

Australia's cross-media ownership law update will create new M&A opportunities

In 1992, Bill Clinton was elected President of the United States, the World Wide Web celebrated its first birthday, and Australia enacted cross-media ownership laws that remain largely unchanged to this day.

However, the country's Department of Communications has now published a background paper to stimulate debate around possible reforms of these laws.

Any reform is likely to reflect not only the very different media world in which we now live but also encourage mergers, joint ventures and content sharing agreements in the Australian media sector.

Background to the Australian cross-media ownership laws

Australia's current cross-media ownership rules were implemented by the *Broadcasting Services Act 1992* and have remained largely unchanged.

The current laws were designed for an age when most media consumed by the Australian population came from the three traditional platforms of TV, radio and print newspapers.

In the modern landscape for media and news coverage, including the advent of the internet age, these rules

may no longer deliver the protections they were designed to afford.

There are notable channel exceptions to the current laws: pay-tv, national print newspapers (as they are not included in the definition of an "associated" newspaper) and any media delivered over the internet, all fall outside of the current regime.

The aim of the rules was to ensure diversity of "voices" in the media sector, especially with respect to news coverage.

Given the power of news media to inform and shape views in a democracy, particularly with respect to politics, the framework to date has

Key points

- With the rise in popularity of the internet replacing the traditional roles of TV, radio and print newspaper, the current system is looking increasingly outdated.
- Repealing or easing some of the existing rules may enable both local and international media entities to engage in M&A in this area that had not been previously possible.
- Any future regulation in the sector will likely be more straightforward and dynamic than that currently in force to recognise the changing media landscape.

focused on ensuring diversity in news coverage.

This diversity of voices was primarily protected by safeguards in the laws that prevented media owners exerting either ownership or editorial control over all three platforms.

Are the current rules fit for purpose?

The internet has now revolutionised the media sector, especially news coverage. With relatively low barriers to entry, new and increasingly influential voices are appearing on the internet.

Current Australian cross-media ownership restrictions

- **75% audience reach rule** – no person can be in control of a TV broadcasting licence whose aggregate licence area populations exceed 75% of the population of Australia
- **1 to a market rule** – a person cannot control more than one TV licence in a licence area
- **2 to a market rule** – a person cannot control more than two radio licences in a licence area
- **2 out of 3 rule** – no person can control more than two of the three regulated platforms (TV, radio and "associated" newspapers) in a licence area
- **5/4 rule** – at least 5 independent media voices (TV, radio and "associated" newspapers) must be present in a metropolitan licence area (4 in a regional licence area)

A newspaper is "associated" with a licence area if more than 50% of its circulation is within the licence area.

Internet distribution also blurs the traditional geographical circulation figures on which these laws were based, with regional papers and streamed media consumed out of defined areas and by multiple users on multiple devices.

The internet has also allowed international media and news coverage to enter and influence the Australian market from afar.

Commentators have argued that regulating the traditional three platforms but not the internet is inappropriate and retaining the current framework does not reflect the reality of the modern industry nor protect media diversity.

M&A opportunities following a repeal of the current rules

The current regime restricts mergers and acquisitions between the major media players.

If some or all of the laws were repealed or softened, a number of new opportunities could open up for the existing media companies to merge or trade titles and channels.

Australian media companies may also become more attractive to new domestic and international entrants to the media market as currently prohibited acquisitions could become possible for a buy and build strategy.

75% audience reach rule

The majority of the major commercial free-to-air television networks in Australia, including Seven, Nine and Ten, are close to the permitted 75% audience reach and are therefore currently prevented from acquiring any smaller regional networks.

Without this rule, these networks would be free to merge with their affiliated regional networks and, theoretically, with each other.

1 and 2 to a market rules

Repealing these licence limits would enable the current largest players in the various platform markets to combine. For example, Seven and Nine would be permitted to acquire some of Ten's licences. The regional

TV broadcasters could acquire other licences in their areas with possible corresponding synergy savings.

New laws

A regime that can adequately regulate and protect diversity in the modern media sector will need to reflect modern technologies. It will need to consider content delivered via the internet including from other jurisdictions.

It is clear that regulation by existing platforms is no longer an appropriate framework and regulators will need to be more creative when designing any new regulatory system to deal with dynamic new modern technologies.

Increased role for the ACCC?

Assuming the current laws are removed, the media sector will still be subject to the jurisdiction of the Australian Competition and Consumer Commission (ACCC).

The ACCC will examine whether a proposed merger/acquisition will lead to a substantial lessening of competition in any relevant market. A merger between a regional TV network and a metropolitan TV network may be permitted if the ACCC considers that the merger will not lessen competition substantially.

The definitions of the different media markets and the nature of competition within them will be crucial to determining which mergers will be permitted.

The editor's voice

Amongst these commercial and consumer issues, any change of regulation will also need to address

the quest for diversity of voice in news reporting that underpinned the 1992 legislation.

Legislation that deals solely with the mechanical delivery of content does not address the modern media world, where news producers around the world share, licence and on-sell content on a daily basis.

Ensuring the diversity of ownership of the companies and editorial regimes now controlling the origination of content seen in any Australian newspaper or news broadcast is already a task that extends far beyond Australia's borders and jurisdiction. Any attempt at control would require examination of the

news sharing agreements that underpin modern news journalism.

Changing channels - one to watch

Reform in this area is likely by 2015, and movement in the media M&A market is likely to follow, if not anticipate, such changes. The Australian media sector – including broadcasters, content originators and supporting technologies – will be one to watch in the coming months.

Media Control and Ownership: Policy Background Paper No.3 is available at: http://www.communications.gov.au/_data/assets/pdf_file/0017/233513/Control_Background_Paper.pdf

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