



# ABA: A First Term Report Card

**Despite promises by the Federal Government that the Australian Broadcasting Authority would be a robust regulator which would intervene to protect the public interest, its first four months of operation suggest that it will be very much a hands-off authority.**

The first major test of its ownership and control powers - the acquisition of the Ten Network in December by a consortium led by Canadian group, CanWest - came and went with barely a press release from the ABA (see chronology opposite page).

The ABA has been in operation since in October 1992, when the new Broadcasting Services Act came into force, and the Authority replaced the Australian Broadcasting Tribunal (which itself had replaced the Australian Broadcasting Control Board in 1976). Earlier issues of *CU* have highlighted widespread concern that the Act gives the new regulator considerable scope to take a non-interventionist stance, by contrast with its predecessor, which had in recent years often acted to protect the public interest in matters of ownership and control as well as programming.

Under the new Act the ABA is charged with ensuring compliance with the foreign control and suitability provisions of the Act. The ABA has however refused to hold a public inquiry into the sale of one of our three major networks, despite persistent urging from the Media Entertainment and Arts Alliance (MEAA), which represents many of the employees of Ten. The AJA and Actors Equity, the unions which merged to form MEAA, have had a longstanding interest in control of the media and its potential impact on their members and the public.

To date, the ABA has declined to use its extensive investigative powers and maintains its 'monitoring' position. This monitoring has involved meeting with the shareholders of Oltec

Limited, the company which has bought the licences, and their advisors.

## Kept in the Dark

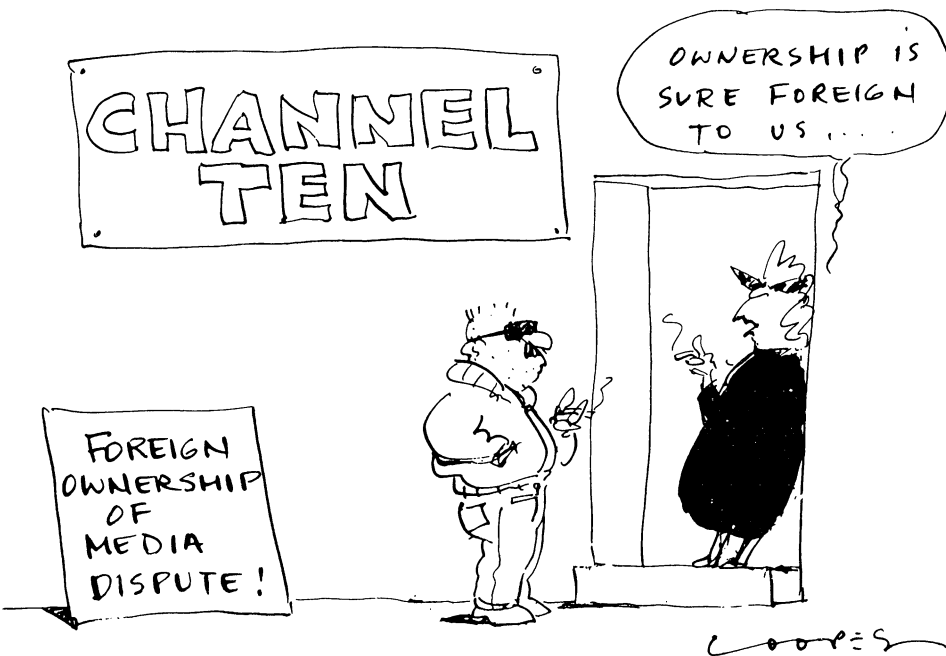
In contrast to the procedure which applied under the Tribunal, the ABA is keeping private all documents supplied to it which relate to the sale and the corporate structure. The public must therefore rely on press reports and the limited information filed with the Australian Securities Commission to decide who controls the Ten Network.

This information vacuum makes it difficult for organisations like MEAA to make meaningful submissions on the transaction and, in particular, on the complex factual issue of who is really in control.

According to press reports, CanWest's chief executive, Canadian Israel Asper, claims that his company has a 57.5 per cent 'economic interest' in the licensee, apparently made up of subordinated debentures. Asper claims that for every \$1 dividend paid on shares there is a similar payment on the debentures. He has also made public statements that he hopes to achieve programming 'cost synergies' with his other global television interests in both Canada and New Zealand.

