

**DMG RADIO (AUSTRALIA) PTY LTD**

**SUBMISSION ON THE FEDERAL GOVERNMENT'S DISCUSSION  
PAPER OF 14 MARCH 2006 ON MEDIA REFORM OPTIONS**

**13 APRIL 2006**

## **1 Introduction**

- 1.1 This submission is made by DMG Radio (Australia) Pty Ltd (“**DMG**”) in response to the Discussion Paper on Media Reform Options (“**Discussion Paper**”) released by the Minister for Communications, Information Technology and the Arts on 14 March 2006.
- 1.2 DMG is a wholly owned subsidiary of Daily Mail & General Trust plc (“**DMGT**”). DMGT is a London based media group with newspaper, radio, publishing, internet, business to business, exhibition, teletext and other media businesses in the United Kingdom, Europe, United States, Canada, Australia, New Zealand, Asia and the Middle East. DMGT is listed on the London Stock Exchange.
- 1.3 DMG is a major participant in the commercial radio industry in Australia. DMG first acquired radio licences in Australia in 1996 and, between 1996 and 2004, it invested more than \$750 million in new and existing licences throughout metropolitan and regional Australia. DMG now owns or controls ten commercial radio stations in Australia. Nine of those stations were established from scratch between 2000 and 2005 under new licences auctioned by the former Australian Broadcasting Authority. Those nine new stations include the highly successful Nova FM radio network and the newly launched Vega FM stations. Through these new and innovative radio stations, DMG has made (and will continue to make) a significant contribution to the diversity, competitiveness and efficiency of the commercial radio industry in Australia.
- 1.4 DMGT has a long term commitment to the media industry in Australia. DMGT conducts publishing, exhibition and other businesses in addition to its radio business in Australia. DMGT in aggregate has invested in the order of \$1 billion in Australia. The regulation of the media in Australia is therefore of great importance to DMGT.
- 1.5 DMG provides this submission by way of contribution to discussion on the package of reforms proposed in the Discussion Paper.

## **2 Executive Summary**

- DMG applauds the Government’s comprehensive review of media ownership rules and its commitment to media reform across all platforms and technologies, and DMG encourages the Government to complete this process, notwithstanding the divergent views put forward by vested interests.
- DMG agrees with the Government’s position that Australia needs a comprehensive digital action plan so that media consumers can benefit as soon as possible from the digital technologies and services that have been and continue to be developed.
- DMG believes 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 Government’s commitment to relax the current media ownership rules.
- DMG believes that the package of reforms proposed in the Discussion Paper should be reviewed and, where appropriate, amended by reference to what is in the public interest and not by reference to the vested interests.

- DMG is comfortable with the statement made by Senator The Hon. Helen Coonan at the ABN AMRO Communications Conference on 6 April 2006 that “a quantitative approach to protecting diversity is better than a qualitative one” so long as that quantitative approach can be made to ensure *meaningful diversity*.
- DMG does not believe that the proposed “minimum voices” test put forward in the Discussion Paper will protect diversity in the media in a meaningful way. DMG believes that diversity in the media is in the public interest and is central to the proper workings of our system of democratic government.
- DMG contends that diversity in the media requires there to be an adequate number of real voices in each market. DMG therefore contends 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.
- DMG believes moreover that even if each of those voices is real and not just token, the proposed test of five voices in metropolitan markets and four voices in regional markets is at the bottom end of what is acceptable. DMG in that regard however takes comfort from the statement made by Senator Coonan at the ABN AMRO Communications Conference that the proposed test “is a floor – not a target”. DMG expects that sentiment to be at the heart of the administration of new media ownership laws by ACMA and of competition laws by the ACCC.
- DMG based on the foregoing submits that the major shortcoming of the proposed minimum voices test is that it assumes that diversity can be measured based on a numeric assessment of the number of media owners in a market, without any regard to the relative *influence* or *reach* of the various forms of media. It assumes, for example, that one of two daily newspapers will have the same “voice” as one of 11 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 stand alone radio station in that market. This belies reality.
- DMG believes that if the proposed minimum voices test is to be retained, in any form, it must be recast as a *real voices* test and there must be a definition of “voice” under which a media asset must attain a minimum prescribed number of readers, viewers or listeners, in a market, before it can be counted as a real “voice” in that market. The minimum prescribed number of readers, viewers or listeners should be different in each market. The numbers for each media asset in the market should be measured at regular intervals. There should be grandfathering protection so that media owners would not be disadvantaged if and when their media assets attain a larger number of readers, viewers or listeners. The real voices test should also operate in a manner that reduces and, if possible, eliminates the risk of mega media conglomerates restricting the access of minor players to other platforms that are owned or controlled by the conglomerates.
- DMG believes that the Government should determine the minimum prescribed number or percentage of readers, viewers or listeners, in a market, before a daily newspaper, free to air television station or commercial radio station can be

