

Telstra Corporation

**Submission
to the**

**Department of Broadband, Communications
and the Digital Economy (DBCDE)
Discussion paper**

**“Sport on television: A review of the anti-
siphoning scheme in the contemporary
digital environment”**

16 October 2009

Executive Summary

Telstra welcomes the opportunity to make a submission in response to the Federal Government's discussion paper on 'Sport on Television: A Review of the Anti-siphoning Scheme in the Contemporary Digital Environment' (the 'Discussion Paper').

Telstra acknowledges the policy objective of the anti-siphoning scheme, which is to ensure broad access by Australian consumers to television coverage of sporting events of national significance. Best practice regulation and the national competition principles agreement dictate that this regulation should constrain competition to no greater extent than necessary to achieve this policy objective¹.

Telstra's submission focuses on questions related to the anti-siphoning policy objective and new media platforms given the nature of Telstra's business. In summary, Telstra's position is:

- There is no evidence that sporting events are being siphoned to new media platforms to the detriment of the anti-siphoning policy objective;
- There is no evidence that this is likely to occur in the foreseeable future;
- New media platforms are complementary to and not a substitute for free-to-air and subscription television;
- New media platforms facilitate the Government's policy objective by expanding the ability for Australians to access sporting content; and
- Regulatory intervention in the absence of an identified problem supported by evidence of market failure can stifle innovation and investment, particularly in emerging dynamic areas such as new media.

While our focus in this submission is on new media, we note that the Productivity Commission recently concluded that the anti-siphoning scheme is anti-competitive. The Commission described the list as "a blunt, burdensome instrument that is unnecessary to meet the objective of ensuring wide community access to sporting broadcasts." It states the regime "imposes an unnecessary regulatory burden", is "inherently anti-competitive" and "has a negative impact on sporting bodies, as a result of the substantial reduction in competition during negotiations with broadcasters for the rights."

Telstra supports the Productivity Commission's recommendation that the list be substantially shortened to lessen its anti-competitive impact. Telstra submits that the list should be limited to those events that are truly of national significance and have historically been shown on free-to-air television.

No evidence of siphoning to new media

Telstra agrees with the Discussion Paper's conclusion that "There is little evidence that sporting events are being 'siphoned' to new media platforms."

Current television offerings (free-to-air and subscription television) are and will for the foreseeable future remain the dominant platforms for viewing of sporting events in Australia. Distribution of sports content via emerging platforms, such as those identified in the Discussion Paper (e.g. internet video), is increasing in use but is still dwarfed by these traditional platforms. For example, the AFL Grand Final event had an audience of approximately 2.5 million free-to-air viewers out of a total of approximately 7.5 million households that enjoy existing free-to-air television, substantially more than any new media platform could support today².

Sports rights holders aim to maximise the value of their rights and the reach of their sporting code by promoting their content to the largest possible audiences, and so seek platforms that provide the greatest reach. Therefore, the likely preference for sports rights holders is to provide exclusive 'live' rights to sporting

¹ *Best Practice Regulation: A Guide for Ministerial Councils and Standard Setting Bodies*, Council of Australian Governments (COAG), October 2007

² *Sport on television: A review of the anti-siphoning scheme in the contemporary digital environment*, Department of Broadband, Communications and the Digital Economy (DBCDE) discussion paper, 20th August, 2009, pg. 3, and *8146.0 - Household Use of Information Technology*, Australian Bureau of Statistics, 2007-08 (calculated as 91% of 8,244,000)

events to free-to-air and subscription television for some time to come³. The economics of both right-owners selling live rights to, and acquisition of live rights by, new media platforms are not comparable to the broadcasters because the limited reach of new media platforms provides neither revenue nor audience anywhere near that of broadcasters. The disparity is such that it is highly unlikely the relative economics would change in the near future.

New media platforms are complementary to existing consumers' television viewing

New media platforms currently, and in the foreseeable future, will continue to complement rather than replace consumers' television viewing, facilitating the Government's fundamental policy objective by expanding the ability for Australians to access sporting content. Analyst firm Ovum predicts that telecommunication television subscribers (i.e. subscription-based television services provided to consumers by telecoms operators and ISPs, which are typically (but not always) IPTV-technology based) would be approximately 184,000 by 2014 versus the 100% of television households expected to be converted to digital free-to-air television by that time.⁴

The market for television viewing has in fact expanded and has increasingly been augmented by engagement with new media platforms (e.g., the Internet). Consumers are finding more time in the day to consume content, in various locations, via various networks and devices and in various forms. Roy Morgan research suggests that Australians spend 21.8 hours watching free-to-air commercial television, but only 9.4 hours on the Internet for a variety of uses. "It is clear that the Internet is becoming more and more a part of Australians' lives, but television is not a dead medium."⁵ Although we are no longer restricted to watching television exclusively in the home, Internet is by no means a replacement for the traditional television viewing experience.

Mobile content consumption is also meeting different consumer demands and providing a different consumer experience in different places and at different times to traditional television. The mobile experience is currently limited by the small size of the handset, screen and battery. Current consumer research suggests that the mobile experience is typically filling in the 'micro moments' when consumers have spare time, for example, when waiting for trains or buses or when taking breaks – checking the latest news and sports clips. The complementary nature of mobile platforms offers consumers greater choice in the format in which sporting content and information is now consumed.

