

**AFL
Australian Football
League**

**Submission to the Productivity
Commission - Inquiry into
Broadcasting**

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THE AUSTRALIAN FOOTBALL LEAGUE

1. The Australian Football League (“AFL”) is a company limited by guarantee. Its members are persons appointed by each Club competing in the Australian football competition conducted by the AFL.

The Clubs competing in the AFL competition do so under Licence from the AFL and are regulated by a series of Rules and Regulations promulgated by the AFL from time to time.

The AFL Rules and Regulations include a provision which vests the right to deal in broadcasting of AFL matches and events, exclusively in the AFL.

2. The Role of the AFL

The Australian Football League has grown out of domestic State leagues with more than 100 years of history.

As we enter the 21st Century, Australian football is a clear leader among sports in Australia. Importantly, it is Australia's only indigenous game.

The AFL's charter is:

- To manage the national Australian football competition.
- To act as stewards to the game and ensure the future welfare of Australian football.
- To maximise the economic and social benefits of Australian football to Clubs, players, the football fraternity, and the community at large.

The AFL's path to pre-eminence among Australian sporting competitions requires success on four fronts:

- To have the most successful national competition.
- To ensure high levels of player participation from grassroots football upwards.
- To ensure high levels of public interest and support.
- To attract and develop talented athletes and sports administrators.

The objectives of the AFL are not all strictly business or even strictly sporting. Australian football is a national pastime and a passionate component of the lives and lifestyles of a large number of Australians. Part of the charter of the AFL is to maximise the social benefits of Australian football and accordingly foster good citizenship both on and off the playing field.

3. The Socio-Economic Impact of Australian Football

Australian football is one of the major sports in Australia and is among the largest individual business sectors within the sports and recreation industry. A study by Street Ryan and Associates Pty Ltd. conducted for the AFL in January 1999, into the socioeconomic impact of Australian football found that Australian football had a major socioeconomic impact on the Australian community. Particulars of those findings are relevant to illustrate the size, extent and impact of Australian football.

Participation and patronage rates are extraordinarily high across Australia:

- Australian football had 448,410 players in 1998, 252,275 male Club players, 107,857 school players, 67,803 AFL Auskick players (primary school age), and 20,457 players in girls/women's, 9-a-side and veterans' football.

- Country Victoria, South Australia and Western Australia continue as heartlands of Australian football. In these areas the rate of player participation is much higher than the average level of participation. Together they contribute 37% of registered football players but only make up 12% of Australia's resident population.
- Australian football is supported by 6316,000 non-playing members. 54% of these members live in Victoria and 66% are members of AFL Clubs.
- Approximately 13.9 million spectator attendances were recorded at Australian football matches in 1998. Of the total attendances, 50.4% were recorded at AFL matches.

Australian football is a major Australian employer:

- Approximately 45,000 Australian football volunteers contributed almost 5.7 million working hours in 1998, worth the equivalent of \$69.2 million in labour effort.
- Australian football peak bodies, leagues, associations and clubs employed over 5000 people in 1998 (excluding players, umpires, coaches and trainers).

24% full time.

25% part time.

51 % casual.

- Remuneration paid to players, coaches, trainers and umpires at all levels of Australian football accounted for the equivalent of a further 3840 full time jobs.

The total financial contribution of all levels of Australian football to the Australian economy in 1998 was estimated to be \$1.708 billion. The State and Territory contributions in 1998 were:

Victoria	\$866,460,000.
South Australia	\$292,958,000.
Western Australia	\$241,647,000.
New South Wales/A.C.T.	\$ 94,863,000.
Queensland	\$ 77,317,000.
Tasmania	\$ 46,625,000.
Northern Territory	\$ 18,924,000.

4. AFL Finances

Total revenue for the AFL in 1999 was approximately \$100 million with major income sources being broadcast rights, corporate sponsorship, Ansett Australia Cup gate receipts and sponsorship, AFL Record, licensing, AFL membership and the Coca-Cola AFL finals series.

After meeting operational costs, the AFL allocated its operating surplus as follows:

- Distributions to AFL Clubs which have more than 450,000 registered members and in many more supporters.
- Grants for grass roots football development.
- Ground improvements - to assist the upgrade of various stadia at which AFL matches are played.

In 1999:

- Distributions to AFL Clubs will total \$42 million or on average, \$2.625 million per Club.

