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Dear Sir/Madam

Please find attached a submission by Broadcast Australia in response to the Report by the ACCC on Pay TV Competition.

Should you have any queries in relation to our submission, please don't hesitate to contact myself on (02) 8425 4602 or email Graeme.Barclay@broadcastaustralia.com.au or Linda Andersen on (02) 8425 4654 or email Linda.Andersen@broadcastaustralia.com.au.

Yours sincerely

Graeme Barclay
Managing Director



SUBMISSION TO DCITA RELATING TO THE ACCC REPORT ON EMERGING MARKET STRUCTURES IN THE COMMUNICATIONS SECTOR, JUNE 2003

1. Introduction

Broadcast Australia (BA) is the owner of the National Transmission Network (NTN), an Australia-wide network of nearly 600 terrestrial broadcast transmission sites. Acquired from the Commonwealth in April 1999, Broadcast Australia's network reaches 98.5% of the Australian population, with a core business of providing digital and analogue television and radio transmission services to the national broadcasters, ABC and SBS. Broadcast Australia also provides transmission and other services to regional commercial free-to-air television and radio broadcasters and telecommunications companies.

BA is owned by Macquarie Communications Infrastructure Group (MCIG), which is listed on the Australian Stock Exchange.

BA is a key stakeholder in the introduction of digital terrestrial television (DTTV) in Australia and is committed to its success:

- BA has worked with ABC to roll-out digital services to all Australia's capital cities and regional centres with over 80% of the Australian population now receiving ABC digital services.
- BA has also worked with SBS to roll-out digital services to all Australia's capital cities and regional centres with rollout now reaching around 70% of the Australian population.
- BA has sought, and obtained from the Australian Broadcasting Authority (ABA), a licence for a three year datacasting trial in Sydney, which will commence in late 2003. BA will incur substantial expense in establishing and running the trial service, and will make the datacasting channel available to a range of government and commercial content services.

The recent ACCC report on 'Emerging Market Structures in the Communications Sector' raises a number of points of interest to BA, and we are pleased to have the opportunity to comment on these. BA believes that the tabling of this report provides a timely and appropriate opportunity for government and industry to reflect, among other things, on the introduction of DTTV in Australia and the associated policy framework. Where impediments are identified or existing policy settings have proved less effective than originally anticipated, new options should be explored.

2. Key Proposals

BA's observations on the report are focused on DTTV and its interaction with pay TV networks (principally issues discussed by the ACCC in chapters 5 and 7). The key proposals that BA wishes to make in this regard are:

- BA agrees with the ACCC's conclusion that datacasting content rules are unduly restrictive and have stifled the emergence of new DTTV services. Consideration should be given to recasting the genre rules in Schedule 6 of the *Broadcasting Services Act 1992* (Act) such that a) the regulatory approach is simply to define restricted content categories (rather than also attempting to define permissible categories) and b) to wind back the content categories that are currently restricted (principally through the lifting of Category B restrictions on news, financial and weather information services).
- BA agrees with the ACCC's conclusion that multi channelling restrictions on commercial free to air (FTA) broadcasters should be removed. While accepting that not all broadcasters would necessarily take up this opportunity (and they should clearly be free not to do so), it is appropriate to leave this to the market to decide.
- While BA accepts the Government does not currently intend to bring forward the moratorium on the granting of a fourth commercial FTA television licence, BA believes that careful consideration should be given to a modified proposal in this regard. BA suggests that the Government move to issue such a licence as a **digital-only** multiplex service. This would continue to afford 'protection' to incumbent commercial FTA operators (ie. in recognition of their substantial investments in the digital transition), but at least provide a new entrant with the opportunity (albeit highly speculative) to establish new DTTV services and provide competitive pressure on the incumbents to develop their own digital offerings. Spectrum for such a service should be made available as soon as possible.
- BA understands that arguments have been made by some in the industry that digital commercial FTA services should be made available for retransmission on pay TV platforms on a mandatory basis. BA concurs with the ACCC view that this is not appropriate, and believes there are strong public interest arguments against this proposition.
- Government has an important role to play in finalising outstanding standards-related issues on DTTV consumer equipment. While BA agrees that government mandation of such standards should be a last resort, further action continues to be necessary.
- The limited uptake of DTTV consumer reception equipment to date should be a cause for some concern. While BA accepts that the consumer take-up of new technology can be characterised by a slow

