



SUBMISSION

SPORT ON TELEVISION: A REVIEW OF THE ANTI-SIPHONING SCHEME IN
THE CONTEMPORARY DIGITAL ENVIRONMENT

DEPARTMENT OF BROADBAND, COMMUNICATIONS AND THE DIGITAL ECONOMY

SPECIAL BROADCASTING SERVICE
October 2009

Introduction

SBS appreciates the opportunity to comment on the Government's review of the anti-siphoning scheme in the contemporary digital environment.

The anti-siphoning list and legislation were created to ensure that sporting events of national significance were broadcast on analogue television, live and free-to-air for the benefit of the Australian public.

However the list has become cumbersome, and a lack of enforcement has left the list open to abuse by broadcasters with competing interests, resulting in some broadcasts of sports events being unreasonably delayed or events not being shown at all. Some examples of this are outlined in this submission.

SBS is of the strong view that there is a need to move to a more robust anti-siphoning scheme with rigorous enforcement measures to ensure that the scheme operates as intended and delivers on its true purpose – to enable the Australian public to have access to live coverage of sports of national significance.

The anti-siphoning list is not about balancing the interests of competing broadcasters it is about preserving access to key sporting events for the Australian public.

This submission makes suggestions as to how the anti-siphoning scheme can be amended to better deliver on its public policy purpose.

Key Recommendations

- Maintenance of the current anti-siphoning policy with an events list based on clear and simple criteria.
- Addition of several key events in sports with growing but significant popularity such as football.
- All events on the anti-siphoning list must be shown live on free-to-air television on the broadcaster's primary channel until full analogue switch-off occurs (scheduled for December 2013).
- If a competition has multiple simultaneous events (such as the Olympics or FIFA World Cup), allow simultaneous events to be shown on a secondary digital channel or time-delayed where there is a clash.
- Certain events should be 'unbundled' – allowing an appropriate combination of broadcasters to negotiate directly with the sporting body/agent to purchase rights to listed events once the anti-siphoning policy has been satisfied through a free-to-air broadcaster.
- All events on the anti-siphoning list should be required to satisfy all of the anti-hoarding provisions. Having purchased rights for events, free-to-air broadcasters must air them live. The "use it or lose it" policy should be refined and enacted.
- ACMA must be given the resources and power to monitor the sports broadcasting schedule, ensure that free-to-air broadcasters are given an opportunity to reasonably acquire events and to enforce the anti-hoarding mechanisms.
- Events (or portions thereof) not adequately broadcast on free-to-air television should be removed from the list, enabling the market to negotiate deals on an unrestricted basis with rights holders.

Key Questions

1. The purpose of the anti-siphoning scheme and its impacts

What purpose should the anti-siphoning scheme have?

The purpose of the anti-siphoning scheme is to ensure Australian viewers have access to live, free-to-air broadcasts of sporting events of national significance on universally available television services. The purpose is not to balance the commercial interests of competing broadcasters (and now internet providers).

The anti-siphoning list and the accompanying anti-hoarding provisions should include robust mechanisms to enable the Government to ensure the spirit of the legislation is followed by all parties. The public should not suffer due to broadcasters using the anti-siphoning list as a tool for individual competitive commercial manoeuvres. The Government, which speaks for the Australian public, must be able to ensure the purpose of the list – live coverage of listed sport events on free-to-air television – is paramount.

The Australian Government strongly supports sport at all levels. It funds elite athletes through the Australian Institute of Sport, it funds Australia's sporting federations, and its Olympic and Commonwealth teams. It funds the building of sporting facilities across Australia from schools and local communities to major stadiums with transport infrastructure. It encourages participation in sport for all to encourage a healthy populace.

It would seem contradictory to build a policy of investment in participation and excellence in sport, and then not to build on that commitment with a broadcasting policy which ensured Australians were able to watch their sporting stars and teams on free-to-air television.

What is the best way to ensure that nationally important and culturally significant sports are shown on free-to-air television?

