

GLOBAL



TELEVISION
PTY LIMITED

Sub no - 0481
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SUBMISSION TO THE

PRODUCTIVITY COMMISSION

IN ITS INQUIRY INTO IMPROVING
COMPETITION, EFFICIENCY AND CONSUMERS'
INTERESTS IN BROADCASTING SERVICES

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1. Introduction

[1] This Submission responds to a question raised on page 20 - *Program Standards*, in section 2.4 – **Australia’s current broadcasting regulation** - of the Broadcasting Inquiry’s Issues Paper.

[2] The question is:

To what extent do the national broadcasters (the ABC and SBS) provide services that are competitive with, rather than complementary to, other media sectors?

[3] This submission focuses on where the Australian Broadcasting Corporation (ABC) is enjoying a competitive advantage by virtue of its public ownership when it competes with private television production businesses.

[4] In doing so, it breaches the principle of competitive neutrality which requires that government business activities do not have net competitive advantages over their private sector competitors by virtue of their public ownership.

2. Who are the Proponents of this Submission

[5] The proponents of this submission, Global Television Pty Limited and Captain Video Services Pty Limited (the Proponents), are providers of television production services to the broadcasting industry.

[6] As individual companies in the industry they each offer film and television producers a comprehensive range of facilities and services at the forefront of available technology to enable the production of films and television programs. Their production facilities service all broadcasting needs including live and recorded productions, studio and outside broadcasts. Services range from pre-establishment through to post production.

[7] Their clients are a wide cross-section of organisations including local and international television networks and production companies, sporting bodies, corporate clients and commercial producers.

3. Competitive Neutrality

[8] As you would be aware, the principle of Competitive Neutrality (CN) was established in 1996 as part of the Commonwealth Government’s Competition Principles Agreement (CPA). CN requires that government business activities do not have net competitive advantages over their private sector competitors as a result of their public ownership¹, and the application of CN is designed to help ensure that public expenditure is effected as efficiently as possible.

¹ Commonwealth Government Competitive Neutrality Policy Statement, June 1996.

4. How Current Practice is uncompetitive

[9] The core business of the Proponents is to rent out their production facilities to support film and television producers and, where required, to provide expert technical assistance in film and television production.

[10] The core business of the ABC, as defined in its Charter², is to *broadcast programs of information and entertainment* In practice, while broadcasting is a principal ABC function, a subsidiary function is the commercial renting out of ABC production facilities to external film and television producers.

[11] As the ABC is a designated Commonwealth business, the CPA requires competitive neutrality arrangements to be explicitly applied to it.³

[12] This submission asserts that in renting out its production studios and facilities to a range of companies and broadcasters on a commercial basis, the ABC has a competitive advantage relative to the Proponents by virtue of its government ownership, and in this respect is not complying with the competitive neutrality arrangements applying to it.

[13] Not only does the ABC have a competitive advantage in ways which will shortly be outlined, the practice in itself:

- is not within its Charter;
- does not relate to ABC productions;
- operates to justify the existence of an asset for non commercial reasons (public accountability and financial subsidy); and
- creates a false industry cost base.

[14] The unfair advantage is accrued through the lower cost base of the ABC compared with its private sector counterparts in operating its production facilities. In a price sensitive marketplace, these lower costs are passed on to clients and used in competitive bidding situations to the disadvantage of the Proponents.

[15] Lower costs are experienced in:

[16] **a. The ABC's ability to use assets and resources of the larger non-commercial organisation**

[17] The ability of the ABC's production facilities to either explicitly or implicitly use assets and resources controlled by the larger non-commercial organisation benefits the cost base and pricing levels of its production facilities. As a result, the full cost of facilities and labour is not being reflected in the ABC's quotes in bidding situations and the ABC is able to quote lower prices for its services and win consequent business.

² As set out in the Charter of the Corporation (s.6(1) and (2) of the *Australian Broadcasting Corporation Act 1983*.

³ As stipulated in the Commonwealth Government's Competitive Neutrality Policy Statement, et al, page 30.

