

CLAYTON UTZ

## Undertaking to the Australian Competition and Consumer Commission

### Concerning Southern Cross Syndication Pty Limited

**Given under section 87B of the Trade Practices Act by:**

Macquarie Media Holdings Pty Limited  
ABN 91 116 024 536

Regional Media No. 2 Pty Ltd  
ACN 124 720 289

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Our reference 217/13125/

Legal\105197743.5

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## 1. Persons giving Undertaking

This Undertaking is given to the Commission under section 87B of the Act by Macquarie Media Holdings Limited ABN 91 116 024 536 ("**MMHL**") on behalf of itself and the Undertaking Parties and Regional Media No. 2 Pty Ltd ACN 124 720 289 ("**RM2**") both of Level 7, No. 1 Martin Place, Sydney NSW 2000.

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## 2. Background

- (a) The Macquarie Media Group ("**MMG**") is an investment fund owned by investors holding stapled securities in the following entities which are listed on the Australian Securities Exchange:
  - (i) Macquarie Media Trust ARSN 116 151 467 ("**MMT**");
  - (ii) MMHL; and
  - (iii) Macquarie Media International Limited ARBN 118 577 423 of 3rd Floor, Washington Mall I, Reid Street, Hamilton HM11, Bermuda ("**MMIL**").
- (b) Macquarie Media Management Limited ABN 16 115 524 019 of Level 7, No. 1 Martin Place, Sydney, New South Wales, 2000, Australia ("**MMML**") is the responsible entity of MMT and the manager of MMHL and MMIL.
- (c) Macquarie Media Group Pty Ltd ACN 110 357 036 ("**MMGPL**") is a Subsidiary of MMHL.
- (d) RM2 is a Subsidiary of Regional Media No. 1 Pty Ltd ACN 124 719 400 ("**RM1**"). The shares in RM1 are held by, or for the sole benefit of, MMML (in its capacity as the responsible entity of MMT) and MMIL.
- (e) Macquarie Regional Radioworks Pty Ltd ACN 109 243 110 ("**MRRW**") is a Subsidiary of MMHL. Certain members of the MRRW Group are holders of Commercial Radio Broadcasting Licences in Australia in Radio Licence Areas.
- (f) Southern Cross Broadcasting (Australia) Limited ("**Southern Cross**") is listed on the Australian Stock Exchange. Certain members of the Southern Cross Group are the holders of Commercial Radio Broadcasting Licences in a number of metropolitan Radio Licence Areas and Commercial Television Broadcasting Licences associated with a number of regional Radio Licence Areas.
- (g) Southern Cross also owns Southern Cross Syndication Pty Ltd (ACN 002 015 821) which licences certain syndicated programs to radio stations outside of the major metropolitan centres. The syndicated programs are produced primarily by MMHL radio stations 3AW, 2UE, 6PR and Magic 1278 and programs are licensed to many regional stations throughout Australia.
- (h) RM2 proposes to acquire 100% of the issued shares of Southern Cross by way of a scheme of arrangement proposed by Southern Cross, as announced to the Australian Stock Exchange by MMG on 3 July 2007 (the "**SCB Transaction**").
- (i) MMHL, and Fairfax Media Limited (ACN 008 683 161) ("**Fairfax**") have entered into a Procurement Deed dated 3 July 2007 which contemplates that subject to certain conditions MMHL, Fairfax and Fairfax Media BCS Pty Limited (ACN 008 663 161) ("**Fairfax BCS**") will, if a Trigger Notice is given, enter into a Share

Purchase Agreement. Relevantly, the Share Purchase Agreement provides for the business listed in Schedule 2 to be sold to Fairfax BCS (the "**Fairfax Transaction**").

- (j) The Commission has made market inquiries and considered the information provided by the parties and other industry participants. The Commission's inquiries were aimed at assessing whether or not the Fairfax Transaction was likely to substantially lessen competition in contravention of section 50 of the Act.
- (k) The Commission has expressed the view that, if the sale of the Fairfax Business were not to proceed as part of the Fairfax Transaction, the SCB Transaction would give rise to a competition concern. The concern is that, as a result of the SCB Transaction, MMHL would control the Divestiture Business. The Divestiture Business is a supplier of radio programming to radio stations which compete with MMHL in regional areas.
- (l) Accordingly, MMHL and RM2 have agreed to offer this undertaking which ensures that, in the event that the Fairfax Transaction does not proceed, then the Divestiture Business will be held separate, managed independently and ultimately divested.
- (m) The Undertaking Parties do not agree that the SCB Transaction is likely to substantially lessen competition in any market. However, in order to avoid delay and to address the Commission's concern, the Undertaking Parties have, without admission, provided this Undertaking.
- (n) The Commission is of the view that, taking into account, and subject to the implementation, of this Undertaking, the specified concerns in respect of the SCB Transaction will be addressed.

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### **3. Definitions and interpretation**

#### **3.1 Definitions**

The meanings of the terms used in this document are as follows:

**"ACMA"** means the Australian Communications and Media Authority.

**"Act"** means the *Trade Practices Act 1974* (Cth).

**"Appointment Date"** means the date on which a Divestiture Agent is appointed under clause 6.3 and 6.4 of Schedule A.

**"Approved Purchaser"** has the meaning given in clause 5.3(d) of Schedule A to this Undertaking.

**"BSA"** means *Broadcasting Services Act 1992* (Cth).

**"Business Day"** means a day on which all banks are open generally in the Australian Capital Territory, but does not include a Saturday, Sunday or public holiday.

**"Commencement Date"** means the date on which this Undertaking comes into effect under clause 4.

**"Commercial Radio Broadcasting Licence"** has the meaning given to that term in section 6 of the BSA.

**"Commercial Television Broadcasting Licence"** has the meaning given to that term in section 6 of the BSA.

**"Commission"** means the Australian Competition and Consumer Commission.

**"Contracts"** means any contract material to the Divestiture Business.

**"Control Date"** means the date on which the Scheme is implemented and RM2 obtains control of all the shares of Southern Cross.

**"Corporations Act"** means the *Corporations Act* 2001 (Cth).

**"Court"** has the meaning given to that term in section 58AA of the Corporations Act.

**"Divestiture Agent"** means a person not objected to by the Commission and appointed by the Undertaking Parties to effect the sale of the Unsold Business pursuant to clause 6.3 and 6.4 of Schedule A.

**"Divestiture Business"** means content supply business comprising Southern Cross Syndication Pty Ltd (ACN 002 015 821) and the Related Assets.

**"Divestiture Date"** means the date on which the Undertaking Parties no longer have ownership or control of the Divestiture Business.

**"Divestiture Period"** means the period described in **Confidential Schedule 1** to this Undertaking.

**"Fairfax Business"** means the business identified in Schedule 2.

**"Fairfax Sale Date"** means the date which is 20 Business Days after the Control Date.

**"Fairfax Transaction"** has the meaning given in clause 2(i).

**"Independent Manager"** means Mr Les Riley (appointed on terms that have been approved by the Commission), or an independent person appointed by the Undertaking Parties and not objected to by the Commission to manage and operate the Divestiture Business.

