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Mr Wayne Poels
Executive Director
Office of Best Practice Regulation
Department of the Prime Minister and Cabinet
One National Circuit
BARTON ACT 2600

Email: helpdesk-OBPR@pmc.gov.au

Dear Mr Poels

Regulation Impact Statement—final assessment second pass

I am writing in relation to the attached draft Regulation Impact Statement (RIS) prepared for the establishment of a register of foreign owners of media assets (register). The proposed register would require foreign persons holding interests in regulated media assets above a certain threshold to notify the regulator of these interests. I believe the RIS meets best practice requirements and is consistent with the Ten Principles for Australian Government policy makers stipulated in the Australian Government Guide to Regulation. In particular, the RIS addresses each of the seven RIS questions, as outlined below. It has also been amended to reflect comments provided by OBPR through the final assessment first pass.

What is the problem?

The media has a unique ability to set news agendas and the context in which public policy issues are analysed and discussed. In turn, this allows the media to inform and shape community views on a number of critical social, economic, and political issues. This influence means that there is a strong policy case to ensure the levels and sources of foreign investment in the Australian media are broadly understood and known.

Foreign investment in Australian media assets is relatively commonplace. There are currently three regulatory frameworks that govern, to varying degrees, foreign investment in the Australian media industry: under the *Foreign Acquisitions and Takeovers Act 1975* (FATA) for foreign investment in media greater than five per cent; under the Australian Securities Exchange for interests in listed entities greater than five per cent; and under the *Broadcasting Services Act 1992* (BSA) for persons that are in a position to control regulated media assets (commercial television broadcasting licences, commercial radio broadcasting licences and associated newspapers).

While these regulatory frameworks serve particular purposes, they do not provide the public with information as to the levels and sources of foreign investment in Australian media companies, nor is the information that is available in a form that members of the public can easily compile and understand. This represents a significant information gap given the role of the media in shaping and informing public opinion on issues of importance in Australia.

Why is government action needed?

Government action is needed to bridge the information gap and increase transparency in relation to the levels and sources of foreign investment in Australian media assets. Such action is consistent with the Government's approach in other industries. There are certain industries that are fundamental to Australian society and have historically been subject to higher levels of regulatory scrutiny. These include the agricultural industry, the media industry, the telecommunications industry, and the transport industry. The Government has also previously introduced a register of foreign ownership relating to agricultural land and water entitlements, and is currently considering implementing a reporting framework for interests in critical infrastructure assets. The proposed reforms will ensure that foreign investment in the media industry is scrutinised in the same manner as in other similar industries.

What policy options are you considering?

On 15 August 2017, the Minister for Communications, the Senator the Hon Mitch Fifield, announced the Government's decision to implement a register of foreign-owned media assets. The stated objective of the register would be to increase transparency of regulated media assets (commercial television broadcasting licences, commercial radio broadcasting licences and associated newspapers). The announcement indicated that foreign persons—as defined in the FATA—would be required to disclosure holdings of 2.5 per cent or higher of these regulated media assets.

In light of this decision, this RIS focuses on the alternative implementation options that are consistent with the Government's policy approach.

The following policy options have been considered in relation to the problem noted above.

Options

Problem	Option	Option	Option
A register	1—No change	2—Establish a register	
Method of implementation	3a—Stand-alone register	3b—BSA register	3c—FATA register
Reporting threshold	4a—at or exceeding two and a half per cent	4b—at or exceeding five per cent	4c—at or exceeding 15 per cent
Reporting frequency	5a—continuous disclosure	5b—bi-annual	5c—annual

What are the likely impacts of each option?

The establishment of a register will lead to the imposition of costs on the regulator and on the foreign persons who are subject to the notification provisions. However, these costs are expected to be minimal (i.e. less than $200,000 per annum in total). These costs can be categorised as:

- initial establishment costs (being the costs of building the register);
- initial compliance costs (being the costs of reporting existing company interests and inputting these details into the register); and
- ongoing compliance costs (being the costs of reporting changes to a foreign person's interests and updating the register accordingly).

A register

As the Government has committed to the implementation of a register, this decision point– whether or not to implement a register—has been included in the RIS for the sake of completeness. A third option was not considered feasible in light of the Government's commitment to implement this change.

A register options

Problem	Option	Option
Costs ($)	1—No change	2. Establish a register
	Nil	The establishment of a register will result in the imposition of some costs for foreign persons to disclose information to a regulator, and for the Commonwealth in establishing and maintaining a register. It is not possible to estimate these costs without also considering some of the key elements of a register, namely: the choice of legislative vehicle and regulator, the reporting threshold, and the reporting frequency.
Assessment	Nil	Increased transparency as to the level and source of foreign investment in Australian media companies, meeting the Government's policy objectives and assisting in eliminating a gap that currently exists in terms of the public availability of such information.

