

DMG RADIO (AUSTRALIA) PTY LTD

**SUBMISSION TO THE DEPARTMENT OF COMMUNICATIONS,
INFORMATION TECHNOLOGY AND THE ARTS**

ON THE

**OPTIONS FOR STRUCTURAL REFORM IN SPECTRUM
MANAGEMENT**

6 SEPTEMBER 2002

1 Introduction

- 1.1 This submission is made by DMG Radio (Australia) Pty Ltd (“**DMG**”). DMG is a wholly owned subsidiary of DMG Radio Investments Pty Ltd which is, in turn, owned 75% by Daily Mail & General Trust plc (“**DMGT**”) and 25% by GWR Group plc (“**GWR**”).
- 1.2 DMGT is a global media group with newspaper, radio, publishing, exhibition, teletext and other media interests in the United Kingdom, Europe, United States, Canada, Australia, New Zealand and Asia. DMGT is also a substantial shareholder in GWR.
- 1.3 GWR is the largest operator of commercial radio in the United Kingdom. It also has interests in commercial radio in Europe, Australia and South Africa.
- 1.4 DMG has been a major participant in commercial radio in Australia since 1996 when it acquired the beginnings of its metropolitan and regional radio network for an aggregate amount in excess of \$40 million. DMG since then has expanded its regional radio network with a further investment of more than \$130 million and has followed that up with \$317 million for new commercial licences in capital cities.
- 1.5 DMG’s commitment to commercial radio in Australia is evidenced by its investment so far of more than \$477 million. A list of all its stations is included in the appendix to this submission. DMG intends to bid at the remaining licence auctions and therefore to invest even more in licences to be allocated in Adelaide, Sydney, Melbourne and Brisbane. It has made (and will continue to make) a significant contribution to the diversity of services in the commercial radio industry in Australia.
- 1.6 This submission addresses the options contained in the discussion paper entitled “Options for Structural Reform in Spectrum Management” and released by the Department of Communications, Information Technology and the Arts during August 2002 (“**Discussion Paper**”) as they relate to the concerns of DMG as a participant in the commercial radio industry in Australia.

2 Executive Summary

- 2.1 DMG understands that a submission will be made by Commercial Radio Australia (“**CRA**”). CRA in its submission will address many issues relevant to a consolidation of any or all of the functions of the Australian Broadcasting Authority (“**ABA**”) and the Australian Communications Authority (“**ACA**”). CRA is opposed to a consolidation of any or all of those functions.
- 2.2 DMG in this submission does not deal with many of the issues addressed by CRA. DMG in this submission rather identifies those points which are important to it if, notwithstanding the submission of CRA, a decision is made to consolidate any or all of the functions of the ABA and ACA.
- 2.3 DMG submits that the ABA and ACA each exercise powers and functions which are essential in spectrum management in Australia. The ABA in particular exercises powers and functions in respect of broadcasting content and the conduct of broadcasters. The exercise of those powers and functions is an essential element of media regulation and is integral in our society. Specific expertise and experience, and a complete knowledge of broadcasting and of the role of broadcasting in our society, must exist in order for those functions and powers to be exercised in an appropriate way. The ABA is the body which over the years has been required to develop that expertise, experience and knowledge.

