# *Public Competition Assessment*

***27 November 2007***

## *Macquarie Media Group - proposed acquisition of Southern Cross Broadcasting (Australia) Ltd and nine regional radio stations owned by Fairfax Media Limited*

### Introduction

1. On 17 October 2007, the Australian Competition and Consumer Commission (**ACCC**) announced its decision not to oppose two proposed acquisitions by Macquarie Media Group subject to section 87B undertakings accepted by the ACCC on that date. The first proposed acquisition is of Southern Cross Broadcasting (Australia) Ltd. The second proposed acquisition is of nine regional radio stations owned by Fairfax Media Limited. The ACCC was of the view that the proposed acquisitions, in conjunction with the undertakings, would be unlikely to have the effect of substantially lessening competition in any market in contravention of section 50 of the *Trade Practices Act 1974* (the **Act**).

2. The ACCC formed its view on the basis of the information provided by the parties and information arising from its market inquiries. This Public Competition Assessment outlines the basis on which the ACCC reached its decisions on the proposed acquisitions, subject to confidentiality considerations.

### Public Competition Assessment

3. To provide an enhanced level of transparency and procedural fairness in its decision making process, the ACCC issues a Public Competition Assessment for all transaction proposals where:

   - a merger is opposed;
   - a merger is subject to enforceable undertakings;
   - the merger parties seek such disclosure; or
   - a merger is approved but raises important issues that the ACCC considers should be made public.

4. This Public Competition Assessment has been issued because Macquarie Media Group's proposed acquisitions are subject to court enforceable undertakings and are considered to raise issues of interest to the public.

5. By issuing Public Competition Assessments, the ACCC aims to provide the public with a better understanding of the ACCC's analysis of various markets and the

associated competition issues. It also alerts the public to the circumstances where the ACCC's assessment of the competition conditions in particular markets is changing, or likely to change, because of developments.

6. Each Public Competition Assessment is specific to the particular transaction under review by the ACCC. While some transaction proposals may involve the same or related markets, it should not be assumed that the analysis and decision outlined in one Public Competition Assessment will be conclusive of the ACCC's view in respect of other transaction proposals, as each matter will be considered on its own merits.

7. Many of the ACCC's decisions will involve consideration of both non-confidential and confidential information provided by the merger parties and market participants. In order to maintain the confidentiality of particular information, Public Competition Assessments do not contain any confidential information or its sources. While the ACCC aims to provide an appropriately detailed explanation of the basis for its decision, maintaining confidentiality will be the ACCC's paramount concern. Accordingly, a Public Competition Assessment may not definitively explain the analysis of all issues.

**The three connected transactions**

8. This matter involves three separate but related proposed acquisitions.

   i. Macquarie Media Group (MMG) proposes to acquire all of the shares in Southern Cross Broadcasting;

   ii. MMG proposes to acquire nine regional radio stations currently owned by Fairfax (identified in paragraph 17); and

   iii. Fairfax intends to acquire from MMG:

      - metropolitan radio stations - 3AW (Melbourne), Magic (Melbourne), 2UE (Sydney), 96FM (Perth), 6PR (Perth), 4BC (Brisbane) and 4BH (Brisbane);
      - Southern Cross Syndication;
      - Southern Star; and
      - Satellite Music Australia.

9. This Public Competition Assessment relates to the first two acquisition proposals identified above. The ACCC granted informal clearance to the third acquisition proposal on 13 September 2007.

## The parties

*The Acquirer – Macquarie Media Group*

10. MMG is an investment vehicle managed by the Macquarie Group. MMG is listed on the ASX.

11. Relevant to the proposed acquisitions, MMG owns 87 commercial radio licences in 45 licence areas across regional Australia and in all States.

*The Target - Southern Cross Broadcasting (Australia) Ltd*

12. Southern Cross Broadcasting (Australia) Ltd (**Southern Cross**) is listed on the ASX. Southern Cross controls commercial radio broadcasting licences in a number of areas (primarily metropolitan areas) and commercial television broadcasting licences in a number of licence areas (primarily regional areas).

13. Southern Cross' television assets include the following:

    - Southern Cross Ten, a regional television network that operates in Victoria, New South Wales and Queensland, with a presence in every major regional centre in the eastern states of Australia. Southern Cross Ten is affiliated with Network Ten and delivers a common program stream to viewers along the eastern seaboard, but with customisation for advertising and some limited customisation for news coverage and certain programs.

    - Southern Cross Television in Darwin, Central Australia and the Spencer Gulf region of South Australia. Southern Cross Darwin and Southern Cross Central have affiliations with the Seven network. Southern Cross Spencer Gulf receives programming from the Seven and Nine networks, complemented by a locally produced nightly news service covering the local region.[1]

    - Southern Cross Television's Tasmanian operations, which broadcasts to the entire State of Tasmania. The Tasmanian operations are affiliated with both the Seven and Ten networks (i.e. a mixture of Seven and Ten content is shown).

    - A 50% interest in Tasmanian Digital Television, which provides a digital only service throughout Tasmania.

14. Southern Cross owns assets aside from its television division. They are:

    i. A radio division comprising seven radio stations: 3AW (Melbourne), Magic (Melbourne), 2UE (Sydney), 96FM (Perth), 6PR (Perth), 4BC (Brisbane) and 4BH (Brisbane).

    ii. Southern Cross Syndication: a division of Southern Cross which distributes news, music, and talk back programming produced by Southern Cross' radio

[1] For the avoidance of doubt, in the Spencer Gulf region of South Australia, both television stations are owned and operated by Southern Cross.

stations throughout Australia. The content is mainly sourced from 2UE, 3AW, 4BC and 6PR and is syndicated to 119 radio stations in every State and Territory. In particular, the talk back shows and sport coverage are syndicated to many licence areas.

iii. Southern Cross' television production and distribution which is branded as the Southern Star Group. It is involved in film, television & video production, sales & distribution and licensing & merchandise.

iv. Satellite Music Australia, which is a supplier of subscription music channels. It provides 30 channels of music to Foxtel and Austar for their digital pay television services as well as providing subscription music services to retailers and customised music channels including advertisements to large retailers.

15. The ACCC notes that it is proposed that the radio and syndication assets described in paragraph 14 will be acquired by Fairfax immediately following MMG's acquisition of Southern Cross.[2] However, the ACCC identified competition concerns in the event that MMG fails to on-sell Southern Cross Syndication to Fairfax. This issue is discussed from paragraph 148.

*The Target – nine radio stations owned by Fairfax Media Limited*

16. Fairfax Media Limited (**Fairfax**) is a newspaper publishing group and media company which operates in both Australia and New Zealand. In Australia, its daily newspapers include *The Australian Financial Review*, *The Sydney Morning Herald* in Sydney and *The Age* in Melbourne. Fairfax also publishes regional newspapers and has a significant online presence.

