

CHAPTER 3

MULTICHANNELLING AND ENHANCEMENTS

3.1 The Broadcasting Services Amendment (Digital Television and Datacasting) Bill 2000 maintains the prohibition in the Broadcasting Services Act on the use of digital spectrum for multichannelling services, except in limited circumstances, by both commercial and national free-to-air broadcasters.

3.2 Multichannelling was a major issue raised in submissions and by witnesses to the inquiry. The main areas of concern were that:

- national broadcasters should be allowed to use multichannel transmission capacity to broadcast television programs in digital mode; and
- digital program-enhancement content as permitted in the Bill is simply multichannelling under a different name.

3.3 As discussed in Chapter 1, witnesses to the Committee repeatedly stated that it would be necessary to fully exploit the new digital technology through offering multichannelling, enhancements and datacasting services to consumers in order to encourage them to switch to digital television.

3.4 According to Ms Christine Sharp, Policy Manager for the Special Broadcasting Service Corporation, SBS believes that the ability to multichannel is critical to its future. Multichannelling would give SBS the opportunity to provide more programming in pursuance of its Charter:

... we have a huge set of obligations and we fulfil those obligations with a very crowded television schedule. I do not know if you have noticed but, for instance, our foreign movies have moved now to 10 o'clock at night in order that we can fit in more of the programming that we think is important in pursuance of our charter. What multichannelling would allow us to do, in the first instance very cheaply, is simply to showcase more of our programming at times that better suit our audiences. The most noticeable demand on SBS television in terms of our logging of overnight audience calls, in terms of requests that come in to our SBS web site, is for programming repeats. We do not schedule like other networks. We do not have much series programming, and people will notice that there has been a documentary, for instance, of particular note and we get constant requests for repeats.¹

3.5 The ABC was surprised that the Bill did not allow for the national broadcasters to provide multichannel services under the digital regime. It had

1 Special Broadcasting Service, *Proof Committee Hansard*, 1 June 2000, p.88

understood that the underlying assumption for the review into multichannelling by national broadcasters in 1999 was that ABC multichannelling should be facilitated.² The outcomes from this review provide the reasons for the Government maintaining its prohibition on multichannelling for the national broadcasters.

Reasons behind decision

3.6 The outcome of the national broadcasters multichannelling review was that the Government did not propose to amend the Broadcasting Services Act to lift the current statutory prohibition on multichannelling by the ABC and SBS. The reasons for this stance were:

- all free-to-air broadcasters would be treated consistently in relation to multichannelling;
- unfettered ABC/SBS multichannelling would unfairly compete with the pay TV sector; and
- it would be difficult to identify specific genres of ABC/SBS programming that would not compete with the wide variety of specialised programming available on pay TV.³

3.7 In addition, according to the review, the ABC and SBS will be able to use digital technology to enhance their Charter functions by providing video and text enhancements that are linked to their digital programs. They will also have considerable flexibility to provide innovative video and text material as part of their datacasting services.

3.8 Further, the issue of whether the commercial and national free-to-air broadcasters should be permitted to multichannel will be addressed as part of the statutory review into multichannelling that is to be conducted before the end of 2005 (Broadcasting Services Act, Schedule 4, paragraph 60(1)(b)).

National broadcasters position

3.9 SBS argued in its submission that additional channels offered by the national broadcasters, as dictated by their Charters, would be distinct from the services offered on commercial free-to-air and pay television. SBS too, can offer multichannel program streams that are complementary to the ABC's programming. It would have no more adverse impact on other television sectors than the programming which it currently generates.⁴

2 Australian Broadcasting Corporation, Submission No. 20, p.2

3 Reports on Digital Television Reviews, Volume One, Department of Communications Information Technology and the Arts, 2000, p.34

4 Special Broadcasting Service, Submission No. 11, p.2

3.10 In relation to the innovative datacasting services referred to in the outcome to the review, the Bill contains restrictions on their use (see Chapter 2) which, according to the ABC, make multichannelling a more attractive proposition. Mr Jonathan Shier, Managing Director of the ABC, informed the Committee that if the ABC were allowed to multichannel it would not have to be concerned with the difficulties inherent in the datacasting definitions in relation to children's programming and the difficulty of distinguishing between education and entertainment. Additionally, multichannelling would enable the ABC to sidestep the involvement of the Australian Broadcasting Authority (ABA) in its datacasting programming decisions⁵ – provisions of the Bill which are fervently opposed by the national broadcasters and their supporters.

