



3 June 2009

Assistant Secretary
Networks Competition Branch
Department of Broadband, Communications and the Digital Economy
GPO Box 2154
CANBERRA ACT 2601

Dear Assistant Secretary

National Broadband Network: Regulatory Reform for 21st Century Broadband

The Australian Rugby League (ARL) and the National Rugby League (NRL) termed as – the Rugby League Community - are pleased to present a combined submission for the consideration of the Federal Government in response to its regulatory reform discussion paper titled *Regulatory Reform for 21st Century Broadband: discussion paper*.

Rugby League supports the government's policy to roll out high speed broadband through the introduction of a truly national network. The purpose of our combined submission is to draw to the attention of the Government the possible unintended consequences of decisions made to secure the regulatory and financial viability of a National Broadband Network. While also outlining our position in relation to statements contained within the discussion paper.

Both the ARL and the NRL are not for profit organisations that administer and commercialise world class elite rugby league competitions which fund all facets of the Rugby League community down to each individual club across six states and two territories.

Rugby League provides access to participate in sport, physical activity and community development. Access is not restricted to metropolitan areas, but embraces regional and remote Australian communities throughout two Territories and five States.

Undoubtedly, Rugby League holds a unique position within the Australian community and the unique nature of the top down funding model that supports the NRL competition and the sparse nature of junior league competitions; means that any changes to the

regulation of our largest revenue source; broadcast rights, is a threat to Rugby League's long term viability.

It needs to be remembered that in any event sport is not an economic constant. It operates in a competitive and at times fragile commercial arena. It actively competes for coverage and revenue against other sports and against other entertainment options.

In Rugby League's submission to the Federal Government's Independent Review of Sport, in November 2008, we specifically highlighted that:

"The money received from media rights packages funds Rugby League from the top to the bottom. Rugby League needs to be able to sell its media rights with absolute certainty in relation to the regulatory regime. Changes to the current regulation of the Free-to-air networks, subscription television providers and or the Anti-siphoning list will directly impact upon Rugby League's revenue streams and therefore its ability to fund the grassroots of the game.

The Government needs to be aware that the current anti-siphoning regime has held back competition in media rights negotiations which have potentially deprived Rugby League of funding for the game's grassroots level." Page 13

Rugby League directly supports the employment of over 200 people and indirectly employs thousands more. Rugby League is not just the visible elite competition but it includes the thousands of recreational players, volunteers, supporters and club officials who dedicate their free time to the support of our great game.

Current Media Rights Allocation

Rugby League's current media rights allocation is subject to the Federal Government's Anti-Siphoning list, which grants free to air broadcasters first rights over subscription service broadcasters. This cumbersome regulation artificially deflates the value of the broadcast components of Rugby League's media rights. At the same time it limits our ability to leverage greater national free to air coverage.

The Nine Network is Rugby League's free to air broadcaster while Fox Sports is Rugby League's subscription broadcaster. Telstra is currently the holder of Rugby League's online media rights, which includes vision, statistics and the NRL club network. The Macquarie Radio Network and ABC Radio are Rugby League's radio broadcast partners.

Rugby League spreads itself across four different, yet important, media platforms deliberately to increase the exposure of rugby league and support the development of stakeholders with an eye to growth and sustainability. Convergence across media platforms in recent years, as the blurring of traditional media has accelerated, means content production and differentiation have become more important and valuable to the long term success and development of Rugby League.

Regulatory Reform Discussion Paper

At the outset Rugby League would like to comment on a number of suggestions raised in the initial discussion paper named: *National Broadband Network: Regulatory Reform for 21st Century Broadband Discussion Paper*.

The outright commitment that the Government has shown in publicly stating their support for markets operating through vigorous competition is welcomed and an important central tenant going forward, one which the Rugby League community is keen to continually see in practice as in word.

Competition between telecommunications companies is vital for ensuring that sales of online media content realise their true value in an open market place and innovation is fostered leading to new developments and greater consumer benefits. Prohibiting or restricting the ability of any telecommunications companies to purchase content on an exclusive basis would be adverse to consumers, content creators (NRL) and sporting bodies more generally.

As outlined in the discussion paper, *“competition delivers cheaper, better quality, and more innovative services to consumers”* (page 12) it is this same competition, regardless of delivery platform that has delivered better online and mobile services to Rugby League supporters.

Specifically addressing the current telecommunications competition regulatory regime, the NRL and ARL believe that the current regulations sufficiently drive competition within the online sports media rights market.