17. On 9 May 2007, Fairfax acquired Rural Press, which published The Canberra Times, ten regional dailies and over 160 non-daily regional publications. Rural Press also owned 9 regional commercial radio licences. The proposed acquisition involves MMG acquiring those 9 regional radio stations from Fairfax. The 9 regional radio stations are:

In Bundaberg:

- 4BU 1332 AM
- 93.9 HITZ FM

In Ipswich:

- River 94.9

In Port Lincoln:

- Magic FM 89.9
- 5CC AM

In Spencer Gulf:

[2] This proposal was subject to a separate ACCC assessment. On 13 September 2007, the ACCC announced that it had decided not to oppose that proposal.

- Magic FM 105.9
- 5AU AM

In Riverland:

- Magic FM 93.1
- 5RM AM

*Other industry participants*

18. In regional television, Prime and WIN operate television networks which have television stations in many of the areas in which Southern Cross operates stations. Other operators of regional television networks and stations include NBN and Imparja.

19. In regional radio, there are several radio stations or radio networks that operate in some of the areas where MMG operates. However, in many regional areas MMG is the only commercial radio station.

20. There are also Government-owned SBS and ABC television and radio operations in the areas in which Southern Cross and MMG operate.

**Areas of overlap of television and radio assets**

21. The proposed transactions would result in a situation where MMG would own a television station (Southern Cross) and at least one radio station in:

- Albury
- Atherton
- Bendigo
- Bundaberg
- Burnie
- Cairns
- Charters Towers
- Coffs Harbour
- Devonport
- Dubbo
- Emerald
- Gold Coast
- Gosford
- Hobart
- Kempsey
- Kingaroy
- Launceston
- Mackay
- Maryborough
- Mt Isa
- Nambour
- Newcastle
- Orange
- Queenstown
- Rockhampton
- Roma
- Scottsdale
- Shepparton
- Toowoomba
- Townsville
- Wagga Wagga
- Warragul
- Young

22. The proposed transactions would result in a situation where MMG would own both television stations and both radio stations in:

- Port Lincoln
- Spencer Gulf

### Areas of overlap of radio assets

23. The only location where the proposed transactions result in a consolidation of radio assets is Bundaberg, where MMG proposes to acquire 4BU and HITZ FM. Post-merger, MMG would own all three commercial broadcasting radio stations in Bundaberg, as it already owns SEA FM.

### Timing

24. The following table outlines the timeline of key events for both acquisitions.

| Date | Event |
|---|---|
| 23rd July 2007 | ACCC commenced review under the Merger Review Process Guidelines. |
| 3rd August 2007 | Closing date for submissions from interested parties. |
| 13th September 2007 | ACCC released Statement of Issues in relation to proposed acquisitions. |
| 26th September 2007 | Closing date for submissions in response to Statement of Issues. |
| 5th October 2007 | Draft undertakings offered subject to ACCC final decision on competition issues. Former proposed date of 10 October 2007 for announcement of ACCC's findings amended to 18 October 2007 to allow for market consultation. |
| 11th October 2007 | Closing date for submissions relating to draft 87B undertakings. |
| 17th October 2007 | ACCC announced its decision to accept undertakings and not oppose the proposed acquisitions. |

### Market inquiries

25. The ACCC conducted extensive market inquiries with a range of industry participants, including: advertisers; competitors; consumers; industry bodies; local councils; chambers of commerce; and other interested parties.

26. The ACCC directly spoke with approximately 500 local advertisers in the areas of interest.

27. The ACCC also consulted with market participants in relation to the Statement of Issues and subsequently the proposed undertakings.

### Statement of Issues

28. The ACCC published Statements of Issues on 13 September 2007 identifying a number of preliminary competition concerns, including concerns arising in 14 specific regions.[3] The Statements of Issues are available on the ACCC's website.

29. The ACCC undertook further market inquiries following the Statements of Issues to inform its final decision.

### Australian Communications and Media Authority (ACMA)

30. While the ACCC has conducted a competition based assessment of the proposed acquisitions, the ACMA has a role in reviewing media acquisition proposals to determine whether the acquisitions would breach the relevant provisions of the *Broadcasting Services Act 1992* relating to media diversity.

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[3] Bundaberg, Port Lincoln, Spencer Gulf, Hobart, Launceston, Burnie, Devonport, Queenstown, Scottsdale, Mt Isa, Roma, Bendigo, Shepparton and Wagga Wagga.

31. The ACCC's process may lead to different conclusions given that it is a competition based assessment rather than a diversity one.

32. If the ACCC considers there to be a section 50 competition concern arising under the *Trade Practices Act 1974* in a certain area, and if the ACMA has already accepted an undertaking to divest assets in that area, the ACCC will still require a suitable divestment undertaking to be given to the ACCC if the parties are to receive informal clearance. The ACCC requires that it be able to enforce any undertaking that is made to address competition concerns, and it, of course, can only do this if a section 87B undertaking is offered to, and accepted by it.

33. The ACCC notes that the ACMA gave its approval for the Southern Cross proposed acquisition, subject to the divestment of some licences within a defined period. ACMA approval was given following the receipt of enforceable undertakings that were of a nature acceptable to ACMA. These undertakings were accepted by ACMA on 19 July 2007 and a copy of those undertakings can be found on the ACMA website at www.acma.gov.au. The divestments required by ACMA are in some cases different to the divestments set out in the undertakings accepted by the ACCC.

34. For further information regarding the ACMA's processes and decisions, please consult www.acma.gov.au.

**Framework for analysis**

35. Consistent with the principles set out in the ACCC's paper, *Media Mergers*, published in 2006, the ACCC has considered the proposed acquisitions in relation to three product classes:

- the supply of advertising opportunities to advertisers;
- the supply of content to consumers; and
- the acquisition of content from content providers.

36. The ACCC's findings in relation to each of these areas are set out below.

37. There are links between all three product classes. For example, where a radio station faces competition, if the radio station loses listeners (for example because a competing station starts broadcasting a popular radio program), that station becomes less attractive to advertisers who will not be willing to pay as much for advertising. This will cause the station to lose advertising revenue, and creates an incentive for the station to improve the quality of its programming to try to attract listeners in order to attract advertisers.