Method of implementation

Problem	Option	Option	Option
Costs ($)	3a—Stand-alone register	3b—BSA register	3c—FATA register
Administration (regulator)	$481,200	$180,600	$430,900
	These costs relate to the establishment and implementation of the register (staff costs, information technology costs, and consultant costs). These costs are to be borne by the regulator.	These costs relate to the establishment and implementation of the register (staff costs, information technology costs, and consultant costs). These costs are to be borne by the regulator.	These costs relate to the establishment and implementation of the register (staff costs, information technology costs, and consultant costs). These costs are to be borne by the regulator.
Other costs	Nil	Nil	Nil

Problem	Option	Option	Option
Assessment	The benefits for each option are likely to be broadly similar. However, option 3b would leverage off the ACMA's existing systems that collate information disclosed to them under Part 5 of the BSA (Register of Controlled Media Groups). This results in a lower estimated cost than options 3a or 3c.	The benefits for each option are likely to be broadly similar. However, option 3b would leverage off the ACMA's existing systems that collate information disclosed to them under Part 5 of the BSA (Register of Controlled Media Groups). This results in a lower estimated cost than options 3a or 3c.	The benefits for each option are likely to be broadly similar. However, option 3b would leverage off the ACMA's existing systems that collate information disclosed to them under Part 5 of the BSA (Register of Controlled Media Groups). This results in a lower estimated cost than options 3a or 3c.

Reporting threshold[1]

Problem	Option	Option	Option
Costs ($)	4a—At or exceeding two and a half per cent	4b—At or exceeding five per cent	4c—At or exceeding 15 per cent
Ongoing costs—businesses and individuals	$24,700	$20,200	$6,600
Ongoing costs—regulator	$49,000	$39,900	$12,500
	These costs are those likely to be incurred by foreign persons when reporting their company interests to the regulator, and those incurred by the regulator to update the register.	These costs are those likely to be incurred by foreign persons when reporting their company interests to the regulator, and those incurred by the regulator to update the register.	These costs are those likely to be incurred by foreign persons when reporting their company interests to the regulator, and those incurred by the regulator to update the register.
Other costs	Nil	Nil	Nil
Assessment	The highest level of disclosure and hence greatest transparency, but the highest regulatory burden as a consequence.	Acceptable level of transparency, and would align with disclosure thresholds used under the FATA and the *Corporations Act 2001*. More modest regulatory burden.	Lowest disclosure of the three options considered, but the lowest regulatory impact.

[1] Assuming an annual reporting frequency and that the BSA Register is used.

Reporting frequency [2]

Problem	Option	Option	Option
Costs ($)	5a—continuous disclosure	5b—bi-annual	5c—annual
Ongoing costs—businesses and individuals	$47,800	$36,300	$24,700
Ongoing costs—regulator	$95,200	$72,100	$49,000
	These costs are those likely to be incurred by foreign persons when reporting their company interests to the regulator, and those incurred by the regulator to update the register. Around two-thirds of these costs are expected to be borne by the regulator.	These costs are those likely to be incurred by foreign persons when reporting their company interests to the regulator, and those incurred by the regulator to update the register. Around two-thirds of these costs are expected to be borne by the regulator.	These costs are those likely to be incurred by foreign persons when reporting their company interests to the regulator, and those incurred by the regulator to update the register. Around two-thirds of these costs are expected to be borne by the regulator.
Other costs	Nil	Nil	Nil
Assessment	Would ensure the register is continuously up to date, but impose the highest regulatory burden.	Would result in periodic updates to the register during a year, and more modest impacts on foreign persons and the regulator.	Would update the register only annually, but impost the lowest cost on foreign persons and the regulator.

Who will you consult and how will you consult them?

The Government undertook extensive consultations in developing the Broadcasting and Content Reform Package to which this measure relates. The bills implementing elements of that Package—the Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017 and the Commercial Broadcasting (Tax) Bill 2017—passed the Parliament in October 2017. The development of this register involved consultations with the Department of Foreign Affairs and Trade, the Attorney-General's Department, the Treasury, and the ACMA as to any issues that might arise through the implementation of a register.

[2] Assuming a two and a half per cent reporting threshold and that the BSA Register is used.

What is the best option from those you have considered?

Option 2 (establishment of the register) is the preferred option, as it would provide the community with increased transparency as to the level and source of foreign investment in Australian media companies. The status quo would result in the current information gap being maintained.

In terms of implementation, the analysis in the Regulation Impact Statement highlights that the key decision point relates to administration: the legislative vehicle for implementing the register and, more specifically, the regulator itself. Under all options considered, around two thirds of all estimated ongoing costs would be incurred by the regulator. Those costs—both in terms of establishing the register and ongoing administration—are estimated to be lowest where the register is implemented through the BSA and administered by the ACMA (Option 3b). This reflects that fact that the register would build on and extend the ACMA's existing functions in relation to media control and ownership, and utilise (to the extent possible) its existing systems and processes.

The final two decision points for the register relate to the reporting threshold and the reporting frequency. In this respect, options 4a (a two and a half per cent reporting threshold) and 5c (annual reporting) are the preferred options.

While resulting in a higher burden on foreign persons, the reporting threshold of two and a half per cent will maximise the transparency of foreign investment in the Australian media.

This impact will be counterbalanced by annual reporting, rather than continuous.

Importantly, the estimated impact of these proposed options on foreign persons—those parties that would need to disclose information to the ACMA—is minimal. In total, these costs are estimated to be $24,700 per annum for all foreign persons who are expected to have to disclose information under the Register, or around $400 per annum for each foreign person (assuming just under 60 foreign persons would be required to report under the register in any given year). In the context of the value of foreign capital invested in the Australian media, and the investors involved, this is a negligible cost.

How will you implement and evaluate your chosen option?

Legislative amendments would be required to the BSA and the *Australian Communications and Media Authority Act 2005*. The impact of these changes, and the overall scheme, will be closely monitored by Government over time. The scheme will be fully assessed through a statutory review to be conducted three years from the commencement of the amendments.

Yours sincerely

Mike Makin
Assistant Secretary
Media Branch
Department of Communications and the Arts
30 November 2017