CABLE & WIRELESS OPTUS

Submission on draft report

Productivity Commission Inquiry Into Broadcasting

1. Executive Summary

1.1 Cable & Wireless Optus supports the principle that regulation of the broadcasting industry and the introduction of digital television should encourage competition, audience choice and diversity of content.

1.2 The digital television regime should maximize the economic and efficient use of spectrum (whether contained in the broadcasting services bands or otherwise) and encourage new entrants. Ideally, spectrum should be competitively acquired. This would ensure a commercial return to the public, in reflecting market determined prices for a scarce asset, and would also help to prevent market distortions.

1.3 Unfortunately, these principles are not reflected in the current regulatory regime for digital television conversion, now contained in Schedule 4 of the *Broadcasting Services Act* 1992. These problems are not overcome by the draft recommendations in the Productivity Commission's Draft Report into Broadcasting.

1.4 **HDTV and Multichannelling**

1.5 Draft recommendations 6.1 and 6.2, which state that the free to air broadcasters (**FTAs**) should not be required to broadcast in high definition television (**HDTV**), and should be permitted to "multichannel", should not be adopted.

1.6 The rationale for the existing digital television scheme is based on each free to air broadcaster being "loaned" 7MHz of broadcasting services bands spectrum, free of charge, to deliver HDTV. The FTAs should not be permitted to avoid the HDTV obligation and use the 'gifted' spectrum to offer multichannelling, subscription or pay-per-view services.

1.7 If draft recommendations 6.1 and 6.2 were adopted, this would create a seriously anti-competitive environment which would have a significantly negative impact on Optus Television and the Australian Pay TV industry.

1.8 If the FTAs are no longer required to deliver HDTV, it is imperative that the 7MHz of spectrum allocated to the FTAs for this purpose be reviewed. One option is for at least some of the spectrum to be returned to the Government where it can be the subject of a competitive auction.

1.9 **Set Top Box Interoperability**

1.10 It is essential that interoperable Set Top Boxes (**STBs**) be developed to provide access to FTA, datacasting and Pay TV services. This would ensure that consumers are not trapped into one mode of delivery or services on the basis of the STB they purchased. It will also encourage competition and diversity in the new digital services market.

1.11 **Datacasting**

1.12 A broad definition of datacasting should be adopted for "new players". This will encourage new datacasting entrants and maximise diversity and competition between service providers.

1.13 A moratorium on the provision of datacasting services by the FTAs should be applied during the simulcast period. This will reduce the ability of the FTAs to leverage their existing marketing power in the broadcasting sector to dominate the datacasting market, at the expense of potential new entrants, and will allow a stronger and more competitive environment to develop.

1.14 The regulatory distinction between datacasting and broadcasting is necessary while the *Broadcasting Services Act* remains the regulatory instrument for the broadcasting industry. If this distinction is to be removed, new legislation will be required.

1.15 **Other Issues**

1.16 C&W Optus supports:

(a) the separation of broadcasting licences into spectrum licences and content licences, with spectrum licences to be administered by the Australian Communications Authority;

(b) the amendment of section 28 of the *Broadcasting Services Act*, which currently prevents the allocation of any new commercial television licences before 31 December 2006;

(c) the recommendations relating to a relaxation of the foreign ownership rules;

(d) the recommendations relating to the abolition of the cross media rules;

(e) the recommendation that the anti-siphoning scheme be amended to enable the establishment of a "dual rights" scheme; and

(f) the recommendation that the regulatory regime for online content be reviewed, but no later than twelve months after the introduction of the legislation.

2. Response to Draft Report Recommendations

Broadcasting Licences and Spectrum Allocation

4.1 Broadcasting licences should be separated into licences granting access to spectrum, and content-related broadcast licences granting permission to broadcast.

C&W Optus supports this recommendation, as the regulatory separation of spectrum and content would assist in a more economic and efficient approach to spectrum allocation and use in the Broadcasting Services Bands (**BSB**).

