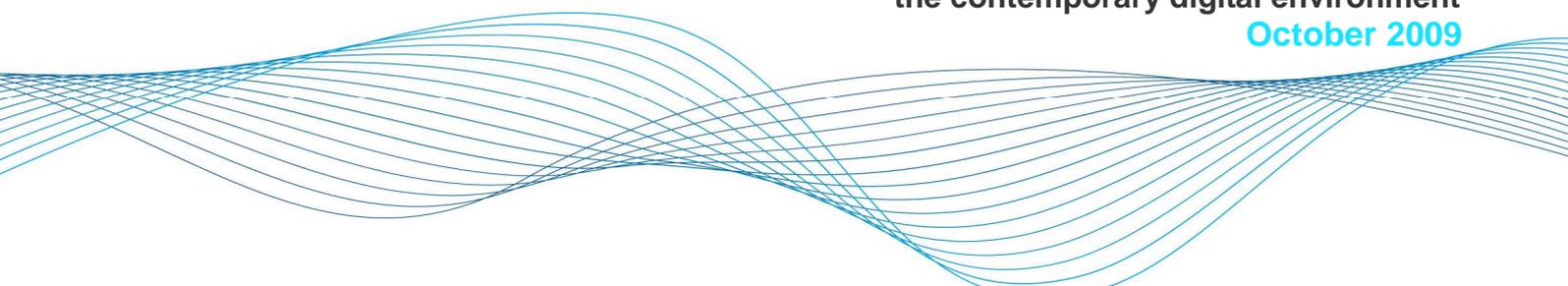




**Sport on Television:
A Review of the anti-siphoning scheme in
the contemporary digital environment**

October 2009



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PART A: Introduction

1. Overview

ASTRA appreciates the opportunity to contribute to the Australian Government's review of the anti-siphoning scheme in the contemporary digital environment ('**Review**').

In summary, ASTRA makes the following points:

- The Australian Government's current anti-siphoning scheme requires reform; it is bad for television viewers, the sports codes and grass roots sports competitions. It is antiquated, anti-competitive and dramatically limits Australian viewers' choice to watch live sport.
- Within the proposed reform, we are not asking for the 'anti-siphoning list' to be scrapped or for a single event¹ on the list which the old networks show to be removed.
- With regard to the 1300² sporting events captured by the anti-siphoning scheme, it gives the old television networks complete control to decide for Australians what and when sport is available to be viewed at all and whether it is able to be viewed live.
- The list is much, much longer than comparable lists in other countries and is protectionist towards the old television networks. This is unfair and unacceptable.
- Subscription TV is a substantial investor in Australian sports but the current rules mean they are limited in how they can broadcast a range of sports events. Instead the old television networks can tie up the rights to broadcast them and then decide not to show them at all.
- Sports fans are increasingly frustrated by their inability to see sport live despite receiving both subscription and old television.
- Interactivity and the ability to view programming when and how you want is increasingly expected by viewers. Huge and growing numbers of people are using Internet, 3G mobile phones and various other new technologies to get their news, information and entertainment.
- Currently over 40%³ of Australians have subscription TV. And more than 50% of 'keen sports fans' have subscription TV.⁴ This continues to grow.
- People are increasingly demanding choice yet the current regime severely limits people's ability to choose.
- The review of the regulatory environment governing anti-siphoning needs to take account of the seismic shift in television viewing behaviour – how people are actually engaging, watching and interacting with TV.
- The vast majority of events on the anti-siphoning list could be bid for fairly in an open market and they would still be broadcast on old television networks. Open market competition would provide sports with valuable revenue.

¹ Those events shown live, near-live (within one hour of commencement) and nationally on the free-to-air networks.

² Current Australian Anti-siphoning List Covering Events Taking Place Between 1 January 2006 and 31 December 2010.

³ Based on 33% household penetration, and a household average of 3.7 people per home among subscribers.

⁴ 2009 Auspoll research commissioned by ASTRA.

2. ASTRA and the Subscription TV Industry

The subscription TV industry is the undisputed market leader of digital broadcasting. A dynamic sector that is constantly evolving and growing, it is received by 33% of Australians through their homes and many more through hotels, clubs and other entertainment and business venues. It is the future of broadcast entertainment and is represented by ASTRA.

ASTRA was formed in September 1997 when industry associations representing subscription (multi-channel) television and radio platforms, narrowcasters and program providers came together to underpin and propel the new era in competition and consumer choice that these new services have brought to broadcasting, communications and entertainment in Australia.

Subscription broadcasting and open and subscription narrowcasting services were new categories of broadcasting services introduced by the Broadcasting Services Act 1992 (Cth) ('BSA'). These new services added to the mix of existing categories of service, those being the national broadcasting services; commercial broadcasting services (commercial television and radio); and community broadcasting services.

