

STATEMENT OF FINDINGS

Breaches of section 56 of the *Broadcasting Services Act 1992* by Lachlan Keith Murdoch

Background

The statutory control rules under the *Broadcasting Services Act 1992* (the Act) set limits on control and directorships of broadcasting licences. The statutory control rules are set out in Divisions 2 and 3 of Part 5 of the Act. Relevantly, section 56 limits the number of directorships a person may hold in relation to companies in a position to exercise control of commercial radio broadcasting licences in the same licence area.

Section 56 of the Act provides:

A person must not be:

- (a) a director of a company that is, or of 2 or more companies that are, between them, in a position to exercise control of more than 2 commercial radio broadcasting licences in the same licence area; or
- (b) a director of a company that is, or of 2 or more companies that are, between them, in a position to exercise control of 2 commercial radio broadcasting licences in a licence area and in a position to exercise control of another commercial radio broadcasting licence in the same licence area; or
- (c) in a position to exercise control of 2 commercial radio broadcasting licences in a licence area and a director of a company that is in a position to exercise control of another commercial radio broadcasting licence in the same licence area.

Section 51 provides a means for dealing with overlapping licence areas for the purposes of the statutory control rules. It provides:

If:

- (a) more than 30% of the licence area population of a licence area is attributable to an overlap area; or
- (b) a licence area is entirely within another licence area;

the rules in this Part apply to the 2 licence areas, but not between those licence areas and other licence areas, as if the 2 licence areas were one.

Under **section 6** of the Act a 'licence area population', in relation to a licence area, means the population of the licence area as determined under section 30. Section 30 of the Act provides:

- (1) The ACMA may, by notice in writing, determine the licence area population of a licence area.
- (2) The ACMA may, by notice in writing, determine a number that is to be the population of Australia for the purposes of this Act.

- (3) In making a determination, the ACMA is to have regard to the most recently published census count prepared by the Australian Statistician.
- (4) The ACMA is to make a new determination of the licence area population of a licence area if the licence area is changed.
- (5) The ACMA is to specify, in a determination of the licence area population of a licence area:
 - (a) the percentage of the population of Australia constituted by that licence area population; and
 - (b) the percentage of that licence area population that is attributable to an overlap area.

Facts

Control of Brisbane licences

In this Statement of Findings the following companies are referred to as the 'relevant companies':

Illyria Radio Investments Limited
 Illyria Investments Pty Limited
 Illyria Nominees Pty Limited
 Antium Pty Limited
 DMG Radio Investments Limited

Between 24 November 2009¹ and 13 February 2010², Mr Lachlan Keith Murdoch and a number of companies controlled by Mr Murdoch (including four of the relevant companies) came into a position to exercise control of DMG Radio Investments Limited, its subsidiary companies and the commercial radio broadcasting licences held by those subsidiaries including the following two commercial radio broadcasting licences in the Brisbane RA1 licence area (the Brisbane licences):

Licence Area	Service licence number	On-Air ID/Call Sign	Licensee company	Relevantly Controlled by	Relevant directorship
Brisbane RA1	1150703	Nova 106.9/4BNE	DMG (UK Radio 2) Pty Ltd	Lachlan Murdoch & relevant companies i.e. Illyria Radio Investments Limited Illyria Investments Pty Limited Illyria Nominees Pty Limited Antium Pty Limited DMG Radio Investments Limited	Lachlan Murdoch - director of relevant companies
Brisbane RA1	1150705	97.3/4BFM	Brisbane FM Radio Pty Ltd	Lachlan Murdoch & relevant companies	Lachlan Murdoch - director of relevant companies

¹ Illyria Radio Investments Limited, Illyria Investments Pty Limited and Lachlan Murdoch notified the ACMA under s64 of the Act that they came into a position to exercise control of the a number of commercial radio broadcasting licences including the Brisbane licences on 25 November 2009.

² Illyria Nominees Pty Limited and Antium Pty Limited notified the ACMA under s64 of the Act that they came into a position to exercise control of a number of commercial radio broadcasting licences including the Brisbane licences on 12 February 2010.

