



**FreeTV**  
Australia

**Submission by  
Free TV Australia Limited**

Department of Communications,  
Information Technology and the Arts

Provision of Commercial Television  
Broadcasting Services after  
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## Executive Summary

- The question of whether new commercial television licences should be allocated is an important question of public policy.
- Any decision concerning the allocation of a new licence should rest with the Parliament and not the Australian Broadcasting Authority. The ABA's role is industry regulation and not policy development which is a Government responsibility.
- The *Broadcasting Services Act 1992* should be amended to limit commercial television licences to no more than three in any licence area.
- Australian commercial free-to-air broadcasters deliver high quality Australian content, local programming and premium overseas product free of charge to all Australians. They directly employ over 6,500 people and are the main support of Australia's film and television production industry.
- A limit on the number of licences is critical to maintaining high quality services as it ensures sufficient revenue and audience share to enable broadcasters to meet social and cultural objectives such as local content quotas.
- A new licence will damage the existing Australian Free TV sector by fragmenting advertising revenue and audience share and driving up prices for premium content. This will create financial instability in the broadcasting sector and jeopardise the standard of services currently provided.
- The media sector is currently undergoing rapid change. The traditional free-to-air business model is being challenged by new digital technologies, a consolidated pay television sector and dramatic growth in below the line advertising.
- Australia is a small market by international standards and has a high number of free-to-air networks relative to other countries and population size.
- A new entrant is unlikely to deliver increased diversity or choice. In order to be sustainable, a new player will target the broad audience sectors already serviced by existing services, driving up content prices and creating pressure on other players to reduce costs. A stand alone niche service is not financially viable.

## Introduction

Australian broadcasting policy has long enshrined the benefits of broadcasting services – available free to all Australians – which offer quality services of wide appeal as well as local relevance.

Australian viewers have been well served by this policy. Australia has one of the most comprehensive and competitive free-to-air broadcasting systems in the world. Relative to other countries, Australia already has a high number of free-to-air national networks which provide a diverse range of high quality programming. Free-to-air television reaches 99% of Australia's population, is in over 7 million homes and is the most accessible source of news, current affairs, entertainment and information for most Australians.

Regulatory limits on the number of commercial services have been critical to achieving this outcome. Australia is a small market by international standards. Our small and scattered population base generates only a limited amount of advertising revenue. Maintaining high levels of service coverage, Australian content and localised programming across extensive geographical areas is expensive. A restriction on licence numbers ensures that each licensee, operating at a high level of efficiency, is able to achieve sufficient revenue to meet its statutory requirements and to meet a strong audience demand for high standards of Australian programming and premium overseas programs.

Whether or not a new licence should be allocated is an important question of public policy. There is a presumption that a further broadcasting licensee would increase viewer choice and content quality. However, this assumes that all the networks – the existing and the new entrant – would achieve the revenue necessary to broadcast programming of similar quality and diversity to the standard viewers enjoy today. This cannot and should not be taken for granted.

Clearly, any potential benefit of having another broadcaster has to be weighed against its effects on the existing broadcasting sector, the local production industry and the resultant outcomes for Australian viewers. The allocation of a new licence is not as simple as 'more is better'. Free TV submits that a further licence would seriously threaten the stability of the Australian free-to-air broadcasting sector and the high quality of free programming which the Australian public has come to expect.

The potential impact of introducing a new licence dictates that this decision should be the responsibility of Parliament rather than the broadcasting regulator. Accordingly Free TV welcomes the Government's announcement of its intention to amend the current legislative arrangements which give the Australian Broadcasting Authority (the ABA) the power to allocate new commercial television broadcasting licences after 31 December 2006.

This submission addresses the following topics.

**Section 1** addresses the decision-making roles of the Government and Parliament on the threshold question of whether or not a new licence should be allocated.

**Section 2** addresses why the question of whether or not a new licence should be allocated is such an important public policy issue.

**Section 3** addresses the social and cultural benefits of the existing limit on the number of licences.

**Section 4** addresses why a restriction on the number of licences is critical to achieving these benefits.

**Section 5** explores the potential social and cultural costs of a new licence.

**Section 6** questions the potential benefits of a new licence.

The submission concludes that for the foreseeable future, a new licence would impose heavy social and cultural costs on the Australian public and few, if any, benefits.

Although the Department's Discussion Paper states that the review "will not address the question of whether or not a new licence should, in fact, be allocated", it seeks comment on the conditions that would apply to any new licence. Whilst the conditions applying to a new licence may alter the impact of a new licence to a greater or lesser degree, Free TV submits that regardless of the conditions, the social and cultural costs of a new licence will outweigh any benefits.

## **1 Decision making process**

Free TV welcomes the Government's announcement of its intention to amend the legislative arrangements which currently give the ABA the power to allocate new commercial television broadcasting licences after 31 December 2006.

Free TV supports the Government's acknowledgement that the allocation of a new licence is an important question of public policy. The ABA is a regulatory authority and not a policy making body. A decision of this nature is clearly a policy decision and demands public accountability at the highest level.

### **1.1 Decision making model proposed by Free TV**

The potential impact of introducing a new licence dictates that any decision to do so should be the responsibility of Parliament. There should be no change unless both the Government and Parliament are convinced that the potential social and cultural costs of a new licence are outweighed by the benefits.

Free TV submits that the *Broadcasting Services Act* should be amended to provide that no more than three commercial licences will be issued in any licence area.

This approach avoids setting arbitrary time frames to revisit this issue and instead leaves it to the Government of the day to determine an appropriate time. It is not possible to predict when and if the small Australian market will be able to support more than 3 commercial and 2 public national networks and continue to deliver designated social and cultural objectives at the current standard. These issues will require detailed consideration in the context of the economic and technological environment of the day and in light of international developments in broadcasting and related sectors.

### **1.2 Decision making model proposed by the ABA**

Free TV does not support the model outlined in paragraph 27 of the DCITA issues paper.

This model would require the ABA to conduct a wide-ranging inquiry covering key policy areas and then recommend whether or not a new commercial television licence should be issued. This is not consistent with the Government's stated intent that decisions regarding the allocation of new commercial broadcasting licences should rest with the Government of the day. The model effectively delegates the policy development process to the ABA whose role is more appropriately regulatory, technical and administrative, for example planning spectrum allocation and devising licence allocation processes. The threshold policy question of whether a licence ought to be planned and allocated should remain with Government.

Specifically, questions such as whether a new licence should be digital only and which of the existing conditions and requirements placed on broadcasting licensees should be applied to new players, are key policy questions which are not related to establishment of the decision making process.

As noted in the DCITA paper, a number of relevant factors would need to be considered when determining whether or not a new licence should be issued. These include social and economic characteristics, demographics, the number of and demand for broadcasting services and technological developments. These questions are not relevant to the current review process which seeks to determine the process and framework for making decisions rather than the threshold question itself.

### 1.3 Datacasting licences

While this submission focuses on the issue of a fourth commercial television broadcasting licence, the principles outlined here apply equally to the issue of other licences that may provide comparable services.

For example, the issue of permanent datacasting licences that could be converted at a future point to another type of broadcasting licence (whether a commercial broadcasting licence or a subscription broadcasting licence) should be subject to the same standards of Government and Parliamentary scrutiny as the issue of a new commercial television broadcasting licence. If this were not the case, it would create a 'backdoor' mechanism by which the Government's policy objective could be undermined.

## 2 Issue of a new licence is an important question of public policy

### 2.1 Regulation of the Australian broadcasting industry

Broadcasting services fulfil key functions in modern societies such as informing, educating, promoting cultural values, entertaining and ultimately, contributing to democracy.

Like almost all other countries, since the inception of television the Australian Parliament has shaped the television broadcasting sector in order to ensure that important public interest objectives are achieved by free-to-air commercial broadcasting.<sup>1</sup>

The objectives of the *Broadcasting Services Act* include the promotion of:

- the availability of a diverse range of radio and television services to audiences throughout Australia (section 3(a));
- the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity (section 3(e));
- the provision of high quality and innovative programming by broadcasters (section 3(f));
- appropriate coverage of matters of local significance (section 3(g)).

Regulation of the Australian broadcasting industry has evolved over decades to the current delicate balance of concessions, obligations and regulations designed to deliver social and cultural objectives. Unlike many countries where public interest objectives are predominantly funded by the public purse, Australian governments have relied heavily on an advertiser-funded model. That is, a model under which commercial free-to-air broadcasters, funded solely by advertising revenue and not government subsidies, play an important role in ensuring television meets social policy objectives.

The restriction on the number of free-to-air commercial television licences is a central tenet of the advertiser-funded model designed to ensure the delivery of broadcast services to all Australians for free and the broadcast of high levels of quality Australian content, including drama, children's programs and documentaries, programs of local relevance and high quality overseas programs.

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<sup>1</sup> As stated by the UK communications regulator Ofcom, "Television has a unique ability to reach millions of people with content that the market would under-provide or would not be widely available, but that can make a significant contribution to our society": Review of Public Service Television Broadcasting, Phase 2, page 109.

Broadcasters must meet a range of statutory obligations including providing adequate and comprehensive coverage, meeting minimum quotas of Australian content including sub-quotas applying to adult drama, children's programming and documentaries, and meeting local content requirements that apply to regional broadcasters. Broadcasters are also subject to other requirements concerning the content of programming delivered to children, restrictions on the types of programs that can be shown at certain times of the day, a requirement to deliver a minimum amount of closed captioning, limits on amounts and types of advertising and many others.

