Submission by
Free TV Australia Limited

Senate Environment and Communications Legislation Committee

Public inquiry into the *Broadcasting Services Amendment (Anti-siphoning) Bill 2012*

4 April 2012

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EXECUTIVE SUMMARY

- Under the Bill the prohibition on pay TV buying an event is lifted if a free-to-air broadcaster has purchased a highlights package of the event. This reverses the current law in this area and could result in less rather than more free-to-air coverage of listed events.
    - The provision should be amended so that pay TV can only acquire rights to an event on the anti-siphoning list if a free-to-air broadcaster has purchased rights to a 'substantial portion' of the event.
- The Bill gives the Minister power to set certain conditions for Tier B Category B quota group events. This is designed to make sure the best games of the AFL and NRL are seen on free-to-air television. However the draft *Broadcasting Services (Category B quota groups) Determination*, concerning the AFL, does not achieve this objective.
- There is a new requirement that broadcasters must offer any listed sport they are unable to show to other free-to-air broadcasters for $1 (and later, to pay TV). This provision is very problematic because it does not reflect the complex and commercial nature of deals for sports rights and consequently does not present a realistic alternative for broadcasters who are unable to show rights.
    - The Bill should be amended so that a free-to-air broadcaster fulfils their obligations if they arrange for the event to be broadcast on another free-to-air service (regardless of the terms).
- The Bill will change arrangements to the timing of automatic removal of events from the anti-siphoning list, and gives the Minister power to make further changes to those time frames in certain circumstances. These changes should not be made. The de-listing period should remain at 12 weeks, to better reflect industry practice and protect against gaming.
- The Bill does not prevent program suppliers for pay TV acquiring the rights to events on the anti-siphoning list. This loophole could allow pay TV channels to circumvent the anti-siphoning rules which apply only to pay TV licensees. The Bill should be amended to bring program suppliers within the ambit of these provisions.
- The Bill contains a number of restrictions on broadcasters screening listed events on digital multi-channels. While recognising the aim of these provisions prior to digital switchover, the Bill should be amended so that they fall away after switchover is completed. There is also no good public policy reason to prevent broadcasters from televising a listed event on a multichannel where that event has already been broadcast on the primary channel of another free-to-air broadcaster.
- The prohibition on content service providers acquiring rights to events on the anti-siphoning list needs to be strengthened to ensure that:
    - events outside Australia are covered, and
    - a content service provider cannot acquire rights to a listed event and make it available on a very short 'near live' delay.
- There are a number of administrative requirements in the Bill that unnecessarily increase the regulatory burden on broadcasters and the agencies administering the legislation. At the same time, the Bill does not place sufficient obligations on pay TV and content service providers so that the ACMA can measure their compliance with the scheme.

- Given that these provisions are unlikely to come into effect until late 2012, a review into the scheme only 12 months later is unnecessary and would not allow for any substantial period of operation of the scheme. The review should therefore be postponed until 2016.

1 Introduction

This submission is made by Free TV Australia (Free TV) which is the peak industry body representing all commercial free-to-air broadcasters in Australia. In 2011, commercial free-to-air television was the most popular source of entertainment and information for Australians.

Free TV welcomes the opportunity to comment on the *Broadcasting Services Amendment (Anti-siphoning) Bill 2012* (the Bill). The anti-siphoning scheme ensures that all Australians continue to have access to sporting events of national significance for free.

Free TV is supportive of changes in the Bill that will allow viewers access to more sport on free-to-air television, in particular the provisions that allow some listed sports to be shown on free-to-air digital channels.

The Bill continues to provide a level of protection to ensure that Australians can see major sporting events for free, but it contains a number of significant concessions to pay TV and sports rights holders. There are some issues in relation to these concessions that have the potential to undermine the scheme, and which we wish to bring to the Committee's attention. There are also a number of aspects of the Bill which are not practical, commercial, or efficient.

Annexure A to this submission is a table which sets out recommended changes to the Bill. Free TV is happy to provide further detail on any of these issues if required by the Committee.

