

# Macquarie Bank breached media control rules

**ACMA has found that Macquarie Bank Limited (MBL) and Macquarie Regional Radioworks Pty Ltd (MRRW) were in breach of the media control rules in the *Broadcasting Services Act 1992* during the period from 5 September 2005 to 8 May 2006. The breaches occurred as a result of financing arrangements between MRRW and Elmie Investments Pty Ltd (Elmie) about five regional radio licences in Queensland, Victoria and Western Australia.**

MBL and MRRW amended the finance documents on 8 May 2006 and the five licences were sold to various independent parties in January 2007. ACMA concluded that the breaches did not support a conclusion that criminal offences were committed by the companies or their directors. For a breach to be a criminal offence, there must be evidence that the person in breach knew, or ought reasonably to have known, that the transaction concerned would place them in breach.

ACMA will closely examine any future arrangements of this nature in the light of new provisions in the *Broadcasting Services Act* that came into operation on 1 February 2007.

One of the new provisions specifically addresses elements of concern in this investigation. It cites specific examples of arrangements that could, in certain circumstances, constitute control, including the provision of finance to a competitor, sharing equipment, production or transmission facilities,

studios, human or other resources, or having a substantial amount of program content that is the same as that provided under another licence. The examples provide additional guidance on the meaning of 'control' and will be particularly relevant for ACMA to consider in future investigations.

'Control' is broadly defined in the Act to include 'control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.' A person (including a company) must not be in a position to exercise control of more than two commercial radio licences in the same licence area.

There are two broad categories of control under the Act that were relevant to this investigation. The first encompasses a range of conduct, situations and relationships where a person is

considered to be 'in a position to exercise control', either alone or together with an associate in a manner that does not simply depend on company interests (for example, through shareholding or voting interests). The second type of control is deemed by virtue of the person holding a certain percentage of company interests as exceeding 15 per cent. The distinction is necessary because company interests are only one aspect of control: 'in some cases, it may be important to look at agreements and arrangements between people and at accustomed courses of conduct between people.'

ACMA began its investigation after being informed by MRRW that it had provided Elmie with finance to purchase the five regional radio licences in Queensland, Victoria and Western Australia. Among other things,

ACMA investigated whether MBL and MRRW had, at any time since September 2005, been in a position to exercise control of Elmie. Elmie operated the five licences from September 2005 to January 2007 and MRRW operates licences in all of the licence areas in which Elmie operated.

The report, *Investigation into the Control of Commercial Radio Broadcasting Licences held by Elmie Investments Pty Ltd*, is on the ACMA website at [www.acma.gov.au](http://www.acma.gov.au) (go to About ACMA: Publications & research > Broadcasting publications > Investigations > Ownership & control).

