

Media reform—Key concepts relating to media ownership in the 2006 amendments to the *Broadcasting Services Act 1992*

Background

The *Broadcasting Services Amendment (Media Ownership) Act 2006* received Royal Assent on 4 November 2006. This Act amended the *Broadcasting Services Act 1992* (the BSA) with respect to the media ownership rules.

The amendments to the BSA removed the foreign ownership and control restrictions as well as certain restrictions on cross-media ownership and control of Australian media assets. However, foreign ownership of Australian media assets continues to be regulated by the *Foreign Acquisitions and Takeovers Act 1975* and Australia's Foreign Investment Policy.

Schedule 1 to the Broadcasting Services Amendment (Media Ownership) Act came into force on 1 February 2007. It introduced a number of key concepts relating to media ownership which are set out below, including prohibitions relating to unacceptable media diversity situations and unacceptable three-way control situations.

Schedule 2 to the Broadcasting Services Amendment (Media Ownership) Act, which contains local content requirements and the repeal of cross-media and foreign control rules, commenced on 4 April 2007. The amendments made in Schedule 3 commence on 1 January 2009. This is intended to coincide with the commencement of Schedule 3 to the *Broadcasting Legislation Amendment (Digital Television) Act 2006*.

Media operations

The control rules in Part 5 of the BSA apply to commercial television licences and commercial radio licences. They do not apply to non-broadcasting services bands television licences.

A 'media operation' is a commercial television broadcasting licence, a commercial radio broadcasting licence or a newspaper that is associated with the licence area of a commercial television broadcasting

licence or a commercial radio broadcasting licence (an 'associated newspaper').

An associated newspaper is one which is entered in the Associated Newspaper Register. 'Newspaper' is defined to mean a newspaper that is in the English language and is published at least four days in a week.

A newspaper must be entered in the Associated Newspaper Register as being associated with one or more commercial television or radio broadcasting licence areas if the ACMA is satisfied that at least 50 per cent of the newspaper's circulation is within that licence area and, in the case of radio licence areas, the circulation of the newspaper within that licence area is at least two per cent of the licence area population.

The ACMA may refuse to enter a newspaper in the Associated Newspaper Register or, in the case of a newspaper in the register, remove the entry. This type of refusal or removal may arise if the ACMA is satisfied that a person has entered into, begun to carry out or carried out a scheme to publish a newspaper and the person did so for the sole or dominant purpose of ensuring that the number of points (explained below) in the licence area of a commercial radio broadcasting licence would be increased or maintained.

Media groups

A media group is a group of two or more media operations.

The concept of 'media group' in the BSA is integral to the media diversity rules which involve the calculation of the number of points in a radio licence area and restrictions on transactions with the effect of reducing the number of points below specified levels.

The scheme relies on the entry of 'registrable media groups' in the new Register of Controlled Media Groups (RCMG).

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Registrable media groups

In order for a media group to be entered in the RCMG, it must be a 'registrable media group'. A registrable media group, in relation to the licence area of a commercial radio broadcasting licence, means a media group of two or more media operations, where:

- a person is in a position to exercise control of each of those media operations; and
- each of those media operations complies with the statutory control rules; and
- if a commercial television broadcasting licence is in the group—more than 50 per cent of the licence area population of the radio licence area is attributable to the licence area of the commercial television broadcasting licence; and
- if a commercial radio broadcasting licence is in the group—the licence area of that commercial radio broadcasting licence is, or is the same as, the radio licence area; and
- if a newspaper is in the group—the newspaper is associated with the radio licence area.

In the media diversity scheme in the BSA, this situation counts for one point. A media operation that is not part of a media group is also worth one point.

As only commercial television licences, commercial radio licences and associated newspapers constitute media operations, other media in the area (such as a community radio or television licence) do not count towards the number of points in the relevant licence area.

Controllers of media operations and media groups

A controller of a media group is a person who is in a position to exercise control of each media operation in the media group.

