

SUBMISSION IN RELATION TO THE GOVERNMENT'S DISCUSSION PAPER ON MEDIA REFORM OPTIONS

27 APRIL 2006

Premier Media Group (**PMG**) welcomes the opportunity to respond to the Government's Discussion Paper on Media Reform Options entitled "Meeting the Digital Challenge: Reforming Australia's Media in the Digital Age" (*Discussion Paper*).

Despite a number of regulatory hurdles, PMG has made substantial investments in digital television broadcasting particularly in relation to the production and broadcasting of major sporting events. PMG's investments include:

- upgrading its broadcast operations centre in Pyrmont from an analogue to digital facility;
- producing all its domestic sport in digital widescreen mode; and
- offering a myriad of interactive digital applications including multiple camera angles, statistics, highlights and alternate match coverage for multi-sport events. Examples include simultaneously broadcasting 2 matches at the 2006 Australian Open tennis tournament and offering a continuous highlights package during Test Matches played by the Australian cricket team overseas.

These investments in digital television broadcasting of sporting events far exceed those made by the commercial or national television broadcasters. In addition, since PMG began operations in 1996, PMG has made significant financial investments in local sporting bodies as well as in relation to the development of innovative broadcast and production techniques and standards for the broadcasting of major sporting events.

This demonstrates that PMG, as part of the subscription television industry, has been the primary driver of digital television take-up in Australia by offering consumers differentiation, choice and innovation.

The Discussion Paper deals with a large number of matters. PMG does not propose to address or respond to all of these matters. Given the nature of PMG's business, this submission focuses primarily on the anti-siphoning scheme currently operating in Australia. Of primary concern to PMG is the significant adverse impact on the future sustainability of PMG's business and its ability to financially support local sporting bodies that the introduction of multichannelling by the commercial free-to-air broadcasters, and the removal of the current genre restrictions imposed on the national broadcasters, would have in circumstances where the anti-siphoning scheme was not simultaneously abolished.

PMG continues to invest heavily in domestic sports. Broadcasting revenue paid by PMG finds its way into all levels of the sporting community including junior programs, stadiums, elite development and

player payments. In the last 12 months alone PMG has signed major broadcasting deals for domestic cricket, domestic soccer, rugby league and rugby union. Our financial commitment under those arrangements well exceeds A\$500 million. If the rules regarding multichannelling are unilaterally changed, there will be a knock-on effect in that PMG's own financial position would be weakened and therefore our ability to continue to invest heavily in domestic sport will be compromised. In those circumstances, each of the local sporting bodies with whom PMG has relationships would be severely affected.

Multichannelling – Removal of Restrictions

Any discussion about the removal or relaxation of the restrictions regarding multichannelling by the free-to-air networks needs to recognise the link between multichannelling and the anti-siphoning scheme. There is a direct link between the restrictions regarding multichannelling by the free-to-air networks and the maintenance of the anti-siphoning scheme.

If the current multichannelling restrictions were eased without abolishing the anti-siphoning scheme, there would be significant adverse ramifications for PMG's business and the sporting bodies it supports. In particular, PMG's further investment in, and implementation of, subscription digital television broadcasting services would be adversely affected. In addition, PMG's financial underpinning of sporting bodies such as the NRL, NBL and FFA would significantly decrease over time because of our inability to compete with the free-to-air networks in acquiring rights to sporting events.

In light of this, PMG is opposed to permitting the free-to-air broadcasters to multichannel (whether by removing the genre restrictions on the national broadcasters or removing the multichannelling restrictions on the commercial free-to-air broadcasters) in the absence of fundamental reform of the anti-siphoning scheme. PMG does not accept that the "backdoor" multichannelling provisions suggested in the Discussion Paper are sufficient to address the competitive imbalance that already exists between the free-to-air broadcasters and the subscription television industry.

PMG is also concerned at the suggestion on page 29 of the Discussion Paper that the Government could bring forward the timing for the relaxation of the restrictions on full multichannelling by the commercial broadcasters "should there be any significant changes in the lead up to analogue switchover which alters the balance in favour of an earlier adjustment". The Discussion Paper notes that such changes could include technological advances. Overall, the suggestion is extremely vague and introduces further regulatory uncertainty. In any event, if there were any significant changes which justified bringing forward the timing for the relaxation of the restrictions on full multichannelling (including due to technological advances), then the anti-siphoning scheme would have to be abolished at the same time.