The value of anti-siphoning schemes has been demonstrated internationally, as seen in countries across the European Union. Since the introduction of Australia's scheme, the public and successive governments have supported the public policy goals of the scheme, while recognising the need for updating and clarifying listed events over time.

Events on the list should be available first to free-to-air television to be shown live on the main analogue free-to-air channel of the relevant broadcaster. Events cannot be shown exclusively on pay television, online or on any other digital services. They should only be able to be shown simultaneously on these other services as long as they are also on free-to-air television.

Where there are sports events with concurrent sessions, such as the Olympics or the FIFA World Cup, broadcasters should be allowed to show the simultaneous events live on their digital multi-channels or reasonably time-delayed on their primary channel. Priority coverage must be broadcast on the main analogue service (until analogue switch-off).

The anti-siphoning scheme should be maintained for the primary analogue channel broadcast of listed events until analogue switch-off. Until analogue switch-off, it would be inequitable to disadvantage audience members who have not converted to digital. After analogue switch-off there will be no need to constrain coverage of sport on multi-channels.

Each event on the anti-siphoning list should be subject to the provisions of the anti-hoarding list so that all events are covered by both schemes. Without a robust “use it or lose it” provision, the spirit of the legislation will not be adhered to.

The public interest test – anti-hoarding

The free-to-air coverage of the 2009 French Open is an example of how an unreasonable delay to coverage can result in an unsatisfactory outcome for audiences. If the anti-siphoning scheme included mandatory anti-hoarding provisions, it would not happen again.

The French Open men’s and women’s quarters, semis and finals are on the anti-siphoning list. SBS made a commercially viable bid which guaranteed free-to-air broadcast rights for live coverage. The bid was non-exclusive, with the expectation that Fox Sports would provide live coverage of a greater number of games. The vendor was able to circumvent the spirit of the anti-siphoning scheme by granting Channel Nine rights to broadcast delayed highlights creating, in effect, an exclusive live window for Fox Sports. When the Open coverage began in May 2009, Channel Nine broadcast only edited highlights of the final rounds. These aired after midnight on their primary channel and were repeated in the middle of the following day on their HD channel. The event did not rate well.

Live coverage of the French Open was provided exclusively by pay-TV. Australian audiences without subscription TV – 67 per cent of the population – were unable to watch the event live.

This action deprived Australian audiences of the access intended by the anti-siphoning scheme and offered by SBS.

Because the event is not on the current anti-hoarding list, there was no mechanism to protect the public interest.

Furthermore, under the de-listing arrangements, Australian audiences could be penalised not just in 2009, but in the future. Due to inadequate free-to-air coverage the event could be identified for de-listing. This could then result in the event not being available on free-to-air television again.

This is an historical example, and SBS is not advocating an examination of the French Open specifically, but rather it illustrates the need to ensure adequate event coverage by broadcasters.

The responsibility for enforcing the public interest should rest with ACMA. It should oversee a single list of events which are subject to both anti-siphoning and anti-hoarding obligations.

The Australian sports market already operates in a manner that effectively 'unbundles' the broadcasting of coverage across most major codes. This has resulted in pay-TV having exclusive rights to a significant number of games in the NRL and AFL competitions. For example, Channel Nine has exclusive rights to three NRL games a week; the remainder are shown exclusively on Fox Sports.

This arrangement appears to satisfy public expectations, while also reflecting the limits that apply to free-to-air broadcasters' appetite for volume coverage.

SBS suggests it would be appropriate to formalise this arrangement by requiring the anti-siphoning list to carry only a proportion of the weekly games of the NRL, AFL and A-League competitions. The remaining bundle of games could be sold to any broadcaster direct by the relevant sports body.

What impacts does the anti-siphoning scheme have on sports rights holders and the business models of free-to-air and subscription television?

Free-to-air television offers the greatest audiences for sporting events above any form of media. Most sports organisations would acknowledge that their sport needs free-to-air exposure to satisfy their sponsors and to give valuable exposure to their sport. Sports which are only on pay-TV can lose their profile, for example the A-League soccer and Super Rugby. Internationally, even sports with a strong pay-TV presence will seek free-to-air broadcasts to maximise their profile. Sports which have a consistent free-to-air platform benefit from optimal public exposure. This leads to a heightened sense of national and cultural importance which will be a major contributor to a sport's profitability in the long run.