C&W Optus agrees with the Productivity Commission's conclusion that the existing scheme does not provide incentives for broadcasters to use spectrum efficiently. By contrast, the introduction of a new spectrum licensing scheme in the BSA may result in "under-used" spectrum becoming available for re-allocation to other (possibly non-broadcasting) users.

The separation of spectrum and content licences may encourage the development of a separate market for spectrum as the spectrum licences would be tradeable (assuming that the principles underpinning the existing spectrum licensing scheme in the *Radiocommunications Act* would apply). This competitive tension between spectrum providers would advantage content providers, and assist in the development of a more economic and efficient broadcasting industry.

Further, the separation of broadcasting service licences into content licences and spectrum licences would promote diversity and encourage competition in the content production industry because of the enhanced access opportunities it would allow.

4.2 The value of spectrum for commercial broadcasting purposes should be reflected in its price.

4.3 Licence fees for existing commercial radio and television broadcasters should be converted to fees that reflect the value of the spectrum held.

C&W Optus strongly endorses these recommendations, which are consistent with the principle that the radiofrequency spectrum is a public asset which should be available on a competitive basis, and that the use of the BSB spectrum should see a commercial return to the public. C&W Optus' experience in competing for "non-BSB" spectrum supports the view that a consistent approach should be applied across the entire radiofrequency spectrum, which would result in a more competitive and efficient broadcasting sector.

The existing system of annual licence fees does not reflect the real value of the BSB spectrum (particularly in relation to commercial television and FM radio, which use the scarcest parts of the BSB) or link the licence fees to amount of spectrum used. The 35 year old schemes in the *Television Licence Fees Act* 1964 and the *Radio Licence Fees Act* 1964 are clearly outdated and should be changed to reflect the value of spectrum used to provide broadcasting services.

4.4 The planning criteria for the broadcasting services bands, currently found in S.23 of the BSA, should, for commercial broadcasting, be restricted to those relevant to the technical planning of the spectrum.

If the ACA is to take over the spectrum planning function (as outlined in recommendation 4.7 below), then it would be appropriate for legislative amendments not to include the section 23 criteria in the matters to which the ACA must have regard. The reasons for this are set out in C&W Optus' response to recommendation 4.7.

4.5 The ACA should estimate and report publicly on the value of broadcasting services bands spectrum reserved for national, community and Indigenous broadcasting services.

C&W Optus supports this recommendation.

There should be transparency in the use of spectrum whether it is acquired and utilized on a purely commercial basis or through Government strategies to deliver on community and cultural objectives. This process would inform the Government on the value of the spectrum reserved for such uses, which is a relevant consideration to be balanced against the social benefits to the community which result from such reservations.

4.6 Simplified processes for reserving sufficient spectrum for national, community and Indigenous broadcasters should be adopted. All unreserved broadcasting spectrum should be made available for commercial broadcasting uses.

C&W Optus does not agree with this recommendation.

It is not an economic or efficient use of the radiofrequency spectrum to plan spectrum for a particular use if it is not needed for that use, as it precludes other uses of that spectrum. The "template" licence area plan suggested by the Productivity Commission would not take account of the levels of demand from service providers for the relevant BSB spectrum. In such circumstances, making all "spare" spectrum available for commercial broadcasting use may not be appropriate if there is demand from other kinds of service providers (including non-broadcasters) for that spectrum, and if there is a lack of demand from aspirant broadcasting service providers.

This recommendation should be reconsidered by the Productivity Commission. In our view the allocation of such spectrum should be demand driven, and non-broadcasting use of the spectrum should not be precluded if there is no demand from broadcasters for that spectrum.

4.7 Responsibility for planning and licensing the broadcasting services bands of the spectrum should be transferred to the Australian Communications Authority and managed under the provisions of the Radiocommunications Act 1992.

C&W Optus supports this recommendation.