2 The anti-siphoning list and why it matters

The anti-siphoning list is a list of sporting events that are significant to Australians. The scheme is a set of laws around the list that prevents pay TV from purchasing the exclusive broadcast rights to those important sporting events.

The list operates in the public interest to ensure that nationally significant sporting events are available to all Australians for free. These events play an important role in Australia's cultural and social life.

The anti-siphoning scheme was established in 1994 to ensure that, with the introduction of pay TV, Australians could continue to have access to major sporting events on free-to-air television and that these events did not migrate exclusively to pay TV.

These underlying principles remain sound.

70% of Australians cannot afford or choose not to pay to watch sport on television.[1] The anti-siphoning list ensures all Australians are able to watch key sporting events, not just the small proportion who choose to pay up to $132 a month for subscription television.

The popularity of sport on television has not diminished, reaffirming the continued importance of the scheme to Australian viewers. In 2011, 3.76 million Australians saw the

[1] OzTAM metro estimates. Pay TV is a national figure: http://www.thinktv.com.au/content_common/pg-tv-households.seo

third match of the NRL State of Origin series, 3.62 million saw the Melbourne Cup and 3.43 million watched the AFL Grand Final.[2]

In 2009/10 Australians demonstrated their support for the anti-siphoning scheme through Free TV's *Keep Sport Free* campaign, with over 127,000 people signing the online petition to keep sport free.

The public interest in free access to sport continues to far outweigh the claimed impact of the scheme on pay TV.

Free TV supports the Bill, which re-affirms the continued value of the scheme in the digital age by allowing some listed sports to be shown on digital multi-channels. It also addresses the fact that the emergence of IPTV and other online subscription based services create the same potential for siphoning of major sporting events as the introduction of pay TV in 1994.

3 Debunking the myths of anti-siphoning

The pay TV industry continues to misrepresent the anti-siphoning scheme in an effort to force Australian families to pay to watch major sporting events. Contrary to pay TV's claims:

- the list has delivered a range of major sporting events to all Australians for free;
- pay TV operators have been able to grow a profitable business;
- rights holders have seen significant growth in the value of their rights; and
- free-to-air broadcasters do not hoard rights.

Free to air broadcasters show the events they acquire and anything else is available to pay TV.[3]

Since the scheme was reviewed in 2004, the list now comprises only those sports that are consistently broadcast by free to air networks and that are genuinely events of national importance.

There are 10 sports on the current list plus the Olympic and Commonwealth Games, all of which have demonstrated national importance and cultural significance and for which there has been strong audience interest and demand. Every sport on the list features strong participation by Australian teams or athletes. Some sports are especially notable for their high levels of participation by female athletes, such as tennis and netball.

As Free TV has argued in previous submissions on this issue, the suggestion that the list covers "hundreds" of events is a distortion caused by the multi-round nature of events such as the Australian Open tennis and Wimbledon (half of which are not available to be broadcast by anyone). The 10 sports on the current and proposed list (plus the Olympics and Commonwealth Games) are important sporting events for Australians, who should be able to view them for free.

The ongoing strong financial performance of Foxtel and Premier Media Group (Fox Sports) underlines the fact that the anti-siphoning rules, while preserving a core Australian value, have not prevented the pay TV industry from developing profitable businesses.

