



ASIC

Australian Securities & Investments Commission

ENFORCEABLE UNDERTAKING

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Section 93AA Australian Securities & Investments Commission Act 2001

The commitments in this Undertaking are offered to the Australian Securities and Investments Commission (ASIC) by:

Midwest Radio Limited

(ACN 003 072 455)

C/- Stirling Warton Williams

Level 10

4 Bligh Street

Sydney NSW 2000

1. Background

- 1.1** Midwest Radio Limited (Midwest) is a company carrying on business as a radio station and newspaper operator.
- 1.2** Midwest is on the official list of the Australian Stock Exchange, but has been suspended since 21 December 2001 and intends to seek re-listing by having a capital raising with a complying prospectus during calendar year 2002.
- 1.3** On 21 November 2001 Midwest issued a Notice of Extraordinary General Meeting (Notice) in which it sought approval to allot and issue 64,287,500 fully paid ordinary Midwest shares representing 81% of the issued capital of Midwest under a Share Purchase Agreement to parties identified in the Information Memorandum that accompanied the Notice (Information Memorandum).

- 1.4 The parties identified in the Information Memorandum included Unitel Media Group Limited, Black Ink No 2 Pty Limited, Panther Advertising Pty Limited, and Jaffa Advertising Pty Limited.
- 1.5 The Midwest shareholders approved the allotment and issue of shares referred to in paragraph 1.3 on 21 December 2001.
- 1.6 The Information Memorandum did not contain an independent expert's report but did contain a report prepared by the Directors of Midwest, which purported to comply with the requirements of the Corporations Act 2001 (the Act) and ASIC Policy Statement 74.
- 1.7 ASIC has formed the view that the Information Memorandum did not provide members of Midwest with all information known to persons proposing to make the acquisition or their associates, or known to the company, that was material to the decision on how to vote on the resolution. ASIC is of the view that in those circumstances if the acquisition of Midwest shares under the Share Purchase Agreement proceeded, then, upon the acquisition of such shares, a breach of section 606(1) of the Act would occur.
- 1.8 ASIC is concerned that the shareholders of Midwest, other than the directors of Midwest and their associates, may be prejudiced if the acquisition of Midwest shares, the subject of the Share Purchase Agreement, proceeds in its current form.
- 1.9 In agreeing to offer the commitments in this undertaking Midwest acknowledges ASIC's concerns set out in paragraph 1.8 above and that completion of the Share Purchase Agreement would result in a breach of section 606(1) of the Act.

2. Undertakings

Pursuant to section 93AA of the Australian Securities and Investments Commission Act 2001 (ASIC Act), Midwest undertakes that it will:

- 2.1 lodge with ASIC within 4 calendar months of the date of this enforceable undertaking a prospectus which complies with section 710 of Part 6D of the Act (Prospectus);
- 2.2 issue the Prospectus which will include the following items:
 - i) an offer period of not less than one calendar month;
 - ii) an arrangement which entitles all shareholders of Midwest at the date of the Prospectus, other than the directors of Midwest or associates at the date of this undertaking (as defined in paragraph 4 below) of the directors (the minority shareholders), to irrevocably offer to sell, using a designated sell form, up to one hundred percent of their ordinary shares in Midwest (the Facility);

- iii) the net price offered under the Facility will be not less than the price at which shares are offered under the Prospectus;
 - iv) a minimum subscription not less than the amount necessary to enable all minority shareholders to sell their shares through the Facility;
- 2.3 apply the proceeds received under the Prospectus first to settling all the obligations under the Facility and then to the other purposes specified in the Prospectus;
- 2.4 use its best endeavours to ensure that the minimum subscription level of the Prospectus is achieved. Although, the parties acknowledge the fact that the minimum subscription is not reached does not of itself constitute a breach of this undertaking.
- 2.5 provide to ASIC an extract of a draft of the Prospectus which sets out the terms of the Facility and its operation at least 5 business days before the Prospectus is lodged with ASIC.

3. Acknowledgements

- 3.1 Midwest acknowledges that:
- 3.1.1 ASIC may issue a media release on execution of this undertaking referring to its terms and the concerns of ASIC which lead to its execution;
 - 3.1.2 ASIC may from time to time publicly refer to this undertaking; and
 - 3.1.3 ASIC will make this undertaking available for public inspection.
- 3.2 Midwest acknowledges that ASIC's acceptance of this undertaking in no way derogates from the rights and remedies available to any third party arising from the conduct described in this undertaking.
- 3.3 Midwest acknowledges that ASIC's acceptance of an enforceable undertaking does not affect ASIC's power to investigate and take appropriate action in the following circumstances:
- a) in relation to future conduct or conduct not described in this undertaking: and /or
 - b) if Midwest breaches this undertaking: and/or
 - c) where ASIC becomes aware of any evidence or information not known to it at the time of accepting this undertaking in relation to the conduct of Midwest which gives rise to new concerns.