- The AFL invested approximately \$13 million in development programs for grass roots football.
- The AFL invested approximately \$820,000 in ground development primarily via support for interest payments and in December 2000, is due to pay \$30 million as its contribution to the development of Colonial Stadium in Melbourne.

Of the AFL's revenue, approximately one third is generated from the sale of broadcast rights. The ability of the AFL, therefore, to maximise:

- distributions to AFL Clubs;
- grants for grass roots football development programs; and
- support for facility development

is directly related to the AFL's ability to maximise broadcast revenue from traditional and new sources.

5. Game Development

In 1999, the AFL invested approximately \$13 million in national game development programs. Such a large investment has been possible by grants from the AFL's operating surplus and sponsorships for specific programs.

These development programs range from AFL Auskick at primary school level through various levels of community football to the AFL national under 18 championships and ultimately the AFL draft where players are selected to play in the AFL competition.

In addition, another \$4.3 million was distributed by the AFL on behalf of its Clubs via the various State and Territory football bodies based on the number of players drafted by AFL Clubs from each State and Territory. This totals more than \$17 million annually in funding from the AFL and its 16 Clubs, invested in grass roots football.

The AFL receives \$450,000 in Federal Government funding via the Australian Sports Commission. Of this amount, \$250,000 is directed towards the AFL Australian Institute of Sport Under 16 academy program which is matched dollar for dollar by the AFL.

The balance of \$200,000 supports the AFL Auskick program for participation in primary schools, coaching, and umpiring development and education and the AFL draft camp which this year was held at the Australian Institute of Sport in Canberra.

Principally through the development of broadcast rights and corporate sponsorships, the AFL has become largely self-sufficient without relying to any significant extent on the public purse.

6. Stadia Development

The AFL and its Clubs have played a major role in the development of major sports stadia throughout Australia which are utilized not only for AFL football matches but also a variety of other sports and forms of entertainment.

The AFL's role in stadia development has involved financial support combined with the scheduling of AFL matches which in turn generate crowds and a variety of revenue streams including catering, corporate box receipts, gate receipts, reserved seat premiums and various supplier rights, all of which significantly help service the large capital expenditure required to construct world class venues and facilities.

These specific projects include:

- The \$150 million Great Southern Stand project at the MCG which opened in 1992.
- A \$125 million upgrade of the Gabba in Brisbane.

- A \$40 million upgrade of Subiaco Oval in Perth.
- A \$20 million upgrade of Football Park in Adelaide.
- The \$625 million Stadium Australia in Sydney. The AFL has agreed to contribute \$6 million towards the cost of converting the stadium to allow AFL matches to be played at Stadium Australia. In addition, the AFL has agreed to play 11I games at Stadium Australia each year for 15 years from 2001.
- The \$460 million Colonial Stadium in Melbourne.
- A facilities upgrade at the Sydney Cricket Ground; and
- Further re-development of the MCG in preparation for the 2006 Commonwealth Games - currently under discussion.

Excluding the further development of the MCG, these projects represent an investment of more than \$1.4 billion in stadia infrastructure in mainland capital cities for facilities not just enjoyed by AFL supporters but other sports and popular forms of entertainment.

7. The AFL in the Community

The AFL plays an important role in the community, in areas other than just the playing and development of Australian football.

- Since 1995, more than 1000 young men and women have received training and employment through the AFL Sportsready traineeship program.

The scheme was developed to offer young people training and career opportunities in sport related industries. With financial assistance from the Federal and State Governments, the program operates in every State in Australia.

The AFL supports the scheme via a \$1 group training levy on finals tickets sold each year and provides subsidies to AFL Clubs whose players participate in the program.

- The AFL is in the fourth year of a partnership with RioTinto to fund specific development programs for Aboriginal communities in the Northern Territory, northern Queensland and northern Western Australia.

The AFL's annual budget for the program is \$550,000 and is designed to offer positive life skills to young People in remote Aboriginal communities via Australian football along with the opportunity of a career path into the AFL competition.

- In 1995, the AFL was the first sporting body in Australia to adopt effective procedures to deal with racial and religious vilification.

The program now involves each AFL Club including players, coaching staff and administrators participating in an annual education program. This program has also been supported by a public education campaign.