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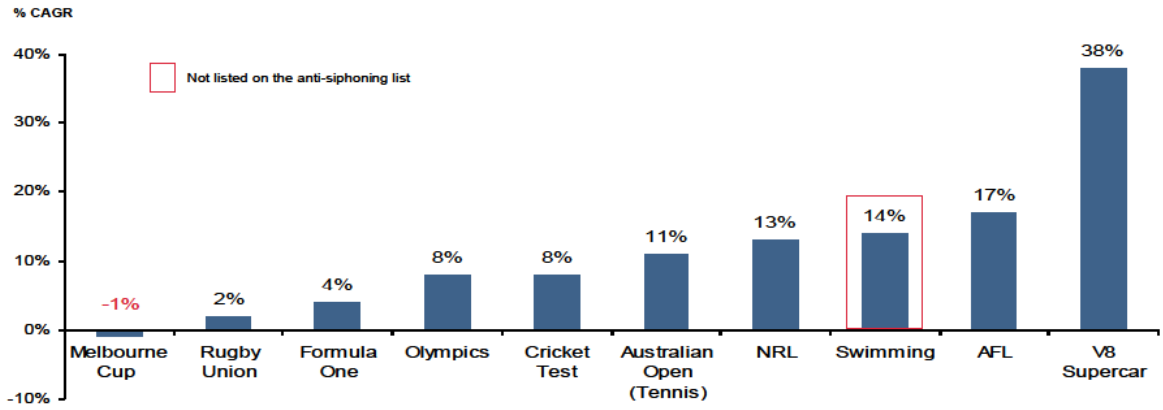
2 OzTAM and RegionalTAM, 5 cap cities and east coast mainland, consolidated data, Free TV only, metro and regional audiences are add to form a combined average audience estimate and ranking, based on program title matches.

[3] Analysis of the ACMA monitoring of the anti-siphoning scheme (last full year 2007) found that FTA broadcasters show 86% of the events to which they hold exclusive rights. This figure rises to 96% when multi-round simultaneous tennis events (such as Wimbledon) are excluded.

For the financial year ending June 2011, Foxtel had a 15.5% growth in earnings and total revenues of $2.14 billion.[4] For the same period, Premier Media Group (Fox Sports) had total revenues of $475.1 million, with each revenue stream improving on the prior period.[5]

There is also no evidence that the anti-siphoning list has disadvantaged sports rights holders. The highly competitive Australian free-to-air market structure has meant that there has been significant growth of broadcasting rights fees since the introduction of the anti-siphoning scheme in 1994.



Note: Olympics 2002-2012, Melbourne Cup 2001-2012, AFL 2001-2011, Cricket 2001-2012, Formula One 2001-2015, Rugby Union 2001-2010, Australian Open 2001-2013, Swimming 2009-2015, NRL 2003-2012, V8 Supercar 2001-2012

Source; FTA and infoplease.com

The value of these rights continues to increase. The AFL has recently signed a record breaking deal worth over $1 billion for the next 5 years[6] and the NRL is expecting a similar boost to its rights which are currently being re-negotiated.[7]

Finally, the myth that free-to-air broadcasters "hoard events" has been demonstrated to be untrue. From 2006 to 2008 the media regulator, the ACMA, monitored and reported on the usage of listed sports by free-to-air broadcasters. There were no instances of hoarding reported.

4 Key issues of concern

Free TV wishes to draw the Committee's attention to a number of issues raised by the Bill which impact the effectiveness of the scheme, and others which are administratively impractical and/or inefficient.

4.1 Highlights packages should not be "part of an event"

The use of the words "whole or part" in section 145ZN(1)(a) and (b) mean that if a free-to-air broadcaster purchases a highlights package of a listed event ("part of an event"), then a pay TV channel can acquire the rights to televise the whole event.[8] Consequently, free-to-air

[4] Source: Consolidated Media Holdings *Annual Report 2011*, p 5 – see also: http://www.foxtel.com.au/about-foxtel/communications/foxtel-announces-solid-growth-despite-difficult-consumer-env-140568.htm
[5] Source: Consolidated Media Holdings Limited *Annual Report 2011*, p 10-11
[6] See: http://www.afl.com.au/news/newsarticle/tabid/208/newsid/112560/default.aspx
[7] See: http://www.foxsports.com.au/league/newly-formed-arl-commission-sets-sights-on-landing-a-big-money-television-deal-for-nrl-rights-in-2012/story-e6frf3ou-1226267798496
[8] Highlights obtained for a news program are not included.

viewers will miss out on seeing the vast majority of the event. Similar wording appears in sections 145ZN(2) and (3), and in 145ZO (in relation to acquisition by content service providers).

For example, if a free-to-air network obtained the rights to a highlights package of the Bathurst 1000 race in the V8 Supercar Championships, then the operation of section 145ZN(1)(b) would allow Fox Sports to acquire the rights to televise the entire Bathurst 1000 before the expiry of the de-listing period.