The anti-siphoning scheme was crafted in this environment: one of uncertainty about the impact of these new services and with exaggerated concerns from incumbent broadcasters who had the most to lose from the competition subscription TV would generate.

ASTRA's current membership includes the major subscription TV platforms as well as the many channels that provide programming to these platforms. Other members include communications companies such as OPTUS and Telstra. A complete list of ASTRA members can be found at www.astra.org.au/members.asp.

Today, subscription TV channels provided by ASTRA members are broadcast on the FOXTEL, AUSTAR and OPTUS subscription TV platforms. These channels are available to over two million residential subscribers⁵ and are directly accessible by more than seven million⁶ people.

Since its inception, over \$A9 billion dollars has been invested in infrastructure, capital, facilities, productions, programs and services in order to establish and develop the subscription TV industry. ASTRA's members are responsible for the bulk of this investment which has been distributed throughout metropolitan, regional and remote markets. Consequently, the sector has created an enormous number of jobs, investment, infrastructure and production content throughout Australia.

The industry continues to invest heavily in its own growth and the growth of the Australian film and television broadcast sectors including the continuing investment in television programming and production.

⁵ XYZ Basic Subscribers, 30 June 2009

⁶ OzTAM NatSTV UEs, 2009Q2

PART B: ASTRA's View

1. Australians Love Sport Or Do They?

While the Review's discussion paper commences by informing its reader that "*Sport is an important part of Australian culture*" and that "*Australians are keen followers of sport on television*", these statements amount to a generalisation of Australians and their interests. It does not provide an accurate or complete picture of Australian attitudes towards sport or an understanding of which Australians enjoy viewing sport and by what means they enjoy viewing it.

In order to better understand the modern, technologically progressive and culturally diverse Australia of 2009, ASTRA engaged Auspoll to conduct national research to identify and understand key issues in consumer behaviours and attitudes towards sports coverage on TV, both in terms of their everyday enjoyment and, more specifically, in terms of the anti-siphoning legislation.

The research included a mix of focus groups and an online survey. More details about the research can be found at Appendix A.

The research revealed the following key results:

- 57% of Australians indicated they were sports fans but only 21% of Australians indicated that they were 'keen' sports fans;
- almost twice as many people believe there is too much sport on old television than believe there is too little;
- 69% of people who are not sports fans believe there is too much sport on old television;
- 49% of all women believe there is too much sport on old television;
- 47% of all 18-24 year olds believe there is too much sport on old television;
- Most football code matches, all major golf tournaments and the French Open tennis have low national significance in Australia;
- Keen sports fans are especially eager to see more live sport on TV; and
- All sports fans are annoyed that more events are not screened live.

Overall, the research indicates that Australians attitudes towards sport are very different from the assumed perceptions stated in the Review's discussion paper.

The research identifies two major groups:

1. 'keen sports fans'; and
2. those that are ambivalent towards sport.

Those ambivalent to sport are the majority. A case in point is that the 2009 Masterchef Australia finale had 30% more viewers than the recent AFL Grand Final⁷.

'Keen sports fans' are a powerful minority in Australian society. They are committed to sport and its coverage. These people feel continually frustrated at the old television networks who fail to broadcast major sports live. This group is more likely to subscribe to subscription TV⁸

⁷ The announcement of the 2009 Masterchef Australia final winner garnered 3.7m viewers, or 30% more viewers, than the 2.8m that watched the 2009 AFL Grand Final. Source: OzTAM 5 City Metro.

⁸ Sport consistently receives the largest number of viewers on subscription TV as supported by OzTAM figures and reported by ASTRA.

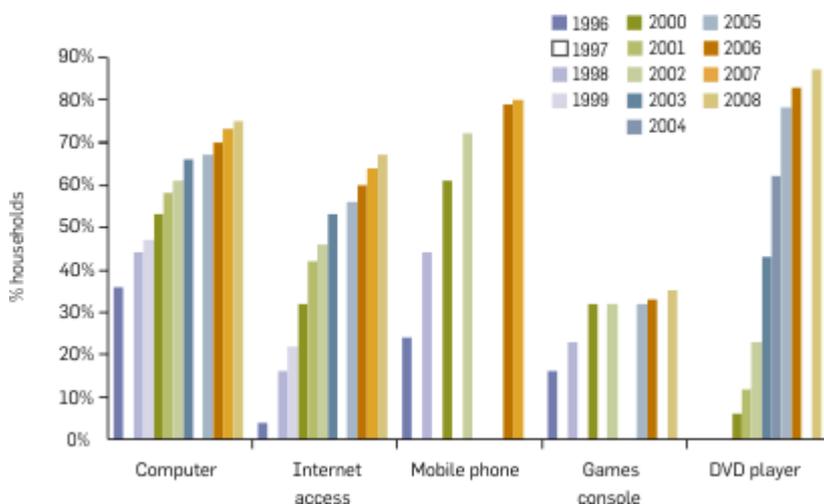
and has indicated that it wants more live sport, whether on old television networks or subscription TV.