[18] This is particularly so in the case of labour costs, which represent approximately 40 per cent of the total service costs, and facility costs, which represents approximately 60 per cent of the total service costs.

[19] The ABC is able to quote the cost of labour at a flat rate well below freelance market rates even though the real cost, including normal shift and penalty payments and other on-costs, may be much more. (See Appendix 1 which shows a quote comparison for the program, *Battle of the Sexes*, between the ABC and one of the Proponents where the ABC's labour costs are estimated as being at a flat rate of \$35 per hour per crew member regardless of statutory award rate, extra penalty and shift payments and other on-costs, and the Proponent's labour costs are stated at varying rates per hour per crew member (all above \$35) reflecting real-term statutory award rates, penalty and shift payments, and on-costs). As a result, as you will observe, the ABC's overall labour cost for a four day period was \$6,362 less than the Proponent's quote, the latter reflecting the real marketplace labour costs. The ABC is able to offer a lower labour quote because its real costs are subsidised from savings accruing elsewhere in the organisation by virtue of its public ownership.

b. The lower purchase price of equipment

[20] Television production equipment is very expensive, however is necessary for industry players to continue to purchase in order to keep up with changing technology and remain competitive. Small production companies will spend an average of \$1 million per year for new and replacement equipment. Larger production companies may outlay up to \$5 - 10 million per year.

[21] The ABC purchases proportionate quantities of television production equipment however as it does not pay sales tax on these purchases, the cost of equipment is 22 per cent less to the ABC than it is to private industry.

[22] The Proponents are further disadvantaged in that, while they need to factor the depreciation from equipment back into their production facility rental charges, the ABC does not need to do this, which further supports its ability to offer lower quotes to the marketplace.

[23] With the onset of digital technology, the implication of this practice for future competition is huge. Digital technology allows for wide screen format and high definition television. If the ABC is to upgrade to this technology, its existing production facilities will need total replacement and the expenditure of enormous amounts of public money on digital, wide screen and high definition television technology.

[24] This would serve to greatly exacerbate the already uncompetitive situation outlined here.

[25] Examples of where ABC is unfairly competing with private sector

[26] Over the years, the Proponents have competed with the ABC on many projects where the ABC's unfair competitive advantage enabled it to win projects over the Proponents. Some more recent examples of outside broadcast projects are listed below.

Canberra

- [27] In February 1998, ABC won the right from four tenderers to use its production facilities to assist in covering the nine day outside broadcast of the Constitutional Convention in Canberra. The Proponents are advised the ABC's quote was approximately half that quoted by the other tenderers.

Sydney

- [28] During 1997 and 1998, ABC won the right to use its production facilities to assist SBS produce several Erickson Cup soccer matches on the basis of a cheaper quote. The Proponent's quote was initially \$9,000, then \$7,750. The ABC's quote was approximately \$7,000.
- [29] In November 1998, ABC won the right to use its production facilities to assist SBS produce the AFI Awards on the basis of an initial equivalent quote with the Proponent, however because SBS had previously used the ABC to produce the AFI Awards based on a cheaper quote, the ABC again won the bid.
- [30] In February 1999, ABC won the right to use its production facilities to assist TV New Zealand (TVNZ) in the production of a series of unilateral⁴ Australian NRL football matches on the basis of a cheaper quote. The ABC's quote was known to have been considerably lower than the Proponent's quote. (This example is one Proponent's quote to this job. The other Proponent's quote for the same job is listed in the 2nd dot point under *Melbourne*, below).

Melbourne

- [31] In about April 1999, ABC won the right to use its production facilities to assist Optus Vision in the production of an Australian National Rugby League (NRL) football match on the basis of a cheaper quote. The Proponent's quote was initially \$22,000, then \$19,000. Optus Vision gave the Proponent the option to reduce its quote however the Proponent declined because it could not commercially justify providing the service for less than \$19,000. The ABC's quote was \$15,000.

⁴ 'Unilateral' means where a host country broadcaster – in this case New Zealand – provides its own overlay on the televising of another country's broadcast.

