



**Senate Inquiry into the provisions of the Broadcasting
Services Amendment (Anti-Siphoning) Bill 2004
Supplementary Submission to the Environment,
Communications, Information Technology and the
Arts Legislation Committee
28 February 2005**

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Committee Secretary
Senate Environment, Communications,
Information Technology and the Arts Committee
Department of the Senate
Parliament House
CANBERRA ACT 2600

By email: ecita.sen@aph.gov.au

The Australian Subscription Television and Radio Association (ASTRA) is pleased to provide a supplementary submission to the Senate inquiry on the provisions of the Broadcasting Services Amendment (Anti-Siphoning) Bill 2004 (**the Bill**).

ASTRA provides this submission on behalf of its members (including platforms and channel providers).

ASTRA reiterates its support for the Bill and provides the following information and attachments which relate to matters raised at the Senate hearing on Monday 21 February 2005. These include:

1. Detail of **simultaneous broadcast** of sporting events on two channels, see also Attachment A;
2. A response from Premier Media Group to Senator Conroy's request for detail of the acquisition of rights to events on the anti-siphoning list by pay TV channel providers (in 1990s) before the free-to-air rights were sold to the free-to-air networks, see also Attachment B and **commercial-in-confidence** PDF attachment;
3. ASTRA's monthly monitoring of free-to-air broadcast coverage of listed events (May to December 2004) as an example of possible monitoring to be undertaken by an independent authority as part of a 'use it or lose it' scheme.

If you require any further information or clarification of the material provided please do not hesitate to contact me.

Yours sincerely



Debra Richards
Executive Director

1. SIMULTANEOUS BROADCASTS OF SPORTING EVENTS ON TWO CHANNELS

FreeTV Australia has claimed to the Committee that the possibility of simultaneous broadcasts of sporting events on two television channels make it unviable to broadcast that sporting event on free-to-air television. Similar claims have been made by SBS and the ABC. As a consequence, it is further claimed that such simultaneous broadcasts do not happen. This argument has been used by the free-to-air networks as one reason why they are now unable to bid for the Ashes.

As usual, this claim by the free-to-air networks is grossly misleading. As the table at **Attachment A** shows, simultaneous broadcasts of the same event occur with frequent regularity. In most cases, the event is broadcast simultaneously on FTA television and subscription television but in some cases it is broadcast by two free-to-air broadcasters at the same time. These broadcasts occur for a number of sporting events irrespective of whether they are on the anti-siphoning list.

Recent examples include:

1. SBS - simultaneous live broadcast of Champions League soccer with ESPN on February 23 and 24, 2005 and simultaneous live broadcast with Fox Sports of 2005 NFL Superbowl on 7 February 2005
2. Channel Seven – simultaneous live broadcast of some matches during the Australian Open tennis 2005. In addition, Seven and Fox Sports broadcast different matches at the same time during the Australian Open
3. Atlanta Olympics - simultaneous live broadcast of a number of events during the Olympics by Seven and SBS
4. Channel Ten - Simultaneous live broadcast with Fox Sports of the Australian MotoGP in October 2004

Please refer to attachment A for more examples. The table is a non exhaustive list relating to the last 12 months. There have been a vast number of similar occurrences by all the free-to-air networks during the past 10 years and if required, we would be happy to collate some of that material for the Committee.

In conclusion on this issue, the practice of the free-to-air networks is different to their rhetoric. In practice, the networks are prepared to enter into arrangements under which they do and will broadcast an event simultaneously with another broadcaster. This demonstrates again that the reason they have not bid for the Ashes is driven by other factors, such as programming conflicts and rating issues, rather than the acquisition of subscription television rights to the Ashes by Fox Sports.

2. ACQUISITION OF RIGHTS TO EVENTS ON ANTI-SIPHONING LIST BY PAY TV CHANNEL PROVIDERS IN 1990s BEFORE FREE-TO-AIR RIGHTS SOLD TO FREE-TO-AIR NETWORKS

Senator Conroy asked us to consider whether we knew when the first time was that Premier Media Group or the entity compiling the Fox Sports channels acquired rights

to an event on the anti-siphoning list before the event was de-listed or the free-to-air rights had been acquired by a free-to air network.

PMG has done a preliminary review and has compiled a non exhaustive list of such occurrences in the 1990s when it or its predecessor in title acquired such rights. The list at **Attachment B** is not exhaustive and is based on the best information PMG has in the timeframe since the questions was asked, mainly because PMG is obviously not always aware of the exact time when its free-to-air network competitors acquired the rights to some events. The free-to-air networks are not in the habit of informing PMG or ASTRA of the exact time or day they finalise their rights deals.

What the list demonstrates clearly is what ASTRA and PMG previously have stressed to the Committee, which is that the system under which PMG and other channel providers such as ESPN operate has been operating as it was originally intended for 10 years.

All broadcasters have been aware that channel providers such as PMG and others often trade and commit to rights to listed events before the free-to-air arrangements are finalised.

Clearly, this has not affected the ability of the free-to-air networks to acquire free-to-air TV rights to these events when they wish to do so and has not affected the operation of the system. The facts are simple- there is no evidence that such acquisitions have resulted in the original intent of the scheme being subverted.

Importantly, the free-to-air networks worked with PMG or the sports bodies or their agents which were licensing free-to-air rights in making decisions about whether or not to acquire free-to-air TV rights **without objecting that there was some so called "loophole"**.

In practice, the free-to-air networks do not routinely raise objections about PMG acquiring the rights. In some cases, for events on the list, the free-to-air networks purchased free-to-air television rights subsequently from PMG or other parties. In other cases they declined the rights. Importantly, in all the examples, when PMG acquired the rights it was aware that it would not be able to broadcast the event on the FOX SPORTS channels unless the event was acquired by a free-to-air network or the event was de-listed.

Therefore, in all cases ultimate control resides and has resided with the Minister who can and could prevent an event from being de-listed if he or she was not satisfied that a free-to-air network had not had a reasonable opportunity to acquire the rights. That the Minister has not had to exercise this discretion to date provides incontrovertible evidence that the system is working as parliament intended.

Finally, PMG has included an example, attached as commercial-in-confidence (**PDF Confidential Attachment**) which demonstrates how selectively the free-to-air networks claim that a "loophole" exists. In this instance, PMG acquired the free-to-air and subscription television rights and wrote to all the networks seeking their interest in acquiring the rights. In rejecting the offers, none of the networks invoked the so called "loophole".

Attachments

- A. table of Events broadcast Simultaneously on Free-To-Air or Subscription Television in last 12 months to February 2005;
- B. table of Events on Anti-Siphoning list where a PMG company entered into contractual commitment to acquire subscription TV rights prior to FTA rights being licensed to FTA networks in period 1994-2000;
- C. PDF commercial-in-confidence for acquisition of rights;
- D. ASTRA Anti-siphoning Coverage of Listed Events – including analysis against current and revised anti-siphoning lists, May, June, July, August, September, October, November and December 2004.

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The Committee determined not to publish Appendix C.