Multichannelling & High Definition Television – Anti-siphoning List

On pages 31 and 32, the Discussion Paper refers to the national and commercial free-to-air broadcasters being prohibited from televising sport on the anti-siphoning list on any digital channel or any non-simulcast HDTV channel unless the sporting event has already been shown (or is simultaneously shown) on the main service or the SDTV service. PMG's view is that this prohibition should not have to be considered since there should be no relaxation of the current multichannelling restrictions without abolishing the anti-siphoning scheme.

Objective of Anti-Siphoning Scheme

It is PMG's view that the anti-siphoning scheme has **not** met its original objective because of the way it operates. The anti-siphoning scheme has not ensured that viewers have seen listed sporting events on free-to-air television, because it has never adequately addressed the problem of hoarding by the free-to-air networks.

This is clearly evident by the research undertaken by ASTRA with PMG's participation discussed further below. Not only is PMG's view shared by other subscription television entities (including ASTRA), as it has been for many years, but also a number of sporting bodies (including the NRL, the NBL, the FFA, the ARU and Cricket Australia), the Australian Association of National Advertisers (AANA), the Australian Hotels Association and the multitude of consumers who regularly voice their concern about the anti-competitive nature of the scheme and hoarding. We therefore find it unacceptable that the Government continues to gloss over these concerns and reject the claim on page 32 of the Discussion Paper that "most parties agree that the regime has generally met its objective". The only group which benefits from the continuation of the anti-siphoning scheme in its current form are the Australian free-to-air broadcasters. Most parties agree that the scheme needs to be abolished or fundamentally reformed.

Review of Anti-siphoning Scheme

At page 32 the Discussion Paper notes that there is scope for further scrutiny of the anti-siphoning list and the number of events on it. In our view, there is already extensive evidence which warrants further scrutiny of the list immediately, particularly in relation to events such as competitions and tournaments which comprise multiple matches. For example, the anti-siphoning list includes every match played in each of the Australian Open and Wimbledon tennis tournaments. Simply put, this means every match played on every court, each day during each tournament.

Research conducted by ASTRA with PMG's participation shows that not every match in each tournament is broadcast by free-to-air television nor is every match in each tournament broadcast live by the free-to-air

networks. For instance in 2005, only 15% of the matches played during the Australian Open and 12% for Wimbledon were broadcast by the free-to-air networks in Sydney. In 2006 only 15% of the matches played during the Australian Open were broadcast by the free-to-air networks in Sydney. Similar evidence of the free-to-air networks not broadcasting every event has been obtained in relation to the Olympics and the Commonwealth Games. In relation to the 2004 Athens Olympic Games, out of the 2,138 hours of events that were available for broadcast only 27.8% were broadcast by the free-to-air networks in Sydney. In relation to the 2006 Turin Winter Olympics, only 1 sporting event was broadcast live by the free-to-air networks in Sydney. Finally, in relation to the 2006 Melbourne Commonwealth Games, only 14% of the available events were broadcast by the free-to-air networks in Sydney. We would be happy to provide the Government with further details of ASTRA's research if required.

We believe ASTRA's research clearly and visibly illustrates the need for immediate reform of the anti-siphoning scheme and in particular, how the list should include only those events which are broadcast live (or near live) and in full on free-to-air television.

At page 34 the Discussion Paper refers to the proposal to conduct a review during 2009 to consider the ongoing rationale for the anti-siphoning scheme after 2010. PMG's views regarding the anti-siphoning scheme and its ongoing rationale are clear. The anti-siphoning scheme provides (as it has done for more than 10 years) and will continue to provide until the end of 2010, unless either fundamentally reformed or abolished, the Australian free-to-air networks with an unfair competitive advantage in the acquisition of sports broadcasting rights which is exploited primarily by the commercial free-to-air networks to the detriment of not only the growth and potential future development of PMG (and other members of the Australian subscription television industry) but also to sports bodies and the general Australian viewing public.

