

[REDACTED]

From: Sue Gabor
Sent: Thursday, 13 December 2012 12:48 PM
To: [REDACTED]
Cc: Connie Godwin
Subject: FW: The ACMA's recent inquiries about Lachlan Murdoch's and Rupert Murdoch's media assets [DLM=For-Official-Use-Only]
Attachments: Letter ACMA to Avaaz - 12 December 2012.pdf

Hi James

It's been a while – hope all's well at your end.

For your information, please see forwarded email below about the outcome of our recent inquiries into whether Lachlan Murdoch and Rupert Murdoch control each other's media assets.

If you have any queries or would like to discuss, please let me or Connie know (Michaela's currently on leave but will be back on Monday).

Thanks

Sue

Sue Gabor
Media Ownership & Diversity Section

Australian Communications and Media Authority
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From: Jennifer McNeill
Sent: Thursday, 13 December 2012 12:21 PM
To: [REDACTED]
Cc: [REDACTED]@dbcde.gov.au; Jonquil Ritter; Sue Gabor
Subject: The ACMA's recent inquiries about Lachlan Murdoch's and Rupert Murdoch's media assets [DLM=For-Official-Use-Only]

For information only

Dear [REDACTED]

I understand that Mr Chapman has already sent through a copy of the (attached) letter that the ACMA sent to Avaaz yesterday.

It advises Avaaz of the ACMA's position following inquiries into whether Lachlan Murdoch and Rupert Murdoch control each other's media assets.

As part of the ACMA's ongoing monitoring role, we were already making inquiries into the relationships between Lachlan Murdoch, Rupert Murdoch and their respective media assets when Avaaz wrote to us in May. Avaaz raised concerns about possible control of News Limited newspapers by Lachlan Murdoch, which was a matter we were already considering before we heard from Avaaz.

We made extensive inquiries in relation to this matter, which included obtaining information from Lachlan Murdoch, Rupert Murdoch, and the trustee company of the Murdoch family trust.

Upon close examination of the relationships between Lachlan Murdoch, Rupert Murdoch and their respective media assets, we found no evidence of:

- Lachlan Murdoch and Rupert Murdoch acting together in any dealings with the News Limited newspapers
- Lachlan Murdoch being able to influence Rupert Murdoch with respect to the News Limited newspapers.

As a result, the ACMA currently considers that Lachlan Murdoch and Rupert Murdoch are not 'associates' for media control purposes, Lachlan Murdoch is not a controller of the News Limited newspapers, and there is no breach of the media control rules in respect of his media assets.

The ACMA also concluded that:

- Lachlan Murdoch's position as director of News Corporation does not put him in a position to control Rupert Murdoch's newspapers
- Lachlan Murdoch had no involvement in News Ltd or News Corp affairs as suggested by news reports raised by Avaaz
- the Murdoch family trust does not put Lachlan Murdoch in a position to control Rupert Murdoch's newspapers.

We anticipate that Avaaz will publish the ACMA's (attached) letter dated 12 September 2012 on their website.

Please let me know if you have any queries or would like to discuss.

Kind regards

Jennifer McNeill
General Manager
Content, Consumer & Citizen

Australian Communications and Media Authority

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12 December 2012

Michelle Shackleton
Global Campaigner
Avaaz Foundation

By email: 

Dear Ms Shackleton

Mr Lachlan Murdoch and News Limited

I refer to previous communications, and in particular, your letter dated 16 May 2012 to the Australian Communications and Media Authority (**the ACMA**) concerning the possible control of the News Limited associated newspapers by Mr Lachlan Murdoch.

The ACMA's responsibilities under the *Broadcasting Services Act 1992 (the Act)* include monitoring the ownership and control of certain media assets in Australia to ensure the media ownership limits are being complied with. To discharge its responsibilities, the ACMA undertakes such inquiries or investigations as it considers necessary.

Both prior and subsequent to your letter, the ACMA made inquiries pertaining to the relationships between Mr Lachlan Murdoch, Mr Rupert Murdoch and their respective media assets.

I write to inform you that, following those inquiries, the ACMA remains satisfied that:

- > Mr Lachlan Murdoch is not in a position to exercise control of the News Limited associated newspapers; and
- > Mr Lachlan Murdoch and Mr Rupert Murdoch are not associates within the meaning of the Act.