- 2.4 DMG submits that a consolidation of any or all of the functions of the ABA and ACA should only be permitted if that expertise, experience and knowledge in respect of content and conduct is retained and continues to be applied.
- 2.5 DMG further submits that a consolidation of any or all of the functions of the ABA and ACA should only be permitted if there is no compromise of the principles of planning which underpin the *Broadcasting Services Act 1992* (Cth) (“BSA”).
- 2.6 No new commercial radio licences should be issued on the analogue spectrum other than those already foreshadowed by the ABA.
- 2.7 No new allocations of analogue spectrum should be made for use for commercial radio broadcasting (whether on the broadcasting services bands or otherwise).
- 2.8 DMG submits that the requirements in paragraphs 2.6 and 2.7 should be enshrined in legislation enacted to effect any merger of responsibilities of the ABA and ACA.
- 2.9 Efficiency in analogue spectrum allocation on the broadcasting services bands depends upon spectrum being issued at market rates as determined by industry participants at auction. DMG and others who have acquired licences in this manner have relied on representations made by regulatory bodies and the government regarding the number of licences which would be issued in each licence area and that information has been reflected in the bids at auction. It is clear that if new commercial licences were to be issued or more analogue spectrum allocated, a different bid would have been made. Consequently, to change the rules of the game at this stage would severely disadvantage those who have acquired licences at auction.
- 2.10 New commercial radio licences or new allocations of analogue spectrum for use for that purpose will result in outcomes which are contrary to the regulatory aims of the ACA and the ABA (in particular, those relating to efficient spectrum management, which are at the heart of the roles of the ABA and ACA).
- 2.11 DMG further submits that the calculation of licence fees with respect to commercial radio licences should remain revenue based rather than based on any formula such as that now used by the ACA.
- 2.12 The basis of licence fees for commercial radio should remain revenue based. This is because the value of analogue spectrum denied to other users and the cost associated with the allocation of analogue spectrum for these purposes is best approximated by the revenues generated by the use of that spectrum.
- 2.13 DMG concludes that in the event that the responsibilities of the ABA and ACA are merged, the merged body should be responsible for planning the allocation of digital spectrum but should have no role in relation to planning the analogue spectrum, aside from completing the process of licence area planning, allocation and licensing begun by the ABA. DMG further believes that even if a merged body is responsible for planning the allocation of digital spectrum, that body should still be required to comply with the principles of planning which underpin the BSA. DMG submits that those principles should not change.
- 2.14 DMG points out that the step identified in paragraph 2.8 would give to the commercial radio industry the same protection which is already given to the commercial television

industry. There cannot be any reason to deny that protection to one arm but extend it to the other arm of the commercial broadcasting industry.

3 Proposed Merger of the ACA and the ABA

- 3.1 The commercial radio industry in Australia is currently regulated by the ACA and the ABA. The ACA and the ABA pursue different statutory objectives, yet their roles and responsibilities overlap in some respects in the area of commercial radio. The Discussion Paper raises the issue of whether the ABA or ACA should assume sole responsibility for any of the functions currently performed by both bodies, or furthermore, whether the two operations and structures of the ABA and the ACA should be merged.
- 3.2 The ACA was established under the *Australian Communications Authority Act 1997* (Cth) and exercises powers granted to it pursuant to the *Radiocommunications Act 1992* (Cth) (“RA”) and the *Telecommunications Act 1997* (Cth). The ACA is responsible for spectrum planning at a general level and the allocation of the majority of the radiofrequency spectrum. The ACA is guided by an overall aim of maximising the public benefit from using the spectrum by ensuring the efficient allocation and use of the spectrum (RA, section 3). In accordance with section 31 of the RA, the Minister for Communications, Information Technology and the Arts has designated a particular part of the spectrum as being primarily for broadcasting purposes. This area of the spectrum is referred to as the broadcasting services bands.
- 3.3 The BSA delegates responsibility for the planning and licensing of the broadcasting services bands to the ABA. In addition, the ABA is responsible for regulating the behaviour of broadcasters and the content of material broadcast by them. The primary objects of the BSA, which guide the policy of the ABA, are set out in section 3 of the BSA. These include ensuring the availability of a diverse range of radio services, high quality and innovative programming, fair and accurate coverage of news and local matters and facilitating an efficient, competitive and responsive regulatory environment. In planning the economic and efficient use of the spectrum, the ABA is to have regard to certain factors, including demographics, social and economic characteristics, demand and supply for new services and technological developments and constraints (BSA, section 23). Section 40 of the BSA allows the ABA to allocate to a person a commercial radio broadcasting licence which is not located on the broadcasting services bands and is thus outside the price-based allocation system.
- 3.4 To the extent that there may be some efficiencies gained from consolidating suitable functions of the ABA and ACA, there is a concern that those efficiencies may be outweighed by other considerations. For example, it is critical to ensure that any functions which are consolidated are functions which can be exercised in the same way in the regulation of all spectrum (whether or not spectrum which is allocated for commercial radio). DMG is concerned that the technical aspects of the spectrum allocation and licence fee procedures which are currently in place and regulated by the ACA may adversely affect the policy objectives of the ABA in relation to commercial radio. DMG submits that the technical focus of the ACA in relation to analogue spectrum allocation and the calculation of licence fees according to a formula may well be suitable and efficient in relation to some areas of the regulation of analogue spectrum, but not to commercial radio. DMG in these circumstances submits that functions should only be consolidated if the exercise of those functions can be undertaken on the same basis and in accordance with the same principles regardless of the use of the spectrum. If functions are consolidated, but their exercise is not the same irrespective of the use of the spectrum, it would be necessary to ensure that procedures and steps are in place so that those

