



AUSTEREO PTY LTD

SUBMISSION TO

PRODUCTIVITY COMMISSION INQUIRY

INTO

THE BROADCASTING SERVICES ACT
AND RELATED LEGISLATION

11 May 1999

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EXECUTIVE SUMMARY

Austereo Pty Ltd (“Austereo”) is a significant participant in the broadcasting industry and in particular in the commercial radio industry.

We submit that there is a case for industry specific legislation to regulate the broadcasting industry and this has been accepted as the case by the major political parties and the general public.

We believe the Broadcasting Services Act represents a fair balance between the need for the Government to regulate the industry and the need to not impose additional costs and constraints on participants.

The tiered approach to regulation in respect to the categories of broadcasting services is supported.

The commercial radio industry operates in a very competitive environment both in terms of listeners and revenue. Competition is also driven by the structure of Australian Radio which comprises community, public, narrowcast and commercial radio. This structure also provides diversity of programs and formats which must be recognised.

The Commercial Radio Code of Practice is a model and effective regulation of the industry which demonstrates the industry’s ability to respond to matters of government and public concern.

THE AUSTEREO GROUP

Austereo was established in 1979 at the time when the first FM radio licences were granted in Australia. Austereo currently controls or operates, either on its own account or through wholly owned subsidiaries, twelve commercial radio licences in Australia.

The commercial licences currently operated by Austereo are 2DAY FM Sydney, Triple M Sydney, FOX FM Melbourne, Triple M Melbourne, B105 FM Brisbane, Triple M Brisbane, SA FM Adelaide, Triple M Adelaide, PMFM and 94.5 Perth, NXFM and KO FM Newcastle. In addition, we have an interest in a joint venture with Australian Radio Network in two Canberra commercial radio licences.

Austereo is involved either by itself or through joint ventures in businesses related to commercial radio including radio programming and syndication, research, and radio networks in Malaysia.

Therefore, Austereo is a significant participant in the broadcasting industry and in this capacity makes this submission.

THE PRODUCTIVITY COMMISSION REVIEW

The Commonwealth Government has referred the Legislation Review of the Broadcasting Services Act 1992 and other broadcasting-related legislation to the Productivity Commission as part of the Government's commitment under the Competition Principles Agreement (CPA).

The Terms of Reference for this Inquiry clearly establish the task of the Productivity Commission. The Commission is required to advise on "practical courses of action to improve competition, efficiency and the interests of consumers in broadcasting services." This is the principal task for the Commission. In undertaking this task the terms of reference direct the Commission to focus on "balancing the social, cultural, and economic dimensions of the public interest and have due regard to the phenomenon of technological convergence".

The Commission is also required to have regard to the Commonwealth's analytical requirements for regulation assessment in accordance with paragraph 5 of the Terms of Reference.

In this submission Austereo seeks to address the principal task of the Commission. We do not seek to make extensive submissions or comments on the Australian Broadcasting Authority (ABA) or the current process of Planning for Radio Broadcasting Services currently being undertaken by the ABA. It is our submission that the Commission is concerned with the broader issues in the Inquiry and should not concentrate on individual determinations of the ABA or related bodies.

KEY ASPECTS OF THE CURRENT LEGISLATIVE FRAMEWORK

The Broadcasting Services Act 1992 (BSA) represented a substantial reform of the broadcasting regulatory regime which sought to:

“establish general rules for the industry which are clear, stable and predictable; to establish minimum requirements expected of industry participants; to introduce flexibility into the regime to enable responsiveness to changing circumstances; to monitor outcomes and trends against policy objectives; and to provide a range of redressive measures to the regulatory authority to deal with breaches or adverse trends.”

(Explanatory Memorandum to BS Bill 1992)

The BSA sought to provide a simple regulatory regime for broadcasting services that applies irrespective of the technical means of delivery. It established a new regulatory authority (ABA) and sought to provide for a planning process which was public. The Act established an ownership and control regime in respect to commercial broadcasters. The ABA was able to establish program standards and to supervise the development of Codes of Practice. A complaints mechanism was established.

The BSA sets out the following categories of broadcasting services:

- (a) national broadcasting services
- (b) commercial broadcasting services
- (c) community broadcasting services
- (d) subscription broadcasting services
- (e) subscription narrowcasting services
- (f) open narrowcasting services

The BSA provides for a definition of each of these categories and for the ABA to make a determination as to which category a service fits into. We believe it is important for the Commission to note the diversity and number of the categories of broadcasting services contained in the BSA and the flexibility given to the ABA in relation to the different categories.

INDUSTRY SPECIFIC LEGISLATION

It has been a long accepted position by the major political parties in Australia that there should be specific legislation regulating the broadcasting industry. The media is viewed as having a central role in shaping the views of the nation and of having the power to effect the economic, financial and political climate of the country. The traditional wisdom is that by virtue of this position the industry should be subject to specific legislation.

All political parties have accepted the position that there is a need to regulate matters such as the ownership and control of media companies, the Australian content of programs, fair and accurate reporting of news, the need for a number of different sources of news and information and the planned introduction of new technologies are all matters which have been deemed to be of such public importance that industry specific legislation is required.

This is also the accepted position in comparable countries. It is a feature of modern developed democracies that the media is subject to industry specific regulation.

These issues are reflected in the objects of the Act which are set out in S3 of the BSA. These objects when read in conjunction with the Regulatory Policy set out in S4 of the Act explains in detail the public interest issues which the legislation seeks to address.