The research has demonstrated that by continuing the list in its current format, no one is being properly served.

2. Australians Want Choice

When it comes to media and entertainment, Australians want choice. Australians are increasingly demanding to be able to view and experience what they want, when they want. They want control over their viewing options. This desire is being encouraged and facilitated by the realisation of a fully digital media landscape which has permitted the distribution of large quantities of content at times or by methods that suit a viewer's needs rather than those of an old television network programmer. It has also permitted the viewer to interact with the media they are consuming, thereby changing the pattern of engagement and altering the type of viewing experience people are seeking.

Chart One: Screen Australia's 'Get the Picture' research of the proportion of households with computer, Internet, mobile phone, games console and DVD player, 1996–2008⁹ further illustrates this trend.



New Media Growth

The world of media and communication has changed beyond recognition since the time the anti-siphoning rules were created. The penetration and use of new media continues to grow and new formats of content delivery are being generated in quick succession. People already regularly use the internet and 3G mobile phones to receive their news, information and entertainment.

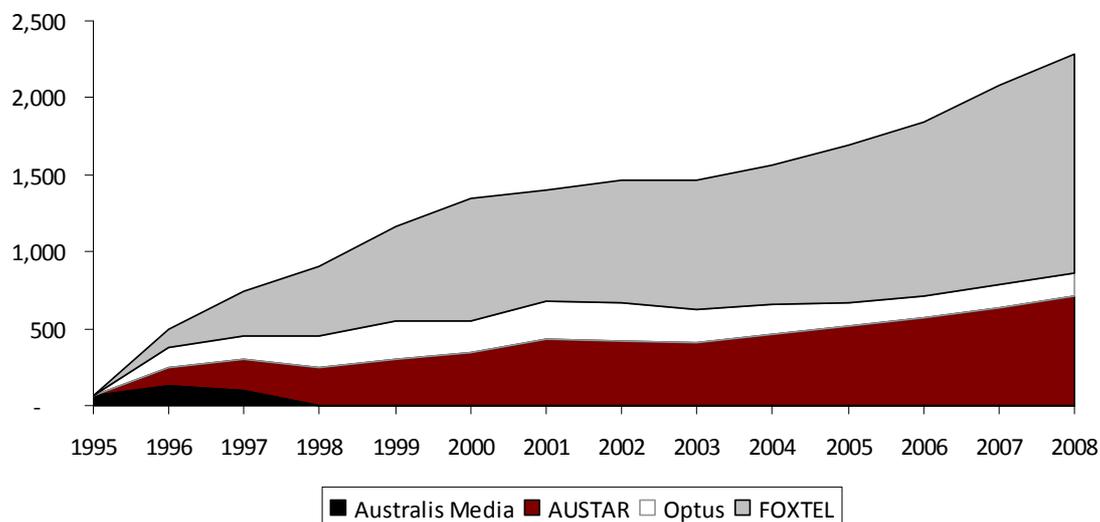
Broadband penetration in Australia is now at 73%¹⁰ of households. Subscription TV is now in 33% of households giving direct access to 40% of Australians, and continues to grow significantly each year.

⁹ <http://www.screenaustralia.gov.au/gtp/wnmcomphome.html>

¹⁰ ABS 2009, Households use of Information technology, <http://agent.capmon.com/largefiles/p090930703.pdf>

Since its inception in 1995, the three major service providers of subscription television in Australia – FOXTEL, AUSTAR and OPTUS – have built up a subscriber base totaling more than 2.3 million subscribers at the end of June 2009.

Exhibit 2.1: Australian STV Subscribers



Choice and Sport

When it comes to viewing sport, Australians particularly want choice. The Auspoll research indicates that Australians who identify themselves as sports fans want to be able to choose what sports they watch and they want to watch these sports live.

ASTRA recently launched a new website www.fairgosport.com.au aimed at encouraging fans to become engaged in the discussion around the anti-siphoning list and to express their views.

The Auspoll research shows that Australians not only want the right to be able to choose but also that this principle of 'a right to choose' is extended to others:

- 67% of people feel that sporting codes should be able to sell their television rights to any broadcaster they choose, and
- 73% of people believe it is unfair that the old television networks have control over broadcasting negotiations for listed sports.

Choice and Sporting Codes

Sporting codes also want this choice. The major sporting codes in Australia have all commented about the negative impact the anti-siphoning list has upon the market for the rights they hold in their sports and their desire to be able to freely negotiate with media outlets of their choosing.¹¹

*"We want the (anti-siphoning) list abandoned but if it is retained, we want guarantees the free-to-air channels can't hoard games by showing them on their digital channels."
David Gallop, CEO of the National Rugby League, The Sydney Morning Herald 8 October 2009*

The Productivity Commission drew together comments raised by sporting bodies about the

¹¹ Productivity Commission's Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services, August 2009 Pg 159

impact of the anti-siphoning list in submissions to a current review being made by the Independent Sport Panel and the recent Senate Standing Committee on Environment, Communications and the Arts' review into the reporting of sports news and the emergence of digital media:

“Sporting organisations have commented on the impact of anti-siphoning regulations on the returns to sporting organisations from broadcast rights.