counted as a “voice”. DMG notes by way of example that, in Sydney, there is a commercial radio station with a cumulative *weekly* audience of less than 230,000 which equates to an average audience share of about 2%. In Melbourne there is a commercial radio station with comparable figures of less than 150,000 and 1.5%. DMG submits that these are examples of media assets that do not have any meaningful reach in their markets and therefore should not be counted as “voices” under the test.

- DMG also believes that the requirement for diversity in the media is even more important in metropolitan markets than it is in regional markets, because the media in metropolitan markets has much more influence on the public as a whole and therefore on the establishment of social trends and on outcomes under our democratic system of government. DMG therefore urges the Government to focus on metropolitan markets and not only on regional markets, when reviewing and, where appropriate, amending, the reforms proposed in the Discussion Paper.
- DMG also submits that before any changes to our media ownership rules can be finalised, both the public and the industry need clarification on the role of the ACCC in media consolidation and, in particular, how it will define media markets and on what basis it will regulate concentration, under the Trade Practices Act. DMG believes that the media industry cannot be compared to any other industry because of the importance of media in our system of democratic government and, in the case of electronic media, because the allocation of spectrum and, therefore, the access of media owners to those mediums, is determined by government. DMG therefore believes that it is neither fair nor appropriate to expect the ACCC to exercise the role of arbiter, unless the basis on which it will act as arbiter is known to the public in advance and is enshrined in the new media ownership rules.
- DMG further submits that before any changes to our media ownership rules can be finalised, we need clarification on how and when the new rules will apply to new digital and other media services, whether those services are internet services or other services that do not face regulatory barriers to entry, or services that are made, or will be made, available through licences issued or to be issued by the Government. All these services have the potential to be mediums of real influence in the new digital age. Some of these services might in fact have achieved significant reach today. Others are expected to achieve that reach in the short to medium term. It is therefore vital that any reform proposal clearly addresses the treatment of these services under the new media ownership rules, whether in a manner that takes those services into account now, or in a manner that provides for them to be taken into account in the future, once those services achieve real influence.
- DMG believes that the Government must review and assess the reach of new media assets today. If it concludes that the reach of all or some of those assets today is significant and, therefore, that those assets represent a source of real influence, then the new media ownership rules must take account of them today. On the other hand, if it concludes that those assets do not have sufficient reach today, but will achieve that reach in the short to medium term, then the new media

ownership rules must include a mechanism under which those assets can be taken into account at that time.

### **3 Current media ownership rules**

- 3.1 DMG believes that the current media specific foreign ownership limits and cross media ownership rules cannot be supported on economic or policy grounds. The current ownership rules are arbitrary and artificial for at least two reasons.
- 3.2 First, these rules assume that ownership in the same market of more than one form of traditional media (ie. daily newspapers, free to air television stations and commercial radio stations) cannot ever be in the public interest. DMG believes that is wrong and, so long as there is adequate diversity in the media, cross ownership in some cases could improve services and create efficiencies without being opposed to the public interest. This of course will not always be the case. Diversity must always be meaningful. This is covered further below.
- 3.3 Secondly, these rules do not extend to new digital media services or other media such as internet services and are restricted to the traditional media. As new services are developed and taken up by media consumers and, in particular, where some of those new services do not face regulatory barriers to entry (ie. licences are required for television and radio, but not for internet and various other forms of new media services), the effectiveness of the current media ownership rules to protect against concentration of ownership will be even further reduced.

