



The ABA has finalised the imposition of two conditions on the licence of commercial radio service 2UE Sydney. Both licence conditions commence operation on 3 April 2000 for three years.

2UE licence conditions imposed

First licence condition—disclosure and compliance

The ABA has imposed two conditions on the licence of commercial radio service 2UE Sydney.

The ABA sought comments from interested parties on draft conditions it gazetted in February. The conditions it has imposed on 2UE's licence take into account submissions received.

'The licence conditions improve on the draft conditions by providing greater certainty of meaning and by avoiding unintended consequences,' said Mr Gareth Grainger, ABA Deputy Chairman. 'They make it easier for the licensee to know where the boundaries lie for disclosure of relevant information. This will ensure greater certainty in procuring compliance with the regulatory regime. Most important of all, the public interest in being informed about those who seek to influence public opinion will be met through the implementation of these conditions.'

Both licence conditions commence operation on 3 April 2000 for a period of three years.

On-air disclosures

The first licence condition requires 2UE to broadcast both general and specific announcements that disclose the existence of certain commercial agreements between presenters and their sponsors.

Commercial agreements

There are two types of agreements that require disclosure: 1 those for which one of purposes of the agreement is that a presenter promote a third party and/or its products or services or interests or provides consultancy services in respect of publicity, promotion or public relations in exchange for any benefit or valuable consideration.

2 those which impose obligations on a presenter to provide services for which the presenter receives, from a person other than 2UE, any benefit or consideration of \$25 000 or more per annum.

General disclosure announcements

A general disclosure announcement is a statement broadcast by 2UE that lists every current commercial agreement concerning a Presenter. Such an announcement must be broadcast once in every program presented by a presenter.

A general disclosure announcement must be broad-

cast at different times in the program, each announcement to occur approximately one hour from the time the announcement is made in the previous program.

Specific disclosure announcements

A specific disclosure announcement is a statement broadcast by a presenter that a relevant commercial agreement exists.

Such an announcement must be broadcast:

- when the name, products or services of a sponsor are mentioned;
- when an agent, employee or officer of a sponsor is interviewed; or
- when any broadcast is requested by a sponsor or is based on or similar to any material which is provided by a sponsor.

However, a specific disclosure announcement need not be broadcast if:

- the material broadcast is a verbatim broadcast of an item or bulletin prepared by the newsroom staff of 2UE; or
- the material broadcast is a pre-recorded or 'live read' advertisement booked through 2UE provided that the advertisement is not presented in a manner whereby a reasonable listener would

be entitled to assume that the advertisement is the reporting of news or the expression of opinion or editorial comment by the presenter or 2UE; or

- the relevant commercial agreement is solely an agreement for the presenter to provide writing services for a magazine or newspaper, to perform or appear in a film, television program or theatrical production, or to provide voice-over services for an advertisement.

Register of current commercial agreements

2UE must keep a Register of Current Commercial Agreements recording the following particulars of each commercial agreement:

- the date of the commercial agreement;
- the parties to the commercial agreement;
- the duration of the commercial agreement;
- a brief description of the obligations of the presenter under the commercial agreement;
- the identity of each person providing a benefit or consideration under the commercial agreement; and
- the amount or value of the benefit or consideration to



be provided under the agreement (in monetary bands only).

There are four monetary bands:

- \$10 000 or less per annum;
- more than \$10 000 but not more than \$100 000 per annum;
- more than \$100 000 but not more than \$500 000 per annum; or
- \$500 000 or more per annum.

Agreements where the benefit or consideration to be provided under the agreement is greater than \$100 000 per annum must be referred to in any specific disclosure announcement as a major commercial agreement.

2UE must keep the register at the station premises and must make it available for inspection free of charge upon request by any member of the public during business hours and must publish it on the 2UE web site.

Notifications to the ABA

2UE must provide to the ABA the particulars of each commercial agreement within 14 days after 2UE is notified of those particulars by a presenter.

Presenters

2UE must require that each presenter provide to 2UE within seven days of any commercial agreement being entered into a copy of each commercial agreement to which the presenter is a party; or if the commercial agreement is not in writing, the particulars of each commercial agreement required for the register.

2UE must also require that each presenter comply with the obligations imposed on 2UE by the Broadcasting Services Act, the Commercial Ra-

dio Codes of Practice and this licence condition.

