



TRADE PRACTICES ACT 1974 (the Act)
UNDERTAKING
TO: THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
GIVEN UNDER SECTION 87B
BY: MACQUARIE BANK LIMITED (ACN 008 583 542) AND
REGIONAL MEDIA PTY LIMITED (ACN 109 243 110)

1. Background

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- (a) These undertakings are given by Macquarie Bank Limited (**MBL**) (ACN 008 583 542) and Regional Media Pty Limited (**RM**) (ACN 109 243 110) pursuant to section 87B of the Act.
- (b) MBL is in the business of investment banking and financial services.
- (c) MBL intends to establish a regional broadcasting entity to supply broadcasting services in regional Australia through the acquisition of media assets outside major state capitals.
- (d) RM is a wholly owned subsidiary of MBL, set up as an entity to acquire radio stations.
- (e) RM has acquired or agreed to acquire regional commercial radio licences and associated radio stations from RG Capital Radio Limited (**RG**) and DMG Radio (Australia) Pty Limited (**DMG**) (being the **RG Licences** and the **DMGRR Licences** respectively) through the transactions described in more detail in Paragraphs 1(f) and 1(g) below (**Subject Acquisitions**).
- (f) Pursuant to an Implementation Agreement dated 3 June 2004 between RM and RG, RM has acquired all the ordinary shares in RG by way of scheme of arrangement. RG currently operates the RG Licences through special purpose subsidiaries in each relevant city or town or in some cases for each relevant radio station in each city or town. Completion of the scheme occurred on 1 September 2004.
- (g) By Share Sale Agreement dated 2 September 2004 between MBL, RM and DMG, RM has agreed to purchase all of the issued shares of DMGRR, the holding company for the 29 wholly owned subsidiaries which operate the DMGRR Licences. Completion of the purchase is scheduled between 8 and 10 September 2004.
- (h) By the Subject Acquisitions RM has and will acquire commercial radio licences and associated radio stations in 44 commercial radio licence areas.
- (i) In five of those licence areas, Albury, Cairns, Mackay, Rockhampton and Townsville (**Owned Overlap Areas**), there is an overlap between the RG Licences and the DMGRR Licences. Following the Subject Acquisitions, MBL and RM will

control a substantial number of the commercial radio broadcasting licences and the commercial radio broadcasting stations for each of the Owned Overlap Areas.

- (j) The Commission has assessed material provided to it by the parties and expressed the view that Part IV of the Act is likely to be contravened should effect be given to the Subject Acquisitions. In particular, the Commission has expressed concerns that the Subject Acquisitions would be likely to breach section 50 of the Act in the separate markets for advertising on commercial broadcast radio within each of the radio licence areas of:
 - (i) Albury;
 - (ii) Cairns;
 - (iii) Mackay;
 - (iv) Rockhampton; and
 - (v) Townsville.
- (k) The Commission's concerns arising from the Subject Acquisitions include, among other matters, the high level of concentration in the relevant markets and the significant market share MBL and/or RM will command following the Subject.
- (l) MBL and RM have agreed to provide these undertakings to the Commission to overcome those concerns arising from the Subject Acquisitions.

2. Definitions and Interpretation

2.1 Definitions

The following additional definitions apply in these Undertakings unless the context requires otherwise:

- (a) **Commencement Date** means, in relation to Undertakings affecting the commercial radio broadcasting stations associated with the RG Licences listed in Schedule 1, the date in clause 3(a)(i); and in relation to Undertakings affecting the commercial radio broadcasting stations associated with DMGRR Licences listed in Schedule 1, the date in clause 3(a)(ii).
- (b) **Commercial Radio Broadcasting Station** means:
 - (i) the relevant commercial radio broadcasting licence and frequency as specified in Schedule 1;
 - (ii) the relevant call sign as specified in Schedule 1;
 - (iii) the relevant business and all of the assets used in the business of radio broadcasting carried on under the relevant radio station name, including:
 - (A) equipment and infrastructure;
 - (B) the goodwill and relevant contracts concerning programming, sales, promotions, and advertising;

- (C) key employees of the business, including the management team and senior personnel and the main staff providing programming, sales, radio announcing, broadcasting and marketing services; and
- (D) the freehold or leasehold (as applicable) to the premises of the relevant business,

but excluding any assets which the Commission consents in writing may be excluded from the sale, such consent not to be unreasonably withheld having regard to whether the Qualified Purchaser wishes to acquire the assets, RM's own ongoing needs and those of the Determined Divestiture Businesses to continue to use shared premises and facilities and the establishment of arm's length facilities sharing and services sharing arrangements customary in the radio industry.