It is in the best interest of the public to have a thriving free-to-air television industry, not a media landscape where all premium content is only available to those who can pay for it.

In Australia's competitive media landscape, pay-TV currently operates with little or no competition, and is profitable. Foxtel's forecast FY2009 earnings before interest, tax, depreciation and amortisation is almost as profitable as the Seven Network, Ten Network and Nine Network combined.¹ Any significant change to the anti-siphoning scheme will have a greater negative impact on the business models of the free-to-air industry (and therefore the greater public) than the economic improvements to pay-TV.

¹ *Australian Financial Review*, 'Stokes and Packer Consolidate the Stalemate', 30 July 2009.

2. The appropriateness of the events on the anti-siphoning list and their rationale for inclusion

What criteria, if any, should there be for including an event on the anti-siphoning list?

The optimum result for the anti-siphoning policy is a balance of audience access to sports events of national importance, the viability and growth of the sporting bodies, and commercial viability for the broadcasters.

For audiences, the primary criteria are:

- Does the event unite Australians, providing a shared cultural and social experience and building a national cultural identity?
- The profile of the event: Is it the premier event of its sport – in Australia or as an international event?
- Australian representation: In international events, do Australian teams or individuals feature at an elite level?
- Audience interest: Is there evidence of audience support through television ratings and participation levels?
- National and regional resonance: Does it have a significant historical or cultural resonance? Is it the primary audience event for its state or region?
- Does the event broaden the experience of Australians, providing exposure to different cultures from around the world?
- The degree to which taxpayer funds have been spent to establish, reform, preserve or grow the sport at any level.

Which events should be included on the anti-siphoning list and why?

SBS believes an inconsistent approach to the list has meant some events, which clearly satisfy the above criteria, have been overlooked.

The following events should be included in the list:

- Each international match involving the men's national football team, including FIFA World Cup qualifying matches.
- Coverage of the A-League football competition. (one or two games per week plus highlights)
- Each stage of the Tour Down Under road cycling race.
- Each stage of the Tour de France road cycling race.

3. The duration of the anti-siphoning list

What is an appropriate duration for the anti-siphoning list? Five years, 10 years or other?

The anti-siphoning list should be ongoing but flexible permanent legislation. The review of listed events could be linked to the individual event's contractual periods, or as requested by broadcasters. Events which are not listed should be considered at regular intervals of a maximum of five years.

Major sports rights contract terms are generally a minimum of three to five years. Therefore, a regular review interval of no greater than five years is needed to re-assess the priorities and the volume of free-to-air coverage provided for each event.

4. The appropriateness of the current automatic de-listing arrangements

Is the current 12 week automatic de-listing period for events on the anti-siphoning list appropriate?

SBS believes there is a need for greater regulation in this area by government to ensure the public interest is represented.

The de-listing provisions should include the need for mandatory notifications to all broadcasters when de-listing is imminent. These notifications and responses must be registered with ACMA.

No event should be de-listed as a consequence of “use it or lose it” provisions because of the failure of one broadcaster to provide appropriate coverage. The merging of the anti-hoarding requirements with those for anti-siphoning should largely eliminate this possibility. But, in any event, the legislation should offer all free-to-air broadcasters the opportunity to “use it” before de-listing is triggered.

5. Scheduling and coverage of events on the anti-siphoning list

What scheduling and or coverage (‘use’) requirements should apply to free-to-air broadcasters with broadcast rights to events on the anti-siphoning list?

All events on the anti-siphoning list must be shown live on free-to-air television on the relevant broadcaster’s primary channel until full analogue switch-off occurs (scheduled for December 2013).

If a competition has multiple simultaneous events (such as the Olympics or FIFA World Cup), simultaneous events should be able to be shown on a secondary digital channel and/or reasonably time-delayed.