In 1997, the AFL won the Victorian section of the Australian Reconciliation Awards in the business and industry section for the steps taken to address the issue of racism in sport. In 1995, the AFL received a special peace award from the United States Association for various initiatives to address racism in sport.

- The AFL supports a range of charities primarily through various fund raising activities at AFL matches, including the Peter MacCallum Cancer Institute, the Royal Children's Hospital, Daffodil Day, the Salvation Army, the RSL and the Australian Olympic Committee.
- In conjunction with the Gaelic Athletic Association, the AFL has developed an International Rules series between Australia and Ireland. The key objectives of the International Rules series are to promote Australia overseas and give elite

athletes the opportunity to represent their country, a chance they would not otherwise have because of the indigenous nature of Australian football.

- All AFL Clubs also support charities and other worthy causes in their local communities. Several AFL Clubs run Care for Kids programs which involve players acting as teachers' aids in classrooms and role models for students.

8. Why Broadcasting Revenue is Important

Broadcasting rights revenue is the largest single source of funding for the AFL. The ability to grow this revenue source by improving the ability to deal in existing rights and developing new rights, will in turn allow the AFL to:

- Maintain and increase its distributions to AFL Clubs which have high levels of community support and interaction.
- Increase investment in game development programs in all States and Territories.
- Maintain relatively low admission prices for attendees at AFL matches.
- Continue and increase support for important community relations programs.

- Continue to invest in facility development where appropriate and for the wider community benefit.
- Continue to operate without significant reliance on Government funding.

9. How Broadcasting Revenue is Protected and Improved

AFL broadcasting rights revenue is derived principally from the sale of Free-to-Air ("FTA-) television rights, Pay television ("Pay TV") rights, Radio rights and Internet web-site rights.

The largest component of revenue is from the sale of FTA rights.

What follows in this submission is an examination of the anti-siphoning provisions which it is submitted, are misconceived and have operated other than as intended with the effect that they have delivered an unfair advantage to FTA broadcasters at the expense of Pay TV broadcasters. As the AFI, nears the end of its current broadcasting contract for both FTA and Pay TV rights, it needs to ensure strong competition between both forms of television broadcasting in order to maximise the value of those rights and the revenue

which the AFL can derive for the benefit of the programs and responsibilities undertaken by the AFL.

In addition to the amendments to the anti-siphoning provisions, the AFL, has identified datacasting as a potential new source of revenue which if allowed in the form urged by this submission, will create strong competition in the market for transmission rights to AFL matches and events and importantly, will provide a new revenue stream which is critical to meeting the exponential growth in expenses and the financial commitment required to fund the various activities of the AFL referred to in this submission.

ANTI-SIPHONING

1. The nature and effect of the anti-siphoning provisions contained in the Broadcasting Services Act 1992 (“BSA”) are adequately summarised in the submission to the Commission by the Australian Subscription Television and Radio Association (“ASTRA”) and section 9.6 of the Commission's Draft Report.
2. An examination of the history of the introduction of the anti-siphoning provisions and the subsequent attempt to ameliorate certain unintended effects, reveals that the principal regulatory consideration is what is best in the public interest.

It was the need to protect the interest of the public in continuing to have wide and free access to major sporting events, including the key components of the AFL competition, that spawned the anti-siphoning provisions of the BSA prior to the introduction of Pay TV.

Section 4(2) of the BSA requires the Australian Broadcasting Authority to regulate broadcasting services in a manner that enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on providers of broadcasting services.

It is no longer possible to justify the anti-siphoning provisions on the basis that Pay TV has insufficient penetration throughout Australia. The extent of Pay TV penetration is referred to in ASTRA's submission to the Commission and those figures were updated in a similar submission made by, ASTRA to the Sport 2000 Task Force, where it revealed that in less than 4 years, the penetration rate in Australia for subscription television is about 16% or over 1 million homes with a viewing potential of more than 3.4 million Australians.

3. Not only is the original public interest consideration considerably less relevant in determining regulatory policy for broadcasting, other considerations which prompted the introduction of the anti-siphoning provisions are at least open to serious question.

It can reasonably be inferred that it was assumed by the regulators that the FTA broadcasters would actually broadcast the listed events and that unchecked, there would be a migration of sport such as AFL to Pay TV.

The folly of the first assumption is evident from experience and the need to subsequently introduce the anti-hoarding amendments to the BSA.