- (c) **Commission** means the Australian Competition and Consumer Commission.
- (d) **Determined Divestiture Businesses** mean one Commercial Radio Broadcasting Station in the radio licence areas of each of Albury, Cairns and Mackay and two Commercial Radio Broadcasting Stations in the radio licence areas of each of Rockhampton and Townsville as determined pursuant to clause 4.2 (and **Determined Divested Business** means any one of them).
- (e) **Divestiture Businesses** mean one Commercial Radio Broadcasting Station in the radio licence areas of each of Albury, Cairns and Mackay and two Commercial Radio Broadcasting Stations in the radio licence areas of each of Rockhampton and Townsville which MBL and/or RM will divest in compliance with these Undertakings (and **Divestiture Business** means any one of them). The Divestiture Businesses are a sub set of the Owned Overlap Businesses.
- (f) **Divestiture Dates** are the dates on which the divestiture of the Divestiture Businesses are completed by or on behalf of MBL and/or RM pursuant to these Undertakings.
- (g) **Divestment Period** means the period specified in Schedule 2.
- (h) **DMG** means DMG Radio (Australia) Pty Limited (ACN 093 553 989).
- (i) **DMGRR** means DMG Regional Radio Pty Limited (ACN 003 882 326).
- (j) **DMGRR Licences** means the commercial radio broadcasting licences owned by DMGRR and/or a Related Body Corporate of DMGRR and acquired by MBL and/or RM through the Subject Acquisitions.
- (k) **Independent Manager** means an independent manager to be appointed by MBL and/or RM to independently manage and operate the Determined Divestiture Businesses in accordance with clause 4.3(c).
- (l) **MBL** means Macquarie Bank Limited (ACN 008 583 542).
- (m) **Overlap Licence Areas** means the licence areas listed in Schedule 1.
- (n) **Owned Overlap Businesses** means the Commercial Radio Broadcasting Stations associated with the station names and call signs listed in Schedule 1 and **Owned Overlap Business** means any one of them.

- (o) **Qualified Purchaser** means a purchaser of a Divestiture Business who is not objected to by the Commission in accordance with clause 4.7 and Schedule 2.
- (p) **Related Body Corporate** in relation to a company, means any other company which would be deemed to be related to the first mentioned company by the operation of section 4A(5) of the Act.
- (q) **RG** means RG Capital Radio Limited (ACN 010 711 056).
- (r) **RG Licences** means the commercial radio broadcasting licences formerly owned by RG and/or a Related Body Corporate of RG and acquired by MBL and/or RM through the Subject Acquisitions.
- (s) **RM** means Regional Media Pty Limited (ACN 109 243 110).
- (t) **Undertakings** means all provisions of this document given by MBL and RM to the Commission, including any Schedules to this document.

2.2 Interpretation

- (a) The following rules of interpretation apply unless the context requires otherwise.
 - (i) Headings are for convenience only and do not affect interpretation.
 - (ii) The singular includes the plural and conversely.
 - (iii) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
 - (iv) A reference to a person includes a body corporate, an unincorporated body or other entity and conversely.
 - (v) A reference to a paragraph, clause, annexure or schedule is to a paragraph or clause of, or annexure or schedule to, these Undertakings.
 - (vi) A reference to any agreement or document (including these Undertakings) is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time.
 - (vii) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it.
 - (viii) A reference to conduct includes any omission and any statement or undertaking, whether or not in writing.
 - (ix) Mentioning anything after include, includes or including does not limit what else might be included.