Currently the anti-siphoning scheme does not oblige free-to-air broadcasters to show any events they acquire. It is essential for broadcasters to be able to determine their own broadcast schedules. However, the purpose of the anti-siphoning list is to provide the best coverage possible for Australia’s audiences. Therefore broadcasters should commit to live broadcasts of listed events.

ACMA should be given the power to oversee the anti-siphoning scheme, with the ability to make exceptions for live coverage on a case-by-case basis, including adjustments required to respect the scheduling of established news bulletins.

6. The restriction on free-to-air television broadcasters being able to show an event on the anti-siphoning list exclusively on their digital multi-channels

Should commercial free-to-air television broadcasters continue to be prevented from being able to show an event or part of a listed event on the anti-siphoning list on their digital multi-channels if the event is not simultaneously shown, or has not already been shown, on their simulcast channel?

What requirements, if any, should be placed on free-to-air digital multi-channels, if listed sports should be shown on these channels, to maximise coverage of sports in metropolitan and non-metropolitan areas?

The status quo should be maintained. Sports on the anti-siphoning list should be broadcast on the primary analogue channels until analogue switch-off (scheduled for December 2013).

Where a clash occurs in a particular event (such as the Olympics or the FIFA World Cup), simultaneous coverage of secondary events on digital multi-channels should be allowed.

Regional splits of sports (eg Brisbane-Sydney game in one market, and St Kilda-Geelong game in another market) should be allowed to suit audience interests.

The purpose of the anti-siphoning list is to provide sport on television for **all** Australians. Until digital coverage is available for all Australians, it would be inequitable and against the public interest motivation of the scheme to allow sport to be carried primarily on secondary free-to-air digital channels.

Multi-event sporting fixtures

SBS recommends that if a competition has multiple simultaneous events (such as the Olympics or FIFA World Cup), simultaneous events should be able to be shown on a secondary digital channel and/or time-delayed where there is a clash.

For example, for the FIFA World Cup 2010 there will be eight occasions during the third round where there is a clash of games. SBS proposes to show Game A live on the main SBS channel, followed by a replay of Game B. On SBS TWO Game B will screen live, followed by a replay of Game A.

7. Coverage of sports on new media platforms

Does sport accessed through new media platforms replace or supplement consumers' television viewing?

What effect, if any, will the provision of sports programming on new media platforms have on the anti-siphoning scheme?

Coverage of anti-siphoned sports on any form of new media should not be allowed unless it is simultaneously broadcast on a primary analogue free-to-air television channel.

As with pay-TV, it would defeat the purpose of the anti-siphoning scheme to allow exclusive sports access on new media at this point in time. This decision can be reviewed when the National Broadband Network is fully operational.

New media will increasingly compete for exclusive sports coverage. The role of the list is to give the greatest number of Australians the opportunity to participate in watching Australian sportsmen and sportswomen and benefit accordingly.

New media includes live streaming online, downloaded content, and 3G mobile phone services. Access to these platforms is not yet widely available, or available with equitable regional coverage. New media coverage is also not available for free. It requires a subscription service, the additional cost of bandwidth for either streaming or downloading content data, and/or the purchase of an application. It would not be socially inclusive for sport of national significance to be made available to some Australians only.

Conclusion

The anti-siphoning list and legislation were created to ensure that sporting events of national significance were broadcast on analogue television, live and free-to-air for the benefit of the Australian public.

SBS is of the strong view that there is a need to move to a more robust anti-siphoning scheme with rigorous enforcement measures to ensure that the scheme operates as intended and delivers on its true purpose – to enable the Australian public to have access to live coverage of sports of national significance.

About SBS

SBS operates under the *Special Broadcasting Service Act 1991*, with a Charter to provide multilingual and multicultural radio and television services that inform, educate and entertain all Australians, and, in doing so, reflect Australia's multicultural society. SBS broadcasts national analogue and digital television services – SBS ONE and SBS TWO; two analogue radio services in Sydney, Melbourne, Canberra and Wollongong and a national service to other centres around Australia, as well as nine digital radio channels providing a simulcast and time-shift of SBS's analogue radio services; and provides online services at www.sbs.com.au.