2UE must not engage, or continue to engage, the services of any presenter unless it is a condition of that engagement that the presenter agrees to provide copies of relevant agreements and particulars to 2UE.

Compliance program

At least twice in the first year of the licence condition and at least once every year thereafter all staff of 2UE involved in the production or presentation of material broadcast by 2UE (including all presenters) must undertake a training program concerning the obligations imposed on 2UE by the Broadcasting Services Act, the Commercial radio codes of Practice and this condition.

At the conclusion of each training program, 2UE must provide to the ABA a written report describing the training and listing the names of the people who undertook the training program.

Part-time presenters

A part-time presenter is a person who presents a program or programs for no more than a total of three hours per week when averaged over a period of four weeks. There is a limited disclosure regime for these presenters.

A general disclosure announcement is not required to be made on programs presented by part-time presenters although they are still subject to the specific disclosure regime.

Part-time presenters are only required to provide to 2UE the names of the parties to the commercial agreement and a brief description of the obligations of the presenter under the commercial agreement.

First condition — disclosure and compliance

27 March 2000

1. Definitions

In this condition:

ABA means the Australian Broadcasting Authority.

Act means the *Broadcasting Services Act 1992*.

Associate of a Presenter means any person (including, without limitation, a corporation or a trustee of a trust) which has, or purports to have, the right to provide the services of the Presenter to any person.

Associate of a Part-Time Presenter means any person (including, without limitation, a corporation or a trustee of a trust) which has, or purports to have, the right to provide the services of the Part-Time Presenter to any person.

Code means a code of practice for commercial radio broadcasting licensees.

Commercial Agreement means an agreement, arrangement or understanding, whether committed to writing or not:

- (a) one of the purposes is that a Presenter or Part-Time Presenter:
 - (i) promote a third party and/or its products or services or interests or;
 - (ii) provide consultancy services in respect of publicity, promotion or public relations;

in exchange for any benefit or valuable consideration; or

- (b) which imposes obligations on a Presenter or Part-Time Presenter to provide services and pursuant to which the Presenter or Part-Time Presenter or an Associate of a Presenter or Part-Time Presenter receives, from a person other than the Licensee, any benefit or consideration of \$25 000 or more per annum; and
- (c) which is not an agreement, arrangement or understanding between only the Presenter or Part-Time Presenter and an Associate of the Presenter or Part-Time Presenter.

General Disclosure Announcement means an announcement referred to in Clause 3.2.

Licensee means Radio 2UE Sydney Pty Ltd or any transferee of the commercial radio broadcasting licence held by Radio 2UE Sydney Pty Ltd.

Major Commercial Agreement means any Commercial Agreement where the value of the benefit or consideration to be received by the Presenter or Part-Time Presenter or an Associate of a Presenter or Part-Time Presenter pursuant to the agreement is greater than \$100 000 per annum.

Part-Time Presenter means a Presenter who presents a program or programs for no more than a total of three (3) hours per week when averaged over any continuous period of four (4) weeks.

Presenter means the on-air presenter or compere¹ of a program broadcast by the Licensee but does not include a Part-Time Presenter.

Register means the Register of Commercial Agreements referred to in Clause 4.1.

Specific Disclosure Announcement means an announcement referred to in Clause 3.1.

Sponsor means:

- (a) a party to a Commercial Agreement (other than a Presenter or Part-Time Presenter or an Associate of a Presenter or Part-Time Presenter); and
- (b) the party or parties who are to directly benefit from the promotional or other services provided by a Presenter or Part-Time



Presenter pursuant to a Commercial Agreement.

2. Commencement

This condition commences on 3 April 2000.

3. On-Air Disclosures

3.1 A Specific Disclosure Announcement is a statement broadcast by a Presenter or a Part-time Presenter that a relevant Commercial Agreement exists and must include at least one of the following phrases:

- (a) [name of Sponsor] is a sponsor of mine; or
 - (b) I have a commercial agreement with [name of Sponsor];
- or if the relevant Commercial Agreement is a Major Commercial Agreement, must include at least one of the following phrases:

- (c) [name of Sponsor] is a major sponsor of mine; or
- (d) I have a major commercial agreement with [name of Sponsor];

3.2 A General Disclosure Announcement is a statement broadcast by a Presenter or other person that lists every current Commercial Agreement concerning a Presenter and must include at least one of the following phrases:

- (a) The following persons are sponsors of mine [names of Sponsors]; or
- (b) I have a commercial agreement with the following persons [names of Sponsors]; or
- (c) [name of Presenter] has commercial agreements with the following persons [names of Sponsors].

