General overview of cross- and foreign ownership rules

Cross-ownership rules

Cross-ownership rules may not only limit the ownership across media platforms (like publishing and television) but also within a single platform. For example, the ownership of multiple radio/television entities (e.g. broadcasters) in a single local market may be restricted. In the Table 1 an example overview is provided of ownership or concentration limits in the different countries.

Table 1: Concentration limits in a number of countries

Country	Concentration limits (simplified)
US[1]	No entity can hold more than **39 per cent** (reach) of the national TV market No combinations among the four major national TV networks Newspaper-broadcasting cross ownership not permitted. An entity may hold a TV station and a radio station in a single market (and more radio stations in larger markets)
UK[2]	A person may not acquire a TV licence if he/she holds a **20 per cent** market share in the newspaper market.
France	No person may hold a television licence and **20 per cent** of the newspaper market in a local area.
Sweden[156]	No ownership restrictions beyond normal competition law
Japan	No entity can hold more than 10 per cent of shareholding in two or more TV broadcast companies in the same service area. No entity can hold more than 33.3333 per cent of two or more TV broadcast companies in different service areas.

In the following paragraphs an example set of cross-ownership rules is provided (taken and adopted from the FCC Media Ownership Rules[3]).

1. *Newspaper/Broadcast Cross-Ownership Rule* – to limit the ownership between newspaper and broadcast entities. Next to specific prohibitions and limits (e.g. the shareholding limits), the following aspects are also included:
    a. A set of factors to evaluate a proposed combination, including (1) the extent to which cross-ownership will serve to increase the amount of local news disseminated through the affected media outlets in the combination; (2) whether each affected media outlet in the combination will exercise its own independent news judgment; (3) the level of concentration in the designated market area

[1] See www.fcc.gov
[2] See www.ofcom.org.uk
[3] See the FCC 2006 review of the Media Ownership Rules on www.fcc.gov

(DMA[4]); and (4) the financial condition of the newspaper or broadcast station, and if the newspaper or broadcast station is in financial distress, the owner's commitment to invest significantly in newsroom operations;

b. Waivers and when waivers are unlikely. For example, for smaller markets (smaller than the top 20 DMAs), the Commission adopted a presumption that it is inconsistent with the public interest for an entity to own newspaper/broadcast combinations and emphasized that it therefore is unlikely to approve such transactions. The Commission will reverse the negative presumption in two limited circumstances: when the proposed combination involves a failed or failing station or newspaper, or when the combination results in a new source of a significant amount of local news in a market;

2. *Local Television Ownership Limit* – under this rule, a single entity may own two television stations in the same local market if (1) the so-called 'Grade B' contours of the stations[5] do not overlap; or (2) at least one of the stations in the combination is not ranked among the top four stations in terms of audience share and at least eight independently owned and operating commercial or non-commercial full-power broadcast television stations would remain in the market after the combination.
3. *Local Radio Ownership Limit* - as a general rule, one entity may own (a) up to five commercial radio stations, not more than three of which are in the same service (i.e., AM or FM), in a market with 14 or fewer radio stations; (b) up to six commercial radio stations, not more than four of which are in the same service, in a market with between 15 and 29 radio stations; (c) up to seven commercial radio stations, not more than four of which are in the same service, in a radio market with between 30 and 44 radio stations; and (d) up to eight commercial radio stations, not more than five of which are in the same service, in a radio market with 45 or more radio stations;
4. *The National Television Ownership Limit* – this type of rules permits a single entity to own any number of television stations on a nationwide basis as long as the station group collectively reaches no more than 39 per cent of the national TV audience;
5. *Radio/Television Cross-Ownership Limit* – this limit cross-ownership between radio and television companies. Under that rule, one company may own in a single market: one TV station (two TV stations if permitted by the local TV ownership rule) and one radio station regardless of total market size; or if at least 10 independent media voices (i.e., broadcast facilities owned by different entities) would remain after the merger, up to two TV stations and up to four radio stations; or if at least 20 independently owned media voices would remain post-merger, up to two TV stations and up to six radio stations or one TV station and up to seven radio stations. Parties must also comply with the local radio ownership rule and the local TV ownership rule.

As the above example demonstrates, (cross-) ownership rules tend to be complex, especially in the area of broadcasting as it serves additional objectives of independent news judgment and diversification of news resources.

[4] Designated Market Area is a term used by Nielsen Media Research to identify an exclusive geographic area of counties in which the home market television stations hold a dominance of total hours viewed. There are 210 DMA in the U.S.

[5] A contour may be visualized by imagining a rough circle surrounding a transmitter site at some distance, where the circle represents a certain field strength value, with greater radio field strengths inside, and lesser radio field strengths outside. The distances to the contours herein were derived using the maximum effective radiated power (ERP) and antenna height above average terrain (HAAT) combination permitted for each station class. For grade B the parameters are 50.0 kW ERP at 150 meters.

Foreign ownership rules

Foreign ownership rules are intended to maintain a balance between encouraging investment in the broadcasting industry and meeting the government's sovereignty and security objectives. However, any foreign ownership restriction always comes together with concerns about whether these restrictions limit the ability of broadcast companies to gain access to capital. They may act as a barrier to innovation and growth in the sector.

Historically, governments have been concerned that foreign control of mass media facilities would confer control over the content of widely available broadcast material, which could lead to the possibility of foreign propaganda and misinformation. These fears are not unreasonable in situations where there are relatively few sources of information available to the public.

A global trend can be observed that governments tend to lift foreign investment restriction in the telecommunication industry first, followed by lifting or relaxing the limits in the broadcasting industry. The introduction of Digital Terrestrial Television Broadcasting (DTTB) may accelerate this debate. Industry parties argue that the high cost of DTTB networks and the adoption of HDTV will increase the costs for broadcasters and foreign investments may be needed. Hence there might be pressure to relax foreign investment rules.

The follow paragraphs outline the foreign ownership limits in Australia (taken and adapted from the independent Communications Law Centre in Australia[6]):

1. The Treasurer has the power to stop substantial acquisitions of Australian assets which are contrary to the national interest;
2. It is allowed for single foreign shareholders to only hold up to 25 per cent of the shares in a mass circulation newspaper, with a maximum of 30 per cent for all foreign interests;
3. Foreign proposals to establish ethnic newspapers in Australia will not generally be approved without substantial local ethnic community involvement and local control of editorial policy;
4. Under the Broadcasting Services Act, a foreign person cannot exercise control over commercial TV licences. Foreign owners cannot have company interests in more than 25 per cent of a subscription TV licence (and overall foreign interests cannot be more than 35 per cent);
5. There are no specific limits on foreign ownership or control of commercial radio in the Broadcasting Services Act and acquisitions in this market fall under the Foreign Takeovers Act and are considered on a case by case basis.

[6] See the website www.law.uts.edu.au/comslaw/