start-up phase followed by rapid uptake, the latter is by no means a foregone conclusion in the case of DTTV. There is a greater role for government and industry in this area, particularly in terms of consumer marketing. Government mandation of integrated digital televisions (iDTVs), with reasonable start dates, may be a legitimate and important step forward as part of Australia's DTTV policy.

3. Key Issues Confronting Digital Television in Australia

BA takes a close interest in international developments in DTTV, and maintains close relationships with key industry participants (broadcasters, equipment suppliers, application developers etc), particularly in the UK and Europe. BA's analysis is that:

- The UK clearly leads the world in DTTV, and the US would also appear to have made some substantial progress (particularly with HDTV as a driver).
- The UK has some very different broadcasting industry dynamics to Australia, particularly with substantial direct competition between satellite, cable and terrestrial platforms.
- Despite the failure of the original DTTV multiplex in the UK (ITV Digital), the emergence of FreeView over the last year has been a success. Consumers have been provided with a significant variety of content to choose from – including:
 - retransmitted FTA analogue services,
 - documentary,
 - shopping and travel,
 - entertainment,
 - children's and education,
 - music,
 - news,
 - special interest and
 - history.
- An important part of Freeview's success has been innovative product development (eg. switching of some BBC programming to digital; new programming exclusively offered on digital; starting some mini-series on both analogue and digital, but with concluding episodes only on digital and day/night channel sharing). Within 12 months of its launch (as at March 2003), Freeview now serves more than 1.6 million UK households (6.5% of all UK households) and the sales rate for DTTV set top boxes is around 35,000/week and is expected to reach significantly more than 2 million by the end of 2003.
- Commercial multiplexes are being successfully operated in the UK on a FTA basis, funded by an advertising/sponsorship model. It is a

combination of no increase in the cost to the consumer and access to circa 30 channels that is driving penetration in that market.

- The increase in the pace of take-up has been further encouraged by the cost of set-top boxes in the UK falling dramatically over time, with a GBP79 unit released in the first quarter of 2003, and one manufacturer announcing its intention to release a GBP60 unit in third quarter 2003. Set-top boxes in Australia remain substantially more expensive (standard definition – A\$300; high definition – greater than A\$600), and it is likely to take significantly greater consumer demand to force these down to price points comparable with the UK.
- Despite the success that has been achieved, the UK is considering further potential initiatives to aid the penetration of digital television, at least some of which are being or should also be considered in Australia:
 - Announcement of a firm switchover date (clearly not yet appropriate in Australia).
 - Mandating digital tuners in all television sets after a certain date.
 - Labelling of analogue receivers with a warning that a digital converter box would be required from a certain date.
 - Public education campaign.
 - Licence conditions on digital multiplex holders that they will continue high levels of coverage after switch-off.
- Recent developments in the UK has created an environment where the DTV platform on a FTA basis will be successful and viable, and provides certainty that digital FTA services will be available to all consumers directly rather than through a subscription television cable or satellite operator.

Accepting that Australia has committed itself to a high definition (HD) digital model (at least in metropolitan and regional areas so far, with an equality of service issue already apparent in relation to remote areas), BA's view is that the policy framework for DTTV should be amended to promote flexibility, diversity (including through new entrant participation) and choice to the maximum extent possible. BA has a similar view to the ACCC on the key issues in this area and believes the priorities are:

- Providing the framework for a (more) viable commercial datacasting model (see section 4, below).
- Allowing those broadcasters who wish to multi channel to do so (see section 5, below).
- Enabling a catalyst for the emergence of significant 'digital only' content that provides a more robust consumer value proposition for DTTV. One way to do this is through the licensing of a fourth digital-only commercial FTA broadcast multiplex (see section 6, below).

