



## Radio

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25 September 2006

Ms Roxane LeGuen  
Secretary  
Media Ownership Bills Inquiry  
Environment Communications Information Technology  
and the Arts  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Ms LeGuen

### **Inquiry into Broadcasting Services Amendment (Media Ownership) Bill 2006 and Related Bills**

We refer to the Broadcasting Services Amendment (Media Ownership) Bill 2006 and to the referral of the Bill by the Senate to the References Committee and Legislation Committee.

DMG Radio (Australia) Pty Ltd (“DMG”) is a wholly owned subsidiary of Daily Mail and General Trust plc and is the owner of the Nova national network of FM radio stations, together with the Vega FM radio stations in Sydney and Melbourne, FIVEaa in Adelaide and Star FM on the New South Wales Central Coast.

DMG agrees that the existing foreign and cross media ownership rules cannot be justified in the long term on economic or policy grounds.

DMG does however hold some concerns in four areas covered by the Bill. These concerns are identified in the short submission attached to this letter and have been the subject of previous submissions made on this matter by DMG.

#### **Minimum Voices Test**

The proposed minimum voices test will not protect diversity in the media in a meaningful way *unless* the test requires there to be an adequate number of *real voices* in each market.

It is unrealistic, for example, to suggest that a mega media conglomerate with one daily newspaper, one free to air television station and two radio stations in one market should be counted as a voice just the same as one small stand alone radio station in that market with an insignificant number of listeners. This belies reality.

DMG submits it is essential that each media asset must attain a minimum level of critical mass, before it can be counted as one of the five (metropolitan) or one of the four (regional) voices in that market.

#### **Small Metropolitan Markets – Concentration of Local Current Affairs Sources**

Perth and Adelaide, in terms of population and economic activity, are closer in size to our largest regional markets, than they are to our two largest metropolitan markets. Perth and Adelaide also suffer from only a very small number of local sources of current affairs. Brisbane is not far behind.

Adelaide for example has only The Advertiser, Today Tonight (on Channel 7), FIVEaa and ABC Radio as sources of local current affairs. Application of the minimum voices test could reduce that number from four to just two. The same situation exists in Perth and might also exist in Brisbane.

### **Internet Diversity**

The internet has not resulted in greater diversity in the sources of news and current affairs. Recent research has overwhelmingly shown that the most popular and influential internet based news and current affairs services are owned and controlled by the major owners of traditional media assets. The explosion of the internet has therefore done nothing more than help the major owners of traditional media develop a position that enables them to build upon their already significant influence.

The new media ownership rules must include a mechanism that will take account of the ownership of internet based assets, if not now, then at least in the future, as the use of those assets by consumers continues to increase. If the rules do not provide such mechanism, the creation or purchase of internet based assets, by the major owners of traditional media assets, will continue and government will be powerless in any attempt to control or restrain their influence in the future.

### **ACMA Enforcement Powers**

DMG opposes the expansion of the enforcement powers of ACMA in areas that relate to on air content and editorial control. The media industry is central to the proper workings of our system of democratic government. It is dangerous in the extreme to allow non elected bureaucrats to interfere with decisions about on air content and editorial control. As a practical matter, that is what will happen if these powers are expanded.

Extensive and documented experience in other industries also demonstrates that powers in respect of enforceable undertakings and civil prosecutions will result in the regulation of business by administrative prerogative and not by legislative act, and will increase the costs of compliance incurred by those businesses, in an exponential fashion and without any commensurate addition to the bottom line.

DMG does however support the expansion of the enforcement powers of ACMA in the specific case of enabling ACMA to better deal with operators who carry on business as commercial broadcasters without being licensed to do so and also to better deal with operators who carry on a broadcasting business outside the broadcasting services bands. DMG believes that ACMA needs such powers in order to be able to better manage and administer legislative policies relating to the use of the radiofrequency spectrum.

### **Conclusion**

We ask that you consider our attached submission. Please do not hesitate to contact us if you require further information.

Yours sincerely



**Kingsley Hall**  
**Finance Director**

# **DMG Radio (Australia) Pty Ltd**

## **Submission to Inquiry into Broadcasting Services Amendment (Media Ownership) Bill 2006 and Related Bills**

We refer to the Broadcasting Services Amendment (Media Ownership) Bill 2006 and to the referral of the Bill by the Senate to the References Committee and Legislation Committee.

We refer also to your letter of 15 September 2006 to Joan Warner of Commercial Radio Australia Limited.

