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The Parliament of the
Commonwealth of Australia

THE SENATE

Broadcasting Services Amendment (Media Ownership) Bill 2006

(Government)

(1) Schedule 1, item 8, page 7 (after line 4), after the definition of statutory control rules in section 61AA, insert:

unacceptable 3-way control situation has the meaning given by section 61AEA.

[unacceptable 3-way control situation]

(2) Schedule 1, item 8, page 11 (after line 6), after section 61AE, insert:

61AEA Unacceptable 3-way control situation

For the purposes of this Division, an unacceptable 3-way control situation exists in relation to the licence area of a commercial radio broadcasting licence (the first radio licence area) if a person is in a position to exercise control of:

(a) a commercial television broadcasting licence, where more than 50% of the licence area population of the first radio licence area is attributable to the licence area of the commercial television broadcasting licence; and

(b) a commercial radio broadcasting licence, where the licence area of the commercial radio broadcasting licence is, or is the same as, the first radio licence area; and

(c) a newspaper that is associated with the first radio licence area.

[unacceptable 3-way control situation]

(3) Schedule 1, item 8, page 15 (after line 28), after Subdivision B, insert:
Subdivision BA—Prohibition of transactions that result in an unacceptable 3-way control situation coming into existence etc.

61AMA Prohibition of transactions that result in an unacceptable 3-way control situation coming into existence—offence

A person commits an offence if:
(a) one or more transactions take place on or after the commencement day; and
(b) the transactions have the result that an unacceptable 3-way control situation comes into existence in relation to the licence area of a commercial radio broadcasting licence; and
(c) the person was:
(i) a party to the transactions; or
(ii) in a position to prevent the transactions taking place; and
(d) the ACMA has not approved the transactions under section 61AMC.

Penalty: 20,000 penalty units.

61AMB Prohibition of transactions that result in an unacceptable 3-way control situation coming into existence—civil penalty

(1) This section applies if:
(a) one or more transactions take place on or after the commencement day; and
(b) the transactions have the result that an unacceptable 3-way control situation comes into existence in relation to the licence area of a commercial radio broadcasting licence; and
(c) the ACMA has not approved the transactions under section 61AMC.

(2) A person must not be:
(a) a party to the transactions; or
(b) in a position to prevent the transactions taking place.

(3) Subsection (2) is a civil penalty provision.

61AMC Prior approval of transactions that result in an unacceptable 3-way control situation coming into existence etc.

(1) A person may, before a transaction takes place that would place a person in breach of section 61AMA or 61AMB, make an application to the ACMA for an approval of the transaction.

(2) An application is to be made in accordance with a form approved in writing by the ACMA.

(3) If the ACMA considers that additional information is required before the ACMA can make a decision on an application, the ACMA may, by written notice given to the applicant within 30 days after receiving the application, request the applicant to provide that information.

(4) If, after receiving an application, the ACMA is satisfied that:
(a) if the transaction took place, it would place a person in breach of section 61AMA or 61AMB; and
(b) either:
(i) the applicant; or
(ii) another person;

will take action, within a period of not longer than 12 months, to ensure that an unacceptable 3-way control situation does not exist in relation to the licence area concerned;

the ACMA may, by written notice given to the applicant:
(c) approve the transaction; and
(d) if subparagraph (b)(i) applies—specify a period within which action must be taken by the applicant to ensure that an unacceptable 3-way control situation does not exist in relation to the licence area concerned; and
(e) if subparagraph (b)(ii) applies—inform the applicant accordingly.

(5) The period specified in the notice must be at least one month, but not longer than 12 months.

(6) The ACMA may specify in a notice given to an applicant the action that the ACMA considers the applicant must take to ensure that an unacceptable 3-way control situation does not exist in relation to the licence area concerned.

(7) In deciding whether to approve a transaction, the ACMA may have regard to:
(a) any relevant undertakings that:
   (i) have been accepted by the ACMA under section 61AS; and
   (ii) have not been withdrawn or cancelled; and
(b) such other matters (if any) as the ACMA considers relevant.

(8) If the ACMA refuses to approve a transaction, the ACMA must give written notice of the refusal to the applicant.

(9) The ACMA must deal with applications under subsection (1) in order of receipt.

(10) If the ACMA receives an application under subsection (1), the ACMA must use its best endeavours to make a decision on the application within 45 days after receipt of the application.

61AMD Extension of time for compliance with prior approval notice

(1) A person who has been given a notice under section 61AMC may, within 3 months before the end of the period specified in the notice but not less than one month before the end of that period, apply in writing to the ACMA for an extension of that period.

(2) The ACMA may grant an extension if it is of the opinion that an extension is appropriate in all the circumstances.

(3) If the ACMA considers that additional information is required before the ACMA can make a decision on an application, the ACMA may, by written notice given to the applicant within 30 days after receiving the application, request the applicant to provide that information.

(4) The ACMA must not grant more than one extension, and the period of any extension must not exceed:
   (a) the period originally specified in the notice; or
   (b) 6 months;

whichever is the lesser period.
(5) In deciding whether to grant an extension to an applicant, the ACMA is to have regard to:
   (a) the endeavours that the applicant made in attempting to comply with the notice; and
   (b) the difficulties that the applicant experienced in attempting to comply with the notice;
   but the ACMA must not have regard to any financial disadvantage that compliance with the notice may cause.

