

ABA SIPHONING INVESTIGATION

In the course of its investigation into which events should continue to be available on free-to-air television, the ABA has called for submissions, held meetings with sports bodies, broadcasters and pay TV operators, and commissioned nationwide research into community attitudes to the issue.

The ABA received more than seventy submissions and it is currently analysing them.

The 31 submissions from the public include ones from people who do not want to pay for any programs which are currently received free via free-to-air broadcasters, to those who are frustrated by the sports coverage provided by the free-to-air networks and will be subscribing to pay TV.

Fourteen submissions have been received from sports bodies. Some of the major sports bodies are ambivalent about a siphoning list, as the broadcast rights to their events have already been sold to the free-to-air operators for the rest of the decade. On the other hand some of the smaller organisations are concerned that if their events were placed on the list they could be disadvantaged when negotiating television rights to their events.

Broadcasters, understandably, have different attitudes to the issue. Free-to-air operators want the list to be as long as possible while the pay operators would like the list to be short.

In its submission, the Trade Practices Commission expressed the view that a siphoning list may be an unnecessary constraint on competition.

The Queensland Government raised concerns about user access to pay TV and both the South Australian and Queensland Governments believe that arts programs such as the Australian Opera and Australian Ballet should be placed on the list.

The ABA has requested an extension of time for the investigation, and expects to report to the minister on 13 May 1994.



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ABA ALLOCATES CABLE PAY TV LICENCES TO PACIFIC MEDIA

The ABA has allocated licences for pay TV broadcasting services to Pacific Media Telecommunications Pty Limited (Pacific Media).

Pacific Media has indicated it intends to deliver pay TV services via cable to Sydney, Melbourne, Brisbane and the Gold Coast.

'The ABA examined the shareholding structure of Pacific Media and found it complied with the foreign ownership provisions of the Broadcasting Services Act', said Mr Peter Webb, ABA Acting Chairman. 'In addition, the ABA found no reason to regard Pacific Media as unsuitable to be allocated pay TV licences.'

Pacific Media has received 18 licences from the ABA, as the Broadcasting Services Act requires a separate licence for each service. The ABA takes a service to be a single stream of programming material.

The ABA has issued a total of 88 subscription television broadcasting services pursuant to section 96 of the Act. The other licence holders are Paynet Telecommunications Pty Ltd (Paynet - eight licences), Rowcom Holdings Pty Ltd (Rowcom - 28 licences), Access Cable Television Pty Ltd (Access - four licences), Home Show Cable Australia Pty Ltd (Home Show - 20 licences), and Cable Television Services Pty Ltd (CTS - 10 licences).

Paynet proposes to provide services to the Cairns and Townsville regions. Rowcom has proposed to cover the Darwin, Cairns, Townsville, Sunshine Coast, Hobart and Launceston areas. CTS proposes a coverage area of Brisbane, Gold Coast, Sydney, Melbourne, Canberra, Adelaide and Perth. Home Show proposes to service Adelaide initially and then cities and towns throughout Australia with populations greater than 150,000 whilst Access will provide services to Lismore initially and then a number of selected country areas and towns in Northern NSW. CTS will service major population centres of Brisbane, the Gold Coast, Sydney, Melbourne, Canberra, Adelaide and Perth.

CONDITIONS

Section 96 of the Broadcasting Services Act allows the ABA to allocate subscription television broadcasting licences delivered by means other than satellite.

Unlike transmitter licences or other service delivery permits, these licences do not have geographical limitations. Therefore, a service licence is valid throughout Australia as long as

the programming on that service is the same in all areas of reception. Where the service differs in a location, a separate service licence is required.

The current prohibition on licensing a pay TV broadcasting service dependent on an MDS system as its means of transmission, or as a part of its means of transmission, does not extend to services using cable as a means of delivery.

The ABA must not allocate a licence for an MDS delivered pay TV broadcasting service before the commencement of satellite broadcasting services under licence A, B or C. This prohibition ceases to have effect on 31 December 1994.

Apart from licences A, B and C, the ABA must not allocate a pay TV broadcasting licence that uses satellite as a means of service delivery before 1 July 1997.

SUITABILITY

The 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.

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.

Relevant offences under the 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 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.

