

ABA FINDS UCOM AND HI VISION SUITABLE

On 30 June 1993, the Chairman of the ABA, Mr Brian Johns, announced the ABA had found both UCOM Pty Ltd and Hi Vision Ltd suitable to be allocated a subscription television broadcasting licence. UCOM is the highest bidder for pay TV licence A and Hi Vision is the highest bidder for licence B. Each of these licences allows the provision of up to four subscription television broadcasting services.

'On the basis of the information currently available to the ABA, there are no reasons to believe that the allocation of the licences would lead to a significant risk of an offence against the Broadcasting Services Act or a breach of the licence conditions,' Mr Johns said.

The ABA's investigations into the suitability of the applicants included whether their ownership and control structures complied with the Act, in particular the nature and extent of any ongoing relationship between the companies. The ABA's investigations into UCOM included the circumstances of the signature to the bid. With Hi Vision, the ABA primarily concentrated on the directors and shareholders of the company. Certain of these were the subject of much media coverage after the announcement of the success of Hi Vision's bid on 30 April 1993.

As required by the Broadcasting Services Act, the ABA received reports from the Trade Practices Commission (TPC) on Wednesday 16 June 1993. The TPC concluded the allocation of pay TV licences to UCOM and Hi Vision would not constitute a contravention of section 50 of the Trade Practices Act.

This section prohibits mergers or other acquisitions if they would have the effect, or be likely to have the effect, of substantially lessening competition in a substantial market. UCOM and Hi Vision have until 30 July to pay the prices they bid (UCOM bid \$177 000 999 and Hi Vision bid \$211 999 715).

SUITABILITY

The Broadcasting Services Act contains a presumption that licence applicants are suitable persons.

When examining suitability, the ABA is required to take into account the business record of an applicant company and its controllers and their record in situations requiring trust and candour. For example, any record of business-related crime or major fraud might be of relevance.

A pay TV licence applicant is unsuitable if the ABA decides there would be a significant risk of an offence against the Act or a breach of the conditions of the licence occurring. In other words, the suitability test relates strictly to the applicant's ability to comply with the obligations of the licence. This is a much narrower test than the 'fit and proper' requirement which existed in the former *Broadcasting Act 1942*.

Relevant offences under the current Broadcasting Services Act relate to ownership and control limits on pay TV licences. This means the ABA could refuse to allocate a licence if a breach of these limits would result.

Most pay TV licence conditions relate to programming (e.g. anti-siphoning rules; no R-rated material until and unless Parliament approves its transmission; no advertising or sponsorship before 1997).

Another condition is that a pay TV service is not to be used in the commission of an offence. Once a transmission system standard has been determined and domestic reception equipment is commercially available, Licences A and B are also subject to a special condition that they provide services within six months of a notification by the Minister for Transport and Communications.

Once a licence has been allocated, there is a requirement for the licensee to remain a suitable person. This means if at any time after the licence is allocated the ABA decides there is a significant risk of an offence against the Act or a breach of the conditions of licence occurring, it may take action to remove the risk of such an offence or breach taking place.

Under the price-based allocation system for satellite pay TV licences, determined by the Minister, the successful bidders have 30 days within which to pay the price bid. After that, their bid falls

away and the second highest offer would be considered.

However, recent amendments to the Broadcasting Services Act mean a deposit will be required from future applicants. If either of the current applicants fail to pay the price they bid within 30 days, the next highest bidder for that licence will be notified and will have three business days to pay a deposit of 5 per cent of the price bid. If they do not pay within the period, then the bid will fall away and the next highest bidder for the licence will be notified.

Once the 5 per cent deposit is paid, the licence applicant would still be subject to TPC and ABA approval in accordance with the Broadcasting Services Act and the price-based determination.

CONDITIONS ON SUBSCRIPTION TELEVISION BROADCASTING LICENCES

A satellite pay TV licensee is subject to the following conditions:

In Part 7 of the Broadcasting Services Act:

- The transmission system must be in accordance with the standard agreed between licensees A and B (s.94);
- ABA is required to impose certain conditions concerning access to a subscriber management system and availability of receiving equipment (s.100);
- Prohibition on advertising or sponsorship before 1 July 1997 (s.101);
- 10 per cent expenditure on Australian programming requirement for drama services (s.102);
- Once a transmission system standard has been determined and domestic reception equipment is commercially available, Licences A and B are also subject to a special condition that they commence to provide services within six months of a notification by the Minister for Transport and Communications (s.103);
- Ownership and control limitations (s.106 - 110).