This unfair competitive advantage is further bolstered by the digital terrestrial television regulatory framework. Therefore, we believe that there are compelling reasons for immediately conducting a review to consider the ongoing rationale for the anti-siphoning scheme rather than waiting until 2009. However, any review, whether conducted now or in 2009 or at any other time, must be undertaken with the strong presumption that the scheme should be abolished in its entirety unless cogent and compelling evidence was provided to the contrary.

Anti-siphoning – Use it or lose it scheme

PMG has been consistently concerned about the hoarding of listed events by the free-to-air broadcasters. As the Minister has been unwilling to include all events on the anti-siphoning list as designated events for the purposes of the anti-hoarding rules, PMG believes that the introduction of a "use it or lose it" scheme would be an appropriate administrative mechanism to prevent hoarding by the free-to-air broadcasters.

However, the criteria adopted for the scheme must be clear and precise and the operation of the scheme must be transparent.

PMG's view is that the "use it or lose it" scheme should apply as follows.

- **What is an event?** The scheme should apply to each "event". The term "event" should be given its meaning in section 115 of the *Broadcasting Services Act 1992 (Cth.)* (when read in conjunction with the anti-siphoning list), not the meaning on page 33 of the Discussion Paper. That is, each single match, race or other event identified in the anti-siphoning list is a separate event. For example, each match in each round of the NRL Premiership Competition is a separate event and each match in each round of the Australian Open tennis tournament is a separate event.
- **What criteria should be adopted?** The criteria adopted for the scheme must be designed to ensure listed events are televised live (or near live) and in full on free-to-air television. Based upon this objective, PMG's view is that the following four criteria would be the only relevant criteria in considering whether an event has been adequately used:
 1. Has a free-to-air broadcaster acquired the right to televise the whole of the event live or near live at least 2,016 hours (i.e the 12 week period referred to in section 115(1AA) of the *Broadcasting Services Act 1992 (Cth.)* to trigger automatic de-listing) before the start of the event?
 - If No, then no other criteria are considered. Under the current anti-siphoning rules, the event would be de-listed for the current year. Under the "use it or lose it" scheme, the Australian Communications and Media Authority (**ACMA**) must issue a "removal notice" (discussed below) which will automatically schedule it for permanent removal from the anti-siphoning list for all future years.
 - If Yes, the following 3 criteria must be considered.
 2. Was the event televised live or near live (i.e., within 1 hour of the start of the particular event) by a free-to-air broadcaster?
 3. Was the event televised live or near live by a commercial free-to-air broadcaster that is able to reach at least 50% of the population or by a national broadcaster? However, an assessment of whether this particular criteria has been satisfied also needs to take into account any differences in coverage between States and in regional areas. For example, the 2005 British Open Golf tournament coverage in Perth was delayed until after the completion of the Nine Networks' regular programming. Therefore the 50% population coverage criteria should not be satisfied if a capital city does not receive the whole of the event live or near live.
 4. Was the **whole** of the event televised live or near live by a free-to-air broadcaster? For example, televising 1 set of a 3 set tennis match would not be televising the whole of the event.

PMG's view is that none of the other criteria suggested in the Discussion Paper are appropriate as they will only serve to convolute the issue. If the free-to-air rights are not fully utilised in accordance with the above criteria, it is irrelevant whether those rights were made available to another free-to-air broadcaster but then not used. The objective of the scheme is (and should

always be) to ensure listed events are televised live (or near live) and in full on free-to-air television – therefore the criteria should be primarily concerned with **actual** coverage of events and not whether another free-to-air broadcaster or a subscription television broadcaster had the opportunity to acquire the rights.