3.11 Even the commercial FTA television sector supported the national broadcasters' position in relation to multichannelling. When asked by Senator Bishop if there was any reason why FACTS would oppose permitting the two national broadcasters the ability to multichannel in fulfilling their respective charters, Mr Tony Branigan, Chief Executive, Federation of Australian Commercial Television Stations (FACTS) replied:

I think the key words are 'in fulfilling their respective charters'. I think we are on record in the course of the reviews last year as expressing a view that we did not oppose multichannelling by the ABC and SBS provided that it was very definitely within their charters and provided that the focus was very much on complementary programming, rather than quasi commercial programming or programming that is likely to compete in a serious sense with commercial television. We recognise that the ABC and SBS do not have the capacity on a single channel to provide a lot of the complementary programming that they already have access to. The SBS foreign language news material is an excellent case in point. Perhaps the ABC's educational programming and some of its children's programming and more localised programming is another series of good examples where we would have no serious problems with that at all, even recognising that it may, at the margin, nibble at our viewing share.⁶

3.12 Multichannelling too, would be preferable to datacasting in order to encourage consumer take-up of digital technology. Mr Colin Knowles, Head, Technology Strategy and Development, ABC, told the Committee:

... some of the datacasting delivery of things that look like multichannel do depend on caching in the [set-top] box. In other words, you have to have a more expensive box that can store your program. Those boxes are only just starting to appear and currently add \$500 to \$600 to the price of the box. Multichannelling requires no additions to the box. It can deliver programs like the existing television system and therefore is more a continuous flow

5 Australian Broadcasting Corporation *Proof Committee Hansard*, 1 June 2000, pp 72-73

6 FACTS, *Proof Committee Hansard*, 31 May 2000, p. 33

of programs ... So, from the public benefit point of view, in getting programs out to consumers to make it attractive for them to switch to digital television, multichannelling offers at the moment far more advantage than what is a bit like your PC-Internet service.

3.13 The ABC informed the Committee in its submission, that, based on the expectation that the 1999 review would recommend national broadcaster multichannelling, it had been planning its multichannel content for the last two years.⁷ Its plans included:

- lifelong learning and informative material to educate and invigorate Australians dealing with a rapidly changing world;
- stimulating children's programs at times to suit children and parents; and
- special interest material to link communities of interest and local communities across the nation.

3.14 The channels proposed by the ABC were being designed to meet the interests of audiences that are not adequately catered for at present, in particular, audiences in rural and regional areas. In carrying out SBS' public service Charter responsibilities, SBS Television too shows an enormous range of programs that are not carried by other broadcasters in the genres of sport, news, movies, world news and current affairs, and documentaries.⁸

3.15 The public benefits of allowing national broadcasters to multichannel would be considerable. With multichannelling the ABC would be able to:

- better fulfil its Charter responsibilities to meet the needs of all Australians by overcoming the television bottleneck and having the scope to deliver additional programs of wide appeal and specialised material in alternative modes;
- play an innovative role in exploring and piloting new content options for audiences and to stimulate the broadcasting industry as a whole;
- test the multichannelling market for later development by the broadcasting industry in general;
- obtain more effective use of its resources by re-versioning content for different delivery modes and platforms and thereby provide new services to audiences;
- initiate and provide opportunities for regional television input to bring benefits to rural and remote communities;
- offer specialised material for local communities and communities of interest;

7 Australian Broadcasting Corporation, Submission No. 20, p. 1

8 Special Broadcasting Service, Submission No. 11, p.3

- provide additional low-cost incentives to the community to take up digital television;
- provide important skills development opportunities for program-makers and producers to explore new technical, operational and creative possibilities of the new media; and
- provide additional outlets for original, new, Australian content including educational, children's and information content.⁹

3.16 Mr Shier from the ABC told the Committee that:

... we would like to be able to show children's programming when perhaps the main channel is showing a completely different genre of program ... a large percentage of the Australian people do not see our programming the first time it is shown. We certainly think there is an opportunity to show more of that on the second channel.

