
Contents

| | |
|--|----------|
| Part 1—Preliminary | 1 |
| Definitions 1 | |
| Knowledge of Company | 3 |
| Media diversity | 3 |
| Definition of Unacceptable 3-way control situation | 3 |
| Prohibition of ..an unacceptable 3-way control situation | 3 |
| When person is in a position to exercise control | 4 |
| Deemed control | 5 |
| Tracing of ownership | 6 |

Part 1—Preliminary

...

3 Objects of this Act

(1) The objects of this Act are:

- (a) to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information; and

...

- (b) to provide a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs; and

...

- (c) to encourage diversity in control of the more influential broadcasting services; and

...

- (g) to encourage providers of commercial and community broadcasting services to be responsive to the need for a fair and accurate coverage of matters of public interest and for an appropriate coverage of matters of local significance; and

...

Definitions

6 Interpretation

(1) In this Act, unless the contrary intention appears:

...

associate, in relation to a person in relation to control of a licence or a newspaper, or control of a company in relation to a licence or a newspaper, means:

- (a) the person's spouse or a parent, child, brother or sister of the person; or
- (b) a partner of the person or, if a partner of the person is a natural person, a spouse or a child of a partner of the person; or
- (c) if the person or another person who is an associate of the person under another paragraph receives benefits or is capable of benefiting under a trust—the trustee of the trust; or
- (d) a person (whether a company or not) who:
 - (i) acts, or is accustomed to act; or
 - (ii) under a contract or an arrangement or understanding (whether formal or informal) is intended or expected to act;

in accordance with the directions, instructions or wishes of, or in concert with, the first-mentioned person or of the first-mentioned person and another person who is an associate of the first-mentioned person under another paragraph; or

- (e) if the person is a company—another company if:
 - (i) the other company is a related body corporate of the person for the purposes of the *Corporations Act 1990*; or
 - (ii) the person, or the person and another person who is an associate of the person under another paragraph, are in a position to exercise control of the other company;

but persons are not associates if the ACMA is satisfied that they do not act together in any relevant dealings relating to that company, licence or newspaper, and neither of them is in a position to exert influence over the business dealings of the other in relation to that company, licence or newspaper.

Note 1: **Licence** is given an extended meaning by this subsection.

Note 2: See also subsection (3).

...

company interests, in relation to a person who has a shareholding interest, a voting interest, a dividend interest or a winding-up interest in a company, means the percentage of that interest or, if the person has 2 or more of those interests, whichever of those interests has the greater or greatest percentage.

...

offence against this Act includes an offence against section 136.1 or 137.1 of the *Criminal Code* that relates to this Act.

...

transaction includes:

- (a) arrangements under which a person becomes a director of a company; and
 - (b) the acquisition of things by gift or inheritance.
- (2) A determination under paragraph (c) of the definition of **broadcasting service** in subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) For the purposes of paragraph (a) of the definition of **associate** in subsection (1), if one person is the child of another person because of the definition of **child** in this section, relationships traced to or through the person are to be determined on the basis that the person is the child of the other person.

7 Interpretation—meaning of control

Schedule 1 sets out mechanisms that are to be used in:

- (a) deciding whether a person is in a position to exercise control of a licence, a company or a newspaper for the purposes of this Act; and
- (b) tracing company interests of persons.

Note: **Licence** is given an extended meaning by subsection 6(1).

8 Interpretation—shareholding interests, voting interests, dividend interests and winding-up interests

- (1) For the purposes of this Act:
- (a) a person has a shareholding interest in a company if the person is beneficially entitled to, or to an interest in, shares in the company, whether or not any part of the legal ownership of the shares is vested in the person; and
 - (b) the percentage of the interest is the value of the shares, or of the interest in the shares, as the case may be, on the basis that the value of the shares is equal to the amount paid on the shares, expressed as a percentage of the total of all amounts paid on shares in the company.
- (2) For the purposes of this Act:
- (a) a person has a voting interest in a company if the person is in a position to exercise control of votes cast on a poll at a meeting of the company; and
 - (b) the percentage of the interest is the greatest percentage of the number of votes, expressed as a percentage of the total number of votes that could be cast on any issue at a meeting of the company, the casting of which the person is in a position to control.
- (3) For the purposes of this Act:
- (a) a person has a dividend interest in a company if:
 - (i) the person is, or would become if a dividend were declared, beneficially entitled to be paid or credited a dividend by the company; or
 - (ii) under the memorandum and articles of association of the company, a share of any profits of the company is to be, or may be, paid or credited to the person otherwise than as dividends on shares; and
 - (b) the percentage of the interest is:
 - (i) if subparagraph (a)(i) applies—the amount of the dividend to which the person is beneficially entitled or will become beneficially entitled expressed as a percentage of the total of all dividends to which members of the company become entitled at that time; or
 - (ii) if subparagraph (a)(ii) applies—the amount of the maximum share of any profits of the company that could be paid or credited to the person at a particular time expressed as a percentage of the total of all shares of profits that could be paid or credited to all members of the company at that time.
- (4) For the purposes of this Act:
- (a) a person has a winding-up interest in a company if the person would be entitled to a share of the property of the company that could be distributed among members of the company if property of the company were distributed among members, whether as a result of a winding-up or otherwise; and