functions are exercised in a different way by reference to the use of the spectrum. Query whether in those circumstances any efficiencies would in fact be achieved through consolidation of those functions.

4 Analogue Spectrum Allocation

- 4.1 DMG submits that the allocation and management of analogue spectrum for commercial radio purposes should only occur in accordance with the planning process which has been underway since the introduction of the BSA in 1992. To this end, in the event that the analogue spectrum allocation function which is currently shared by the ACA and the ABA were to be transferred to the sole administration of a merged body, DMG would expect that the legislation enacted to effect the merger include a prohibition on the issue of additional radio licences on the analogue spectrum after the completion of the licence area planning, allocation and licensing process.
- 4.2 The introduction of the BSA in 1992 sought to bring about a number of changes to the radio industry. These innovations were based upon a set of foundation principles, which were developed in the context of public consultation involving interested and knowledgeable industry participants.
- 4.3 The concepts which constitute the core of the BSA reforms, insofar as they related to commercial radio broadcasting, are as follows:
- the three stage planning, allocation and licensing process to be carried out by the ABA, pursuant to which the Australian radio landscape was to be comprehensively surveyed in relation to radio services and population spread, with new commercial radio broadcasting licences being allocated where appropriate;
 - the introduction of price-based allocation for commercial radio broadcasting licences, as opposed to a “beauty parade” method of allocation;
 - the inability of any one person to own or control more than two commercial radio broadcasting licences in any one licence area (as modified by the overlap provisions); and
 - the continued levying of licence fees pursuant to a revenue based formula.
- 4.4 To alter the allocation of available radio licences on the analogue spectrum would severely disadvantage industry participants who have bid for and been allocated licences at auction in reliance upon the directives contained in the BSA and the assumption that no more analogue spectrum would be allocated for commercial radio licences at the conclusion of the planning, allocation and licensing process.
- 4.5 The Productivity Commission in Australia recently reviewed the pricing mechanism in relation to spectrum in the “*Broadcasting*” report (March 1998) and the “*Radiocommunications*” draft report (August 2002). In both reviews, the Productivity Commission was concerned with analysing whether the current system of analogue spectrum allocation and pricing achieved maximum efficiency with respect to usage of that spectrum. Both reports strongly recommended that efficiency would be best achieved by harnessing market forces for the allocation of analogue spectrum for commercial broadcasting. To this end, the Productivity Commission recommended the auction process in relation to commercial radio licences be retained, as market forces would provide a current valuation of the spectrum being offered.