The restriction on licence numbers ensures that each commercial broadcaster, operating at a high level of efficiency, can achieve sufficient revenue to meet its statutory obligations and deliver benefits to the Australian public by providing services of a quality over and above what would occur in a purely market-driven industry, in terms of both coverage and range and quality of content.

A restriction on the number of free-to-air commercial television licences has been the cornerstone of Australian commercial television policy since the 1950's. The restriction was reviewed in the mid-1980's, and renewed in a form which permitted regional commercial television aggregation. It was reviewed again in 1992, and renewed in a form which allowed the introduction of competing services in some smaller markets, but retained the overall limit of three commercial licences in any market. This limit was reviewed again in 1997, when it was renewed following the Government's conclusion that there would be no net community benefit in introducing a fourth licence.<sup>2</sup>

In 1998, Parliament extended the specific prohibition on a fourth commercial licence to a general prohibition on new commercial television free-to-air licences in any market until 2007.

When launching the digital television legislation in 1998, Senator Alston set out the policy reasons:

*“Australia is well served by the current commercial television arrangements. The range of programming available to Australian audiences on free-to-air television is substantial and of high quality, with significant levels of Australian content.*

*A fourth commercial channel would undermine the available advertising revenue base and thus the commercial viability of the existing three players particularly during the expensive conversion process to digital. Lifting the three licence restriction could result in negative consequences for the existing commercial television industry, without any significant offsetting benefits for the community.*

*It is also questionable whether a fourth commercial broadcaster could provide sufficient quality Australian programming.”*

This policy was endorsed by all political parties in 1998. In June 2000 Senator Alston confirmed the importance of maintaining a strong free-to-air broadcasting sector to deliver cultural and social benefits, when he stated:

*“It has ... long been recognised that Australia has one of, if not the best, free-to-air television systems in the world - a fact not seriously contested by anyone on either side of the digital television debate.*

*Australia also has strict local content rules that apply to free-to-air television but do not apply to the same extent to other mediums like subscription television and*

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<sup>2</sup> The conclusion was based on advice to that effect from the ABA and the Bureau of Transport and Communications Economics.

*datacasting. Local content rules, I might add, that will continue to apply in the simulcast digital environment.*

*History also demonstrates that free-to-air television has stood the test of time. It reaches virtually every household in the country. It continues to be one of the favoured and most frequently undertaken leisure activities for Australians of all ages. And just as free-to-air television was not supplanted by VCRs in the 1980s or by Pay TV in the 1990s, so it is premature to predict the death of television (as George Gilder did some ten years ago) in the first decade of the 21st century despite the widespread uptake of computer technologies and the Internet.*

*In other words, free-to-air television is an important part of our lives and its continuing healthy existence is something that the vast majority of Australians would support. High quality free-to-air television also does not come by accident. It involves television networks, both commercial and national, being willing and financially able to make the necessary ongoing investment in the production of innovative (and often expensive) local content in a highly competitive environment.*

*Ever since television was introduced to Australia just before the Melbourne Olympics in 1956, there has been a legislative limit on the number of free-to-air networks, in recognition of the relatively small size of the market. Indeed, three free-to-air and two national networks offers greater qualitative and quantitative diversity than many other countries including the US and the UK.*

*The 1998 all-party decision to maintain the limit was therefore based on a longstanding concern that our quality product with its attendant local content requirements should not be put at risk<sup>3</sup> (emphasis added).*

There has been no change in the Australian media landscape since the moratorium was introduced to suggest that the restriction is not necessary or that there would be any net public benefit in introducing a fourth licence.

On the contrary, media and communications markets are undergoing rapid change making it now more important than ever before that we ensure that commercial free-to-air broadcasters can continue to deliver quality programming and local content to all Australians, free of charge.

Global sources of information and entertainment are increasingly competing for viewers' attention. The effect is two-fold. The globalisation of media markets has the potential to weaken social cohesion and cultural identity<sup>4</sup> and as a result local content will become increasingly important. At the same time, fragmentation of audiences through new technologies such as the internet, DVDs and PVRs is challenging the traditional advertiser funded free-to-air broadcasting model and threatening its ability to deliver social and cultural objectives.

Combined with the growing impact of convergence and new digital technologies, a further direct and serious threat to advertising revenues from another mainstream commercial broadcaster would threaten the ability of broadcasters to continue to serve public interest objectives.

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<sup>3</sup> Speech by Senator Alston to "New Broadcasting and Datacasting Symposium" 14 June 2000.

<sup>4</sup> This has been recognised by Ofcom in its Review of Public Service Broadcasting, Phase 1. Page 9 states that "Addressing under-provision [of public interest objectives] by an unregulated market may become more important as the world becomes more complex, and social cohesion, cultural identity and aspects of the democratic process are under pressure."

## 2.2 Regulation of broadcasting in other developed countries

With the growing impact of convergence, new digital technologies and audience fragmentation, a number of countries including the UK, Canada and New Zealand have been assessing the continued ability of commercial broadcasters to achieve social and cultural objectives through advertiser-funded business models.

A report, “The Future of Public Broadcasting”, commissioned by the New Zealand statutory funding agency NZ On Air, which studied six different countries including Australia, concluded:

*“From the evidence in the countries in this study, it is abundantly clear that the achievement of social and cultural objectives requires intervention and regulation. These objectives will not be achieved without such measures; indeed they are likely to be seriously undermined by a broadcasting market left to pursue its own commercial imperatives. Commercial or part-commercial broadcasters are unlikely to broadcast other than commercial programmes unless they are required to by regulation.”*<sup>5</sup>

The current “Review of Public Service Television Broadcasting” by the UK communications regulator, Ofcom, has highlighted the challenge of ensuring that the objectives and benefits delivered by the existing analog free-to-air television system (comprising both public and commercial broadcasters) are successfully translated into the digital domain.<sup>6</sup>

Ofcom has expressed no doubt as to the magnitude of the challenge. The First Ofcom Report stated: *“The existing commercial funding base for PSB [public service broadcasting] is being eroded...So new forms of explicit or implicit funding or support for PSB need to be considered for the longer term.”*

The Second Ofcom Report published in October 2004, has emphasised the challenge in even stronger terms. The Report states:

*“If we do not act now to plan new measures for the post-switchover world, there is a real risk that PSB across the system will decline, both in amount and in effectiveness. Commercial broadcasters will not be able or willing to screen PSB programming which does not produce a full commercial return; and the BBC will no longer face competition for quality.”*<sup>8</sup>

*“If no action is taken, the BBC will emerge by default, as the only PSB provider of any significant scale. Such an outcome would undermine the TV broadcasting environment, which has relied on a plurality of PSB organisations and has served the UK well. Viewers would be the losers.”*<sup>9</sup>

Although the BBC enjoys a “unique and privileged funding status”<sup>10</sup> which underpins the delivery of public interest objectives to UK audiences, Ofcom recognises the important contribution of commercial broadcasters to delivery of public interest objectives. Ofcom also appreciates that threats to the advertiser-funded model of

<sup>5</sup> NZ On Air, The Future of Public Broadcasting: The Experience in 6 Countries, November 2003, page 8.

<sup>6</sup> The UK Communications Act defines public service television broadcasters to include the main terrestrial television channels, both public and private (advertiser-funded) channels.

<sup>7</sup> Ofcom Review of Public Service Television Broadcasting, Phase 1, page 11. In the UK, ITV has made public its consideration of potentially relieving itself of its Public Service Broadcasting obligations that form the backbone of its social contract with the UK government and viewers, by handing back its analogue licenses prior to digital switch-off. This has been actively considered in response to increasing fragmentation of television audiences, pressure of economies of scale and towards market consolidation and reduced advertising revenues.

<sup>8</sup> Ofcom, Review of Public Service Television Broadcasting, Phase 2, page 6.

<sup>9</sup> Ibid, page 13.

<sup>10</sup> Ibid, page 12. In 2003-2004 the BBC received £2,820 million in TV licence fee revenue.

television are real: for the first time this year in the UK, subscription-related television revenue outstripped that derived from commercial advertising, a trend which most commentators expect to continue.

Ofcom Chief Executive, Stephen Carter, recently described the “*commercial shareholder-owned public service broadcasters [as] powerful investment engines for new UK-made content.*” He described this as “*a key reason why Ofcom supported the merger of Carlton and Granada and the creation of ITV plc. We believe that an ITV plc will be better placed to deliver UK-made quality television than the separate feuding baronies.*”<sup>11</sup>

Increasingly, the pressure being placed upon the UK commercial broadcasters from the growing impact of convergence and new digital technologies is pushing the industry towards further consolidation, rather than increased competition. Since the creation of ITV plc, the remaining free-to-air commercial broadcasters FIVE and Channel 4 (a not-for-profit commercial broadcaster) have announced their active exploration of a range of merger or partnership options with each other and other market players.

For similar reasons, consolidation via acquisition is an ongoing trend within the commercial media marketplace in Canada.

Australia’s commercial free-to-air broadcasters are undoubtedly facing the same convergence, fragmentation and technological issues that broadcasters around the world are facing. The UK, Canada, New Zealand and other countries with mature TV markets are grappling with the challenge of ensuring a viable commercial free-to-air broadcast sector that can continue to deliver public interest objectives.<sup>12</sup> In stark contrast, the focus in Australia seems to be on whether or not to unravel the existing system and allocate a further commercial licence, thus making it even harder for commercial free-to-air broadcasters to deliver services that meet these objectives.