Under the current rules, a pay TV broadcaster cannot obtain rights to televise a listed event that had only received limited highlights coverage on free-to-air. This is in line with the policy objectives of the anti-siphoning scheme, which are to ensure maximum coverage of significant sporting events on free-to-air channels.

Members of the public expect the anti-siphoning scheme to deliver more than just a highlights package of a nationally significant event. This view is supported by previous judicial consideration which concluded that highlights packages represent a substantially different viewer proposition to the event as a whole.

In *Nine Network Australia Pty Ltd v Australian Broadcasting Authority, Foxtel Cable Television* [1997] FCA 104 (25 February 1997), Lockhart J stated:

> *The right to televise highlights of a cricket match is not substantially the same as the right to broadcast the match itself, so it could not be said that the rights acquired by Seven to televise the highlights of the various matches are sufficient to prevent breach of condition 10(1)(e) by Foxtel Cable.*

The matter was appealed to the Full Court: *Foxtel Cable Television Pty Ltd v Nine Network Australia Pty Ltd & Australian Broadcasting Authority* [1997] FCA 185 (26 March 1997)

In a unanimous judgement dismissing the appeal, the Full Court said:

> *...it cannot be said that a right limited to the broadcast of one-hour of highlights of each day of an event is a right to televise the event. A summary of a work is not the work itself. This approach is consistent with the terms of s 115(2).*

International experience clearly demonstrates that major sporting events move to pay TV once regulatory protections are removed or relaxed.

In 1998, Test Match cricket in England was moved to the "B list" of the UK anti-siphoning scheme (which requires only a highlights package on free-to-air television). Despite assurances from the rights holder that a substantial amount of live cricket would still be available on free-to-air television[9], the last Test match to be screened live on free-to-air television in England was the Ashes in 2005. From 2006 to the present, pay TV has successfully outbid the free-to-air networks for coverage rights to the English Test Cricket. This has resulted in very limited coverage of these events (1 hour delayed highlights packages) for people without pay TV and a "furious response from cricket fans".[10]

Recently, Sky Sports in the United Kingdom signed a new deal for exclusive rights to all England's home Test, one-day and T20 matches, to the end of 2017.[11] Only highlights will be available on free-to-air TV.

The experience in the UK serves as a powerful example of the detrimental effects of allowing a highlights package to qualify as coverage of a significant sporting event. Any relaxation of the regulatory protections will inevitably result in the migration of sport to pay TV and a significant overall reduction in Australians seeing these events.

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[9] See: http://www.telegraph.co.uk/sport/cricket/2369021/No-going-back-on-Sky-deal-says-Caborn.html
[10] See: http://www.guardian.co.uk/media/2004/dec/15/bskyb.channel4?INTCMP=SRCH
[11] See: http://www.guardian.co.uk/media/2012/jan/31/sky-sports-england-cricket-deal

Limited highlights coverage of a listed event on free-to-air should not remove the prohibition on pay TV acquiring rights to that listed event. If enacted in its current form, section 145ZN may result in less rather than more free-to-air coverage of listed events, as seen in the UK.

This can be remedied by amending the relevant provision so that the prohibition on acquisition of rights to the event applies, unless a national or commercial free-to-air television broadcaster has acquired "a substantial proportion" of the event. The amendment should replace "in whole or part" in sections 145ZN(1)(a) and (b) with the words "a substantial proportion". The wording "a substantial proportion" will also encompass the whole of the event. A similar approach should be taken in sections 145ZN(2) and (3), and 145ZO (in relation to content service providers).

4.2 Mechanism to ensure that quality Tier B games are available for free-to-air broadcast

The Bill introduces a new mechanism which effectively splits the rights for certain events on the anti-siphoning list (designated as *Tier B*, *Category B quota group* events). This is designed to deal with multi-round interstate competitions of the AFL Premiership and the NRL Premiership.

In the Bill, the Minister is given powers to specify particular characteristics of events which should be available free to the Australian public. This means that the games with specified characteristics must be shown on free-to-air, while the others come off the list and may be purchased by pay TV.