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Schedule 2 of the Broadcasting Services Act - General conditions

(Note: subject to moratorium on advertising and sponsorship in s.101.)

- A pre-election electoral blackout condition (cl.3).
- A requirement to announce particulars and keep a record of the person or company authorising the broadcast of political matter (cl.4).
- A requirement to keep recordings of political or current affairs broadcasts for a statutory period (cl. 5).
- Special rules relating to broadcast of advertisements regarding medicines (cl.6).

Schedule 2 of the Broadcasting Services Act - Special conditions relating to subscription television broadcasting in Part 6

- Prohibition on advertising tobacco products.
- Requirement to comply with applica-

ble program standards (note: there are at present no program standards applying to pay TV. The ABA may determine program standards where industry codes of practice fail or where no code of practice is developed).

- Requirement that articles of association contain certain provisions relating to ownership and control compliance.
- Requirement to allow access to airwaves by Minister in public interest.
- Anti-siphoning condition.
- Prohibition on 'X' rated or unclassified programs.
- Moratorium on 'R' rated programming till completion of ABA research on community standards and Parliamentary approval of broadcast of such programs.
- Prohibition on use of service in the commission of an offence.
- Requirement to remain a suitable licensee.
- Requirement that subscription fees will continue to be the predominant source of income.



HOW MANY

BY: BOB GREENEY,

Have you ever wondered why there aren't more television services? On my television set and VCR tuner there are channels 0 to 69 - that's 70 channels - so why does the current plan only allow for six metropolitan-wide services? This short article attempts to explain why, without getting lost in all of the technical mystery.

CHANNELS 0 TO 69

Look at your television guide. If you're in Sydney, Melbourne, Brisbane, Adelaide or Perth, it will show channels 2, 7, 9, 10 and 28. If you're in Newcastle it will show 3, 5A, 45, 48, 54 and 57 (ABC-TV broadcasts on both VHF-5A and UHF-48). In Nowra, the channels are 53, 56, 59, 62 and 65, while in Canberra the channels are 3, 7, 28, 31 and 34, (37). Ballarat has channels 6, 11, 30, 33, (36) and 39. I'll come back to channels 36 and 37 later.

In all cases, a sixth channel is planned for your area - it is generally the next UHF channel three channels above your highest existing UHF television channel, i.e. 31 in the capital cities, 60 or 68. So there seems to be lots of channels potentially available. Each channel occupies the standard Australian television channel width, 7 MHz.

The Very High Frequency (VHF) broadcasting bands run from 45 MHz to 230 MHz and contain channels 0 through to 12. (MHz stands for megahertz, and is a measure of the frequency in millions of cycles per second).

In the Ultra High Frequency (UHF) range, broadcasting bands run from 526 MHz to 820 MHz and contain 42 channels (channels 28 through 69 inclusive). That's a total of 55 channels, since channels 13 through to 27 do not exist, nor are there television broadcasting frequencies available between the VHF and UHF television bands. (This part of the spectrum is generally used for mobile radiocommunications such as two-way radio, garage door openers, radio remote control systems, etc.)

SECOND DRAFT OF FREQUENCY ALLOTMENT PLANS

The ABA will release a second draft of its frequency allotment plans (FAPs) in September as part of its continuing consultation on planning.

This follows consideration of more than 150 submissions received in response to an initial exposure draft and feedback from technical workshops conducted in most capital cities.

The FAPs set out the number of radio and television channels to be made available in each geographic area and will be determined after the completion of public consultation.

ABA Chairman Mr Brian Johns said: 'We want to ensure that everyone has proper access to information so there is an informed public debate. The second draft is designed to achieve this aim'.

The first exposure draft identified radio and television channels already in

use or planned throughout Australia and sought comment on fundamental planning assumptions on which they were based.

There will be 30 days for public comment on the second draft after it is released. Following consideration of any further submissions, the FAPs will be finalised and published later this year.

The second exposure draft FAP will be sent to everyone who received the earlier draft or submitted comments.

In accordance with the planning provisions of the *Broadcasting Services Act 1992*, frequency allotment plans are being developed progressively to cover all parts of Australia and all portions of the broadcasting services bands for which the ABA is responsible (AM and FM radio and television bands).

