

Australia's richest man cleared of breaching media laws

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The extraordinary degree of control of Australia's mass media by two tycoons--Rupert Murdoch and Kerry Packer--is likely to tighten further after a remarkable decision by the Australian Broadcasting Authority on March 8 to clear Packer of breaching media ownership laws.

Both Packer and Murdoch are multi-billionaires. Packer, said to be worth \$5 billion, is regarded as Australia's richest man only because Murdoch--now an American citizen--is no longer counted as an Australian. Packer owns the top-ranking television network--Nine--as well as a large stable of news, women's and other magazines. Murdoch owns a daily national newspaper--the *Australian*--plus dailies in nearly every capital city, in some cases the only daily newspaper.

Companies run by the two media moguls and their sons, James Packer and Lachlan Murdoch, are also equal shareholders in the pay-TV group Foxtel and last month took strategic joint stakes worth \$709 million in One.Tel--a rising telecommunications and internet company.

Apart from the two government-run TV and radio outlets, the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS), the only significant media company not in the grip of Packer and/or Murdoch is Fairfax Holdings, the publisher of the *Sydney Morning Herald*, the *Melbourne Age*, the *Australian Financial Review* and regional newspapers. That exception is now in question following the Australian Broadcasting Authority (ABA) ruling.

The six members of the ABA, a federal government-appointed body, declared on March 8 that neither Kerry Packer, James Packer nor Brian Powers, the former chief executive of two key Packer companies, had breached the Broadcasting Services Act last year when Powers simultaneously resigned his positions at the head of Packer's empire and was financially assisted by Packer to join the Fairfax board.

The Act, as last amended by the Keating Labor government in 1995, prohibits the owner of a TV station from controlling a newspaper in the same city, either directly or through an "associate". This currently presents a problem for both Packer and Murdoch. Packer has repeatedly stated his determination to take over Fairfax, but if he did so openly he would breach the Act by controlling newspapers as well as TV stations in Sydney and Melbourne. For his part, Murdoch wants to acquire a national TV network but cannot legally do so while he owns newspapers across the country.

On May 18 last year, Powers quit as Executive Chairman of Packer's Publishing and Broadcasting Limited (PBL) and as Chief Executive Officer of Consolidated Press Holdings Limited (CPH), and, on the

same day, was appointed to the Fairfax board. This spectacular switch, and the widespread public concern it generated, gave the ABA no choice but to announce an investigation. On the face of it, Powers was acting on behalf of Packer.

This suspicion was heightened when the editor-in-chief of the *Sydney Morning Herald*, John Alexander, was dismissed on May 22, Powers became chairman of the Fairfax board on May 29, and the Chief Executive Officer of Fairfax, Robert Muscat, resigned on August 24. Within four days of Powers arriving at Fairfax, its leading editor had been removed. Within 11 days, Powers had taken the chair and within three months the company's chief executive had quit.

Not only that but Powers, who had been one of Packer's right-hand men since 1993, was given an ongoing consultancy with Packer's companies, and continued to have his house lease, mobile phone and tennis and golf club memberships paid by them. He also retained a close social relationship with Kerry and James Packer.

In addition, Powers remains a director of an offshore company involved in American film and television production and in which PBL has a 20 percent share. James Packer is soon to join Powers on that company's board.

Above all, Powers had only become Fairfax chairman by using a \$12 million loan from Packer to acquire a 15 percent stake in FXF Trust, a Packer company that has a 16.2 percent holding in Fairfax. Just before he shifted to Fairfax, Powers had collaborated with Packer on a failed attempt to have Neville Miles, an administrator of the FXF Trust, appointed to the Fairfax board.

The ABA's decision to rubberstamp these arrangements provides a rare glimpse of the actual relations between the media barons, the government and official regulators. The ABA's inquiry, conducted behind closed doors, was dominated by blunt and belligerent testimony from Kerry Packer, followed by threats of legal action from Packer's lawyers if the ABA's initial draft report was not altered to remove any suggestion that he and Powers were acting in unison.

According to an edited version of Packer's sworn evidence at the inquiry last October 27, he was asked why the ABA should be satisfied that he was not working in cahoots with Powers in relation to Fairfax. Packer responded: "Because I am not a liar and I'm telling you I'm not. I do not control Fairfax and I never, ever have, much as I would like to, and much as one day maybe I will."

He ridiculed the inquiry panel, insisting that he could hardly "control Mr Powers by mental telepathy". He was indignant when asked about his alleged influence over editorial decisions at Fairfax. "If I controlled Fairfax, do you think they would actually be running those stories? I mean, I would have thought it was self-evident I have no damned control of Fairfax".

Judging from the sanitised transcript released by the ABA, Packer's performance was reminiscent of his 1991 appearance before a federal parliamentary media inquiry into one of his previous bids to take control of Fairfax. For two hours Packer verbally kicked the assembled MPs around the room, berating them for having the nerve to question the conduct of someone such as himself.