Directorship of companies controlling Brisbane licences

Mr Murdoch is a director of the relevant companies³ which are in a position to exercise control of the Brisbane licences. He remained as a director of these companies for the period from 7 October 2010 to 9 November 2010, as indicated in the following table:

Company Board	Date Appointed	Appointment continuous between 7.10.10 and 9.11.10 Y/N
Illyria Nominees Pty Limited [ACN:126 789 991]	30/07/2007	Y
Illyria Investments Pty Limited [ACN: 126 790 136]	30/07/2007	Y
Antium Pty Limited [ACN: 126 790 225]	30/07/2007	Y
Illyria Radio Investments Limited [UK company number: 07083906]	16/12/2009	Y
DMG Radio Investments Limited [UK company number: 03673200]	16/01/2010	Y

Directorship of company controlling Nambour licence

On 7 October 2010, Prime Media Group Limited⁴ (Prime) announced that Mr Murdoch had been appointed to its board⁵. Since 20 August 2007, Prime has been in a position to exercise control the following licence in the Nambour RA1 licence area⁶:

Licence Area	Service licence number	On-Air ID/Call Sign	Licensee company	Relevantly Controlled by	Relevant directorship
Nambour RA1	1150116	Hot 91/4MCY	Hot 91 Pty Ltd	Prime	Lachlan Murdoch – director of Prime

Mr Murdoch resigned from the board of Prime on 9 November 2010⁷.

Nambour/Brisbane radio licence area overlap

On 16 June 2009, the ACMA determined under section 30 of the Act that 32.78% of the population of the Nambour RA1 licence area is attributable to an area that overlaps with the Brisbane RA1 licence area (attachment A).

3 Australian Securities and Investments Commission (ASIC) records indicate that Mr Murdoch is a director of Illyria Investments Pty Limited, Illyria Nominees Pty Limited and Antium Pty Limited. Companies House records indicate that Mr Murdoch is a director of Illyria Radio Investments Limited and DMG Radio Investments Limited.

4 ACN: 000764867.

5 ASIC records indicate that Mr Murdoch became a director of Prime on 7 October 2010.

6 Prime notified the ACMA under s64 of the Act that it came into a position to exercise control of the relevant licence on 20 August 2007.

7 ASIC records indicate that Mr Murdoch ceased as a director of Prime on 9 November 2010.

Findings

The Authority finds that Mr Murdoch was in breach of subsections 56(a), 56(b) and 56(c) of the Act, for the period 7 October 2010 to 9 November 2010 inclusive in respect of the Brisbane RA1/Nambour RA1 combined licence area as set out below:

Section 56(a)	
Licence Area:	Brisbane RA1/Nambour RA1
Companies of which Mr Murdoch was a director:	Illyria Nominees Pty Limited Illyria Investments Pty Limited Antium Pty Limited Illyria Radio Investments Limited DMG Radio Investments Limited Prime Media Group Limited
Commercial radio licences controlled by companies of which Mr Murdoch was a director:	SL 1150116 SL 1150703 SL 1150705
Period of Breach:	7 October 2010 to 9 November 2010

Section 56(b)	
Licence Area:	Brisbane RA1/Nambour RA1
Companies of which Mr Murdoch was a director that control a licence:	Licence 1 (SL 1150705): Illyria Nominees Pty Limited; Illyria Investments Pty Limited; Antium Pty Limited; Illyria Radio Investments Limited; DMG Radio Investments Limited Licence 2 (SL 1150116): Prime Media Group Limited
Commercial radio licence controlled by Mr Murdoch:	SL 1150703
Period of Breach:	7 October 2010 to 9 November 2010

Section 56(c)	
Licence Area:	Brisbane RA1/Nambour RA1
Company of which Mr Murdoch was a director which controls a licence:	Prime Media Group Limited (controls SL 1150116)
Commercial radio licences controlled by Mr Murdoch:	SL 1150703 SL 1150705
Period of Breach:	7 October 2010 to 9 November 2010