38. The ACCC took into consideration such links between the product classes and how the interactions occur.

39. The remainder of this Public Competition Assessment is divided into four main sections, as follows:

    I. The supply of advertising opportunities to advertisers

    II. Consumer content

    III. Acquisition and supply of content by media operators

    IV. Undertakings accepted by the ACCC

## I. THE SUPPLY OF ADVERTISING OPPORTUNITIES TO ADVERTISERS

### Market definition

40. The ACCC's *Media Mergers* paper noted:

    *"…the main question when considering an advertising market for merger analysis is: which alternative media outlets would be likely to constrain a merged media company from increasing its advertising prices because advertisers consider them to be substitutable?"* [4]

41. Essentially, the ACCC's analysis of advertising markets in this matter sought to establish whether the proposed acquisitions would result in advertisers facing higher prices for radio or television advertising due to the removal of a competitive constraint from the market.

42. For example, if in a particular location there are two commercial radio stations owned by MMG and the price that those radio stations can charge for advertising is significantly constrained by the presence of Southern Cross Television, then Southern Cross and MMG are likely to be in the same market in that location.

43. The ACCC assessed this issue across 35 regions where the proposed acquisitions by MMG would result in an aggregation of ownership of media assets. Each area was assessed in the context of the specific information received from market participants in that area and the characteristics of that area. Differences in the market inquiries responses and differences in the characteristics between areas resulted in different conclusions in relation to the relevant market definition.

44. To arrive at a conclusion in relation to each area, the ACCC took into account a number of factors in forming conclusions about each area of overlap, including:

    - submissions from interested parties;
    - views of local advertisers;
    - market structure; and

[4] p28. *Media Mergers*

- geographic and population overlap.

45. These factors are discussed in more detail directly below.

Submissions from interested parties

46. The ACCC noted submissions from some interested parties that argued that the supply of advertising services by regional radio stations occurs in a separate market from the supply of advertising by other modes of delivery, such as television and newspapers. These parties argued that advertisers do not consider advertising on radio to be substitutable for advertising on television (and vice versa) because:

    - Different media platforms have different **characteristics** (e.g. audio versus visual, geographic reach, demographics, immediacy) which give them their appeal for certain types of advertising.

    - Different media platforms have different advertising **prices**. Television advertising tends to be significantly more expensive in a simple dollar comparison with radio advertising. This may mean that the smaller businesses that tend to advertise more on radio may not consider television advertising to be viable.

    - Different media platforms are used by advertisers for different **purposes**. For example, radio is used more as a “call to action” where as television is used more to build brand awareness.

47. Other submissions from other interested parties, most notably, operators of some radio stations, contradicted these views and submitted that they competed directly with television stations for the advertising spend of businesses in their region. It was argued that advertisers will switch their mix of advertising between radio and television in response to price incentives, and that small businesses do advertise on television in regional areas.

48. When faced with a hypothetical 5-10% price rise, an advertiser will consider whether that price rise causes its mix of advertising to be sub-optimal. That is, could the advertiser increase its revenue by changing its mix of advertising spending? To put it in simple terms, if the advertiser currently spends $5,000 with a particular media outlet per month and expects to earn an additional $7,000 in revenue as a result, it has an expectation of a $2,000 return on that advertising investment. A 10% price rise will mean that the advertiser must pay $5,500 to get $7,000 in revenue so its return on investment decreases to $1,500. If the business could instead spend some of that $5,000 on a different media outlet (even if a media outlet on a different platform) with a higher expected return on investment, it will be profitable for the business to switch some or all of its budget to that outlet. The ability and incentive to switch some or all of its advertising budget to that alternative outlet may mean that the alternative outlet is acting as a constraint on prices rises.

Views of local advertisers

49. The ACCC spoke directly with approximately 500 local advertisers in the areas of overlap. The primary purpose of these discussions was to gauge the ways in which advertisers use different advertising media as well as their views on the extent to which they considered radio and television advertising to be substitutable.

50. The ACCC's market inquiries indicated that a business usually has an advertising budget which it spends in a way that it considers will provide it with the greatest increase in revenue. Some businesses spend their whole budget on a particular platform while others use a mix of advertising across different advertising platforms.

51. Broadly, advertisers can be placed in one of the following categories:

- **Group A –** advertisers who only used one of either radio or television and would not consider using the other form of advertising at all, even if, hypothetically, they faced a price rise of 5-10% in the mode of advertising they currently utilise.

- **Group B –** advertisers who use both radio and television advertising but do not consider them substitutable. In other words, these advertisers would not switch any, or only a very small part, of their advertising budget from radio to television if the price of radio advertising increased 5 to 10% (with no improvement in coverage). Or alternatively, these advertisers would not switch any, or only a very small part, of their advertising budget from television to radio if the price of television advertising increased 5 to 10% (with no improvement in coverage).

- **Group C –** advertisers who use both radio and television advertising and consider them substitutable (i.e. they would switch a significant part of their advertising budget, although not necessarily all of their budget, between radio and television depending on which mode of delivery offers the best deal for their business).

- **Group D –** advertisers who use either or both of radio and television, but consider that other forms of advertising, such a local newspapers, mail drop-outs, internet, billboard or sponsorships, place a stronger competitive constraint on radio or television, compared to the competitive constraint that radio and television place on each other.

52. The ACCC found that every business has different perceptions in relation to the substitutability between different forms of advertising and values the modes differently.

53. In general, the more advertisers in a particular region that fall into group C, the more likely it is that radio and television stations in that region compete for advertisers, and are therefore likely to be strong substitutes and are in the same market. This is because the willingness of these advertisers to switch between

radio and television is likely to act as a constraint on radio and television owners raising prices.

54. The size of group C within each area varied significantly across the 35 areas of overlap and this had a significant bearing on the views the ACCC reached in relation to market definition in each area.

55. The ACCC noted that advertising rates, although typically based on a “rate card”, are often negotiated individually between a business and the advertising salesperson. Advertisers use the threat of switching their advertising budget to another media outlet as a means of bargaining down their price of advertising with a given media outlet. The more options an advertiser has and the more willing they are to switch, the stronger will be their ability to bargain down their price of advertising. Market inquiries revealed that the media company salespeople are fully aware of the alternative options that an advertiser is likely to consider effective. Therefore, the suppliers of advertising space will price discriminate, by not offering the very best advertising deals to those advertisers that do not have effective alternatives. While this form of price-discrimination does not necessarily alter the market definition, it raises the prospect that a certain body of customers, in particular those in group C, may be harmed through a reduction in competition brought about by the merger, even if other customers are not adversely affected.

Market structure

56. The 35 areas of overlap displayed different market structures in terms of the number of separately owned radio stations and the number of separately owned television stations.

