

ABA File Ref: 2001/0022

27 February, 2001

Mr John Williams
Telecommunications Inquiry
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Mr Williams

**Australian Broadcasting Authority Submission to the Productivity Commission
Inquiry into Telecommunications-Specific Competition Regulation**

Thankyou for your e-mail of 9 January 2001 and the opportunity to make a submission to the Productivity Commission in respect of the additional matters arising out of the Report of the Telecommunications Service Inquiry 2000 (Besley Report).

The ABA understands that the Commission, in considering the additional matters, is required to:

1. have regard to the differing levels of competition across Australia and consider whether a greater recognition of those differing circumstances should be incorporated into competition regulation; and
2. specifically consider the implications of current pay television programming arrangements for the development of telecommunications competition in regional Australia, and consider whether any additional regulatory measures are needed to facilitate access to pay television programming.

As competition issues are outside the scope of the *Broadcasting Services Act 1992* (the Act), the ABA does not have any specific comments in relation to the issues raised in 1 above.

It is the ABA's understanding that one of the central issues concerning pay television programming and its development in regional Australia is the scope of the *Trade Practices Act 1974* to deal with exclusive program agreements between program providers and carriers. This being the case, the ABA agrees with the substance of the ACCC's submission and takes this opportunity to provide the following additional comments:

The ABA identifies the following objects of the Act as being relevant to the issue:

- promoting the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information [s. 3(a)];
- providing a regulatory environment that will facilitate the development of a broadcasting industry that is efficient, competitive and responsive to audience needs [s. 3(b)]; and
- encouraging responsiveness to the appropriate coverage of matters of local significance [s. 3(g)].

As such, any comments by the ABA are limited to specific content matters, in particular:

- issues of diversity, efficiency, competition and responsiveness to audience needs and local content; and
- issues that affect programming on pay television in regional markets.

The Act takes a light-touch approach to the regulation of subscription television broadcasting in Australia. In accordance with the provisions of the Act, the ABA has responsibility for content matters, such as ensuring compliance with licence conditions applicable to subscription television licences (Part 6 of Schedule 2 to the Act) and the minimum levels of expenditure on eligible drama programs (s. 103A of the Act).

The ABA also submits that Part 8A of the Act, which provides for restrictions on subscription television services in regional areas, was inserted into the Act in 1999 to provide another regulatory measure to ensure that the objects of the Act, identified above, are promoted, as well as ensuring diversity of programming in regional markets.

The ABA further submits that clause 7 (2) (a), Part 3, Schedule 2 of the Act makes it a standard condition of a commercial television licence requiring that a commercial television licensee '*contribute to the provision of an adequate and comprehensive range of broadcasting services in that licence area*'. For the purposes of the Commission's Inquiry, however, it should be noted that this licence condition **does not** apply to subscription television broadcasting licences.

The ABA does not have any further material to add to the Productivity Commission's consideration of whether any additional regulatory measures should apply to pay TV programming.

Should you require any further assistance, please contact Tony Fielding by phone on (02) 9334 7883 or e-mail Anthony.Fielding@ABA.gov.au.

Yours sincerely

Giles Tanner
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