Significantly, implementation of this recommendation would give the ACA complete responsibility for the planning of the radiofrequency spectrum. Under the present

regulatory scheme, the planning of the part of the radiofrequency spectrum identified as the BSB is the responsibility of the ABA. Historically, the justification for this "different treatment" of the BSB rested on an assumption that the BSB should be planned by reference to not only economic and technical considerations, but also to social considerations (see Explanatory Memorandum to *Broadcasting Services Bill* 1992).

In the current broadcasting environment, the social considerations which previously supported the planning of the BSB by the ABA are no longer so pronounced. Since the BSA was enacted, there has been a proliferation of new media being made available to Australian "audiences", including pay television and internet services. It should no longer be a regulatory imperative for the regulator to ensure that an appropriate "mix" of broadcasting services be made available in a licence area, given the increase in alternative sources of information.

In this context, the objectives guiding the planning of the BSB should be limited to technical considerations and economic considerations (to the extent that any planned use of the BSB should be able to be justified on the basis that it is economic and efficient). The ACA is well placed to address the relevant economic and technical considerations.

The benefits of this approach would be to clearly delineate the responsibilities of each regulatory agency and reduce the existing levels of "overlap".

4.8 The ABA should retain responsibility for issuing licences to broadcast.

C&W Optus agrees with this recommendation. Content regulation is the natural function of the ABA.

Australia's diverse broadcasting services

5.1 The digital transmission of the community television signal should be allocated by tender, financed by government subsidy, to a television multiplex licensee in each relevant license area.

As outlined in the draft report, the digital conversion scheme for television provides that a condition will be placed on at least one datacasting licence in each licence area, requiring datacasting licensees to broadcast a digital standard definition community television channel as part of their multiplex signal.

The draft report questions this scheme in light of its recommendations in relation to HDTV which it suggests provide scope for any television licensee (and not just a nominated datacaster) to forgo part of their own content to broadcast a community television channel.

As outlined in the response below to recommendation 6.1, C&W Optus has serious concerns about the removal of the mandate relating to HDTV in the absence of the Government revisiting the entire scheme for digital television conversion in Australia. However, the draft report raises interesting issues in relation to the role of community television in the digital broadcasting environment.

The obligation to carry community television should rest with the commercial FTAs, and not with the new entrant datacasters. Community television belongs with other television services and not with datacasting services. The conversion scheme should require that a portion of the 7MHz channel allocated to the commercial FTAs be used to provide a standard definition community television service. This would be a community service obligation imposed on the commercial broadcasters, who have not paid for the 7MHz channel, and who, unlike the national broadcasters, operate for profit.

The recent options paper issued by the ACA (*Datacasting Spectrum Allocation Scenarios*) poses a number of options by which an obligation to carry a community television channel could be imposed upon datacasters. Each of the options outlined by the ACA involves costs to the Commonwealth and costs to the new entrant datacasters. In all the circumstances, it is more appropriate that these costs be borne by the commercial FTAs.

The Road to Digital Television

6.1 The objective of the conversion scheme should be to facilitate consumer's adoption of readily available and affordable standard definition equipment.

- *High definition transmission should be permitted but no longer be mandated.*

C&W Optus strongly supports the proposition that digital television should be introduced into Australia in a manner that is readily available and affordable to Australian consumers.

However, C&W Optus cannot understate its concern with the Productivity Commission's recommendation that the High Definition transmission standard should be permitted but no longer mandated under the digital television regime.

The fundamental basis upon which the Government decided to "loan" 7MHz to each FTA was to ensure that the FTAs could provide prescribed amounts of HDTV from 1 January 2001. If this ceased to apply, there would be absolutely no policy justification to support the "handover" of a 7MHz channel to each FTA free of charge. In such circumstances, the entire digital conversion scheme would need to be revisited, starting with the first principles of access, competition and equity.

For example, the digital television conversion scheme now contained in Schedule 4 of the BSA also permits the FTAs to use any spectrum not required for HDTV to deliver enhanced programming and datacasting. However, the decision to permit the provision of datacasting and enhanced programming was made in an environment where it was clearly envisaged that most of the 7MHz spectrum would be required to deliver HDTV.