**"Information Memorandum"** has the meaning given in clause 4.1(a) of Schedule A.

**"Local Content Requirements"** means any conditions imposed by ACMA under section 43 of the BSA that have the effect of requiring the licensee of a regional Commercial Radio Broadcasting Licence to meet specified local content and local presence requirements including any condition that ACMA is required by section 43C of the BSA to ensure is in force from 1 January 2008 requiring the licensee of a regional Commercial Radio Broadcasting Licence to broadcast, during daytime hours each business day, at least the applicable number of hours of material of local significance.

**"MRRW Group"** means MRRW and its Subsidiaries

**"Objection Period"** means either:

- (a) the period which ends 10 Business Days (or in the case of clause 4.1(c) in Schedule A, 5 Business Days) after the Commission is provided with the information relevant for it to determine whether to object to a person or proposal put forward by the Undertaking Parties for consideration by the Commission in accordance with this Undertaking, or

- (b) such further period as is determined by the Commission to be necessary and notified to the Undertaking Parties prior to the expiry of the original objection period.

**"Proposed Divestiture Agent"** means a person proposed by the Undertaking Parties to be the Divestiture Agent.

**"Proposed Purchaser"** means a proposed purchaser of the Divestiture Business.

**"Proposed Purchaser Notice"** means a notice in writing to the Commission that identifies the person(s) to whom the Undertaking Parties propose to divest the Divestiture Business and sets out certain other information in relation to the Proposed Purchaser including the information referred to in clause 5.3 of Schedule A.

**"Radio Licence Area"** means a licence area for a Commercial Radio Broadcasting Licence.

**"Related Assets"** means the confidential assets described in **Confidential Schedule 3**

**"Related Body Corporate"** means in relation to a company, any other company which would be deemed to be related to the first named company by the operation of section 4A(5) of the Act.

**"Sale and Purchase Agreement"** means an agreement or agreements in respect of the sale and purchase of the Divestiture Business.

**"SCB Transaction"** has the meaning given in clause 2(h).

**"Scheme"** means the scheme of arrangement under which RM2 will acquire all of the shares in Southern Cross and Southern Cross shareholders will receive cash.

**"Southern Cross Group"** means Southern Cross and its Subsidiaries.

**"Subsidiary"** has the meaning given to that term by section 46 of the Corporations Act.

**"Trigger Date"** means the date on which the Court approves the scheme of arrangement under section 411(6) of the Corporations Act.

**"Trigger Notice"** means the notice which may be given by either MMHL or Fairfax pursuant to the procurement deed to effect the sale of the Divestiture Business to Fairfax.

**"Undertaking Parties"** means MMHL, RM2 and each Subsidiary of MMHL and RM2. A reference to the Undertaking Parties is a reference to one or more of the Undertaking Parties as the context requires.

**"Undertaking"** means all provisions of this document given by the Undertaking Parties to the Commission, including any Schedules to this document.

**"Unsold Business"** has the meaning given in clause 6.1 of Schedule A.

## **3.2 Interpretation**

The following rules of interpretation apply unless the context requires otherwise:

- (a) The singular includes the plural and conversely.
- (b) A construction that would promote the purpose or object underlying the Undertaking (whether expressly stated or not) shall be preferred to a construction that would not promote that purpose or object.

- (c) Material not forming part of this Undertaking may be considered to:
  - (i) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or
  - (ii) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking.
- (d) In determining whether consideration should be given to any material in accordance with clause 3.2(c), or in considering any weight to be given to any such material, regard shall be had, in addition to any other relevant matters, to the:
  - (i) effect that reliance on the ordinary meaning conveyed by the text of the clause would have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
  - (ii) the need to ensure that the result of the Undertaking is to address the Commission's competition concerns.
- (e) In performing their obligations under this Undertaking, the Undertaking Parties will do everything within their power to ensure that their performance of those obligations is done in a manner which is consistent with promoting the purpose and object of the Undertaking.
- (f) For the avoidance of doubt, references to the "ordinary course of business" include conduct required to comply with the BSA, any subordinate legislation and any conditions or requirements imposed by ACMA from time to time.

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#### **4. Commencement of this Undertaking**

This Undertaking will come into effect when it has been:

- (a) executed by the Undertaking Parties; and
- (b) accepted by the Commission.

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#### **5. Sale of the Divestiture Business**

- (a) Upon the Control Date occurring, the Undertaking Parties will use their best endeavours to sell the Divestiture Business to Fairfax or a Related Body Corporate of Fairfax, prior to the Fairfax Sale Date.
- (b) If the Divestiture Business is not sold by the Fairfax Sale Date pursuant to clause 5(a), the provisions in **Schedule A** will come into immediate effect.
- (c) For the avoidance of doubt, the obligations in **Schedule A** of this Undertaking only apply to the Undertaking Parties if the Divestiture Business is not sold pursuant to clause 5(a).



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## **6. Preservation of Divestiture Business**

### **6.1 Maintenance of the Divestiture Business Prior to Fairfax Sale Date**

The Undertaking Parties must, in accordance with this Undertaking, from the Control Date until the Fairfax Sale Date (or such other time period specified below) and, subject to not interfering in the role of the Independent Manager, take all steps within their power to ensure that:

- (a) the Divestiture Business is managed and operated in the ordinary course of business as a separate fully operational, competitive going concern and in such a way that preserves the goodwill of the Divestiture Business;
- (b) the maintenance of any of the assets of the Divestiture Business are continued in the ordinary course of business, including, without limitation, maintenance of technical equipment;
- (c) staffing levels are maintained and employment conditions are maintained and endeavours are made to retain existing employees and contractors and, in particular, but without limitation, continue arrangements for the maintenance of IT, technical and broadcast equipment in line with practice, in the ordinary course of business during the period of 12 months prior to the Control Date;
- (d) the Divestiture Business continues existing programming and program production arrangements that were in place during the period 3 months prior to the Control Date subject to:
  - (i) reasonably and legally required changes made to increase the level of local production to meet the Local Content Requirements;
  - (ii) changes to increase the use of content produced by the Divestiture Business; or
  - (iii) changes to increase the use of content produced by persons or businesses independently of the Undertaking Parties or MMML.

For the avoidance of doubt, where MRRW currently supplies programming on an informal basis, nothing in this clause will prevent MRRW from formalising such program supply arrangements on reasonable commercial terms. This obligation is subject to MRRW continuing to produce that programming. Should any programming supplied to the Divestiture Business cease to be produced by MRRW, MRRW will take all steps within its power to offer to supply, on reasonable commercial terms, replacement programming;

- (e) the Divestiture Business is operationally separate from the Undertaking Parties, and, to the greatest extent possible (and subject to the arrangements contemplated by the Undertaking) notwithstanding the ultimate ownership by the Undertaking Parties, is operated as a financially separate entity;
- (f) ensure that the books and records of the Divestiture Business are kept separate from those of the Undertaking Parties, except to the extent necessary for financial reporting;
- (g) the Divestiture Business continues to receive access to working capital and sources of credit for the Divestiture Business which are appropriate to the nature of the Divestiture Business and the usual commercial requirements of such a business, at levels consistent with the 12 month accounting period immediately preceding the

current 12 month accounting period at the relevant time for the Divestiture Business;