- 4.6 In a competitive market, the price paid for a good will be determined by the competing forces of supply and demand for that good in the market. A potential acquirer of a radio licence to be auctioned will aggregate all information obtained in order to decide whether they will bid for the new licence and at what price. A potential acquirer will investigate how many other licences are in existence and how many more are to be allocated in that licence area. The potential acquirer will assume, based on the legislative aims of the BSA and representations made by the ABA and by the government, that the completion of the licence area plan for that licence area means that no more licences will be allocated in that licence area, other than those foreshadowed in the licence area plan. This information will enable the potential entrant to estimate what share of advertising revenue they could expect to receive in the market and evaluate whether a new station would survive in the market. The potential acquirer will then consider how many others may wish to purchase the new licence in the market and can estimate what a new licence would be worth to other potential purchasers. The making of a decision whether to bid for a licence and hence, the usefulness of market forces in determining the value of a good, will depend upon the accuracy of the information available to the potential acquirer.
- 4.7 DMG made a commercial decision to enter the market based on its legitimate expectations as to the composition and future direction of the market boundaries. In particular, the market value placed by DMG upon new licences to be issued was calculated on the basis that apart from those new licences envisaged in the licence area plans, no new commercial radio broadcasting licences would be allocated in those licence areas. To alter those expectations by allocating additional analogue spectrum for commercial radio purposes would severely prejudice the interests of DMG and others who have acquired licences at the auctions. Moreover, to do so would send a signal to potential new entrants that they cannot rely on representations made to them by government as to the number of radio licences expected to become available in any given licence area.
- 4.8 DMG takes a very strong view that the allocation of analogue spectrum must continue to take place according to the planning mandate of the ABA. The issue of new licences based solely on demand is unacceptable as the number of licences in a licence area should primarily depend upon the economic and social demographics of that licence area. To alter the allocation of analogue spectrum in any way which is inconsistent with that policy will render the prices paid for radio licences at auction out of step with true market forces and thus inaccurate. In turn, this would result in inefficiencies in the allocation of analogue spectrum and thus defeat the objectives of both the ACA and the ABA.
- 4.9 The allocation of new analogue spectrum for commercial radio purposes would lead to an increase in the proliferation of radio stations in each relevant licence area and a corresponding dilution in the quality of radio stations and the content of programs broadcast, particularly where the relevant licence area already has sufficient radio stations to satisfy audience requirements. Licensees may be unable to sustain quality programming due to a lack of advertising revenue, thus leading to discontinuity in the number and quality of radio stations available, particularly community radio stations with little advertising appeal. In addition, an increase in the number of commercial radio stations would require a corresponding increase in the resources of the regulatory body responsible for monitoring compliance with licence conditions and program content standards. An increase in the amount of analogue spectrum allocated may also result in more interference between stations. This interference will decrease the value of affected licences and result in the inefficient use of analogue spectrum, particularly in congested licence areas and will lead to a decline in the value of spectrum. A more appropriate time

to consider the allocation of any new spectrum with respect to commercial radio should be when digital radio is introduced.

- 4.10 Licensees of commercial radio licences and commercial television licences have paid market price for those licences. Analogue spectrum has been allocated in those cases on the basis of supply and demand. Licensees have assumed a predetermined level of competition and market prices reflect that level of competition. Licensees have been encouraged to set price in that way by the planning principles which underpin the BSA. Licensees of commercial television licences have the added protection that their assumed level of competition is enshrined in the BSA. DMG contends that there is no reason why the assumed level of competition for licensees of commercial radio licences should not also be enshrined in legislation.

5 Licence Fees

- 5.1 Analogue spectrum is a resource which may be utilised by various different market participants for many different uses. Each portion of spectrum will be valued differently depending on the use to which it is put. The most appropriate use of any particular section of spectrum will depend on its bandwidth, the geographic area of signal coverage and degree of interference. Spectrum may be used for television and radio broadcasting, telecommunications, remote control devices, defence, emergency services, meteorology and satellite. Broadcasting services utilise 38% of the very high frequency (VHF) band of the radiofrequency spectrum and use other areas of spectrum for related purposes. Out of the total frequency allocated in Australia, broadcasting accounts for only 2%.
- 5.2 Users of some parts of the radiofrequency spectrum are required to make payments to the Commonwealth Government for the right to access spectrum. Prices will vary depending on how much spectrum is allocated and the use to which that spectrum may be put. Holders of commercial radio broadcasting licences are required to pay annual licence fees to the Commonwealth Government according to a formula which is based on the gross earnings of the relevant licensee company which have been derived from the broadcasting of “advertisements or other material” (*Radio Licence Fees Act 1964 (Cth)*, section 4). In 1999-2000, the licence fees paid by commercial broadcasters comprised 71% of all spectrum-related licence fees collected by the Commonwealth Government.
- 5.3 Other users of spectrum are charged licence fees on an administrative basis, which attempts to approximate the market value of the amount of spectrum covered by the licence. This calculation is made by reference to the value of spectrum denied to other users (“opportunity cost”), combined with a cost-recovery component. The ACA is currently responsible for levying licence fees of this nature. The formula used for calculating the fee includes variables to represent the bandwidth used, the level of spectrum congestion, the area of coverage based on the power of the transmission, the spectrum location of the frequency, the type of service supplied and a coefficient based on the Commonwealth Government’s revenue targets. The effect of this administrative basis is that each block of spectrum in each licence area will attract the same fee. This will be the case whether the spectrum is used for commercial radio or non-profit, community purposes.
- 5.4 DMG submits that it would be erroneous to suggest that each segment of analogue spectrum allocated along the broadcasting services bands in a licence area should be subject to an administrative-type annual licence fee of the same quantum. This is because radio licences are subject to different degrees of regulation in relation to its content and community obligations. Consequently, costs incurred by the regulatory body in relation