57. The ACCC found that the closest substitutes usually exist within one media platform when the outlets on that platform are separately and independently owned. For example, in a town where there are three television stations and three separately owned radio stations, a business that advertises on one radio station is generally likely to consider substituting to advertising on the other radio stations before it considers substituting to television. This is not to say that the radio advertiser will not use television advertising; only that the advertiser’s response to a 5-10% price rise in the radio station it uses is likely to be to consider switching to other radio stations before considering switching to television advertising.

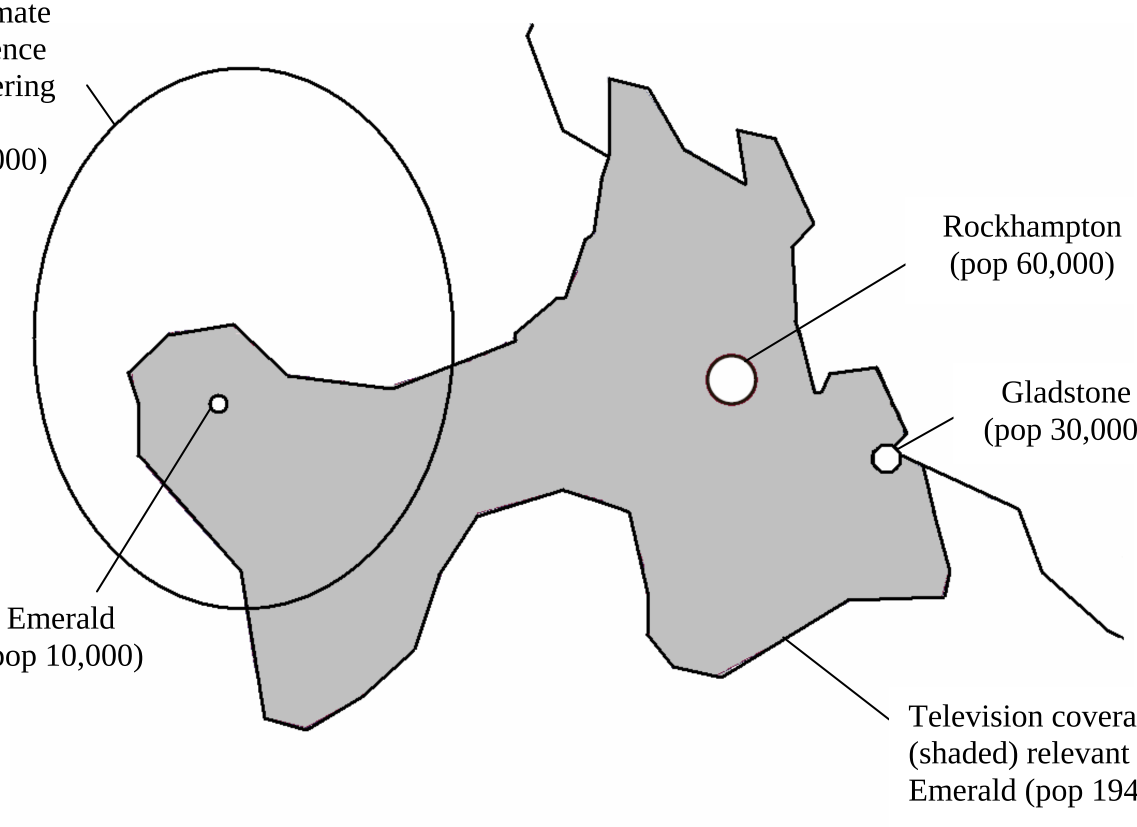
58. A different situation occurs when there is a single owner of all radio stations in a particular region. In this situation, the strongest source of competitive constraint on the radio station owner can come from a different platform (e.g. television advertising).

Geographic and population overlap

59. In some regions the area and population covered by the radio broadcasts differs in size to the area and population covered by the television broadcasts.

60. For example, the population covered by radio broadcasts from Emerald is 42,000. The population covered by television broadcasts to that area is 194,000 (primarily

because the television signal also covers the larger populations in Rockhampton and Gladstone). This is shown in the diagram below.




61. This difference between the population covered by radio stations and television stations in Emerald makes it less likely that advertisers in Emerald would consider advertising on television as a close substitute for advertising on radio.

62. This is because many local businesses in Emerald are unlikely to find it attractive to purchase television advertising because the audience of the television signal is spread across a far greater area than the area from which the business may be trying to attract customers. The local business would have to pay higher advertising rates for the broadcast to viewers from the wider area, when many of those viewers may not be relevant to its business. That is, people in Rockhampton and Gladstone, in this example, are highly unlikely to travel to Emerald to purchase most goods and services. However, some businesses in Emerald may seek the wider coverage and still consider radio and television to be substitutable.

63. In contrast, where the radio and television broadcast populations of a town compare closely, such as in Bendigo (with a population of 226,000 for television compared with 186,000 for radio), advertisers in that region are more likely to consider advertising on the two media forms substitutable.

64. In line with this reasoning, the ACCC found that for regions where the population reached by the television stations was much larger than the population reached by the radio stations in that region, the use of television advertising by local

advertisers was generally lower. However, the ACCC noted that radio and television licence areas are not strictly defined. Radio signals can extend beyond the licence area, which can therefore have the effect of attracting listeners from a wider area.

Conclusion – market definition

65. The key issue in analysing the market definitions was the degree of substitution. In each of the relevant geographic areas, the ACCC found a certain degree of substitution between radio and television, but the focus of its assessment was whether substitution was strong enough such that radio and television advertising could be considered to be in the same market.

66. Further, the ACCC assessed, on a case-by-case basis, whether substitution with other forms of advertising, particularly print advertising, was such that it should be included in the relevant advertising market.

67. Given the characteristics and market inquiry responses differed between different regions, the ACCC did not adopt a “one-size-fits-all” market definition when assessing the relevant advertising markets. Rather, the ACCC looked at each area on a case-by-case basis, placing importance on the views and experiences of local advertisers in each area and the prevailing market structure.

68. In Bundaberg, the ACCC considered that radio advertising was in a separate market since market inquiries indicated that other forms of advertising did not act as a strong constraint on radio advertising in Bundaberg.

69. In each of Burnie, Devonport, Launceston, Port Lincoln and Spencer Gulf, the ACCC considered that there was a combined market for advertising on radio and television. In these regions, market inquiries revealed a significant proportion of advertisers that considered radio and television substitutable. The lack of significant competition from independent commercial radio stations was also important. The ACCC did not consider that other forms of advertising, such as print advertising, were close substitutes.

70. In relation to other areas, the ACCC did not consider it necessary to reach a conclusive view because, irrespective of whether the relevant markets were defined as a combined market for advertising on radio and television or separate markets for radio or television, the ACCC took the view that the acquisitions were unlikely to raise competition concerns.