### **3 The social and cultural benefits delivered to all Australians**

#### **3.1 The free-to-air broadcasting sector provides quality services to all Australians free of charge**

The longstanding bi-partisan policy concerning free-to-air television has focussed on protecting every Australian’s right to receive free high quality broadcast services, irrespective of who they are and where they live.

Over time, the main elements of this policy have been crafted to ensure the broadcast of levels of Australian content, drama, documentaries and children’s programming, local news and current affairs, major sporting events and the broadcast of high quality overseas programs.

Australian viewers have received following benefits.

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<sup>11</sup> Speech by Ofcom Chief Executive Stephen Carter to the Voice of the Listener and Viewer Spring Conference, 29 April 2004.

<sup>12</sup> In the UK, Ofcom has proposed further public funding of public service broadcasting, to supplement ongoing provision of public service programming by the already generously-funded BBC. In Canada the Government has announced that it will “[T]ake steps to align its regulatory and funding mechanisms so that they place stronger emphasis on attracting audiences to Canadian programming. In particular, the Government believes that real strides in viewership for English-language drama need to be made.”: The current debate in New Zealand is focussed on the optimal balance between direct public funding for the state-owned broadcaster, TVNZ, and public funding channelled via the contestable fund operated by statutory agency, NZ On Air.

- Three commercial free-to-air services and two public free-to-air services are delivered to almost all Australians.<sup>13</sup>
- Substantial amounts of local news and local information as well as coverage of local events and sporting programs are provided by free-to-air broadcasters.<sup>14</sup>
- Regional and remote stations are important sponsors of local causes. These include sponsorship of local events, sponsorship of sporting stadiums, local sporting clubs and teams, active participation in work experience programs and fund raising for important local causes via telethons.
- Commercial free-to-air television provides locally-focussed advertising services in 88 regional markets and sub-markets and five remote markets. Local advertising makes up around 36% of regional television advertising spend<sup>16</sup> and plays an important role in maintaining local businesses and the viability of local towns.
- All Australians receive free access to coverage of major sporting events, supported by the anti-siphoning list.
- All Australians receive a high quality and quantity of Australian content for free (see section 3.2 below).
- All Australians get free access to highly acclaimed international programming, including many programs which are only available on pay TV in other countries (see section 3.2 below).
- Commercial free-to-air television services provide considerable direct economic benefit to the community through licence fees paid to the Australian Government. Commercial free-to-air television broadcasters paid licence fees of almost \$200 million to Consolidated Revenue in 2002-03 and have paid more than \$2 billion over the last twenty years, in addition to other taxes. Licence fees are set on a sliding scale with metropolitan licensees generally paying 9% of their gross receipts which in 2001-02 was equal to an average of 36% of profits. Australian television licence fees are far higher than those in comparable countries, such as the UK, US and Canada.

### 3.2 Commitment to quality Australian and overseas content

Over the five years to June 2003, commercial free-to-air broadcasters spent \$3.33 billion on Australian programs. In the same period, expenditure on Australian programs increased by 19.4%. Last year commercial free-to-air broadcasters spent \$723 million on Australian programs.

Expenditure on Australian drama (adult and children's) during 2002-2003 was \$145.9 million. Over the past five years expenditure on adult Australian drama has increased by 10.9% and expenditure on children's drama by 51.5%.

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<sup>13</sup> The costs of establishing and maintaining a service in regional markets is formidable – the mainland aggregated markets each cover thousands of square kilometres (the largest covers over 4 million square kilometres) and complex news gathering systems, transmission chains and scores of subsidiary transmitters are required to disseminate signals to all significant settlements within these huge markets.

<sup>14</sup> All regional television licensees exceeded local content quota requirements in the first 6 months of operation of the local content licence condition introduced by the ABA in 2003. Lyn Maddock, Acting Chair of the ABA stated "It is very pleasing to see that the regional licensees are broadcasting these levels of local content ... all licensees provided their audiences with local content relevant to their local areas": ABA News Release 106/2004, 7 September 2004.

<sup>16</sup> ABN Amro, FTA Television: The TV Margin Cycle, 22 June 2004, page 46.

Total program expenditure on Australian and foreign programming during 2002-2003 exceeded \$1 billion per annum (\$1030.3m), an increase of 14.8% over the five year period. Australian programs represent more than 70% of this total spend.<sup>17</sup>

Over the past 5 years commercial free-to-air broadcasters have introduced a range of quality new Australian drama programs including *The Secret Life of Us* and *White Collar Blue* (Network 10), *McLeod's Daughters* and *Stingers* (Nine Network) and *Always Greener* (Seven Network). Long-standing series such as *Blue Heelers* and *All Saints* have continued to rate highly on the Seven Network.

Over the past 6 months alone, high-end mini-series and telemovies including *The Alice*, *Jessica*, *The Stiff*, *Small Claims* and *Go Big* have premiered.

These programs have been critical and ratings successes. Not all new series survive, but the networks have nevertheless increased their commitment to developing and maintaining quality Australian programming.

Australian free-to-air viewers also get free access to highly acclaimed international programming, including many programs which are only available on pay TV in other countries. For example, the winners and all nominees for the 2003 and 2004 US Golden Globe Awards for Best TV Series – Drama and Best Television Series – Musical or Comedy and for the 2003 and 2004 Emmy Awards for Best Drama Series and Best Comedy Series, are already showing or are soon to be screened on Australian free-to-air television.<sup>18</sup> Highly successful programs such as *Sex in the City*, *Queer Eye for the Straight Guy*, *the Osbournes*, *Newlyweds*, *The Sopranos* and *Six Feet Under* are shown on free-to-air television in Australia, but are only available on pay television in their country of origin, the USA.

Free-to-air commercial broadcasters employ more than 6,500 people directly<sup>19</sup> and are the main support of Australia's independent audio-visual production industry. This was recently acknowledged by Kim Dalton, Chief Executive of the Australian Film Commission: *"Local television is the bedrock of the industry. If that's beginning to look shaky, that has enormous implications for the whole of our industry, including our ability to operate a service sector for foreign production."*<sup>20</sup>

### **3.3 These benefits are delivered by one of the most vigorously competitive free-to-air television markets in the world**

Australia has a high number of national free-to-air networks, relative to other countries and populations.

**Appendix 1** sets out an analysis of the average number of national free-to-air television networks present in OECD countries relative to population. The analysis shows that while the number of *public* national networks in each country does not vary appreciably relative to population, there is a strong correlation between population and number of *commercial* national networks. That is, the larger the population of a given country, the greater the number of free-to-air national commercial networks that can be viably supported by available advertising revenue.<sup>21</sup>

<sup>17</sup> Australian Broadcasting Authority, Broadcasting Financial Results 2002-2003.

<sup>18</sup> Golden Globe Awards List from [www.hfpa.org](http://www.hfpa.org). Emmy Awards Lists from [www.emmys.org](http://www.emmys.org). All nominees and with one exception, all winners are shown or due to be screened on commercial free-to-air television. The exception is the UK series *The Office*, winner of the 2004 Golden Globe Musical or Comedy Series Award which has been shown on the ABC.

<sup>19</sup> Australian Bureau of Statistics, Television, Film and Video Production, 2002-2003.

<sup>20</sup> Garry Maddox and Cosima Marriner, "Subsidies urged for ailing film industry", Sydney Morning Herald, 5 August 2004.

<sup>21</sup> This analysis does not take into account population density which also determines the number of advertiser-funded networks that a population can support. The more dispersed a population the more costly the terrestrial transmission network needed to reach it. Also, the more dispersed a population is, the less value for money local advertisers get and

With 2 national public television networks and 3 national commercial networks serving a population of almost 20 million people, Australia is well served relative to other OECD countries.

The analysis in Appendix 1 shows that OECD countries with populations ranging from 10 to 50 million people have an average of 2.82 national commercial television networks.

Of the 7 OECD countries with populations between 10 and 20 million, only Greece has more than 3 national commercial networks. All other countries have 2 or less national commercial networks. With 8 commercial networks in a small market by international standards, the Greek television market is characterised by a lot of volatility with a large number of television networks commencing operations, closing and re-commencing operations in a new form over the last ten years.

Of the 4 OECD countries with populations between 20 and 50 million people, Canada which has a population 1.5 times the size of Australia, is the only country with more national commercial networks (4) than Australia. One of these networks, TVA, is a French-language television network that broadcasts free-to-air in Quebec only.<sup>22</sup>

Further, despite having 4 national commercial networks, the Canadian television market is generally regarded as one of the more concentrated in the world.

Although not OECD countries, it is noteworthy that Taiwan and Malaysia which are very close in population size to Australia<sup>23</sup>, each support three national commercial networks and two public commercial networks.

Though the UK free-to-air television market has access to a population and television advertising market three times the size of Australia's, there are only three national commercial networks provided by ITV, Channel 4 and FIVE and two national public networks provided by the BBC. Increasingly the pressure being placed upon the UK commercial broadcasters from digitisation and other changes in media and entertainment consumption is pushing the industry towards further consolidation rather than increased competition.

Last year Ofcom approved the merger of Carlton and Granada to form ITV plc. As a result, the remaining free-to-air commercial broadcasters FIVE and Channel 4 have announced their active exploration of a range of merger or partnership options with each other and other market players. Should this occur, it could potentially leave the UK market with only two free-to-air commercial operators, ITV and a merged not-for-profit Channel 4 and FIVE.

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hence, the less they will pay. Australia not only has a small population, it also has the largest land mass per head of population of any OECD country.

