TVG Communications Pty Ltd

Submission To The Productivity Commission Inquiry Into The Broadcasting Services Act 1992 And Related Legislation

MAY 1999

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1 TVG Communications Pty Ltd

TVG Communications Pty Ltd was formed in 1995 with the purpose of establishing an innovative low budget cable and satellite channel for the emergent Australian Pay TV audience.

After researching subscription television in the United States and Europe and identifying a significant gap in the market, a commercial Pay TV Channel targeting the 16 to 39 year old demographic was developed.

The proposed channel, “TV Grump”, aims to introduce major innovations to the way television is produced, programmed and presented.

The TV Grump channel would achieve a minimum 65% Australian content with the vast majority of programming being presented live to air 24 hours a day, 365 days a year featuring: music, short films, animations, comedy, satire, current affairs and other popular culture programming.

Utilising the latest technologies, a large untapped pool of program supply from small independent production companies, multi-skilled staffing arrangements and low budget production methods develop by TVG Communications, TV Grump would broadcast a full year of television programming with the highest Australian content in the country, for an annual operating cost equivalent to 20 episodes of Water Rats.

As well as offering Australian audiences a completely new entertaining style of TV, the proposed channel would make a significant contribution to Australian culture, developing new performers in all areas of the arts.

TV Grump is also designed to export its format and Australian produced programming to the world market following it’s successful establishment in Australia.

During 1995 financial models and innovative production, acquisitions, programming, marketing and advertising sales strategies for TV Grump were developed into a financially sound business plan and TVG Communications presented the proposal to Pay TV carriers and potential investors.

While Pay TV channel development is the main business of TVG Communications we have also been involved the development of television programs, and produced the award winning documentary “Media Rules” for SBS Television in 1996.

This submission is primarily on the regulatory environment of Pay TV but also makes some comment on issues in the television industry overall.

2 Response to TVG Communications as a new entrant to the Pay TV industry

Since it’s establishment in 1995, TVG Communications Pty Ltd has discussed carriage of the proposed new channel with Foxtel, Optus Vision and Austar. We have also talked with most of the major media players in Australia with respect to potential financing of the TV Grump channel.

The proposed channel was greeted with interest from all sections of the industry. At different times in the past 4 years serious negotiations were entered into and further development work undertaken in cooperation with a number potential investors.

Despite having an innovative product that major media players were interested in, the TV Grump channel is yet to be established. This is primarily due to the economic, organisational and infrastructure circumstances of the Australian Pay TV industry, on which the regulatory and legislative impact has been significant.

TVG Communications still plans to establish the TV Grump channel and the improving economics of the Pay TV industry bode well for the future. However we believe we can offer the Productivity Commission some insight into the impediments facing new players, and how regulation might be improved to increase competition and the opportunities for entry into the industry.

3 Impediments to New Players

From experience gleaned since 1995 TVG Communications believes the ability for new players to enter the market has been greatly inhibited by the regulatory environment.

The then Australian government’s decision to opt for three exclusive carriers and for duplicated cable infrastructure roll out has, with hindsight, proved a major mistake.

The collapse of Australis demonstrates the folly of this approach when the economics of infrastructure requirements, the size of the Australian market and growth in subscriptions led to substantial losses and dictated that three truly competing carriers would never be viable in the first decade of Pay TV, if ever.

The resultant infrastructure cost burdens on carriers and cash flow difficulties in the first few establishment years of Pay TV have contributed to carriers "playing it safe" and being less inclined to carry and / or invest in new Australian channels not based on concepts already proven overseas. In a loss making environment they are obviously less inclined to carry on reasonable terms, or potentially invest in, new channels which may be in competition to existing channels in which they have equity or greater proportions of equity.

The original exclusivity period granted to Foxtel, Optus Vision and Australis / Austar, while financially necessary because of the government's infrastructure policy decisions, has effectively put the control of new channels and new program content in the hands of these 3 entities.

They have obviously made decisions in the best interests of their shareholders and their economic survival. This has not enhanced the opportunities for new channel providers to enter the market.

4 Competitiveness In Pay TV

The ideal model for maximum competition in the Pay TV industry would have been to regulate for one carrier engaged purely in distribution and distribution infrastructure, with the supply of channels open to any player who could source programming, attract finance and meet ABA licensing requirements.

This would have opened the door for many new players and a far greater diversity of choice for Australian viewers. However that opportunity has been missed with the Federal Government's decision in the early 1990's.