## Competition analysis

71. Following a preliminary round of market inquiries, the ACCC released a Statement of Issues for each of the proposed acquisitions on 13 September 2007.

72. In relation to advertising markets, the ACCC formed preliminary views in relation to the likely level of concern in each region. Each region was categorised as either an area unlikely to raise concerns; an area that may raise concerns; or an area likely to raise concerns.

73. The following regions were identified as areas that were unlikely to pose concerns in advertising markets:

- Albury
- Atherton
- Cairns
- Charters Towers
- Coffs Harbour
- Dubbo
- Emerald
- Gold Coast
- Gosford
- Kempsey
- Kingaroy
- Mackay
- Maryborough
- Nambour
- Newcastle
- Orange
- Rockhampton
- Toowoomba
- Townsville
- Warragul
- Young

74. Competition concerns in advertising markets were considered unlikely in these regions, primarily for reasons including the following:

- a limited number of advertisers considered radio and television advertising to be substitutable;
- for those advertisers that considered radio and television substitutable, they considered that alternative television stations and, in some cases, alternative commercial radio stations, would provide an effective constraint on a combined MMG-Southern Cross post-acquisition; and
- for some areas the populations covered by the radio and television stations in those regions do not overlap to a large degree, suggesting that businesses who wish to advertise on radio may be less likely to advertise on television (or vice-versa).

75. Following further market inquiries after the release of the Statements of Issues, the ACCC confirmed its views in relation to the areas listed above.

76. In the Statements of Issues the ACCC identified several towns/cities as areas that may raise competition concerns. However, upon making further market inquiries, the ACCC formed the view that competition concerns were unlikely to occur in many of these areas. These areas were:

- Bendigo
- Hobart
- Mt Isa
- Queenstown
- Roma
- Scottsdale
- Shepparton
- Wagga Wagga

77. These regions can be categorised into three broad groups:

- **Bendigo, Shepparton and Wagga Wagga** – while the geographic and population overlap between the radio and television broadcast areas are similar in these regions, further market inquiries revealed that, to the extent that advertisers consider radio and television substitutable, WIN and PRIME are likely to competitively constrain the merged-entity.

- **Hobart** – further market inquiries indicated that, post-acquisition, WIN and HO-FM will provide alternative options for advertisers in Hobart. While the ACCC's decision in relation to Hobart was finely balanced, the ACCC was satisfied that the acquisition of Southern Cross would not be likely to provide the opportunity for the merged-entity to materially raise the price of advertising, and, accordingly, was not likely to result in a substantial lessening of competition in Hobart.

- **Mt Isa, Queenstown, Roma and Scottsdale**[5] – further analysis and market inquiries indicated that substitution between radio and television by advertisers in these regions was highly unlikely, mainly due to the large discrepancy between the sizes of the broadcast areas for television and radio relevant to these regions.

78. Following further market inquiries after the release of the Statements of Issues, the ACCC formed the view that competition concerns in relation to advertising markets were likely in:

- Bundaberg
- Burnie
- Devonport
- Launceston
- Port Lincoln
- Spencer Gulf

79. Each of these areas is discussed in more detail below.

<u>Bundaberg</u>

80. MMG is proposing to acquire 4BU and HITZ FM from Fairfax, and Southern Cross Television. MMG already owns SEA FM in Bundaberg. Accordingly, post-acquisition MMG would be the sole owner of all commercial broadcast radio stations in Bundaberg.[6]

[5] While the ACCC formed the view that competition concerns were unlikely in advertising markets in Queenstown and Scottsdale, Macquarie's radio stations in these towns were included as part of the divestiture package pursuant to the section 87B undertaking accepted by the ACCC. This is because the ACCC needed to ensure that the purchaser of the divestiture assets in Tasmania would have the scale to be a viable, vigorous and effective competitor to the merged-entity.

[6] The ACCC notes that MMG gave enforceable undertakings to ACMA to divest a radio station in Bundaberg (4BU). As noted in paragraph 32, if the ACCC considers there to be a section 50 competition concern arising under the Trade Practices Act 1974 in a certain area, and if the ACMA has already accepted an undertaking to divest assets in that area, the ACCC will still require a suitable divestment undertaking to be given to the ACCC if the parties are to receive informal clearance.

81. Market inquiries indicated that other forms of advertising did not act as a strong constraint on radio advertising in this region. Significant concerns were expressed by advertisers in Bundaberg at the prospect of all three commercial radio stations being owned by a single entity, particularly the prospect of increased radio advertising prices.

82. The ACCC considered that barriers to entry for a new radio station in Bundaberg would likely to be significant, particularly given the lack of availability of licences and likely difficulties in overcoming listener loyalty towards incumbents.

83. The ACCC considered the acquisition of 4BU and HITZ FM by MMG would be likely to substantially lessen competition in the market for the supply of radio advertising. The undertakings accepted by the ACCC to address this competition concern are discussed later.

<u>Burnie and Devonport</u>

84. The market structures in Burnie and Devonport are very similar to one another.

85. MMG already owns both commercial radio stations in each town and is proposing to acquire Southern Cross Television. The only other commercial television station is WIN.[7]

86. A substantial proportion of advertisers in Burnie and Devonport considered radio and television advertising substitutable. The ACCC noted the discrepancy in the size of the radio and television broadcast areas and populations covering Burnie and Devonport (the television population being around four times larger), but the views of market inquiries revealed a high degree of substitutability. Market inquiries indicated that other forms of advertising, including newspaper advertising, were not likely to act as a viable constraint on radio and television advertising rates in Burnie and Devonport.

87. Post-acquisition, to the extent that any constraint on the merged entity was to exist, it would come from WIN television. Information provided to the ACCC indicated that WIN is the weaker of the two television stations, particularly in northern Tasmania. The ACCC considered that WIN television would be likely to impose a relatively weak competitive constraint on the merged entity, and that the price of advertising on both radio and television for Burnie and Devonport businesses would be likely to increase post-acquisition. The ACCC considered the acquisition of Southern Cross by MMG would be likely to substantially lessen competition in the market for the supply of television and radio advertising in Burnie and Devonport. The undertakings accepted by the ACCC to address this competition concern are discussed from paragraph 153.

[7] A digital-only television station, jointly owned by WIN and Southern Cross also operates across Tasmania, including Burnie. However, the ACCC considered that because the station was digital only it would not reach the same audience as the other television stations owned by WIN and Southern Cross. Market inquiries indicated that advertisers did not consider the digital channel to be a viable advertising option.

Launceston

88. MMG currently owns 7LA, an AM radio station in Launceston. The only other commercial radio station in Launceston is 7EX – a station focussed mainly on broadcasting racing programming. The two commercial television stations servicing Launceston are Southern Cross and WIN.

