



**AUSTRALIAN FOOTBALL
LEAGUE**

**Submission to the Productivity Commission -
Inquiry into Telecommunications Competition Regulation**

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INQUIRY INTO TELECOMMUNICATIONS COMPETITION REGULATION**

A. INTRODUCTION

Chapter 16 of the draft report of the Productivity Commission (“the Commission”) into Telecommunications Competition Regulation released on 29 March 2001 relates to pay television and regional telecommunications. Chapter 16 reviews various aspects of pay television programming, and notes the importance of sporting content as a subscription driver for pay television.

The Australian Football League is a provider of sporting content for pay television and has been asked to put to the Commission any views it may have in relation to Chapter 16 of the Commission’s draft report.

B. AUSTRALIAN FOOTBALL LEAGUE

The Australian Football League (“the 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 from time to time by the AFL.

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

The Role of the AFL

The AFL has grown out of domestic state leagues with more than 100 years of history. Australian football is a clear leader among sports in Australia and is its only indigenous game.

The AFL’s charter is:-

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

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.

AFL Finances

Total revenue for the AFL in 2000 was approximately \$110 million with the major income sources being broadcasting rights, corporate sponsorships, pre-season competition gate receipts and sponsorship, AFL Record, licensing, AFL membership and the AFL finals series.

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

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

In 2000:

- Distributions to AFL Clubs totalled more than \$50 million or on average, \$3.125 million per Club.
- The AFL invested approximately \$15 million in development programs for grass roots football.
- The AFL invested approximately \$1.75 million in ground development primarily via support for interest payments and paid \$30 million as its contribution to the development of Colonial Stadium in Melbourne.

Why Broadcasting Revenue is Important

Broadcasting rights revenue is the single largest source of funding for the AFL, making up more than one third of total revenue. 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.

The AFL's broadcasting rights revenue is principally derived from the sale of free-to-air ("FTA") television rights, pay television rights, radio rights and Internet web-site rights.

The sale of pay television rights to AFL matches and events is the second largest component of the AFL's broadcasting rights revenue, after the sale of FTA television rights.

C. BROADCAST OF AFL MATCHES

Media 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. FTA television coverage and pay television coverage throughout Australia is a very important part of these efforts, particularly in the under developed New South Wales and Queensland markets.

While the AFL Competition is national in the sense that the competition comprises teams from 5 states of Australia, rugby league remains the dominant winter sport in New South Wales and Queensland. The ability of the AFL to promote Australian football in the developing states of New South Wales and Queensland is heavily dependent upon the amount of television broadcasts of AFL matches in those states. Greater television coverage creates greater awareness from which participation and patronage develops.

It is the mass market objective of the AFL and the imperatives which drive it that AFL football be viewed by as many Australians as possible, both on FTA television and pay television.

Current Arrangements

The AFL has licensed HSV Channel 7 Pty Ltd, Amalgamated Television Services Pty Ltd, Brisbane TV Limited, South Australian Telecasters and TVW Enterprises Limited ("Seven") the rights for live and delayed FTA television and pay television coverage of AFL matches and events. AFL matches and events includes matches played in the pre-season competition, state of origin series, home and away competition and the AFL finals series. The arrangement between AFL and Seven operates until the end of the 2001 AFL season.

The current arrangement between the AFL and Seven includes a right to sub-licence. In the last 5 years, there has been pay television coverage of AFL matches on Sports Vision, Optus Vision, Austar and Neighbourhood Cable. It is noted that both Austar and Neighbourhood Cable are regional pay television broadcasters and that the rights holder (Seven) has granted a sub-licence to those pay television operators to broadcast AFL matches on pay television in regional areas, and the AFL has consented to such sub-licence. The AFL has never refused a request to sub-licence a pay television broadcaster.

The developing markets in New South Wales and Queensland cannot presently, consistently command prime time FTA television broadcasts but those markets are sufficiently developed to absorb live pay television coverage. Exposure of that type would build the following for AFL in these markets and assist the AFL to develop its product.

Future Arrangements

The AFL has granted to News Limited the FTA television and pay television rights to AFL matches and events in Australia for the period 2002 to 2006 (inclusive). These rights include the right to sub-licence, and the AFL and Foxtel are in the process of finalising an arrangement for the broadcasting of AFL matches on pay television throughout Australia for 2002 to 2006. It will be a term of the agreement between the AFL and Foxtel that Foxtel can sub-licence pay television rights, and that it must sub-licence the pay television rights to Austar and Optus on reasonable commercial terms.