If the FTAs are not to be required to deliver HDTV then the Government's digital television regime becomes not only anti-competitive, but highly detrimental for the pay television industry. In the absence of a requirement to provide HDTV, there is a real risk that the current prohibition on the FTAs offering multichannelling, subscription

broadcasting and other non-broadcasting services will be lifted before 2005 when a review is to be held into this issue.

In such an environment, the incentives for Australian audiences to subscribe to pay television services are greatly diminished, given that audiences could view comparable channel formats (eg sport, movies, news) on the multichannel services offered by the FTAs from a significantly lower cost base. This result would seriously impair the ability of the pay television industry to compete for viewers against the FTAs.

The massive capital investments made by the pay television industry were made in good faith and on the basis of the regulatory environment that existed when the BSA was enacted in 1992. It is not in the national interest for this new industry, which is generating employment opportunities, training benefits for the production industry, and offering unprecedented choice to Australian television audiences, to be unfairly penalised by regulation.

For these reasons if HDTV is no longer mandated it is imperative that the Government's loan of 7MHz of spectrum to the FTAs be completely reviewed in accordance with competition principles. One option is for at least some of the spectrum to be returned to the Government where it can be the subject of a competitive auction. Alternatively, a scheme based on payment for the digital spectrum by each FTA could be adopted.

- *Additional audio standards should not be mandated.*

C&W Optus supports the proposition that no additional audio standards should be mandated. The basic MPEG audio and video standards have been adopted world wide for digital television systems and should be adopted in Australia. However, the transmission of additional alternative audio should be a matter for individual broadcasters.

6.2 Regulatory restraints on new digital services should be minimized.

- *Datacasting should be defined liberally. Datacasting services should not be constrained by a regulatory distinction between datacasting and broadcasting.*

C&W Optus supports the development of a dynamic and competitive new digital environment. However, as it made clear in its earlier submission to the Productivity Commission, it is concerned about the FTAs leveraging their existing marketing power in the broadcasting sector to dominate new digital services such as datacasting, at the expense of potential new entrants. Under the existing scheme, the FTAs may use "leftover" spectrum not required for HDTV to provide datacasting services.

The FTAs currently enjoy a protected position in the Australian media market. If unrestricted by regulation, the FTAs will be able to leverage their position arising from a long history of protection from competition. Such leveraging is likely to take the form

of vertical integration and the use of television transmission capacity to cross-advertise their datacasting services on their television services.

A current example of cross-advertising can already be seen in the commercial television environment in relation to online services. For example, at the end of an episode of Foreign Correspondent, viewers are invited to go on-line and discuss the program on the ABC website. A similar invitation is issued at the end of an episode of Sixty Minutes, with viewers being given the opportunity to chat on-line to the presenter or subject of the program via the ninemsn website. This is a small example of what can be expected to occur in the digital environment where the FTAs will be in a position to exploit their existing market base, profile and capacity to advertise their datacasting services in competition with any new players.

New datacasting providers are likely to need several years and large advertising budgets to be able to compete with the profile and exposure of datacasting services offered by a FTA.

Further, the FTAs can draw on their vast content libraries for datacasting content and can be expected to use their incumbent power to dominate the market for the acquisition of new content for datacasting. Each of the commercial FTAs have long standing and key relationships with major suppliers of content such as the Hollywood studios, and sporting bodies. Further, the Nine and Seven Networks have interests in either on-line services or pay television or both, which gives them substantial advantages over new entrants in the market in terms of securing the appropriate content for datacasting.

There is little doubt that if the FTAs are unrestricted in their use of datacasting they will continue their horizontal and vertical integration strategies to dominate the provision of datacasting services, thereby further strengthening their dominant position in the media sector.

Datacasting services provided by FTA

For the reasons outlined, the FTAs should be subject to restrictions on their ability to provide datacasting services. These restrictions should not apply to new datacasting entrants who are not FTAs.

