



THE UNIVERSITY OF
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The Media Industry in Australia: public policy choices

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It's an honour to be here and it's good to be with an old colleague and deliver this AN Smith Memorial Lecture.

When I taught, which as Alan said in his correction of the bio, was actually quite a long time ago, I used to start my classes with one of my favourite sayings, which is that "The answer is usually in the question." I used to start with that because to me it was more important to teach people not to answer other people's questions but to ask their own questions. I think that's what distinguishes the teaching in a great university and it's what to me characterises good journalism. The best journalism comes from the people who can ask the best questions.

So, in keeping with that spirit, and being here in a university delivering a university lecture, rather than just put to you a position on media policy, what I'd prefer to do is explore some questions about media policy and see if we can't find the answer in the questions.

The core question that I want to start with is something like this: given widespread dissatisfaction with current media policy and media regulation in Australia, why hasn't reform occurred and why is getting reform to occur so hard?

Now when I pose that question, the next thing that I would say is: watch out when you see a question at you for the embedded assumptions. And there is an embedded assumption in my question, so I need to deal with that first.

The assumption is that there is widespread dissatisfaction with the current media regulation, which basically limits people from owning different kinds of media, limits things such as the number of licenses that are available, limits foreign ownership of media assets in different ways.

And, as I say, since embedded assumptions can be dangerous, what I want to do is start by outlining why there's such widespread agreement that reform is needed. And then, having got to there, what I'd like to do is say, "Well, what questions does that raise in terms of why the reform hasn't occurred?"

There are two reasons why I think people are universally dissatisfied with current regulation. First is that every time someone takes a serious look at the current regulation they conclude that it is flawed, that it isn't working. We have had a number of serious looks at this regulation. Probably the most thorough recent examination of regulation came from the Productivity Commission, which did a report on broadcasting in March 2000. They had basically three conclusions. The first was that the diversity of sources of information and opinion is best served by diversity of ownership of media companies and by competition. Secondly, they said that any competitive legislation, particularly restrictions on new TV licences, foreign investment, pay TV advertising and sports broadcasting should be removed. And thirdly they said the restrictions ought to be removed in a phased program, and that the regulation of this industry should be left to

the same people who regulate other industries, namely the Trade Practices Commission and the Foreign Investment Review Board. So the Productivity Commission looked at this in depth and they concluded we need reform and they outlined a pathway.

At the same time, everybody in the industry who lives with these restrictions has been advocating reform. Our industry disagrees on most things. But one thing we all agree on is that reform would be beneficial to the industry. And we might disagree on the shape of reform, and I'll come to that. But the need for reform is broadly agreed.

And when you look at the political parties nobody wants to maintain exactly what's in place, although as you'd expect with political parties we get different shades of reform in the various party policies.

The Liberals say they would like to repeal cross media and foreign restrictions on ownership, provided that Labor or the Democrats will agree with them. And they also say that in order to make that work they want the owners of cross media properties to give them undertakings that, at least for TV and radio and papers, that they will maintain distinct editorial processes and retain existing levels of news and current affairs production. So the Liberals would like to make changes. They are a little quieter about what they want to do with TV licenses.

The Labor Party says at this stage they want to leave reform to a second term, they are not unhappy with cross, but they don't appear to be permanently wedded to the foreign restrictions.

The Democrats have given us a viewpoint that says broadcasting and media law should ensure the public has access to a range of opinions and should encourage a diversity of ownership and Australian control. Like a lot of policies, that's a half-full one because it leaves some important things out. It says they'd like to have diversity but it's silent as to quality. And quality in media requires scale. So that's sort of a wishful call for a reform but without really articulating how that reform might occur.

So the starting point is there is a widespread agreement that reform is needed from pretty well everybody who has a vested interest.

The second reason why I think there is widespread agreement on the need for reform is the fact, from my perspective, that this industry is not delivering the benefits that it could to the country. Now, in order to reach that conclusion you say "Compared to what? What are the benefits that a good media industry provides to a country?" Those benefits fall into three categories. I think media makes a very important contribution to democracy, to the democratic process. And, you know, it goes without saying, and it's never clearer than right now when we are in an election campaign, that we put the statements of those who aspire to have power under scrutiny and we maintain an openness and that's really important. The second contribution that a media industry makes is just to the colour and the texture and the vibrancy of the society. Are we an interesting place? Do we have lots of ideas flying around? Do we have communities that are able to define themselves and make contact with each other? So a good media industry helps energise and define and make interesting and more liveable the communities in which we work. And lastly, a media industry is essential if we are going to have a market economy. Markets work because of the free flow of information. Markets only work when buyers and sellers are informed. Now if I want to sell you shares, then there is a whole lot of law that says I've got to give you a prospectus and I go to jail if I tell you a lie. But, you know, when you choose a stock, you want to be an informed buyer, you'd like to see a range of objective reviews. Or if you buy a car, or if you go to a restaurant, or whatever you want to do in our market economy requires you to be informed and media plays a role.