Reasons

- The application of section 51 of the Act to the facts of this case, in respect of Brisbane RA1/Nambour RA1, is as follows: as 32.78% of the population of the Nambour RA1 licence area is attributable to an area that overlaps with the Brisbane RA1 licence area (as determined under section 30 of the Act), the Brisbane RA1 and Nambour RA1 licence areas are combined and treated as one licence area under section 51 for the purposes of the statutory control rules, including section 56.
- The application of subsection 56(a) of the Act to the facts of this case, in respect of Brisbane RA1/Nambour RA1, is as follows: a person (Mr Murdoch) must not be a director of 2 or more companies that are, between them, in a position to exercise control of more than 2 commercial radio broadcasting licences in the same licence area.
- Mr Murdoch was a director of companies (the relevant companies and Prime) that are, between them, in a position to exercise control of more than 2 commercial radio broadcasting licences (with service licence numbers 1150703, 1150705 and 1150116) in the same licence area (Brisbane RA1/Nambour RA1 combined licence area) for the period 7 October 2010 to 9 November 2010 inclusive.
- The application of subsection 56(b) of the Act to the facts of this case, in respect of Brisbane RA1/Nambour RA1, is as follows: a person (Mr Murdoch) must not be a director of 2 or more companies that are, between them, in a position to exercise control of 2 commercial radio broadcasting licences in a licence area and in a position to exercise control of another commercial radio broadcasting licence in the same licence area.
- Mr Murdoch was a director of companies (the relevant companies and Prime) that are, between them, in a position to exercise control of 2 commercial radio broadcasting licences [with service licence number 1150703 (controlled by each relevant company) and service licence number 1150116 (controlled by Prime)] in a licence area (Brisbane RA1/Nambour RA1 combined licence area) and in a position to exercise control of another commercial radio broadcasting licence (with service licence number 1150705) in the same licence area (Brisbane RA1/Nambour RA1 combined licence area) for the period 7 October 2010 to 9 November 2010 inclusive.

- The application of subsection 56(c) of the Act to the facts of this case, in respect of Brisbane RA1/Nambour RA1, is as follows: a person (Mr Murdoch) must not be in a position to exercise control of 2 commercial radio broadcasting licences in a licence area and a director of a company that is in a position to exercise control of another commercial radio broadcasting licence in the same licence area.
- Mr Murdoch was in a position to exercise control of 2 commercial radio broadcasting licences (with service licence numbers 1150703 and 1150705) in a licence area (Brisbane RA1/Nambour RA1 combined licence area) and a director of a company (Prime) that is in a position to exercise control of another commercial radio broadcasting licence (with service licence number 150116) in the same licence area (Brisbane RA1/Nambour RA1 combined licence area) for the period 7 October 2010 to 9 November 2010 inclusive.

Attachment A

Section 30 schedule

determined 16 June 2009

NAMBOUR RA1

Area-ID: 458

Services: 4MCY, 4SEE, 4SSS
Population: 401 909
(2.03% of Australian population)
Area: 3 780 km²

Overlapping Licence Area	Population in overlap	% of LA pop. in overlap	% of Aust pop. in overlap
AUSTRALIA WIDE S40 1130032, 1130033, 1150442, 1150507, 1170227, 1170508	401 909	100.00	2.03
BRISBANE RA1 4BBB, 4BC, 4BFM, 4BH, 4BNE, 4KQ, 4MMM, 4TAB	131 723	32.78	0.67
BRISBANE TV1 BTQ, QTQ, TVQ	219 326	54.58	1.11
GYMPIE RA1 4GY	64 680	16.10	0.33
QLD & NT S40 1170430	401 909	100.00	2.03
QUEENSLAND S40 4DB	401 909	100.00	2.03
REGIONAL QUEENSLAND TV1 RTQ, STQ, TNQ	254 007	63.21	1.29
REMOTE CENTRAL & EASTERN AUSTRALIA TV1 IMP	1 184	0.30	0.01
REMOTE CENTRAL & EASTERN AUSTRALIA TV2 QQQ	1 184	0.30	0.01

The population of Australia at the 2006 Census for the purposes of this schedule is 19 813 080 persons.