One opportunity is also to produce programming which has appeal in a particular region, which will be a possibility with rural or regional programming.¹⁰

3.17 Ms Sharp from SBS, told the Committee:

... the reason we look at [multichannelling] in the first instance from SBS's point of view is that it is very cost effective, and we have to be mindful of that. We would like, as it goes on, to develop a much more complex channel that takes in much more Australian content. We would like to provide a multicultural programming stream specifically for the second channel that would have a regional focus in terms of Australian multicultural arts and events around the country.¹¹

3.18 Clearly the opportunities provided by the new technologies have great potential to benefit the Australian people. Arguing in its submission for the Bill to be amended to allow the ABC and SBS to multichannel, the Government of Western Australia stressed the benefits to regional areas:

Digital broadcasting signals can be split into many different bands to offer viewers a choice of programs. Regional areas, even very small ones, can therefore be effectively served with programs such as local sporting events, including race meetings. Better service to regional audiences results which will counteract some of the losses to local content which have occurred previously.¹²

9 Australian Broadcasting Corporation, Submission No. 20, p.2

10 Australian Broadcasting Corporation, *Proof Committee Hansard*, 1 June 2000, p.74

11 Special Broadcasting Service, *Proof Committee Hansard*, 1 June 2000, p.88

12 Government of Western Australia, Submission No. 15, p.3

3.19 The Committee's view is that in the interest of fairness, the national broadcasters should not be permitted to multichannel since they compete with the pay TV and commercial free-to-air broadcasters for audiences and the commercial FTAs are prohibited from multichannelling under the Bill.

Pay TV's view of multichannelling

3.20 The pay TV sector is of the view that any multichannelling is in competition with it whether it be by the commercial or by national broadcasters. Ms Debra Richards, Executive Director, ASTRA, informed the Committee:

... the national broadcasters are competitors and as such they are ours. So we have not changed from the view that we put through all that public process. But if the committee is of the view that ABC and SBS should be treated differently in some way, then we would seek that whatever the national broadcasters could multichannel should be limited and in no way should it be seen as a precedent for the commercial networks to also multichannel, and that is the reason we have put forward. It would be the thin end of the wedge. They are in competition in terms of what they want to provide.¹³

3.21 The ABC refutes these concerns. It believes that the pay TV sector can no longer be regarded as a fledgling in the media landscape. Also:

[t]he addition of the very limited ABC multichannel capacity available in the 7 Megahertz of spectrum (allowing for the simulcast) can have little impact on the many channels comprised in pay television's suite of offerings.¹⁴

3.22 As Ms Sharp from SBS pointed out to the Committee in relation to the fact that the national broadcasters competed with commercial broadcasters for audiences:

[but] competition for audiences does not translate into competition for revenue. More than \$2 billion—well over \$2 billion this year—is spent each year on TV advertising. Around one per cent of that goes to SBS; and it does not matter how big the ABC audience gets, none of course goes to the ABC. The point I am trying to make is that, in our view, multichannelling will not change the size of that advertising pie for television. It will not bring more advertising revenue.¹⁵

3.23 According to the ABC, there will be no impact on commercial televisions' advertising revenue. The ABC does not compete for advertising or sponsorship

13 Australian Subscription Television and Radio Association, *Proof Committee Hansard*, 1 June 2000, pp 111-112

14 Australian Broadcasting Corporation, Submission No. 20, p.3

15 Special Broadcasting Service, *Proof Committee Hansard*, 1 June 2000, p.88

revenue and has no interest in drawing a mass audience away from commercial free-to-air or pay television broadcasters through multichannelling.¹⁶

Digital Program-enhancement content

3.24 The Bill permits FTA broadcasters to provide enhancements if these are directly linked to the main (simulcast) digital program. According to the Explanatory Memorandum to the Bill:

A key part of ‘directly linked’ will be ensuring the enhancement is provided within the same time period as the main program. Therefore, enhancements should be contemporaneous to the programs to which they are linked. In addition, enhancements should be extended to allow a limited form of overlapping of programs, where events extend into other scheduled programs because of circumstances outside the broadcaster’s control.¹⁷

3.25 Items 91 and 112 in the Bill provide exceptions to the analog/digital simulcast requirements for commercial and national FTA broadcasters respectively. These exceptions are defined in items 94 and 115 of the Bill. The effect of these amendments to Schedule 4 of the Broadcasting Services Act is to use any spectrum not required for simulcasting in digital and analog mode to provide limited opportunities for broadcasters to provide digital program-enhancement content, multichannelling transmission capacity and electronic program guides.

Digital program-enhancement content

3.26 The Bill provides for there to be two categories of digital program-enhancement content – Category A and Category B.