(6) If the ACMA does not, within 45 days after:
   (a) receiving the application; or
   (b) if the ACMA has requested further information—receiving that further information;
   extend the period or refuse to extend the period originally specified in the notice, the ACMA is to be taken to have extended that period by:
   (c) the period originally specified in the notice; or
   (d) 6 months;
   whichever is the lesser period.

(7) If the ACMA refuses to approve an application made under subsection (1), the ACMA must give written notice of the refusal to the applicant.

61AME Breach of prior approval notice—offence

(1) A person commits an offence if:
   (a) the person has been given a notice under section 61AMC; and
   (b) the person engages in conduct; and
   (c) the person’s conduct contravenes a requirement in the notice.

Penalty: 20,000 penalty units.

(2) A person who contravenes subsection (1) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

61AMF Breach of prior approval notice—civil penalty

(1) A person must comply with a notice under section 61AMC.

(2) Subsection (1) is a civil penalty provision.

(3) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any later day) during which the contravention continues.

[unacceptable 3-way control situation]

(4) Schedule 1, item 8, page 16 (line 2), at the end of the heading to section 61AN, add “— unacceptable media diversity situation”.

[unacceptable 3-way control situation]

(5) Schedule 1, item 8, page 17 (after line 16), after section 61AN, insert:

61ANA Remedial directions—unacceptable 3-way control situation

(1) If, on or after the commencement day, the ACMA is satisfied that an unacceptable 3-way control situation exists in relation to the licence area of a commercial radio broadcasting
licensure, the ACMA may give a person such written directions as the ACMA considers appropriate for the purpose of ensuring that that situation ceases to exist.

(2) The ACMA’s directions may include:
(a) a direction requiring the disposal of shares or interests in shares; or
(b) a direction restraining the exercise of any rights attached to:
   (i) shares; or
   (ii) interests in shares; or
(c) a direction prohibiting or deferring the payment of any sums due to a person in respect of shares, or interests in shares, held by the person; or
(d) a direction that any exercise of rights attached to:
   (i) shares; or
   (ii) interests in shares;
be disregarded.

(3) Subsection (2) does not limit subsection (1).

(4) A direction under subsection (1) must specify a period within which the person must comply with the direction.

(5) The period must not be longer than 12 months.

(6) If the ACMA is satisfied that the person:
   (a) acted in good faith; and
   (b) took reasonable precautions, and exercised due diligence, to avoid the unacceptable 3-way control situation coming into existence;
the period specified in the direction must be 12 months.

(7) If the ACMA is satisfied that the person acted flagrantly in breach of section 61AMA or 61AMB, the period specified in the direction must be one month.

(8) The Parliament recognises that, if a period of one month is specified in a direction, the person to whom the direction is given or another person may be required to dispose of shares or interests in shares in a way, or otherwise make arrangements, that could cause the person a considerable financial disadvantage. Such a result is seen as necessary in order to discourage flagrant breaches of sections 61AMA and 61AMB.

(6) Schedule 1, item 8, page 17 (line 18), after “61AN”, insert “or 61ANA”.

(7) Schedule 1, item 8, page 17 (line 24), omit “The ACMA”, substitute “In the case of a direction under section 61AN, the ACMA”.

(8) Schedule 1, item 8, page 17 (after line 30), after subsection 61AP(3), insert:
(3A) In the case of a direction under section 61ANA, the ACMA may grant an extension if it is of the opinion that:
   (a) an unacceptable 3-way control situation is likely to cease to exist in the licence area concerned within 3 months after the end of the period specified in the direction under section 61ANA; and
   (b) the applicant acted in good faith; and
(c) an extension is appropriate in all the circumstances.

(9) Schedule 1, item 8, page 18 (line 10), after “61AN”, insert “or 61ANA, as the case may be”.

(10) Schedule 1, item 8, page 18 (line 25), after “61AN”, insert “or 61ANA”.

(11) Schedule 1, item 8, page 19 (line 2), after “61AN”, insert “or 61ANA”.

(12) Schedule 1, item 8, page 19 (line 10), omit “either”, substitute “any”.

(13) Schedule 1, item 8, page 19 (line 20), omit “area.”, substitute “area;”.

(14) Schedule 1, item 8, page 19 (after line 20), at the end of subsection 61AS(1), add:

(c) a written undertaking given by a person that the person will take specified action to
ensure that an unacceptable 3-way control situation does not exist in relation to the
licence area of a commercial radio broadcasting licence.

(15) Schedule 1, item 8, page 22 (lines 22 to 37), omit paragraph 61AZ(1)(c), substitute:

(c) the ACMA is satisfied that the coming into existence of the media group does not
have the result that an unacceptable 3-way control situation comes into existence in
relation to the licence area of a commercial radio broadcasting licence;

(16) Schedule 1, item 8, page 31 (line 4) to page 33 (line 3), Subdivision F to be opposed.

(17) Schedule 1, item 18, page 37 (table item dealing with section 61AJ, 2nd column), after
“61AJ”, insert “or 61AMC”.

(18) Schedule 1, item 18, page 37 (table item dealing with section 61AK, 2nd column), after
“61AK”, insert “or 61AMD”.

(19) Schedule 1, page 37 (before line 18), before item 19, insert:

18BA Section 205Q

Before “subsection”, insert “61AMB or”.