

PRODUCTIVITY COMMISSION RADIOCOMMUNICATIONS INQUIRY

SUBMISSION FROM 2KY BROADCASTERS PTY LIMITED

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EXECUTIVE SUMMARY

2KY Broadcasters Pty Limited ('2KY') is controlled by TAB Limited.

2KY owns or is authorised to use 130 apparatus licences in New South Wales.

2KY uses this network to broadcast racing radio to rural and regional New South Wales.

2KY is content with the status quo in the manner in which apparatus licences are issued and would welcome legislation which provided that apparatus licences could be renewed indefinitely.

2KY has been at the forefront of the commercial radio industry in pushing for the digitisation of radio. 2KY is currently co-operating with the peak body of commercial radio broadcasters, FARB, in technical trials of digital broadcasting equipment. 2KY does not want valuable spectrum which could be used for digital broadcasting to be lost by allocation to other purposes. This would not be in the interests of the radio broadcasters or the Australian community.

2KY management would welcome the opportunity to speak to the submission.

INTRODUCTION TO 2KY AND ITS SERVICES

Background

Effective from April 2001, TAB Limited ('TAB') acquired control of 2KY Broadcasters Pty Limited ('2KY'), through a subsidiary company, Sky Channel Pty Limited.

2KY holds and uses a licence to operate a commercial radio service in the Sydney metropolitan area, with call sign 2KY.

2KY holds and uses 99 operation licences in New South Wales, following its recent acquisition of the licences held by NSW Race Narrowcasts Pty Limited.

2KY is also authorised to use 29 apparatus licences under section 114 of the Radiocommunications Act.

2KY is Australia's largest narrowcaster measured by a number of services, number of persons reached and area covered.

2KY broadcasts the same programs on its commercial radio service, and its narrowcasting network.

The content of these services is comprised of:

1. racing radio (as it is defined later in this submission); and
2. programs not dedicated to racing.

TAB's products and access

TAB is a publicly listed, Australian-based provider of entertainment services specialising in wagering and gaming.

TAB conducts a broad range of wagering services under its RaceTAB and SportsTAB banners.

Through RaceTAB, customers are offered on-course and off-course totalisator wagering services in New South Wales on a comprehensive program of thoroughbred, harness and greyhound racing events.

SportsTAB has offered fixed odds sports wagering since 1998 and now covers 24 domestic and international sports.

TAB also offers totalisator betting on National Rugby League fixtures through a product known as FootyTAB.

TAB's products are available to customers in rural and regional Australia. Access to totalisator wagering has traditionally been through retail outlets in New South Wales and telephone betting. TAB's retail outlets are comprised of agencies, sub-agencies, PubTABs and ClubTABs. Since 1992, a product known as BetStream has allowed large volume bets to be made from a customer's personal computer linked to the TAB and since 1997, access to wagering products has been available through an internet product, NetTAB.

TAB's website makes the content of 2KY commercial broadcasting service available live on the worldwide web.

TAB's subsidiary Sky Channel Pty Limited, is a satellite telecaster with a weekly viewing audience of 2 million in Australia.

Racing Radio

2KY has broadcast race descriptions and related information since the 1970's.

In 1992, the predecessor to TAB, the Totalisator Agency Board of New South Wales, contracted 2KY to broadcast race descriptions and related information.

2KY did not seek a limited licence under the *Broadcasting (Limited Licences) Regulations* to permit it to broadcast racing radio.

Following the introduction of the BSA, the Totalisator Agency Board of New South Wales contracted 2KY to develop a narrowcasting network for the delivery of racing radio to rural and regional New South Wales.

From that time, 2KY through Narrowcasts acquired the licences which comprises its narrowcasting network.

Racing radio is currently broadcast on 2KY's broadcasting and narrowcasting network for more than 90% of the time between the hours of 7am and 11pm, 7 days per week.

Racing radio is a highly structured format. Typically, a racing radio program relates to racing events taking place on the same day as the program. The format is built around providing information in relation to those events, which directly promotes betting. The information includes:

- expert analysis of upcoming races;
- interviews with riders, trainers, bookmakers and owners about upcoming races;
- reports on track conditions;
- fields;
- scratchings information;
- riding changes;
- weights information;
- likely dividends;
- expert tips;
- live race descriptions and replays;
- race results information; and
- official dividends.