Austereo submits that the BSA regulatory scheme does provide a fair balance between the need for the Commonwealth Government to regulate the broadcasting industry and the manner in which that regulation is to be imposed without imposing additional costs and constraints on the participants.

The BSA adopts a tiered approach to regulation in the various categories of broadcasting services. Austereo submits that it is appropriate this is the case. The Commission should not be diverted into a detailed examination of the "degree of influence the different types of broadcasting services are able to exert in shaping community views" (S4 BSA). Austereo submits that this Section as a whole states the position that varying degrees of regulation are required based on the level of reach of that category of broadcasting service but that the regulation should not impose unnecessary financial and administrative burdens on broadcasters.

We support the model of regulation which provides that the appropriate industry association and the participants should develop and administer a code of conduct which sets out the key obligations of licence holders. This model adequately reflects the Parliament's desire to provide regulation on these important issues but not to impose any unnecessary burdens.

We have been an active participant with our industry association FARB in the development of the Draft Commercial Radio Code of Practice (the Code) which is presently the subject of public consultation. We shall make specific comments on the Code later in this submission.

COMPETITION AND THE COMMERCIAL RADIO INDUSTRY

The commercial radio sector relies upon advertising and related revenue to survive. In this regard, Austereo competes with all sectors of the media including newspapers, magazines, television, commercial radio competitors and other forms of radio for revenue from the advertising dollar.

We also compete with all of these sectors for our listening audience. The introduction of new services such as Pay-TV, Internet radio and the impending introduction of digital TV simply increases the competition we face.

As noted previously, the BSA sets out six categories of broadcasting services. The Commission should be wary of submissions which might suggest that an increase in the number of participants in the commercial radio category will necessarily result in greater diversity of services arising from the increase in competition. We are of the firm view that commercial radio operators will seek to maximise their listening audience and their potential revenue by targeting those consumers who are currently being catered for by the existing operators.

The BSA does provide a direct avenue for the ABA to provide for a greater diversity of product if that is seen as a key policy objective. The categories of Community Broadcasting Services and Open Narrowcasting Services are available to the ABA to allocate in order to provide greater diversity of programs. Special interest groups or "niche markets" can be catered for in these categories. The BSA provisions are satisfactory in this regard. Austereo has in submissions expressed interest in gaining narrowcast licences if these were available to allow us to broadcast specific interest programs which we would develop. There is no restriction on the holders of a narrowcast licence from operating on a commercial basis.

In our submission, the Commission should recognise that the current structure of Australian radio, comprising community, the ABC and SBS, narrowcast and commercial radio does provide a "diverse range of radio and television services offering entertainment, education and information". (BSA; Objects S3(a))

A major component of the regulation of competition in the commercial broadcasting area has been the provisions relating to the ownership and control of licences and in the area of television certain provisions restricting foreign ownership. We do not wish to make comment on issues of the foreign ownership of broadcasters in Australia but we do note there are no provisions restricting the foreign ownership of commercial radio companies in Australia. As a progressive company seeking opportunities to expand we are restricted by the provisions restricting foreign ownership in comparable countries. The opportunity to participate in many jurisdictions is limited to joint venture arrangements. This is one area where Australia missed an opportunity to seek reciprocal arrangements with other countries and as a consequence has restricted the opportunities for Australian companies to expand their activities.

COMMERCIAL RADIO CODE OF PRACTICE

We submit that the Draft Code which is at present the subject of a process of public consultation demonstrates that the current model of regulation set out in the BSA can produce regulations which are responsive to public concerns and to public policy issues such as Australian content.

The Code deals with issues such as, program content and language including sex and sexual behaviour, news content, advertisements, Australian music and provides a complaint mechanism.

The Australian music quotas contained in the Code prescribe minimum content levels of Australian music and further prescribe minimum levels of new Australian music. This is consistent with the object of the BSA to promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity. Austereo and the commercial radio industry has shown a strong commitment to Australian music and talent by the development of specialist programs, sponsorship of Australian artists and many other initiatives.

The complaints handling process in the Code is supported. Complaints are directed to the broadcaster at the first instance. This is the correct process as it allows for complaints to be handled effectively by the people that are the subject of the complaint. Responsibility for the complaint is placed at the local level. A formal response is required within 30 days. The ABA retains the ability to deal with complaints directly.

The Code is a comprehensive document dealing with important subject areas. It provides an effective regulation of these areas without imposing an unreasonable financial or administrative burden on broadcasters.

NEW TECHNOLOGY

The regulatory scheme of the BSA provides for and indeed seeks to promote the introduction of new technologies. The introduction of commercial digital radio broadcast (DRB) services will represent a large investment not just from broadcasters but also the public in acquiring receivers suitable for DRB reception.

It is clear that the planning process for the introduction of DRB has not proceeded to the extent it could have due to the priority being given to the planned introduction of digital television. We note that the Commonwealth Government has given commercial television broadcasters a breather in recognition of the costs and resources to be expended in the introduction of digital television. The planned introduction of DRB in Australia may require similar concessions to existing licence holders in order that commercial operators will be able to recoup the costs expended in the introduction of DRB.

Austereo is now waiting for a formal plan to be developed by the ABA. We have recently received approval from the Malaysian Government to undertake test broadcasts.

PARTICIPATION IN INQUIRY

Austereo notes the timetable set out in respect to the Inquiry and we shall seek to participate in the further consultations proposed by the Commission.