In its draft Report, the Commission has referred to the fact that the anti-siphoning provisions have not actively encouraged FTA broadcasters to exercise the rights they have

acquired and ASTRA in its submission to the Commission, has quantified the problem. pointing out the FTA networks are covering less than 33% of events captured on the list live, and only, approximately 40% of the total events at all. The current regime has allowed the FTA broadcasters to "cherry pick" and still retain control over the whole orchard. That is as much a criticism of the regime as the conduct of the FTA broadcasters as there is simply not enough programming space, in some cases at least, to accommodate higher sporting content.

Initial concern that sporting events such as AFL matches would migrate from FTA television to Pay TV is contrary to the United States experience where there has been no such migration. Details of the Report for Congress prepared by the US Federal Communications Commission in 1994, is included in ASTRA's submission to the Commission.

The anticipated migration argument traditionally, distinguishes between the US experience and that in the United Kingdom where the sale of subscription television rights in relation to Premier League Soccer, to B Sky B was significant in changing viewing habits by successfully driving new Pay TV subscriptions. The commercial effect of the sale of those rights to Pay TV was that subscriptions increased to a point where it could no longer be said that a substantial proportion of the general public was being denied access to Premier League Soccer. Migration is only a problem if there is not a corresponding

increase in subscriptions and, not only is there no evidence of that, in Australia, the fact is that the experience, financial strength and wide availability of FTA television combined with the mass market strategies of major sports such as the AFL, is sufficient to ensure that the key components of the AFL competition will remain on FTA television.

4. In addition to the need to take account of changing circumstances and the fundamental misconceptions which underlie the anti-siphoning provisions, it is a fact that the provisions simply have not operated as was intended.

In its submission to the Commission, ASTRA has detailed how the anti-siphoning provisions have operated to effectively appoint the FTA broadcasters as sports brokers with a statutory monopoly and how cumbersome the de-listing procedure has proven to be.

As has been noted by the Commission in its draft Report, the anti-hoarding provisions have far from eliminated the problem of hoarding by virtue of the fact that the ABC or SBS are not compelled to take up an offer of live broadcasting rights where the initial rights holder for whatever reason, is unable or unwilling to provide a live broadcast. Why would the ABC or SBS agree to "babysit" commercial FTA network viewers through higher ratings periods?

5. In its submission to the Commission, ASTRA pointed out that the current anti-siphoning provisions have in fact produced the result that there is less sport broadcast on Australian television than would be the case if those provisions did not exist.

It is critical to the maintenance and development of its broadcast revenue stream, that the AFL has the ability to increase the amount of television coverage of AFL matches.

Many AFL matches are scheduled concurrently, with the result that live coverage is denied in the case of a match or matches other than the one chosen by the FTA broadcaster.

Rights fees for the broadcast of AFL matches and events is constrained to some extent by the other programming commitments of an FTA broadcaster. The value of FTA broadcast rights for AFL matches and events is enhanced by exclusivity in the market for FTA broadcast services but the result is that some AFL matches and events are not broadcast at times when a Pay TV operator would be able to do so. The AFL could reasonably expect to derive additional revenue from the sale of rights to more matches on both FTA television and Pay TV if the current anti-siphoning provisions were abolished.

Naming rights sponsors for the various components of the AFL competition obtain most exposure through the broadcast of AFL matches and the identification of the

the competition, either as a component of the name eg. Coca Cola AFL Premiership Season, by the display of fence and grass signs at the venue where AFL matches are played or by virtual signage digitally inserted into a broadcast. There is all enormous disparity in value between a fence sign at an AFL venue which is in prime television position and one which has limited or no television exposure. Sponsorship income and the value of sponsorship to the AFL and the Clubs competition in the AFL competition is therefore directly linked to the amount of television coverage of AFL matches. The development of virtual advertising as a new source of revenue is similarly linked to the amount of televised "real time" AFL action.

The ability of the AFL to promote Australian football in the developing States of New South Wales and Queensland is heavily dependant upon the amount of television broadcasts of AFL matches in those States. Greater television coverage creates greater awareness from which participation and patronage develop.

The developing markets in New South Wales and Queensland cannot presently, consistently command prime time FTA broadcasts but those markets are sufficiently developed to absorb live Pay TV coverage. Exposure of that type would build the following for AFL in these markets and assist the AFL to develop a product which might eventually migrate to FTA television, as the market matures.