So I judge media policy in terms of whether we are making the kind of contribution we can to the political debate, the kind of contribution that we can to defining and energizing and making society an interesting and rewarding place and making the kind of contribution that we can to the market economy that keeps us in jobs and with the where with all to do the things that we want to do.

And if I had to grade all media (and I can grade because here I am at a university), if I had to give a grade to the contribution made by all media to political debate and to society at the moment, I'd say probably a B and no way an A. Why do I say that? Why? I'd say, look, from time to time, I think we have the capacity to do an outstanding job. I think our papers, for example, in covering elections, in rising to the challenge of a September 11, do a fabulous job. But is every paper, is every article in the paper, is every edition what it could be? And, of course, it isn't. And it does come back to a question of platforms and scale and resources and I'll come back to that.

Then you look at television. What do we get out of our television here? I mean there is an assertion that we have great television but reality is we have very limited choice in terms of television. And the television that we have is quite artificially protected from competition.

One of the great puzzles to me is why, when governments are so hungry for money and there are so many ways in which they could spend the money, for example, on education or on health, why they aren't selling more TV licenses. We could have two more TV licenses tomorrow. All the government has to do is make the spectrum available and open a bidding process. The last time I looked at this, one of the banks told me they'd probably go for around a billion dollars each. So, you know, it's interesting to me why, at a time when political parties are telling us all the things they want to do, and when they are finding it hard to find the money to do it, we don't see more television licenses up for sale. Pay TV is highly restricted in terms of rules, quite restricted in terms of the technology that it uses. Digital television has been practically still born. Broadband in this country is only very, very narrowly available. The best example of what we've got or what we've had from the industry is datacasting, which never got off the ground because no player was prepared to bid. And datacasting was an artificial construct designed to protect the industry within this regulatory framework that I think is stopping it from doing the job that it could.

If you look at what's the commercial incentive to the industry and what's the kind of industry that's been created by this regulation, it seems to me the message that we're giving our media industry is either get out or diversify or struggle. If you look at our two most successful media organisations, News Corporation is now largely an international company, it sees its future elsewhere and it's developed overseas in ways that would have been impossible in Australia. You look at the next largest media company, PBL, and its growth has come not from media but from casinos and from investment. So the message to those successful players is find other areas to use your talents. Let's look at Fairfax. Fairfax is a company that for many, many years was unstable and troubled. It is currently at a size and with a limited scope of activities that really stops us competing in the way that I think the community would like us to compete with News Limited in a number of markets. And from time to time I get calls from Queensland saying why don't we have a second paper in Brisbane, why isn't there a second paper in Adelaide. And the answer lies in the industry structure. Why would we? And how are we resourced to do that – do we have the size and scope and diversity, scale and platforms that would allow us to do that?

Look at television. Channel Ten has only been saved and able to become a member in good standing of the oligopoly of commercial television because of a very complex transaction with Can West that really tested the limits of the existing legislation. And finally we have the ABC. The best I can say is that the ABC is, in our current

environment, schizophrenic. It's torn between having a role as a public broadcaster and attracting the funds to do that, and having a role as another player in an inadequately served market and seeking a commercial position that you would expect to have. So it's neither fish nor fowl.

So my embedded assumption that everybody wants reform and that reform is justified, is a fair assumption and that then brings me back to my question. If it is fair to assume that reform is needed, why don't we get reform, why is reform so hard?

That causes me to ask a couple of other questions. The first question, the first possibility why reform might not be occurring, is because even though what we have is imperfect, the alternatives are worse. And you might say cross and foreign and limited licenses are an awful system but the alternatives are worse. My answer to that question is no, the alternatives aren't worse. There are a number of alternatives and they're pretty much all better. The Productivity Commission outlined an alternative. Nobody has really argued with that alternative. It was really sort of put in the too hard basket and I'll come back to that. But their model, which was to introduce gradually more competition, more licenses and to unwind the existing regulation and replace it with a revised trade practices regime and a Foreign Investment Review Board oversight, was a perfectly workable solution and one I think that would be a lot better, in that it would allow players to reach scale that would allow a much richer set of outcomes. I'll come back to that in a moment.

