

Section 67 of the *Broadcasting Services Act 1992* allows for the application for prior approval of temporary breaches of the ownership and control rules, to allow restructuring in the industry. Over the past year, the ABA has granted a number of these prior approvals. It has also also granted extensions of time for the temporary breaches under section 68 of the Act.

## Extensions of time for approval for temporary breaches

The *Broadcasting Services Act 1992* allows the ABA to give approval for temporary breaches of the ownership and control rules to allow restructuring in the industry. Temporary approvals can be given for periods of six months, one year or two years. The Act also allows a person who has been given temporary approval to apply for an extension of the approval time period of up to the time period previously granted.

In considering whether or not to grant an extension of time for approval of temporary breaches, the ABA must take account of the applicant's endeavours in trying to remedy the breach and any difficulties they may have encountered. The ABA must not take account of any financial disadvantage which may be incurred by the applicant.

During the past year the ABA has been allocating commercial radio FM licences by auction in a number of regional markets. A number of existing licencees in those markets have sought prior approval for breaches of the Act to enable them to participate in the auction.

The ABA granted some approvals, as permitted by the Act. Extensions for the approval period were sought in three cases: Shepparton, Mackay and Perth. In one case, the breaches had not been remedied within the period allowed, including the extension period. The ABA issued a notice to rectify the breach, as provided by the Act.

### **Goulburn Valley and Border Venture Pty Ltd**

#### **Shepparton**

On 29 January 1999, under section 68 of the Act, the ABA granted Goulburn Valley and Border Venture Pty Limited, its associated corporate entities and its directors (Goulburn Valley), an extension of three months to the six month period it had previously granted under section 67. The approval under section 67 related to breaches of sections 54 and 56 of the Act (the two-to-a-market rule) in the Shepparton licence area.

The breaches arose when Goulburn Valley became the successful bidder at the auction of the new commercial FM radio broadcasting licence allocated in Shepparton. Goulburn Valley already held the licences of the two existing commercial radio services in the market (3SR and 3SUN).

### **DMG Regional Radio Pty Ltd**

#### **Mackay**

On 5 February 1999, under section 68 of the Act, the ABA granted DMG Regional Radio Pty Limited, its associated corporate entities and its directors (DMG), an extension of four months to the six months approval period previously granted under section 67. The approval was for breaches of sections 54 and 56 of the Act (the two-to-market rule).

The breaches arose as a result of DMG acquiring the new commercial radio FM licence auctioned in Mackay. DMG holds the two existing commercial radio broadcasting licences in the Mackay licence area (4MK and 4MKY).

### **Southern Cross Broadcasting Australia Limited**

#### **Perth**

On 20 February 1998, Southern Cross was granted prior approval under section 67 of the Act to breach sections 54 and 56 of the Act (the two-to-market rule) in the Perth licence area for a period of six months. This approval to breach was granted to allow Southern Cross to acquire the FM commercial radio licence 6NOW. Southern Cross were already in a position to exercise control of 6IX and 6PR in the Perth licence area. This approval period was extended for a period of two months under section 68 after Southern Cross experienced difficulties in attempting to rectify the breach.

Southern Cross sold the 6IX licence to Radio Perth Pty Ltd on 30 November 1998. The ABA formed the view that Southern Cross was still deemed to be in control of 6IX, and issued a notice to Southern Cross, under section 70. The notice directed Southern Cross to take action within one month so that it was no longer in breach.

The ABA will be investigating Southern Cross to ensure that it complies with the section 70 notice. 