3. Commencement and Duration of Undertakings

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- (a) These Undertakings commence after their execution by MBL and RM and acceptance by the Commission and are effective in relation to:
 - (i) the RG Licences listed in Schedule 1 on the completion of RM's acquisition of all of the ordinary shares in RG by way of scheme of arrangement; and

- (ii) the DMGRR Licences listed in Schedule 1, on the completion of RM's acquisition of all of the shares in DMGRR.
- (b) These Undertakings will cease to be of effect as they apply to each Owned Overlap Business on the earlier to occur of:
- (i) the divestiture in accordance with these Undertakings to a Qualified Purchaser or Qualified Purchasers of all of the Determined Divestiture Businesses which broadcast in the same Overlap Licence Area as the Owned Overlap Business; and
 - (ii) the Commission determining that it is no longer necessary for MBL and RM to keep these Undertakings in place in respect of that Owned Overlap Business,
- but in any event, subject to clause 3(c), on final completion of the divestiture of all the Determined Divestiture Businesses to a Qualified Purchaser or Qualified Purchasers in accordance with these Undertakings.
- (c) The obligations of MBL and RM under clause 4.3(g) will continue for 3 years after the completion of the divestiture of all of the Determined Divestiture Businesses.

4. Undertakings

4.1 Divestitures

- (a) MBL and/or RM will divest or cause the divestiture of one Commercial Radio Broadcasting Station in the radio licence areas of each of Albury, Cairns and Mackay and two Commercial Radio Broadcasting Stations in the radio licence areas of each of Rockhampton and Townsville to a Qualified Purchaser or Qualified Purchasers:
- (i) either separately or together; and
 - (ii) as viable going concerns;
- and will use their best endeavours to complete the divestitures as soon as possible within the Divestment Period in accordance with clauses 4.2 to 4.7 of these Undertakings.
- (b) MBL will use reasonable endeavours to ensure the smooth transition of the Determined Divestiture Businesses to the Qualified Purchaser or Qualified Purchasers.

4.2 Determination of Owned Overlap Businesses to be Divested

- (a) Within 3 months of the execution of these Undertakings, MBL and/or RM will give the Commission a written advice (***Divestiture Advice***) that specifies which of the Owned Overlap Businesses it proposes to divest in accordance with these Undertakings.
- (b) The Divestiture Advice must specify one Commercial Radio Broadcasting Station in the radio licence areas of each of Albury, Cairns and Mackay and two Commercial

Radio Broadcasting Stations in the radio licence areas of each of Rockhampton and Townsville.

- (c) Within four weeks of receiving the Divestiture Advice the Commission will notify MBL of any objection (**Proposed Divestiture Objection Notice**) it has to the divestiture proposals of any of the Owned Overlap Businesses specified in the Divestiture Advice, including any alternate Owned Overlap Businesses which in the Commission's view ought to be divested having regard to:
- (i) the likelihood of the Owned Overlap Businesses specified in the Divestiture Advice being vigorous and effective competitors in the hands of a Qualified Purchaser or Qualified Purchasers; and
 - (ii) the likelihood of the divestiture of the Owned Overlap Businesses specified in the Divestiture Advice overcoming the competition concerns raised by the Subject Acquisitions.
- (d) If a Proposed Divestiture Objection Notice has been given by the Commission, MBL and RM will within 15 business days either:
- (i) provide written notice to the Commission of a revised list of Owned Overlap Businesses that are to be divested which satisfies the Commission's concerns;
 - (ii) satisfy the Commission's concerns in relation to the Owned Overlap Businesses in the Divestiture Advice; or
 - (iii) proceed to divest immediately the Owned Overlap Businesses set out in the Proposed Divestiture Objection Notice in accordance with clauses 4.5 to 4.7 of these Undertakings whilst at the same time observing their obligations under clauses 4.3 and 4.4.
- (e) If a Proposed Divestiture Objection Notice is not given by the Commission within the time specified in 4.2(c), the Owned Overlap Businesses specified in the Divestiture Advice will be the Owned Overlap Businesses which are to be divested pursuant to these Undertakings.
- (f) The Owned Overlap Businesses identified to be divested in accordance with the processes set out in clauses 4.2(a) to 4.2(e) are hereafter referred to as the **Determined Divestiture Businesses** for the purposes of these Undertakings.

