



TV licence auctions: ACCC intervenes

THE AUSTRALIAN Competition and Consumer Commission (ACCC) has instituted proceedings in the Federal Court against three television networks, related companies and a number of individuals.

The ACCC alleges there have been breaches of provisions of the Trade Practices Act (TPA) prohibiting contracts, arrangements or understandings between competitors that substantially lessen competition and competitors from boycotting particular customers in a market (ss 4D and 45), and exclusive dealing (s 47). Allegations include:

- that the Golden West Network (GWN) entered into an exclusive 15 year program supply agreement with the Nine Network (Nine);
- that a subsidiary of Nine, Territory Television (TT), entered into an exclusive program supply arrangement for ten years with a five year option with Amalgamated Television Services, a Seven Network (Seven) subsidiary;
- that these two agreements amount to an exclusive dealing and that each of the individuals named was knowingly involved in the contravention;
- that Nine and Seven agreed that Nine would not express interest in any second commercial licences for regional Western Australia and, in return, Seven would withdraw its expression of interest for the Darwin area second commercial licence, and that the above two agreements were part of this overall agreement;
- that this overall agreement contained an exclusionary provision or had the effect of substantially lessening competition for free to air services in the two markets; and
- that the object of the agreements was to hinder others from acquiring the second licences and to put GWN and TT in a position to be

allocated the licences in Darwin and Western Australia respectively.

The ACCC is seeking pecuniary penalties and injunctions against those named and declarations that the agreements contravene the TPA.

The second Darwin licence is to be auctioned on 29 October. It is the first time since the 1980s that a commercial television licence has been offered to new players, and the first allocation using a price-based system. Seven applications have been received by the Australian Broadcasting Authority.

The ACCC said it commenced proceedings to ensure that the market was informed on the matter, following its failure to persuade the companies to 'unwind' the agreements. □

Lucy York

STOP PRESS

ON 25 October, the ACCC and Nine jointly announced details of an agreement reached in relation to the proceedings. They include:

- Nine and TT agreed to terminate the exclusive program supply agreement with Seven and have undertaken not to enter into any similar agreement for the acquisition of Seven's programming in relation to the Darwin market; and
- the ACCC will withdraw its claims for declarations and pecuniary penalties against Nine, TT and Nicholas Falloon, Finance Director and director of Nine.

The ACCC is to maintain its claims for injunctions. Further, if the ACCC succeeds in its claims in respect of the exclusive program supply agreement for regional Western Australia, Nine has agreed that it will give undertakings to the Court that it terminate the agreement with GWN, and will offer to supply programs to the regional Western Australian market on reasonable commercial terms. □

Film Assistance Review

THE FEDERAL government is conducting a review of Commonwealth assistance to the film industry.

The review will consider and make recommendations on:

(1) the efficiency and effectiveness of existing arrangements for Commonwealth support for the film and audiovisual industry, including:

- the extent to which the program promotes the development of the industry, fosters a diverse range of quality film and television product, and meets Commonwealth cultural objectives
 - the extent of any unnecessary overlap or duplication between the Commonwealth's support mechanisms
 - the effectiveness of links between these mechanisms and with other sources of government support, including the ABC, SBS and State film support programs
 - whether any existing elements of the Commonwealth support program would be more appropriately provided by other levels of government
 - the extent to which existing arrangements encourage private sector participation in the industry, and possible improvements to the arrangements in this regard
 - the possibility of changing the present 10BA tax arrangements to provide, to an overall level predetermined by the Government, additional incentives for films which are commercially successful - taking into account the examination of the effectiveness of concessional taxation treatments announced in the Budget.
- (2) future options for the Commonwealth's support program in terms of the appropriate nature and level of assistance and the mechanisms through which it is provided, taking account of
- findings from term of reference (1)
 - the impact of factors likely to influence the development of the film and audiovisual industry over the next five years
 - the nature and size of the Australian industry and its potential for growth. □