

Transaction would mean licences in Port Lincoln and Spencer Gulf North under Macquarie's control

ACMA recently sought public comment on an application from Macquarie Media Group for prior approval of a transaction. The result of the transaction would be that, for a period, Macquarie Media Group would control all commercial radio and television licences in the South Australian radio licence areas of Port Lincoln and Spencer Gulf North.

Macquarie Media Group proposes to acquire Star Broadcasting Network Pty Ltd, which owns the only two commercial radio licences in each of Port Lincoln (5CC and Magic FM 89.9) and Spencer Gulf North (5AU and Magic FM 105.9). Star Broadcasting Network is currently controlled by Fairfax Media Limited.

As a result of a recent transaction involving Southern Cross Broadcasting (Australia) Limited, Macquarie Media Group already controls the two commercial television licences in Port Lincoln and Spencer Gulf North. If its acquisition of Star Broadcasting Network were approved, Macquarie Media Group would be in control of all the commercial radio and commercial television licences in these two licence areas for a limited period.

An unacceptable media diversity situation already exists in both these areas.

Macquarie Media Group proposes to sell a radio licence in each licence area within one year. An independent manager, who would have a reporting responsibility to ACMA, would manage the licences in the period before they are sold.

There are currently two points in both the Port Lincoln RA1 and Spencer Gulf North RA1 licence areas. In each licence area, a registered media group comprising two Star Broadcasting Network radio licences is worth one point and two Southern Cross television licences are worth one point between them. The

proposed transaction would reduce the number of points in these licence areas to one.

The Port Lincoln RA1 licence area covers the local government areas of Port Lincoln and Tumby Bay; Cleve; Franklin Harbor; Lower Eyre Peninsula; Kimba; and Le Hunte.

The Spencer Gulf North RA1 covers the local government areas of Wakefield and Whyalla; Port Pirie City and Districts; Barunga West; Copper Coast; Northern Areas; Peterborough; Port Augusta; Roxby Downs; Clare and Gilbert Valleys; Flinders Ranges; Goyder; Mount Remarkable; Orroroo/Carrieton; and Yorke Peninsula.

ACMA sought submissions from residents, local businesses, advertisers, and participants in making radio or television programs in the Port Lincoln RA1 or Spencer Gulf North RA1 licence areas about the proposed transaction.

The Australian Competition and Consumer Commission (ACCC) is assessing whether Macquarie Media Group transactions (including the one which is the subject of the application to ACMA for approval) give rise to the possibility of a breach of section 50 of the *Trade Practices Act 1974*. The ACCC also invited comments on its statements of issues on these transactions.

In accordance with protocols agreed between the ACCC and ACMA, submissions received will be shared. Submissions closed on 28 September 2007.

UNACCEPTABLE MEDIA DIVERSITY

An 'unacceptable media diversity situation' will exist in a metropolitan licence area of a commercial radio broadcasting licence if the number of points in the radio licence area is less than five and in a regional licence area of a commercial radio broadcasting licence if the number of points is less than four.

A registrable media group (a group of two or more media operations) is worth one point in a licence area. In general, a media operation (a commercial television licence, a commercial radio licence or a newspaper that is associated with the licence area of a commercial television or commercial radio licence) that is not part of a media group is also worth one point.

Transactions that result in an unacceptable media diversity situation or reduce the number of points in a licence area in which an unacceptable media diversity situation already exist are prohibited.

PRIOR APPROVAL

A person may apply to ACMA for approval of a transaction before it takes place if it would result in an unacceptable media diversity situation or would reduce the number of points in a licence area in which an unacceptable media diversity situation already exists.

If certain preconditions are satisfied, ACMA has a discretion about whether to approve a transaction and the period during which action must be taken to restore the points in a licence area 'lost' because of the transaction, which cannot be more than two years.

ACMA can give a notice requiring that action be taken as a condition of approval and may accept an enforceable undertaking that describes not only the action to be taken, but also alternative action to be taken in the event that the proposed course of action is not implemented for any reason.

ACMA must be satisfied that the approval sought is consistent with the scheme and objects of the Broadcasting Services Act. There must be evidence and a sufficient basis for ACMA to decide to exercise its powers in favour of an application. In appropriate cases, ACMA may seek public comments on a proposed transaction before granting approval.

ACMA is responsible for enforcing the law in this area and ensuring that individuals and legal entities do not breach the prohibitions on unacceptable media diversity situations without ACMA's approval. If such a transaction proceeds without the approval of ACMA, a person involved in the transaction or able to prevent it may have committed an offence, or be subject to a civil penalty order.

More information is in a paper entitled *Media Ownership Reforms – Prior Approval Processes for Certain Media Mergers* on the ACMA website at www.acma.gov.au (go to For licensees & industry: Licensing & regulation > Media ownership & control > About media reform).