The FTAs should be subject to a moratorium on their ability to provide datacasting services, at least until the end of the simulcast period. This would maximise the commercial opportunities for new entrants and would enhance competition.

After the end of the simulcast period the FTAs should be permitted to offer datacasting services on the proviso that they pay at least the same amount as new entrants pay at auction for the right to offer datacasting services. The ‘charge’ referred to in the current legislation would need to be at the amount which ensures that the FTAs do not have an unfair competitive advantage over new entrant datacasters who have to purchase spectrum on the open market.

If this approach is not supported by the Productivity Commission, then the FTAs should be subject to particular restrictions which would level the playing field during the analog simulcast period. These restrictions should include the following;

- the FTAs should not be permitted to offer "datacasting" services which are effectively defacto broadcasting services such as video on demand, near video on demand, full frame rate audio/video services, cached (stored) video and audio services;

- the FTAs should be prohibited from offering e-commerce and two way interactive communications;

- the FTAs should not be permitted to offer carriage services such as Internet or online services. Without this restriction, the FTAs would be able to turn themselves into carriage service providers, unfairly relying on their incumbent position in the broadcasting market.

C&W Optus is also concerned about enhanced programming becoming defacto datacasting, which may occur if the FTAs offer interactive and e-commerce services as "enhanced programming. These services should be excluded from the definition of enhanced programming as inclusion would blur the distinctions between the different kinds of digital services.

The adverse competitive consequences of allowing the FTAs unrestricted access to datacasting cannot be underestimated. Concentration of electronic delivery of communications services by the FTAs will hamper competition and diversity in the new datacasting industry, and will provide the FTAs with an unfair competitive advantage which will ultimately limit consumer choice.

New Entrant Datacasters

C&W Optus has reconsidered its position in relation to the kinds of datacasting services which should be able to be provided by new entrant datacasters.

C&W Optus now supports a broader definition of datacasting in relation to the services which are provided by "new players" on spectrum which is allocated through a price based allocation process and which is not included in the 7MHz channels "loaned" to the FTAs.

The main argument in support of this view is that the provision of datacasting services by new entrants in the broadcasting industry will encourage diversity of opinion and competition between service providers. Also, new datacasting providers will have obtained spectrum through a price based allocation process, and will not be able to rely on an incumbent position in the FTA industry in order to provide datacasting services.

New entrants will therefore be undertaking greater risks in bringing new services to audiences.

While the existing regulatory scheme requires the FTAs to pay a charge for spectrum used for datacasting, they will still be providing new services from an advantageous position as a FTA incumbent - with existing infrastructure and commercial content arrangements at their disposal. By contrast, new entrant datacasters will be entering into a highly competitive market where they are relatively unprotected from commercial risk.

Specifically, new datacasters should be permitted to offer point to multipoint services, point to point services, next generation broadcasting services such as video on demand, full frame rate audio/video services, cached (stored) video and audio services, e-commerce, two way interactive and online services.

A regulatory distinction between datacasting and broadcasting is necessary while the BSA remains the regulatory instrument for the broadcasting industry. If this distinction is to be removed, new legislation will be required. This is an issue for the longer term, possibly after the end of the simulcast period.

C&W Optus is concerned to ensure that the migration from analog to digital television broadcasting results in the current analog television spectrum being freed up to the greatest extent possible, even allowing for the introduction of new broadcasting services, further stimulating competition and choice in the converging, multimedia world. To this end, clear rules need to be established for the handing back of analog spectrum.

Set Top Box Interoperability

The draft report focuses on the likely cost of set top boxes (**STBs**) capable of decoding digital television transmissions. C&W Optus agrees with the Productivity Commission that this issue is of importance to the digital conversion scheme, as the price of set top boxes will influence the initial "take-up" of digital television services by consumers.

However, it also is essential that interoperable STBs be developed to provide access to FTA, datacasting and pay television services. This would ensure that consumers are not excluded from receiving services because the STB they have purchased does not allow those services. The development of an interoperable STB will also encourage competition and diversity in the new digital services market.