The Productivity Commission's review of The Broadcasting Services Act and related legislation offers the opportunity to improve competitiveness and social and cultural dividends through regulatory changes in the future.

5 The Future One Carrier Environment

Despite the Federal Government's attempt to create two cable carriers and one satellite carrier, the economics of the market place are slowly moving Australian Pay Television towards the ideal model of one carrier described above.

The demise of Australis Media Limited set the direction, with Foxtel now establishing itself as the dominant carrier. It is likely that at some point in the future the other carriers will either formally merge, or enter into channel distribution arrangements with the different carriers distributing the same content, effectively creating one carrier.

If, or when, the one carrier environment arrives, which we believe is likely, a single Pay TV carrier which is also a channel provider itself will be in an incredibly powerful position.

It will be subject to strong economic temptations to give preferential treatment to channels it has equity in. While this situation is currently guaranteed by the exclusivity periods granted to the present carriers, when this exclusivity period ends, given that the carriers own the distribution infrastructure there will be a need for new regulation to ensure fair competition and access for new channel providers.

This is similar to the situation with the new telephone companies accessing Telstra's local call network and independent Internet Service Providers accessing Telstra's bandwidth.

Even if the one carrier environment does not emerge and the current carrier configuration remains, when the programming exclusivity period for Foxtel, Optus Vision and Austar ends the need for regulation to ensure fair competition and access for new channel providers will still apply.

6 Recommendations

To improve future competitiveness in the Pay TV industry and increase the opportunities for the entry of new players TVG Communications makes the flowing recommendations:

6.1 Regulatory Supervision of Pay TV Carriers

With respect to cable, satellite and MDS subscription television the Broadcasting Services Act and related legislation should be amended to give the ACCC or ABA power to monitor carriers with respect to areas such as: share of subscriber fees, billing arrangements, advertising share arrangements, joint marketing arrangements, pricing of distribution services, etc; and enforce regulations to ensure fair competition and access for new pay TV channels. Such amendments to come into force when the current carriers' guaranteed exclusivity period ends.

6.2 Proportion of Non-Carrier Owned Channels

The Broadcasting Services Act and related legislation should be amended to ensure that with respect to cable and satellite Pay TV there is a minimum proportion of potential channels carried, allocated to Australian produced channels that do not have carrier equity. Such independent channels to access carriage on the same pricing structures as channels with carrier equity. Such amendments to come into force when the current carriers' guaranteed exclusivity period ends.

6.3 Australian Content

There have been enormous benefits to the Australian television industry from Australian Content regulation over the past 4 decades. The regulations have contributed greatly to increased Australian programming, increase in employment in the industry and the development of Australian cultural identity. The regulations have also contributed significantly to the rise of competing independent production companies. We believe the current Australian Content regulations should be maintained with respect to the free to air television.

Legislation should be amended to change the status of New Zealand produced television programming so that it is no longer considered Australian.

With respect to Pay Television the current requirements for 10% of spending on drama to be on Australian content on Pay TV should be maintained.

Further the Broadcasting Services Act and related legislation should be amended to introduce an overall 10% Australian content quota for cable and satellite subscription television carriers with allow carriers to amortise Australian content across different channels.

6.4 Cross-Media Ownership

As a small business in the TV industry, TVG Communications Pty Ltd doesn't believe the recent rhetoric of some large players that the trend towards convergence of technologies such as the Internet and television provide a reason for repealing the current cross media ownership provisions. The Australian cross media ownership rules do not stop or impede media companies from becoming larger international players on the global stage as has been suggested. The convergence of technologies potentially puts existing major media players with access to vast reservoirs of content into a more dominant position in the new digital arena.

From a self interested perspective and the perspective of all new players trying to enter the television industry, the greater the diversity of media ownership, the greater potential for new program suppliers and channel providers to establish themselves.

But the broader perspective of the television consumer, cross media ownership regulations contribute greatly to the choice of information and entertainment available to the people of Australia. Access to information from diverse sources is one of the basic foundations of a functioning democracy. The case for diversity of media ownership in the interests of democracy is well known and has been extensively argued in many forums in the past, so we will not reiterate it here. TVG Communications supports those arguments.

We believe that the current cross media ownership laws should be at the very least retained and potentially strengthened. As the Internet continues to become a business environment here should be some consideration of extending cross media ownership provisions to the Internet.

7 Contact Details

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