Category A digital program-enhancement content

3.27 A Category A digital program-enhancement may be content in any form (eg text, data, sound, still or moving images) which is closely and directly linked to the subject matter of the primary television program, is for the sole purpose of enhancing the primary program, and is transmitted simultaneously with the primary program.¹⁸ A note to new subclauses 6(14) and 19(14) provides examples of this type of content:

Note: For example, if the primary program is live coverage of a tennis match, the category A digital program-enhancement content could consist of any or all of the following:

16 Australian Broadcasting Corporation, Submission No. 20, p.4

17 Explanatory Memorandum, Broadcasting Services Amendment (Digital Television and Datacasting) Bill 2000, p.27

18 Explanatory Memorandum, Broadcasting Services Amendment (Digital Television and Datacasting) Bill 2000, pp 89-90

- (a) the match from different camera angles;
- (b) each player's results in past matches;
- (c) video highlights from those past matches;
- (d) each player's ranking and career highlights.¹⁹

Category B digital program-enhancement content

3.28 A Category B digital program-enhancement is a program that provides simultaneous live transmission of two overlapping sporting events in the same sport at a particular venue. This category would allow simultaneous live transmission of, for example, two tennis matches in a tournament on different courts in the same centre or complex. However, it would not allow simultaneous live transmission of:

- two rugby league matches at different grounds; this would not satisfy the 'same venue' requirement; or
- swimming and gymnastics at the Olympic Games, even if both occur in adjacent buildings in the same complex; this would not satisfy the 'same sport' requirement.

3.29 The transmission of the second sporting event must be live, and simultaneous with the live transmission of the first sporting event.

3.30 New subclauses 6(16)-(19) and 19(16)-(19) (items 94 and 115 respectively) provide for the Australian Broadcasting Authority to make determinations, which are disallowable instruments, clarifying whether or not two or more specified sporting events involve the same sport. According to the Explanatory Memorandum, use of this mechanism will give broadcasters greater certainty in ambiguous cases.²⁰

Program overlaps

3.31 The Bill allows for multichannelling in limited circumstances specified in new paragraphs 6(8)(d) and 19(8)d (items 91 and 112 respectively). Where a designated event, which is broadcast live, extends beyond the scheduled finishing time into another scheduled program, the broadcaster may multichannel the live broadcast and the other program, provided that the delayed finish is beyond either the broadcaster's control, or the control of any person who directly or indirectly supplied the program to

19 Broadcasting Services Amendment (Digital Television and Datacasting) Bill 2000, item 94, p.26 and item 115, p.33

20 Explanatory Memorandum, Broadcasting Services Amendment (Digital Television and Datacasting) Bill 2000, p.90

the broadcaster; and the other program was scheduled by the broadcaster at least one week before the start of the designated event.²¹

3.32 A designated event is either a sporting event or an event determined in writing by the Australian Broadcasting Authority. These determinations by the ABA are disallowable instruments. The Explanatory Memorandum states that it is “intended that this power would be available to be used for important public events, such as live coverage of Centenary of Federation celebrations”.²² This power would also cover the situation where extra time is added to a day’s play in a test cricket match to make up for rain delays.²³

Response of the pay TV sector

3.33 Evidence received by the Committee from the pay TV sector was particularly vociferous in its concerns about the digital program-enhancement and multichannelling provisions of the Bill.

Multichannelling is the core distinction between pay TV and FTA television services in the television market. It was on the basis of the legislative prohibition on multichannelling and assurances from Government that the commercial networks would be prevented from multichannelling for at least a four year period that the pay TV industry has continued to make heavy financial investments in rolling out pay TV and other services, and associated employment and training, in both regional and metropolitan Australia.²⁴

3.34 The pay TV industry is incensed at the loan of digital spectrum to the FTA broadcasters. It believes that this, combined with what it sees as inequitable anti-siphoning regulations and prohibitions on new FTA broadcasters till 2007, forms an anti-competitive bias favouring the FTA broadcasters at the expense of pay TV providers. The enhanced programming provisions of the Bill add insult to injury to the pay TV sector and, according to Cable & Wireless Optus, “will have a significantly negative impact on the Pay TV industry as they will allow the FTAs to use their free spectrum to unfairly compete with the multichannelling services offered by the Pay TV sector”.²⁵

3.35 The Committee notes that Open TV – a provider of set-top box software – put forward the view that the legislation favours the pay TV industry. Open TV argues