An ordinary person might well wonder how it is possible for a person to have a 57 per cent economic interest in a television network and not be in control. It may be that CanWest and its advisors have managed to effectively divorce control from economic interest, but in any case this is a matter on which the public has a right to be reassured.

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## Union Seeks Inquiry

MEAA has now lodged a formal complaint with the ABA asking for a public inquiry into the suitability of the licensee of Ten. It has asked the ABA to investigate whether CanWest is in fact in a position to control the licence in breach of the foreign ownership provisions of the Broadcasting Services Act 1992.

According to the Act, the ABA must investigate the complaint. MEAA is now waiting for the ABA's decision.

Meanwhile, the ABA's handling of the Ten Network sale raises the much broader question about the role the public can expect the ABA to play in the future.

If the transfer of one of our three commercial television networks can take place behind closed doors, one is left wondering what Communications Minister Collins meant when he said: 'The provisions empower the ABA to investigate and act on any suspected artifice or arrangement that may seek to contravene them'.

## Light Touch on Programs Too?

The ABA also appears to be taking a light touch approach to complaints about program content.

A recent complaint about a scathing *Sixty Minutes* program portraying Canberra as a 'cosy' town, lodged by ACT Labor Leader Rosemary Follett and the president of the Young Liberal Movement, Stephen Foreshaw, was dismissed.

The ABA said the question of possible inaccuracies was raised with the Nine Network but on balance the ABA decided the network met with the overall objective of the standard. It pointed to the fact that Nine had subsequently aired other points of view on its affiliate WIN, and that the distinction between commentary and reporting had been 'clear enough'.

The ABA has put out a brochure on its complaints process which urges complainants to take their complaints direct to licensees, even though the stations are still in the process of developing their codes of practice. The ABA's suggestion would seem somewhat premature, as there is no certainty that licensees will choose to cover all areas currently covered by standards, and if they choose not to develop codes the ABA-administered standards will remain in operation.

The ABA has not yet made public the process it will use for deciding whether the codes of practice developed by each sector of the industry provide appropriate community safeguards. But there is likely to be considerable community interest in the procedures adopted.

In stark contrast to its closed door approach on ownership and control matters, the ABA has embarked on a highly public process to develop planning priorities for new services.

Late last year the Authority held a series of seminars on planning, and submissions on areas which should be given priority are due in mid-February. It remains to be seen whether the ABA has been successful in interesting the community in this arcane but important area of broadcasting policy.

## Cultural Area More Encouraging

Under the chairmanship of Brian Johns, the ABA also seems to be taking considerable interest in the potential role of the ABA in cultural policy. The Act's objectives include 'developing and reflecting a sense of Australian identity character and cultural diversity' and 'promoting high quality and innovative programming'.

It is a task that Johns appears to be warming to although perhaps not in the way that might have been envisaged by the Act's mentors in the Department of Transport and Communications.

At the SPAA conference late last year, Johns urged the film industry 'to think and try to explore the possibility

and possible ways that the Australian content levels can be improved'.

He has already begun a round of informal consultations with the production industry and licensees seeking their views on the Australian content standard, and it seems inevitable that the outcome will be a formal inquiry to amend the standard.

The question is whether such a review would be confined to building on the existing standard, or whether it might become another full-blown inquiry into the need for Australian programs, and ways in which the regulator might encourage such programs.

There is considerable pressure from New Zealand for Australia to allow New Zealand programs full Australian points under the standard, and the DOTAC view appears to be that this will precipitate a complete review of the quota approach.

## Biggest Test Lies Ahead

The ABA's biggest test is still looming. So far the lawyers have found little cause to lock horns with the ABA, but this is likely to change once the regulator begins to grant (or not grant) licences for new services.

The action being taken by would-be pay TV operator Steve Cosser over the Ministerial direction to the ABA to comply with government policy of not allowing MDS delivery of pay TV to begin ahead of satellite delivery could be a foretaste of the future.

The radio industry is also flagging its concern about the narrowcasting regime, and legal action on the definition of a narrowcast service is only a matter of time. While the regulator may wish to act informally and flexibly, there will always be those who will seek to pursue their legitimate commercial interests through the courts. The way the ABA deals with these confrontations will truly test both its independence from government and its ability to deal fairly with a congenitally litigious industry. □

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