Further, the ACMA is also satisfied that Mr Rupert Murdoch is not in a position to exercise control of the TEN Network commercial television broadcasting licences and the DMG Radio Group commercial radio broadcasting licences controlled by Mr Lachlan Murdoch.

The '3-way control' rule

Section 61AEA of the Act provides that an unacceptable 3-way control situation exists in relation to a particular commercial radio broadcasting licence area if a person is in a position to exercise control of each of the following media operations in that licence area:

- > a commercial television broadcasting licence
- > a commercial radio broadcasting licence
- > an associated newspaper.

In the radio licence areas of Adelaide RA1, Brisbane RA1, Melbourne A1 and Sydney RA1, Mr Lachlan Murdoch is in a position to exercise control of two commercial radio broadcasting licences, and one commercial television broadcasting licence.

We understand that your concern is that an unacceptable 3-way control situation would exist if Mr Lachlan Murdoch was in a position to control any News Limited controlled newspaper in any of these licence areas.

Lachlan Murdoch and Rupert Murdoch as 'associates'

The ACMA has carefully considered whether Mr Lachlan Murdoch and Mr Rupert Murdoch are associates in terms of the Act to determine whether Mr Lachlan Murdoch is in breach of the 3-way control rule.

The term 'associate' is defined in section 6 of the Act to include a parent or child of the person in question. Because Mr Rupert Murdoch is Mr Lachlan Murdoch's father, they are associates under the Act unless the ACMA is satisfied that:

1. they do not act together in any relevant dealings relating to that company or newspaper; and
2. neither of them is in a position to exert influence over the business dealings of the other in relation to the relevant company or newspaper.

At this time, the ACMA remains satisfied of the two matters above.

The ACMA has looked closely at whether Mr Lachlan Murdoch and Mr Rupert Murdoch act together in any relevant dealing in relation to the News Limited associated newspapers but has found no evidence that they do.

The ACMA has also considered whether Mr Lachlan Murdoch is in a position to exert influence over the business dealings of Mr Rupert Murdoch in relation to those associated newspapers. Again, it has found no evidence that he is.

Lachlan Murdoch as otherwise in a position to exercise control of News Limited

As a result of its inquiries, the ACMA is also satisfied that Mr Lachlan Murdoch is not otherwise in a position to exercise control of News Limited. In particular, Mr Lachlan Murdoch is not involved in the affairs of News Limited and does not have company interests in News Corporation (News Corp) of more than 15 per cent.

Involvement in the affairs of News Ltd

News Corp has 16 directors of which Mr Lachlan Murdoch is a non-executive director. Mr Lachlan Murdoch, as a director, has one vote only and cannot unilaterally decide issues to be determined by the board. The ACMA's view is that being a director alone does not put a person in a position to exercise control of a company.

The ACMA is satisfied that there is no other evidence to suggest Mr Lachlan Murdoch is involved in the affairs of News Limited's associated newspapers.

In reaching this conclusion, the ACMA has taken into account the relevant provisions of Schedule 1 to the Act and specifically clause 3 of Schedule 1, which is relevant to the question of whether a person is in a position to exercise control of a newspaper.

Company interests in News Corp

The ACMA is satisfied that the level of Mr Lachlan Murdoch's company interests in News Corp is less than one per cent and therefore Mr Lachlan Murdoch is not in a position to exercise control of that company through the deeming provision in clause 6 of Schedule 1 to

the Act.¹ The ACMA is satisfied that the Murdoch Family Trust does not confer a company interest on Lachlan Murdoch.

As the Act recognises, a person may be in a position to exercise control of a company even when they hold less than 15% company interests in a company. Clause 3 of Schedule 1 is intended to provide the means of finding out who is in a position to exercise control of a newspaper. On assessment of each of the provisions of clause 3 of Schedule 1, the ACMA is satisfied that Mr Lachlan Murdoch is not in a position to control News Limited's associated newspapers.

Future developments

The ACMA will continue to monitor developments and issues to ensure that the Act is being complied with and will continue to undertake such inquiries and investigations as it deems appropriate where it suspects breaches of the control rules may have occurred.

In the meantime, I thank you again for your letter and for bringing your concerns to our attention.

Yours sincerely



Jennifer McNeill
General Manager
Content, Consumer and Citizen Division

¹ Clause 6 of Schedule 1 to the Act provides that 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.