21 Explanatory Memorandum, Broadcasting Services Amendment (Digital Television and Datacasting) Bill 2000, p.89

22 Explanatory Memorandum, Broadcasting Services Amendment (Digital Television and Datacasting) Bill 2000, p.91

23 Explanatory Memorandum, Broadcasting Services Amendment (Digital Television and Datacasting) Bill 2000, p.89

24 Australian Subscription Television and Radio Association, Submission No. 29, p.3

25 Cable & Wireless Optus, Submission No. 13, p.6

that the triplecasting model, by forcing broadcasters to offer analog, SDTV and HDTV, will have the effect of squeezing the bandwidth to the limit. Consequently, the level of interactive services which free-to-air broadcasters can offer to consumers will be severely limited and consumers will turn to Pay TV:

Interactive services will be limited and will force consumers to subscribe to Pay TV or datacasting to obtain those services. This policy is very much biased in favour of Pay TV.²⁶

3.36 Although the Category B digital program-enhancement content provisions attracted the most criticism from the pay TV sector – with all pay TV submissions to this Inquiry calling for their abolishment – the Category A digital program enhancement content provisions too were censured.

3.37 Telstra believes that the linking of the enhancements to the *subject matter* of the primary broadcast rather than the linking of them to the *primary broadcast* as was the original concept in the Digital TV Review - *Datacasting and Enhanced Programming*, has the effect of significantly broadening the scope of the provisions. According to Cable & Wireless Optus, Category A is defined extremely broadly with no limit on the amount of video that can be broadcast as the secondary program and “in many cases will result in defacto multichannelling”.²⁷

3.38 ASTRA’s submission states:

In addition, the generous provisions for ‘Category A enhanced programming’ which allows unlimited video linked to the primary program appears to allow multichannelling and of all program genres, for example past episodes of *Seinfeld* directly linked to the primary program of *Seinfeld*.²⁸

When this example was put before officers from the Australian Broadcasting Authority for comment however, whilst acknowledging that the example would need to be looked at, Professor David Flint, Chairman of the Australian Broadcasting Authority, replied “It is not my understanding of the intention of the enhanced services provision [that this would be allowed].” Nevertheless, ASTRA recommends that Category A be limited to exclude separate video streams.

3.39 The Category B digital enhancement content provisions are particularly objectionable to the pay TV industry. According to Cable & Wireless Optus, the restrictions imposed by the anti-siphoning regime have led the pay TV sector to develop schedules of sporting programs based on events which have traditionally not been broadcast by the FTAs due to either a lack of interest or a lack of space in program schedules.

26 Open TV, Submission No. 32, p.2

27 Cable & Wireless Optus, Submission No. 13, p.7

28 Australian Subscription Television and Radio Association, Submission No. 29, p.9

The proposed amendments will enable the FTA broadcasters to use Category B digital enhancements to offer these ‘second tier’ sporting events, such as the lead up matches to Wimbledon, with the benefit of the anti-siphoning regime and using spectrum that has been obtained at no cost. This is clearly anti-competitive and inequitable.²⁹

3.40 The submissions received by the Committee from the pay TV industry are unanimous in predicting that the effect of these two categories of enhancements will be less, rather than more, sport being available to viewers. They reason that this is because FTA broadcasters will be able to acquire the rights to sporting events but without any obligation to show more sport.³⁰ Also, pay TV subscribers will start to have their viewing choices diminished because of the reducing opportunities for pay TV to acquire sports rights and, in turn, afford to buy them.³¹ Additionally, the ability of sports fans to see FTA multichannel sport will be constrained by the pace of consumer investment in digital TV receiving equipment.³² And finally, sports fans in rural, regional and remote areas will suffer the most because digital services will not be available until several years after capital city services commence.

3.41 Telstra recommends that if the Category B digital program-enhancement provisions are not removed from the Bill, the only way to address the anti-competitive impacts of the provisions is to include a requirement that FTA broadcasters pay for their digital spectrum, over and above what is required for SDTV simulcast, and also that the anti-siphoning regime be overhauled.³³ Fairfax too submitted that a spectrum use charge should apply to everything other than traditional broadcasting (ie enhancements, multichannelling, and Electronic Program Guides) as well as datacasting.³⁴

3.42 Mr Branigan from FACTS told the Committee:

Certainly we are not looking at large numbers of hours of [enhanced] programming each year—I would be surprised if it amounted to more than a few score hours each year, which is not huge—and does not really seem to justify the ‘we’ll all be rooned’ cries from pay TV.³⁵

3.43 Some witnesses raised the issue of Electronic Program Guides (EPG) within the context of “enhanced programming. EPGs are discussed in Chapter 2 of this report.