A change in control of a media operation requires notification to ACMA. If a registrable media group is formed from a change in control to one or more media operations, ACMA will enter the group in the Register of Controlled Media Groups.

Changes in control are also relevant to the 'trigger event' provisions relating to local presence and local content for regional commercial radio.

Register of Controlled Media Groups

The ACMA was required by the BSA to establish the Register of Controlled Media Groups as soon as practicable after 1 February 2007. The RCMG was first published on 27 March 2007.

The RCMG contains entries for registrable media groups in each radio licence area. An entry in the RCMG lists the media operations that form part of a group and the controllers of those operations. While

an entry for a media group is unconfirmed (or if a removal of an entry or an alteration is unconfirmed), the entry for the group will include a note indicating the unconfirmed status.

The information in the RCMG is supplemented by a separate report published by the ACMA, the *Media Diversity Report*. Part 1 of this report lists, by licence area, the media groups which appear in the RCMG and the media operations which are not part of any media group. Part 2 of the *Media Diversity Report* provides an alphabetical list of all the controllers appearing in Part 1, and the media operations they are in a position to control. The report also indicates whether the ACMA has been notified that a commercial television service passes the shared content test (described in section 61AE of the Act).

Unacceptable media diversity situation

This concept relies on the new points scheme in the BSA. What comprises an unacceptable media diversity situation will depend on whether the relevant commercial radio broadcasting licence area is a metropolitan licence area or a regional licence area.

An unacceptable media diversity situation will exist in a metropolitan licence area of a commercial radio broadcasting licence if the number of points in the radio licence area is less than five.

An unacceptable media diversity situation will exist in a regional licence area of a commercial radio broadcasting licence if the number of points in the licence area is less than four.

The prohibition on transactions that result in an unacceptable media diversity situation, or which reduce the number of points in a licence area in which an unacceptable media diversity situation already exists, is sometimes referred to as 'the 4/5 rule'.

The scheme requires assessment of the number of points in a commercial radio licence area because Parliament considered that a radio licence area would more closely reflect the influence of relevant radio services or newspapers in a community than a television licence area which may cover a larger geographical area and population.

Unacceptable three-way control situation

An unacceptable three-way control situation exists in relation to the licence area of a commercial radio broadcasting licence (the *first radio licence area*) if a person is in a position to exercise control of:

- (a) a commercial television broadcasting licence, where more than 50 per cent of the population of the first radio licence area is attributable to the licence area of the commercial television broadcasting licence; and
- (b) a commercial radio broadcasting licence, where the licence area of the commercial radio

broadcasting licence is, or is the same as, the first radio licence area; and

- (c) a newspaper that is associated with the first radio licence area.

The prohibition on transactions that result in an unacceptable three-way control situation is sometimes referred to as ‘the 2-out-of-3 rule’.

Statutory control rules

The statutory control rules are the limitations on control and directorships set out in Divisions 2 and 3 of Part 5 of the BSA (for example, the limit of two commercial radio licences in a licence area).

A person must not be in breach of a limitation on control or directorships that relates directly or indirectly to a media operation, except where the ACMA has approved the breach in advance of the transaction by which it arose.

Approval of temporary breaches

Before a transaction takes place or an agreement is entered into that would place a person in breach of the statutory control rules, the person may apply to the ACMA for approval of the breach.

The ACMA may approve the breach and specify a period during which the person must take action to ensure the breach ceases. This period cannot be more than two years.

The BSA provides for applications to the ACMA for approval of transactions that would result in either an unacceptable media diversity situation or an unacceptable three-way control situation coming into existence. If such a transaction proceeded without the prior approval of the ACMA, the person would be in breach of the unacceptable media diversity situation or unacceptable three-way control situation provisions, and may have committed an offence, or be subject to a civil penalty order.

Further information

For further information, go to www.acma.gov.au/mediareform.

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Email alerts

To receive an email alert when the ACMA publishes a new fact sheet on media reform, or updates an existing fact sheet, you can subscribe at www.acma.gov.au/mediareform.

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