- (b) the percentage of the interest is the percentage that the value of that part of the property of the company to which the person would be so entitled bears to the total value of the property of the company.
- (5) A person may have a voting interest, a dividend interest or a winding-up interest in a company even if the person does not have a beneficial entitlement to, or to an interest in, shares in the company.

...

Knowledge of Company

50 Interpretation—knowledge of company

- (1) For the purposes of this Part, if a director, the chief executive or a secretary of a company has knowledge of a matter, the company is taken to have knowledge of the matter.
- (2) Subsection (1) does not limit the ways in which knowledge of a company can be established.

...

Media diversity

Subdivision A—Introduction

...

Definition of Unacceptable 3-way control situation

61AA Definitions

...

unacceptable 3-way control situation has the meaning given by section 61AEA.

unacceptable media diversity situation has the meaning given by section 61AB.

61AEA Unacceptable 3-way control situation

For the purposes of this Division, an **unacceptable 3-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% of the licence area 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.

...

Prohibition of ..an unacceptable 3-way control situation

61AMA Prohibition of transactions that result in an unacceptable 3-way control situation coming into existence—offence

A person commits an offence if:

- (a) one or more transactions take place on or after the commencement day; and
- (b) the transactions have the result that an unacceptable 3-way control situation comes into existence in relation to the licence area of a commercial radio broadcasting licence; and
- (c) the person was:
 - (i) a party to the transactions; or
 - (ii) in a position to prevent the transactions taking place; and
- (d) the ACMA has not approved the transactions under section 61AMC.

Penalty: 20,000 penalty units.

61AMB Prohibition of transactions that result in an unacceptable 3-way control situation coming into existence—civil penalty

- (1) This section applies if:
 - (a) one or more transactions take place on or after the commencement day; and
 - (b) the transactions have the result that an unacceptable 3-way control situation comes into existence in relation to the licence area of a commercial radio broadcasting licence; and
 - (c) the ACMA has not approved the transactions under section 61AMC.
- (2) A person must not be:
 - (a) a party to the transactions; or
 - (b) in a position to prevent the transactions taking place.
- (3) Subsection (2) is a civil penalty provision.

...

When person is in a position to exercise control

2 When person is in a position to exercise control

- (1) For the purposes of this Schedule, a person is in a position to exercise control of a licence or a company if:
 - (a) the person, either alone or together with an associate of the person, is in a position to exercise control of the licensee or the company; or
 - (b) in the case of a licence (other than a datacasting transmitter licence or a restricted datacasting licence):
 - (i) the person is the licensee; or
 - (ii) the person, either alone or together with an associate of the person, is in a position to exercise (whether directly or indirectly) control of the selection or provision of a significant proportion of the programs broadcast by the licensee; or
 - (iii) the person, either alone or together with an associate of the person, is in a position to exercise (whether directly or indirectly) control of a significant proportion of the operations of the licensee in providing broadcasting services under the licence; or
 - (c) in the case of a non-licensee company—the person, either alone or together with an associate of the person, is in a position to exercise (whether directly or indirectly) control of a significant proportion of the operations of the company; or
 - (d) the person, either alone or together with an associate of the person, is in a position to:
 - (i) veto any action taken by the board of directors of the licensee or the company; or
 - (ii) appoint or secure the appointment of, or veto the appointment of, at least half of the board of directors of the licensee or the company; or
 - (iii) exercise, in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the licensee or the company; or
 - (e) the licensee or the company or more than 50% of its directors:
 - (i) act, or are accustomed to act; or
 - (ii) under a contract or an arrangement or understanding (whether formal or informal) are intended or expected to act;in accordance with the directions, instructions or wishes of, or in concert with, the person or of the person and an associate of the person acting together or, if the person is a company, of the directors of the person.
- (2) Paragraph (1)(b) does not apply to the provision of programs by a person to a licensee under an agreement for the supply of programs to a licensee if the conditions of the agreement relate only to the programs so supplied or their promotion.

...

- (3) An employee of a licensee or of a non-licensee company is not, except through an association with another person, to be regarded as being in a position to exercise control of a licence or a company under subclause (1) purely because of being an employee.
- (4) More than one person may be in a position to exercise control of a licence or a company.