89. Advertisers contacted by the ACCC in Launceston considered 7EX to be only a very limited advertising alternative.

90. Although the ACCC did have close regard to the possibility that 7EX could change its format or approach, and become a more effective constraint on the merged entity if the merged entity attempted to raise prices, the ACCC concluded that 7EX would be unlikely to provide a significant competitive constraint on the merged entity in the foreseeable future.

91. The potential audience of the television stations covering Launceston is approximately twice as large as the potential radio audience. However, market participants, particularly medium to large businesses located in Launceston, considered radio and television substitutable and were concerned that their only effective alternative option post-acquisition would be WIN television. Market inquiries also indicated that the relative strength of Southern Cross in Northern Tasmania is likely to limit the extent to which advertisers are willing to switch to WIN television.

92. The ACCC concluded that the merged entity would face limited constraint in the supply of radio and television advertising in the Launceston market, and that prices would be likely to rise for radio and television advertising for Launceston businesses post-acquisition.

93. In light of the above, the ACCC formed the view that the acquisition of Southern Cross would be likely to result in a substantial lessening of competition in Launceston. The undertakings accepted by the ACCC to address this competition concern are discussed from paragraph 153.

Port Lincoln and Spencer Gulf

94. The market structures in Port Lincoln and Spencer Gulf were found to be very similar.

95. There are two commercial radio stations in each of Port Lincoln and Spencer Gulf that are currently owned by Fairfax. MMG proposes to acquire these stations from Fairfax.

96. There are two commercial television stations in each of Port Lincoln and Spencer Gulf, all owned by Southern Cross. MMG will acquire control of these stations through the proposed acquisition of Southern Cross.

97. The effect of both transactions would be that MMG would own all commercial radio and television stations in Port Lincoln and Spencer Gulf.

98. The potential audience populations for the radio stations and television stations of these areas are very similar, making it more likely that advertisers would be willing to substitute between radio and television advertising. This was confirmed by market inquiries, which revealed concerns from advertisers that the acquisitions would result in a single owner of all of the radio and television advertising options in those regions. These advertisers were concerned that this would enable MMG to raise the price of radio and/or television advertising. The advertisers did not consider that other forms of advertising, such as newspaper, mail-drop or internet advertising, would provide a significant competitive constraint on MMG post acquisition.

99. The ACCC therefore considered that a significant number of advertisers would likely be faced with a reduction in competition and would be likely to face a significant price increase post-acquisition.

100. For this reason, the ACCC formed the view that the acquisitions would be likely to result in a substantial lessening of competition in television and radio advertising markets in Port Lincoln and Spencer Gulf. The undertakings accepted by the ACCC to address this competition concern are discussed from paragraph 153.

Bundling

101. Aside from the horizontal aggregation issues discussed above, the ACCC considered whether the acquisitions would have the potential to raise competition concerns in certain regions based on MMG potentially bundling the sale of advertising on television and radio such that competition would be substantially lessened. Bundling tends to potentially raise competition concerns where there are related, but separate markets. In this matter, in regions where radio and television advertising markets are separate, there may be potential for bundling because some advertising customers may use both forms of advertising and the merged entity will be a provider of both.

102. The ACCC considered that in some areas, bundling of radio and television advertising is likely to occur and may even have the result of reducing the number of advertising customers that can be accessed by competing radio and television stations. However, the ACCC considered that the extent to which this would be harmful to competition in most areas was minimal. In particular, the ACCC noted that a high proportion of television advertising in regional areas is placed by national advertisers, who are unlikely to utilise local radio advertising. Further, in most areas there is at least one competing television station that limits the potential harm to competition from bundling.

103. The exceptions to this view are Port Lincoln and Spencer Gulf where, post-acquisition, MMG would be the sole owner of television and radio stations. The ACCC considered that, in the event that competition concerns did not arise from the substitutability between advertising on radio and television in Port Lincoln and Spencer Gulf, then it is likely that competition concerns would still have arisen due to the potential for anti-competitive bundling which would raise barriers to entry and thus raise competition concerns.

### Conclusions – advertising markets

104. The ACCC formed the view that the acquisitions were likely to result in a substantial lessening of competition in advertising markets in:

- Bundaberg
- Burnie
- Devonport
- Launceston
- Port Lincoln
- Spencer Gulf

105. MMG offered undertakings to divest radio stations in relation to all of these areas. The undertakings, which were accepted by the ACCC, are discussed from paragraph 153.

## II. CONSUMER CONTENT

106. The ACCC's *Media Mergers* paper highlighted that when assessing a media merger, the ACCC will:

> *"…consider whether a merged media business could exercise market power by reducing the quality of the content it provides consumers, which could include reducing the diversity of the content it provides."* [8]

107. The paper also notes:

> *"…when considering the supply of content to consumers, if the price of one source of content rises, or its quality falls post merger, what are the real alternatives for consumers?*[9]

108. This is the critical question to answer when looking at the likely impact of the proposed acquisitions on the supply of content to consumers. As the media forms in question are provided to consumers without charge, the relevant consideration for this transaction is the alternatives to consumers in the event of a reduction in quality.

### Market definition

*Product dimension*

109. In relation to consumer content, the ACCC considered that the most likely area of competition concern between the operations of Southern Cross and of MMG radio stations was in the supply of local news and information.

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8 p6 *Media Mergers*
9 p5 *Media Mergers*

110. The ACCC considered that there is a much wider range of sources available for other types of content which are relevant to the proposed transaction. For example, state, national and international news and opinion are extensively covered in state and national newspapers, as well as on the internet, pay TV and the ABC and SBS, for example. Therefore the ACCC focussed on the provision of local news and information. The ACCC considered that generally, local news and information is distinct from, and not substitutable for, other types of news and information such as international news or sports news.

111. Given that local news and information is typically provided as part of a package along with other news, such as international and national news, the ACCC focussed on markets for the provision of a package of news which includes significant local news and information relevant to the specific geographic area.

112. A key issue in considering this matter was whether different platforms for news are in the same market. Information in relation to the substitutability of packages of local news and information content is not readily available. As such, for completeness, the ACCC considered it appropriate to consider the likely impact of the merger on the basis of two possible alternative market definitions. The first was to consider ‘platform–specific’ markets (i.e. separate television, radio and newspaper markets) for the supply of a package of news that includes significant local news and information relevant to the specific geographic area. If such a definition is adopted, then no aggregation will occur under this market definition in any area except Bundaberg. The second was to consider that radio and television would be in the same market for the provision of a package of news that includes significant local news.