DMG Radio (Australia) Pty Ltd (“**DMG**”) is a wholly owned subsidiary of Daily Mail and General Trust plc (“**DMGT**”). DMGT is a global media company and its shares are listed on the London Stock Exchange.

DMGT over the past decade or so has invested about \$1 billion in the radio, exhibitions, educational publishing and recruitment industries in Australia.

DMG in particular is the owner of the Nova national network of FM radio stations, together with the Vega radio stations in Sydney and Melbourne, FIVEaa in Adelaide and Star FM in Gosford.

DMGT has a long term commitment to the media industry in Australia. The regulation of that industry is therefore of great importance to us.

We lodged a submission on the proposed media law changes with the Minister on 13 April 2006 and we delivered a further letter to her in that regard on 24 May 2006. We attach copies of that submission and letter, for your information.

DMG agrees with the Government that the existing foreign and cross media ownership rules cannot be justified in the long term on economic or policy grounds. DMG therefore supports the decision to relax the current media ownership rules.

DMG does however hold some concerns in four areas covered by the Bill. These concerns are also identified in our earlier submission and letter, but we will highlight them again.

### **Minimum Voices Test**

DMG does not believe that the proposed “minimum voices” test will protect diversity in the media in a meaningful way. Diversity in the media requires there to be an adequate number of *real voices* in each market. DMG therefore submits that the proposed requirement for at least five voices in metropolitan markets and four voices in regional markets, might be acceptable and might protect diversity, so long as each of those voices is *real* and not just *token*.

The major shortcoming of the proposed minimum voices test is it assumes that diversity can be measured by reference just to the *number* of media owners in a market, without any regard to the relative *influence* or *reach* of those owners.

The Bill assumes, for example, that one of two daily newspapers will have the same voice as one of eleven radio stations in a market. It also assumes, for example, that a mega media conglomerate with one daily newspaper, one free to air television station and two radio stations in one market will have the same voice as just one small stand alone radio station in that market. This belies reality.

DMG submits that the minimum voices test must be recast as a *real voices* test and a media asset must attain a minimum level of critical mass, in a market, before it can be counted as a *real voice* in that market. If the minimum voices test is not recast as a *real voices* test and, as a result, the minimum voices test has no regard to *influence* or *reach*, the application of the test will result in a diminution of diversity and will give rise to artificial results.

For example, notwithstanding the minimum number of five media owners in metropolitan markets, the application of the minimum voices test could result in just two mega media conglomerates, plus one other large media owner, plus two very small and insignificant owners, in each of Sydney and Melbourne and, even worse, it could result in just one large media owner, plus four very small and insignificant owners, in each of Perth and Adelaide. These outcomes would not be conducive to diversity in any of these cities.

### **Small Metropolitan Markets**

DMG also believes it is artificial to treat all metropolitan markets the same for the purpose of the minimum voices test.

Sydney and Melbourne are the only markets that might be large enough to withstand the application of a quantitative test such as the minimum voices test (and, once again, so long as the voices are *real voices*).

Brisbane is perhaps on the cusp. Perth and Adelaide, however, in terms of population and economic activity, are closer in size to our largest regional markets (such as Newcastle, Gold Coast, Sunshine Coast and Geelong) than to our largest metropolitan markets (being Sydney and Melbourne). Perth and Adelaide also suffer from only a very small number of local sources of current affairs. Brisbane is not far behind.

Adelaide for example has only The Advertiser, Today Tonight (on Channel 7), FIVEaa and ABC Radio as sources of local current affairs. Application of the minimum voices test could reduce that number from four to just two. The same situation exists in Perth and might also exist in Brisbane.

We are also concerned that the application of a minimum voices test in these smaller metropolitan markets could result in just one large media owner, plus four very small and insignificant owners, in those markets. There is a real risk that mega media conglomerates will not invest in those markets (either because of the retention of television aggregation rules or because of the return on investment and other dynamics of those markets).

DMG is concerned that small metropolitan markets will miss out on the investment and national marketing undertaken by the mega media conglomerates and yet, at the same time, these markets will not benefit from the special protections that are being extended to regional markets under the Bill.

DMG does not advocate the extension of regional protections into these small metropolitan markets. We instead submit that particular attention must be given to the prescription of a minimum number of readers, viewers or listeners, for each media asset to be counted as a *real voice*, in those markets, in order to protect the people of Perth and Adelaide.