- (h) the Undertaking Parties provide and maintain levels of administrative, promotional, technical, advertising and marketing support to the Divestiture Business which are appropriate to the nature of the Divestiture Business and the usual commercial requirements of such a business, at levels consistent with the 12 month accounting period immediately preceding the current 12 month accounting period at the relevant time for the Divestiture Business;
- (i) the Undertaking Parties do not procure, promote or encourage the redeployment of management or staff or contractors working at or involved with the Divestiture Business at the Trigger Date to any other business operated by the Undertaking Parties or Southern Cross;
- (j) the Undertaking Parties do not solicit or otherwise cause an advertiser of a Divestiture Business to cease advertising with the Divestiture Business. For the avoidance of doubt, nothing in this clause prevents the Undertaking Parties from engaging in conduct, including marketing or promotional activity, directed towards advertisers generally whether in the area in which the Divestiture Business's broadcasts are received or otherwise or which is in the ordinary course of business in selling national advertising;
- (k) the Undertaking Parties do not, from the Commencement Date until one year of the Divestiture Date, use or disclose any confidential information gained through the ownership and/or management of the Divestiture Business to the detriment of any aspect of the Divestiture Business, including its goodwill, competitive standing, or commercial viability (for the avoidance of doubt this obligation does not prevent a disclosure under a confidentiality agreement to potential purchasers for the purposes of the sales process contemplated by this Undertaking);
- (l) ensure that confidential information of the Divestiture Business, particularly but without limitation, information relating to advertising customers, is not disclosed to any employees or officers not involved directly with serving or running the Divestiture Business (and in particular those employees or officers involved in any way with the operation of the Southern Cross Group operations to be acquired by the Undertaking Parties);
- (m) not make any contracts, arrangements or understanding between the Undertaking Parties and the Divestiture Business or purchaser of the Divestiture Business, unless it is expressly permitted in this Undertaking or otherwise approved by the Commission; and
- (n) within 5 Business Days from the Control Date, the Undertaking Parties will direct all staff of the Divestiture Business to ensure that they do not do anything inconsistent with the Undertaking Parties' obligations in this clause and to otherwise act to preserve the goodwill and competitive position of the Divestiture Business.

## **6.2 Separation Changes Notification**

The Undertaking Parties must, within 5 Business Days of the Control Date, notify the Commission of any proposal to make changes to the Divestiture Business that the Undertaking Parties intend to make to ensure the separation of the Divestiture Business required by clause 6.1. The Commission may object to any change in the Objection Period by giving notice to the Undertaking Parties. If the Commission so objects to any change or imposes conditions on the making of any change, the Undertaking Parties will not:

- (a) proceed with that change, or
- (b) if conditions are imposed by the Commission, will only proceed with that change in a manner which complies with the Commission's conditions.

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## **7. Appointment of Independent Manager**

If 12 Business Days after the Control Date a Trigger Notice has not been issued by any of the parties to the SCB Transaction (or, if a Trigger Notice has been issued but, by the Fairfax Sale Date the sale of the Fairfax Business has not been completed), the Undertaking Parties must notify the Commission, in writing, of the identity of the proposed Independent Manager to oversee the operation of the Divestiture Business at the Undertaking Parties' cost, together with such information as the Commission requires to assess whether the Commission will object to the appointment of the proposed Independent Manager, including a copy of the proposed terms of engagement of the Independent Manager.

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## **8. Authorisation**

The Commission may authorise the Mergers Review Committee, a member of the Commission or a member of the Commission staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the Commission may impose.

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## **9. Compliance and Information**

- (a) The Undertaking Parties must provide the Commission with copies of all documents comprising any executed Sale and Purchase Agreement and all other proposed transaction documents between the Proposed Purchaser and any of the Undertaking Parties relating to the divestment of the Divestiture Business within 2 Business Days of it being entered into.
- (b) At the Commission's direction, each of the Undertaking Parties will itself and will procure that its directors, employees, agents or contractors identified by the Commission:
  - (i) furnish information to the Commission which may include information concerning the bids received in respect of the Divestiture Business or the identities of bidders, at any time during the Divestiture Period;
  - (ii) produce documents to the Commission within the Undertaking Parties' custody, control or power; and/or
  - (iii) attend the Commission at a time and place appointed by the Commission, on reasonable notice and during business hours, to answer any questions the Commission (its Commissioners, staff or agents) may have,in relation to the Undertaking Parties' compliance with this Undertaking.
- (c) Subject to clause 12, information furnished, documents produced or information given in answer to questions may be used by the Commission for any purpose consistent with its statutory duties.
- (d) Any direction made by the Commission under clause 9(b) will be notified to the Company Secretary of each of the Undertaking Parties.

- (e) The Undertaking Parties will respond in a timely manner to any queries or requests for information made by the Commission, including a person authorised by the Commission under clause 8, in relation to this Undertaking.
- (f) Nothing in clause 9(c) requires the provision of information in respect of which any of the Undertaking Parties has a proper claim of legal professional privilege.

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## 10. Obligation to Procure

Where the performance of an obligation under this Undertaking is imposed on the Undertaking Parties, if complete performance of the Undertaking requires a Related Body Corporate to take some action, or refrain from taking some action, the Undertaking Parties will procure that Related Body Corporate to take that action or refrain from taking that action and, if necessary will procure the offering of undertakings by the Related Body Corporate to the Commission.

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## 11. Notices

- (a) Any notice, demand, consent or other communication given or made under this Undertaking to the Commission should be sent to:

Australian Competition & Consumer Commission  
Attention: General Manager, Mergers and Asset Sales  
Address: 23 Marcus Clarke Street, Canberra ACT 2601  
Fax No: (02) 6243 1212

or to any other address which the Commission subsequently notifies to the Undertaking Parties.

- (b) Any notice, demand, consent or other communication given or made under this Undertaking to the Undertaking Parties should be sent to the address or fax number below or the address or fax number last notified by the intended recipient to the sender:

Macquarie Media Holdings Limited  
Attention: Mark Dorney/John Whitehead  
Address: Level 7, No. 1 Martin Place, Sydney NSW 2000  
Fax No: (02) 8232 4713

or to any other address which the Undertaking Parties subsequently notify to the Commission.

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## 12. Confidentiality and disclosure

### 12.1 Public Inspection

Subject to clause 12.2, the Undertaking Parties acknowledge that the Commission will make this Undertaking available for public inspection.

### 12.2 Confidential Schedules 1 and 3

- (a) The Undertaking Parties note that the Commission has agreed that subject to clause 12.3, **Confidential Schedule 1** will remain confidential until the Divestiture Date.
- (b) The Undertaking Parties note that the Commission has agreed that subject to clause 12.3, **Confidential Schedule 3** will remain confidential until:

- (i) 6 months after the Divestiture Date if the Divestiture Business is sold to Fairfax or a Related Body Corporate of Fairfax; or
- (ii) the Fairfax Sale Date, if the Divestiture Business is not sold to Fairfax or a Related Body Corporate of Fairfax.

### **12.3 Disclosure of Undertaking**

- (a) Subject to clause 12.2, the Undertaking Parties acknowledge that the Commission will from time to time publicly refer to this Undertaking.
- (b) Nothing in clause 12.2(a) or 12.2(b) prevents the Commission from disclosing such information as:
  - (i) as required by law;
  - (ii) as is permitted by a lawful exercise of the Commission's powers under section 155AAA of the Act; or
  - (iii) is necessary for the purpose enforcing this Undertaking.
- (c) Nothing in clause 12.2 prevents the Commission from using the information for any purpose consistent with its statutory duties.