- [32] In February 1999, ABC won the right to use its production facilities to assist TV New Zealand (TVNZ) in the production of 15 unilateral Australian NRL football matches on the basis of a cheaper quote. The Proponent's lowest commercially feasible quote was \$221,360. The ABC's quote was known to have been considerably lower.
- [33] For the 1998 Australian Football (AFL) football season, ABC won the right to use its production facilities to assist Foxtel in the production of the weekly *Pig, Jimmy & Rooboy* football program on the basis of a cheaper quote. The Proponent's lowest commercially feasible quote was \$3,250 per show. The ABC's quote was known to have been considerably lower.
- [34] For the 1996 Australian Football (AFL) football season, ABC won the right to use its production facilities to produce a weekly football panel show in the Daimaru Shopping Centre on the basis of a cheaper quote. The Proponent's lowest commercially possible quote was \$8,200 per show *excluding* lighting, staging, pre-production and generators. The ABC's quote was \$10,000 per show *including* everything.

[35] The Proponents understand that ABC Melbourne is currently looking for excess studio production space because its Ripponlea studios are being used to capacity.

[36] The following quote from a *Business Review Weekly* article on 8 March 1999⁵ about in-studio ABC projects not only supports these observations but succinctly demonstrates the core message this submission seeks to communicate. That is, that the ABC is exploiting the advantage of public studios, staging, facilities, materials and resources to undertake an activity which is not within its charter at the expense of genuine, hard-fought commercially mandated initiatives.

[37] The article observes that recently in one Sydney ABC studio Channel Nine was shooting *Hi Five*, Optus was shooting *The Cricket Show* and Channel Seven was shooting *ATVI*; in another studio Channel Ten was shooting *Home Shopping*; in another studio the Hal McElroy team was shooting *Dog's Head Bay*; and in a Melbourne ABC studio Channel Seven was shooting *Full Frontal*. The article went on to say that, "What all that means is the ABC's general production is virtually at a standstill. The ABC is sitting on its backside because its studios have been rented out to commercial stations."

[38] To attempt to overcome the problems associated with this unfair competitive practice, the Proponents have been forced to negotiate other arrangements in the marketplace, such as:

- [39] matching the ABC's price at uncompetitive rates in bids in order to win ongoing work. This occurred for one Proponent on many occasions in 1998 in its efforts to win production of the Rugby League on behalf of Sportvision.
- [40] entering into "exclusive supply" contracts with clients; and

⁵ Adele Ferguson in *ABC Sale finds some Sponsors*, *Business Review Weekly*, March 8 1999.

- [41] disregarding projects where direct competition with the ABC was likely to ensue, and focusing on longer term contracts in other fields.

[42] So that, while in reality the unfair competitive practice has increased in recent years, Proponents' examples have reduced relative to those of former years as, finding no recourse from the practice, they have been forced to seek alternative business.

5. Recommendations

[43] As per clause 3 of the Competition Principles Agreement, the Proponents recommend that more effective competition be introduced between the ABC and private film and television production businesses so that the competitive advantage currently accruing to the ABC in this area be neutralised and the ABC be exposed to the same types of costs and commercial disciplines faced by the Proponents. As CN principles already apply to the ABC, the Proponents recommend that more effective arrangements than those currently applying be put in place.

[44] Specifically, the ABC should:

a. Price its services to reflect 'full cost attribution'⁶

[45] The ABC should price its materials and services in a manner that reflects full cost attribution with regard to the following:

- cost of capital, including a rate of return on equity and the cost of debt;
- depreciation on plant and equipment and similar non-current assets;
- wage and labour on-costs;
- cost of materials;
- attributable share of common costs;
- state and Commonwealth tax liabilities;
- debt guarantee fee (where relevant); and
- regulatory cost associated with any regulation that would apply to the ABC if it were not an exempt Crown body.

b. Be subject to Taxation Neutrality

[46] The CPA requires that where the ABC undertakes significant business activities as part of a broader range of functions, it should pay all applicable taxes or tax equivalents and debt guarantee charges.