4.3 Condition of Divestiture Businesses

Maintenance of all of the Owned Overlap Businesses prior to determination of which ones are to be divested

- (a) From the Commencement Date until such time as the Owned Overlap Businesses which are to be divested are determined pursuant to clause 4.2, MBL and RM will not:
- (i) sell or transfer their interest in any of the Owned Overlap Businesses except in accordance with these Undertakings; and

- (ii) sell, transfer or permit the disposal of, or deal with, any assets, including programming or broadcasting staff, comprising part of, or used in, any of the Owned Overlap Businesses to the extent that doing so would diminish or materially affect the goodwill, competitive standing, commercial viability or profitability of any of the Owned Overlap Businesses.
- (b) From the Commencement Date until such time as the Owned Overlap Businesses which are to be divested are determined pursuant to clause 4.2, MBL and RM will maintain all of the Owned Overlap Businesses as competitive, fully operational Commercial Radio Broadcasting Stations and in such a way which does not diminish or materially affect the goodwill, competitive standing, commercial viability and profitability of each of those businesses, including:
- (i) maintaining existing staffing levels, sales, promotions, programming and advertising contracts on commercial terms no less favourable than existing arrangements;
 - (ii) maintaining broadcasting equipment and other assets necessary to run a Commercial Radio Broadcasting Station in existing condition;
 - (iii) using their best endeavours to renew or replace sales, promotions, programming and advertising contracts on expiry on commercial terms no less favourable to the relevant Determined Divestiture Business and entering into new, commercially favourable contracts where possible; and
 - (iv) maintaining the competitive standing of each of the Owned Overlap Businesses.

Maintenance of the Determined Divestiture Businesses

- (c) From such time as the Owned Overlap Businesses which are to be divested are determined pursuant to clauses 4.1 and 4.2, MBL and/or RM will appoint a person to manage and operate the Determined Divestiture Businesses (the Independent Manager). It will be a term of MBL and/or RM's engagement of the Independent Manager that he will use his best endeavours to operate the Determined Divestiture Businesses independently of and from any other Commercial Radio Broadcasting Stations in which MBL and/or RM or any Related Bodies Corporate have any interest. This includes implementing specific measures to maintain the confidentiality of any competitively sensitive information of the Determined Divestiture Businesses, including, without limitation, in respect of:
- (i) the determination of advertising rates and discounts (if applicable),
 - (ii) overseeing the management of the inventory;
 - (iii) determining advertising terms of trade;
 - (iv) determining availability of inventory; and
 - (v) determining quantity of advertising per hour.

- (d) From such time as the Owned Overlap Businesses which are to be divested are determined pursuant to clause 4.2, MBL and/or RM will not and will procure that the Independent Manager will not:
- (i) sell or transfer their interest in any of the Determined Divestiture Businesses except in accordance with these Undertakings;
 - (ii) sell, transfer or permit the disposal of, or deal with, any assets, including programming or broadcasting staff, comprising part of, or used in, the Determined Divestiture Businesses to the extent that doing so would diminish or materially affect the goodwill, competitive standing, commercial viability or profitability of the Determined Divestiture Businesses.
- (e) From such time as the Owned Overlap Businesses which are to be divested are determined pursuant to clause 4.1 and 4.2, MBL and RM will use their best endeavours to ensure that all the Determined Divestiture Businesses are maintained and operated as competitive, commercially viable and fully operational Commercial Radio Broadcasting Stations independent from any other Commercial Radio Broadcasting Station in which MBL, RM or any of their Related Bodies Corporate have any interest.
- (f) MBL and RM will, from the Commencement Date until the Divestiture Date, maintain each of the Determined Divestiture Businesses as competitive, fully operational Commercial Radio Broadcasting Stations and in such a way which does not diminish or materially affect the goodwill, competitive standing, commercial viability or profitability of each of those businesses, including:
- (i) maintaining existing staffing levels, sales, promotions, programming and advertising contracts on commercial terms no less favourable than existing arrangements;
 - (ii) maintaining broadcasting equipment and other assets necessary to run a commercial radio station in existing condition;
 - (iii) using their best endeavours to renew or replace sales, promotions, programming and advertising contracts on expiry on commercial terms no less favourable to the relevant Determined Divestiture Businesses and entering into new, commercially favourable contracts where possible; and
 - (iv) maintaining the competitive standing of each Determined Divestiture Business.
- (g) MBL and RM will not, and will procure that the Independent Manager will not, at any time during the Divestment Period or within three years of the completion of the sale of all of the Determined Divestiture Businesses, use any competitively sensitive information gained through their acquisition and/or management of the divested businesses to the detriment of any of the Determined Divestiture Businesses, including their goodwill, competitive standing, commercial viability or profitability.