New Media

The AFL sees the ability to communicate AFL matches on the Internet and other forms of new media as a means of increasing revenue and showcasing AFL matches throughout Australia and the rest of the world. The AFL intends to grant broadcasting rights in respect of AFL matches, including the right to webcast, for the period 2002 onwards. The AFL anticipates that the Internet and other forms of new media will become an increasingly important means of promoting the AFL and broadcasting AFL matches and events, and will significantly contribute to AFL revenue.

D. THE COMMISSION'S INQUIRY

Chapter 16 of the Commission's draft report identifies three sets of issues in respect of competition in the pay television industry:

- Access to programming content;
- Arrangements for transporting the signal to regional operators; and
- Differences in the regulation of pay television and FTA television.

These submissions relate only to access to programming content and the differences in pay television and FTA television regulation. The AFL makes no submissions in relation to the arrangements for transporting signal to regional operators.

Access to programming content

The AFL is a content provider in so much as it contracts to grant the rights to broadcast AFL matches (content) on pay television. The AFL's current and future pay television broadcasting agreements are exclusive agreements. The Commission has expressly sought feedback about the degree of and motives for the exclusive contracting of content.

The AFL's motive for contracting on an exclusive basis is to maximise revenue by obtaining a premium for exclusivity. The existence of an "exclusivity premium" has been noted in Fox Sport's submission to the Commission.

The AFL's exclusive contract arrangements include the right to sub-licence. The right to sub-licence creates an incentive for the licensed pay television operator to sub-licence to other pay television operators and get back some of the exclusivity premium. It is through the sub-licensing of AFL content that regional pay television operators have obtained access to AFL related content.

It is the experience of the AFL that sub-licensing results in pay television broadcasts of AFL matches throughout New South Wales, Queensland and Victoria. The broadcasting on pay television of AFL matches in these areas accords with the AFL's mass market objectives. The experience of the AFL in the broadcasting of AFL related content by regional pay television operators is not consistent with the suggestion in the draft report of foreclosure of such content in regional areas.

Differences in regulation of pay television of FTA television

The anti-siphoning provisions and restrictions on multi-channeling are anti-competitive. The draft report notes the finding of the Commission's report on Broadcasting that the anti-siphoning provisions are the quid pro quo for the multi-channeling restrictions. This is little comfort to the sporting organisations who are adversely effected by both forms of regulation.

Anti-siphoning provisions

The AFL has consistently argued against the existence of the anti-siphoning provisions* and agrees with the findings of the Commission's report on Broadcasting that the detrimental effects of the anti-siphoning provisions on sporting organisations outweigh the perceived benefits.

The most significant detrimental effect to sporting organisations of the anti-siphoning provisions is that they prevent sporting organisations maximising revenue. By preventing sporting organisations dealing exclusively with pay television operators, the anti-siphoning provisions create a competitive advantage for FTA television broadcasters in negotiating the rights to listed sporting events. The effect of this for the AFL is that it is unable to maximise revenue from the sale of its broadcast rights. This in turn effects distributions to AFL Clubs and funding for game development and capital works.

Multi-channeling restrictions

The AFL is committed to providing AFL supporters with as many commercially viable options as possible to view AFL football. The ability for the AFL's FTA television licensee to broadcast AFL matches on multiple channels would allow more AFL matches to be broadcast live on FTA television. Further, the ability to broadcast different aspects of the one AFL match on multiple channels could enhance the viewers experience of AFL matches. It appears that the restrictions on multi-channeling could restrict the volume of AFL matches that can be broadcast on FTA television and not allow presentation of the content in the best possible manner.

The AFL submits that sporting organisations whose events are listed on the anti-siphoning list are significantly detrimentally effected by the anti-siphoning provisions. This may be exacerbated by the effects of the restrictions on multi-channeling. These regulations prevent the sporting organisations allowing broadcasters to showcase content in the best possible manner and maximising revenue.

E. OPTIONS FOR PAY TELEVISION REGULATION

In the draft report the Commission identifies various possible approaches to the control of content on pay television.