29 Cable & Wireless Optus, Submission No. 13, p.9

30 Australian Subscription Television and Radio Association, Submission No. 29, p.8

31 Foxtel Management Pty Limited, Submission No. 26, p.5

32 Foxtel Management Pty Limited, Submission No. 26, p.5

33 Telstra, Submission No. 16, p.9

34 John Fairfax Holdings Limited, Submission No. 25, p.7

35 FACTS, *Proof Committee Hansard*, 31 May 2000, p.32

3.44 The Committee concluded that the concerns of the Pay TV industry with respect to possible adverse impacts on them arising from the FTAs being able to offer program enhancements are unlikely to be realised in practice. In any case, the BSA and the current Bill provide that all aspects of the operation of the digital television regime are subject to review.

Underserved regional licence areas

3.45 An underserved regional licence area or market is one in which there are fewer than three commercial television services. Markets with only one commercial service are referred to as solus markets.³⁶ Regional broadcasters are allowed up to three years more than metropolitan broadcasters before they have to transmit in digital mode.

3.46 As required by Schedule 4 of the Broadcasting Services Act, a review was conducted into underserved regional licence areas as to whether they should be provided with up to the same number of commercial television broadcasting services as are provided in metropolitan areas. The new digital technology provides relatively low-cost options, through multichannelling, to expand the range of broadcasting services in underserved markets.

Solus markets

3.47 There are currently four solus markets with a total licence area population of 234,739. Under section 38A of the Broadcasting Services Act an existing licensee in a solus market may apply to the ABA for an additional commercial television broadcasting licence for the area and the ABA is legislatively obliged to grant the licence, subject to the availability of spectrum.³⁷ Section 38A licence applications are exempt from the moratorium on new commercial licences. The existing licensees have all applied for section 38A licences in all four solus markets.

3.48 Both the existing service and additional service are required to be simulcast in analog and digital formats after the introduction of digital terrestrial television broadcasting. The new section 38A analog services will be required to commence from one year after the relevant amendments to the Broadcasting Services Act. The digital services are required to commence before 1 January 2004.

3.49 The Bill aims to encourage the early introduction of these additional section 38A services by providing licensees with options for lower rollout costs of their digital services through permitting multichannelling of both digital services in the

36 Explanatory Memorandum, Broadcasting Services Amendment (Digital Television and Datacasting) Bill 2000, p.54

37 Explanatory Memorandum, Broadcasting Services Amendment (Digital Television and Datacasting) Bill 2000, p.54

same channel, with an exemption from HDTV requirements to be made available.³⁸ The appropriateness of this exemption will be reviewed in 2005. New subclause 6(5A) (item 86) allows the licensee to elect to multichannel the existing and new services in digital mode. No additional 7 MHz spectrum is therefore required.

3.50 New subsection 38A(2) (item 22) adds a 'use it or lose it' condition to an additional licence granted under section 38A.

Two service markets

3.51 There are ten markets across Australia with two commercial services available with a total licence area population of 1,566,163. The section 38A option does not apply to two service markets. In order to encourage the introduction of new services in these markets, the Bill inserts a new section 38B in the Broadcasting Services Act (item 23).

3.52 New section 38B will allow one additional licence to be allocated in each two-station market. However, an additional licence cannot be allocated under new section 38B if one of the existing licences was issued under section 38A. The additional licence allows only digital transmission of the broadcasting service concerned. The licensee must commence providing the additional service in SDTV digital mode by 1 January 2004, or an earlier date notified by the ABA.

