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# New digital channels, boundaries and balances

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# How the media reforms will affect programs and rights

- *Broadcasting Legislation Amendment (Digital Television) Bill 2006*: SDTV, multi-channels, HDTV and anti-siphoning.
- Blurring of the boundaries between traditional and new forms of media.
- Challenges for broadcasters and licensors of rights.

# Is the devil in the detail?

- Tip of the iceberg for media reform.
- Staggered implementation of reform from date of Royal Assent of the Digital Television Bill to end of the simulcast period.
- Outstanding issues:
  - unallocated spectrum - not covered by the Bills
  - anti-siphoning - "use it or lose it"

## Multi-channelling - National Broadcasters

- ABC and SBS currently permitted to multi-channel, but restricted to particular types of programs (i.e. educational, health, science, religion and children's programs).
- Bill removes the current genre restrictions to permit ABC and SBS to provide a broader range of digital services, such as news, drama, movies and sport.
- In other countries national broadcasters have played an important role in providing multi-channel content and driving digital uptake.

# Multi-channelling - Commercial Broadcasters

- From 1 January 2007, the requirement that the HDTV version must be a simulcast of SDTV version will be removed (in effect allowing one HDTV multi-channel).
- This channel will only be available to the small percentage of the population with an HD set top box or television with an HD tuner (current estimates about 5% of households).

# Multi-channelling - Commercial Broadcasters (cont)

- From 1 January 2009, FTA broadcasters permitted to provide a single SD multi-channel.
- End of the simulcast period - remove restrictions on the number of multi-channels and remove the existing HDTV quota.

# Multi-channelling - Anti-siphoning

- Events on the anti-siphoning list will not be permitted to be shown on a multi-channel unless it has already been shown on the analogue service.

- New definition of "anti-siphoning event":

*"an event, or an event of a kind, that is specified in a notice under subsection 115(1)"*

# Multi-channelling - Anti-siphoning (cont)

## *Televising the whole of an anti-siphoning event*

41A - (2) During that period, the licensee must not televise on a SDTV multi-channelled commercial television broadcasting service in the licence area the whole of an anti-siphoning event unless:

- (a) the licensee has previously televised in the licence area the whole of the event on the core commercial television broadcasting service; or
- (b) the licensee will televise simultaneously in the licence area the whole of the event on both:
  - (i) the core commercial television broadcasting service; and
  - (ii) the SDTV multi-channelled commercial television broadcasting service.

# Multi-channelling - Contractual issues

- "core" or "primary channel" vs multi-channel.
- Licensors of rights: coverage on mainstream channel.
- Broadcasters: flexibility to produce content for multi-channels.
- Likely to be debate about whether contracts will prescribe events (or parts of events) as core/primary channel events.

## Licences outside the BSB

- Moratorium on commercial TV licences outside the BSB ends on 31 December 2006.
- Could include satellite, wireless or broadband TV services. This could include IPTV.
- Currently point-to-point services and general streamed publicly available internet services do not require licences. No change to this in the Bill.

## Licences outside the BSB (contd)

- Applications can be made to ACMA under section 40. Minister to have power to veto in the "public interest" taking into account:
  - the policy objectives of the BSA
  - the number and characteristics of existing broadcasting services available
  - the demand for new broadcasting services
  - the nature of the proposed service and the audience the licensee would target
- Applicant would be able to seek merits review of a decision of the Minister by the Administrative Appeals Tribunal.

# Use of the unallocated spectrum: Minister's 12 September announcement

- 2 channels to be offered by way of auction asap in 07.
- Channel A will be for FTA in-home services that do not replicate commercial or pay TV - possibly narrowcasting and datacasting services.
- Channel B for "highest and best use", including in-home services and mobile TV.
- Channel A will be charged a licence fee like commercial broadcasting and Channel B will attract an upfront spectrum licence fee.

## 12 September announcement (cont)

- FTA TV broadcasters not allowed to control Channel A but will be allowed to control Channel B if not used for in-home services and can supply programming to Channels A and B.
- No other express exclusions, but ACCC to apply usual TPA analysis.
- Further provisions to protect competition to be considered.
- Channel A bidders must demonstrate financial and rollout capability Channel B licensee must deploy services within 18 months.

## More channels - Contractual issues

- Do existing contracts which grant TV rights extend to new media like IPTV and Mobile TV?
- Broadcasting agreements: "television rights", "internet rights" or "mobile rights".
- Defining "television", eg. "all forms of television now known or hereafter developed".
- Increased specificity re how technologies are defined.

# Anti-siphoning

- Commencing 1 January 2007 a "use it or lose it" scheme will be introduced for events on the anti-siphoning list, based on ACMA's first year of monitoring.
- Impact of scheme will largely be determined by how "use" of rights by FTA broadcasters is defined.
- 14 March 2006 Discussion Paper contains some guidance.

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