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The Manager

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To: Australian Communications and Media Authority

Foreign Ownership of Australian Media Assets Review of Legislative Requirements Consultation

The Australian Financial Markets Association (AFMA) is providing comment on Australian Communications and Media Authority's (ACMA) review of the legislative requirements for foreign ownership of Australian media assets.

AFMA represents the interests of over 130 participants in Australia's financial markets. Our members include Australian and foreign-owned banks, securities companies, treasury corporations, traders across a wide range of markets and industry service providers. They are the major providers of wholesale banking and financial market services to Australian businesses and investors.

1. Overview

AFMA has stated on a number of occasions in recent years that there are opportunities for the Australian government to streamline the investment framework that applies to foreign-owned firms. We see the notification requirements as part of wider foreign ownership notification and control system. The regulatory burden imposed by duplicative requirements does not serve the national interest and efforts to rationalise arrangements are good for national productivity. This review is therefore welcomed.

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From an industry perspective it is important to bear in mind that the requirements which are the subject of the review[1] are just one component of the various disclosure and approval regimes relevant to holdings of Australian media companies. These include:

- 2.5% disclosure under the *Broadcasting Services Act 1992* (**BSA**) when a foreign person:
    - becomes a "foreign stakeholder" in an Australian media company (s74F of the BSA)
    - ceases to be a "foreign stakeholder" in an Australian media company (s74G of the BSA)
    - is a "foreign stakeholder" in an Australian media company at the end of a financial year (s74H);
- substantial holding disclosure by a person who, either alone or with their associates has relevant interests representing 5% or more of the votes in a listed company, as required by s671B of the *Corporations Act 2001* (Corporations Act) There are also ongoing disclosure requirements which are triggered where a person's substantial holding changes by 1%, they cease to have a substantial holding, or they make a takeover bid;
- 10% threshold[2] above which approval is required for a foreign person to acquire an interest in an Australian media business, as defined in section 13A of the *Foreign Acquisitions and Takeovers Regulation 2015*; and the related upcoming Foreign Ownership of Australian Assets FOAA register from 2024 which uses a 20% threshold for firms including 'Australian media business' above a certain size (currently $289 million).
- 15% disclosure to ACMA under s63 of the BSA as it deems a person to be in a position to exercise control at this level (notification required at a lower level if the person can control at that lower level); and
- Limitations on control and directorships under the BSA.

2. Response to Selected Consultation Questions

ACMA Question 3: We invite comments on the definition of a Foreign Stakeholder and the current notification threshold of 2.5% company interests, including whether or not the threshold remains appropriate or, if not, what that threshold should be.

ACMA Question 13: What are the costs to business of complying with the notification provisions to meet FOMA obligations? To what extent can these costs be reduced (for example, by removing duplication with other reporting/notification requirements and/or by streamlining Division 10A)? If you are a foreign stakeholder, you may include specific costs that you have incurred when making notifications.

ACMA Question 14: Are the circumstances when a foreign person is required to notify the ACMA (sections 74F to 74L of the BSA) appropriately designed? Should

[1] Specifically, Division 10A of the Broadcasting Services Act 1992 – Register of Foreign Owners of Media Assets

[2] Increased from 5% effective 1 April 2022.

notifications be required in other circumstances, or should fewer notifications be required? If the latter, how might a scenario for fewer notifications be achieved?

Subject to our following points about the utility of the disclosures under s74F and s74G of the BSA, we propose an improvement in relation to the current cessation disclosure 74G form. There should be no requirement for redundant information in the form of an ownership chart and relevant interests to be submitted in the notification. It is sufficient to simply report the issuer details and the date of ceased to be a substantial shareholder in a similar way to the ASX major shareholding reporting requirement. (i.e. Form 605 cessation disclosure).