3.53 Under new subsection 38B(1), there are three alternative mechanisms for the allocation of the additional licence:

- a) application by a joint-venture company jointly owned by the existing licensees to provide a combined third 7 MHz digital-only service to be provided in both SDTV and HDTV formats;

If the incumbents do not wish to provide a combined service, a licensee will be permitted to multichannel a new digital service using the 7 MHz allocation for the digital transmission of their existing analog service. Only one of the two licensees in each two-service market will be permitted to multichannel. In this instance, the new licence will be allocated by:

- b) separate applications from both licensees, with the licence to be allocated via a price-based allocation process, with bidding limited to the two incumbent licensees; and
- c) application by one of the existing licensees.³⁹

38 Explanatory Memorandum, Broadcasting Services Amendment (Digital Television and Datacasting) Bill 2000, p.62

39 Explanatory Memorandum, Broadcasting Services Amendment (Digital Television and Datacasting) Bill 2000, pp 63 and 74-76

3.54 Where multichannelling takes place, the two services are exempt from HDTV requirements. SDTV requirements will apply. The HDTV exemption will be reviewed in 2005.⁴⁰

3.55 For the additional licence to be allocated, the two existing licensees may, within 90 days of commencement of the section (which will be a day to be proclaimed), give the ABA a joint written notice specifying one of the above alternatives and the additional licence may be applied for within 12 months of the commencement of the section.

3.56 New subsections 38B(20) and (21) provide that both the parent and additional licensees continue to provide services under the licence for at least 2 years after the commencement of the provision of the commercial television broadcasting service under the additional licence.

Reaction in submissions

3.57 WIN Corporation and Southern Cross Broadcasting (Australia) Limited (current incumbents in solus or two service markets) supported the provisions made in the Bill for solus and two service markets. WIN states that the introduction of any further competition in those markets would not be in the public interest as it might delay the early introduction of digital services given cost considerations, market size and revenue projections.⁴¹

3.58 Prime Television Limited has applied to the ABA for a licence to enter two of the four solus markets (Riverland and Mount Gambier) and has been considering the feasibility of seeking a licence in the other two (Broken Hill and Spencer Gulf). Prime contends that the proposed legislation should be amended and that new licences should be made available in each of these markets on a price-based allocation system.⁴²

Multichannelling by Commercial FTAs in Regional Areas

3.59 Prime argues that the relaxation of the multichannelling requirements in the South Australian market should remain, enabling the existing analog operators and the new licensees to share facilities and costs for the transmission of the new digital services.

40 Explanatory Memorandum, Broadcasting Services Amendment (Digital Television and Datacasting) Bill 2000, p.63

41 Southern Cross Broadcasting, Submission No. 35, pp 1-6, and WIN Corporation Pty Limited, Submission No. 30, pp 4 and 5

42 Prime Television Limited, Submission No. 17, pp 3-6

3.60 Prime contends that a precedent for removing the automatic right of Solus Licensees to the allocation of a second licence has been set by the NBN in Newcastle when the commercial TV equalisation legislation was introduced in 1987.

3.61 Prime supports the amendments proposed for the two service markets except for Tasmania because Tasmania has not yet undergone the ABA's licence area plan process to determine the sustainability of three commercial TV providers. Prime recommends that the ABA undertake the licence area plan process in Tasmania as a matter of urgency so that the feasibility of an additional commercial station can be determined.

3.62 Southern Cross Broadcasting is concerned that the introduction of a third commercial broadcaster in Tasmania could have disastrous results for the two incumbent broadcasters given the stagnant economy and declining population. It would lead to the cancellation of locally produced programming and job losses.

3.63 Mr David Carr, Legal Adviser to Prime Television Pty Ltd, suggested to the Committee that at least in the formative stages of digital television, a limited form of multichannelling as a means of reducing the costs of establishing digital television in smaller regional and remote locations should be allowed. He informed the Committee that the principle of shared facilities was one of the factors that enabled the rapid rollout of news services to regional areas under the aggregation process in the late 1980s and 1990s. During that time the three broadcasters shared such common facilities as transmission towers and antennas which significantly reduced their costs.

3.64 Mr Carr suggests that the advent of digital television offers additional opportunities to share not only the hardware, but also the transmission system and the spectrum used to deliver the service to viewers.

An example of where this relaxation of the multichannelling prohibition would benefit viewers is the city of Cobar in western New South Wales. Cobar has a population of about 6,000 people. It is presently served by three commercial television services, each with a separate transmitter but combining through a common transmission tower and antenna. Replication of that system in digital would be costly. However, if the three commercial broadcasters and maybe even the ABC were permitted to multichannel on the same digital channel, there is more likelihood of the people of Cobar receiving digital television at an earlier date than otherwise would be the case.⁴³

3.65 The Committee supports the provisions in the Bill which encourage new broadcasting services through multichannelling in underserved regional areas of Australia.

43 Prime Television, *Proof Committee Hansard*, 1 June 2000, p.116