4.4 Notice to comply

- (a) Until such time as all of the Determined Divestiture Businesses have been divested in accordance with these Undertakings, MBL and RM will communicate with the Commission and keep it informed of:
- (i) the progress in respect of divesting the Determined Divestiture Businesses; and
 - (ii) any material changes being made or agreed or proposed to be made to the remaining Owned Overlap Businesses in relation to staffing, programming, sales and advertising operations or strategies that have, or will have, an effect on the competitive standing, commercial viability or profitability of either the Determined Divestiture Businesses or the remaining Owned Overlap Businesses:
 - (A) in the period until the divestment of all the Determined Divestiture Businesses; or
 - (B) after the divestment of all the Determined Divestiture Businesses.
- (b) At the end of the first five months of the Divestment Period, MBL and/or RM will provide the Commission with an audited report, which has been prepared by an independent qualified auditor, and which details for each of the Determined Divestiture Businesses:
- (i) the gross monthly advertising revenues for each of the previous five months;
 - (ii) the historical gross monthly advertising revenues for each of the past three financial years;
 - (iii) the key attributes, assets, staffing, programming, promotions, sales and advertising contracts which were in existence as at the Commencement Date and any material changes effected to them since the Commencement Date; and
 - (iv) the auditor's opinion of whether there has been any change in the competitive standing or commercial profitability in comparison to the previous three financial years of any of the Determined Divestiture Businesses since the date of execution of these Undertakings, including a description of any such changes which have arisen.
- (c) All costs associated with the auditor and the auditor's report and the auditor's certificate referred to in clauses 4.4 and 4.5 will be paid for by MBL and RM.
- (d) If after the first 6 months of the Divestment Period the Commission is not satisfied that MBL and RM have complied in all material respects with their obligations under clause 4.3, the Commission may issue a notice in writing to MBL giving 14 days notice to remedy any non-compliance with clause 4.3.

4.5 Divestiture Process

Within the Divestment Period, MBL and/or RM will:

- (a) invite expressions of interest to purchase the Commercial Radio Broadcasting Stations associated with the Determined Divestiture Businesses by sending a notice (**Offer Notice**) to prospective purchasers identified by MBL and RM;
- (b) place in a national daily newspaper, a metropolitan daily newspaper in the capital city of each State in which the Overlap Licence Areas are located and a local daily newspaper in the region of each of the Overlap Licence Areas appropriate display advertisements seeking expressions of interest to purchase separately and together the Determined Divestiture Businesses; and
- (c) prepare a confidential information memorandum (or similar) relating to the sale of the Determined Divestiture Businesses (**Information Memorandum**) which must contain or annex a comprehensive draft Sale and Purchase Agreement for the divestiture of the Determined Divestiture Businesses in accordance with these Undertakings.
- (d) Not less than 14 days prior to the provision of the Information Memorandum to any prospective purchaser, MBL and RM will provide to the Commission a copy of the Information Memorandum, together with a certificate from an independent auditor (the **Auditor**) certifying that:
 - (i) so far as is material, the Determined Divestiture Businesses offered for sale are accurately described, and clearly represented as being for sale pursuant to the terms of these Undertakings, in the Information Memorandum; and
 - (ii) the obligations of MBL and RM pursuant to clause 4.6 of these Undertakings are clearly set out in the Information Memorandum.
- (e) At any time prior to the provision of the Information Memorandum to any prospective purchaser:
 - (i) the Commission may make inquiries as to the attributes and extent of the businesses and assets of the Determined Divestiture Businesses;
 - (ii) MBL and/or RM will require the Auditor, if the Commission requests, to provide information to the Commission or to allow the Commission to inspect the Auditor's relevant records, as to the compliance of MBL and RM with these Undertakings and the accuracy of the certificate given by the Auditor under clause 4.5(d);
 - (iii) at the request of either of them, MBL and/or RM and the Commission will discuss and negotiate in good faith any difference of view in relation to the inclusion into, or exclusion from, the description of the business and assets for sale in the Information Memorandum, of any asset which forms part of the Determined Divestiture Businesses.
- (f) MBL and RM will not provide the Information Memorandum (or any part of it) to prospective purchasers unless clause 4.6(d) and (e) have been complied with. MBL and/or RM will permit any prospective purchaser (who is likely to be a Qualified Purchaser) to have reasonable access to the business records and personnel of each of the Determined Divestiture Businesses and to inspect the

