

[REDACTED]

From: Sue Gabor
Sent: Tuesday, 11 December 2012 10:43 AM
To: [REDACTED]
Cc: [REDACTED] DL - Jennifer McNeill & Assistants; DL - Jonquil Ritter & Assistants; Connie Godwin
Subject: Mr Lachlan Murdoch [DLM=For-Official-Use-Only]
Attachments: Letter ACMA to Gilbert + Tobin - 11 December 2012.pdf

Dear Gina

Please find attached letter from the Australian Communications and Media Authority advising you of the conclusion and outcome of the ACMA's recent inquiries.

Kindly note that we intend sending the letter to Avaaz at 5 pm tomorrow (Wednesday 12 December).

Regards

Sue

Sue Gabor
Media Ownership & Diversity Section

Australian Communications and Media Authority
T [REDACTED]
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11 December 2012

Ms Gina Cass-Gottlieb
Gilbert + Tobin Lawyers
GPO Box 3810
SYDNEY NSW 2001

By email: [REDACTED]

ACMA2012/972

Dear Ms Cass-Gottlieb

Mr Lachlan Murdoch

I am writing to advise you that the Australian Communications and Media Authority (the ACMA) has now concluded its inquiries into whether Mr Lachlan Murdoch and Mr Rupert Murdoch control each other's media assets.


The ACMA presently considers that, on the information available to it, Mr Lachlan Murdoch and Mr Rupert Murdoch are not associates within the meaning of section 6 of the *Broadcasting Services Act 1992*, and that Mr Lachlan Murdoch and Mr Rupert Murdoch are not in a position to exercise control of each other's media assets.

Please find attached the ACMA's response to Avaaz, which the ACMA proposes to send on Wednesday 12 December 2012. Kindly note that we anticipate Avaaz will publish the ACMA's letter on the Avaaz website.

In accordance with its regulatory role, the ACMA will continue to monitor the relationship between Mr Lachlan Murdoch and Mr Rupert Murdoch with respect to their media assets. The ACMA may make further inquiries or commence an investigation if circumstances change or new information comes to light suggesting that Mr Lachlan Murdoch or Mr Rupert Murdoch is in a position to influence the other, or that they act together with respect to any of their media assets, or they otherwise control each other's media assets.

Thank you for your assistance with this matter.

Yours sincerely



Jennifer McNeill
General Manager
Content, Consumer and Citizen Division

12 December 2012

Michelle Shackleton
Global Campaigner
Avaaz Foundation

By email: [REDACTED]

Dear Ms Shackleton

Mr Lachlan Murdoch and News Limited

I refer to previous communications, and in particular, your letter dated 16 May 2012 to the Australian Communications and Media Authority (**the ACMA**) concerning the possible control of the News Limited associated newspapers by Mr Lachlan Murdoch.

The ACMA's responsibilities under the *Broadcasting Services Act 1992 (the Act)* include monitoring the ownership and control of certain media assets in Australia to ensure the media ownership limits are being complied with. To discharge its responsibilities, the ACMA undertakes such inquiries or investigations as it considers necessary.

Both prior and subsequent to your letter, the ACMA made inquiries pertaining to the relationships between Mr Lachlan Murdoch, Mr Rupert Murdoch and their respective media assets.

I write to inform you that, following those inquiries, the ACMA remains satisfied that:

- > Mr Lachlan Murdoch is not in a position to exercise control of the News Limited associated newspapers; and
- > Mr Lachlan Murdoch and Mr Rupert Murdoch are not associates within the meaning of the Act.

Further, the ACMA is also satisfied that Mr Rupert Murdoch is not in a position to exercise control of the TEN Network commercial television broadcasting licences and the DMG Radio Group commercial radio broadcasting licences controlled by Mr Lachlan Murdoch.

The '3-way control' rule

Section 61AEA of the Act provides that an unacceptable 3-way control situation exists in relation to a particular commercial radio broadcasting licence area if a person is in a position to exercise control of each of the following media operations in that licence area:

- > a commercial television broadcasting licence
- > a commercial radio broadcasting licence
- > an associated newspaper.