For example, the Australian Rugby Union says that:

For sports operating in the mass entertainment business, it is vital that they be able to make their own decisions which balance the twin objectives of optimisation of exposure (say, through free to air television) and maximisation of revenue (perhaps via pay/subscription TV and other forms of distribution platforms). Anti-siphoning is a form of regulation which can substantially reduce the competitive tension required for price maximisation and thus lessen the amount of funds available to invest in pathways and grass-roots sport.

(Australian Rugby Union 2008, pp. 12-13)

In the view of the Australian Rugby League and National Rugby League:

... 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. The continued operation of the anti-siphoning scheme, in its current form, will continue to restrict sports from realising the full value of their media rights and driving for national coverage as part of their broadcasting model.

Whilst, it would be inconceivable for Rugby League to totally move away [from] free to air broadcasting. The growth of media rights sales underpins Rugby League's investment in junior league and the thousands of kids born today who will play Rugby League into the future.

(Australian Rugby League and National Rugby League 2008, p. 13)

The National Rugby League also states:

The point that the anti-siphoning Legislation fails to take into account is that sports are already in the business of achieving the widest possible coverage within the media landscape. In doing so they are subject to market forces.

... The sports that do achieve free to air network interest need to be able to freely negotiate the extent of coverage and the mix of free to air versus subscription telecasts in order to balance revenue versus public exposure.

(National Rugby League 2009, p. 4)

While Cricket Australia states that:

... changes to the anti-siphoning policy in particular need to ensure that new settings do not create market distortions that deny sports their ability to derive a fair market value for the rights that are central to the administration of sport.

(Cricket Australia 2008, p. 21)¹²

Choice is not only sought after by viewers and by sporting codes. Choice leads to better resourced sporting codes which in turn means that at a 'grass root level' the sports are healthier and better placed to encourage amateur or professional participation and facilitate the development of the sport and the sport's future stars, and importantly, its fans.

¹² Productivity Commission's Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services, August 2009 Pg 159

3. What Old television Will Say and What Old television Will Do

Old television networks show a selection of Australian sports live and nationally. These events such as the Melbourne Cup or the AFL or NRL Grand Final rate well and receive the large television audiences that old television networks require to generate the advertising revenues their business model demands.

However more often than not, many sports that appear on the anti-siphoning list are not shown or not shown live or nationally, despite the networks acquiring the rights to do so. This is because the networks know what is confirmed in the Auspoll research: that there is only a proportion of Australians who are 'keen' sports fans. This means that the networks broadcast other (non sporting) programs as a preference to these sports as they rate better. The mass audience is important. This frustrates the keen sports fans who can't view the sporting game live on the old television network and are not able to access the sport on media that would happily broadcast the event live, such as subscription TV.

This pattern of failing to broadcast live or at all (sometimes by on- selling their rights to others, including subscription TV) is documented in both ASTRA's¹³ and the Australian Communication and Media Authority's (ACMA's)¹⁴ monitoring of old television network coverage of events on the anti-siphoning list.

ASTRA monitoring has shown that on average 77% of the available sport on the anti-siphoning list is not shown by old television networks at all. An example of listed sports events that have failed to be shown live or at all is included at Appendix B.

The Auspoll research indicates that almost 50% of Australians believe that old television should only have exclusive access to the sporting events they will actually broadcast.

It also indicates that many sports fans do not believe that the secondary digital channels being launched from the old television networks will offer improved coverage. The new digital channels will have very similar issues to the primary channels, given the business model of free to air television: large audiences are needed in order for the revenue model to work so popular events will be shown live and other events (that remain on the anti-siphoning list) will be shown delayed or not at all, thereby frustrating the audience (keen sports fans) that would be interested in watching the sport in the first place.

Auspoll research demonstrated that many sports fans are fed up with the treatment of sports coverage by the old television networks and do not trust them to change.

¹³ Independently audited ASTRA research monitored the old television network coverage from 2000 to 2005.

¹⁴ ACMA monitored the old television network coverage from 1 January 2006 to 3 September 2008.