<sup>22</sup> TVA only reaches a national audience by virtue of a compulsory requirement of the Canadian regulator that all Canadian cable operators carry the TVA network (designed to improve access for the French-Canadian community).

<sup>23</sup> Taiwan has 22 million people and Malaysia has 23 million people.

## **4 A limit on the number of licences is critical to delivering these benefits**

### **4.1 Australia is a small market and a limit on the number of licences is needed to ensure quality services are delivered free to all Australians**

Limiting the number of licences is critical in order to deliver the public benefits outlined in section 3 under an advertiser-funded model.

Australia is a small market by international standards. Australia's small population generates a limited amount of advertising revenue. On a per national commercial network basis, the Australian market generates US\$700 million in advertising revenue, compared to \$8.5 billion in the US and \$1.48 billion in the UK.<sup>24</sup>

Australia's population is also highly dispersed. Australia has the largest land mass per head of population of any OECD country.

Television is expensive to program and operate. It is particularly expensive where it involves high levels of local service across extensive areas, and the provision of extensive, high-cost Australian and local programming. Television can operate relatively cheaply only where it largely uses off-the-shelf programs, and minimises infrastructure costs by concentrating on lucrative highly populated markets.

### **4.2 Australian programming is expensive**

Australian programming is expensive because most or all of its cost must be recovered in the local market (which is the whole country for most entertainment programming and much sport, but may be only a single licence area for news and other highly local programs).

Overseas programs are much cheaper than Australian programming because their cost of production has usually been recovered in their country of origin, while export sales provide additional revenue beyond break-even. The cost disparity is particularly large for high-end drama.

Content costs are the largest single outlay for commercial free-to-air television broadcasters. Spending on Australian programs makes up more than 70% of total program expenditure. Therefore, relatively modest variations in the financial environment can make a major difference to the affordability of expensive local programming.

The Australian programs particularly vulnerable to replacement by less expensive genres or imports are adult drama and news and current affairs. From a social and cultural perspective, these programs are particularly valuable for their capacity to inform, educate, reflect and shape the Australian community.

#### **4.2.1 Australian drama is particularly vulnerable to replacement**

The Joint Standing Committee on Treaties' Inquiry into the Australia – United States Free Trade Agreement heard evidence that:

*“There is a systemic market failure in terms of particular audiovisual product and broadcasting, comparing our market to the United States, and that is why to date there have been mechanisms to ensure that Australian content is available to Australian audiences. We believe that it has been necessary for governments to*

<sup>24</sup> US and UK data to 2002 from [www.worldscreen.com](http://www.worldscreen.com). Australian data to end 2003 from CEASA, Advertising Expenditure in Main Media, 31 December 2003, converted to US dollars at exchange rate of 0.75.

*intervene to ensure that those products do have Australian content and that investment is made in Australian content, because market-forces alone will not provide that result.*<sup>25</sup>

The systemic market failure arises from the fact that Australia's small market can not achieve the economies of scale needed for efficient broadcast program production. The huge cost disparity between producing Australian content and importing popular US content was the subject of evidence to the Joint Standing Committee on Treaties by the Media and Entertainment Arts Alliance (MEAA):

*“American product is sold to Australian broadcasters at much cheaper rates than it costs to produce Australian programs, as the American producers have recovered their production costs in America and are exporting at a profit ... an American television drama program that costs US\$1 million per episode to produce can recoup that investment within America and be sold to an Australian network for between US\$20,000 and US\$65,000 per hour.”*

The MEAA compared this to an Australian program that might cost US\$320,000 to produce. Sale of the program to an Australian broadcaster would generally be expected to cover half of these production costs.<sup>26</sup>

First release Australian programs also pose a greater investment risk for broadcasters relative to established overseas programs. This is particularly the case for drama programs. As the Screen Producers Association of Australia (SPAA) explained to the Productivity Commission:

*“If Australian audiences know a program has been popular overseas, they will watch it from the first episode. However new Australian programs can take longer to develop a regular audience. For example, Neighbours was screened for several years before becoming popular with viewers and advertisers. This means the investment risk to the broadcaster is relatively greater for a new Australian program than for an established imported program.”<sup>28</sup>*

The cost disparity between local and imported drama programs and the increased investment risk associated with local programs, means that local drama is particularly vulnerable to changes in a broadcaster's financial environment. This was recognised by the Productivity Commission in its 1999 Broadcasting Inquiry Report. The Productivity Commission stated:

*“For the commercial broadcaster, the decision to broadcast a particular program does not depend on its social and cultural value to the community. The broadcaster's main concern is the program's ability to generate a profit – that is, its advertising revenue relative to cost. High cost programs with social and cultural value may be vulnerable to replacement by programs with a better*

<sup>25</sup> Joint Standing Committee on Treaties, The Australia – United States Free Trade Agreement, Report 61, para 11.86, page 168 citing evidence from Mr Scot Morris of the Australasian Performing Rights Association (APRA) and the Australasian Mechanical Copyright Owners Society (AMCOS).

<sup>26</sup> The challenge of supporting the production and broadcast of local content is not unique to Australia. The economies of scope associated with broadcast program production means that the challenge is common to all countries with small populations. Even in Canada, which has a population double the size of Australia's, rights to popular US sitcoms and dramas can be purchased for between CAN\$100-125,000 per hour, which is roughly a third of the cost of licensing a Canadian program. Canadian broadcasters will pay licence fees of CAN\$300,000 per hour for Canadian programming, which is likely to generate only 1/5<sup>th</sup> of the amount of advertising revenue that a US program will generate: Response of the Canadian Broadcasting Corporation to the CTRC call for comments: Support for Canadian Television Drama Broadcasting Public Notice CTRC 2003-54 which can be found at <http://cbc.radio-canada.ca/htmen/submissions/drama.pdf>.

In New Zealand local-made programs cost up to as much as ten times more than imported product: NZ On Air, The Future of Public Broadcasting: The Experience in 6 Countries, November 2003, page 10.

<sup>28</sup> Quoted in the Productivity Commission, Broadcasting Inquiry Report, March 2000, page 167.

*revenue-to-cost ratio, even if the alternative is less popular with viewers and advertisers. New Australian drama series (which may have high social and cultural value), for example, typically have much higher licence fees than those of US drama series of similar genre and may be vulnerable to replacement, even though the US program attracts a smaller audience. Programs that are popular or valuable to the community will therefore not necessarily be provided by the market.*<sup>29</sup>

#### **4.2.2 News, current affairs and local programs are also particularly vulnerable**

During 2002-2003 commercial free-to-air television stations spent \$164.9 million on the production of a wide range of news and current affairs programs – the biggest single category of Australian program expenditure, after sport.<sup>30</sup> The cost of producing news services is borne solely by the broadcaster and in the case of local news must be recovered in a single licence area.

Metropolitan networks provide national and state-based news and current affairs programs. Regional stations typically carry a state-based news bulletin from their affiliated network and one or more local services. In some regional licence areas, regional broadcasters provide separate local news services to up to 5 sub-markets in a licence area.

This has come about because the spread of population over a number of widely-separated centres in larger regional licence areas makes it difficult to provide a successful single news service for the entire market. In order to meet viewer demand, separate news-services are provided to each major sub-market. However, each of these sub-markets has a relatively small potential audience, so a news service must rate very well to remain viable. Only the market-leading news service has normally achieved these viewing levels in regional sub-markets.

Prior to the introduction of local content quotas in April 2003, 44 separate local news services were delivered to 33 separate sub-markets. Even more local news services are now provided since the introduction of local quotas, but almost all are unprofitable on a stand-alone basis.

All regional broadcasters are meeting their local content quota requirements with a combination of local news and other programs of local significance, and many broadcasters are substantially exceeding the quotas.<sup>31</sup> However local programming is vulnerable to reduced revenue. Affiliate fees paid to metropolitan networks make up the vast majority of regional programming costs and have increased substantially over the last 10 years. If revenues decline, regional broadcasters are unlikely to be able to negotiate lower cost affiliate deals (which are typically struck on a long term basis) particularly in light of the additional cost and revenue pressures faced by commercial networks. As a result, news and any locally produced programs will be the focus of cost cuts.

Experiences of regional commercial stations during the regional aggregation process in the early 1990s underline how vulnerable local news is to reduced revenue. A number of stations simply stopped providing local news.<sup>32</sup>

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<sup>29</sup> Ibid, page 393.

<sup>30</sup> Australian Broadcasting Authority, Broadcasting Financial Results 2002-2003.

<sup>31</sup> Australian Broadcasting Authority News Release, Regional Television Exceeds Local Content Quotas, 7 September 2004.

<sup>32</sup> The effect of increased competition in radio broadcasting has been a reduction in live broadcasting from local studios, including the broadcast of local news. A number of regional radio stations have responded to reduced profit margins by rationalising and centralising their content production.