Developing a quality mechanism to ensure that the best games/events are not siphoned to pay TV has been a matter of great concern to Free TV broadcasters.

In announcing changes to the anti-siphoning list on 25 November 2010, the Minister stated:

> *The Government will put in place mechanisms to protect the quality of the matches on free to air television. As is the case now, the AFL will continue to determine which games are broadcast on free to air.* ***However the Government will put in place a mechanism to protect the quality of games on free to air television, ensure that Friday and Saturday night games remain blockbuster games in the round.*** *And blockbusters, like Anzac Day and Queens Birthday games will remain on free to air*

At the same press conference, responding to a question, the Minister also said:

> *We've got commitments from the AFL that the Friday night game is the best game, the Saturday night game is the second best game.*

For *Tier B Category B quota groups* to work effectively, it is important that the quota group games be of a sufficient standard. Section 145G(2) of the Bill permits the Minister to specify "associated set conditions" in a Determination, which provides scope for ensuring that quality games are captured.

We note that the current draft *Broadcasting Services (Category B quota groups) Determination* in relation to the AFL does not stipulate anything other than one Friday night and one Saturday night game (along with protections for local broadcast of games involving Perth and Adelaide teams, and ANZAC Day and Queen's Birthday games in Victoria). This does not ensure that blockbuster games will continue to be scheduled and available on FTA television on these nights. Consequently we anticipate that some changes will need to be made to the *Broadcasting Services (Category B quota groups) Determination* to protect the quality of AFL games offered to free-to-air broadcasters in the next contract negotiations with the AFL.

We have not seen a Determination concerning the NRL but similar considerations would clearly apply.

4.3 Offers to transfer rights for $1

There is a new requirement that broadcasters must offer any listed sporting event they are unable to show for $1 to other free-to-air broadcasters (and later, to pay TV).

These "must offer" provisions do not recognise the complex nature of contracts for sports rights. Free TV is concerned that the $1 "must offer" provisions are unworkable for these reasons:

- the broadcaster is not the owner of the rights and therefore does not have an unfettered right to deal with the rights in any manner of its choosing.
- the broadcaster is subject at all times to the requirements of upstream licensors and the scope of the licence granted to the broadcaster by the principal licensor to whom the broadcaster is contractually bound.
- the principal licensor of the rights may not permit an assignment of the kind proposed by the Bill.
- as a practical matter, the party acquiring the rights would be required to provide a range of contractual promises, not just agree to pay $1.00. This is not accommodated by the terms of the Bill.
- various ancillary obligations associated with delivery of the content would need to be transferred to the acquiring party but fall outside the terms of "an offer to transfer rights" under section 145K.
- the provisions require all rights negotiations and scheduling decisions to have been concluded 120 days before the event. This does not reflect industry practice where deals can happen only weeks before the event and scheduling decisions can be made in the days leading up to broadcast.

Overall, the provisions do not reflect commercial and industry practice and are overly prescriptive. As such, they do not provide for a process that could actually be followed in practice, meaning that this is not a real and possible alternative for broadcasters. We submit that the alternative provided in the Bill should be realistic and viable.

The objective of this provision is to create an incentive for free-to-air broadcasters to show the sporting events that they purchase the rights to, or in the alternative, that they are broadcast on another free-to-air television network.

This would be better achieved if section 145H(3) simply provided that a free-to-air broadcaster would not be in breach of its coverage obligations where it arranged for another free-to-air broadcaster to televise the event.[12] The provision does not need to lay out the terms of supply because failure by a broadcaster to transfer coverage rights would lead to a breach of its licence condition. This can result in a range of sanctions including a substantial penalty of up to $220,000.

The threat of these sanctions is sufficient incentive for broadcasters to comply with the anti-hoarding provisions, and it still achieves the public policy goal of ensuring that events on the anti-siphoning list are shown on free-to-air television.

[12] Amendments to 145J and the omission of sections 145K, 145L and 145M are also required to achieve this outcome.

