

21 August 2009

Regulatory Burdens Review
Productivity Commission
GPO Box 1428
Canberra City ACT 2001

Dear Sir/Madam

Productivity Commission Review of Regulatory Burdens on Business: Social and Infrastructure Services – Draft Research Report - Response to Free TV submission

This document responds to Free TV's submission to the Productivity Commission dated 10 August 2009.

The Free TV submission contains numerous incorrect assertions and errors of fact which ASTRA believes it is important to correct for the record.

Sport on digital multi-channels

Free TV argues in favour of allowing listed sport to premier on their multi-channels and says that this will increase the broadcasting of sport on the multi-channels and drive digital take-up.

As ASTRA has pointed out in previous submissions, the subscription television sector does not object to sport premiering live on the multi-channels *so long* as this occurs under fair and balanced regulatory settings. The best way – for viewers, sports codes and grass roots competitions – of ensuring more sport on the terrestrial multi-channels *and* on subscription television is to remove events from the list that the commercial networks do not broadcast (i.e. around 75% of events on the list). Under existing law **non-listed** sport can premier on the terrestrial multi-channels. This currently occurs with a wide range of non-listed sports including the Indian Premier League (20:20 Cricket), Formula 1 events taking place outside of Australia, and the majority of games in the Trans Tasman netball competition.

Our sector is, however, implacably opposed to extending the protections enjoyed by the terrestrial networks even further by permitting the terrestrial networks to premier **listed** sports on their multi-channel.

The combination of providing the terrestrial networks an exclusive preferred position with first rights of negotiation to over 1300 sporting events (under the anti-siphoning list) and also allowing them to use the expanded programming capacity of the multi-channels to premier listed sports events would provide the terrestrial networks with significantly more protection, substantially reduce our sector's ability to bid for rights, reduce competitive tension for sport rights, empower the terrestrial networks to drive down the value of sports rights and ultimately mean less money for the sports codes and their grass roots.



The adverse impact of such a policy has been recognised by numerous bodies. For instance, the then Government in its *Explanatory Memorandum to the Broadcasting Legislation Amendment (Digital Television) Bill 2006* said:

*(Allowing listed sport on multi-channels) would also have an adverse impact on the subscription television industry's capacity to provide sports programming.*¹

In assessing the option of allowing listed sport on the multi-channel the *Explanatory Memorandum* said that if implemented this policy *would significantly reduce subscription television's ability to negotiate for sports rights and could reduce access to sporting events for viewers* as the terrestrial networks may take events off their main channel and put them on their multi-channel (which has much lower penetration levels than the main channel).²³

It was also made clear in the *Explanatory Memorandum* to the 2006 media reforms that such an approach would be inconsistent with the policy rationale of the anti-siphoning list which is to ensure that sport is widely available.

Similarly the Productivity Commission said in 2000 that, *The anti-competitive effects (of the list) would be even greater if the free to air stations are allowed to multi-channel*" The Commission pointed out in its 2000 report that the anti-competitive nature of the anti-siphoning had an adverse impact on subscription television, as well as the value of sports rights and sports codes. It follows therefore that increasing the anti-competitive effect of the list (by allowing listed sport to premier on the multi-channels) would significantly exacerbate the problems caused by the anti-siphoning list which the Productivity Commission identified in its Broadcasting Inquiry Report.

Finally, the Australian Competition and Consumer Commission has also noted that:

*It is concerned that by giving FTA broadcasters almost exclusive rights to the listed programming, the anti-siphoning list has substantial anti-competitive effects and is more intrusive than is necessary to achieve the policy objective of ensuring key sporting events are available to viewers on FTA television.*⁴

Free TV incorrectly says reform of the list would mean 'sport will migrate to pay TV'

Free TV consistently misrepresents the impact of our sector's proposal to shorten the list to the 23% of events on the list that the terrestrial networks broadcast. Free TV argues that Sport will migrate to pay TV if it is delisted and viewers will be forced to pay for sport which they are currently receiving free of charge.

This claim is entirely without foundation. As ASTRA has clearly stated, our proposal is to de-list those events that the terrestrial networks do not broadcast. This means that those sport that are currently broadcast on terrestrial television remain on the list (and terrestrial television) and those sports that come off the list are available for either the terrestrial networks or subscription television to obtain in an open market.

¹ Broadcasting Services Amendment (Digital Television) Bill 2006, Explanatory Memorandum, 2006, p5

² Ibid, p 13

³ Productivity Commission, Broadcasting, Inquiry Report, 2000 p. 444

⁴ Australian Competition and Consumer Commission, Emerging Markets Report Communications, 2003, p92

ASTRA understands from the Productivity Commission's draft report on regulatory burdens that it favours a similar approach.

Misrepresents the cost of subscribing to the sports package

Presumably Free TV misrepresents the cost of subscribing to subscription television sports packages to create public and political concern around any dismantling of their extensive protections. Free TV says in its submission that *only a third of all Australians opt to pay up to \$131 per month for a subscription service*.

The price they are quoting represents FOXTEL's premium package (which provides access to over 150 channels including five high definition channels). The majority of FOXTEL customers (i.e. over 90% of customers) subscribe to packages that cost less than \$131 per month. It is possible, for instance, to subscribe to the entry package plus the sports package for \$56 a month (which is less than \$2 a day).

It is also worth nothing that while over 30% of households subscribe to subscription television this amounts to around 40% of the population. This is the case because our product is taken up by a disproportionate number of families which means that on average there are around 3.8 people in every subscription television house hold.

Free TV says the 'negotiation process is operating as intended'

Free TV argues that the negotiation process is operating as intended. ASTRA submits that it is only operating in the way in which the terrestrial networks intend.

The anti-siphoning list puts the terrestrial networks in the 'box seat' over the negotiation of sports rights to over 1,300 events, including the 77% of events that they do not broadcast. Free TV and its networks (i.e. the beneficiaries of the list) are the only parties that argue the negotiating process is really working.

As is clear from the Productivity Commission's draft report on regulatory burdens all other parties to the negotiations other than the terrestrial networks believe that the list has a detrimental and burdensome impact on negotiations. Those who agree with this position include the subscription television sector and all the major sports codes.

ASTRA has provided a detailed outline of the burdens that the list imposes throughout the negotiating process in previous submissions to the Commission and does not propose to re-state these facts here.

The above points do not represent an exhaustive list of statements and arguments in the Free TV submission that ASTRA does not agree with. However, it does cover briefly some of our key concerns in relation to that submission.

Yours sincerely



Debra Richards
CEO