...

3 When person is in a position to exercise control of a newspaper

- (1) For the purposes of this Schedule, a person is in a position to exercise control of a newspaper if:
 - (a) the person is the publisher of the newspaper; or
 - (b) the person is in a position, either alone or together with an associate of the person and whether directly or indirectly:
 - (i) to exercise control of a significant proportion of the operations of the publisher in publishing the newspaper; or
 - (ii) to exercise control of the selection or provision of a significant proportion of the material to be published in the newspaper; or
 - (c) if the newspaper is published by a company:
 - (i) the person is in a position, either alone or together with an associate of the person, to exercise control of the company; or
 - (ii) the person, either alone or together with an associate of the person, is in a position to veto any action taken by the board of directors of the company; or
 - (iii) the person, either alone or together with an associate of the person, is in a position to appoint or secure the appointment of, or veto the appointment of, at least half of the board of directors of the company; or
 - (iv) the person, either alone or together with an associate of the person, is in a position to exercise, in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the company; or
 - (v) the company or more than 50% of its directors:
 - (A) act, or are accustomed to act; or
 - (B) under a contract or an arrangement or understanding (whether formal or informal) are intended or expected to act;in accordance with the directions, instructions or wishes of, or in concert with, the person or of the person and an associate of the person acting together or, if the person is a company, of the directors of the person.
- (2) Subparagraph (1)(b)(ii) does not apply to the provision of material by a person to a newspaper under an agreement for the supply of material of that kind if the conditions of the agreement relate only to the material so supplied.
- (3) An employee of the publisher of a newspaper is not, except through an association with another person, to be regarded as being in a position to control the newspaper under subclause (1) purely because of being an employee.

...

Deemed control

5 Explanation of examples

In an example in this Part, a percentage written next to an arrow indicates that the person before the arrow has company interests in the company to which the arrow is pointing which exceeds that percentage.

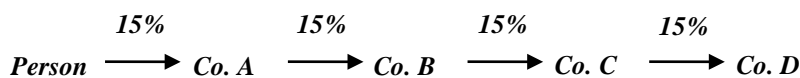
6 The 15% rule

- (1) If a person has company interests in a company exceeding 15%, the person is to be regarded as being in a position to exercise control of the company.

7 Application of method through chain of companies

The method described in clause 6 can be applied in the case of a chain of companies. Where a company interest of more than 15% is maintained throughout the chain, the person is to be regarded as being in a position to exercise control of the last company in the chain.

Example:



Here the person is to be regarded as being in a position to exercise control of Company D.

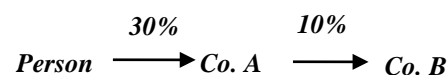
Tracing of ownership

8 Tracing of ownership

Company interests can be traced through a chain of companies using a method known as the fractional tracing method. This method applies a formula to decide what company interest a person has.

This method is best demonstrated by an example.

Example:



The person's company interest in Company B is worked out using the formula:

Company Interest 1 × Company Interest 2

where:

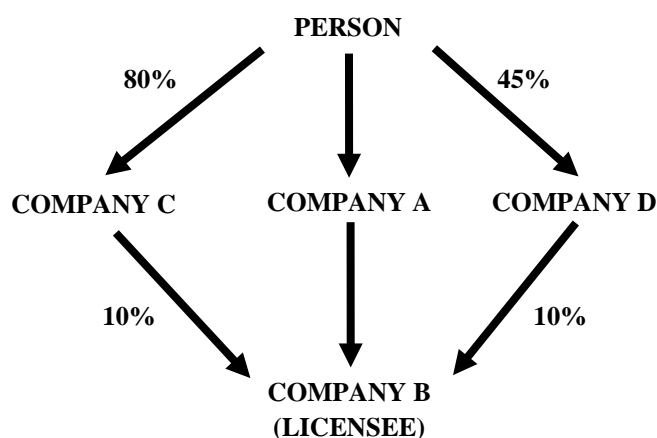
Company Interest 1 is the company interest of the person, expressed as a fraction, in Company A.

Company Interest 2 is the company interest of Company A, expressed as a fraction, in Company B.

In this case, the formula produces: $3/10 \times 1/10$, which means that the person has a 3% company interest in Company B.

Interests traced in this way can be added. If Company B is a licensee and the person had, through other chains of companies, a further 12.5% company interest in Company B, the person would be regarded as being in a position to exercise control of Company B under Part 3 of this Schedule because the person would have company interests exceeding 15% in Company B.

Example:



In this example, the person has a 15.5% company interest in Company B. This is made up of 3% (through Company A), 8% (through Company C) and 4.5% (through Company D).

This method of tracing ownership may be used through any number of companies. However, the ACMA is not required to trace every minor company interest.