4.4 Automatic de-listing period

Under the scheme, an event is removed from the anti-siphoning list if the rights have not been acquired by a free-to-air broadcaster within 12 weeks of the event's commencement.

This automatic delisting period is fundamental to the scheme because it frames commercial negotiations between rights holders and broadcasters. The current 12 week period remains appropriate and reflects the fact that rights negotiations, in practice, often continue until close to the commencement of an event. Despite this, the Bill increases the automatic delisting period to 26 weeks.

Free TV is very concerned that after this change:

- free-to-air broadcasters will not be able to conclude all rights negotiations within the extended timeframe proposed. Negotiations often continue until only weeks or even days before events occur; and
- automatic delisting at such an early stage will result in the anti-siphoning list being circumvented through the use of delaying tactics.

The Bill also includes a new provision enabling the Minister to specify an alternative delisting period for an event of up to 52 weeks. Our members strongly oppose the provision that enables this extension. As evidenced by the recent AFL negotiations, rights deals are frequently concluded within 52 weeks of the next season. There is no demonstrated need for this additional power.

4.5 Pay TV program supplier loophole

The Bill states that pay TV providers are prohibited from acquiring exclusive rights to sporting events on the anti-siphoning list. However, this prohibition does not apply to program suppliers of pay TV broadcasters. This loophole means that a program supplier for pay TV broadcasting licensees (including a related body corporate of a pay TV broadcasting licensee) can purchase any and all rights to an event on the list, thus preventing it from being shown on free-to-air television.

This matter was raised by Free TV as part of the review of the anti-siphoning scheme in 2009, and has been raised in a number of other reviews since 2001.

It is vital to the effective operation of the scheme that the Bill be amended so that program suppliers of pay TV broadcasting licensees are subject to the prohibition on acquisition of rights for events on the anti-siphoning list.

This can be achieved by inserting the words "or the program supplier of a subscription television broadcasting licensee (as defined in section 145C)" after the words "subscription television broadcasting licensee" in section 145ZN(1). Similar changes should be made to sections 145ZN(2) and (3).

4.6 Multi-channel restrictions

There are a number of restrictions in the Bill on broadcasters screening events on the anti-siphoning list on their multi-channels. These provisions are designed to ensure that Tier A events can be seen by as many Australians as possible, including those who have not yet converted to digital television (and live in areas where analogue switch off has not occurred).

However, the completion of digital switchover will make requirements to broadcast Tier A events on the primary channel unnecessary, as 100% of people will have access to all digital channels. This is a matter which can and should be dealt with in the current legislation.

Free TV requests that the Bill be amended so that the requirement to premiere Tier A events on the primary channel expires on 31 December 2013. This can be achieved by omitting sections 145X and 145Y, and making amendments to sections 145Z and145ZA.

The Bill also prohibits free-to-air broadcasters from televising Tier A anti-siphoning events on their SDTV or HDTV multi-channels unless that licensee has previously televised the event on their *own* core or primary service (ie if it has previously screened on Network A's primary channel it cannot be later broadcast on Network B's digital channel). There is no rationale for this limitation.

For instance, two free-to-air broadcasters may share the rights to an event on the anti-siphoning list. If one broadcaster shows the event live on their primary channel, the other should be allowed to show the same match at a later time on their digital multi-channel.

Free TV submits that the multi-channel restrictions should also be lifted where the event has been previously televised on any other free-to-air broadcaster's primary channel.

4.7 Rights acquired by content service providers

There are two primary issues of concern in the Bill which relate to rights acquired by content service providers.

The first issue concerns the wording of the provision which prohibits content service providers from acquiring live rights to events on the anti-siphoning list.

This prohibition is defined so that events streamed with only a very short delay will fall outside the prohibition. This could lead to effective circumvention of the restrictions expressed in section 145ZO.

In order to make section 145ZO effective, we request the provision be amended so that "live" is defined to provide a more appropriate window (for example, within 4 hours of the event's commencement).

The second issue relates to events on the anti-siphoning list which occur outside Australia.

