic criteria. That is hardly surprising in an economic statute such as the *Trade Practices Act (TPA)*. Nevertheless, it is important to recognise that media diversity is a different, and broader, concept than economic competition. In enforcing s. 50 of the *TPA*, the ACCC may only have regard to the latter. The policy of this suite of legislation, as the committee understands it, is to have regard to much broader considerations, including considerations of public interest and social utility, rather than merely market concentration in a narrow economic sense. Proceedings under s. 50 of the *TPA* cannot do this.

4.38 Accordingly, the committee considers that there is a *lacuna* in the proposed enforcement provisions of the Bills. It recommends that the ACMA be given broad powers, analogous to those in ss. 80 and 81 of the *TPA*, to enforce the legislation by injunctions (including interlocutory injunctions) and divestiture orders, in appropriate cases.

4.39 One question which then arises is whether the legislation should set out (by analogy with s. 50(3) of the *TPA*) the criteria according to which alleged breaches of the new diversity provisions of *Broadcasting Services Act* are to be assessed, or whether the rather vague criterion of 'public interest' is sufficient. The committee has an open mind on that question. But it is firmly of the view that the expedient of

looking to the ACCC to in effect police the diversity provisions of the legislation through s. 50 of the *TPA* is inappropriate and unworkable.

4.40 The committee recommends that the ACMA be given broad powers, analogous to those in ss. 80 and 81 of the *TPA*, to enforce the legislation by injunctions (including interlocutory injunctions) and divestiture orders, in appropriate cases.

Community television access to digital spectrum

4.41 The committee was convinced that there is a strong public demand for the allocation of digital spectrum to community television broadcasters.

4.42 The community television sector comprises seven locally owned, licensed stations in Adelaide, Brisbane, Lismore, Melbourne, Mount Gambier, Sydney and Perth, with more than 260 member groups, 3,200 volunteers and 50 paid staff. The community television sector provides training in all areas of television production to more than 500 Australians every year and has a combined annual turnover of more than \$5 million.

4.43 Over 3.7 million viewers watch community television in Australia, according to Oztam survey results in August 2006. This is a significant proportion of the national viewing market and indications are that this audience is growing.

4.44 Community television broadcasts a diverse array of programming made by and for local and regional communities. As the FTA television broadcasters and viewing audience move to digital television, it is vital that community television be given the opportunity to retain its audience by also transitioning to digital. Given the limited financial resources of community television, it is essential that a significant lead time be provided, to enable this transition.

4.45 The committee recommends the prompt provision of digital television spectrum to community television broadcasters.

Usage of and access to “Channel B” spectrum

4.46 The committee has noted the concerns of several witnesses regarding the allocation of the “Channel B” spectrum and the inclusion of FTAs in the allocation process.

4.47 The committee heard strong arguments regarding the anti-competitive effect of awarding the entirety of the spectrum to one broadcaster. This would provide an effective monopoly and may result in the spectrum being used to merely 're-broadcast' existing content.

4.48 While there may be technical and regulatory challenges in 'splitting' the spectrum, the committee considers that competition is essential for content development and therefore acceptance and uptake by the viewing public.

4.1 The committee recommends the Minister address the issue of access to “Channel B” in order to provide opportunity for diversity of content.

**Senator Alan Eggleston
Chair**