AFMA's members are generally subject to the notification requirements as financial services intermediaries where holdings arise as a result of facilitating trading strategies of clients (and managing the market risk they are exposed to from those strategies). As market intermediaries they do not seek to influence or control ASX-listed entities, nor to acquire holdings on their own behalf. Further, in most cases, the holdings are very short term. AFMA wishes to point out that such members are engaged in a different business activity to fund managers, which are managing investment funds for clients over a period of time rather than facilitating the process of transacting securities in the market.

The 2.5% notification threshold does not support meaningful disclosure. For financial market intermediaries, which are facilitating hundreds of millions of dollars worth of trading in listed securities on a daily basis, notifying ACMA that they hold company interests of 2.5% does not provide meaningful information as their holding does not equate to any control or influence over a particular company or its respective management. Where a person (including a foreign person) *is* in a position to exercise control of certain media assets, they must notify ACMA under s63 of the BSA. It would therefore better support the key purpose of ACMA's register of providing transparency about media control and ownership[3] if ACMA were to make the disclosures under that section of the BSA public rather than require disclosure at 2.5%.

Accordingly, the Government should look at repealing the notification requirements under s74F and s74G of the BSA. Within the limitations of the operation of the law without such a repeal, we submit that a threshold of 5% or higher is more appropriate than the current 2.5% level. A 5% threshold would align with the definition of a 'substantial holding' under s9 of the Corporations Act. At this level, all persons, whether foreign or not, are subject to disclosure requirements under s671B of that Act. Aligning the ACMA and substantial shareholder reporting requirements would reduce the burden on foreign firms from providing notifications under multiple disclosure regimes which provide little additional benefit for transparency about the ownership of and influence over Australian media.

[3] Page 4 of the Regulation Impact Statement available at: Explanatory memorandum to the Broadcasting Legislation Amendment (Foreign Media Ownership And Community Radio) Bill 2017

Foreign Investment Regime and Annual notification

AFMA notes in this context that the Government has announced that reforms to the foreign investment framework which commenced on 1 April 2022 narrow the definition of an 'Australian media business' and amend the control threshold from 5% to direct interest (ie. in practice meaning 10% or more). In such scenario, the ACMA media business reporting threshold should also be considered to be amended in line with the proposed Foreign Investment Review Board reforms given these are less sensitive types of investment.

Separately, the annual notification required under s74H of the BSA duplicates the notification requirements under 74F and 74G and should be repealed. From the latter two requirements, the public and ACMA is well informed about the level and sources of foreign ownership of Australian media. ACMA is able to determine who is a "foreign stakeholder" at any point in time and therefore has the information to meet its requirements under s74R (to report to the minister foreign stakeholder's company interests). It is unclear what benefit is derived from the annual notification requirement above the two other notification types.

We note that there is limited risk of foreign companies amassing large holdings in Australian media companies as, under the regime administered by the Foreign Investment Review Board, a foreign person cannot hold more than 10% of a media business without pre-approval from the Treasurer.

ACMA Question 6:
Is information on the Register easily accessible and comprehensible? If not, why not, and how could it be improved?
ACMA Question 8:
Is the information appropriate and relevant? Should additional or different information be shown?

The accessibility of the Register would be improved if the information could be extracted in an Excel format. It should contain additional information for media companies that are listed, for example the ISIN or Reuters Instrument Code (RIC). These changes would support foreign persons to comply with the notification requirements.

3. Summary

To summarise, our proposals to ease the significant regulatory burden on AFMA members while ensuring there are meaningful disclosures about the level of foreign ownership of Australian media, are:

- the notification requirements under Division 10A of the BSA should be repealed and the notifications required under s63 made public via the ACMA Register; or

- the ACMA notification requirements under Division 10A of the BSA should be aligned with the substantial shareholder disclosure requirements under the Corporations Act; and
- the annual notification requirement under s74H of the BSA should be repealed as it is unnecessarily duplicative.

Please contact David Love either on 02 9776 7995 or by email at dlove@afma.com.au in regard to this letter.

Yours sincerely

David Love
General Counsel & International Adviser