New media platforms provide new and innovative ways for sports events to reach existing and new fans and so facilitate the Government's policy objective. Examples of how new media supports rather than substitutes for existing consumers' television consumption of sporting content are video-on-demand highlights, replays of key moments, immediate access to event results, player statistics and other related information. While these are valuable services to the consumers who access them, they do not replace current television offerings.

Governing bodies of popular sport in Australia rely on the revenue from sports rights across multiple channels and platforms to support the administration and development of the sport^{6, 7}. The complementary nature of online and mobile rights is recognised by the market by both rights holders and rights purchasers and has contributed to the development of new media. The extension of the anti-siphoning scheme to new media platforms has the potential to disrupt the existing and future market for these complementary rights to the detriment of both rights holders and the participants in the sports that rely upon them as well as the developing internet and mobile content sector. New media platforms offer both free-to-air and subscription television an increased ability to provide internet like services as add-ons, which would make any unnecessary regulatory intervention even more problematic.

³ NBN: *Regulatory Reform for 21st Century Broadband*, Australian Football League, 3 June 2009

⁴ *Telco TV forecasts: 2009–14*, Ovum, August 2009 and *Sport on television: A review of the anti-siphoning scheme in the contemporary digital environment*, Department of Broadband, Communications and the Digital Economy (DBCDE) discussion paper, 20th August, 2009, pg.3

⁵ Roy Morgan's Single Source Survey, 2008

⁶ NBN: *Regulatory Reform for 21st Century Broadband*, Australian Football League, 3 June 2009

⁷ NBN: *Regulatory Reform for 21st Century Broadband*, Australian Rugby League, 3 June 2009

New media still emerging

The new media landscape emerging in Australia is characterised by an innovative and competitive market for content along with new and emerging technologies that are increasingly providing consumers with more choice and greater accessibility in more places. Recent investments in platforms such as Telstra's Next G™ mobile network are evidence of exciting new developments in the Australian communications landscape.

New media markets are dwarfed by the free-to-air television market, where 91% of Australian households are able to access all free-to-air national and commercial digital services licensed for their area⁸. Although mobile connections now exceed 115.1% of the population, mobile broadband connections are currently limited to 10.3% of all Australians⁹. Furthermore, analysts expect that only 1%-2% of television households will have some form of television over an IP network by 2013¹⁰. The new media landscape is clearly in its infancy.

No policy rationale for regulatory intervention

Regulatory intervention in the absence of an identified problem supported by evidence of market failure is particularly dangerous for emerging and rapidly evolving markets, in which the prospect of innovation and further investment can be thwarted by premature and overly burdensome intervention. The DBCDE's principles for Australia's Digital Economy state that "Regulatory restructures are important to provide business certainty, address market failures and protect the interests of consumers. If not carefully constructed, however, regulation can stifle innovation and investment, particularly in dynamic areas."¹¹

The principles of good regulatory process identified by the Banks Taskforce on Reducing the Regulatory Burden on Business, supported by the current Federal Government¹², state that "governments should not act to address problems until a case for action has been clearly established", and "only the option that generates the greatest net benefit for the community, taking into account all the impacts, should be adopted."¹³ The Discussion Paper states that "To date, there is little evidence that sporting events are being 'siphoned' to new technology platforms". So in applying the Government's principles, it is clear that there is no basis to extend any regulation to new media platforms at this time.

Given the Productivity Commission's assessment of the anti-siphoning scheme as anti-competitive in its current state, the prospect of extending the list should be considered only where there is a clear and real risk of harm to the policy objective. Certainly the policy intent of the anti-siphoning scheme to ensure wide access to sport of national significance on television is not advanced (and may in fact be harmed) by restricting the opportunity for new and emerging technology platforms to broaden accessibility to sporting content even further. Simply put, there is no case to impose the anti-siphoning scheme upon new media platforms and to do so could harm a vibrant, innovative and competitive emerging market.

Conclusion

Telstra agrees that there is no evidence to date that sporting events are being exclusively 'siphoned' to new media platforms, or that it will be in the foreseeable future. As such, there is no evidence that extension of the anti-siphoning scheme to new media would support the policy objective. Any such move would represent unwarranted and overly burdensome regulation to the detriment of the Australian public and sporting community. In fact, sports content distributed via new media platforms facilitates additional and complementary viewing of sports events and so supports the policy objective. For these reasons, Telstra concludes that the anti-siphoning scheme should not be extended to new media platforms.

⁸ *Sport on television: A review of the anti-siphoning scheme in the contemporary digital environment*, Department of Broadband, Communications and the Digital Economy (DBCDE) discussion paper, 20th August, 2009, pg. 3

⁹ *Australian mobile market statistics and tracker 1H09*, Ovum, September 2009

¹⁰ *Global Digital TV, 8th Ed.*, Informa, 12 September 2008 and *Telco TV forecasts 2009-2014*, Ovum, August 2009

¹¹ *Australia's Digital Economy: Future Directions – Final Report*, DBCDE, 2009, pp.20

¹² *Ministerial Statements, Best Practice Regulation Requirements*, Mr. Lindsay Tanner, Minister for Finance and Deregulation, 17th March 2009, pg. 1889

¹³ *Rethinking Regulation – Report of the Taskforce on Reducing Regulatory Burdens on Business*, Australian Government, January 2006