In addition, BA believes that there are other measures which deserve close examination (some of which have also been raised by UK government and industry stakeholders):

- Ongoing, substantial consumer marketing campaign to consumers, including advertising and equipment labelling (see section 8, below).
- Mandation of digital tuners in television sets, assuming reasonable time periods and the support of the consumer equipment manufacturing industry (see section 8, below).
- Resolution of key standards-related issues, such as the Applications Program Interface (API) standard (see further, section 8 below).

Finally, the ACCC report makes reference to retransmission of digital FTA services. BA concurs with the ACCC's view that there is no justification for mandatory retransmission of FTA digital services on pay TV networks (see further, section 7, below).

4. Datacasting

Schedule 6 of the Act is structured in a way that provides for restrictions on content that may be transmitted as part of a datacasting service (certain genres of television programs; audio content), while qualifying those restrictions not to include particular content categories (eg. information-only programs, educational programs, foreign language news programs) and extracts of the restricted programming.

BA notes that the ACCC refers to permissible datacasting content as including "News, financial and weather information" (page 86 of its report) as well as education programs etc. This is not, in fact, the case as the ability to transmit "news, financial and weather" (Category B) content appears severely constrained in Schedule 6.

The ACCC notes DCITA's recent review of the datacasting rules and its concern that substantial changes could compromise the moratorium on new commercial FTA services, because a less restricted datacasting service would essentially be a commercial FTA service. BA suggests that this is something of a non sequitur as 'datacasting' has always been a modified (restricted) form of digital television broadcasting – it is simply a question of the degree to which the two services can be alike.

It is BA's view that the datacasting genre rules can be significantly relaxed without a datacasting service effectively becoming a television service. The current genre restrictions are so onerous (ie. effectively all mainstream entertainment and news-related content are prohibited or severely curtailed) that even if, say, all Category B content (ie. news, financial information and weather) were made permissible this would still leave a service distinctly different to 'television' (ie. no drama, sports, music, infotainment, documentary, reality television, children's entertainment, light entertainment, compilation, quiz or comedy programming, other than a 10 minute extract

would be possible). At a practical level, this would still mean that over 80% of the programming on Sydney's three commercial stations, for example, would not be permitted as part of a datacasting service¹.

BA believes that there is a strong, practical case for the datacasting genre rules to be significantly relaxed. BA would advocate the lifting of the Category B restrictions and consideration be given to an exemption for category A programming where content is produced in Australia. The advantages of these amendments would be:

- Adding to the diversity and plurality of news and current affairs views available to Australians;
- Greater viability for a commercial datacasting service through the provision of mainstream content with substantial consumer appeal;
- Lifting of the category B restrictions would be a relatively uncomplicated legislative change;
- A carve-out for locally produced content may offer the potential for further development and exposure of this programming to Australian audiences;
- By making a datacasting service more attractive to consumers, datacasting would be able to play an important role in encouraging take-up of DTTV in accordance with the objectives of the transition scheme.

As a regulatory approach, BA suggests that any re-working of the datacasting genre rules simply and very clearly identify those content categories that are not permitted – everything else ought to be permitted. This avoids the problem in the current legislation where an attempt is also made to define permitted content, thereby leaving significant potential 'grey' areas for a potential datacaster.

Schedule 6 also makes provision for a datacasting licensee to provide its programming information to FTA broadcasters for the purpose of EPG (electronic program guide) compilation. BA proposes that these provisions be amended so that a reciprocal obligation exists on FTA broadcasters vis a vis a datacasting licensee (ie. such that a datacaster can formulate an industry – wide EPG as part of its service offering).