[47] The Proponents request that this Inquiry review the sales tax exempt status of the ABC and recommend to the Government that tax exemptions be either removed, or taxation equivalent regimes (TERs) be established.

⁶ The CPA specifies that prices for goods and services supplied by significant government businesses should reflect 'full cost attribution'. 'Full cost attribution' being prices that at least cover costs (including a return on capital invested and all relevant taxes and charges).

c. Divests its production facilities

[48] As already discussed in this submission, the Proponents contend that there is spare capacity in the ABC's production asset and that this asset is being put to non-commercial use in an unfairly competitive manner. The Proponents do not believe there is sufficient justification in the long term retention of this asset by the ABC, and recommend it is sold to avoid the future capital costs associated with it, the future uneconomical use of taxpayers' money, and the future inefficient use of the asset.

[49] In this regard, the Proponents agree with the recommendations of the Mansfield Report⁷ which included that:

- [50] The ABC's Charter should be revised to reflect a core business focus on domestic free-to-air broadcasting and to make specific provision for news, current affairs and information; 'localism'; exposure of Australian cultural expression; and programming for children and youth;
- [51] The ABC should move to outsource the majority of non-news and current affairs television production over the next three years; etc.

[52] Although Australia is one of the last countries to embrace the overseas trend toward outsourcing of non-core business, increasingly Australia's free-to-air television networks have been divesting their non-core production infrastructure through outsourcing and focusing on their core business of broadcasting. This trend has both produced industry efficiencies beneficial to the media industry as a whole and stimulated independent production companies, such as those of the Proponents.

[53] The Proponents further believe that as industry infrastructure becomes more expensive, particularly with the worldwide introduction of digital broadcasting, high utilisation will be required to support these investments and it will become increasingly cost efficient for broadcasters to outsource these services rather than carry the substantial investment themselves.

[54] The ABC to date has resisted the prospect of outsourcing its television production facilities and the Proponents believe this will serve to maintain inefficient practices and inefficient use of taxpayers' money.

[55] This submission urges the Productivity Commission to support media industry activity that encourages forward thinking and appropriate structures into the 21st century.

⁷ In 1996 a review of the role and functions of the ABC was commissioned by the Minister for Communications and the Arts, Senator Richard Alston, and conducted by Bob Mansfield.

6. Further Information

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Battle of the Sexes – Becker Entertainment

Cost Comparison
Global Television v ABC TV

APPENDIX 1
 (3 pages)

Submission to Productivity Commission by Global
 Television P/L and Captain Video Services P/L.

Facilities

- Studio includes lighting
- Control Room
- Cameras x 4
- BVW 75 VTR x 2
- Green Room
- Dressing Rooms
- Make-up

Global Rate card per day \$ 4,480

Global	5 days including 1 day dark hire	\$ 18,470	[24 hours]
ABC TV	5 days including 1 day dark hire	\$ 19,520	[10 hours]

<u>Crew</u>	<u>GTV</u>	<u>ABC</u>
Floor Manager	\$ 39	\$ 35
Make-up x 2	\$ 49	\$ 35
Wardrobe x 1	\$ 49	\$ 35
Staging Assistant	\$ 40	\$ 35
Technical Manager	\$ 55	\$ 35
Lighting Director	\$ 55	\$ 35
Lighting Assistant	\$ 40	\$ 35
Camera Operators x 4	\$ 45	\$ 35
Vision Mixer	\$ 45	\$ 35
Vision Control	\$ 45	\$ 35
Videotape Operator	\$ 45	\$ 35
Audio Director	\$ 55	\$ 35
Audio Assistant	\$ 45	\$ 35
Hours per day x 8	\$ 6,328	\$ 4,760

Additional Hours x 2 – Day 1

Technical Manager	\$ 110	\$ 70
Lighting Director	\$ 110	\$ 70
Lighting Assistant	\$ 80	\$ 70

Global	4 days including additional hours	\$ 25,612
ABC TV	4 days including additional hours	\$ 19,250