### **4 New media assets**

- 4.1 It is to be noted, in relation to new media services, that the most popular and influential internet based news and current affairs services have been quickly accumulated by the major owners of traditional media assets. Those owners are therefore in a position to build upon their influence and to further reduce diversity, for so long as the ownership of such assets falls outside the media ownership rules. DMG therefore submits that any new media ownership rules must recognise the potential for new media 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 those new media assets and not only the ownership of traditional media assets.
- 4.2 DMG accepts that new media assets have not been taken up by media consumers today to such an extent that their influence rivals the influence of traditional media. DMG does however believe that new media assets have gained at least some influence today through their take up by media consumers. The Government must decide whether the level of take up today is sufficient to conclude that those assets have real influence now. If that is the conclusion, it follows that the new media ownership rules must take ownership of new media assets into account today. On the other hand, if that is not the conclusion, then any new media ownership rules still must foreshadow that the ownership of new media assets will one day be taken into account in the application of those rules and must provide a certain mechanism under which that will happen.
- 4.3 DMG also believes that to include a mechanism in the new media ownership laws, to take account of new media assets in the future, is the only way that those who create or

purchase new media 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 new media assets, will continue and the Government will be powerless in any attempt to control or restrain that influence in the future.

- 4.4 DMG has commissioned the undertaking of a survey in this regard. The purpose of that survey is to identify, in a random sample of media consumers, those internet based news and current affairs services that are most used by them. Preliminary indications are that, of those media consumers who access internet news and current affairs services, an overwhelming majority access those that are owned or controlled by the major traditional media companies. DMG is concerned that this pattern might mean that the development and take up of new media assets will not have the positive impact it could otherwise have on diversity.

## 5 Diversity

- 5.1 Diversity of media ownership is a critical element of any modern system of democratic government. The democratic system depends, in large part, on there being several strong voices which are capable of offering different content, including thoughts, views and opinions on social and political issues which affect our community. The media is so pervasive in modern life that its effectiveness and integrity within our political and social system would be seriously undermined if it were controlled by only one or two mega media conglomerates.
- 5.2 The importance of diversity of media ownership in our system of democratic government is supported by numerous independent studies and analyses. Moreover, that support reinforces the need for *meaningful* diversity. Meaningful diversity in this context means at least two things. First, a media asset will not add meaningful diversity to a market unless that asset commands a minimum number of readers, viewers or listeners. Secondly, that media asset will only add to diversity if the asset has equal access with all other media assets in the market to other media platforms in which, on which or through which it can advertise and promote its services. In short, a media asset will only add to diversity if it attracts a minimum number of consumers and it has equal access to all other platforms. These conclusions are supported by reviews undertaken by organisations like the Communications Law Centre in Australia and by global authorities and researchers such as Michael Gurevitch and Jay G Blumler (Prof. Doris A. Graber, *Media Power in Politics*, CQ Press, 2000, University of Illinois at Chicago).
- 5.3 DMG in all of these circumstances believes that "diversity" means that there must be a diverse range of different *voices* which can be *heard* in the community. A voice must be strong in order to be heard. A token voice is not enough. It follows that it is not enough that there is simply a minimum number of voices without any further requirement because, in some cases, not all of those voices will be capable of being heard, or at least not to the same extent as others. DMG does not suggest that a media owner should be discriminated against because a media asset of that owner, through hard work, has achieved a large number of readers, viewers or listeners. Media ownership laws should have nothing to do with success on a stand alone basis. DMG does however believe that

if one voice is not heard because it just does not reach a prescribed minimum number of readers, viewers or listeners, or if one voice is marginalised, relative to another voice, only because the first voice is denied access to platforms that are owned or controlled by the second voice, then it is just not possible to treat those voices as equal. They are not and they never will be.