### **Internet Diversity**

DMG demonstrated in its submission and also, with documented evidence, in our subsequent letter, that the most popular and influential internet based news and current affairs services are owned and controlled by the major owners of traditional media assets. The vast majority of people in our metropolitan markets who go to internet based news and current affairs services, go to those services that are owned by PBL, News, Fairfax or the ABC.

It follows that the advent of the internet has not resulted in greater diversity in the sources of news and current affairs and, instead, the major owners of traditional media assets have developed a position that enables them to build upon their already significant influence. This adverse impact on diversity will continue for so long as the ownership of internet based assets falls outside the media ownership rules.

We therefore submit that the new media ownership rules, in one way or another, must recognise the potential for internet based assets to be taken up by media consumers and therefore to influence those consumers and, as a result, those rules must take into account the ownership of internet based assets and not only the ownership of traditional media assets.

We recognise how difficult it is to measure and thereupon regulate the *influence* or *reach* of internet based assets and also how difficult it is to formulate media ownership rules that take into account the ownership, not only of traditional media assets, but also of internet based assets.

DMG nonetheless submits, through the media ownership rules to be administered by ACMA, that a mechanism should exist to take account of the ownership of internet based assets, if not now, then at least in the future as the use of those assets by consumers continues to increase.

That is the only way that those who create or purchase internet based assets today can be held to account, through the media ownership rules, when those assets, coupled with those owners' traditional media assets, result in those owners having even more influence in the future than they have today.

If the rules do not provide a certain mechanism for this today, then the "free for all" that exists today, in terms of the creation or purchase of internet based assets, will continue and the government will be powerless in any attempt to control or restrain that influence in the future.

### **ACMA Enforcement Powers**

The Bill proposes to expand the enforcement powers of ACMA. Among other things, the new enforcement powers will enable enforceable undertakings to be given to ACMA and will enable civil prosecutions to be undertaken by ACMA.

DMG opposes the expansion of enforcement powers in areas that relate to on air content or editorial control. The media industry is central to the proper workings of our system of democratic government. It is dangerous in the extreme to allow non elected bureaucrats to interfere with decisions about on air content and editorial control. As a practical matter, there is no doubt that the expansion of enforcement powers will have that effect.

Regulators were given expanded enforcement powers and, in particular, powers in respect of enforceable undertakings and civil prosecutions, quite a few years ago, in the financial services industry. Evidence submitted to various parliamentary and other inquiries demonstrates that to expand powers in this way:

- results in a proliferation of policy statements and practice notes issued by the regulators (in relation to the actions that the regulators expect to see in order for enforceable undertakings and civil prosecutions to be avoided);
- increases at an alarming rate the costs associated with compliance programs and training in order to satisfy the requirements of those policy statements and practice notes;
- increases at an alarming rate the costs associated with ongoing liaison with the regulators (including compliance, audit and update visits by the regulators and ongoing information gathering exercises undertaken by the regulators); and

- results in the effective regulation and control of relevant businesses by administrative prerogative and not by law.

DMG submits that the enforcement powers of ACMA should not be expanded:

- *at all*, in relation to on air content or editorial control;
- *in other areas*, without *immediate* recourse by affected businesses to the courts; and
- *in any event*, until a review has been undertaken of the application and effectiveness of the exercise of such enforcement powers by regulators in the financial services industry (as called for last month by AXA Asia Pacific Holdings Limited in respect of the overturned exercise of enforcement powers by APRA).

DMG as an aside is also concerned that the additional costs that will be imposed upon businesses, as a result of the expansion of enforcement powers, will be crippling for many small businesses in the media industry and, over time, those small businesses will no longer be able to exist (with consequent adverse repercussions for diversity). In particular, in the commercial radio industry, where a very large number of regional radio stations are owned on a solus basis or as part of very small groups, these increased compliance costs could be devastating.

DMG is of the strong belief that disputes about on air content and editorial control should be decided always and only by an independent court and it is an affront to our democratic system to put that power into the hands of non elected bureaucrats.

DMG is less concerned about the expansion of enforcement powers for ACMA in areas that do not relate to on air content or editorial control (such as accounting and reporting requirements, certain ownership and control requirements, and technical operating requirements).

DMG does support the expansion of enforcement powers to enable ACMA to better deal with operators who carry on business as commercial broadcasters without holding the required licences under the Act. DMG also supports the expansion of enforcement powers to enable ACMA to deal with other operators who do not fall within the broadcasting services bands but who otherwise broadcast programs that are the same as or similar to programs broadcast by licensed commercial operators.