The draft report also appears to assume that the Pay TV industry will bear the cost of developing an interoperable STB. However, the draft report should take into account the possibility of different marketing models being developed in this area, including direct purchase retail propositions.

Multichannelling

- **Free to air multichannelling and interactive services by commercial and national broadcasters should be permitted**.

C&W Optus strongly opposes this recommendation.

The fundamental condition of the allocation by the Government of 7MHz of spectrum to each of the FTAs was the requirement that the FTAs would provide digital television in HDTV format.

If the FTAs are to use this gifted spectrum to "multichannel" they would be competing with the new pay television sector from a significantly lower cost base. This would be extremely anti-competitive and would contradict the HDTV policy which "justified" the handover of the 7MHz spectrum in the first place.

During the simulcast period, commercial and national broadcasters should not be permitted to offer subscription or pay-per-use services using spectrum provided to them under the digital convergence plan.

C&W Optus agrees with this recommendation. The pay television industry has undertaken a huge investment to provide Australian audiences with a diversity of television choice previously unknown in Australia. When this investment was made, the regulatory regime gave C&W Optus no reason to envisage that the FTAs would be able to offer subscription or pay-per-view services. Allowing the FTAs to offer subscription or pay-per-view services would threaten the ongoing viability of the pay television industry, and its ability to compete for audience share against the FTAs.

It is imperative that the Government's regulatory regime should not enable the FTAs to undermine the viability of the pay television industry.

6.3 The conversion plan should be modified. Government should:

- **Set a termination date for analog broadcasting of 1 January 2008 for capital cities and 1 January 2011 for regional areas**

C&W Optus agrees with this recommendation, but only if it is based on outcomes resulting from a complete revision of the existing digital television scheme. For the reasons previously stated, C&W Optus cannot support a scheme whereby HDTV was "voluntary", as this would undermine the foundations upon which the existing Government policy was based. Analog spectrum should be "freed up" for other uses, but not on the basis of the framework outlined in the draft report.

- **Announce that spectrum used for analog simulcasting will be reallocated by auction or other market process two years prior to the termination date, with vacant possession on that date. At the same time, steps should be put in train to complete the conversion process using contract spectrum clearers if necessary.**

C&W Optus supports this recommendation, on the basis that there is competitive demand for the analog spectrum from other sectors of the communications industry, and that this recommendation would bring forward the dates when that spectrum could be re-allocated.

Regulatory restriction on entry into broadcasting

7.1 Section 28 of the BSA, which prevents any new commercial television licences being allocated before 31 December 2006, should immediately be repealed.

C&W Optus endorses the amendment of section 28 as a competitive measure which would allow the entry of a fourth commercial broadcasting licensee into the Australian media landscape.

This fourth commercial broadcasting licence should be allocated by way of price-based allocation under the existing scheme in the BSA.

As this licence would be commercially obtained there should not be any additional prohibitions on the use of this licence, other than those already in the BSA.

C&W Optus encourages diversity in the digital spectrum environment and sees plurality as an essential element in Australia's forward looking transition from an analog to a digital television environment.

Ownership and control

8.1 Foreign investment in broadcasting should be covered by Australia's general foreign investment policy. All restrictions on foreign investment, ownership and control in the BSA should be repealed.

C&W Optus supports the lifting of the foreign investment and ownership restrictions in broadcasting.

These restrictions should be repealed for the key reason that it would increase the pool of players who can bid for media assets – this increases the likelihood that a price will be paid for the asset which reflects the real value of the spectrum.

Further, the scope of media diversity is artificially constrained by the existing foreign ownership rules. If the pool of bidders for commercial television licences is limited to the domestic players, there will be less diversity in opinion than there may be otherwise.

Removal of the foreign ownership rules will result in less concentration of media ownership which may ultimately benefit the economy overall (with the media sector enjoying a greater degree of competition).

8.2 If recommendation 8.1 is not adopted, the BSA should be amended to allow for unrestricted investment of Australian sourced funds managed by foreign managers.