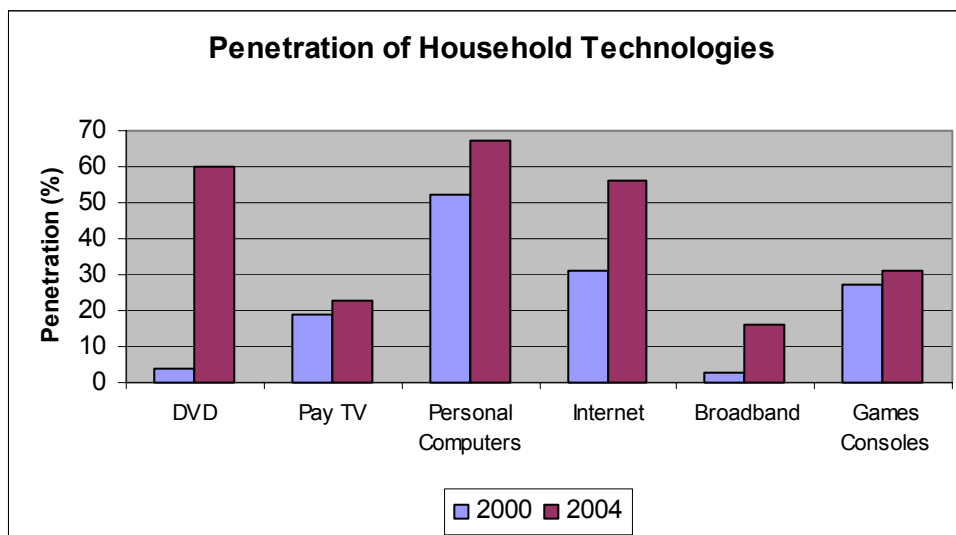
### 4.3 Free-to-air broadcasters’ ability to deliver social and cultural objectives is already being challenged

The traditional funding and operational model for free-to-air commercial television broadcasting is being challenged worldwide by a number of technology-led trends. An ever-increasing array of digital technologies are entering consumer markets and with them an increasingly diverse set of alternate outlets for media and entertainment content.

This is occurring at the same time that the free-to-air television industry is incurring large costs to implement its own technology-led change to free-to-air digital broadcasting. It is also occurring as free-to-air broadcasters face increased competition for both content and audiences from a consolidated pay television sector.

Some of the trends that are radically re-shaping media and communications markets include advances in digital compression techniques for audiovisual content, increased consumer acceptance of digital storage, and new broadband distribution mediums which offer home access to local and international audio-visual content via the internet.

These technologies are changing the way consumers use their time and are fragmenting the mass-audiences which have traditionally been the domain of free-to-air broadcasting. Between 2000 and June 2004, penetration in 5 capital city Australian households of DVD players has increased from 4% to 60%, pay television from 19% to 23%, personal computers from 52% to 67%, internet access from 31% to 56% and games consoles from 27% to 31%.<sup>34</sup> Penetration in all Australian households of broadband has increased from 3% in 2000 to 16% as at 30 September 2004.<sup>35</sup>



Emerging products and services such as personal video recorders and other so-called ‘ad-skipping’ technologies are also likely to impact viewing habits and advertising revenue in coming years.

<sup>34</sup> ATR Australia, Trends in Household Technology, OzTAM Establishment Survey of Five Cities to Q2, 2004

<sup>35</sup> Broadband penetration figures from Australian Film Commission, Australia’s Audiovisual Markets, September 2004, page 79 and ISP News report, "Telstra welcomes 1 million broadband customers", Monday 18 October 2004.

The threat of fragmentation of advertising expenditure is greater for free-to-air broadcasting than many other forms of media. This is because free-to-air broadcasters seek to attract a large broad audience. The threat from new media comes on top of a continuing trend toward below-the-line marketing, away from mass media advertising.

The most recent Report by Ofcom on its Review of Public Service Broadcasting considered these challenges in the context of the UK market and concluded:

*“If audience fragmentation continues on current trends, the viewing share of the five main terrestrial channels could fall to 65 per cent by the end of the decade, compared with 85 per cent only five years ago. Even this estimate does not allow for major shocks in the market – such as a major strategic push to increase programme spend and audiences by a cable/satellite channel, or the disruptive effects of new technologies.”<sup>36</sup>*

The Ofcom Report goes on to consider the financial prospects of the large UK broadcasters over the next decade using a simulation model of commercial broadcaster finances developed by Spectrum Strategy Consultants. The model was based on the relationships between three variables: a channel's expenditure on production, the viewing share gained from its programming, and the advertising revenues generated on the basis of these audiences. The model tested the effects of various plausible downside risks against a steady state scenario. The steady state scenario assumed no significant changes in market structure, regulatory policy or trends in device uptake. Ofcom conceded that “the steady state scenario is unlikely to reflect the real world outlook.”<sup>37</sup>

On the basis of the model, Ofcom concluded that:

*Under the steady state, the main terrestrial channels face growing commercial pressures as switchover approaches, but are able to sustain advertising premiums and benefit from overall market growth. Even in this relatively favourable scenario, though, their profit margins show little buoyancy over the period.*

*Once we incorporate the effects of various downside risks into our model, the outlook looks less bright for the public service broadcasters ... the combination of these factors is extremely damaging to the financial health of commercial public service broadcasters. Simply unravelling the set of relatively optimistic assumptions that make up the steady state would place increasing pressure on PSB obligations. None of the commercial channels would be able to make a positive operating profit by 2010.*

*The downside risk scenario shows that the financial performance of the commercial terrestrial broadcasters is extremely sensitive to the development of the TV broadcasting market. At best, the channels are likely to maintain their current profitability; at worst they would be forced to change their strategies radically to maintain viability.”<sup>38</sup>*

Australian broadcasters need to be particularly alert to over reliance on optimistic economic assumptions. As discussed further in section 5, historically television advertising revenue has been highly volatile with the industry experiencing big troughs in times of economic downturn.

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<sup>36</sup> Ofcom Review of Public Service Television Broadcasting, Phase 2, page 27.

<sup>37</sup> Ibid, page 30.

<sup>38</sup> Ibid.

The impact of audience fragmentation on the Australian broadcasting market is yet to be fully understood. However it is clear that, combined with these challenges, a further direct and serious threat to advertising revenues in the form of a further mainstream commercial broadcaster, would seriously undermine the existing free-to-air broadcasters' ability to continue to deliver high quality Australian and local content.

In the words of Greg Dyke, former Director General of the BBC:

*“Channel fragmentation will gradually erode the current revenue base of Britain’s commercial channels. If in the commercial world, you lose share year after year, in the end you either change your cost base or fall off a cliff.”<sup>39</sup>*

#### **4.4 Delivery of social and cultural objectives has never been more important than it is today**

Maintaining the ability of the Australian free-to-air broadcasting sector to continue to deliver social and cultural objectives has never been more important than in today’s increasingly global media market.

The debate concerning the local content provisions of the United States Free Trade Agreement prompted overwhelming and unequivocal expressions of public and political support for the importance of Australian content to Australia’s cultural identity and the central role of free-to-air broadcasting in delivering Australian content.

The Parliament of Australia Joint Standing Committee on Treaties’ Report on the Free Trade Agreement notes the *“numerous submissions [it received] from concerned individuals and groups detailing the importance of Australian ‘stories and voices’ on television and radio”<sup>40</sup>*.

The Report further states that the Committee heard evidence on the importance of local content requirements for the Australian television and music industries ‘to the extent that’:

*“successive federal, state and local governments in Australia have recognised that access to Australian arts, entertainment and audiovisual product is essential for the well being of this society”<sup>41</sup>*

Similar statements were made in the course of the Parliamentary debates on the Free Trade Agreement Implementation Bill, including the following statement from ALP MP Brendan O’Connor:

*“It is critical for this nation, in order to know who we are and in order to ensure that our culture survives, that we have proper local content laws.”<sup>42</sup>*

Free-to-air broadcasting plays a unique and central role in preserving and strengthening cultural identity by providing quality Australian and local content free of charge to all Australians, and by contributing to the health of the local production industry.

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<sup>39</sup> Speech to the Edinburgh International TV Festival, 24 August 2003.

<sup>40</sup> Parliament of Australia Joint Standing Committee on Treaties, Report 61, The Australia-United States Free Trade Agreement, paragraph 11.77.

<sup>41</sup> Ibid, at paragraph 11.75.

<sup>42</sup> US Free Trade Agreement Implementation Bill, Second Reading Speech, Mr Brendan O’Connor MP, 24 June 2004.

## 5 Potential social and cultural costs of a new licence are high

There is a presumption that a new broadcasting licensee would provide new and diverse programming and increased viewer choice. However, this assumes that all broadcasters, the existing and the new entrant, could co-exist in an environment where audience share and advertising revenue continue to fragment. It also assumes that all broadcasters, the existing and the new entrant, could secure sufficient revenue to deliver programming of a similar quality and diversity to the standard viewers enjoy today.

Free TV submits that the entry of a new player would threaten the stability of the free-to-air broadcasting sector and the quality of programming that Australian viewers have come to expect. This would have consequential effects on the viewing audience and employment in the production sector.

The section examines the likely impact of a new licence on the existing commercial television industry, on viewers and on the Australian production industry.

### 5.1 Impact of a new licence on the industry

#### 5.1.1 *Total viewing will not increase*

In a mature market there is little scope to increase overall viewing, or attract substantial amounts of new revenue from other media. In fact viewing levels on free-to-air commercial television have decreased by 14 minutes in the last 8 years.<sup>43</sup> Viewing levels will continue to be challenged by pay television, the Internet and other new media.