## 6 Other platforms

6.1 Access to all other platforms is a critical issue today. Media assets will have more fragmented audiences in the years ahead, as we see the proliferation of new media assets such as subscription television, internet sites, datacasting and digital services. DMG contends that as consumers take up these new media assets in greater numbers, it will be important, in order to protect diversity of ownership in the media and also be sure that some media assets are not denied access to platforms that are owned or controlled by the owners of other media assets, to have media ownership rules and competition guidelines that:

- take into account and do not ignore the ownership of new media assets when determining the number of real voices in a market;
- take into account the ownership of new media assets when determining the concentration of ownership of media services in the market; and
- operate in a manner that guarantee access by the owners of media assets to other platforms owned by the owners of other media assets in the market.

6.2 DMG believes that if the Government proceeds with the proposed test of at least five voices in metropolitan markets and four voices in regional markets, the application of that test by ACMA, coupled with the administration of its competition guidelines by the ACCC, should (or at least might) guard against the risk of mega media conglomerates exercising control over access to multiple platforms, so long as those rules and guidelines operate as set out in paragraph 6.1 and so long as ACMA and the ACCC at all times err on the side of caution and, when in doubt or when the issues are balanced, they are guided by the principle that five voices in metropolitan markets and four voices in regional markets “are the floor – not the target” as stated by Senator Coonan (and DMG would like to see that statement in the Explanatory Memorandum and Second Reading Speech when any bill is introduced into Parliament).

6.3 DMG is concerned that the creation of mega media conglomerates, without the right checks and balances, could result in there being two categories of media assets in the future. The first category would be the all reaching and all powerful mega media conglomerates. The second category would be the minor players who are left with an insignificant number of readers, viewers or listeners and without access to other major platforms (and therefore without access to adequate advertising revenue). These minor players would have only a token voice, both in terms of reach (ie. the number or percentage of readers, viewers or listeners) and service (ie. in terms of quality and effectiveness). DMG believes it would be wrong to count those minor players in any numeric test under media ownership rules because it would be artificial to maintain that those players constitute any sort of voice other than a token voice at best.

6.4 DMG at the end of the day believes that the public interest in our system of democratic government requires a well informed debate of issues through the media. For that debate to be well informed, it is essential that there are enough media assets to report and comment on all of the issues from divergent points of view. Moreover, each of those media assets needs to achieve at least a minimum prescribed reach and needs to be able to promote itself on other platforms, in order for the issues reported and commented on by them to form part of the debate. Media ownership rules and competition guidelines must therefore operate in the manner set out in paragraph 6.1. DMG believes that is the best way to achieve these objectives.

## **7 Metropolitan markets**

7.1 DMG contends that the media ownership rules and competition guidelines it proposes in paragraph 6.1 are critical not only in regional markets but, even moreso, in metropolitan markets, because of the far greater reach of metropolitan markets and, to be frank, the greater influence of people in metropolitan markets, relative to people in regional markets, in the establishment of social trends and the workings of our political system. These observations are not disrespectful of the role and importance of our regional communities in Australia. Rather, these observations are statements of simple fact. DMG therefore urges the Government not to allow the debate in this area to be hijacked by pressure groups who represent regional markets and asks the Government to make sure that the greater need for diversity in metropolitan markets is not overshadowed by the louder noises made by those who represent regional markets. At the end of the day, diversity is of equal importance in both metropolitan markets and regional markets and the public in all of those markets have equal rights to the benefits that flow from diversity.

## **8 The role of the ACCC**

8.1 A further element of the package that requires better articulation is the role of the ACCC as the arbiter of competition issues in media mergers and acquisitions in Australia. It is clear that this role will be critical. Cross media holdings which are permitted under the minimum voices test will nonetheless be subjected to competition analysis by the ACCC. That competition analysis is therefore equally important when determining the make up of the media ownership landscape. It sits side by side with the diversity issue as the key policy concern with consolidation of the media industry. This is consistent with the requirements set out by DMG in paragraph 6.1.