Racing radio also includes stories of human interest or general appeal.

It is likely that 2KY will increase the hours of racing radio on its network, as TAB extends betting services to racing in New Zealand, the United States, Asia and Europe.

2KY believes that within 2 to 5 years, it will broadcast racing radio 24 hours a day, every day of the year, except Good Friday and Christmas Day. 2KY would do this in order to support TAB's commercial activities. TAB intends to extend racing for two reasons:

1. to extend the hours during which its betting services are available; and
2. more importantly, through the extension of places at which it provides these services, it can through the regulatory authorities in those places limit the locations from which

‘pirate’ operators provide betting services in competition with TAB (it is worth noting that the ‘pirates’ do not contribute to the race clubs upon which betting services are provided in the same way that TAB is required to do).

Technological advances which permit the co-mingling of betting pools in various countries will assist in this process.

Implications

2KY’s commercial objective is to support TAB’s commercial activities by maintaining and developing its extensive broadcasting and narrowcasting network in order to continue to broadcast racing radio throughout most of New South Wales up to 24 hours per day, 7 days per week.

OVERVIEW OF 2KY'S SUBMISSION

2KY wishes to provide comments on the issues of importance to it.

2KY is generally satisfied with the manner in which apparatus licences are issued.

None of 2KY's apparatus licences have expired yet. In March 2002, 2KY's first apparatus licence will expire. 2KY has been informed by the ACA that this licence will be renewed under a ministerial direction.

2KY will respond to selected issues raised by the *Issues Paper*, using the headings and questions in the *Issues Paper* for convenience.

THE APPROACH TO ALLOCATING SPECTRUM LICENCES UNDER THE RADIOCOMMUNICATIONS ACT

Licence Types

What are the advantages and disadvantages of the three types of licence?

2KY supports the creation of apparatus licences because they are a relatively low cost way of obtaining access to the spectrum to enable it to broadcast racing radio through rural and regional New South Wales.

What are the characteristics or situations to which each type of licence is most suited?

2KY believes that apparatus licences are particularly useful in rural and regional areas.

CHARGING FOR USE OF THE SPECTRUM

Apparatus Licences

Is it appropriate to charge the three components for apparatus licences sold at auction?

This depends upon the amount of the three charges. 2KY understand that the amount of the charges is under review by the ACA and that the charges may increase to reflect the extended tenure of licences. 2KY is concerned to ensure that these charges are not increased to a level which adversely affects the economic viability of its narrowcasting services.

Should the SAT be set to maximise revenue or encourage efficient use of the spectrum? Why?

2KY does not know how licence fees could be set to encourage efficient use of the spectrum or whether the SAT achieves that objective.

Should holders of apparatus licences be able to appeal against increases in the SAT? Why?

Yes.

The Auction Process

Given these objectives, when should auctions (rather than tenders or predetermined prices) be used to sell spectrum or apparatus licences? How much of the spectrum should be allocated using auctions? Why?

2KY believes that auctions are the fairest way to allocate apparatus licences because auctions provide a fair opportunity to all aspirant broadcasters to acquire a licence based on competition principles.

Any spectrum on the broadcasting services band, which is to be allocated to an apparatus licence, should be subject to an auction for that reason.

To what extent are auctions effective at promoting efficient use of the spectrum?

2KY contends that 'efficient use of the spectrum' is a value laden term. 2KY is not able to give that phrase any objective or measurable meaning.

2KY is content with the auction process.

Do auction processes ensure the spectrum is allocated to the uses that are of the highest value to society?

Again, 'highest value to society' is a value laden term.

2KY contends that racing radio is of value, particularly in rural and regional New South Wales. The House of Representatives Communications Committee report following the withdrawal of ABC racing services support this view. The ABA is keen to find a place for racing radio in the BSA framework, through the exercise of its powers under section 19 of that act.

2KY is not able to give any meaning to the 'highest value to society'.

Should entry to the auction process be restricted in order to influence the shape of the industry that uses spectrum?

No (except that the spectrum allocated to broadcasting should be protected for broadcasting and not sold for other purposes).