#### 5.1.2 *Total revenues are unlikely to increase and may decrease*

Total advertising revenues for the industry are unlikely to rise with the entrance of a new competitor. Overseas experience is that, in a mature advertising market like Australia<sup>44</sup>, television advertising does not increase with the entrance of new broadcasters. In both the United Kingdom and the United States free-to-air television's share of the total advertising pool has remained stable at 33% and 22% respectively, over the period that new entrants have gained advertising share.<sup>45</sup>

Pay television, the Internet and new media technologies will have an increasingly negative impact on viewing levels and advertising revenues in coming years. Spend on pay television advertising grew by 38% in 2003 and is expected to more than double its current level by 2008. Spend on internet advertising grew by 41.3% in 2003 and is expected to more than double its current level by 2007.<sup>46</sup>

The threat to advertising revenues from new media comes on top of a continuing trend toward below-the-line advertising away from mass media advertising. Television's share of total advertising spending is already declining, due to the dramatic growth of below-the-line advertising over the last 5 years.<sup>47</sup>

Television advertising revenues are highly susceptible to downside factors such as an economic downturn. An analysis of advertising spend on free-to-air television over the

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<sup>43</sup> Survey Audits 03 Review – metro and regional.

<sup>44</sup> Mass media advertising spending in Australia is already high and spending on free-to-air television has remained fairly constant at approx 35% of above-the-line advertising revenues over the last 20 years: ABN Amro, FTA Television: The TV Margin Cycle, 22 June 2004.

<sup>45</sup> ABN Amro, FTA Television: Time to Face the FACTS, July 2002.

<sup>46</sup> PricewaterhouseCoopers, Australian Entertainment and Media Outlook: 2004–2008, Third Annual Edition June 2004, page 110.

<sup>47</sup> CEASA Advertising Revenue, 2003.

last 20 years shows that there has been a substantial degree of volatility with the industry experiencing big swings between peaks and troughs. Advertising spend tends to grow faster than gross domestic product during cyclical growth periods, but falls short of gross domestic product in recessions.<sup>48</sup> On average, in proportional terms, any change in commercial television revenue is about one-and-a-half times the change in gross domestic product.<sup>49</sup> The metropolitan television broadcasters went through a fundamental restructuring following the previous downturn.<sup>50</sup>

### **5.1.3 Total revenue will be fragmented between more broadcasters**

A successful new entrant will acquire the majority of its advertising revenue from existing metropolitan stations, some from existing regional stations and the remainder from SBS, pay television and other sources. There is no doubt that a new entrant would severely impact the revenues of existing broadcasters. During an economic downturn or advertising recession, the impact would be even greater due to the additional impact of reduced advertising revenues.

### **5.1.4 Reduced revenue leads to pressure to reduce costs**

As revenues decline, broadcasters will seek to protect earnings by cutting costs.

Programming is the most substantial cost category for television networks, accounting for nearly two-thirds of total costs of metropolitan networks. Australian programs represent about 70% of the total programming expenditure by metropolitan television networks.

Not only is programming the largest cost category, but it has also been the fastest growing. Programming costs have grown by 65% over the past decade. At 5.1%, the average rate of growth over the period has been exactly the same as average revenue growth.<sup>51</sup>

An important factor to note is that programming costs have risen in every year, even when revenue has fallen. Broadcasters have only been able to maintain and improve margins as a result of reductions in fixed costs, other than programming.<sup>52</sup>

This has two important implications. Broadcasters have already stripped out a lot of excess costs (other than programming) in the most recent advertising recession period. This means that any savings in these costs going forward is likely to be limited.<sup>53</sup>

As a result, savings will have to come from cuts to programming costs. High production costs associated with Australian content, particularly drama and news and current affairs, will be the main focus for reduced spending.

Regional stations generally acquire a program stream from a metropolitan network, typically in exchange for a percentage of their advertising revenue. Regional stations insert some local programs of their own and local advertising. If regional stations faced reduced revenues, local programs would have to be cut as these are the only programming costs that are within the station's control.

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<sup>48</sup> ABN Amro, FTA Television: The TV Margin Cycle, 22 June 2004.

<sup>49</sup> Australian Broadcasting Authority, Commercial Television Industry 1978-79 to 1988-89, page 9.

<sup>50</sup> Total industry expenditure exceeded revenue between 1988-89 and 1990-91.

<sup>51</sup> ABN Amro, FTA Television: The TV Margin Cycle, 22 June 2004.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

### **5.1.5 Costs for premium content will increase**

Commercial television broadcasters seeking to maintain earnings face limited choices. As discussed in the previous section, any savings in non-programming costs going forward is likely to be limited. The only way to attempt to salvage falling revenues will be to seek to regain audience share by bidding even more aggressively for overseas contracts and local television personalities and production staff.

A review by the Australian Broadcasting Authority of the commercial television industry over the period 1978-79 to 1998-99, reports that between 1986-87 and 1998-89 total expenditure on foreign and Australian programming increased by 31.4% as networks bid for higher quality programs with the aim of increasing audience share.<sup>54</sup>

The result was that by 1989 all three networks were experiencing severe financial difficulties.<sup>55</sup> By 1991, both the Seven and Ten networks were controlled by creditors and Nine Network had been sold back to its original owner for a fraction of the price received only 3 years previously.

### **5.1.6 Potential for financial instability of an existing network**

By acquiring revenues at the expense of existing metropolitan television networks and driving up the cost of premium content, the new entrant will lower the profitability of metropolitan broadcasters. As a result, one or possibly even more than one of the major networks could face financial difficulty.

Even though it is assumed that a new entrant would operate solely in capital city markets, regional networks will also be impacted by a decline in revenues and profitability. This is because when planning national free-to-air advertising spend, advertisers tend to prioritise spend with metropolitan networks. Any surplus in the advertising budget is then allocated to regional stations.

It is unlikely that national advertising budgets will increase just because there is a new television network. It is far more likely that national advertisers will first cut spending on regional networks to accommodate spend on a new network. National advertising makes up around 64% of regional television advertising spend<sup>56</sup>, so a re-allocation of spending away from regional networks could have a substantial adverse impact on regional viability. Regional broadcasters are already experiencing cost pressures as a result of ongoing expenditure on digital rollout, rising affiliation fees and the costs of complying with local quota requirements.

## **5.2 Impact on viewers**

A considerable revenue contraction for existing commercial networks would mean stations would have to rely on programming of much lower cost, and reduce many hours of non-quota Australian and local programming they currently broadcast. The impact on viewers would be:

- less quality
- less Australian content
- less drama
- cut-backs to news and current affairs
- less local content such as local news.

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<sup>54</sup> Australian Broadcasting Authority, Commercial Television Industry: 1978-79 to 1998-99, page 20.

<sup>55</sup> Total industry expenditure exceeded revenue between 1988-89 and 1990-91.

<sup>56</sup> ABN Amro, FTA Television: The TV Margin Cycle, 22 June 2004.

The response to reduced revenue can be gauged from what happened in the early 1990's (although the revenue fall at that time was much less than could be expected from a new competitor, and lasted for less than two years). Reacting to huge losses and the 1991 recession, commercial networks virtually ceased to commission the most expensive kinds of local drama and variety. They could no longer justify commissioning programs which would be unable to recoup their Australian broadcast licence fees in the small Australian market, no matter how well they rated. Cost reductions were not restricted to these highest cost program categories, but were also felt in entertainment programming generally, as well as news and current affairs.

If one of the new or existing networks was to go out of business, there would be unavoidable disruption to industry employment and Australian viewers.

If a new licence was limited to capital city markets, the benefits of Government's policy of regional television equalisation would be undermined. That policy was designed to ensure that regional viewers have the same access to commercial television services as metropolitan viewers. The equalisation policy was the subject of several years of industry discussion, Government and Parliamentary inquiry and public debate. It involved the profound re-shaping of regional commercial television markets and many years of financial distress for regional broadcasters. It would be disappointing, if having survived this period of upheaval, regional viewers are faced with the prospect of lower quality programming and reduced local programming, for no benefit.

### **5.3 Impact on Australian production industry**

In 2002-2003 commercial broadcasters spent \$723 million on Australian programs.

In the same period productions for television accounted for 75.9% of production costs related to audio-visual content. Production of commercials, station promotions and other television content accounted for another 14.6% of production expenditure. Productions made other than for television accounted for only 9.5% of production expenditure.<sup>59</sup>

Around three-quarters of the expenditure on television production relates to content made for commercial free-to-air television.

With pay television and new media platforms unlikely to contribute in any appreciable way to the Australian production industry in the foreseeable future, free-to-air television will continue to underpin the content industry.

A further free-to-air television licence would clearly provide an initial boost to the content industry as another broadcaster competes for content to fill its quota requirements. However, Free TV submits that the initial gains for the content industry will be undermined as existing players cut programming costs to regain revenues.

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<sup>59</sup> Ibid. Production costs include all costs relating to development, pre-production shoots and post-production of films and programs during 2002-03 undertaken by film and video production businesses, television broadcasters and subscription television channel providers.

<sup>61</sup> Australian Competition and Consumer Commission, Report to Senator Alston, Minister for Communications, Information Technology & the Arts on Emerging Market Structures in the Communications Sector, June 2003, page 89.

There is also the potential for loss of employment and revenues for individual producers contracted to an existing or new licensee which experiences financial difficulties.

## 6 Potential benefits of a new licence are doubtful

A further licence should only be issued if the potential social and cultural costs are clearly outweighed by the benefits of a further licence. Free TV submits that the benefits are not clear. Rather, a new licence would threaten the stability of the free-to-air broadcasting sector and the quality of programming that Australian viewers have come to expect.

In order to gain sufficient audience share to break-even financially, a new entrant would need to target a broad mix of viewers, with content similar to that provided by the existing networks. It is unlikely that a stand-alone niche broadcaster could be sustained on an advertiser funded model given Australia's low population base.

Further, because of the size of the upfront investment required, market entry is more likely to be attractive to a company that can leverage access to existing overseas content.