*AFL's submissions to Australian Broadcasting Authority "investigation into Pay Television Siphoning" in 1994; AFL's submissions to the Sport 2000 Task Force in September 1999; AFL's submission to the Productivity Commission – Inquiry into Broadcasting in December 1999; and AFL's submission to ABA – Review of Anti-Siphoning List in April 2001

ACCC's Proposal

The ACCC seeks to prohibit exclusive supply arrangements between vertically integrated content providers and pay television operators. The ACCC's proposal requires content providers to make content available to all other pay television operators on (non-discriminatory) terms and conditions. The Commission considers that the ACCC's proposal should be viewed as applying to all operators and program suppliers in the pay television industry.

Prohibition on Exclusive Contracts

The AFL submits that the proposed regime to prohibit exclusive contracts for the supply of content is heavy handed and unnecessary. Such a regime assumes that exclusive supply agreements have an anti-competitive motivation and places the onus on the operator or supplier to prove, on public interest grounds, that an exclusive contract should be allowed. As outlined above, the AFL's motivations for exclusive program supply contracts are not to restrict competition. The onus to demonstrate anti-competitive motivation or effect should remain with the regulator.

The prohibition of exclusive program supply agreements would prevent content providers from maximising revenue by depriving them of the premium that is paid by pay television operators for exclusivity. The exclusivity premium is essential for the AFL to maintain its existing level of broadcasting revenue, and to continue to make distributions to AFL Clubs, and to undertake football development programs and capital works.

In circumstances where the anti-siphoning legislation already restricts AFL broadcasting revenue, the removal of the AFL's ability to obtain a premium for pay television exclusivity would place the AFL at a significant revenue disadvantage compared with other competing forms of entertainment.

Mandated Access Regime

The AFL does not support the idea of a mandated "access regime" for pay television content, whether using a declaration process or otherwise. It is the AFL's experience that a pay television operator with exclusive rights will grant access to other pay television broadcasters. Indeed the proposed contractual arrangement between the AFL and Foxtel already includes an express term providing for Foxtel to supply content to Optus and Austar.

Sub-licensing

The ACCC has recommended an absolute prohibition on pay television operators sub-licensing in unserved areas. The AFL submits that such a restriction is unnecessary. The sale of content for an Australia wide territory is a significant means of content suppliers obtaining a premium, and does not necessarily cause content foreclosure. In the AFL's experience, pay television operators will pay a greater premium for an Australia wide licence. This premium allows the AFL to pursue its charter. Also, pay television operators who do not serve all Australia are likely to want to sub-licence the broadcast rights to regional areas and this will allow broadcast of the content in these areas (eg: in the AFL's case, Austar and Neighbourhood Cable).

Watching Brief

An option discussed in the Commission's draft report is to retain a watching brief on the pay television industry. Such an option would be consistent with the approach taken by the FCC in the United States. If any of the options discussed in the draft report are to be adopted by the Commission, the AFL suggests that it should be this one.

In outlining the reasons in favour of the watching brief option in the draft report, the Commission suggests that there is no conclusive evidence of content foreclosure on pay television. The AFL agrees with this. As noted above, it is the experience of the AFL that the broadcasting of AFL related content on pay television in Australia in the last five years has increased, both in regional and metropolitan areas. Further, the watching brief option leaves it open for the Commission to review the impact of new technology, including the Internet, webcasting and other forms of new media, on competition in the pay television industry.

F. CONCLUSION

For a variety of reasons the AFL submits there is no need for further regulatory intervention in the pay television area. The AFL's current and future pay television arrangements are not motivated by a desire to restrict competition, but rather the aim is to maximise revenue to allow the AFL to fulfill its charter and to obtain the best possible showcase for AFL matches on pay television. The AFL strongly opposes any restrictions preventing exclusive contracting arrangements between content suppliers and pay television operators, a mandated access regime and a prohibition on forms of sub-licensing. AFL revenue would be seriously threatened if it was deprived of the premium it obtains for exclusive pay television contracts, especially in circumstances where the anti-siphoning list and the restriction on multi channeling already detrimentally impact AFL broadcasting revenue. Should the regime proposed by the ACCC and discussed in the Commission's draft report be adopted the AFL would require increased government funding to preserve existing levels of support for its Clubs, football development programs and capital works payments.