On page 24 of the discussion paper a range of statements are made about access to content and the possible prohibitive nature of current exclusive content arrangements, while not directly naming them. Exclusivity is a vital part of any rights deal as it is the point of differentiation which gives rise to the value placed on the broadcast. Current exclusivity arrangements for online sports rights are much the same as a terrestrial broadcaster like Network 7 hiving off exclusive drama content for its associated (commercialised) website Yahoo 7, this is not seen as locking in content, as outlined in the discussion paper but is seen as additional and beneficial for interested viewers. As this example shows, exclusivity or the theory of “lock-in” content is not a telecommunications company issue alone. The ARL & NRL believe that stimulation of demand for a product or service is primarily attached to the premium nature of the content which we sell and not solely related to the mechanism of carriage or service.

The discussion paper as a whole seems to ignore the current reality that businesses, whether a telecommunications company with wholesale infrastructure or without needs to be able to realise a business proposition in a market where customers are willing to pay for a good. The unfair characterisation of content as a “lock-in” device, this in some way implies a negative outcome. The practice of attracting customers and retaining customers is a long held business practice, which in the case of online and mobile content is necessary to drive critical mass and as such revenue and innovation.

Rugby League feels that there is no content traffic jam, the market for online and mobile rights for sports content is highly competitive and strongly contested by telecommunications carriers, content aggregators, news organisations, the traditional broadcasters etc. Also rights are normally subject to defined time periods, at which point they come up for sale again.

There is currently no evidence that proves the NRL’s exclusive online and mobile rights have limited the opportunities available to competitors, in both the carriage and content sectors. The current fair-dealing provisions of the Copyright Act, supported by Rugby League, allow content aggregators to display the basic content based news items that are available across various media platforms.

The NRL rejects the notion that one content service provider of our media rights is dominant over others, as the rights allocation is currently spread across a wide variety of mediums.

Significantly the government's paper on page 24 talks of the problems associated with Telstra becoming a media company but is silent on the growing reality that media companies are increasingly becoming on-line entities.

Should a Telstra or any other on line provide be excluded from bidding for unique content while media companies entering this space remain able to through their existing arrangements, then competition will in fact be reduced in direct contrast to the Government's stated goals.

The notion that online media rights content could be subjected to a new Anti-siphoning list or some other regulatory instrument, without significant financial hardship for a national sporting organisation is simply delusional. As the decentralisation of modern media continues to evolve, the proportion of rights funds gleamed from online rights will grow more rapidly than those of the more traditional media organisations. These increasing funds are important to offset loses in traditional media funds while also increasing the reach, scale and scope of a national sport.

The Rugby League community would caution against any moves to increase the economic viability of the National Broadband Network over and above the wholesale network that would result from the rollout phase. The artificial inflation of the wholesale network to include premium content, for example: sports online media rights, which would need to be removed from a competitive market place would severely restrict the value that a national sporting organisation could realise and thus re-invest through its sport.

In the case of the NRL Telstra Premiership, Telstra's online and mobile sports properties have strongly benefited consumers and fans. Thanks to Telstra, sports fans can access high quality and up-to-date footage and information when, where and how they want. The emergence of online and mobile content offerings gives consumers greater choice and higher quality access to content. Restricting Telstra's ability to acquire content will adversely impact Telstra's ability to develop and offer world leading products. This in turn will adversely affect our fans and consumers.

What is at risk?

All funds received from the various media rights packages fund Rugby League from the top down. Rugby League needs to be able to sell its media rights with absolute certainty in relation to the regulatory regime, across a wide range of platforms.

The revenue the ARL & NRL receive from the sale of online media rights benefits the development of Rugby League and the local communities in which it is played. Restricting, in any way, a potential buyer from acquiring online media content will obviously adversely affect revenues and the services offered to and by the Rugby League Community.

In 2008-2009 Rugby League will spend over \$50 million on development activities across the breadth and depth of the Rugby League community, with total expenditure exceeding \$200 million.

The Rugby League community firmly believes that the current telecommunication regulations are sufficient to allow for the Government's development of the National Broadband Network, without the need for further regulation.

Ultimately a sustainable NBN platform must be able to provide for a sustainable on-line economy for the production of the content that will decide its relevance to everyday Australians.

Rugby League looks forward to a continuous engagement with Government as it finalises the regulatory framework for the National Broadband Network.

Yours sincerely



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