

STATEMENT OF FINDINGS

Breach of section 56 of the *Broadcasting Services Act 1992* by Siobhan Louise McKenna

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

Directorship of company controlling Nambour licence

Ms McKenna was appointed to the board of Prime Media Group Limited¹ (Prime) on 20 August 2009². Since 20 August 2007, Prime has been in a position to exercise control of the following licence in the Nambour RA1 licence area³:

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	Siobhan McKenna

Directorship of companies controlling Brisbane licences

On 16 December 2009 Ms McKenna was appointed as a director of Illyria Radio Investments Limited⁴ and on 16 January 2010 she was appointed as a director of DMG Radio Investments Limited⁵, companies which are in a position to exercise control of the following two commercial radio broadcasting licences in the Brisbane RA1 licence area (the Brisbane licences)⁶:

¹ ACN: 000764867.

² Records of the Australian Securities and Investments Commission (ASIC) indicate that Ms McKenna was appointed to the board of Prime on 20 August 2009.

³ 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.

⁴ Records of the United Kingdom's Companies House indicate that Ms McKenna was appointed to the board of Illyria Radio Investments Limited on 16 December 2009.

⁵ Records of the United Kingdom's Companies House indicate that Ms McKenna was appointed to the board of DMG Radio Investments Limited on 16 January 2010.

⁶ DMG Radio Investments Limited notified the ACMA under section 64 of the Act that it came into a position to exercise control of licence numbers 1150703 and 1150705 on 16 December 2009. Illyria Radio Investments Limited notified the ACMA under section 64 of the Act that it came into a position to exercise control of licence numbers 1150703 and 1150705 on 16 December 2009.

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	DMG Radio Investments Limited Illyria Radio Investments Limited	Siobhan McKenna
	1150705	97.3/4BFM	Brisbane FM Radio Pty Ltd	DMG Radio Investments Limited Illyria Radio Investments Limited	Siobhan McKenna

Ms McKenna remained as a director of these companies until her resignation from them on 10 November 2010, as indicated in the following table:

Company Board	Period of appointment
Illyria Radio Investments Limited [UK company number: 07083906]	From 16.12.2009 to 10.11.2010
DMG Radio Investments Limited [UK company number: 03673200]	From 16.01.2010 to 10.11.2010

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).

Findings

The Authority finds that Ms McKenna was in breach of subsection 56(a) of the Act for the period from 16 December 2009 to 10 November 2010 inclusive in respect of the Brisbane RA1/Nambour RA licence area as set out below:

Matter	
Licence Area:	Brisbane RA1/Nambour RA1
Companies of which Ms McKenna was a director:	DMG Radio Investments Limited Illyria Radio Investments Limited Prime Media Group Limited
Commercial radio licences controlled by companies of which Ms McKenna was a director:	SL 1150116 SL 1150703 SL 1150705
Provision of the Act that was breached:	Section 56(a)
Period of Breach:	16 December 2009 to 10 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.
- 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 (Ms McKenna) 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.
- Ms McKenna was a director of 2 companies (Prime Media Group Limited and Illyria Radio Investments Limited) 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 from 16 December 2009 to 10 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.