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## **13. No derogation**

### **13.1 Action for breach of Undertaking**

The Undertaking does not prevent the Commission from taking enforcement action at any time whether during or after the period of this Undertaking in respect of any breach by the Undertaking Parties of any term of the Undertaking.

### **13.2 Other action under the Act**

Nothing in the Undertaking is intended to restrict the right of the Commission to take enforcement action under the Act in the event that divestiture of the Divestiture Business is not implemented in accordance with the Undertaking.

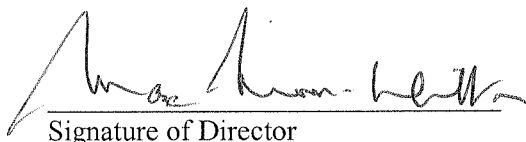
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## **14. Costs**

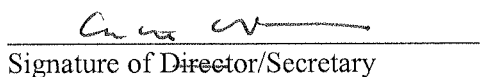
All costs incurred by the Undertaking Parties in providing information to the Commission, in responding to the Commission inquiries as required by this Undertaking or in complying with this Undertaking are to be paid by the Undertaking Parties.

Signed by: Macquarie Media Holdings Limited ABN 91 116 024 536

by:

  
Signature of Director

MAX MOORE-WILTON  
Name of Director (please print)

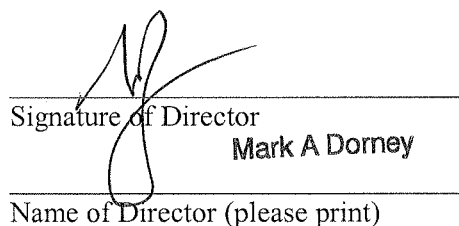
  
Signature of Director/Secretary

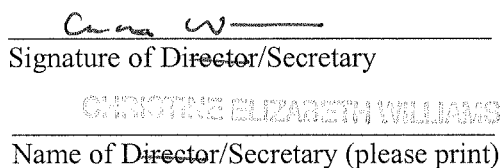
CHRISTINE ELIZABETH WILLIAMS  
Name of Director/Secretary (please print)

Date: 16 October 2007

Signed by: Regional Media No. 2 Pty Ltd ACN 124 720 289

by:

  
Signature of Director  
**Mark A Dorney**  
Name of Director (please print)

  
Signature of Director/Secretary  
CHRISTINE ELIZABETH WILLIAMS  
Name of Director/Secretary (please print)

Date: 16 October 2007

This Undertaking was accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Trade Practices Act 1974* (Cth) on 17 Oct 2007.

~~The Common Seal of the Australian Competition and Consumer Commission was affixed to this document in the presence of:~~

  
Chairman

Graeme Julian Samuel

## **Schedule A – Backstop obligations**

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### **1. Undertaking to divest**

The Undertaking Parties will divest the Divestiture Business to an Approved Purchaser within the Divestiture Period in accordance with this Undertaking. All aspects of the Divestiture Business must be sold to a single Approved Purchaser at the same time.

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### **2. Preservation of Divestiture Business**

#### **2.1 Treatment of Divestiture Business**

The Undertaking Parties must, in accordance with this Undertaking, until the Divestiture Date (or such other time period specified below), and subject to not interfering in the role of the Independent Manager, take all steps within their power to ensure that:

- (a) the Divestiture Business is managed and operated in the ordinary course of business as separate fully operational, competitive going concerns and in such a way that preserves the goodwill of the Divestiture Business;
- (b) the maintenance of any of the assets of the Divestiture Business are continued in the ordinary course of business, including, without limitation, maintenance of technical equipment;
- (c) staffing levels are maintained and employment conditions are maintained and endeavours are made to retain existing employees and contractors and, in particular, but without limitation, continue arrangements for the maintenance of IT, technical and broadcast equipment in line with practice, in the ordinary course of business during the period of 12 months prior to the Control Date;
- (d) the Divestiture Business is operationally separate from the Undertaking Parties, and, to the greatest extent possible (and subject to the arrangements contemplated by the Undertaking) notwithstanding the ultimate ownership by the Undertaking Parties, is operated as a financially separate entity;
- (e) ensure that the books and records of the Divestiture Business are kept separate from those of the Undertaking Parties, except to the extent necessary for financial reporting;
- (f) the Divestiture Business continues to receive access to working capital and sources of credit for the Divestiture Business which are appropriate to the nature of the Divestiture Business and the usual commercial requirements of such a business, at levels consistent with the 12 month accounting period immediately preceding the current 12 month accounting period at the relevant time for the Divestiture Business;
- (g) the Undertaking Parties provide and maintain levels of administrative, promotional, technical, advertising and marketing support to the Divestiture Business which are appropriate to the nature of the Divestiture Business and the usual commercial requirements of such a business, at levels consistent with the 12 month accounting period immediately preceding the current 12 month accounting period at the relevant time for the Divestiture Business;
- (h) the Undertaking Parties do not procure, promote or encourage the redeployment of management or staff or contractors working at or involved with the Divestiture

Business at the Trigger Date to any other business operated by the Undertaking Parties or Southern Cross;

- (i) the Undertaking Parties do not solicit or otherwise cause an advertiser of a Divestiture Business to cease advertising with the Divestiture Business. For the avoidance of doubt, nothing in this clause prevents the Undertaking Parties from engaging in conduct, including marketing or promotional activity, directed towards advertisers generally whether in the area in which the Divestiture Business's broadcasts are received or otherwise or which is in the ordinary course of business in selling national advertising;
- (j) the Undertaking Parties do not, from the Commencement Date until one year of the Divestiture Date, use or disclose any confidential information gained through the ownership and/or management of the Divestiture Business to the detriment of any aspect of the Divestiture Business, including its goodwill, competitive standing, or commercial viability (for the avoidance of doubt this obligation does not prevent a disclosure under a confidentiality agreement to potential purchasers for the purposes of the sales process contemplated by this Undertaking);
- (k) ensure that confidential information of the Divestiture Business, particularly but without limitation, information relating to advertising customers, is not disclosed to any employees or officers not involved directly with serving or running the Divestiture Business (and in particular those employees or officers involved in any way with the operation of the Southern Cross Group operations to be acquired by the Undertaking Parties);
- (l) not make any contracts, arrangements or understanding between the Undertaking Parties and the Divestiture Business or purchaser of the Divestiture Business, unless it is expressly permitted in this Undertaking or otherwise approved by the Commission; and
- (m) within 5 Business Days from the Fairfax Sale Date, the Undertaking Parties will direct all staff of the Divestiture Business to ensure that they do not do anything inconsistent with the Undertaking Parties' obligations in this clause and to otherwise act to preserve the goodwill and competitive position of the Divestiture Business.

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### **3. Appointment of Independent Manager**

#### **3.1 Independent Manager to Manage Divestiture Business**

The Undertaking Parties must, in accordance with this Undertaking appoint an Independent Manager (at their cost) to independently manage the operation of the Divestiture Business from the Fairfax Sale Date until the Divestiture Date.

#### **3.2 Proposed Independent Manager**

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#### **3.3 Objection by the Commission**

The Commission may, within the Objection Period (which commences upon supply of the information referred to in clause 7 of this Undertaking), object to the appointment of the proposed Independent Manager identified by the Undertaking Parties, or to the terms of his/her appointment, if the Commission is not satisfied that the Independent Manager is independent



of the Undertaking Parties or has the necessary skills or experience for the role, or the Commission otherwise considers the terms of appointment to be unsatisfactory.

