



23 September 2016

Christine McDonald
Committee Secretary
Environment and Communications Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Ms McDonald

Inquiry into the provisions of the Broadcasting Legislation Amendment (Media Reform) Bill 2016 (the Bill)

Thank you for the opportunity to make a submission to the inquiry into the provisions of the Bill. We refer the Committee to our submission dated 21 March 2016 (the **March Submission**) to the previous inquiry into the Bill and note that this letter should be read in conjunction with the March Submission.

Further to our March Submission, there are a number of additional considerations to which we would like to draw the Committee's attention.

A. ADDITIONAL CONSIDERATIONS

We support the Bill and have strongly advocated for repeal of the 75% reach rule and the 2-out-of-3 rule for a number of years. We appreciate this Bill is the priority for the Turnbull Government and it is an urgent priority for regional broadcasters, such as Prime. We support the commitment of the Turnbull Government, as stated in the Second Reading of the Bill, "to reform legislation in areas where archaic legislation is holding Australian businesses back".

We would however note that, as was discussed in evidence given by Prime to the Committee hearing on 31 March 2016, this Bill should be considered as the first tranche of broader media reform that is needed. Prime believes that subsequent to the passing of this important Bill, attention should be focussed on repeal of similarly out-dated – indeed archaic – media ownership and control laws in the *Broadcasting Services Act*.

Prime also supports additional immediate and permanent licence fee relief for broadcasters. Licence fees were introduced in 1964 (under the *Television Licence Fees Act*) on the premise that there was a limited means by which to distribute content, and that use of a scarce



resource that delivered profits to broadcasters justified the imposition of a “broadcast tax”. This is now not the case, especially as profits are in decline.

It was noted in the Second Reading of the Bill on 1 September 2016 that “Australians are increasingly using new sources of news and entertainment content, including subscription and online platforms, which are not subject to regulations restricting their investment decisions and operating structure.” The Turnbull Government has acknowledged that the barriers to entry into the market are now diminished with the advent of the internet and a range of platforms and technologies by which consumers can source news and entertainment content. Broadcast licence fees are out of kilter with those paid in other comparable jurisdictions, such as the UK and must be significantly reduced to help drive competition, investment, and to preserve Australian jobs in the free-to-air television sector.

B. UPDATES TO THE MARCH 2016 SUBMISSION

We would like to draw the Committee’s attention to the following updates to data included in our March Submission, and take the opportunity to reiterate comments made to the Committee in our March Submission regarding certain drafting concerns we have in relation to the Bill.

1. Market Capitalisation

Below is the updated market capitalisation data for some of the more prominent global media and tech companies and ASX listed Australian media companies as at the close of trade on the ASX on 21 September 2016 and on the NASDAQ on 20 September 2016:

Company	Market capitalisation
Apple	\$604 billion*
Google/You Tube (Alphabet Inc)	\$537 billion*
Facebook	\$368 billion*
Netflix	\$41 billion*
News Corporation	\$10.9 billion
Fairfax Media	\$2.16 billion
Southern Cross Austereo	\$1.22 billion
Seven West Media	\$1.07 billion
Nine Entertainment Co Holdings	\$807 million
APN News & Media	\$688 million
Network Ten	\$476 million
Prime Media	\$97 million

*US Dollars



2. Prime's Market capitalisation movements since September 2013:

Below are updated details of Prime's market capitalisation. As you will note in the March Submission, Prime's market cap was \$148 million; it is presently \$97 million.

- 23 September 2013: Prime's market capitalisation = \$388 million
- 22 September 2014: Prime's market capitalisation = \$340 million
- 21 September 2015: Prime's market capitalisation = \$219 million
- 21 September 2016: Prime's market capitalisation = \$97 million

3. Definition of Trigger Event and concept of "control"

Prime notes that the 61CV Trigger event provision in the Bill has been amended to address the concern we raised in our March Submission in relation to "control" not being two-way.

Prime however reaffirms its view, as set out in the March Submission, that the preferred methodology for the "Control" test should be the **actual control parameters** (as opposed to deemed control) set out in Schedule 1—Control and ownership of company interests, Part 2, sections 1(d) and 1(e) of the *Broadcasting Services Act*.

Actual control is a more appropriate test, and is set out below:

- "(d) the person, either alone or together with an associate of the person, is in a position to:*
- (i) veto any action taken by the board of directors of the licensee or the company;*
or
 - (ii) appoint or secure the appointment of, or veto the appointment of, at least half of the board of directors of the licensee or the company; or*
 - (iii) exercise, in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the licensee or the company; or*
- (e) the licensee or the company or more than 50% of its directors:*
- (i) act, or are accustomed to act; or*
 - (ii) under a contract or an arrangement or understanding (whether formal or informal) are intended or expected to act;*
- in accordance with the directions, instructions or wishes of, or in concert with, the person or of the person and an associate of the person acting together or, if the person is a company, of the directors of the person."*



We would suggest that there should be **no reference to a 15% ‘deemed control’** threshold because a 15% interest in (or ‘deemed control’ of) a regional commercial television broadcasting licence is unlikely to yield any “consolidation”, “additional scale” or “efficiency” that will benefit the business operations of regional broadcasters, and clearly is at odds with the intention of the Bill as outlined in the EM and Second Reading of the Bill on 1 September 2016.

A further concern that arises in relation to the proposed use of a deemed control test is that in the case of all publicly-listed media companies, including Prime, the Bill does not contemplate what happens if the threshold is reached by a person or a company taking a 15% interest in a listed company on a “particular day” (the words used in the Bill) – which would technically give rise to a Trigger Event – but then the very next day, week or month afterwards, a person or a company reduces their shareholding to 14.9%. The proposed mechanism will introduce a level of uncertainty into the business operations of regional broadcasters. It is likely to cause confusion, has the potential to adversely affect vulnerable regional media companies, leaving them susceptible to manipulation and facing a further regulatory burden without any additional scale, efficiency or consolidation having been achieved.

Should you have any questions, please do not hesitate to contact me on _____ or via email at _____

Yours sincerely

Emma McDonald
General Counsel & Company Secretary
Prime Media Group Limited