to each station will differ. For example, a large commercial radio station in a metropolitan licence area will command more attention and resources from the regulator than a small community station operating in the same licence area. The large commercial radio station will have more listeners and will probably attract more public comment, including complaints from listeners requiring processing and investigation by the regulatory body. Moreover, the regulator will be more eager to ensure compliance in relation to the content of programs broadcast by the large station, for example, with respect to tobacco advertising and accuracy of news reports, as breaches will affect a larger number of listeners.

- 5.5 Analogue spectrum issued for radio purposes can be contrasted with other types of spectrum use where equivalent charges across the range of spectrum may well be appropriate. This will certainly be the case where the radiofrequency spectrum is used merely as a conduit for relatively homogenous communications between private organisations or individuals, which would arguably attract the same degree of attention and resources from the regulator. For example, this may be the case in relation to use of spectrum by meteorology services, couriers or taxis.
- 5.6 DMG submits that the licence fees imposed upon commercial radio broadcasters should be different to those paid by other users of spectrum. This distinction is warranted by the nature of the commercial radio industry as a form of media compared with other users of spectrum. Radio stations must rely on the effective use of its spectrum in order to earn enough money to survive. Commercial radio stations rely upon revenue provided to them by advertisers and this revenue in turn depends upon audience numbers and demographics. In contrast, users of spectrum such as emergency service providers and defence bodies generally gain their revenues independently of the recipients of their communications via the spectrum. For example, the defence budget depends upon government policy and the effective use of spectrum by communications between defence employees is merely incidental to its operations.
- 5.7 DMG accepts that the use of analogue spectrum should be subject to annual licence fees according to the market value of that spectrum. DMG submits that the best way to estimate the value of analogue spectrum used for commercial radio broadcasting is to consider the returns generated by the use of that spectrum. This issue was debated by industry participants and government prior to the introduction of the BSA in 1992 and it is significant that the basis of levying licence fees was not changed from the revenue based model, particularly in light of the wide-ranging reforms ushered in by the BSA. As far as commercial radio is concerned, the frequency of the radio station has as much to do with branding and audience accessibility as it does with the technical requirements of broadcasting relating to spectrum. A freshly allocated licence will be less valuable than the licence of an incumbent radio station as a new station has not yet established a position in the market. In addition, it is arguable that analogue spectrum which has a distinctive frequency is more valuable, as audiences may be more likely to remember the location of a particular radio station on the dial. Moreover, a new commercial radio station may also wish to position itself close to a successful competitor on the dial so that the new entrant will be the next best option for listeners who “channel surf” during commercials.
- 5.8 DMG submits that an approach to licence fees for radio operators which is not based on revenues will severely curtail diversity in the industry. A licence fee structure based on gross earnings allows small radio station operators, as well as radio stations in the start-up phase, to meet their licence fee obligations, regardless of their on-air or advertising performance for the year. To change the licence fee system to an administrative-type fee

will discourage new licensees from entering the market and will wipe out less profitable stations by narrowing the gap between the highest fee-payers and the lowest. This will be the case particularly in metropolitan licence areas where licence fees will be onerous, commensurate with the high value of spectrum in those areas.

6 Conclusion

- 6.1 Any consolidation of the functions of the ABA and ACA should ensure that the objectives of efficient allocation and use of analogue spectrum are not compromised.
- 6.2 The maximisation of efficient analogue spectrum use is best achieved by ensuring that users of spectrum pay market price for the use of that spectrum. In relation to the broadcasting services bands, the value of the spectrum will be determined by informed participants at auction. The prices paid for licences reflect the expectation of industry players that no additional analogue spectrum will be issued until the completion of the licence planning, allocation and licensing process. Any alteration of this belief will prejudice those who have acquired auctions at market thus far. A prohibition preventing the issue of new radio licences should be enshrined in legislation to ensure that radio is treated in the same way as television.
- 6.3 The licence fees payable for the use of analogue spectrum in the broadcasting services bands should remain revenue based. Any other basis will not accurately reflect the cost associated with the use of the analogue spectrum, nor the value of that spectrum denied to other users.