When a Labor MP politely asked Packer if he thought parliament had no right to inquire into media ownership, Packer replied: "That's exactly what I am saying." Packer told the inquiry that it was an "intellectual wank" and he was tired of having "crap" heaped on him over the Fairfax bid. One Labor MP apologised abjectly for suggesting that Packer had evaded foreign investment laws.

All in all, it was a graphic demonstration of the contempt with which the ruling class treats the "people's representatives". What followed the ABA's questioning of Packer last October was equally revealing about how the corporate elite deals with regulatory agencies such as the ABA.

Despite Packer's verbal barrage, according to well-sourced media reports, a majority of the six members of the ABA originally concluded that Packer and Powers were associates within the meaning of the Act, that is, likely to act at the direction of, or in concert with, each other. This split finding, the first in the ABA's history, was included in the draft report, sent to the affected parties' legal representatives last December.

Lawyers for both Packer and Powers sent back submissions declaring that the ABA had failed to provide sufficient evidence to prove an association and would face an expensive and protracted court challenge. Powers' lawyer, John Atanaskovic, suggested that because the ABA agreed that Powers did not personally control Fairfax, there was no need to make a finding on his association with Packer.

This is precisely what the ABA did in its final report. As confidently predicted by media commentators, the ABA ruled that Powers, being only one member of the 10-person Fairfax board, did not control the company. Having done so, the ABA sidestepped the nature of the relationship between Packer and Powers, saying that a finding on that issue had become irrelevant and "would serve no useful purpose in the terms of this report".

This ruling was all the more striking because Packer bluntly told the ABA that he intended to use his stake in the FXF Trust, held in partnership with Powers, as a "starting point" to seize control of Fairfax as soon as legally possible.

Even more remarkably, Packer made it plain in his testimony that he expected Powers to take charge of Fairfax in no uncertain terms. Asked about his likely future dealings with Powers, Packer said that during one of their many golf games together he might say to Powers: "What are you doing about getting those arseholes [a reference to Fairfax journalists] into shape? Have you got rid of any more people? Is this managing director of yours that you have appointed [Fred Hilmer, Muscat's successor] any bloody good?"

There is no doubt that, in practice, Powers placed his personal stamp on every aspect of Fairfax's operations from the day he joined the board. Evidence before the ABA showed that in addition to ousting Alexander and Muscat, he successfully prevailed upon the board to impose a staff freeze, slash the planned budget and drop a bid to buy the *Canberra Times*, then on the market. And unusually for a company chairman, Powers personally held discussions with Packer over Fairfax forming a joint Internet venture with Packer's PBL Online and NineMSN--the Nine Network's web service.

Even the ABA admitted that: "Mr Powers has clearly been

influential in a number of key decisions taken at Fairfax." Yet its report concluded that Powers was not in a position to exercise control.

The test for "control" over a newspaper company under the Act is couched in unambiguous language. It asks whether the person "either alone or together with an associate of the person, is in a position to exercise, in any manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the company". Powers obviously exercises such "direction" and "restraint" at Fairfax.

One academic, Jock Given of the Communication Law Centre at the University of New South Wales, commented: "Probably many chairmen in Australia would be surprised to discover they are not in a position to exercise control of their companies." He added that on the basis of the ABA's ruling, it was "difficult to see why Mr Packer couldn't become a chairman of Fairfax as well".

Given said the politicians who voted for the cross-media ownership laws might be "rather surprised" to learn they had created a law that allowed such a result. Whether that is true or not, there is no doubt that the Howard government is preparing to make another bid to clear the way for Packer--and Murdoch--to have free reign. Prime Minister John Howard moved to scrap or water down the cross-media ownership laws in 1996 but backed off in the face of widespread public criticism.

Last week, as soon as the ABA handed out its report, Communications Minister Richard Alston declared that the matter of Packer's control or influence over Fairfax was "now closed". The previous week he asked the Productivity Commission to review the broadcasting laws to assess whether they were anti-competitive.

The Murdoch press is already mounting a campaign to use the proposed review to overturn restrictions on media monopolisation, as well as limits on foreign ownership. Responding to the ABA report, one Murdoch business columnist Mark Westfield wrote: "Even a superficial analysis would show that both the cross-media ownership rule which binds Packer and the foreign ownership laws which apply specifically to the media are anti-competitive, whimsical and antiquated."

Along with the argument that the edifice of parliament provides "democracy," one of the central ideological nostrums of the capitalist class has been the "freedom of the press"--the claim that private ownership of the media somehow guarantees freedom of opinion. In reality, as the approval of the latest Packer operation illustrates, the media barons are determined to exercise ever greater control over all forms of mass communication, including newspaper, television and the Internet.



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