3.3

- (a) The Licensee must broadcast a General Disclosure Announcement on each occasion that a program presented by a Presenter is broadcast.
- (b) Each General Disclosure Announcement must be broadcast, in any one week, at different times in the program with each announcement to occur approximately one hour from the time the announcement is broadcast in the previous program.

3.4 Subject to Clause 3.5, the Licensee must broadcast a Specific Disclosure Announcement at the time of and as part of:

- (a) a broadcast by a Presenter or a Part-Time Presenter of any material in which the name, products or services of a Sponsor are mentioned by the Presenter or Part-Time Presenter;
- (b) a broadcast of any material by a Presenter or a Part-Time Presenter in which an agent, employee or officer of a Sponsor is interviewed in relation to any matter that concerns the Sponsor, its products, services or interests; or
- (c) any broadcast requested by a Sponsor or which is based on or similar to any material which is provided by a Sponsor.

3.5 A Specific Disclosure Announcement need not be broadcast :

- (a) if the material broadcast is a verbatim broadcast of a news item or bulletin prepared by the newsroom staff of the Licensee; or
- (b) if the material broadcast is an advertisement broadcast pursuant to an agreement between the Licensee and the advertiser provided that the advertisement is not presented in a manner whereby a reasonable listener would be entitled to assume that the advertisement is:
 - (i) the reporting of news; or
 - (ii) the expression of opinion or editorial comment by the Presenter or Part-Time Presenter or the Licensee; or
- (c) if the relevant Commercial Agreement is solely an agreement for the Presenter or Part-Time Presenter to provide writing services for a

magazine or newspaper, to perform or appear in a film, television program or theatrical production, or to provide voice-over services for an advertisement.

4. Register of Current Commercial Agreements

4.1 The Licensee must keep a Register of current Commercial Agreements concerning Presenters and Part-Time Presenters which records the following particulars of each Commercial Agreement concerning Presenters:

- (a) the date of the Commercial Agreement;
- (b) the parties to the Commercial Agreement;
- (c) the duration of the Commercial Agreement;
- (d) a brief description of the obligations of the Presenter under the Commercial Agreement;
- (e) the identity of each person providing a benefit or consideration under the Commercial Agreement; and
- (f) subject to Clause 4.2, the amount or value of the benefit or consideration to be provided under the Agreement and which records the following particulars in relation to Commercial Agreements concerning Part-Time Presenters:
 - (g) the parties to the Commercial Agreement;
 - (h) a brief description of the obligations of the Part-Time Presenter under the Commercial Agreement.

4.2 The Register need only record the amount or value of the benefit or consideration to be provided under a Commercial Agreement as:

- (a) \$10,000 or less per annum;
- (b) more than \$10,000 but not more than \$100,000 per annum;
- (c) more than \$100,000 but not more than \$500,000 per annum; or
- (d) \$500,000 or more per annum.

4.3 The Licensee must keep the Register at the station premises and must make it available for inspection free of charge upon request by any member of the public during business hours.

4.4 The Licensee must publish the Register on any website operated by or on behalf of the Licensee and must link the Register directly to the home page of that website.

5. Notifications to the ABA

5.1 The Licensee must provide to the ABA in writing the particulars set out in clauses 4.1 or 4.2, as appropriate, in relation to each Commercial Agreement provided to the Licensee by each Presenter or Part-Time Presenter within fourteen (14) days after the Licensee is notified of those particulars by the Presenter or Part-Time Presenter.

6. Presenters

6.1 The Licensee must require that each Presenter:

- (a) provide to the Licensee within 7 days of any Commercial Agreement being entered into:
 - (i) a copy of each Commercial Agreement to which the Presenter or an Associate of a Presenter is a party; or
 - (ii) if the Commercial Agreement is not in writing, the particulars set out in clause 4.1 of each Commercial Agreement.
- (b) complies with the obligations imposed on the Licensee by the Act, each Code² and this condition.

