

DMG RADIO AUSTRALIA PARTNERSHIP

FURTHER SUBMISSION TO THE PRODUCTIVITY COMMISSION

PUBLIC ENQUIRY INTO BROADCASTING

Introduction

The Australian Broadcasting Authority (“**ABA**”) has just released a draft licence area plan for commercial and community radio services in Sydney.

DMG Radio Australia Partnership (“**DMG**”) is of the view that the Productivity Commission (“**PC**”) should be aware of and take into account some of the matters considered by the ABA.

DMG therefore makes this further submission. It is essential to do so, in light of the release of the draft licence area plan, which constitutes further material which cannot be ignored in the preparation of its draft report by the PC.

The purpose of this further submission, therefore, is to assist in the disclosure and consideration of all relevant matters before the release of its draft report by the PC.

DMG’s Position

DMG agrees with a lot of the information and detail contained in the ABA’s discussion paper under the heading “Preliminary View 3”. That information and detail relates to additional wide coverage commercial radio services in Sydney.

DMG submits, however, that the draft decision in Preliminary View 3 is inconsistent with and contrary to the ABA’s own analysis of the information and detail contained in its discussion paper.

The ABA’s own analysis demonstrates that the immediate issue of three or four new FM commercial radio licences in Sydney would be supported by:

- the financial condition of the market;
- the financial performance of the two existing owners of FM commercial radio services in Sydney;
- the principles of diversity, efficiency and competition which are the cornerstones of the planning process under the Broadcasting Services Act 1992;
- the disparity which now exists between the relative numbers of commercial radio services and community radio services in Sydney (when compared to the average percentages of the population who listen to those services); and
- the great success of FM commercial radio services when compared to AM commercial radio services (by reference to shares of audience and revenue) which leads to domination (and the exercise of significant influence) by the two existing owners of FM commercial radio services in Sydney.

DMG also submits that the ABA did not consider a number of other matters which, if considered, would have further strengthened its analysis. Three matters which, in particular, were not considered in enough depth by the ABA are:

- the very strong financial performance of the two existing owners of FM commercial radio services in Sydney (which has been underpinned by the protection given to them since the introduction of the two-to-a-market rule and the delay in the issue of new licences);
- the very different audiences served by FM commercial radio services and AM commercial radio services (and the result that for most purposes they operate in different markets and, therefore, any increase in diversity of services and any consideration of ability to withstand more competition, should be assessed only by reference to the existing market for FM commercial radio services); and
- the competitive advantage of the two existing duopoly owners of FM commercial radio services in Sydney (to be able to withstand competition if only one new FM commercial radio licence is issued now and, therefore, the new owner is not a duopoly owner but the owner of just a single service).

DMG's position is quite simple.

The ABA's preliminary view (that in Sydney it is appropriate to issue now only one new FM commercial radio licence and, after four years, if it ever happens, one further FM commercial radio licence) is wrong.

It is not supported by the ABA's own analysis.

It is not supported by the principles of diversity, efficiency and competition.

It is not supported by reference to the listening habits of the mainstream public.

If the ABA's planning process does not support the issue of many more FM commercial radio licences in Sydney notwithstanding:

- the exceptionally positive economic and financial circumstances which exist;
- the principles of diversity, efficiency and competition;
- the listening habits of the mainstream public;
- that no new commercial radio licences have been issued in Sydney for twenty years,

then the planning process is flawed.

DMG and other significant owners of radio services believe that the planning process does support the immediate issue of three or four new FM commercial radio licences in Sydney. DMG simply believes that the ABA is wrong and that its preliminary view, if converted into a final decision, will represent an erroneous implementation of the planning process.

DMG urges the PC to recognise that the ABA's preliminary view, if converted into a final decision, will entrench a market which is already anti competitive and will deny an appropriate choice of format and programs to the mainstream public of Sydney. DMG also urges the PC to comment in its draft report if it thinks that the ABA's preliminary view is inconsistent with the matters identified

above and, if that view is nonetheless open under the planning process, to recommend appropriate changes to the legislation so that a more appropriate decision will then be made.

