



44 Avenue Road
Mosman NSW
Australia 2088

T : 61 2 8968 7100
F : 61 2 9969 3520
W : freetvaust.com.au

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Attention: Ms Roberta Bausch
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Email: rbausch@pc.gov.au

Review of National Competition Policy Reforms, Discussion Draft, October 2004

Free TV Australia is the industry association of free-to-air commercial television stations licensed to broadcast in Australia under the *Broadcasting Services Act 1992* (**BSA**). All 48 metropolitan and regional free-to-air commercial stations are members of Free TV. Free TV is the successor to the Federation of Australian Commercial Television Stations (**FACTS**) and Commercial Television Australia (**CTVA**).

Free TV Australia appreciates the opportunity to respond to the Review of National Competition Policy Reforms, Discussion Draft, October 2004 (the "**Discussion Paper**"). Our comments focus on the following issues addressed in Section 8 – Further Infrastructure Reform and Legislative Review – Communications:

Restrictions on the number of commercial free-to-air television stations
Restrictions on datacasting

Individual members of Free TV Australia may also make submissions on other matters.

1. Restrictions on the number of commercial free-to-air stations

The Commission has put forward a draft proposal that, "unless the reviews currently in progress provide a good case to the contrary, the Australian Government should amend its broadcasting policy to remove the restrictions on the number of commercial free-to-air TV stations".

Free TV is strongly opposed to the removal of restrictions on the number of commercial free-to-air television stations. We do not believe issue of new licences would be in the public interest. We have set out our views publicly in our recent response to the Department of Communications, Information Technology & the Arts Discussion Paper on the Review of the Provision of Commercial Television Broadcasting Services after 31 December 2006 ("New Licences submission").

In that submission we have argued that:

- The question of whether new commercial television licences should be allocated is an important question of public policy and as such any decision concerning the allocation of a new licence should rest with the 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 a new licence would impose heavy social and cultural costs on the Australian public and few, if any, benefits.
- Australia has one of the most comprehensive and competitive free-to-air broadcasting systems in the world. 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 would damage the existing Australian Free TV sector by fragmenting advertising revenue and audience share and driving up prices for premium content. This would 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 already 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.

2. Restrictions on datacasting

We refer to the Commission's draft proposal that, unless the reviews currently in progress provide a good case to the contrary, the Australian Government should amend its broadcasting policy to remove the restrictions on datacasting.

The existing datacasting rules were the result of lengthy consideration and are the only service parameters that have been generally agreed to separate broadcasting from other uses of the spectrum. As a result, any relaxation of the datacasting rules will by definition allow broadcasting in some form or other. Therefore, this proposal can only be considered if the current review determines that additional commercial broadcasting licences are in the public interest. As discussed above, Free TV strongly rejects that new licences are in the public interest.

Free TV (then FACTS) made a Submission in Response to the Department of Communications, Information Technology and the Arts Issues Paper on 25 January 2002 (Review of the Operation of Schedule 6 of the Broadcasting Services Act 1992 (Datacasting Services)).

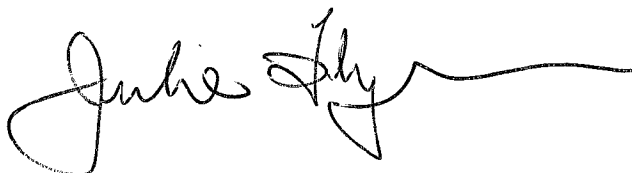
The Government responded to the review in December 2002 stating that there would be no change to the datacasting rules as "no other option for defining the content which

datacasters can provide was likely to result in greater opportunities to develop a viable business case without, in effect, breaching the moratorium on provision of new television broadcasting services before 31 December 2006" (Speech by Senator Alston to "New Broadcasting and Datacasting Symposium" 14 June 2000).

As we have argued in our New Licences submission, the issue of permanent datacasting licences that could be converted at a future point to another type of broadcasting licence should be subject to the same level of Government and Parliamentary scrutiny as the issue of a new commercial broadcasting licence. If this is not the case, it will create a backdoor mechanism by which the Governments policy objectives can be undermined.

We enclose for the Commission's reference copies of both submissions.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Julie Flynn', with a long horizontal flourish extending to the right.

JULIE FLYNN
Chief Executive Officer