

Investigation into the control of radio licences owned by Elmie Investments

ACMA has commenced an investigation into the control of five commercial radio broadcasting licences owned by Elmie Investments Pty Ltd.

The investigation will look at the control issues arising from the agreement by Macquarie Regional Radioworks Pty Ltd (MRRW) to finance the purchase.

ACMA will be guided in its investigation by the objects of the Broadcasting Services Act which encourage diversity in control of the more influential broadcasting services.

Elmie purchased the five licences (3EL Maryborough, 3ML Mildura, 4AA Mackay, 4EL Cairns and 6EL Bunbury) from AMI Radio Pty Ltd on 5 September 2005.

MRRW is already in a position to control two commercial radio licences in the overlapping Bendigo/Maryborough licence areas (3CV and 3BBO), Bunbury (6BET and 6BUN), Cairns (4HOT and 4RGC), Mackay (4MKY and 4RGM) and Mildura (3MDA and 3RMR).

ACMA has issued notices to a number of parties requiring the production of documents relating to the terms of reference to the investigation.

ACMA will prepare an investigation report and affected parties will have an opportunity to comment before ACMA makes a decision. ACMA has wide-ranging investigative powers under the Broadcasting Services Act, including the power to seek documents and call witnesses to testify under oath.

The schedule to the terms of reference and relevant extracts from the Broadcasting Services Act are on the ACMA website (go to ACMA > Media Releases (MR 16/2006, 20 February 2006).

TERMS OF REFERENCE FOR INVESTIGATION INTO CONTROL OF THE COMMERCIAL RADIO BROADCASTING LICENCES HELD BY ELMIE INVESTMENTS PTY LTD

Having regard to the matters set out in Part A of this Notice, for the purpose of the performance of the functions of the Australian Communications and Media Authority (ACMA) under the *Australian Communications and Media Authority Act 2005* (the ACMA Act), including the following:

- (a) to regulate broadcasting services in accordance with the *Broadcasting Services Act 1992* (the Act)
- (b) to suspend and cancel licences and to take other enforcement action under the Act
- (c) to monitor, and to report to the Minister on, the operation of the Act
- (d) to do anything incidental to or conducive to the performance of its functions

ACMA has decided to conduct an investigation under Division 2 of Part 13 of the Act into the matters described in Part B of this Notice.

Part A: Background – legislation

1. Section 3(1) of the Act includes the following objects:
 - (b) to provide a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs; and
 - (c) to encourage diversity in control of the more influential broadcasting services.
2. The Act also charges ACMA with responsibility for monitoring the broadcasting industry. Parliament has conferred on ACMA a range of functions and powers that are to be used by ACMA in a manner that, in its opinion, will produce regulatory arrangements that are stable and predictable and deal effectively with breaches of the rules established by the Act.
3. For legislative provisions relevant to this investigation, see the attached Schedule.

Part B: Matters to be investigated

4. The investigation will be conducted into the following matters:
 - a. Whether Macquarie Bank Limited, or any of its subsidiaries, or any other related person or associate ('MBL') is, or has been since 5 September 2005, in a position to exercise control of the following commercial radio broadcasting licences (the Elmie licences):
 - (i) SL10368 (the 3EL licence) for the Maryborough (Victoria) RA1 licence area, in relation to which MBL is in a position to exercise control over licences SL10258 and SL10367 for the overlapping Bendigo RA1 licence area
 - (ii) SL10074 (the 6EL licence) for the Bunbury RA1 licence area, in relation to which MBL is in a position to exercise control over licences SL10404 and SL10043
 - (iii) SL4170 (the 4EL licence) for the Cairns RA1 licence area, in relation to which MBL is in a position to exercise control over licences SL1150044 and SL5742
 - (iv) SL10098 (the 3ML licence) for the Mildura RA1 licence area, in relation to which MBL is in a position to exercise control over licences SL10094 and SL10096, and
 - (v) SL4181 (the 4AA licence) for the Mackay RA1 licence area, in relation to which MBL is in a position to exercise control over licences SL1150089 and SL1964
 - b. Whether MBL or any other person was required to make a notification to ACMA pursuant to sections 63 or 64 of the Act in relation to the Elmie licences and, if so, whether they failed to do so
 - c. Whether any offences against the Act have been committed in connection with any such failure to notify or in other communications or dealings with ACMA, in relation to control of the Elmie licences
 - d. Whether any other offences against the Act have been committed in relation to the Elmie licences
 - e. Whether MBL and its Directors complied with certain notices issued under section 67 of the Act on 15 July 2004
 - f. Whether Elmie Investments Pty Ltd remains a suitable licensee as required by the licence condition set out at paragraph (b) of subclause 8(2) of Schedule 2 to the Act
 - g. What action, if any, should be taken as a result of ACMA's findings in relation to the matters identified above.

Part C: Conduct of the investigation

In conducting this investigation, ACMA will consider such other matters as are necessary to address the issues identified in these Terms of Reference and may, if it is considered desirable and appropriate to do so, amend these Terms of Reference to include any additional issues which arise in the course of this investigation. The investigation will be conducted using ACMA's powers.

[NOTE: Unless otherwise stated, words and phrases in these Terms of Reference have the same meaning as defined in or when used in the Act.]