The large set up costs faced by a new entrant means that it would seek to minimise content outlays by using a higher proportion of overseas programming and producing minimal local content. Both existing networks and the new entrant would be forced to focus on low-cost Australian programming for quota requirements.

Given that Australian free-to-air viewers already get free access to highly acclaimed international programming (as discussed in section 3.2), it is unlikely that a new entrant will improve the quality of overseas content provided to viewers. The outcome would simply be more low-cost Australian and overseas content at the expense of quality Australian content.

The benefits of a new licence are doubtful, at best. Given the potential costs (discussed in section 5), there does not appear to be any compelling justification for a new licence.

When the ACCC offered support for the issue of new licences in its Report to Senator Alston on Emerging Market Structures in the Communications Sector it was not able to point to any clear benefits. The ACCC acknowledged that issuing more licences may not ultimately lead to any increase in the number of available services in the longer term<sup>61</sup>. It conceded that such a move would be likely to lead to increased costs to the industry. Further, it offered no evidence to suggest that consumers would have a greater range or quality of service than they currently enjoy.

The only real arguments offered by the ACCC in support of additional licences were market contestability and the fact that the ACCC "*is unconvinced ... that the benefits of the restriction on the number of free-to-air licences outweighs the costs of this restriction*" and that the Commission is therefore "*sceptical of the need for the current moratorium*".<sup>62</sup>

Concerns that levels and quality of local programming would be adversely affected by the introduction of additional free-to-air licences were dismissed as being overstated on the basis that European broadcasters transmit material in excess of their local content requirements and that Australian broadcasters have historically spent 70% of programming costs on Australian content.

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<sup>62</sup> Ibid, page 92.

These comments ignore the very different dynamics in a small market such as Australia and the fact that historically high levels of expenditure on programming have been possible only because of the current regulatory structure.

The ACCC's comments also ignore the fact that in European markets language provides a powerful incentive and protection to local programming. Even within Europe, local content production is being challenged by the rise of pan-European broadcast and global media entities.<sup>63</sup>

The New Zealand experience demonstrates that whilst de-regulation has increased the number of television services available, it has resulted in record low levels of local content production<sup>64</sup> and there is heated debate as to whether it has extended the range of programming on offer. One commentator has summarised the experience as follows: "*The eclipse of public service ideals by commercial imperatives is, critics argue, part of a pattern of change which has produced plurality without diversity.*"<sup>65</sup>

There is a good chance that a new licence in Australia would not produce plurality or diversity. Free TV submits that the Australian public should not be asked to compromise the quality of existing free-to-air television services for unknown and unsubstantiated benefits.

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<sup>63</sup> See discussion of the European television market in Appendix 1.

<sup>64</sup> A study on "Local Content and Diversity: Television in Ten Countries" published in 1999 found that "New Zealand was right at the end of the international continuum in respect of the quantity of local content, with its figure of 24% of total transmission lower than any of the countries in that study". This figure had not changed materially since a UK study conducted in 1983, though this has recently increased to a high of 27.4% in 2002 as a result of the New Zealand government's intervention in the form of a new charter and public funding for TVNZ and additional government funding to the statutory funding body for broadcast programming, NZ On Air.

<sup>65</sup> Graham Murdoch. "The Encyclopaedia of Television, New Zealand, The Museum of Broadcast Communications at [www.museum.tv](http://www.museum.tv).

## Appendix 1

### World Television Market Concentration and Competitive Analysis

Australian television viewers are served by one of the most vigorously competitive free-to-air television markets in the world that provides access to quality Australian and overseas programming free to all Australians. The Australian television market is comprised of two national public television networks (ABC and SBS) and three national commercial television networks (Seven, Nine and Ten).

#### Population and Television Networks

Commercial television networks are dependent upon the revenues derived from advertising which is directly linked to the size of the audiences that television programming can attract and hence which are more attractive to advertisers. The strength of free-to-air television over the past 3 decades or more has been its ability to attract and retain large audiences. Free TV asserts that the single most critical factor in any analysis of competition and concentration within a commercial free-to-air television market is the available audience. Furthermore, Free TV asserts that the larger the population of a given country, the greater the number of national commercial television networks that can be viably supported and by association, the greater the number of national television networks that will be present in the country.

This is supported by an analysis of the average number of national television networks present in countries around the world when compared against their population. Table 1 below, shows a breakdown of the average number of national public and commercial networks present in OECD countries for given population ranges (calculated on the information presented in Table 2). This Table clearly demonstrates that there is a very strong correlation between population and the number of national television networks that can be found operating in a country. Smaller countries with a population of less than 10 million people average less than four national television networks, while countries with populations over 50 million people have an average of eight national television networks.

Countries with populations ranging from 10 to 50 million people have an average of 2.82 national commercial television networks and average a total of 5.27 national networks including their national public television networks.

**Table 1 Average Number of National Television Networks by Population**

OECD Country Populations	National Public Networks	National Commercial Networks	National Networks	% Commercial Networks
Less than 10 Million	2	1.55	3.55	44
Between 10 and 50 Million	2.45	2.82	5.27	54
Greater than 50 Million	2.25	6.12	8.37	73

Table 1 also clearly shows that while the number of national public television networks present in each country does not vary appreciably as the country's population moves above 50 million, the number of national commercial television networks rises commensurately with the rise in the country's population. This is consistent with a strong link between population size, the available advertising revenue and the presence of commercial television networks.

## Concentration and Competition in Terrestrial Television Markets

To test the assertion that Australia has a competitive and vibrant free-to-air television marketplace, a detailed comparison of the number of national free-to-air terrestrial television networks that are operational in countries around the world can be made against the population and potential television market of each country. Table 2 presents this analysis for all OECD countries. This shows that Australia with an estimated population of almost 20 million people has some 3,946,397 people for every national television network and 6,577,328 people for every national commercial television network operating in the country.

This ranks Australia 14th out of all 30 OECD countries in terms of national commercial television networks per head of population and 5<sup>th</sup> out of the 11 OECD countries with similar sized populations (between 10 and 50 million).

Although they are not OECD countries, it is noteworthy that that Taiwan with 22 million people and Malaysia with 23 million people (similar populations sizes to Australia) also have identical levels of competition within their national free-to-air television markets with two national public television networks and three national commercial television networks.

Of the OECD countries with populations between 10 and 20 million, only Greece and Belgium with populations of just over 10 million people, have more than 5 national television networks. Greece is also the only country in the category with more than 3 national commercial networks. Further analysis of the Greek and Belgium television markets is set out below.

Canada, which has a population 1.5 times the size of Australia, is the only country with a population between 20 and 50 million with more national commercial networks than the Australian market.

12 of the 13 OECD countries that rank ahead of Australia by the ratio of population to national television networks are European countries. At a first glance these markets appear to have access to a more competitive and less concentrated television market than Australia. However, further investigation reveals that this is not necessarily the case. The other country that ranks ahead of Australia is New Zealand, where the experience of de-regulation has resulted in record low levels of local content.

The European market is discussed in further detail below.

The analysis drawn from Table 2 does not take into account population density which also impacts on the number of commercial national networks that can be supported by a country's population. This is because of the high cost of transmitting free-to-air television signals to a highly dispersed population. Australia has the largest land mass per head of population of any OECD country. If this factor was taken into account, Australia is even better served by its number of national television networks, relative to other countries.

**Table 2 National Television Networks per head of Country Population<sup>i</sup>**

Country	Population	Households	National Terrestrial TV Networks (Channels)			Ratio of Population per Terrestrial TV Network	
			Public	Commercial	Total	All Network Channels	Commercial Network Channels
Iceland	280,798	100,000	1	3	4	70,200	93,599
Luxembourg	454,157	16,000	0	1	1	454,157	454,157
New Zealand	3,951,307	1,300,000	2	3	5	790,261	1,317,102
Greece	10,665,989	2,300,000	2	8	10	1,066,599	1,333,249
Hong Kong	7,394,170	2,100,000	0	4	4	1,848,543	1,848,543
Singapore	4,608,595	1,000,000	3	2	5	921,719	2,304,298
Finland	5,190,785	2,300,000	2	2	4	1,297,696	2,595,393
Denmark	5,384,384	2,400,000	2	2	4	1,346,096	2,692,192
Slovakia	5,430,033	1,675,843	2	2	4	1,357,508	2,715,017
Ireland	3,924,140	1,300,000	3	1	4	981,035	3,924,140
Norway	4,546,123	2,000,000	2	1	3	1,515,374	4,546,123
Hungary	10,045,407	3,820,000	1	2	3	3,348,469	5,022,704
Portugal	10,102,022	3,020,000	2	2	4	2,525,506	5,051,011
Czech Republic	10,249,216	3,900,000	2	2	4	2,562,304	5,124,608
Belgium	10,289,088	4,600,000	5	2	7	1,714,848	5,144,544
<b>Australia</b>	<b>19,731,984</b>	<b>7,350,000</b>	<b>2</b>	<b>3</b>	<b>5</b>	<b>3,946,397</b>	<b>6,577,328</b>
Germany	82,398,326	35,300,000	2	11	13	6,338,333	7,490,757
Taiwan	22,603,001	7,230,000	2	3	5	4,520,600	7,534,334
Malaysia	23,092,940	3,600,000	2	3	5	4,618,588	7,697,647
Canada	32,207,113	12,000,000	2	4	6	5,367,852	8,051,778
Austria	8,188,207	3,300,000	2	1	3	2,729,402	8,188,207
Sweden	8,878,085	4,210,000	3	1	4	2,219,521	8,878,085
Italy	57,998,353	21,400,000	2	6	8	7,249,794	9,666,392
Turkey	68,109,469	15,600,000	4	7	11	6,191,770	9,729,924
Poland	38,622,660	13,430,000	3	3	6	6,437,110	12,874,220
Spain	40,217,413	13,100,000	2	3	5	8,043,483	13,405,804
Mexico	104,907,991	23,300,000	1	6	7	14,986,856	17,484,665
United Kingdom	60,094,648	25,100,000	2	3	5	12,018,930	20,031,519
France	60,180,529	24,500,000	4	3	7	8,597,218	20,060,176
Philippines	84,619,974	13,800,000	1	4	5	16,923,995	21,154,994
South Korea	48,289,037	13,800,000	3	2	5	9,657,807	24,144,519
Japan	127,214,499	48,000,000	2	5	7	18,173,500	25,442,900
United States	290,342,554	104,000,000	1	8	9	32,260,284	36,292,819
Switzerland*	7,318,638	3,100,000	3	N/A	3	2,439,546	N/A
Netherlands	16,150,511	6,940,000	3	N/A	3	5,383,504	N/A