In the radio licence areas of Adelaide RA1, Brisbane RA1, Melbourne A1 and Sydney RA1, Mr Lachlan Murdoch is in a position to exercise control of two commercial radio broadcasting licences, and one commercial television broadcasting licence.

We understand that your concern is that an unacceptable 3-way control situation would exist if Mr Lachlan Murdoch was in a position to control any News Limited controlled newspaper in any of these licence areas.

Lachlan Murdoch and Rupert Murdoch as 'associates'

The ACMA has carefully considered whether Mr Lachlan Murdoch and Mr Rupert Murdoch are associates in terms of the Act to determine whether Mr Lachlan Murdoch is in breach of the 3-way control rule.

The term 'associate' is defined in section 6 of the Act to include a parent or child of the person in question. Because Mr Rupert Murdoch is Mr Lachlan Murdoch's father, they are associates under the Act unless the ACMA is satisfied that:

1. they do not act together in any relevant dealings relating to that company or newspaper; and
2. neither of them is in a position to exert influence over the business dealings of the other in relation to the relevant company or newspaper.

At this time, the ACMA remains satisfied of the two matters above.

The ACMA has looked closely at whether Mr Lachlan Murdoch and Mr Rupert Murdoch act together in any relevant dealing in relation to the News Limited associated newspapers but has found no evidence that they do.

The ACMA has also considered whether Mr Lachlan Murdoch is in a position to exert influence over the business dealings of Mr Rupert Murdoch in relation to those associated newspapers. Again, it has found no evidence that he is.

Lachlan Murdoch as otherwise in a position to exercise control of News Limited

As a result of its inquiries, the ACMA is also satisfied that Mr Lachlan Murdoch is not otherwise in a position to exercise control of News Limited. In particular, Mr Lachlan Murdoch is not involved in the affairs of News Limited and does not have company interests in News Corporation (News Corp) of more than 15 per cent.

Involvement in the affairs of News Ltd

News Corp has 16 directors of which Mr Lachlan Murdoch is a non-executive director. Mr Lachlan Murdoch, as a director, has one vote only and cannot unilaterally decide issues to be determined by the board. The ACMA's view is that being a director alone does not put a person in a position to exercise control of a company.

The ACMA is satisfied that there is no other evidence to suggest Mr Lachlan Murdoch is involved in the affairs of News Limited's associated newspapers.

In reaching this conclusion, the ACMA has taken into account the relevant provisions of Schedule 1 to the Act and specifically clause 3 of Schedule 1, which is relevant to the question of whether a person is in a position to exercise control of a newspaper.

Company interests in News Corp

The ACMA is satisfied that the level of Mr Lachlan Murdoch's company interests in News Corp is less than one per cent and therefore Mr Lachlan Murdoch is not in a position to exercise control of that company through the deeming provision in clause 6 of Schedule 1 to

the Act.¹ The ACMA is satisfied that the Murdoch Family Trust does not confer a company interest on Lachlan Murdoch.

As the Act recognises, a person may be in a position to exercise control of a company even when they hold less than 15% company interests in a company. Clause 3 of Schedule 1 is intended to provide the means of finding out who is in a position to exercise control of a newspaper. On assessment of each of the provisions of clause 3 of Schedule 1, the ACMA is satisfied that Mr Lachlan Murdoch is not in a position to control News Limited's associated newspapers.

Future developments

The ACMA will continue to monitor developments and issues to ensure that the Act is being complied with and will continue to undertake such inquiries and investigations as it deems appropriate where it suspects breaches of the control rules may have occurred.

In the meantime, I thank you again for your letter and for bringing your concerns to our attention.

Yours sincerely



Jennifer McNeill
General Manager
Content, Consumer and Citizen Division

¹ Clause 6 of Schedule 1 to the Act provides that if a person has company interests in a company exceeding 15%, the person is to be regarded as being in a position to exercise control of the company.