Issues

- 1 The ABA's planning process should encourage and promote, and not interfere with or hinder, competition in the commercial radio services sector in the major cities of Australia. If the ABA's planning process supports or even permits protectionism, then it is flawed. If the legislation supports or even permits protectionism, it should be amended.
- 2 The ABA's analysis of information and detail in its discussion paper is correct and relevant in most areas and should be considered in the preparation of its draft report by the PC.
- 3 The ABA's discussion has notable weaknesses, however and, for the purposes of the PC, three of those weaknesses are as follows:
 - (a) no consideration of the economic and financial condition of the market which comprises FM commercial radio services in Sydney (and, instead, irrelevant consideration of the economic and financial condition of an artificial market which comprises both FM commercial radio services and AM commercial radio services in Sydney, even though FM commercial radio services are recognised by the market as far superior services and, as a result, there is no effective competition between them);
 - (b) no consideration of the real meaning of diversity (or of the methods for achievement of diversity, in particular, in light of the existence today of such an enormous number of community radio services relative to commercial radio services and whether, in those circumstances, diversity is best achieved through redressing the imbalance); and
 - (c) no consideration of the economic and financial advantage enjoyed by the two existing owners of FM commercial radio services in Sydney by virtue of their duopolies (and, as a result, no consideration of the competitive disadvantage to be suffered by a new owner of a single new FM commercial radio service in Sydney because, if there are then only five FM commercial radio services in Sydney, there will always be an "odd one out" and it will be impossible for at least one owner to own two of those services).
- 4 The ABA's preliminary view that only one new FM commercial radio licence should now be issued in Sydney with one further FM commercial radio licence to be issued, if ever, after four years in Sydney, is inconsistent with and contrary to the ABA's analysis of the information and detail, and with the ABA's conclusions based on that information and detail. The ABA's preliminary view, in short, is not supported by its own analysis. The preliminary view reads as if it has been superimposed over the analysis and does not bear any meaningful resemblance to the conclusions set out in the analysis.
- 5 To conclude that it is appropriate to issue two new FM commercial radio licences in Sydney and then to defer the issue of one of those licences for at least four years (and possibly for ever) is unsustainable
- 6 Commercial radio services attract the vast majority of listeners and meet the needs of the vast majority of the mainstream public of Sydney. Moreover, within the aggregate

grouping of commercial radio services, FM services are much more dominant than AM services in terms of attracting listeners and meeting needs. The ABA's planning process should recognise these facts and is flawed to the extent that it does not.

- 7 Community radio services are intended to fill specific and, by definition, minority needs as those needs exist when the services commence. Community radio services are not required, however, to demonstrate any ongoing fulfilment of the specific or minority needs for which they first came into existence. Community radio services will continue even if they cease to fulfil those needs or even if those needs disappear. Many community radio services after a period of years attract only a minuscule audience and do not continue to fulfil any specific or minority needs. There is no legislative motivation for them to do otherwise. There are some community radio services which are notable exceptions to this. But many of them follow the pattern. This is not an efficient allocation of the radiofrequency spectrum. It does not enhance diversity. It means nothing to the mainstream public. Their needs are fulfilled only through commercial radio services.
- 8 There have been no new commercial radio services in Sydney for 20 years. Over that time, however, there has been a proliferation of new community radio services. There are now many more community radio services than commercial radio services in Sydney. Further expansion of the community radio sector to the exclusion of FM commercial services cannot be supported by reference to diversity, efficiency or competition. Specific and minority needs can be fulfilled without so many community radio services. The ABA's planning process should redress this imbalance and the interest of the mainstream public should be reflected in the future relative growths of these two sectors.
- 9 The two-to a-market rule was introduced in 1992. It was in response to well founded claims put forward by the owners of FM commercial radio services in major cities that commercial services could not operate in an efficient way on economic or financial grounds unless they were permitted to operate as duopolies. Those claims were accepted by the legislature and that is how the two-to a-market rule came into being. The ABA's preliminary view is inconsistent with the rationale for the two-to a-market rule. It will not allow the owner of the one new FM commercial radio service, to be issued now, to get the benefits of a duopoly. It will not allow that owner to compete with the two existing owners on equal terms. There will not be a level playing field. The two existing owners of the FM commercial radio services in Sydney oppose the issue now of two new FM commercial radio licences. They therefore oppose a new owner being given an opportunity which, in the past, they have claimed to be essential in their own cases.
- 10 The two existing owners of FM commercial radio services in Sydney earn around 30% of the profits generated by the 215 commercial radio stations which comprise the entire commercial radio industry in Australia. This stark reality leads to the inevitable question of why those two owners should continue to be protected from new competition.
- 11 It cannot be justified that the ABA's same planning process has given rise to massive increases in competition faced by owners of commercial radio services in regional markets (where those markets are much smaller and have less economic and financial capacity to withstand competition) and yet, if the ABA's preliminary view is converted into a final decision, that same planning process will lead to protection for the two existing owners of FM commercial radio services in Sydney (where those owners enjoy record profits and where the economic and financial conditions are able to support much more competition).