4. Where There Is A Will, There Is A Way

ASTRA is not alone in its views about the negative effects of the anti-siphoning regulatory framework. ASTRA notes the following:

- **Australian Government Productivity Commission's Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services, August 2009**

Key Findings

Anti-siphoning list is overly burdensome

"The inclusion in the list of events which cannot be, or are not broadcast, by free-to-air television broadcasters imposes a protracted negotiation process on subscription TV broadcasters. The protracted negotiation process might be shortened through strengthening the anti-siphoning regime or by introducing a formal 'use it or lose it process'. However shortening the existing list would be a more effective approach to this problem, while being consistent with the overall policy objective." (page 156)

Anti-siphoning regime is anti-competitive

"The anti-siphoning regime is inherently anti-competitive. The anti-siphoning provisions directly limited competition between subscription TV and free to air networks. ...(It) shifts the balance of negotiating power in favour of free to air networks." (page 157)

Anti-siphoning regime has a negative impact on sporting bodies

"The anti-siphoning regime has a negative impact on sporting bodies as a result of the substantial reduction in competition during negotiations for their rights." (page 158)

Anti-siphoning regime has limited effectiveness

"There are a number of reasons why it could be expected that broad coverage of sporting events would be maintained in the absence of anti-siphoning regulation... Despite the expanding audience of subscription TV, free-to-air networks still have a considerably higher audience base and hence, can potentially generate large advertising earnings from broadcasting high rating sporting events... [F]or broadcasts that are likely to attract large audiences, free-to-air operators would nevertheless be in a strong position to acquire these rights even without the protection of the anti-siphoning regime." (page 158)

"The anti-siphoning list appears to be unnecessary to meet the objectives of wide consumer access to sports broadcasts (it may actually reduce consumer access to sports broadcasts). Further, it imposes substantial regulatory burdens and competitive disadvantages on subscription TV networks. The option to abolish the anti-siphoning regime should be explored." (page 163)

Recommendation 4.4

"The anti-siphoning regime imposes regulatory burdens because of the protracted commercial negotiations required in respect of listed events. To address this issue the Australian Government should substantially reduce the anti-siphoning list."

- **Australian Government Productivity Commission Broadcasting Inquiry Report (Report No.11, 3 March 2000) reached similar conclusions and in summation found:**

“that the anti-siphoning rules are anti-competitive and that the costs of the current scheme to sporting organisations, the broadcasting industry and the community as a whole, exceed their benefits. These anti-competitive effects will be even greater if the free-to-air stations are to be allowed to multichannel on digital television, as recommended in this report. As currently constituted, the anti-siphoning provisions of the BSA contravene the Competition Principles Agreement.”

- **Australian Competition and Consumer Commission Inquiry into Emerging Market Structures in the Communications Sector (June 2003)**

Key Findings

“The Commission is particularly concerned about...the anti-siphoning provisions, which reserve particular sporting events for FTA operators.” (page XXV)

“The Commission has previously expressed some concerns about the current anti-siphoning regulations. It is concerned that by giving FTA broadcasters almost exclusive rights to the listed programming, the anti-siphoning list has substantial anti-competitive effects and is more intrusive than is necessary to achieve the policy objective of ensuring key sporting events are available to viewers on FTA television.” (page 72)

“Potential costs of the current anti-siphoning regime include: possible reduction in the number of sports programs that may be broadcast; less consumer choice for consumers; less competition between FTA and pay TV broadcasters in both acquiring rights and at a retail level; and increased barriers to entry for pay TV operators.” (page 72)

- **Australian Government’s recently outlined approach to Telecommunications Regulation (September 2009)**

The Australian Government recently announced planned reforms to telecommunications regulation. Describing the changes as ‘fundamental reforms to existing telecommunications regulations in the interest of Australian consumers and businesses’, and being ‘[in line] with the Government’s commitments to address impediments to Australia’s long-term productivity growth’; Senator the Hon Stephen Conroy indicated that *“The existing telecommunications anti-competitive conduct and access regimes have been widely criticised as being cumbersome, open to gaming and abuse, and provide insufficient certainty for investment”*.¹⁵

In the Media Conference that Senator Conroy conducted on the day of the announcement, he stated that in making these changes to long-held regulatory positions: *“We are trying to modernise the telco industry, moving from the dying days of copper to the new era of fibre”*.¹⁶

In ASTRA’s view the Australian Government should apply this same approach to broadcasting regulation and particularly to the anti-siphoning scheme as the government attempts to ‘modernise the broadcasting industry, moving from the dying days of analogue to the new era of digital’.

¹⁵ ‘Historic reforms to telecommunications regulation’: Media Release, Senator The Hon Stephen Conroy

¹⁶ Transcript: Senator Stephen Conroy Media Conference Tuesday 15 September, 2009 Australian Parliament House, Canberra

There is considerable opportunity for Government to apply the same momentum behind the regulatory reform of the telecommunications and broadband sector to broadcasting and drive both to a new era of productivity and growth.

5. International Situation

The Australian anti-siphoning list covers more than 1300 sporting events. This list is much, much longer than comparable lists in other countries and much longer than most Australians believe it should be.