DMG RADIO
TABLE OF COMMERCIAL RADIO BROADCASTING LICENCES

| Call Sign | Licence Area |
|------------------------|---------------|
| New South Wales | |
| NOVA FM (96.9FM) | Sydney |
| 2AY (1494AM) | Albury |
| 2AAY (104.9FM) | Albury |
| 2CSF (105.5FM) | Coffs Harbour |
| 2CFS (106.3FM) | Coffs Harbour |
| 2DBO (93.5FM) | Dubbo |
| 104.5FM | Gosford |
| 2RG (963AM) | Griffith |
| 2RGF (99.7FM) | Griffith |
| 2OAG (105.1FM) | Orange |
| 2GZF (105.9FM) | Orange |
| 2ROX (105.1FM) | Kempsey |
| 2PQQ (106.7FM) | Kempsey |
| 2WZD (93.1FM) | Wagga |
| 2WG (1152AM) | Wagga |
| 2LFF (93.9FM) | Young |
| 2LF (1350AM) | Young |
| Victoria | |
| NOVA 100 (100.3FM) | Melbourne |

| Call Sign | Licence Area |
|-------------------|-----------------------|
| 3BDG (91.9FM) | Bendigo/Maryborough |
| 3BBO (93.5FM) | Bendigo/Maryborough |
| 3MDA (99.5FM) | Mildura |
| 3RMR (97.9FM) | Mildura |
| Queensland | |
| 97.3FM* | Brisbane |
| 4BH (882AM) | Brisbane |
| 4HOT (103.5FM) | Cairns |
| 4CCA (102.7FM) | Cairns |
| 4CHT (95.9FM) | Charters Towers |
| 4GC (828AM) | Charters Towers |
| 4HIT (94.7FM) | Emerald |
| 4HI (1143AM) | Emerald |
| 4MKY (100.3FM) | Mackay |
| 4MMK (101.9FM) | Mackay |
| 4AMM (97.9FM) | Mareeba |
| 4AM (558AM) | Mareeba |
| 4MIC (102.5FM) | Mt Isa |
| 4LM (666AM) | Mt Isa |
| 4ROK (107.9FM) | Rockhampton/Gladstone |
| 4CC (927AM) | Rockhampton/Gladstone |
| 4ROM (95.1FM) | Roma |

| Call Sign | Licence Area |
|--------------------------|---------------------|
| 4ZR (1476AM) | Roma |
| 4RAM (103.1FM) | Townsville |
| 4TOO (102.3FM) | Townsville |
| Western Australia | |
| 6AAY (106.5FM) | Albany |
| 6VA (783AM) | Albany |
| 6BY (900AM) | Bridgetown |
| 6BET (1269AM) | Bridgetown |
| 6TZ (963AM) | Bunbury |
| 6BUN (95.7FM) | Bunbury |
| 6SEA (102.3FM) | Esperance |
| 6SE (747AM) | Esperance |
| 6KAR (97.9FM) | Kalgoorlie |
| 6KG (981AM) | Kalgoorlie |
| 6KAN (94.9FM) | Katanning |
| 6WB (1071AM) | Katanning |
| 6MER (105.1FM) | Merredin |
| 6MD (1098AM) | Merredin |
| 6NAN (100.5FM) | Narrogin |
| 6NA (918AM) | Narrogin |
| 6NAM (96.5FM) | Northam |
| 6AM (864AM) | Northam |

| Call Sign | Licence Area |
|------------------------|--------------|
| 93.7FM* | Perth |
| South Australia | |
| 5AA (AM) | Adelaide |
| 5SE (963 AM) | Mt Gambier |
| 5SEF (96.1FM) | Mt Gambier |

* denotes 50/50 joint venture with Australian Radio Network Pty Ltd.