- ***When should the event be assessed against the criteria?*** ACMA must assess each event against the above criteria as soon as possible after the conclusion of the event and publish its assessment within 1 month of the conclusion of the event. In relation to those events which are part of a competition or a tournament (such as the NRL, AFL, the Australian Open and Wimbledon) ACMA's assessment of each event would take place at the conclusion of the relevant competition or tournament and it would publish its assessment within 1 month of the conclusion of the competition or tournament.
- ***What is the effect of the assessment?*** For an event to have been "used" by a free-to-air broadcaster, the event must satisfy **all** of the above criteria. Where an event has not met all of the above criteria, ACMA must issue a "removal notice" contemporaneously with its assessment. The notice will automatically and permanently remove the event from the list for all future years on the 14th day after the issue of the notice, subject to Ministerial discretion.
- ***What discretion does the Minister have?*** The Minister would have a discretion not to permanently remove an event from the list. The discretion must be exercised within the 14 day period described above. Where the Minister elects not to permanently remove an event from the list within the 14 day period, the Minister must publish written reasons for his or her decision. Any election by the Minister not to permanently remove an event from the list does not mean that the event will not be subject to the usage criteria in the future. On the contrary, the event will still be subject to that criteria and if the event again fails to meet the usage criteria the event will be permanently removed from the list on the 14th day after publication of ACMA's assessment unless the Minister again exercises his or her discretion.
- ***What happens after an event is removed from the list?*** Once an event is permanently removed from the list, market forces will prevail and all broadcasters (whether free-to-air or subscription) can acquire the right to televise the equivalent event in future years while the anti-siphoning list remains in force without any restrictions.

Attached as Annexure A are 3 hypothetical examples of how the above "use it or lose it" scheme would work in practice.

PMG would be pleased to discuss these issues further with the Government if required. PMG also requests the opportunity to provide further comment in relation to any recommendations proposed by the Department following completion of its review of the submissions made on the Discussion Paper.

Annexure A

Worked hypothetical examples of operation of “use it or lose it” scheme**EXAMPLE 1: United States Open Tennis Tournament 2006****EVENT :** Women's Singles First Quarter-Finals Match (Davenport v Molik)**EVENT DATE :** 5 September 2006**TOURNAMENT****END DATE:** 10 September 2006**DATE OF ACMA****ASSESSMENT:** 10 October 2006**DATE OF****REMOVAL:** 25 October 2006

Criteria	Fulfilled – Yes/No
Live/Near Live Televised Rights Acquired by FTA	Yes
Televised live or near live	No
Broadcast reach 50% of population	No
Whole event televised	No

ASSESSMENT : FTA failed to use television rights.**RESULT :** First match in the women's singles quarter-finals of each of the US Open tennis tournaments 2007, 2008, 2009 & 2010 scheduled for permanent removal from anti-siphoning list on 25 October 2006 unless Minister intervenes in the preceding 14 days.**EXAMPLE 2: Rugby League State of Origin Series 2006****EVENT :** Game 1, Telstra Stadium, Sydney**EVENT DATE :** 24 May 2006**SERIES END****DATE:** 5 July 2006**DATE OF ACMA****ASSESSMENT:** 5 August 2006

Criteria	Fulfilled – Yes/No
Live/Near Live Televised Rights Acquired by FTA	Yes
Televised live or near live	Yes
Broadcast reach 50% of population	Yes
Whole event televised	Yes

ASSESSMENT : FTA used television rights.**RESULT :** Event remains on anti-siphoning list.

EXAMPLE 3: French Open Tennis Tournament 2006

No free-to-air broadcaster has acquired the live rights to the 2006 French Open Tennis Tournament. As a result, those events currently listed on the anti-siphoning list (ie., each match in the men’s and women’s singles quarter-finals, semi-finals and finals) have been removed from the list for 2006 under section 115(1AA) of the *Broadcasting Services Act 1992 (Cth.)* and under a “use it or lose it” scheme should be scheduled for permanent removal from the anti-siphoning list for all future years (ie., 2007-2010).

EVENT : Each match in the men’s and women’s singles quarter-finals, semi-finals and finals of the French Open Tennis Tournament 2006

TOURNAMENT

END DATE: 11 June 2006

DATE OF ACMA

ASSESSMENT: 11 July 2006

DATE OF

REMOVAL: 26 July 2006

Criteria	Fulfilled – Yes/No
Live/Near Live Televised Rights Acquired by FTA	No
Televised live or near live	N/A
Broadcast reach 50% of population	N/A
Whole event televised	N/A

ASSESSMENT : FTA failed to use television rights.

RESULT : Each match in the men’s and women’s singles quarter-finals, semi-finals and finals of the French Open Tennis Tournaments 2007, 2008, 2009 & 2010 scheduled for permanent removal from anti-siphoning list on 26 July 2006 unless Minister intervenes in the preceding 14 days.