What are the advantages and disadvantages of setting a reserve price?

2KY believes that the reserve price deters aspirant broadcasters who are under capitalised or lacking experience from attending auctions and for that reason supports the setting of modest reserves for apparatus licences.

LICENCE TENURE AND BAND CLEARANCE

Licence Tenure

What factors influence the appropriate duration of licences?

There is a significant difference between the establishment of AM and FM services. Typically, an FM service can be co-located on an existing FM transmitter site and there is usually more than one site available to an aspirant broadcaster for this purpose. By contrast, AM transmitters are generally not suitable for co-location and it is difficult to find sites suitable for AM broadcasting because AM transmitters are usually located within wetlands in order to appropriately earth the transmitter, and often wetlands are ecologically sensitive and not suitable for development. Also, where an FM transmitter is co-located, the cost of establishing the transmitter is relatively low. By contrast, because AM transmitters are generally not capable of being co-located, the cost of establishing a transmitter is very high. The cost of establishing an AM transmitter is made more problematic by the limited future of AM broadcasting. Presumably, an aspirant broadcaster will take these matters into account before bidding for an apparatus licence at an auction. They are certainly matters relevant to the appropriate duration of a licence.

What would be the likely consequence of extending apparatus licences?

This would make apparatus licences more valuable and provide greater certainty to broadcasters using apparatus licences, which would enable them to invest more in their services and therefore provide a better service.

Should there be more scope for extending licences? If so, for how long?

2KY would like to be able to renew its apparatus licences each time the term on those licences expires, that is, apparatus licences should be allocated on an indefinite basis.

What would be the advantages and disadvantages of allocating licences on an indefinite basis? Would a 'use it or lose it' condition be desirable?

It would be desirable to allocate licences on an indefinite basis because it would provide greater certainty and would enable licence holders to invest in their licences, which should provide

better quality of service. It will also enable holders of licences to trade their licences on the secondary market.

2KY supports a 'use it or lose it' condition, subject to the qualification that the ACA must have authority to extend the time for the commencement of broadcasting to take into account difficulties, such as obtaining appropriate site access.

SECONDARY TRADING OF LICENCES

Are there factors constraining the development of secondary markets?

Not to 2KY's knowledge. It has been able to sell apparatus licences when required.

If the duration of apparatus licences is increased, is a secondary market for these licences likely to develop?

2KY contends that the secondary market for these licences is likely to be improved by an extension of the duration of these licences.

NON COMMERCIAL USE OF THE SPECTRUM

How should 'adequate' provision of spectrum for public or community services be determined?

2KY believes that in the planning process, more care needs to be taken in relation to the quality of the selection of aspirant community service broadcasters and in the number of licences which are allocated for that purpose. 2KY is concerned that too much spectrum in the Sydney metropolitan area has been allocated to unmeritorious aspirant broadcasters at the cost of commercial interests, particularly narrowcasters.

BROADCASTING

What are the advantages and disadvantages of the approach recommended by the Commission in its Broadcasting Report? That is, to transfer all spectrum planning and licensing responsibilities to the ACA?

2KY is content with the current arrangements in place in relation to the planning and licensing responsibilities of the broadcasting services band. Giving the ABA responsibility for these issues reflects the special nature and importance of broadcasting and for that reason 2KY supports the status quo. Also 2KY believes the ABA has developed expertise in planning and licensing which may be lost in the transfer of these responsibilities to the ACA. Therefore, 2KY identifies as a disadvantage any change which will adversely affect the operation of the current system.

LOOKING TO THE FUTURE

How is technological change likely to affect the future management of radio frequency spectrum?

The major issue before the radio industry is the migration of digital radio. 2KY has been at the absolute forefront of the commercial radio industry in pushing for digitisation of radio. This has been recognised by the General Manager of the ABA, Giles Tanner, in evidence given to the House of Representatives Communications Committee.

2KY is currently co-operating with the peak body of commercial radio broadcasters, FARB, in technical trials of digital broadcasting equipment. 2KY does not want valuable spectrum which could be used for digital broadcasting to be lost by allocation to other purposes. This would not be in the interests of the radio broadcasters or the Australian community.

2KY BROADCASTERS PTY LIMITED

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