113. The ACCC considered that if the proposed acquisition would not raise concerns in these markets, then it would not be necessary to consider further the substitutability of other forms of media, such as local news and information provided through local newspapers or the internet. But where preliminary competition concerns were identified, the ACCC considered further whether, in the relevant geographic area, sources of news other than television and radio were substitutable.

*Geographic dimension*

114. Regardless of whether platform-specific or cross-media markets are defined for the supply of content to consumers, the ACCC considered that radio licence areas are likely to define the appropriate geographic boundaries of these markets for the purposes of the competition assessment. This is because radio licence areas will usually define the area of overlap between the operations of the television and radio operations in the provision of content.

**Competition analysis**

115. The ACCC’s inquiries revealed that the extent of the supply of local news content differed by region. Specifically:

- In Victoria, NSW and Queensland, Southern Cross produces a limited amount of local news in the form of local news “updates” throughout the day which total around 9 minutes per day. In these States, in the majority of areas of overlap, there are two competing television stations which produce at least as much local content. In these regions, there is usually a small amount of local news produced by the local MMG radio station and, in some cases, by the competing radio station(s). There is often local news provided by local newspapers in these areas.

- In Tasmania, Southern Cross produces a 30 minute nightly news bulletin as well as news updates throughout the day. In Tasmania, WIN is the only other commercial television broadcaster which produces a similar amount of local news content. The ABC also produces a nightly Tasmanian news service. In Tasmania, there is usually a small amount of local news produced by the local MMG radio stations in Hobart and Launceston and by the competing radio station – HO-FM – in Hobart.

- In Port Lincoln and Spencer Gulf, where Southern Cross owns both television stations, it produces a 30 minute nightly news bulletin which is broadcast on one of its stations. In these regions, the local Fairfax radio stations (which MMG proposes to acquire) produce local news and information content in-house.

<u>Victoria, NSW and Queensland</u>

116. Generally, in each of the areas of overlap in Victoria, NSW and Queensland, it was found that consumers had access to a number of television and radio (and in some cases, newspaper) options from which they could source local news content.

117. Southern Cross and MMG did not appear to be particularly significant providers of local news content in any of these areas. Other television and radio stations in these areas tend to provide at least as much local news content as Southern Cross and MMG.

118. The ACCC did not consider that the aggregation of Southern Cross and MMG radio stations in the areas of overlap in Victoria, NSW and Queensland would be likely to raise competition concerns in relation to the supply of local news content, whether looking at a combined television-radio market or separate markets.

119. The ACCC did not consider that the existence of Southern Cross as a possible competitor was a significant factor for MMG when MMG made decisions about the quantity and quality of local news to provide. Similarly, the ACCC did not consider that the existence of MMG as a possible competitor was a significant factor for Southern Cross when Southern Cross made decisions about the quantity and quality of local news to provide.

120. For these reasons, the ACCC did not consider the acquisition of Southern Cross would be likely to raise competition concerns in the supply of content to consumers in Victoria, NSW and Queensland. In particular, the ACCC did not consider there would be a reduction in competition in the supply of packages of news which include significant local news and information relevant to the specific geographic area.

Tasmania

121. The key distinction between Tasmania and the above regions is that Tasmania only has two commercial television operators whereas in most parts of Victoria, NSW and Queensland, there are three.

122. The key question is what options would consumers have in the event that the merged-entity attempted to reduce the quality or quantity of local news content?

123. The alternatives available to consumers would be WIN, the ABC (television and radio) and in Hobart, the HO-FM radio station. In addition, there are three major local newspapers in Tasmania – *The Mercury* (based in Hobart), *The Examiner* (based in Launceston) and *The Advocate* (based in Burnie) – all of which provide local news coverage.

124. The ACCC did not consider that the aggregation of Southern Cross and MMG radio stations would be likely to raise competition concerns in the supply of local news content to the areas of overlap in Tasmania, whether looking at a combined television-radio market or separate markets.

125. The ACCC did not consider that the existence of Southern Cross as a possible competitor was a significant factor for MMG when MMG made decisions about the quantity and quality of local news to provide. Similarly, the ACCC did not consider that the existence of MMG as a possible competitor was a significant factor for Southern Cross when Southern Cross made decisions about the quantity and quality of local news to provide.

126. For these reasons, the ACCC did not consider the acquisition of Southern Cross would be likely to raise competition concerns in the supply of content to consumers in the relevant regions in Tasmania. In particular, the ACCC did not consider there was likely to be a substantial lessening of competition in the supply of packages of news which include significant local news and information relevant to the specific geographic area.

Port Lincoln and Spencer Gulf

127. After the two acquisitions, MMG would own both commercial television and both commercial radio stations in these regions.

128. In Port Lincoln and Spencer Gulf, the ACCC considered that the provision of television and radio were close substitutes in the provision of packages of news which include significant local news and information relevant to the specific geographic area.

129. The ACCC had concerns that the acquisitions would create the potential for MMG to reduce the quality of local news and information broadcast to these regions. The ACCC considered that radio and television are close constraints in the supply of content to consumers.

130. The only other source of daily local news and information would be any local news and information provided by ABC television and radio. Whilst the ACCC considered ABC radio and television could be viable competitors to the local news and information supplied by Fairfax and Southern Cross, it would constitute only one or two out of five or six media outlets in each of Port Lincoln and the Spencer Gulf. The ACCC considered the merger would result in a substantial reduction of competitive constraints in the supply of local news and information.

131. The ACCC also had regard to the existence of bi-weekly local newspapers that are distributed to individual towns within the Port Lincoln and Spencer Gulf radio licence areas. However, it considered that in the event of a reduction in quality of local news and content delivered via television and radio, it is unlikely that these bi-weekly and weekly local newspapers would be considered real alternatives for consumers. The ACCC had regard to the possibility of a new daily paper becoming established, but did not consider this would impose a significant constraint within a reasonable timeframe.

132. For these reasons, the ACCC considered that the acquisitions would be likely to raise competition concerns in the supply of content to consumers in Port Lincoln and Spencer Gulf. In particular, the ACCC considered there would be a reduction in competition in the supply of packages of news which include significant local news and information relevant to the specific geographic area.

133. The undertakings accepted by the ACCC to address this competition concern are discussed from paragraph 153.

<u>Bundaberg</u>

134. Post-acquisitions, MMG would own three commercial radio stations and Southern Cross television station in Bundaberg.[10] MMG would become the owner of 4BU and HITZ FM in addition to SEA FM. ABC radio would be the fourth source of local radio news.

135. The other sources of local news and information in the region would come from television stations Seven, WIN and the ABC, and a local newspaper.

136. The Fairfax radio stations produce a substantial amount of local content in and for Bundaberg, including half hourly local news updates.