### **3.4 Independent person**

The proposed Independent Manager must be Mr Les Riley (appointed on terms that have been approved by the Commission), or a person who is independent of the Undertaking Parties, MMML and Southern Cross. Without limitation and unless approved by the Commission, a person will not be independent of the Undertaking Parties and Southern Cross if he or she is a:

- (a) current employee or officer of the Undertaking Parties, MMML or Southern Cross;
- (b) person who has been an employee or officer of the Undertaking Parties, MMML or Southern Cross in the past 18 months;
- (c) shareholder who, in the opinion of the Commission, holds a material number of shares of the Undertaking Parties, MMML or Southern Cross;
- (d) professional adviser of the Undertaking Parties, MMML or Southern Cross, whether current or in the past 18 months;
- (e) person who has a contractual relationship with the Undertaking Parties, MMML or Southern Cross;
- (f) person who is a supplier of the Undertaking Parties, MMML or Southern Cross;  
and
- (g) person who is a material customer of the Undertaking Parties, MMML or Southern Cross.

### **3.5 Appointment of Independent Manager**

If within the Objection Period, the Commission does not object to the proposed Independent Manager or the proposed terms of engagement, the Undertaking Parties must appoint the proposed Independent Manager within 5 Business Days of the expiry of the Objection Period in accordance with the terms of engagement approved by the Commission and immediately forward to the Commission a copy of the executed terms of engagement.

The terms of the Undertaking Parties' engagement of the Independent Manager will include the following obligations to apply from the Fairfax Sale Date:

- (a) the Independent Manager will operate the Divestiture Business in the ordinary course of business as a separate, fully operational, competitive going concern and in such a way that the goodwill and competitive position of the Divestiture Business is preserved. The Independent Manager must not make any material adverse change to the attributes of the Divestiture Business or the relevant Commercial Radio Broadcasting Licence for the relevant Radio Licence Area. Without limitation, the Independent Manager must:
  - (i) ensure all arrangements in place at the Trigger Date for maintenance of any of the assets of Divestiture Business assets are continued or replaced in the ordinary course of business, including, without limitation, maintenance of technical equipment, unless otherwise permitted by the Commission;
  - (ii) ensure that all technical assets are maintained in accordance with normal business practise;

- (iii) use his/her best endeavours to maintain or replace all arrangements with contractors, unless otherwise permitted by the Commission;
  - (iv) ensure staffing levels are maintained (including management personnel, broadcasters and advertising staff) and employment conditions are maintained and endeavours are made to retain existing employees and contractors on terms similar to their existing remuneration; and
  - (v) provide to the Commission, in the reports under clause 3.5(i) of this Schedule A, in respect of employees or contractors who have departed since the last such report, details of the reason why any employee or contractor of the Divestiture Business is no longer employed or under contract;
- (b) the Independent Manager will, to the greatest extent commercially practicable operate the Divestiture Business in a manner which is financially and operationally separate from the Undertaking Parties;
- (c) the Independent Manager will keep the books and records of the Divestiture Business separate from those of the Undertaking Parties;
- (d) the Independent Manager will implement specific measures to maintain the confidentiality of any competitively sensitive information of the Divestiture Business, including, without limitation, in respect of:
  - (i) the determination of advertising rates and discounts (if applicable); and
  - (ii) determining advertising terms of trade,
 and must not disclose any such information to the Undertaking Parties;
- (e) the Independent Manager will use best endeavours to renew or replace sales, promotions and advertising contracts (to the extent that they exist in relation to the Divestiture Businesses) on expiry on commercial terms no less favourable to the relevant Divestiture Business and entering into new, commercially favourable contracts where possible;
- (f) the Independent Manager will continue existing programming and program production arrangements that were in place during the 3 month period prior to the Control Date, subject to
  - (i) reasonably and legally required changes made to increase the level of local production to meet the Local Content Requirements;
  - (ii) changes to increase the use of content produced by the Divestiture Business; or
  - (iii) changes to increase the use of content produced by persons or businesses independently of the undertaking Parties or MMML;
- (g) the Independent Manager will ensure that the Divestiture Business has access to a sufficient number of management personnel, broadcasters and advertising staff to operate as a viable going concern;
- (h) the Independent Manager will not use or disclose any confidential information gained through the management of the Divestiture Business other than for the

purpose of fulfilling the requirements of this Undertaking or to the extent necessary to perform the duties of Independent Manager;

- (i) the Independent Manager must provide detailed written reports to the Commission in relation to the operation of the Divestiture Business and this Undertaking, and the Independent Manager must carry out the Commission's directions in relation to matters arising from the reports. The Independent Manager must provide such a report within 14 Business Days from the date on which the Independent Manager is appointed or the Fairfax Sale Date (whichever is later) and 5 Business Days after the end of each calendar month thereafter;
- (j) the Independent Manager must respond to any information request made by the Commission to the Independent Manager directly at any time. The Independent Manager may report and respond to the Commission directly in response to any request, or as otherwise required by the Commission;
- (k) the Undertaking Parties will indemnify, to the extent permitted by the law, the Independent Manager for any expenses, loss, claim or damage arising from the performance by the Independent Manager of functions required to be performed by the Independent Manager by this Undertaking save for fraud, recklessness, gross negligence or deliberate breach of contract; and
- (l) the Undertaking Parties will provide the Independent Manager with the authority necessary for him or her to manage the Divestiture Business independent of, and without interference from, the Undertaking Parties.

### **3.6 Alternative Independent Manager**

- (a) If within the Objection Period, the Commission objects to the proposed Independent Manager, or the terms of engagement, the Undertaking Parties must, within 5 Business Days of the Commission nominating an alternative Independent Manager, appoint the Independent Manager nominated by the Commission on terms determined by the Commission including the price to be paid by the Undertaking Parties.
- (b) The terms of appointment of an Independent Manager appointed under this clause must include the terms of engagement and obligations as are set out in clause 3.5 of this Schedule A.

### **3.7 Resignation of the Independent Manager**

In the event that the Independent Manager resigns or otherwise stops acting as the Independent Manager before the Divestiture Date, the Undertaking Parties must notify the Commission in writing within 1 Business Day and must within 5 Business Days (from when the Independent Manager ceased acting as an Independent Manager) nominate a new Independent Manager and supply to the Commission the information referred to in clause 7 of this Undertaking. If within the Objection Period the Commission objects to the proposed new Independent Manager, the Undertaking Parties must, within 5 Business Days of the Commission nominating an alternative Independent Manager, appoint any alternative Independent Manager nominated by the Commission on terms determined by the Commission including the price to be paid by the Undertaking Parties.

If the Commission does not object within the Objection Period to the proposed new Independent Manager or the terms of his or her appointment, then the Undertaking Parties must, within 2 Business Days of the expiry of the Objection Period, appoint the new proposed Independent Manager as the Independent Manager.