This submission has earlier referred to the commitment of the AFL to Junior development and television coverage of AFL matches is a key component of the AFL's effort to attract young Australians to play Australian football in preference to many other sporting and recreational options. The important work at that foundation level and the stimulation which existing supporters derive from television broadcasts of exciting matches or other matches in which a favoured or popular team competes, is necessary to preserve and develop attendances at AFL matches which in turn protects the extremely important revenue which AFL Clubs, venues and the AFL derive from gate receipts.

It is the mass market objective of the AFL and the imperatives which drive it, that will ensure far more effectively than the anti-siphoning provisions, that AFL football will be viewed by as many Australians as possible.

6. The AFL has consistently argued for the removal of the anti-siphoning provisions.

In 1994 the AFL submitted to the Australian Broadcasting Authority Investigation into Pay TV "Siphoning", that protection of the market for AFL football by

In its September 1999 submission to the Sport 2000 Task Force, the AFL again argued the case for removing the restraints imposed by the anti-siphoning provisions.

For the reasons set out in this submission, the AFL urges the Commission to recommend the abolition of the anti-siphoning provisions and thereby return decision making in relation to the broadcast of sports such as Australian football, to those custodians who have been entrusted to care for and develop the sporting, enterprise. Decision making should be determined by what is in the best interests of the sport and that should be unaffected by outdated, misconceived and dysfunctional legislative dictates.

7. While the case for the total abolition of the anti-siphoning provisions is compelling and is the preferred position of the AFL, the AFI, notes that in the debate to date, three identifiable models have developed for amending the current anti-siphoning provisions.

The first of those models is what might reasonably be referred to as the "reduction model".

ASTRA and its members, principally FOXTEL in its submission to the Sport 2000 Task Force, have argued that the Current problems experienced with the anti-siphoning provisions would be considerably reduced if the list of events specified for protection, was cut back to more accurately reflect what is actually shown on FTA television.

The difficulty with that submission is that it merely reduces the extent of the problem by more effectively eliminating hoarding. It does not address the inequity of denying Pay TV broadcasters access to sporting events which a sport determines ought to be broadcast on both FTA and Pay TV or even Pay, TV alone, where that is the only means of exposure as a result of FTA programming constraints, scheduling clashes or specific regional appeal.

It is the concept of a list which delivers a competitive advantage to FTA broadcasters by giving them first rights to certain events that is inequitable as opposed to the extent to which they can exercise those preferential rights.

8. The second model proposed for dealing with the problems associated with the anti-siphoning provisions appears in the Report of the Sport 2000 Task Force. It might reasonably be referred to as the “buy out model”.

The Task Force Report found that:-

"The effect of the anti-siphoning laws has been to establish a TV broadcasting oligopoly among the free-to-air TV stations. This has been granted without the free-to-air stations having any obligation to show these events. Ultimately, this

limits the earning potential of the NSOs (*National Sporting Organisations*) and holds back the quantity and quality of sports coverage on TV.”

The Task Force recognised the result of the removal of the present inequities stating:-

If anti-siphoning laws were removed at some time in the future, major Australian sports would have the potential to significantly increase their income."

What follows from that important recognition in the Task Force Report, is an extraordinary proposition that sports could "buy" their way off the anti-siphoning list by agreeing to pay to the Government a fixed percentage of the revenue derived by the sport from the sale of its television broadcasting rights. A revenue pool would be established to assist the development of a range of other sports which while it is not said, must to some extent be competitors for participants, spectators, television rights, sponsorship, merchandising, etc, of the donor organisation.

The Task Force proposal amounts to a thinly disguised tax on sports like the AFL whose funds including any incremental broadcasting revenue. are fully devoted to the fundamentally important objectives and programs set out in this submission.

No sport should be required to buy its way out of an inequitable and iniquitous regime and the Task Force proposal is not an option which the Commission should contemplate.