As the ACCC notes, the prospect of liberalising the datacasting genre rules and the possibility of bringing forward the issuance of a fourth commercial licence (even in a restricted form) are related issues. Should the Government be minded to consider only one of these options, BA's view be that it would be

¹ Refer Sydney television program for Friday 18 July 2003. This shows that only approximately 13.5 hours out of a total of 72 hours of programming constituted news, financial information and weather.

preferable to issue a fourth commercial (digital only) FTA licence that could be operated as a “commercial” multiplex (see further, section 5, below).

5. Multi channelling

BA strongly concurs with the ACCC’s comment that HD and multi channelling are not mutually exclusive. This position has been long-held by BA, and is reinforced by a) the ability to dynamically manage bandwidth usage within a digital channel, and b) continuing advances in digital compression technology (for example, MPEG-4 and Windows Media 9) that significantly enhance the efficient use of spectrum.

BA shares the ACCC’s scepticism about the arguments raised against removing the multi channelling restriction for commercial FTA broadcasters. While there is no need to mandate multi channelling, the decision to multi channel or not should be a matter for the market rather than regulation. It is apparent from international experience, that increased choice/content has operated as a major catalyst for DTTV uptake. It is appropriate to allow Australia’s commercial FTA broadcasters to innovate in this regard and, as with proposed changes to datacasting regulation, multi channelling is highly likely to significantly spur DTTV take-up.

BA is equally sceptical of the pay TV industry’s arguments against removing the multi channelling restriction. Firstly, even with advances in compression technology (referred to above), the 7MHz channel represents a finite resource in terms of how many channels can be transmitted simultaneously (particularly with the HD requirement in place). Secondly, the fact that it is reasonable to assume that DTTV is still considerable lengths from being a widely adopted consumer technology will mean that the pay TV sector has a number of years to adjust to any impact (if any).

BA concurs that the multi channelling restriction should be removed forthwith, and that FTA broadcasters nationally should each be capable of using their multiplex to best advantage.

6. The Case for a Fourth (Digital-Only) Commercial FTA Broadcaster

BA notes with interest the competition and economic arguments (including international comparisons of FTA commercial performance) cited by the ACCC and before it, the Productivity Commission. Taking these arguments into account, as a matter of principle BA agrees that a fourth commercial FTA licence should be issued.

However, at a practical level, it is clear that the parliament made a commitment to incumbent FTA broadcasters in the lead-up to the 1998 Digital Television legislation to inhibit further competition until at least January 2007 (ie. while significant DTTV investments were made). The Minister reaffirmed this important point upon tabling the report for comment.

BA believes that there is a reasonable mid-point between these two positions which can result in considerable benefit to the consumer and the uptake of DTTV in Australia. This involves the immediate allocation of a separate digital-only fourth commercial FTA channel, which BA believes would have a number of strong advantages:

- Introduce further diversity to Australian commercial FTA television, consistent with government policy (as recently demonstrated in the decision to press ahead with the allocation of further FM radio licences in major metropolitan markets).
- Increase competitive forces in commercial FTA broadcasting, albeit very gradually. It is reasonable to expect incumbent commercial FTAs to increase their own commitment to developing innovative digital services as they seek to respond to a digital only new entrant.
- Act as a significant spur to the marketing of DTTV to consumers, given that the new licensee's business case would depend totally on the successful mass adoption of DTTV by consumers. This is likely to include significant innovation that might not otherwise occur, for instance, in relation to the development of interactive services on the DTTV platform.
- At a practical level, significant competitive impacts are unlikely to be felt by incumbent commercial FTA broadcasters (and, indeed, pay TV operators) for at least a few years. That is to say, it will take a new licensee a significant amount of time to establish its service, programming and brand, and its market will be constrained by take-up of digital consumer reception equipment which is starting from a very low base.