C&W Optus prefers recommendation 8.1 to recommendation 8.2. However, if recommendation 8.1 is not adopted, the implementation of recommendation 8.2 would improve the efficiency of capital allocation in the Australian media sector.

8.4 Only after the following conditions have been met:

- **Removal of regulatory barriers to entry in broadcasting (see Recommendations 4.4 and 7.1), together with the availability of spectrum for new broadcasters; and**
- **Abolition of restrictions on foreign investment, ownership and control in the BSA; and**
- **Amendment to the Trade Practices Act to provide for a media specific public interest test to apply to mergers and acquisitions;**

The cross media rules should be removed.

C&W Optus supports the abolition of the cross media rules. The current cross media rules rely on outdated assumptions about the degree of influence the traditional media has on shaping community views in Australia. In focussing on the degree of influence exercised by commercial television, commercial radio and newspapers, the current regulatory system overlooks the dynamic role played by "new media" in Australia, particularly online services.

Further, the impact of new media in Australia can only become more pronounced in the future, especially with the introduction of digital terrestrial datacasting services, the ever-increasing availability of the internet to audiences, and a dynamic print media industry, particularly in the magazine sector.

In practice, the operation of the cross-media rules has produced arbitrary results. Such results are particularly inappropriate in a rapidly converging communications industry. The existing regulatory system focuses on regulation of particular delivery mechanisms (newspapers, commercial television and commercial radio) rather than on the actual services delivered to audiences. This approach requires review and replacement with a regulatory system that can adapt and respond in an appropriate way to a converging communications sector.

The draft report recommends removal of the cross media rules only after the regulatory barriers to entry in broadcasting have been removed (per recommendations 4.4 and 7.1, which are supported by C&W Optus), the "foreign" rules have been abolished and the *Trade Practices Act* has been amended to provide for a media specific public interest test. C&W Optus supports this approach.

The cross media regulation could be accommodated under media specific amendments to the *Trade Practices Act* to address the social, cultural and political dimensions of the

public interest as they apply to proposed media acquisition and mergers of a certain kind in the Australian media industry.

The preparation of such amending legislation will attract intense interest from the public. In such circumstances, if the Government elected to conduct a public review into how the public interest test should be constructed, C&W Optus would welcome the opportunity to participate.

9.6 Consumer Access to Sports Programs

C&W Optus notes that the "dual rights" scheme suggested by the Productivity Commission is an improvement on the existing anti-siphoning regime, which hampers the ability of the pay television industry to compete with FTA.

C&W Optus would have preferred that the Productivity Commission accepted the submission of C&W Optus and ASTRA that the anti-siphoning regime be abolished.

However, if this suggestion is not to be adopted by the Productivity Commission in its final report, C&W Optus supports the suggestion contained in the draft report, which would mean that pay television would no longer be excluded from broadcasting premium sporting events.

10.5 The regulatory scheme for controlling access to online content should be reviewed after two years of operation. Such a review should encompass:

- **The scheme's success in regulating access to objectionable material;**
- **The scheme's effect on Internet service providers, Internet content hosts and online commerce;**
- **The scheme's effect on freedom of expression and access to educational, artistic and political material; and**
- **The scheme's compliance and administrative costs.**

C&W Optus supports a co-regulatory approach to online content issues based on the development of industry codes of practice. It is currently working closely with the Internet Industry Association to develop a code of practice which provides a responsible and balanced approach to Internet Content issues in Australia.

C&W Optus supports the recommendation that the regulatory regime for online content, inserted into Schedule 5 of the BSA, should be reviewed. However, C&W Optus believes that this review should take place no later than 12 months after the introduction of the legislation, not 2 years as recommended by the Productivity Commission.

The review will be important to ensure that legislation has not had a detrimental effect on Australian Internet Service Providers in terms of the schemes compliance and administrative costs, international competitiveness and the effect on network efficiency and e-commerce in Australia.