And the second, another alternative might be to deal with the industry structure. That's one I want to talk about, for the government to basically act as a catalyst in a structural intervention. So what do you mean by that? What do I mean by structural intervention? Well, every industry has a structure and structure is, in fact, one of the most important determinants of the way in which an industry operates and the way in which an industry then provides its output to the community. So you say well what's the structure of the media industry? Now there are a lot of ways to look at this. You could say, well, there are two large newspaper groups and some smaller ones and there are three commercial stations and all of that stuff. But, really, when you look at the structure of this industry and you see that content can move across platforms, the thing that defines structure to me is the size of the company, the market capitalisation. So if you look at the structure of our industry in those terms, then by far and away the largest player is News, capitalised at between 50 and 60 billion dollars. Then you have PBL, Publishing and Broadcasting, capitalised at six, seven billion dollars. Then you get Fairfax, capitalised at about two and a half. So we have News something like 20 times our size, PBL something like three times our size. Then you get the television stations which are about 2/3rds our size. And then you get minor players like Rural Press, West Australian News that are about half our size or about 40% of our size. So it's really like there's Snow White and there's the queen and then there's the seven dwarfs. That's the industry structure. Two very large players, one global large player, one domestic very large player and then a lot of small players.

And you say, well, is that a good structure? What's wrong with that structure? Well, firstly, it's relatively uncompetitive. It's very hard for the seven dwarfs to take on either the queen or Snow White because the deep pocket difference between them ultimately gets you. And if you want to have, therefore, contestable, competitive media and if you want to get not just diversity, but diversity with quality, then you don't have enough players of the size and scale to really have the diversity that I believe that the industry needs to provide in order for it to meet those goals I've outlined earlier.

And, in fact, if you look at the Snow White, queen and seven dwarfs scenario and you say where would it lead, in time it may well just lead to what is an effective duopoly. So it's a relatively uncompetitive structure. And, secondly, it's a structure that's frozen. It's frozen at a time when technology's changing very rapidly, when leading companies

around the world, whether it's News or whether it's AOL Time Warner, are moving across platforms and trying to see how they can take advantage of new technology and move forward rather than stay frozen in a particular form of technology that they've inherited. So what we have today is an uncompetitive structure and a structure that's relatively frozen at a time when technology and opportunity is changing more rapidly than it has probably at any time our history.

Why do I say that it's OK to intervene? Well, a lot of reform has started with reform of structures. It's OK for governments to take a role in changing industry structure. It's an important variable and it's a variable that they do play with. I mean we have basically deregulated finance but we have the structural element to our reform and it's called Four Pillars. And the view is that there ought to be at least four major players. That's a structural constraint on the industry but it was in the context of allowing the industry a lot of other freedom. When we reformed electricity most of the reform started with the structural reform of generation. When we reformed telecommunications, the reform started with structural reform. And so it's not inappropriate to start with structural reform. It has been done before and it generally triggers or creates an environment then where other things can follow more easily.

So question one, or sub-question one is, are there alternatives? And I say of course there are alternatives. The Productivity Commission has given us an alternative and they don't have a monopoly on alternatives. There's a structural alternative and there may even be "big bang" and other alternatives.

The second reason why you might say, well OK, if there are alternatives why haven't they been chosen? And the question that raises is: is there something wrong with the reform process? Is the reform process flawed? Now I think the reform process is seriously flawed and I think this is, to me, probably the nub of why we still have the regulation we do. And it's flawed in a number of respects.

Firstly, it doesn't start with fundamental goals. Everybody starts with this issue of diversity as if the goal of media policy is to provide diversity and that's it. Well, it's not it. There are at least two other goals. There's clearly a goal of quality. Diversity without quality just means you get a lot of noise with very few signals. So there's a goal of quality. And quality requires organisations of critical mass relative to each other and relative to the demands on them to produce the quality. So there's a goal of quality.

And there are other goals that we have of all of our industries and particularly this industry which is such an exciting industry and an industry with so much potential. And that's a goal of contributing to the economic life of the community, contributing to the growth of new businesses, to the spin-offs that we saw, I think often inappropriately, pop up during the dot com period. This is an industry that allows innovation and encourages innovation and is fertile for innovation if you create the circumstance that allows it to flourish.

So the reform process is flawed because it doesn't start with the goals. You sort of assume a goal, diversity, and off you go. And then you get to a position on diversity like the Democrats have articulated, which is unworkable, so nothing changes.