*Sorted by ratio of population per national commercial television network*

## European Television Markets

A noteworthy difference between the European television market and Australia is that populations are highly concentrated within countries making television cheaper to operate, and a substantial number of commercial broadcasters operate across a number of different countries, allowing for audience aggregation and economies of scale.

The tendency towards media concentration across European markets is strongly exemplified by the examples offered by the RTL Group and SBS Broadcasting Group. The media organisation, RTL Group which is based in Luxembourg and is majority owned by the Bertelsmann Group, operates a total of 26 commercial television networks across Belgium, Croatia, France, Germany, Hungary, Luxembourg, Netherlands, Spain and the United Kingdom. RTL Group's television networks reach a total combined European audience of approximately 170 million viewers each day.

The SBS Broadcasting Group which is also based in Luxembourg and owns a range of diverse commercial media entities in television, radio and print, operates 10 television networks across Belgium, Denmark, Finland, Hungary, Norway, Romania and Sweden. SBS Broadcasting Group's television networks reach a combined European audience of approximately 100 million viewers each day.

Table 3 shows the commercial networks operated by the RTL Group and SBS Broadcasting Group by country.

The RTL Group and SBS Broadcasting's television interests allow them to create an aggregated television audience well in excess of that provided by an individual European country. This provides the organisation with economies of scale and a large audience to drive greater advertising revenue premiums from European advertisers. The European Audiovisual Observatory notes the trend towards the creation of pan-European television channels and networks in a report<sup>66</sup> prepared for a Ministerial Conference on Broadcasting conducted by the European Union

The report notes:

*"More than 200 of these channels target non-national markets."*

and that:

*"...the market share of foreign channels is very significant in smaller countries which in general are also those with a high level of cable penetration."*

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<sup>66</sup> "Transfrontier Television in the European Union: Market Impact and Selected Legal Aspects", Background Paper prepared by the European Audiovisual Observatory for a Ministerial Conference on Broadcasting organised by the Irish Presidency of the European Union, Dublin & Drogheda 1-3 March 2004.

**Table 3 RTL Group and SBS National Commercial Television Networks<sup>ii</sup>**

Media Company	Operating Country	National Commercial Networks	
RTL	Germany	RTL RTL 2 Vox Super RTL RTL Shop n-tv	
	Belgium	RTL TV I Club RTL Plug TV	
	Netherlands	RTL 4 Yorin RTL 5	
	France	M6 RTL 9	
	Croatia	RTL Televizija	
	Hungary	RTL Klub	
	Luxembourg	RTL Tele Letzebuerg Den 2. RTL	
	Spain	Antenna 3	
	United Kingdom	Five	
	SBS	Netherlands	SBS6 Net5 Veronica
		Sweden	Kanal 5
Hungary		TV 2	
Belgium		VT 4	
Denmark		Kanal 5 tv danmark	
Romania		Prima TV	
Norway		TV Norge	

### Belgium

The Belgian free-to-air television market is characterised by a very high penetration of cable television and a strong reliance upon public broadcasting. Five of Belgium's seven national television networks are provided by public broadcasting organisations with two French-language channels (La Une and La Duex) operated by RTBF and three Flemish-language channels (Kanvas, Ketnet and TV1) operated by VRT.

The two national commercial networks are provided by the RTL Group and SBS Broadcasting.

### Greece

The Greek television market is the exception to the rule with regard to European television broadcasting with a large number of national commercial television networks present in a small market by international standards. Currently, there are eight commercial or private television networks operating in Greece, majority owned and operated by Greek media organisations and two national television networks provided by the state public broadcaster, Greek Broadcasting Television.

- Alpha TV
- Alter
- Antenna 1
- Mega Channel

- Star Channel
- Tempo
- Mad TV (music)
- 90.2 TV (shopping)

The television market in Greece, given its size and the high number of commercial television networks, is characterised by a lot of volatility with a large number of television networks commencing operations, closing and re-commencing operations in a new form over the past 10 years. The Greek television market also has an estimated 160 local channels that operate with very limited audience and the majority of which are un-licensed.

### **United Kingdom Market**

Though the United Kingdom free-to-air television market has access to a population and television advertising market three times the size of Australia's, there are only three national commercial television networks provided by ITV, Channel 4 and FIVE and two national public networks provided by the BBC. Increasingly the pressure being placed upon the UK commercial broadcasters from digitalisation and other changes in media and entertainment consumption is pushing the industry towards further consolidation rather than increased competition.

Last year the newly created regulator OFCOM approved the merger of Carlton and Granada to form ITV PLC. As a result, the remaining free-to-air commercial broadcasters FIVE and not-for-profit Channel 4 have announced their active exploration of a range of merger or partnership options with each other and other market players. Should this occur, it could potentially leave the UK market with only two free-to-air commercial operators, ITV and a merged Channel 4 and FIVE. Other options receiving active speculation include partnerships between FIVE and Flextech (owned by Telewest) or BSkyB and cooperation efforts between ITV or Channel 4 with the BBC.

### **US Market**

Comparisons are regularly offered between the US and Australian television markets as evidence that the Australian television market is highly concentrated and lacks competition. These comparisons are of little value given the size differential between the two markets.

The US market is second only to China as world's biggest television market with an estimated population in excess of 290 million people and a television advertising market worth over US\$50.8 billion. In contrast, the Australian television advertising market worth approximately US\$2.1 billion with an estimated population of almost 20 million people is over 14 times smaller in population and 24 times smaller in advertising revenue terms than the US.

Further perspective can be offered by the fact that the largest US television license area of New York provides access to an audience that is larger than the entire Australian television market. The top 5 US metropolitan television markets in total reach over 59 million people or close to 3 times the total Australian population. A population and audience of this size provide access to a substantial advertising revenue opportunity not only on a national level but on a regional or metropolitan basis as well. This substantially greater advertising revenue provides ample support for many more television channels and networks than could reasonably be expected to ever survive in the Australian market.

### **Canada**

The Canadian media market has access to six national television networks. Two national public television networks are operated by the public broadcaster Canadian Broadcasting

Corporation and its French-language subsidiary SRC. The remaining four national commercial television networks are:

- Global TV
- Canadian Television
- CHUM Television (City TV/NewNet)
- TVA

TVA is a private commercial French-language television network that broadcasts over the air exclusively in the French province of Quebec and reaches a national audience by virtue of its mandated carriage by cable television operators. This is due to a decision taken by the Canadian regulator, Canadian Radio-television and Telecommunications Commission (CRTC) in 1998 which made it compulsory for all Canadian cable operators to carry the TVA network. The decision was taken out of a desire to improve service to Canada's francophone community and as a result of the existing, very high penetration of cable television. Less than 15% of Canadian households are dependent upon free-to-air terrestrial television broadcasts for their television service.

CHUM Television, though nominated under this analysis as a national commercial television network, currently only operates as a regional network of eight local television stations across Canada. In April 2004, CHUM Limited entered into an agreement to purchase Craig Media which owns another three local television stations. This acquisition which is currently awaiting approval by the CRTC, will provide CHUM with an audience reach via terrestrial television broadcasts approaching that of a national television network.

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<sup>i</sup> Information Sources for country population, televisions, households, public and commercial television networks as at July 2003:

1. TV Radio World ([www.tvradioworld.com](http://www.tvradioworld.com))
2. NationMaster ([www.nationmaster.com](http://www.nationmaster.com))
3. World Screen News ([www.worldscreennews.com](http://www.worldscreennews.com))
4. European Journalism Centre ([www.ejc.nl](http://www.ejc.nl))
5. European Audio Visual Observatory, Persky – Directory of Television Channels in Europe ([www.obs.coe.it](http://www.obs.coe.it))
6. Cinema, TV and Radio in the EU, Statistics on audiovisual services, 2003 Edition, The Office for Official Publications of the European Community
7. Television Bureau of Advertising ([www.tvb.org](http://www.tvb.org))
8. Television Bureau of Canada ([www.tvb.ca](http://www.tvb.ca))

<sup>ii</sup> Sources for RTL Group and SBS Broadcasting Television Networks:

1. RTL Group – Major Television Markets ([www.rtlgroup.com](http://www.rtlgroup.com))
2. SBS Broadcasting Corporate Profile, TV Stations ([www.sbsbroadcasting.com](http://www.sbsbroadcasting.com))