8.2 DMG submits that the Government should not make any final decision about the regulation of media ownership and, moreover, it should not close off submissions from the industry and public, unless and until the ACCC has clearly defined how it will regulate consolidation of media assets after the removal of the existing ownership restrictions. Before that occurs, it is impossible to know how the ownership landscape will be allowed to develop and what cross media holdings will and will not be permitted. It is therefore impossible to assess the consequences and implications of the proposed ownership reforms until its role is clarified by the ACCC. DMG further submits that it is not enough just to leave it to the ACCC to clarify its role. Rather, once that is done by the ACCC, it must be acknowledged by the Government. The Government should only then enact new laws.

- 8.3 DMG moreover does not believe it is fair to expect the ACCC to be the ultimate arbiter of mergers and acquisitions in the media sector because that thrusts the ACCC into a role that involves conscious choices about who will be allowed to expand their reach and who will not be allowed to do the same, in a sector that is not only important, but critical, to the exercise of their democratic rights by the public. The ACCC deals with the public as consumers. However, the democratic process deals with the public as voters. The ACCC should have only a limited role in determining matters that result in the provision of more or less information to voters.
- 8.4 The Government must do all it can to make sure that as much as possible in this regard is included in legislation and as little as possible is left to the discretion of the ACCC. This after all is the central responsibility of government. DMG by virtue of this contention should not be taken to have any concerns about the exercise of its powers by the ACCC. DMG in fact has confidence in the application of its guidelines by the ACCC and believes that the ACCC will exercise its powers in an appropriate fashion when determining if mergers or acquisitions will result in unacceptable concentration of ownership in a consumer market. The ACCC has indicated that it will focus on concentration in the creation of media content when it considers mergers and acquisitions under its competition guidelines. DMG agrees with that approach, in particular, in an era where the proliferation of new media assets is anticipated and where the creation of content used on the various platforms, rather than the delivery of that content through those platforms, will define power in the market.
- 8.5 DMG nonetheless believes that it is the Government and not the ACCC that must first determine, as a fundamental building block, what sort of aggregation is permitted and what sort of aggregation is excessive, in the “market” for the provision of information to voters as part of our system of democratic government.

## **9 Proposed minimum voices test**

- 9.1 Under the proposed minimum voices test, for example, the *Daily Telegraph* in Sydney (which is one of two daily newspapers and has a *daily* circulation of approximately 1,200,000) would be treated as an equal voice with a commercial radio station that is only one of 11 commercial radio stations and has a *weekly* cumulative audience of less than 230,000 and an average audience share of only about 2%. But this is not the reality because the content published by the *Daily Telegraph* and the penetration it achieves within the city of Sydney gives it significantly greater influence and reach than a stand alone commercial radio station with a very modest audience. The same examples exist in other metropolitan cities. For example, the *Herald Sun* in Melbourne has a *daily* circulation of approximately 1,500,000 and it would be treated as an equal voice with a stand alone commercial radio station that has a *weekly* cumulative audience of less than 150,000 and an average audience share of only about 1.5%. The minimum voices test ignores the reality and assumes that all media are on equal footing, irrespective of their actual influence and reach within the community. DMG believes that this is not a proper basis for achieving meaningful diversity.
- 9.2 There is a real danger that the minimum voices test proposed by the Discussion Paper, in particular as it relates only to traditional media and not to new media, could lead to the emergence of one or two mega media conglomerates which are allowed to compile media assets which dominate news, views and opinion within each market. It could mean, for

example, that one or two media companies could each own a major daily newspaper, a free to air television station, two talk back or current affairs radio stations, plus any amount of internet and new digital media services, in a single market, leaving only the small and less influential media (owning no more than a radio station here and a small internet site there) to provide countervailing influence within the community.

