



## ABA REFERS PAY TV LICENCE B TO TPC

The ABA has asked the Trade Practices Commission (TPC) to provide a report into the allocation of satellite pay TV licence B to New World Telecommunications Pty Ltd (New World).

The TPC has 45 days (until 4 January) within which to provide its report to the ABA.

'As a result of UCOM's failure to pay the balance of the amount it bid for licence A, the common ownership difficulties between UCOM and New World are now not an issue. The ABA is now in a position to refer New World's application for licence B to the TPC,' said Mr Brian Johns, ABA Chairman.

The request follows an earlier decision by the ABA not to refer licence B to the TPC while common ownership difficulties between the applicants for licence A and licence B had not been resolved.

By moving to refer licence B now, the ABA is completing the sequence it commenced with the referral of only licence A to the TPC in September 1993.

The ABA was notified on 18 November of imminent shareholding changes in the composition of New World.

The ABA is now considering the suitability of New World to be allocated a pay TV licence. Its assessment, and that of the TPC also, will take into account any shareholding changes in New World.

An applicant is unsuitable if the ABA decides that allocation of the licence would lead to a significant risk of an offence against the Act or a breach of the conditions of the licence.

### **THE ROLE OF THE TRADE PRACTICES COMMISSION**

The issue by the ABA of satellite pay

TV licences A and B is subject to a report by the TPC stating that the issuing of the licence would not contravene section 50 of the Trade Practices Act 1974 (TPA) and that the allocation would be authorised under the TPA if the applicant had applied for such an authorisation. Authorisation may be granted on public benefit grounds.

Section 50 of the TPA prohibits mergers or other acquisitions which substantially lessen competition.

Changes in the applicant company's shareholding arrangements can occur at any stage of the TPC's consideration of the matter.

The TPC must provide a report in relation to each application within 45 days of the ABA's written request.

### **REFERRAL OF ONE APPLICATION**

On 13 September 1993, the ABA referred only licence A to the TPC for its consideration and to report to the ABA as required. The ABA took this action because of the common ownership of the applicant for licence A (UCOM Australia Pty Ltd) and the applicant for licence B (New World Telecommunications Pty Ltd). The ABA had received advice from the principals of these companies that licence A was the preferred licence.

The Broadcasting Services Act states a person who is in a position to exercise control of licence A must not, before 1 July 1997, have company interests exceeding 2 per cent in, or be in a position to exercise control of, licence B and vice versa.

The ABA, therefore, decided that it would not refer New World's application to the TPC until the common ownership problems of applicant companies which had paid a deposit of five per cent of the bid price was no

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longer an impediment. The failure of UCOM to pay the balance of its bid for licence A means the common ownership of UCOM and New World is not now a relevant consideration.

### **ALLOCATION**

Satellite pay TV licensees and applicants for such licences are required to be suitable persons. An applicant for a licence is taken to be suitable unless the ABA is satisfied there would be a significant risk of a breach of the Act or the conditions of the licence if the ABA were to allocate the licence. Once

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**PUBLIC POLICY IN AUSTRALIA**

G. Davis et al. 2nd ed. St Leonards, NSW., Allen & Unwin, 1993.

The writers of this book have directed it at anyone interested in public policy, political science and public administration. The book attempts to answer questions such as 'how do Australian governments make decisions?', 'are the problems facing decision-makers here unique' and 'what impact do the federal system, an active state, the structure of government and the behaviour of parties and pressure groups have on the policy outcomes?' Chapters include discussion of the public sector, political organisations, policy delivery, evaluation and accountability and economic policy. The final chapter poses the question - policy; can it be made better? In debating these issues, the authors interweave theories of government with analyses of Australian institutions and actions.



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allocated, the licence is subject to a condition that the licensee remain a suitable person.

The ownership structure of an applicant, which can change at any stage of the process of assessment by the TPC and the ABA, even prior to the allocation of the licence, will be treated by the ABA as relevant to the applicant's suitability because of the possibility of a breach of the ownership provisions of the Act.

The same foreign ownership limits apply to pay TV licences A and B (20 per cent for any one person and an aggregate of 35 per cent) but licence A is subject to more rigorous cross-media ownership and control restrictions.

Where the ownership structure of an applicant is subject to change, the ABA will require evidence that the applicant's ownership conforms to the relevant ownership or control provisions of the Act before notifying the applicant that a licence will be allocated.

Once it is satisfied there are no impediments to allocating a licence, the ABA must notify the applicant that a licence will be allocated upon payment of the amount bid by the applicant. The applicant has 30 days in which to pay the price bid otherwise the allocation process will recommence with the next highest bidder.