By way of example:

Event	Australia	UK	France
Local sport	NRL - all matches AFL - all matches	FA Cup - Final only Scottish FA Cup - Final only	French Football cup - Final only
Wimbledon	All matches	Final only	Not included
French Open	Quarter-, Semi-, Finals	Not Included	Finals only
US Open	Quarter-, Semi-, Finals	Not included	Not Included
Davis Cup	Any match involving Australia	Not Included	Semi- and Finals Involving France only
Rugby World Cup	All Matches	Final only	Semi- and Final only
Culturally resonant sport	Cricket - every one day national game; every match in cricket world cup Netball - every national match	FIFA World Cup - Final only	World Handball - Championship matches with France only

The consequence of the extensiveness of the list, as evidenced at Appendix B, is that most of the events on the Australian list simply cannot be scheduled on the old television networks.

6. Change Is Needed

The Auspoll research identified that 65% of people feel that the anti-siphoning law is a bad thing for sport in Australia.

The current situation is clearly not working. Keen sporting fans are frustrated by the absence of live coverage for sporting events and the non sporting fans believe there is already too much sport on old television networks and choose not to view more.

ASTRA's view is that only the events currently on the list which the old networks consistently show¹⁷ should be on an anti-siphoning list. These events such as the Melbourne Cup or the AFL or NRL Grand Final will always be broadcast on the old television networks as they are now. The rest of the events on the anti-siphoning list that are not being broadcast appropriately by old television networks could and should be bid for fairly in an open market.

The sporting codes will be in a position to negotiate with the broadcaster of their (and not the Government's) choosing, based on their own analysis of who will provide exposure, marketing and monetary compensation for their broadcast rights.

The most important beneficiary will be ordinary Australians, who will finally be given the opportunity to choose what they want to watch.

¹⁷ Live, near-live (within one hour of commencement) and nationally.

PART C: Key Issues Raised in the Discussion Paper for Comment

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 list should be to ensure that only events of national interest, such as Melbourne Cup or the AFL or NRL Grand Final are broadcast on the old television networks.

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

Sporting bodies and the markets for their rights should be allowed to operate unimpeded by anti-siphoning regulation. As the Australian Productivity Commission has identified, “[the] option to abolish the anti-siphoning regime should be explored”¹⁸ In ASTRA’s view competition and open negotiations are the best way to arrive at any outcome that is beneficial to consumers. Popular events are viewed by large audiences. These audiences in turn mean that old television networks generate significant advertising revenue.

This revenue is far greater than any return that subscription television could receive by broadcasting the sporting event. Consequently, old television networks can justify paying more than subscription television for sports rights and do so. By way of example, Network TEN and Fox Sports were on equal footing negotiating for the rights to the Indian Premier League. Channel 10 won these rights, and the IPL is now shown on ONE.

According to the Australian Productivity Commission:

*“free-to-air broadcasters are able to pay substantial premiums for selected sporting events and generally pay more for matches they broadcast than subscription broadcasters. In the absence of an anti-siphoning regime it appears likely that many very popular events would remain on free-to-air television because free-to-air networks are in a position to pay a premium for broadcast rights to high rating events, given their larger viewing base.”*¹⁹

On the basis that an anti-siphoning list remains, the best way to ensure that significant events are shown is to reduce the list to only those which meet clear national interest criteria and then impose obligations on old television networks to have to broadcast those events live as a condition of license or on the basis that the event will be removed from the anti-siphoning list if it is broadcast on delay or not at all. Where old television networks don’t acquire rights and/or don’t broadcast the event live, then the event should be delisted so that subscription TV has the opportunity to make the event available for sports fans.

¹⁸ Productivity Commission’s Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services, August 2009 Pg 163

¹⁹ Productivity Commission’s Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services, August 2009 Pg 161

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

The impact of the anti-siphoning scheme on sports rights holders and the business models of old television networks and subscription TV is significant and well documented.

The scheme by its nature means that the old television networks become the indirect gatekeepers for the broadcast of the great majority of sporting events. This creates an anti-competitive, protectionist environment in which the trading of a valuable commodity (the rights to the broadcast of sport) is conducted. The advantages of this environment are held by old television networks to the detriment of the public, sporting bodies and the subscription TV industry. The perverse effect of this is that in the absence of competitive pressure from subscription TV, far less sport is available to viewers. Further, the value of the sporting rights are reduced which in turn reduces the flow on benefits to the sports themselves.

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

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

The anti-siphoning list should contain only the events that the old television networks have consistently broadcast live and nationally to Australians. These events are sought out by large television audiences and these audiences will ensure that the live broadcast of the sport is able to be monetised by the old television networks. In this way, the old television networks and the viewers receive the benefit of the live broadcast of sport.

If the old television networks have not broadcast an event live and nationally it should be removed from the list. It represents an event that the old television networks either do not wish to broadcast (or broadcast live) and or cannot be monetised in comparison to alternate programming. Subscription TV does wish to broadcast such events to the 'keen sports fans' that wish to view them.