137. The ACCC had concerns that the acquisition of 4BU and HITZ FM would create potential for MMG to reduce the quality of local news and information broadcast on the radio stations in Bundaberg due to the removal of its closest competitors.

138. The undertakings accepted by the ACCC to address this competition concern are discussed from paragraph 153.

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[10] The ACCC notes that MMG gave enforceable undertakings to ACMA to divest a radio station in Bundaberg (4BU). As noted in paragraph 32, if the ACCC considers there to be a section 50 competition concern arising under the Trade Practices Act 1974 in a certain area, and if the ACMA has already accepted an undertaking to divest assets in that area, the ACCC will still require a suitable divestment undertaking to be given to the ACCC if the parties are to receive informal clearance.

Cross-promotion

139. The ACCC considered whether the merged-entity could use its market power gained from having a monopoly in the supply of content to consumers through one medium (for example radio) to lessen competition in the supply of content through the other medium (television). MMG has a monopoly in commercial radio in many licence areas where there will be overlap with Southern Cross.

140. Competition concerns would most feasibly occur through the merged-entity cross-promoting its affiliated television or radio network.

141. The ACCC considered that these strategies would only be likely to be problematic for competition if they somehow foreclose competing television networks from promoting their own shows. The ACCC did not consider that this would be the case, since radio would only be one method by which a television station would promote its own shows. The ACCC considered self-promotion (i.e. advertising by a station of its own programmes) is likely to be the most common form of television promotion. While radio and television operators do advertise their programmes on the opposite medium, they are not significant advertising customers of each other. Therefore, the extent to which a television station will be curtailed from promoting their content by a television competitor holding a monopoly over the radio stations in the region is likely to be minimal.

## III. ACQUISITION AND SUPPLY OF CONTENT BY MEDIA OPERATORS

142. In addition to the ACCC's assessment of the acquisitions by MMG of Southern Cross Broadcasting and of nine Fairfax radio stations, the ACCC also assessed a separate, but related proposal whereby, following MMG’s proposed acquisition of Southern Cross, Fairfax would acquire from MMG the following assets:

    1. Metropolitan radio stations - 3AW and Magic (Melbourne), 2UE (Sydney), 96FM and 6PR (Perth), 4BC and 4BH (Brisbane);
    2. Southern Star television production;
    3. Southern Cross Syndication (which on-sells radio content); and
    4. Satellite Music Australia.

143. While the ACCC decided not to oppose this proposal, it was necessary for the ACCC to consider the possibility that this transaction would not progress as intended. That is, that MMG would retain the above assets and they not be sold to Fairfax.

144. The focus of this part of the ACCC's assessment was particularly on the possibility of MMG retaining Southern Cross Syndication (**SCS**). SCS is a supplier of syndicated content produced by Southern Cross radio stations and third parties to regional radio stations and networks around Australia.

145. The ACCC considered that there was a national market for the supply of radio content to radio stations. The ACCC did not investigate whether there were

separate markets for the different types of content, as it would not have altered the competition analysis in this area. Accordingly, this question remains open.

**Horizontal aggregation of content suppliers**

146. MMG is not a significant supplier of radio content to radio stations it does not own. The aggregation of MMG and Southern Cross' radio assets (in the event that Fairfax does not acquire the metropolitan radio stations from MMG) does not provide the merged-entity with any ability to increase the price of content it supplies to third parties or reduce its quality.

147. The ACCC considers that, on a basic horizontal analysis, competition concerns are unlikely to arise in the aggregation of radio content providers.

**Vertical issues**

148. The ACCC considered whether, in the event that MMG retains SCS, concerns would arise with respect to MMG having the incentive to disadvantage its regional competitors. In some regions, MMG would be a supplier of key content to radio stations it competes with for audiences and advertising revenue.

149. The ACCC's inquiries revealed that, while some significant content is produced by other radio networks, many of these networks do not syndicate their content and are unlikely to provide their content to regional radio stations. Further, SCS syndicates several shows which are number one radio programs for particular demographics, and are often considered “must have” content (e.g. talk back and sport coverage).

150. The ACCC considered that if MMG retained SCS, it would become a critical supplier of content to its regional radio rivals. The ACCC considered that MMG would then potentially have the ability and incentive to:

- retain the Southern Cross content exclusively for its own regional radio stations which may result in possible foreclosure of MMG’s regional radio rivals; and/or
- increase the price of Southern Cross content for its radio competitors, thereby raising its rivals’ costs.

151. For these reasons, the ACCC considered that if MMG were to retain SCS this would be likely to give rise to substantial competition concerns.

152. MMG offered, and the ACCC accepted, court-enforceable undertakings which address the issues identified above. The undertakings are discussed below.

## IV. UNDERTAKINGS ACCEPTED BY THE ACCC

153. The undertakings offered by MMG and accepted by the ACCC involve obligations to divest:

- 4BU in Bundaberg;
- 5CC and Magic FM in Port Lincoln;

- 5AU and Magic FM in Spencer Gulf;
- 7LA in Launceston;
- 7BU in Burnie;
- 7AD in Devonport;
- 7XS and the right to a new licence in Queenstown; and
- 7SD and SEA FM in Scottsdale.

154. The undertakings also require that these assets be held separate, independently managed and operated during the divestiture period. Although the ACCC did not consider there were competition concerns specifically in Queenstown and Scottsdale, MMG's radio stations in these towns were included as part of the divestiture package to ensure there was a suite of assets providing the divestiture business with sufficient scale and scope such that a prospective purchaser could establish a viable and independent competitor to the merged entity, and thereby resolve the ACCC's competition concerns. Furthermore, the Queenstown and Scottsdale assets were not easily separated from the other radio assets, so it was considered including these assets would ensure a more effective divestment process.

155. MMG also provided an undertaking to divest Southern Cross Syndication and related assets to an approved purchaser, in the event that these assets were not on-sold to Fairfax shortly after the proposed acquisition of Southern Cross by MMG. The undertaking was designed to resolve the competition concern the ACCC had in relation to the possibility that MMG would retain Southern Cross Syndication, even though MMG's stated intention was to on-sell the assets to Fairfax shortly after acquiring Southern Cross.

156. The ACCC considered that the undertakings addressed all of the competition concerns in all of the relevant markets. The undertakings are all available on the ACCC's website.

**CONCLUSION**

157. On the basis of the above, including taking into account the undertakings accepted by the ACCC, the ACCC formed the view that MMG's proposed acquisitions of Southern Cross Broadcasting and of Fairfax's nine regional radio stations would not be likely to result in a substantial lessening of competition in any of the relevant markets in contravention of section 50 of the Act.