

The Nationals Senators Dissenting Report

The Nationals Senators do not support the Committee report in its entirety.

A major concern with the proposed media reforms remains the over centralisation of the media market and the lack of capacity of the ACCC to have effective oversight of media mergers and their effect on the democratic process of our nation.

The desire for the ACCC and ACMA to be able to curtail an inherent oligopoly may be there, but their legal powers to enforce this desire are not apparent. Concerns remain with regards to the channel B digital licence, the overcentralisation of regional markets and even the potential overcentralisation of metropolitan markets, despite measures to mitigate these issues.

The classic statement by the ACCC Chairman, Mr Samuel, is once the egg is scrambled you cannot unscramble it - the scrambled egg being overcentralisation of media power. The return on investment for the current major incumbents, in comparison to their overseas counterparts, is clear evidence of a current market manipulation which has inhibited true competition.

The ACCC has no powers to be, nor was it set up to be, the arbiter and protector of a diversity of public opinion. Currently, the public interest test is only relevant if a matter goes to authorisation. The public interest, therefore, is not taken into account when the ACCC considers whether a merger or acquisition will substantially lessen competition under section 50 of the Trade Practices Act. As mergers rarely go through the authorisation process (1 in around 700), it is clear, therefore, that the public interest will be rarely considered by the ACCC, under the current regime.

Even if the public interest was considered, it does not encompass the public interest of diversity of political opinion. This present lack of consideration of the public interest, by the ACCC, was noted by the Productivity Commission in its report on broadcasting. The Productivity Commission was clear in its view that the introduction of a public interest test, with particular emphasis on diversity of political and public opinion, in relation to media mergers or acquisitions, must be a central feature of any media reforms.

These concerns are evident in responses received from Mr Beecher of Private Media Partners during the Inquiry. When questioned as to whether he believes that the passage of this legislation, without amendment, could affect the democratic process in Australia, he responded “Absolutely. We have no doubt about that. We may know very quickly, because there will be a flurry of takeovers. We are not trying to demonise the owners of the media. That is their role. But if you look at the track record of media owners in this country in terms of directing the information traffic, when they want to, on issues that they are interested in — on big political issues, on

societal issues — they have done that. The result of this legislation will be to give those same owners more media outlets with which to do that.”

When questioned further in relation to the lack of powers within the ACCC to deal specifically with the protection of democracy as one of the underlying fundamental standards they are there to enforce, Mr Beecher expressed his belief that the ACCC cannot be an effective arbiter as it does not have the resources to be able to deal with the complex legal and other issues that will arise from certain mergers.

When questioned about the powers of the ACCC, in a democracy, to be able to balance up any retrograde steps that might come out of this legislation, Mr Beecher responded by saying “I am not an expert on the ACCC, but my understanding is that the ACCC’s role is to regulate commercial marketplaces, so I do not understand how they can then look at the issue of diversity of news and current affairs and journalism separate from the commercial aspects of those. I do not understand how they can do that.”

Mr Samuel, Chairman of the ACCC, when questioned in relation to the ability of the ACCC to protect the market, made the comment, “Perhaps it should be pointed out that, even under the law as it currently stands, we are not the final arbiter on mergers or, for that matter, anything else under the Trade Practices Act.” He went on to say, “Everything we say, if you like, is prefaced by the fact that we are not the ultimate decision maker either now or if the Dawson changes were introduced.” Mr Samuel’s position obviously does call into question the ability of the ACCC to protect against the monopolisation of public opinion in a market.

An inherent scepticism remains, on the powers of this legislation, post implementation, as to its capacity to protect diversity in political opinion, public opinion and diversity of ownership with its ramification on such things as monopolistic or near monopolistic control on advertising. The powers that are presumed by the ACCC to cover this contingency, we feel, have not been adequately displayed through the Senate Inquiry format and, as such, these remain our concern prior to viewing any amendments.

Hand-in-hand with the strengthening of the role of the ACCC, we believe that the powers of ACMA should be strengthened with appropriate legislation that would allow ACMA to conduct its operations in a pro-active manner.

A further dimension of the regulation and control of a more concentrated media should include a transparent framework of ownership. We believe there should be an associated or related entities test, similar to that present in the Tax Act. At any time, the ultimate ownership of a media company should be quite clear and readily accessible. No media company should be able to exert influence by way of financial, programming arrangements or other mechanisms from their voice to others without the two voices being deemed as one.

Accordingly we also believe the definition of a 'voice' as it relates to these Bills needs to be more clearly defined. It is our view that a 'voice' is one that strongly reflects throughout the day exemplars of both a public opinion and local political views. Consideration should be given that a radio station that is almost exclusively reliant upon music or racing such as a TAB station should be excluded from the 'voice' definition as their effect on the political opinion is minimal.

Recommendations

Recommendation 1 is not supported. The legislation as drafted does not incorporate the 2/3 rule as contained in Recommendation 4.

Recommendation 2 is supported

Recommendation 3 is in part supported, with a further recommendation that:

1. The ACMA and ACCC's legal powers be further strengthened to account for the breadth of the legislation and the concerns raised by witnesses, with particular consideration given to the public interest test; and the introduction of a broader injunctive and divestiture power.
2. There be the inclusion of an associated or related entities test and tracing provisions relating to ultimate ownership of a media company.

Recommendation 4 is supported.

Recommendation 5 is not supported. It is recommended that:

1. The Minister agree to amend the legislation to provide for an immediate requirement that there be not less than 12 and a half minutes per day, Monday to Friday, of locally sourced and presented news, exclusive of weather reports, with scrolling repeats of the same bulletin prevented. The practice of 'ripping and reading' should also be prevented to ensure diversity of opinion and genuine locally devised content;
2. All radio stations be required to broadcast 'local and live' for a minimum of six (6) hours a day between the recognised 'industry' program times of Breakfast and Drive Time with programming locally sourced and presented;
3. Recognising that some views were expressed with regard to the requirement to comply with local content rules, we recommend that following legislative introduction and after a period of 12 months the committee further examine the issue of local content requirements in detail and report to the Senate; and
4. All amendments pertaining to 'local content' be legislative in nature and not regulatory.

Recommendation 6 is supported.

Recommendation 7 is not supported. It is recommended that the committee further examine the issue of access arrangements for Channel B in order to maximise the opportunities for a diverse range of players to provide content on this service in detail and report to the Senate before the legislation comes into effect.

Recommendation 8 is supported.

Summary and Conclusions

The summary and conclusions at Chapter 4 of the report need to be considered in light of this dissenting report.

Barnaby Joyce
Senator for Queensland

Fiona Nash
Senator for New South Wales