### **3.8 Termination of Independent Manager**

- (a) The Commission must approve any proposal by the Undertaking Parties to terminate the Independent Manager's appointment.
- (b) The Commission may direct the Undertaking Parties to terminate the Independent Manager if the Independent Manager acts inconsistently with the provisions of this Undertaking or the terms of his/her engagement, or, if in the Commission's opinion the Independent Manager is managing the business in a manner which is in any way harmful to the competitive position of the Divestiture Business.
- (c) Upon seeking approval to terminate, or being directed by the Commission to terminate, the appointment of an Independent Manager, the Undertaking Parties must within 5 Business Days nominate a new Independent Manager and supply to the Commission the information referred to in clause 7 of this Undertaking. If within the Objection Period the Commission objects to the proposed new Independent Manager, the Undertaking Parties must, within 5 Business Days of the Commission nominating an alternative Independent Manager, appoint any alternative Independent Manager nominated by the Commission on terms determined by the Commission including the price to be paid by the Undertaking Parties. If the Commission does not object within the Objection Period to the new Independent Manager or the terms of his or her appointment, then the Undertaking Parties must, within 2 Business Days of the expiry of the Objection Period, appoint the new Independent Manager as the Independent Manager.

### **3.9 Further Obligations on Undertaking Parties Relating to Independent Manager**

The Undertaking Parties must

- (a) provide the Independent Manager with access to working capital and sources of credit for the Divestiture Business which are appropriate to the nature of the Divestiture Business and the usual commercial requirements of such a business, at levels consistent with the 12 month accounting period immediately preceding the current 12 month accounting period at the relevant time for the Divestiture Business;
- (b) provide to the Independent Manager any information or other assistance reasonably requested by the Independent Manager that the Independent Manager considers necessary for the running of the Divestiture Business or for reporting to or otherwise advising the Commission.
- (c) direct their managers, officers, employees and agents to act in accordance with, and not interfere in, the duties of the Independent Manager and assist the Independent Manager to comply with his/her conditions of appointment;
- (d) direct their officers, employees, agents and contracts involved with the Divestiture Business to abide by the instructions of the Independent Manager;
- (e) ensure that the Independent Manager is fully able to acquire and pay for sufficient and timely delivery of all goods and services (including from third parties) required by the Divestiture Business;
- (f) accept (and direct their officers, employees and agents to accept) direction from the Independent Manager as to the control, management, financing and operations of the Divestiture Business, and for the Divestiture Business to meet all of their legal, corporate, financial, accounting, taxation, audit and regulatory obligations; and

- (g) provide and pay for any external expertise, assistance or advice reasonably required by the Independent Manager to perform his or her role.
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## **4. Divestiture Process**

### **4.1 Information Memorandum**

- (a) To facilitate the divestment of the Divestiture Business by the Divestiture Date, the Undertaking Parties must prepare a confidential information memorandum (or similar) relating to the sale of the Divestiture Business, including a comprehensive description of the assets, contracts and other elements that make up the Divestiture Business for its divestiture in accordance with this Undertaking (the “**Information Memorandum**”).
- (b) Prior to the release of the Information Memorandum to any Proposed Purchaser the Undertaking Parties will provide a copy of the Information Memorandum to the Commission and seek the Commission's written notice of no objection to the Information Memorandum prepared by the Undertaking Parties.
- (c) The Commission will, within the Objection Period, consider the proposed Information Memorandum, and advise the Undertaking Parties in writing of any decision to object on the basis of inconsistency with this Undertaking (in which case the Commission will provide the Undertaking Parties with its written reasons for its objection) or not to object to the proposed Information Memorandum.
- (d) Within 7 Business Days of any objection by the Commission pursuant to clause 4.1(c) of this Schedule A, the Undertaking Parties will amend the Information Memorandum to address the Commission's concerns as stated in its reasons for objection and provide a copy to the Commission.
- (e) The Undertaking Parties must not provide the Information Memorandum (or any part of it) to any Proposed Purchaser unless the Commission's written notice of no objection to the Information Memorandum has first been obtained pursuant to clause 4.1(c).

### **4.2 Divestiture terms**

The terms on which the Divestiture Business is to be divested (and which are to be included in the Sale and Purchase Agreement) must, subject to specific provisions in Schedule 2 to the contrary:

- (a) provide for the assignment, transfer or licence of any intellectual property in the Divestiture Business including all material intellectual property of the Divestiture Business excluding any trademarks or brand names which are used by the Undertaking Parties in the business retained by the Undertaking Parties;
- (b) provide for the assignment or transfer to the purchaser or purchasers of all other material assets in the Divestiture Business being consistent with the assets held by the Divestiture Business during the 3 month period prior to the Commencement Date (unless otherwise approved by the Commission) and including those referred to in Schedule 3;
- (c) provide for the Undertaking Parties to make available to the Approved Purchaser, or the Approved Purchasers as the case may be, any of the staff of the Divestiture Business which it wishes to employ;

- (d) prohibit the Undertaking Parties from doing anything with the intention of or which is likely to have the effect of discouraging any staff of the Divestiture Business taking up employment with the purchaser, and for the Undertaking Parties to take all reasonable steps to facilitate the transfer of those employees;
- (e) provide for the Undertaking Parties to procure that the Independent Manager continues to operate the Divestiture Business in the ordinary course of business between the date of execution of the relevant Sale and Purchase Agreement and the relevant Divestiture Date;
- (f) provide for the assignment or transfer to the purchaser or its nominee of the rights and obligations under any of the Contracts relevant to the Divestiture Business (subject to the receipt of necessary third party consents) and the Undertaking Parties will apply for all third party consents to assignment or transfer of material contracts and use their reasonable endeavours to obtain these consents by the Divestiture Date;
- (g) provide that any contracts, arrangements or understandings between the Undertaking Parties and the Divestiture Business that are not explicitly permitted in this Undertaking may be terminable by the purchaser on no less than 30 days notice and are designed as interim measures or are otherwise approved by the Commission; and
- (h) be consistent with the obligations of the Undertaking Parties to effect a sale of the Divestiture Business in accordance with the terms, intent and purpose of this Undertaking.

The Undertaking Parties must not contract to sell the Divestiture Business on terms which would be inconsistent with the role of the Divestiture Agent, the granting of authority to the Divestiture Agent under clause 6 of this Schedule A, or any other obligation in this Undertaking.

### **4.3 Reporting to the Commission**

- (a) The Information Memorandum will require all approaches by any interested party to be made to persons nominated by the Undertaking Parties, and if those persons are approached by any party interested in acquiring the Divestiture Business, the Undertaking Parties must inform that party as soon as practicable that it will not consider the approach further unless the Undertaking Parties can disclose the details of any offer to purchase the Divestiture Business to the Commission.
- (b) The Undertaking Parties must not engage in negotiations with any party interested in acquiring the Divestiture Business if the party has not agreed to the disclosure requirement in 4.3(a) of this Schedule A.
- (c) The Undertaking Parties must forward to the Commission:
  - (i) in the reports under clause 4.3(d) of this Schedule A, information concerning the identity of each entity that has expressed an interest (whether in writing or orally to a senior executive or to an employee actively involved in the transaction or a nominated financial adviser of an Undertaking Party) in acquiring the Divestiture Business (or any material part thereof) since the last report and a short description of the nature of that interest; and
  - (ii) within 5 Business Days of its receipt, a copy of any bona fide written expression of interest or offer to acquire the Divestiture Business.