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

The criteria for determining whether or not an event is on the anti-siphoning list is whether old television networks have consistently shown the event live or near live (within one hour of commencement), and nationally.

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 duration of any anti-siphoning list should be for a maximum of five years. If the period is shorter than this, it would be difficult to ensure certainty for sports rights holders and broadcasters given the lead time associated with sports rights negotiations and the multiple year deals that are struck. Conversely, if the duration is longer than this, there would be a risk that the list would fail to be able to respond to rapidly evolving media or related consumer demands.

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?

The automatic de-listing period should be extended to 26 weeks prior to the event occurring to enable any alternative subscription TV broadcaster to pick up the event, and importantly to promote the event so that sports fans know where to find it. Old television networks know well in advance whether they want to broadcast an event or not. It is not unreasonable to allow others to have the time to make plans for broadcast on this basis.

This would better balance the interests of subscription TV and free-to-air television broadcasters and will improve the efficiency of the operation of the de-listing provision of the anti-siphoning scheme to the benefit of sporting bodies and viewers.

ASTRA understands that a period of 26 weeks would be sufficient for a free-to-air network to finalise its telecast plans and would provide a better opportunity for subscription TV operators to acquire rights to events and market and promote those events to subscribers and potential subscribers.

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?

Old television networks must broadcast any sporting event that is on the anti-siphoning list live or near live, and nationally. Otherwise the event must be removed from the list.

A full list of examples of old televisions failure to provide coverage is contained at Appendix B.

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?

The current restrictions that apply to all free-to-air and not just commercial television broadcasters broadcasting an event on the anti-siphoning list on their digital multi-channels should be maintained.

There are a number of reasons for this:

1. Allowing sport to be broadcast on digital multi-channels is a no win situation for everyone. It would grant more protection and power to the old television networks, drive down the price paid for sporting rights, and have an adverse effect on sporting codes and negatively impact sport at the 'grass root level'.
2. The point of placing sport on the anti-siphoning list is that all Australians should be able to view that sport. This is not achieved if the sport is broadcast on a digital channel given current penetration rates of digital reception in Australia. It should be noted that HD

penetration is naturally lower than digital penetration. Furthermore and until the time of 100% penetration of HD televisions, this will not be achieved if the sport is broadcast on HD channels.

3. Allowing the sport to be broadcast on digital multi-channels is unlikely to have any bearing on whether the broadcaster will broadcast sport live. This is because the same set of circumstances surrounding the broadcasting of sport on an old television network's main channel applies to the digital multi-channel. Only the minority 'keen sports fans' will be interested in many sporting events and these events are best able to be shown (and monetised) on subscription TV. ASTRA's Auspoll research confirms such a position, indicating that many sports fans do not believe the use of the digital multi-channels will offer any improved coverage by the old television networks.
4. Subscription TV will be further disadvantaged. As the Productivity Commission stated:

"If the restrictions on the multi-channel broadcasting were removed, while the anti-siphoning restrictions on subscription TV remain, the impact on the subscription networks could be significant".²⁰

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?

ASTRA does not believe any events on the anti-siphoning list should be able to be shown on the multi-channels.

7. Coverage of sports on new media platforms

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

New media platforms supplement consumers' television viewing of all types of programming including sport. Trends of new media usage would suggest however that these forms of media consumption will become increasingly important given the evolution of the media sector and related consumer demands. Consumers will expect to receive all forms of content of their choosing at the time, and on the platform of their choice.

The Australian Government's development of a National Broadband Network will continue to drive the penetration and usage of new media platforms.

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

The provision of sports programming on new media platforms highlights the antiquated nature of the current anti-siphoning regulation. As it stands today, there are no restrictions which would prevent an online provider purchasing exclusive rights to sports rights and making them available free or via subscription online, while the current restrictions prevent subscription television from broadcasting these same events.

²⁰ Productivity Commission's Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services, August 2009 Pg 161

It is impossible to regulate new forms of media using the anti-siphoning regulation, which was developed to address an analogue environment, and we certainly do not support the extension of the anti-siphoning regime to online media. However, given the competing nature of these new forms of media with subscription TV, this regulation is clearly out of date. In such a rapidly evolving media landscape, it is unacceptable for subscription TV to be regulated whilst IPTV and the online sector is not. The challenges presented by the regulation of new media only serve to demonstrate further how imbalanced and anti-competitive the anti-siphoning regime is.

The Productivity Commission agrees. Referring to IPTV, it stated that:

“Such technological change is likely to decrease the effectiveness of the [anti-siphoning] scheme. Attempts to increase the reach of anti-siphoning regulations could exacerbate the anti-competitiveness of the scheme and may prove difficult to achieve in any case.”²¹

²¹ Productivity Commission’s Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services, August 2009 Pg 162

CONCLUSION

It is clear that the current anti-siphoning scheme has a detrimental impact on subscription television, the sports codes and grass roots sports, and most importantly, Australian television viewers. The underlying policy rationale for imposing this anti-competitive, protectionist and restrictive regime is, we believe, blatantly challenged by the outcomes of the Auspoll research that ASTRA has conducted, and by the evolution of the media landscape.