9. The third model arising from the debate in relation to the anti-siphoning provisions is that proposed by the Commission in its draft Report,

It' FTA broadcasters and Pay TV broadcasters prevented from negotiating contracts with the AFL that excluded the other category of broadcaster that would enable the AFL to deal with both categories equally. AFL matches and events could be shown on both FTA television and Pay TV but if for instance an FTA broadcaster, sensitive to different regional markets, chose to restrict its national broadcast to exclude in the case of the AFL, New South Wales and/or Queensland, the AFL should be able to contract for a Pay TV broadcast live into those States. The AFL should have the right to stipulate what its coverage requirements are and to supplement any limitations on broadcasts imposed by an FTA broadcaster, with a specific obligation on a Pay TV broadcaster.

Dual rights would enable the AFL to be more flexible in its scheduling of matches and to increase its television coverage by awarding rights to matches played concurrently to FTA and Pay TV respectively.

The essential feature of the model which the Commission has indicated it is inclined to recommend, is that the market should determine the allocation of television coverage and that the regulatory provisions should do nothing more than ensure that there is a level playing field for all rights bidders.

10. AFL submits that the model referred to by the Commission in its draft Report, be subject to review or amended to provide that when Pay TV penetration reaches a certain level or alternatively after a certain period of time the AFL should be free to negotiate an exclusive arrangement with a Pay TV broadcaster.

The unregulated environment in the United States works largely because of the high degree of penetration of Pay TV - approximately 70%. The value of sporting rights would be increased substantially if a sporting organisation was able to deal exclusively with a bidder which could satisfy the mass marketing objective. The inclusion of a contingent right to deal exclusively is important not only in terms of enhancing the future value of sports rights. but in the meantime, it will ensure that there is a healthy environment in which FTA broadcasters and Pay TV broadcasters can market their wares, with particular appeal to particular sports.

The ability to deal exclusively with a Pay TV broadcaster should be considered on a regional basis before sufficient national penetration. so that in certain areas or States

where there was a high concentration of Pay TV subscribers, broadcast rights to that area could be vested exclusively in a Pay TV broadcaster, so long as the area surrounding that particular region was available as well, to an FFA broadcaster.

DATACASTING

1. The AFL supports draft recommendation 6.2 in the Commissions draft Report, that:
 - "Datacasting should be defined liberally. Datacasting services should not be constrained by a regulatory distinction between datacasting and broadcasting."

2. The AFL supports but makes no discrete submissions on draft recommendation 6.2 in relation to multichannelling and interactive services by commercial and national broadcasters other than to note that enhanced programming has the potential to create greater viewer interest in television broadcasts of AFL events, particularly through the incorporation of historical and statistical information. vignettes, etc, into "real time" broadcasts of AFL matches and events.

A more interesting, enhanced format with increased viewer support would increase the value of the right to broadcast AFL matches and events and would provide a mutual benefit for the broadcaster and the AFL. New or infrequent viewers would be more attracted by enhancements which explain the game of Australian football and showcase match highlights as an adjunct to real time action.

3. The AFL notes the legislative policy on the issue of new commercial television broadcasting licenses and accepts the need to distinguish between a datacasting service and a commercial television broadcasting service.

4. The AFL has examined each of the options for distinguishing between datacasting and broadcasting, contained in the discussion paper published by the Department of Communications, Information Technology and the Arts entitled "Reviews into the Scope of Datacasting Services and Enhanced Services - Discussion of Options" ("DCITA discussion paper").

5. Greater competition in the market for the delivery of images of AFL matches and events will allow the AFL and other popular sports, opportunities to significantly increase revenue by licensing rights in various categories including traditional FTA and Pay TV broadcasts and new types of digital services.

The current market for the broadcast of AFL matches and events is confined to a limited number of FTA and Pay TV broadcasters who compete for a menu of winter sporting events. That competition is severely restricted again by operation of the anti-siphoning provisions and the unfair and unintended competitive advantage that those provisions deliver to FTA broadcasters.

While AFL football is national in the sense that the AFL competition comprises teams from five States of Australia, Rugby League remains the dominant winter team sport in New South Wales and Queensland. In dealing with its FTA rights, the AFL has pressed for greater penetration in the developing States of New South Wales and Queensland by seeking broadcasts in as near as possible to prime time in those States.

The greater audience for competitive Rugby League and Rugby Union product and the ratings demands for prime time broadcasts have made prime time AFL F-TA coverage difficult to achieve in the developing markets for AFL football. Datacasting offers a unique opportunity to overcome this strategic weakness.