- (d) Without limiting the operation of clause 9 of this Undertaking, on the first Business Day of every month from the Fairfax Sale Date, the Undertaking Parties will provide a written report to the Commission as to the progress made in divesting the Divestiture Business, including providing details of the third party consent to assignment or transfer of material Contracts which are required by the Approved Purchaser or the Approved Purchasers as the case may be, as well as details of the progress of obtaining these consents.
- (e) The Undertaking Parties will respond in a timely manner to any queries made by the Commission about the divestiture of the Divestiture Business and in particular, the Undertaking Parties must, if the Commission so requests, provide information to the Commission as to the attributes and extent of assets and arrangements comprising the Divestiture Business.
- (f) If, following any monthly report provided by the Undertaking Parties under clause 4.3(d) of this Schedule A the Commission directs the Undertaking Parties to take steps or provide further information in relation to this Undertaking, the Undertaking Parties will do so within 5 Business Days to the extent it is practicable to do so given the scope of the Commission's direction and in any event as soon as reasonably practicable.

#### **4.4 Further Services to be Provided by Undertaking Parties**

If the Commission is satisfied that in order to operate the Divestiture Business, the Proposed Purchaser or Approved Purchaser requires the Undertaking Parties to provide services, facilities, equipment or access to locations not part of the Divestiture Business and that the Undertaking Parties are capable of providing such services from their own resources (“Further Services”), the Commission may give notice to the Undertaking Parties to provide such Further Services on reasonable commercial terms to that person if that person becomes an Approved Purchaser. The Undertaking Parties must comply with any such notice and provide details of any proposed arrangement in relation to Further Services to the Commission prior to entry into the Sale and Purchase Agreement. The Undertaking Parties will comply with the terms of any such agreement proposed in respect of the supply of the Further Services.

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### **5. Approved Purchaser**

#### **5.1 Sale only to an Approved Purchaser**

- (a) The Undertaking Parties will not sell, and will not authorise the Divestiture Agent to sell, the Divestiture Business to a purchaser other than an Approved Purchaser.
- (b) An Approved Purchaser is a Proposed Purchaser which has not been objected to by the Commission in accordance with clause 5.3 of this Schedule A.

#### **5.2 Proposed Purchaser Criteria**

The Undertaking Parties will only propose for approval a purchaser which:

- (a) is independent of and has no direct or indirect material interest in the Undertaking Parties or MMML; and
- (b) the Undertaking Parties believe, in good faith and having made reasonable inquiries, is of good financial standing and has an intention to operate the Divestiture Business as a going concern.

### 5.3 Proposed Purchaser Notice

- (a) The Undertaking Parties must provide the Commission with a Proposed Purchaser Notice for each Proposed Purchaser on a confidential basis that:
  - (i) sets out the name, address, telephone number and any other available contact details of the Proposed Purchaser;
  - (ii) attaches a copy of the proposed Sale and Purchase Agreement and all other proposed transaction documents between the Proposed Purchaser and any of the Undertaking Parties in relation to the divestment of the Divestiture Business;
  - (iii) includes a description of the business carried on by the Proposed Purchaser identifying whether the Proposed Purchaser is a radio broadcaster;
  - (iv) includes the names of the persons in a position to exercise control, and the directors, of the Proposed Purchaser; and
  - (v) includes such other information that the Commission requires to assess the independence of the Proposed Purchaser.
- (b) The Undertaking Parties acknowledge that the Commission need not approve a Proposed Purchaser until after it has consulted with the public about the Proposed Purchaser or Proposed Purchasers by disclosing the name of the Proposed Purchaser or, where there is more than one Proposed Purchaser, the names of all of the Proposed Purchasers. The Commission will only make such disclosure when approval is granted by the Undertaking Parties to make the disclosure.
- (c) The Undertaking Parties must not enter into a Sale and Purchase Agreement with any Proposed Purchaser:
  - (i) until the Commission has confirmed in writing that it does not object to the Proposed Purchaser and the terms of the proposed Sale and Purchase Agreement; or
  - (ii) unless it is a condition precedent to the completion of that Sale and Purchase Agreement, that the Commission has given the confirmation referred to in clause 5.3(c)(i) of this Schedule A and the condition precedent cannot be waived.
- (d) When the Commission has confirmed in writing that it does not object to the Proposed Purchaser and the terms of the proposed Sale and Purchase Agreement, the Proposed Purchaser becomes an Approved Purchaser.
- (e) In making its decision whether or not to object to a Proposed Purchaser, the Commission will have regard to whether it is satisfied that:
  - (i) the Proposed Purchaser is independent of the Undertaking Parties, MML and Southern Cross;
  - (ii) the Proposed Purchaser is of good financial standing and has an intention to maintain the competitive position of the Divestiture Business;



- (iii) the Proposed Purchaser is able to conduct the Divestiture Business in such a manner that it will be an ongoing vigorous and effective competitor; and
- (iv) the sale of the Divestiture Business to the Proposed Purchaser will address any competition concerns held by the Commission.

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## **6. Failure to divest within the Divestiture Period**

### **6.1 Sale of Unsold Business**

In the event that the sale of the Divestiture Business is not completed by the end of the Divestiture Period, the Divestiture Business becomes an Unsold Business to be sold by the Divestiture Agent.

### **6.2 Notification of Proposed Divestiture Agent**

Within 2 Business Days of the Divestiture Business becoming an Unsold Business, the Undertaking Parties must notify the Commission, in writing, of the identity of the Proposed Divestiture Agent who must be independent of the Undertaking Parties, MML and Southern Cross and have the appropriate experience and qualifications to act as a divestiture agent, together with such information as the Commission requires to assess whether the Commission will object to the appointment of the Proposed Divestiture Agent including the proposed terms of appointment.

### **6.3 Alternative Divestiture Agent**

- (a) If within the Objection Period the Commission objects to the Proposed Divestiture Agent or the terms of appointment, the Undertaking Parties must appoint a Divestiture Agent nominated by the Commission, within 5 Business Days of nomination by the Commission on terms of appointment approved by the Commission and which include the terms set out in clause 6.4 of this Schedule A and must forward a copy of the executed terms of appointment immediately to the Commission.
- (b) If agreement on fees cannot be reached between the Undertaking Parties and the Divestiture Agent nominated by the Commission within 5 Business Days of nomination by the Commission, the Undertaking Parties will agree to pay such fees as are directed by the Commission.