assets and operations of the business, subject to any confidentiality assurances which, in the opinion of the Commission, are reasonable.

- (g) The Commission acknowledges that MBL and RM may pursue alternate divestment approaches including an Initial Public Offering or Management Buy-Out which may form the basis of the divestment of the Determined Divestiture Businesses, provided such alternative divestment approaches result in the divestiture of the Determined Divestiture Businesses to Qualified Purchasers in the Divestment Period required by these Undertakings.
- (h) MBL and/or RM will, within 1 week of the expiration of the Divestment Period, provide to the Commission (on a confidential basis) copies of all offers to purchase all or any of the Determined Divestiture Businesses.

4.6 Divestiture Terms

- (a) The terms on which each of the Determined Divestiture Businesses is to be divested must include provision for, on normal contractual terms:
 - (i) the assignment and transfer to the purchaser of all assets of the business, subject to normal contractual terms regarding collection of receivables by the vendor;
 - (ii) the assignment to the purchaser or its nominees of the trade mark represented by the station call sign (but excluding any trade mark excluded from the sale by reason of its identification or networking with Commercial Radio Broadcasting Stations being retained by RM);
 - (iii) the purchaser to offer employment to those of the employees of the business which it wishes to employ, on terms which are no less favourable to those employees individually than the terms on which they are employed prior to the divestiture of the business; and
 - (iv) MBL and RM to refrain from doing anything with the intention or likely effect of discouraging any of the employees of the Determined Divestiture Businesses from taking up employment with the purchaser, and for MBL and RM to take all reasonable steps to facilitate the transfer of those employees.

4.7 Commission to Approve Purchasers

- (a) On MBL and/or RM reaching an "in principle" agreement with a prospective purchaser as to the sale of the Determined Divestiture Businesses MBL and/or RM will give the Commission written notice (**Proposed Purchaser Notice**) that:
 - (i) sets out the name, address and telephone number and any other available contact details of the proposed purchaser;
 - (ii) attaches a copy of the proposed sale and purchase agreement with the proposed purchaser and identifies any changes to the proposed sale and purchase agreement from that which was included in the Information Memorandum; and

- (iii) includes a description of the business carried on in Australia by the proposed purchaser;
- (iv) includes the names of the owners and directors of the prospective purchaser; and
- (v) attaches statutory declarations by a Division Director of MBL or other qualified representative of MBL and RM, attesting to:
 - (A) any current contracts, arrangements or understandings between MBL and/or RM and the prospective purchaser (or any Related Body Corporate, directors or managers of the prospective purchaser); and
 - (B) any contracts, arrangements or understandings between MBL and/or RM and the prospective purchaser (or any Related Body Corporate, directors or managers of the prospective purchaser) made or arrived at in the last five years.

such contracts, arrangements or understandings including, but not limited to, equity interests, joint ventures, supply arrangements, licensing agreements, directorships and management positions, in Australia and overseas.

- (b) The Commission may object to the proposed purchaser having regard to:
 - (i) the ability of the proposed purchaser to conduct a Commercial Radio Broadcasting Station business;
 - (ii) the likelihood of the Determined Divestiture Businesses in the hands of the proposed purchaser, being vigorous and effective competitors in the relevant market; and
 - (iii) the independence of the proposed purchaser from MBL, RM and their Related Bodies Corporate, directors and managers,

by giving MBL written notice of its objection (an **Objection Notice**) within 3 weeks of receipt by the Commission of the Proposed Purchaser Notice, or such further period as agreed between the Commission, MBL and RM. If an objection notice is not given by the Commission within that time, the proposed purchaser will be a Qualified Purchaser.