6. In addition to the difficulty associated with developing markets, there is anecdotal evidence that in the past at least, FTA broadcasters have acted in accord with what is loosely and colloquially known as "keep off the grass" arrangements.

The limited competition between broadcasters which is exacerbated by the Current anti-siphoning provisions which effectively prevent Pay TV broadcasters from competing for AFL coverage, creates at least the possibility that some broadcasters may be dissuaded from bidding for certain rights, in order to protect an investment in certain other sporting rights which a competitor may otherwise bid for.

In order to ensure that sporting organisations such as the AFL can generate maximum returns from the sale of their sporting rights, it is critical that there be healthy competition between a number of bidders.

7. The AFI, urges the Commission to adopt option 3 in the DCITA discussion paper as the preferred means of distinguishing between datacasting and broadcasting.
8. While accepting that there is a need to differentiate between a television broadcast and a service provided by a datacaster, the AFL strongly believes that it is essential that datacasters have the ability to provide a service which appears “broadcastlike” in content and quality but that access should be distinguished on the basis that the datacast service be available only by subscription.

The AFL submits that the restrictions proposed under option 1 in the DCITA discussion paper. Would prevent datacasting services from achieving any reasonable degree of public appeal or commercial viability and limited to the extent proposed in option 1, the exercise would not encourage the provision of datacasting services of AF1, matches and events.

9. Similarly in the case of option 2, the degree of interaction required would alienate the “lazy interactive” or “lean back” audience. referred to in the March 1999 Report from Communications and Strategy Management Pty Ltd.

The AFL notes the further difficulties referred to in the DCITA discussion paper in relation to overseas datacasting models which be excluded under option 2 and the blurring of the concept of interactivity created by technology, particularly the existence of data carousels, as militating against the adoption of option 2.

10. Option 3 in the DCITA discussion paper distinguishes between a broadcast and a datacast on the basis of delivery via subscription services.

The content under this model can exhibit all of the attributes of an enhanced, broadcast quality presentation and the subscription requirement would not offend the legislative prohibition on new commercial FTA broadcast licenses.

The AFL currently operates a non-broadcast data service under a joint venture with Amalgamated Television Services Pty Ltd (ACN 000 145 246) and News Interactive Limited (ACN 007 871 178) on the internet under the URL:www.afl.com.au. Under that initiative, website content is not subject to any content licence requirement and it would be illogical to distinguish between the AFL's almost unfettered capacity to develop its website on the one hand and its ability to license a datacaster to provide similar services Including video on a subscription basis. on the other.

11. As noted in the DCITA discussion paper, a principal advantage of option 3 is that it would "improve the business case for datacasting" which would in turn create an opportunity for the AFL, to derive significant revenue from the licensing, of these new rights.

In order to preserve that opportunity, the AFT submits that there should be no restrictions on content for the purposes of distinguishing between a datacasting service and a broadcast. For instance, there should be no limitations on the proportion of video or moving images in terms of time, screen size or frame rates. The essential distinguishing characteristic Ought to be the basis on which the service is made available ie subscription.

12. In addition to funding obtained from subscriptions, datacasting services ought to be able to include limited advertising as a means of generating revenue and enhancing the value of these rights for sports such as the AFL.

Naming rights sponsors, other corporate and team sponsors, contribute significant amounts of money to the AFL and the Clubs competing in the AFL competition. Invariably sponsors require in return for their financial commitments, the opportunity to advertise on any medium by which AFL matches and events are communicated to the public. That could be as passive as sponsorship of a segment.

13. As has been noted in the DCITA discussion paper different categories of datacasting could be established to protect the right of the viewing audience to continue to receive free services such as Teletext and the AFL submits that the definition and regulatory challenges posed by option 3, are all capable of satisfactory resolution. In fact the perceived technical difficulties associated with option 3, are considerably less than those arising under option 2.

Option I as indicated in this submission, fails on a purely commercial basis.

14. The essential advantage of option 3 to the AFL and the public is the greater access offered to AFL product for Australian consumers including importantly, new or occasional AFL fans.

Increasing the choice of access by introducing broadcast quality, subscription datacasting services operating over a sufficient band width, creates real competition for delivery services which in turn ensures that sporting rights are able to increase in value which is vital to the ability of a sporting organisation such as the AFL, to meet increasing costs pressures associated with the AFL competition and its projects and responsibilities referred to in this submission.