- 9.3 The extent of the voice provided by the mega media conglomerates would drown out the combined voices of the less influential media companies who make up the alternative “minimum voices”. The less influential media companies would be unable to practically compete in a social and political sense, as well as an economic sense. There is also a risk that the less influential media companies would be denied access to the other platforms owned by the mega media conglomerates. This has been covered above. These outcomes cannot be in the public interest, as echoed in various of the papers compiled by Prof. Graber.
- 9.4 One possible outworking of this is that even more prominence and reliance might be placed on the public broadcasters to provide some measure of countervailing influence, in particular in cases where the government of the day does not find favour with the mega media conglomerates. The ABC and SBS might find themselves thrust into an environment where they are encouraged to take an active position and to express active views on matters of public significance (when, according to our traditions, the taking of active positions and the expressing of active views on matters of public significance, have always been within the realm of commercial and other non public funded media, and not within the realm of public broadcasters).
- 10 **Alternative real voices test**
- 10.1 DMG submits that the best and only way meaningful diversity can be guaranteed is to adopt a minimum voices test which looks both to the *number* of media voices and the *influence* of those voices in the context of the particular community in which they operate.
- 10.2 To use the examples above, what relative weighting should be given to the *Daily Telegraph* compared with a stand alone commercial radio station with modest audience in Sydney, or to the *Herald Sun* compared with a stand alone commercial radio station with modest audience in Melbourne, or to the *Courier Mail* compared with a stand alone commercial radio station with modest audience in Brisbane? How will we assess the level of influence these assets represent? How will the non-traditional media (such as internet, podcasting, subscription TV and 3G telephones, which are not currently subject to cross media ownership restrictions and are not confined in their reach to any particular geographical area) be treated when assessing the relative influence of newspapers, television and radio? How will the laws protect media owners who increase their influence over time, simply by improving the popularity (ie success) of their media assets?
- 10.3 DMG agrees that a test that is too complicated and that attempts to address all of these issues could create confusion and might not be in the best interests of either the public or the industry. DMG therefore does not contend that we should have a test that attempts to address everything. DMG does however believe that we need a test that at least sets a minimum prescribed number or percentage of readers, viewers or listeners in order for a media asset to be counted as a “voice” and that contains a mechanism for taking into

account the influence and ownership of new media assets once the take up of those assets by consumers becomes significant.

10.4 DMG will not recommend a specific model. That is because any model requires detailed review of the actual influence today of the traditional media and it would also need to accommodate changes in actual influence of the traditional media and also new media, over time. DMG does however believe that it might be possible, for example, to develop a *real voices* test under which:

- there must be a minimum number of voices in each market;
- a voice will only be counted in that number, at the time of any acquisition in that market, if that voice has a minimum prescribed number or percentage of readers, viewers or listeners in that market;
- daily newspapers, free to air television stations and commercial radio stations might be the only media assets eligible to be counted as voices at this point (although the number or percentage of readers, viewers or listeners of new media assets should also be measured and, if that number or percentage is significant, there is no reason not to count them as voices now);
- the number or percentage of readers, viewers or listeners of media assets (both traditional media assets and new media assets) in the market would be measured and recorded at pre determined intervals (such as after every three years or after every five years);
- a person would be prohibited from acquiring a media asset if, after that person acquires that media asset, there would be fewer than the minimum number of voices prescribed for that market (being fewer than five voices in a metropolitan market or fewer than four voices in a regional market) and where a voice will only be counted in that number if, at that time, it has the minimum prescribed number or percentage of readers, viewers or listeners in that market;
- a person would still be prohibited from acquiring a media asset, notwithstanding that there would not be fewer than the minimum number of voices prescribed for that market if, after that person acquires that media asset, there would be unacceptable concentration in ownership of platforms or in creation of media content in that market, in contravention of competition guidelines; and
- there would be appropriate grandfathering provisions so that no person would ever be required to dispose of a media asset, either because the number or percentage of readers, viewers or listeners of that asset has increased, or because another person has acquired another media asset in a transaction that has nothing to do with the first person.