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Advertising Consultation  
Recalls and Advertising Section, Office of Product Review  
Therapeutic Goods Administration

By email: [advertising.consultation@tga.gov.au](mailto:advertising.consultation@tga.gov.au)

Dear Sir/Madam

## **Regulating the advertising of therapeutic goods to the general public**

The Australian Subscription Television and Radio Association (ASTRA) welcomes the opportunity to respond to the Therapeutic Goods Administration's (TGA's) Consultation Regulation Impact Statement (RIS) relating to the advertising of therapeutic goods to the general public. ASTRA is the peak industry body for subscription television (STV) in Australia. Formed in 1997, ASTRA's membership includes the major STV operators, as well as channels that provide programming to these platforms.

The Consultation RIS provides that:

...media such as the internet, SMS, narrowcast/subscription transmission (includes pay TV) are currently **excluded** from the "pre approval scheme" which requires certain advertisements to be approved prior to publication or broadcast.<sup>1</sup>

By contrast, the TGA notes that the advertising of all medicines which can be advertised (being most over-the-counter and complementary medicines) must be pre-approved in other media, including when broadcast on free-to-air (FTA) television.

Among media which the TGA identifies as not being subject to pre-approval requirements, STV is singled out as a candidate for inclusion in the scheme. Despite noting that the 'current resources available for pre-approvals are insufficient to deal with the growing volume of advertising across all electronic media', and noting a number of impracticalities of including other types of electronic media in the pre-approval scheme, the TGA nominates STV for inclusion on the basis that '...the situation may be different with advertisements on pay TV where there would appear to be little difference from advertising on free-to-air TV'.<sup>2</sup>

ASTRA does not agree with this characterisation and, for the reasons set out below, submits that STV should not be subject to the same level of regulation as FTA television.

### **Current arrangements for STV are working effectively**

First, there is no evidence of a need for change—current arrangements for STV are working well. ASTRA's Codes of Practice, which are given effect when registered by the Australian Communications and Media Authority, include requirements relating to advertising of therapeutic goods. For example, the Subscription Broadcast Television Codes of Practice require that STV licensees ensure advertisements promoting goods or services defined in the *Therapeutic Goods Advertising Code* comply with that Code and must refer any specific complaints relating to these types of advertisements to the body administering that Code.<sup>3</sup>

Further, the Consultation RIS notes that the Complaints Resolution Panel established by the Therapeutic Goods Regulations has the function of receiving and considering complaints

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<sup>1</sup> Consultation RIS, p.10.

<sup>2</sup> Consultation RIS, p.21.

<sup>3</sup> Clause 6.1 (a) of the Subscription Broadcast Television Codes of Practice 2007.

about the advertising of medicines and medical devices directed to the general public through media types which *include* STV.<sup>4</sup>

ASTRA members advise that complaints about advertisements for therapeutic goods shown on STV are extremely rare. This suggests a very low level of concern about the way in which therapeutic goods are currently advertised on STV. Taking into account this low level of concern, the existence of protections in the ASTRA Codes, and the availability of an avenue for redress available via the Complaints Resolution Panel, ASTRA submits that current arrangements provide appropriate safeguards.

### **Regulations should be set according to the degree of influence of a service**

Second, ASTRA would like to address the TGA's comparison of the reach of STV and FTA broadcasting. In 2012, the TGA argued that:

it is likely that pay-television reaches at least as many viewers as some free-to-air channels currently available in Australia, with advertising on these free-to-air channels requiring pre-approval.<sup>5</sup>

ASTRA respectfully submits that this not an accurate representation of the reach of STV services in Australia.

For example, in the week commencing 7 July 2013, between 6.00 am and midnight, the average audience for the FTA networks' core channels (Seven, Nine and Ten) in metropolitan areas was between 234,457 and 406,439; and, for the FTA networks' digital multi-channels (7TWO, 7mate, GO!, Gem, ONE and ELEVEN) the average was between 41,990 and 121,530 viewers. By contrast, between 6.00 am and midnight during the same period STV channels attracted significantly smaller audiences nationally—while FOX8 attracted 34,453 and the Lifestyle Channel attracted 26,919 viewers, SKY NEWS attracted 13,882, MTV attracted 8,049 and Channel [V] attracted 4,514 viewers.<sup>6</sup>

ASTRA refers the TGA to the degree of influence principle set out in the *Broadcasting Services Act 1992*.<sup>7</sup> This principle provides that regulatory controls should be applied according to the degree of influence that different types of services exert in shaping community views in Australia. ASTRA notes that, compared with STV providers, the FTA networks exert a significant degree of influence through their privileged access to spectrum, near universal coverage and regulatory protections. Therefore, it is appropriate that regulations applying to a free service which is nearly universally available be calibrated differently to those applying to a discretionary STV service with a relatively lower penetration and viewing audience.

Should you have any questions please feel free to contact me on (02) 9776 2685.

Yours sincerely



Andrew Maiden  
CEO

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<sup>4</sup> Consultation RIS, p.14.

<sup>5</sup> TGA, *Advertising regulatory framework - Options for reform*, 1 May 2012, pp. 17-18.

<sup>6</sup> Source: OzTAM All Metro Homes, 7/07/2013 - 13/07/2013, S-S 0600-2359, 1800-2359, Total People, Projections, Consolidated to 07/07/2013.

<sup>7</sup> *Broadcasting Services Act 1992*, s.4.