5. Further Information

- (a) MBL and RM will provide the Commission with copies of any executed agreement in connection with the sale of any of the Determined Divestiture Businesses promptly when it is entered into.
- (b) Pending the sale of the Determined Divestiture Businesses, MBL and RM will at all reasonable times provide the Commission with such information (in confidence) as the Commission may reasonably require in relation to:

- (i) the marketing, management and operation of the Determined Divestiture Businesses; and
 - (ii) the sale of the Determined Divestiture Businesses.
- (c) If requested by the Commission, MBL or RM will provide the Commission with such other information as the Commission reasonably requests in relation to the fulfilment of these Undertakings. This information may include information relevant to the management and operation of the Commercial Radio Broadcasting Stations in the relevant Owned Overlap Areas and arrangements for the divestiture of the Determined Divestiture Businesses. The information will be provided within 10 business days of receipt by MBL or RM of a request in writing or within such other time period as may be agreed to by the Commission.

6. Confidentiality Obligations

6.1 Reference to Undertakings

Subject to clause 6.2, MBL and RM acknowledge that the Commission will make these Undertakings available for public inspection and the Commission may issue a media release regarding these Undertakings and may from time to time publicly refer to these Undertakings.

6.2 Confidentiality Obligations

- (a) The Commission agrees that the following provisions of these Undertakings are to remain confidential:
- (i) Part 1 of Schedule 2; and
 - (ii) Part 2 of Schedule 2,
- until such time as specified in Schedule 2.
- (b) The Commission agrees to keep confidential all confidential information provided to the Commission in relation to the sale of the Determined Divestiture Businesses, including without limitation any confidential further information referred to in clause 5.
- (c) Nothing in this clause prevents the Commission from disclosing such information referred to in clause 6.2(b) and/or 6.2(a) as:
- (i) is required by law;
 - (ii) is reasonably necessary for the purpose of enforcement action under section 87B of the TPA; or
 - (iii) is reasonably necessary for the purpose of making such market inquiries as the Commission thinks fit to assess the impact of competition arising in connection with the proposed sale of the Determined Divestiture Businesses, provided that the Commission will not disclose any information or documents referred to in clause 6.2(b) to any third parties without first

providing MBL with a copy of any proposed disclosure no less than 2 business days before the intended release of a disclosure.

6.3 Expiry of Confidentiality

These Undertakings, including all confidential provisions, will become publicly available in their entirety at the earlier of:

- (a) the completion of the sale of all the Determined Divestiture Businesses; or
- (b) MBL and RM fulfilling all their obligations pursuant to these Undertakings.

6.4 Compulsion to provide information

MBL and RM acknowledge that, if the Commission is required by law to provide any person with:

- (a) a copy of these undertakings in their entirety including confidential provisions; or
- (b) a copy of any part of these undertakings including confidential provisions;

it may do so without seeking the consent of MBL or RM.

7. Notices

- (a) Any notice, demand, consent or other communication given or made under these Undertakings 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:

MBL:	Macquarie Bank Limited Attention: Mark Dorney and Alex Harvey Address: No.1 Martin Place, Sydney NSW 2000 Fax No: (02) 8232 3656
RM:	Regional Media Pty Limited c/- Macquarie Bank Limited Attention: Mark Dorney and Alex Harvey Address: No.1 Martin Place, Sydney NSW 2000 Fax No: (02) 8232 3656

The Commission:

Australian Competition & Consumer
Commission

Attention: General Manager, Mergers and Asset
Sales

Address: 470 Northbourne Avenue

Dickson ACT 2602


Fax No: (02) 6243 1212

8. Acknowledgements

- (a) When the performance by MBL or RM of an obligation under these Undertakings requires a Related Body Corporate of MBL or RM to take some action or refrain from taking some action, MBL and RM will procure that Related Body Corporate to take that action or refrain from taking that action.
- (b) If:
- (i) MBL and RM are unable to comply with their obligations under these Undertakings due solely to circumstances outside of their control; or
 - (ii) the Commission considers that the intention of these Undertakings has not been complied with,
- then MBL, RM and the Commission will review these Undertakings, and negotiate in good faith for the amendment or revocation of these Undertakings, having regard to the objective that competition in relevant markets is not to be substantially lessened, prevented or hindered as a result of the Subject Acquisitions.
- (c) Clause 8 (b) above shall not apply in respect of circumstances:
- (i) that exist at the date of these Undertakings;
 - (ii) that are reasonably foreseeable; or
 - (iii) that arise, whether directly or indirectly, by virtue of any act, matter or thing done by or on behalf of MBL and/or RM, or the failure of MBL and/or RM to do any matter or thing.
- (d) MBL and RM acknowledge that these Undertakings in no way derogate from the rights and remedies available to any other person arising from the Subject Acquisitions and conduct to which these Undertakings relate.
- (e) These Undertakings do not prevent the ACCC from taking enforcement action at any time whether during or after the period of the Undertakings in respect of any breach by MBL or RM of any of these Undertakings.

Each attorney executing this Agreement states that he or she has no notice of revocation or suspension of his or her power of attorney.

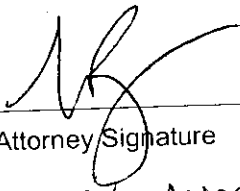
Signed for **MACQUARIE BANK LIMITED** by
its attorney under power of attorney dated
6 September 2004 in the presence of:



Witness Signature
SALLY ADELE BOX

Print Name

Date: 9/9/04

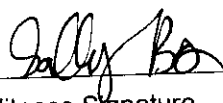


Attorney Signature
MARK ANDREW JORNEY

Print Name

Date: 9/9/04


Signed for **MACQUARIE BANK LIMITED** by
its attorney under power of attorney dated
6 September 2004 in the presence of:



Witness Signature
SALLY ADELE BOX

Print Name

Date: 9/9/04

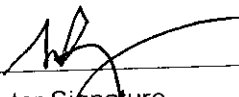


Attorney Signature
ALEXANDER HARMS HARBY

Print Name


Date: 9/9/04

Executed by REGIONAL MEDIA PTY
LIMITED:



Director Signature
Mark Andrew Donney

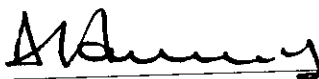
Print Name



Witness Signature
SALLY ADELE BOX

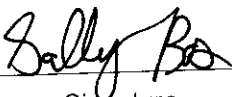
Print Name

Date: 9/9/04



Director/Secretary Signature
ALEXANDER HARMS HARVEY

Print Name




Witness Signature
SALLY ADELE BOX

Print Name

Date: 9/9/04

ACCEPTED by THE AUSTRALIAN
COMPETITION & CONSUMER
COMMISSION



Graeme Julian Samuel
Chairman

Date: 9 September 2004

Schedule 1

Owned Overlap Licence Areas and Owned Overlap Businesses

Licence Area	Name of Station and Call Sign of each Owned Overlap Business	Frequency	Licence Holder or its parent company of each Owned Overlap Business prior to the Subject Acquisitions	Licence No
Albury	2AAY	104.9 FM	(DMGRR)	SL 10289
RA1	2AY	1494 AM	(DMGRR)	SL 10387
	2BDR	105.7 FM	(RG)	SL 1150011
Cairns	4CCA	102.7 FM	(DMGRR)	SL 1150014
RA1	4HOT	103.5 FM	(DMGRR)	SL 5742
	4RGC	99.5 FM	(RG)	SL 1150044
Mackay	4MKY	100.3 FM	(DMGRR)	SL 1964
RA1	4MMK	101.9 FM	(DMGRR)	SL 1150018
	4RGM	98.7 FM	(RG)	SL 1150089
Rockhampton	4CC	927 AM	(DMGRR)	SL 4171
RA1	4ROK	107.9 FM	(DMGRR)	SL 1150045
	4RGK	101.5 FM	(RG)	SL 1150183
	4RO	990 AM	(RG)	SL 4182
Townsville	4RAM	103.1 FM	(DMGRR)	SL 4168
RA1	4TOO	102.3 FM	(DMGRR)	SL 4185
	4RGR	100.7 FM	(RG)	SL 1150009
	4RGT	106.3 FM	(RG)	SL 1150091

Schedule 2 (Confidential)