



ABA Member, Ms Kerrie Henderson spoke at the Media Ownership In Australia conference conducted by the Communications Law Centre was held in Sydney on 10 April 1997. An abridged version of her speech follows:

Media Ownership and control - pitfalls and prospects

The tension between certainty and flexibility seems to be the main focus of current debate about broadcasting regulation.

A number of submissions to the Government's cross media review have commented on the need for greater flexibility. The review will no doubt be examining whether there is still a need for specific fixed limits and how to build in more flexibility if they are to be retained.

The debate has thrown up two possible ways to allow more flexibility, while keeping some regulation of media ownership. These are firstly a media-specific public interest test, or secondly limits for the media market as a whole—the 'share of voice' suggestion from the United Kingdom, and its variations.

The Trade Practices Act and general competition policy under its auspices are concerned with economic competition, with the aim of promoting efficiency and economic growth. However, it is clear the community has expectations of the broadcasting industry well beyond the economic. We expect broadcasting to provide suitable material for our children, to entertain us, to respect our values and reflect our sense of who we are. We expect it also to be the principal medium for the conduct of public debate.

These social policy goals, especially that of providing a diversity of news, information and opinion sources necessary for democratic process to work effectively, are not considered relevant in competition law.

Public interest

The idea of a public interest test is hardly new to broadcasting in Australia. The lesson of history is that a highly flexible public interest discretion really needs to be dragged back along the continuum in the direction of certainty.

One way to do so might be to specify

precise criteria which are to be applied. This would enable Parliament to make the threshold decisions on relevant factors; and would go quite a way towards meeting the need for regulatory transparency. Statutory criteria would also set clear parameters for any appeal.

To be useful the criteria would need to set out, at the minimum, whether the public interest is to be interpreted in the local area or nationally or both; the prioritisation of different aspects of the public interest, for example as between diversity of views, diversity of voices and diversity of sources; and how relevant media areas of influence, or 'markets' are to be defined.

Shared voice

The 'share of voice' concept attempts to provide a way to incorporate flexibility into what is essentially a numerical approach.

It begins with the idea of a total media market—covering at least television, radio, newspapers and pay TV—and sets broad ownership and control limits which then allow media owners to structure their investments as they please, provided they stay within the limits.

As always, the devil is in the detail. The many variables in how to measure a person's 'share', and in particular how to 'weight' the various sectors of the media, would result in contestable assumptions, considerable uncertainty and fluctuations in market shares.

Code - based

A variation on the concept has been developed by Richard Collins and Cristina Murrioni at the Institute of Public Policy Research in the UK. They suggest a three pronged approach involving competition policy and minimal media

ownership limits, in combination with codes of editorial independence.

A code-based approach is very familiar to us in Australia and our current codes of practice for broadcasting services address some issues such as accuracy and fairness, correction of errors and distinguishing opinion from fact. However such codes work best when assessing material which has actually gone to air or been printed. The investigation of material that didn't make it and the exercise of influence in such decisions would be a process of deciding who is in a position to exercise control over editorial decisions.

Business plan

I would like to suggest another alternative—a kind of 'Business Plan' approach.

The first step would be to develop a set of principles incorporating aspects of the existing codes of practice, journalistic codes of ethics and the principles of editorial independence.

Once principles were formulated, media organisations would then be required to develop their own 'business plans' for the implementation of the principles within their organisation.

These plans could then be registered with a media regulator and organisations required to report periodically on their implementation.

The publication of the fundamental criteria and the plans would provide a mechanism for public accountability and review.

By allowing all the stakeholders to have a part in the process, such an approach would maximise the opportunities for efficient, flexible and transparent regulation. More importantly, it would honour the fundamental reasons for regulation in the first place. The people, in the industry, in the community and in government. 