Increasingly, carriage service providers are looking to promote take-up of broadband access by packaging such services with access to premium content services. Therefore, just as subscription broadcasters have historically sought to drive take-up of subscriptions by including premium content (including premium sports rights) in subscription packages, carriage/content service providers are increasingly looking to drive take-up of bundled offerings in a similar way meaning that incentives to acquire premium sports rights will increase.

Many anti-siphoning events occur outside Australia, including a number of significant Tier A events. However, the prohibition on content service providers acquiring live rights to listed events in the Bill only covers events taking place in Australia. This limitation undermines the effectiveness of the prohibition. There is no reason that this prohibition should be restricted to cover only events taking place in Australia. There are a number of means by which a jurisdictional connection with Australia could be established without limiting the events only to those held in Australia.

It is also the case that streamed online content is most effectively streamed to mobile from within Australia. This means that even if an event occurs outside Australia, it is probably being streamed to Australian viewers by a content service provider operating in Australia

(making enforcement against such content service providers straightforward).

This prohibition should apply to all events on the anti-siphoning list (whether or not they take place in Australia) and this qualification should therefore be removed.

4.8 Reporting & notification requirements for free-to-air broadcasters

Given the current focus on "reduced, better targeted regulation"[13], the new reporting and notification requirements on FTAs should operate so that the additional regulatory burden on broadcasters is kept to a minimum. Under the current wording, free-to-air broadcasters must notify the ACMA of the acquisition, cessation or alteration of rights to events on the anti-siphoning list within 10 business days.

This unreasonably short time period set out in the new sections 115B and 145ZQ will lead to inadvertent breaches, unnecessary investigations, possible regulatory action by the ACMA and the imposition of fines on broadcasters.

Thirty business days is a more appropriate timeframe to require ACMA notification. This better reflects existing commercial practices, whilst still enabling the ACMA to effectively monitor compliance. The public policy objective in requiring these short reporting times is not clear.

A further area where reporting requirements are not efficient relates to reporting of the cessation of rights. The current wording of the Bill prevents a broadcaster from notifying the cessation of rights at the same time the rights are acquired, even though the cessation date is usually known at the time of acquisition because these rights are negotiated for a specific period.

There is no demonstrated rationale for having to separately advise cessation of rights (particularly when this must be done within a short window of 10 days after the cessation, rather than when the end date is first known). This is highly likely to result in unintentional breaches by broadcasters.

The Bill should therefore be amended to remove this requirement. The double notification provisions are just unnecessary red tape and unfairly expose broadcasters to the risk that they will breach licence conditions for no public policy gain. The consequences for broadcasters if they do not comply with these requirements are substantial.

If this provision is not removed, it should be amended so that at the very least, the initial notification of the acquisition of rights can also serve as notification of the cessation date.

4.9 Absence of notification requirements for pay TV and content service providers

A previous exposure draft of the Bill required pay TV licensees and content service providers to notify the ACMA of their rights acquisitions and cessations. These provisions have been removed from the version of the Bill that was introduced to Parliament.

There is good reason to require pay TV licensees to notify of rights held for events on the anti-siphoning list. Without a requirement to notify, the ACMA will not be able to effectively measure compliance with the prohibition provisions and monitor the effective operation of the anti-siphoning scheme. Notification requirements for pay TV broadcasters and content service providers should be reinstated to the Bill.

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[13] See *Convergence Review Interim Report*, p V: http://www.dbcde.gov.au/__data/assets/pdf_file/0007/143836/Convergence-Review-Interim-Report-web.pdf

4.10 Timing of review

The Bill states that a review of the anti-siphoning provisions, including whether they should be repealed, must be conducted before the end of 2014.

Given that these provisions are unlikely to come into effect until late 2012, the review should be pushed back to allow for a substantial period of operation of the scheme. As it stands, the legislation will be in operation for approximately 12 months before the next review commences. We note that we have been in an almost constant state of review of this legislation since 2006 which creates a considerable amount of commercial uncertainty. The review should therefore be postponed until 2016 in order to allow the scheme a chance to operate effectively and consistently and to give all players some period of certainty.