ASTRA is not calling for an abolition of the list. We seek important structural reform to the list to ensure that the regime meets the policy objective of ensuring that sporting events of significance and national importance are able to be made freely available to the Australian public, and no more than this. In light of its inherently anti-competitive nature, the regime if it continues to exist must not extend beyond delivering this sole objective.

For these reasons, we call for clear reform that:

- (a) limits the events on the list to those which have been identified as most important by consistently being shown live, near live and nationally by the old television networks; and
- (b) imposes an obligation on the old television networks to broadcast listed events acquired live, near live and nationally or the event is automatically removed from the list.

We welcome the opportunity to comment on the anti-siphoning regime. Please do not hesitate to contact ASTRA if you require further information or clarification of the matters raised.

Please contact:

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Appendix A

Auspoll Research

Research conducted by Auspoll for ASTRA included a mix of focus groups and an online survey.

The focus groups were held in Sydney, Melbourne and the Gold Coast during the week of May 25, 2009. The online quantitative survey was conducted between June 26-30, 2009 with a total sample of 1500 Australian residents, weighted to be representative of the national population by age, gender and residential location.

The total sample of 1500 provides an error margin of +/- 2.5% at a 95% confidence level. This means that for a result of 50%, we can be 95% confident that the actual result would be between 47.5% and 52.5%.

Appendix B

Below are examples of old television's failure to broadcast sports coverage between 2006 and 2009. This includes is not comprehensive however clearly demonstrates the sport that has not been shown or shown severely delayed or in part.

2006

Sport	FTA Channel	Detail
Australian Open	Seven	Less than 10% of tournament shown live
Winter Olympics	Seven	Less than 5% of the events broadcast
Netball	Nine	28% of listed matches shown live
NRL		5 out of 8 weekly matches not shown
AFL		4 our of 8 weekly matches not shown

2007

Sport	FTA Channel	Detail
Wimbledon	Nine	Less than 10% of tournament shown live
US Open		No coverage until the quarter finals
NRL		5 out of 8 weekly matches not shown
AFL		4 our of 8 weekly matches not shown

2008

Sport	FTA Channel	Detail
AFL Preliminary Final	Channel Seven and Prime	1 Hour, Sydney, Brisbane, Perth, and regional NSW & QLD 30 mins in Melbourne
NRL Elimination Semi-Final	Channel Nine and WIN	1 Hour Sydney, Brisbane. After Midnight in Melbourne and across regional Victoria
AFL Preliminary Final	Channel Ten	Two Hours in Sydney and Brisbane 30 minutes in Melbourne
NRL Elimination Semi-Final	Channel Nine and WIN	Four Hours Delay in Melbourne and Regional Victoria for Melbourne Storm Fans.
Netball: Australia v New Zealand	Channel Ten and	Four Hours to 11pm

	Southern Cross	
Netball: Australia v New Zealand series 2	Channel Ten and Southern Cross	Four hours to 11pm
2008 Olympics	Seven	<p>Less than 5% of events shown live</p> <p>Sally McLellan's semi-final run, Australia's then best hope in any track and field event, delayed by 45 minutes;</p> <ul style="list-style-type: none"> o Ken Wallace's gold medal 500m kayak final and bronze medal 1500 kayak final; o Full and live coverage of Steve Hooker's historic gold medal performance in the pole vault; o Full coverage of Matthew Mitcham's extraordinary gold medal in 10m platform diving final, the first Australian gold medal in men's diving since Dick Eave won gold in 1924; o In sailing, Nathan Wilmot and Nathan Page's gold medal winning performance in the men's 470 class and Elise Rechichi and Tessa Parkinson win in the women's 470 class - both shown on delay only; o Grant Hackett's heroic victory in his 1500m heat swim delayed, due to AFL coverage; o Coverage of the Olyroos football opening match against Serbia, delayed to make way for Seven's reality series "Make Me A Supermodel"; and o Olympic events featuring Australian medal hopes, including shooting dual gold medalist Michael Diamond competing in the men's trap final and Australia's women synchronised diving champions in the 3m springboard final, delayed for AFL coverage.
French Open		Not broadcast at all

NRL		5 out of 8 weekly matches not shown
AFL		4 our of 8 weekly matches not shown

2009

Sport	FTA Channel	Detail
Oct NRL GF	NINE	Cut off trophy giving ceremony
Wimbledon	Nine	Delayed Australian matches 2 hours to 11.40pm
Netball: Aus v NZ	Ten	Delayed broadcast four hours to 11pm
Netball: Aus v Eng	No coverage	
Netball: Aus v Jamaica	No coverage	