The second reason the reform process is flawed is because it's preoccupied with personalities. This is a personality-driven business. Wherever I do the talk along the lines that I'm talking about tonight, people say to me, "Well, what do you think about Kerry Packer buying Fairfax?" That's not a debate about policy. It's not about whether combining the resources of Channel 9 and Fairfax competing against, say, the resources of Rupert Murdoch and television and, say, the resources of some other consortium, and O'Reilly and West Australian News and some other channel, wouldn't be a good picture? It's about Kerry Packer. And it's defined by Kerry Packer the person. Now my answer to

that is well why is this a question about Kerry Packer. Kerry Packer had a kidney transplant. If he had a personality transplant would it then be OK for him to buy Fairfax? And, you know, clearly you don't make policy on the basis of personality. And, similarly, they don't talk about News or its size or its scope, they talk about Rupert Murdoch. And so we have policy made on the basis of personality. Now that's generally bad grounds for policy. It's bad policy because it doesn't start with goals.

The process is flawed firstly because it doesn't outline the goals.

Secondly, it's preoccupied with personalities.

Thirdly, it's insufficiently transparent. Now there was a nice quote today in one of our papers from that television show *The West Wing* where one of the congressional advisors makes the statement "There are two things that it's better not to know how they're made. One of them is sausages and the other is laws." And that's particularly true of media laws where, you know, the celebrated dinner of the media mogul and the Prime Minister and, you know, the off-the-record discussion, is actually much more important than the open and the transparent deliberations in front of, say, a Productivity Commission. What goes on behind the scenes seems to drive too much of the process. So we don't get reform because, at the end of the day, when light is shone on what comes out, nothing happens.

Fourthly, a lot of the proposals are not specific enough. Senator Alston recently did a doorstep interview and he said that he'd like to see the industry reformed and, if re-elected, this is what he'd do. And, you know, he asked what do we think about it. And I basically said it was the Jerry Maguire quote: "Show me the legislation. Show me the money." Because this is a complex area and you get a lot of platitudes or generalities about the direction of reform but we rarely see specific legislation in all its detail and, when we do, it's generally quite deficient.

And lastly, it's an area that's hard politically. It's hard politically because it's complex, it's difficult to explain, it's difficult to get people excited about. You don't see this as a top issue in an election campaign. If the Prime Minister is pushed he says, "Well, this isn't my most important priority." When Labor are put under the gun they say, "Let's leave things the way they are. It's a second term agenda." So basically this doesn't score and vocal minorities just cause the politicians more trouble.

And lastly, and I think it's actually a strong reason for reform, I think the reform process doesn't move forward because deep down the politicians actually like having a negotiating chip over the media. And that's the strongest reason why we should reform the industry. When I go to Canberra as I do from time to time because you need to as part of the job, you go there and you sit with the politicians, there's always two parts to the discussion. The first part is all the editorials they don't like and then the second part is the media reform. And I think they don't want to actually be deprived of that ability to have that conversation and yet, not speaking as a media executive but speaking as a citizen, I don't want them to have even the hint of that power and I think that's a very strong reason for reform.

For in summary, to me the puzzle isn't so much that reform is needed or why reform might be needed, but the puzzle to me is that it hasn't happened. And I think the answer to that puzzle lays really in the process. It lays in the fact that the process hasn't been set up in a sufficiently clear and transparent way for change to happen. And when you get a flawed process then bad politics gives you bad policy and I think that's what we've had.

So, in conclusion, what would I like to see? From my perspective any of the thoughtful reform proposals would be better than leaving things the way they are. And that's why

I said my purpose tonight is to explore the question rather than give you the answer. But if I had to make a choice I think I would bet or would prefer to see some structural reform. One of the ideas that I like is the thought of a special commission being established with a one year time-frame and that commission would be set up by Parliament, would report to Parliament and would follow a four-part process.

Firstly, it would define goals and I think that's really important. So when we look at proposals we can say this is good compared to what, compared to what outcome.

Secondly, it would seek proposals from people in the industry. They could be proposals to merge, to acquire, to bid for new licences. Proposals that would reshape the structure of the industry in light of the goals that have been articulated.

Thirdly, it would decide which of those proposals were acceptable or unacceptable. It wouldn't pick the winners, it would simply pick the range of acceptable proposals and indicate what were the range of unacceptable proposals and indicate a timeframe.

And lastly it would determine, in light of those proposals, the future regulatory oversight of the industry that it thought appropriate.

Is that wishful thinking? I mean if you look at Australia fifteen years ago and you look at it today, a lot of what's happened fifteen years ago would have been wishful thinking. We've had massive reform and it has left us with a much more robust society and a much stronger economy and an ability to withstand shocks that are really, I think, the envy of many parts of the world. So is it wishful thinking? You could have said that about a lot of reform that I think has been far more difficult than media reform. And is it important enough to justify the time and the attention of our political leaders? From my perspective it is and, if it isn't, it should be because what could be more important to a free and a vibrant and an interesting society than a media industry which is really Grade A on a world scale. Thank you.