### **6.4 Appointment of Divestiture Agent**

- (a) If within the Objection Period the Commission does not object to the Proposed Divestiture Agent or the terms of appointment, the Undertaking Parties must appoint, within 5 Business Days of the end of the Objection Period, the Proposed Divestiture Agent as a Divestiture Agent, in accordance with the terms of appointment approved by the Commission which must include the terms set out in this clause, and forward to the Commission a copy of the executed terms of appointment.
- (b) The appointment of the Divestiture Agent must be on terms approved by the Commission, which must include terms to the effect that the Divestiture Agent:
  - (i) is empowered by the Undertaking Parties and required to effect the divestiture of the Unsold Business to an Approved Purchaser within the Divestiture Agent Period for cash at the best price and on the best terms

that are attainable within the Divestiture Agent Period, but subject to an overriding and unconditional obligation to complete the sale of the Unsold Business at any price and on any terms by the end of this period;

- (ii) may charge such fees as are agreed between the Divestiture Agent and the Undertaking Parties (but not fees contingent on the price to be obtained for the Unsold Business), to be paid by the Undertaking Parties. If agreement cannot be reached between the Divestiture Agent and the Undertaking Parties within 5 Business Days from the date of the Commission's notice that it does not object to the Proposed Divestiture Agent, the Undertaking Parties will agree to pay such fees as are directed by the Commission. If the Commission has directed the Undertaking Parties to appoint the Divestiture Agent pursuant to clause 6.3 of this Schedule A, then the Undertaking Parties must pay the Divestiture Agent fees in the amount directed by the Commission;
- (iii) is the only person who may divest an Unsold Business after the Appointment Date;
- (iv) may retain any person required to effect the divestiture of an Unsold Business, and the fees of that adviser or agent must be paid by the Undertaking Parties, provided that those fees are of a level which is consistent with usual industry practice for fees of that kind for the services provided by that adviser or agent;
- (v) must account to the Undertaking Parties for:
  - A. any moneys derived from the divestiture of any Unsold Business;
  - B. all disbursements, fees and charges incurred by the Divestiture Agent in undertaking his/her duties; and
  - C. all fees of the Divestiture Agent;
- (vi) must provide a written report on the first Business Day of each month from the Appointment Date until the Divestiture Date to the Commission and the Undertaking Parties, and answer any enquiries of either the Commission or the Undertaking Parties relating to:
  - A. the efforts made to sell the assets;
  - B. the identity of any persons expressing interest in the Divestiture Business; or
  - C. any other information required by the Commission or the Undertaking Parties;
- (vii) must use best endeavours to ensure that the Undertaking Parties comply with their obligations as set out in this Undertaking and notify the Commission of any failure by any of the Undertaking Parties to do so; and
- (viii) must comply with the obligations in clauses 4.3(a), 4.3(b) and 4.3(c) of this Schedule A that apply to the Undertaking Parties.

## **6.5 Powers of Divestiture Agent**

The Undertaking Parties will grant the Divestiture Agent an irrevocable power of attorney conferring all necessary power and authority to effect the divestiture of the Unsold Business on terms considered by the Divestiture Agent in its sole discretion to be consistent with this Undertaking.

## **6.6 Assistance to Divestiture Agent**

The Undertaking Parties must provide the Divestiture Agent with all relevant information available to the Undertaking Parties and reasonably assist the Divestiture Agent to effect the divestiture of the Unsold Business as quickly as possible.

## **6.7 Provision of information to the Commission by the Divestiture Agent**

The Commission may request information from the Divestiture Agent directly at any time. The Undertaking Parties undertake to require the Divestiture Agent to report and respond to the Commission directly in response to any such request, or as otherwise required by the Commission.

## **6.8 Termination of Divestiture Agent**

- (a) The Commission must approve any proposal by the Undertaking Parties to terminate the Divestiture Agent.
- (b) The Commission may direct the Undertaking Parties to terminate the Divestiture Agent if the Divestiture Agent acts inconsistently with the provisions of this Undertaking or, if in the Commission's opinion, is unlikely to effect a sale of the Divestiture Business as required by the terms of engagement.
- (c) On the Undertaking Parties seeking the Commission's approval to terminate or following the Commission issuing a direction to terminate, the Commission can nominate at its discretion an alternative Divestiture Agent. The Undertaking Parties must appoint an alternative Divestiture Agent nominated by the Commission within 2 Business Days of such nomination, in accordance with the terms of appointment indicated by the Commission (and including the terms set out in clause 6.4(b) of this Schedule A) and must immediately forward a copy of the executed terms of appointment to the Commission upon execution.

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## **7. Release of staff**

### **7.1 Release**

Where:

- (a) the Divestiture Business is sold as contemplated by this Undertaking; and
- (b) the terms of sale contemplate that, immediately following the completion of the sale, a staff member of the Undertaking Parties or one of their Related Bodies Corporate will be employed by or otherwise provide services to, the Divestiture Business;

the Undertaking Parties must release the relevant staff member, with effect from the Divestiture Date, from:

- (c) any obligation to provide services to the Undertaking Parties; and

- (d) any non-compete or similar restraint of trade obligation, to the extent that such obligation would otherwise prevent the staff member from his or her contemplated role in relation to the Divestiture Business.

## **7.2 Employment of staff by Proposed Purchaser(s)**

The Undertaking Parties further undertake that they will not, directly or indirectly, discourage staff of the Divestiture Business from seeking employment with the Proposed Purchaser, or Proposed Purchasers as the case may be, of the Divestiture Business.

## **7.3 Employment of staff by the Undertaking Parties**

The Undertaking Parties undertake not to offer employment to, or to employ, any staff member employed by the Divestiture Business at the Control Date within the 12 month period following the Divestiture Date unless the Commission has previously approved such offer or employment provided that nothing in this clause is to have the effect of requiring the Undertaking Parties to breach any applicable law.

Schedule 1 – **CONFIDENTIAL** – Divestiture Period

## Schedule 2 - Fairfax Business

The Fairfax Business is all of the businesses in the Share Purchase Agreement which is Exhibit 1 to the Procurement Deed dated 3 July 2007 executed by MMHL, RM2 and Fairfax Media Limited (ACN 008 663 161), and which includes the following entities which conduct metropolitan radio broadcasting activities in the named regions using the listed metropolitan Commercial Radio Broadcasting Licences and their subsidiaries:

SCB Subsidiary	Licence No.	On-Air-ID (Frequency)	Radio Licence Area
Radio 2UE Sydney Pty Ltd	4102	2UE (954 kHz)	Sydney RA1 (NSW)
3AW Southern Cross Radio Pty Ltd ("3AW")	4140	3AW 1278 Talk Radio (1278 kHz)	Melbourne RA1 (QLD)
1278 Southern Cross Radio Pty Ltd	4146	Magic 1278 (693 kHz)	Melbourne RA1 (QLD)
96FM Southern Cross Radio Pty Ltd	3038	96fm (96.1 MHz)	Perth RA1 (WA)
6PR Southern Cross Radio Pty Ltd	4201	6PR (882 kHz)	Perth RA1 (WA)
Radio 4BC Brisbane Pty Ltd	4161	4BC (1116 kHz)	Brisbane RA1 (QLD)
Queensland Radio 2000 Pty Ltd	4162	4BH 882 (882 kHz)	Brisbane RA1 (QLD)

2. Southern Star Group Limited;
3. Satellite Marketing Australia Pty Limited (ACN 072 328 986), the subsidiaries of which are:
  - (a) Satellite Music Australia Pty Limited (ACN 074 162 888);
  - (b) Satellite Interactive Marketing Pty Limited (ACN 078 808 554); and
  - (c) Digital Radio Australia Pty Limited (ACN 083 365 799).
4. Southern Cross Syndication Pty Ltd (ACN 002 015 821);
5. Southern Cross View Pty Ltd (ACN 104 575 591) and its 50% shareholding in You Play Pty Ltd (ACN 104 575 591); and
6. Tricom Group Pty Ltd (ACN 007 217 870), the subsidiaries of which are:
  - (a) Southern Cross Emedia Pty Ltd (ACN 007 445 892); and
  - (b) Fantasports Australia Pty Ltd (ACN 067 204 219).

Schedule 3 - **CONFIDENTIAL** – Related Assets