The allocation of a digital-only licence will, on any reading, involve the licensee in a long term (possibly speculative) business proposition. Other than limiting the licence to a digital-only service, BA does not believe it is appropriate to subject this licence to any further restrictions other than those to which incumbent commercial FTAs are subject (eg. local content) and should allow multi-channelling. A fourth commercial multiplex should be made available on a national basis and as soon as possible.

7. Retransmission of FTA Services by Pay TV Networks

In chapter 7, the ACCC discusses the interface between the FTA and pay TV sectors. It canvasses the possibility of regulatory intervention in the provision of access to digital pay TV networks for the delivery of digital FTA or interactive services (ie. the pay TV set-top box as the 'gateway' to the home).

At this stage, BA is inclined to agree with the ACCC that it is too early to contemplate regulatory intervention in relation to this matter as it remains to

be seen how consumers will choose to take-up digital FTA and pay TV services. What is apparent to BA is that without some of the deregulatory measures contemplated above, digital pay TV services are likely to quickly dominate the DTTV consumer proposition.

In relation to the supply of FTA services on pay TV networks, BA concurs with the ACCC's view that it would not be appropriate to legislate access. In relation to the proposal that there be mandated retransmission of all digital FTA services by pay TV operators, BA believes that there would be significant disadvantages in this approach, particularly in regional areas:

- It would be inconsistent with the trend to a less regulated approach to broadcasting.
- It seeks to supplant commercial negotiation and agreement with an inflexible legislated obligation where events have not yet unfolded to an extent to establish any clear public interest case.
- It would potentially undermine the considerable investment that has already been made in DTTV distribution and transmission.
- In regional areas, such retransmission would inevitably lead to a diminution in local content and may significantly prejudice the business case of regional commercial FTA broadcasters.
- Such retransmission would only provide SD programming, and would undermine the HD requirement currently underpinning Australia's DTTV framework.

8. Consumer Reception Equipment and Standards

BA put views to the Government earlier in 2003 on issues related to DTTV consumer equipment, arising out of the Minister's interest in obtaining industry comment on the proposal to mandate incorporation of digital tuners in new television sets.

BA reiterates its views expressed at that time:

- Progress by the industry (essentially the incumbent FTA broadcasters) on the final resolution of DTTV standards issues continues to be very slow. The agreement of a common standard for the Application Program Interface (API) in the receiver is a significant outstanding issue, and its resolution is a pre-requisite to certainty in the market for 'smart' receivers and to the proposal to mandate digital tuners in new television sets. As it stands, the market opportunity for receivers is limited to simple units that are not capable of delivering enhanced or interactive services. Given that industry consensus has so far proved ineffective in resolving this issue, BA believes that there may be a role for the Government (potentially through the ABA) to a) clearly indicate

its expectation that this issue will be resolved in a timely fashion and b) take on a more active 'facilitation' role (perhaps through the ABA) between industry stakeholders.

- That there is merit in the proposal for government to mandate that all newly manufactured television sets incorporate (progressively) digital tuners, similar to the approach being pursued in the US. Among its advantages, this approach would provide consumer equipment manufacturers with greater certainty and is also likely to provide a significant spur to the take-up of DTTV receive equipment over time.
- Consumer equipment labelling may also be worthy of consideration, similar to the approach being pursued in the UK. Essentially, this would see a label affixed to all new analogue television sets sold in Australia informing consumers of the digital transition process and that in the future a digital converter box (or digital television set) will be required.
- Ongoing, substantial consumer marketing of DTTV is clearly essential to increased take-up. Clearly, consumers will not invest in something that they do not understand or where they cannot see the benefit. While acknowledging that commercial FTA broadcasters are currently undertaking a short consumer marketing campaign to coincide with the commencement of HD transmission requirements, BA does not believe that this is adequate. Government and non-government stakeholders should consider the funding of an ongoing joint government-industry DTTV marketing initiative.

Broadcast Australia
25 July 2003