6.2 The Licensee must require that each Part-Time Presenter:

- (a) provide to the Licensee within 7 days of any Commercial Agreement being entered into:
 - (i) the names of the parties to any such Commercial Agreement; and
 - (ii) a brief description of the obligations of the Part-Time Presenter



pursuant to the Commercial Agreement.

(b) complies with the obligations imposed on the Licensee by the Act, each Code and this condition.

6.3 The Licensee must not engage, or continue to engage, the services of any Presenter or Part-Time Presenter unless it is a condition of that engagement that the Presenter or Part-Time Presenter complies with Clause 6.1 or 6.2 as appropriate.

7. Compliance Program

7.1 The Licensee must ensure that at least twice in the first year of this condition and at least once every year thereafter all staff of the Licensee involved in the production or presentation of material broadcast by the Licensee and all Presenters and Part-Time Presenters undertake a training program concerning the obligations imposed on the Licensee by the Act, each Code and this condition.

7.2 The Licensee must ensure that each training program referred to in Clause 7.1 is conducted by a firm of lawyers with expertise in broadcasting law or compliance programs and that the firm, provides to the ABA at the conclusion of each training program, a written report setting out details of:

- (a) the training conducted; and
- (b) the staff of the Licensee and the Presenters or Part-Time Presenters who undertook the training program.

8. Calculation of Consideration

For the purposes of determining the value of the benefit or consideration referred to in:

- (a) paragraph (b) of the definition of Commercial Agreement;
- (b) paragraphs (a) to (d) of Clause 4.2; and
- (c) the definition of Major Commercial Agreement;

the value of any benefit or consideration to be provided under all agreements, arrangements or understandings with the same Sponsor are to be aggregated.

9. Avoidance

Every contract, agreement, or arrangement made or entered into, orally or in writing, whether before or after the commencement of this condition, shall so far as it has, or purports to have, the purpose or effect of in any way, directly or indirectly-

- (a) defeating, evading, or avoiding any responsibility or duty imposed on any person by this condition; or
- (b) preventing the operation of this condition in any respect, be of no effect and be absolutely void for the purposes of this condition, but without prejudice to such validity as it may have in any other respect or for any other purpose.

10. Duration of Condition

This condition will cease to operate on 2 April 2003.

1 This does not include commentators or guests invited to appear on a program whether or not they appear on the program regularly.

2 This is not intended to make each Code a licence condition but to place a condition on the Licensee that it shall require, in the terms of engagement of any Presenter, that the Presenter is bound by the obligations imposed on the Licensee by the Act, each Code and this condition.

Second condition— paid advertisements distinguishable from other program matter

27 March 2000

The condition requires that advertisements broadcast by 2UE must be presented in such a manner that the reasonable listener is able to distinguish them from other program material.

It only concerns advertisements where consideration has been provided to 2UE or the presenter for the broadcast of that advertisement. Thus community service announcements put to air free of charge are not included.

If a product or service has been provided to 2UE or a presenter solely for review and the review occurs on air, this is not considered an advertisement for the purposes of this condition.

Second condition — paid advertisements distinguishable from other program matter

1. Definitions

In this condition:

Advertisement means

- (a) material broadcast a substantial purpose of which is to draw public attention to, or to promote, an organisation, product or service; and
- (b) consideration has been provided by or on behalf of that organisation or a supplier of that product or service to the Licensee, or to a Presenter or an Associate of a Presenter for the broadcast of that material.

Associate of a Presenter means any person including without limitation, a corporation or a trustee of a trust) which has, or purports to have, the right to provide the services of the Presenter to any person. Consideration means any valuable consideration but does not include consideration which consists of the provision, at no charge, of a product or service solely for review.

Licensee means Radio 2UE Sydney Pty Ltd or any transferee of the commercial radio broadcasting licence held by Radio 2UE Sydney Pty Ltd.

Presenter means the on-air presenter or compere of a program broadcast by the Licensee.

2. Commencement

This condition commences on 3 April 2000.

3. Distinguishing Advertisements

Advertisements broadcast by the Licensee must be presented in such a manner that the reasonable listener is able to distinguish them from other program material.

4. Duration of Condition

This condition will cease to operate on 2 April 2003.

