



Senate ECITA Committee Inquiry into Media Ownership and related Bills 2006

Seven Network response to ASTRA submission

3 October 2006

The Seven Network has been asked to respond to various claims made in ASTRA's submission to this Inquiry.

Sports Usage by Free to Air broadcasters

ASTRA's claims of the amount of sport shown by FTA's are at best a misrepresentation of the true position and at worst deliberate misinformation.

In 2005, free to air broadcasters showed in excess of 1648 hours of sports on the anti-siphoning list. This amounts to on average about 32 hours of listed sports per week. This of course does not take into account the additional coverage of non-listed sports and the fact that there are many weeks each year where there are no listed sports played at all. No other type of content other than news and current affairs receives such a high level of consistent coverage on free to air television.

ASTRA claims that there are 1300 events on the anti-siphoning list. In fact, the list covers only ten sports, plus the Olympics and Commonwealth Games. Of the so-called 1300 events on the list, 836 are Wimbledon and Australian Open Tennis matches. Half of these games are never recorded for broadcast by tournament organisers and are therefore not available to be shown by any broadcaster in the world.

ASTRA accuses free broadcasters including Seven of "hoarding" sports rights. Nothing could be further from the truth. "Hoarding" means acquiring rights and not using them and not allowing them to be used by others. There is simply no evidence that this is occurring with any listed sporting event. In almost all cases, what is not shown on free TV is available to be broadcast on pay TV.

ASTRA's figures also fail to reveal the amount of sport on the anti-siphoning list that pay TV operators already have access to and acquire and how much of these rights they actually show. This is because pay TV is not interested in providing Australian viewers with more sport by using their multichannel capability to show events that may not be able to be accommodated on a single free-to-air channel, they are actually interested in replacing current free coverage of major sport with coverage you have to pay for.

Free broadcasters only acquire those rights they are able to show and they show what they acquire. In many cases, only part of a listed event is acquired by a free broadcaster and the rest is available to pay TV, such as NRL, Australian Open and Wimbledon. In other cases, broadcasters may acquire non-exclusive rights which allow the sport to be simultaneously broadcast on pay TV, as is the case with much Rugby

Union. The winners are Australian viewers, who see the best of the ten listed sports on free TV and complementary coverage of those sports and others on pay TV.

Specific Sports referred to in the ASTRA submission

Soccer

Seven acquired the right to the National Soccer League games in 1998. The rights were acquired by Seven following an approach from the sport's administration, which was seeking more money and with it the opportunity to restructure the competition.

Seven agreed to acquire the rights to the NSL at a significant price (approximately \$2 million per annum) on the basis that the NSL would restructure the competition and the administration of the sport, which was riddled with problems at the time. In essence, Seven's purchase of the rights was a "rescue package". Seven made it clear to the sport at the time of the deal that Seven's plans for the rights were contingent on the restructure of the competition into something that would generate more widespread viewer interest.

As is widely known, the restructure of the NSL never eventuated. After a Government Inquiry, the only solution identified was to discontinue the NSL competition completely and to start a new competition with a whole new structure and management. Although Seven held rights to the NSL competition until the end of the 2007/08 season, after being approached by Frank Lowy in late 2002, Seven agreed to relinquish those rights for the good of the game, although it could have compelled the continuation of the NSL competition under its agreement.

It is completely false to state that in the period during which Seven held the rights, it "broadcast only 1 match of the 31 they owned the rights to." The NSL Finals series consisted of 9 games each season.

In 2000, due to Seven's extensive Olympics commitments, all NSL games were sub-licensed to the ABC. They broadcast 5 of the 9 games in the Finals Series. In 2001, the Grand Final was broadcast live on Seven along with another 5 one hour highlights programs covering various Finals matches. In 2002, we broadcast the Minor Semi-Final, the Preliminary Final and the Grand Final live despite the limited audience we were able to attract for these games. Highlights programming was also provided of other games.

ASTRA also claims that the matches not shown by Seven were "locked away by the network and never shown. Subscription TV was unable to secure the rights from Channel 7." This is utterly false. Firstly, the NSL finals games were all shown on Seven's pay TV sports channel C7. C7 was broadcast on both the Austar and Optus platforms, although access to the Foxtel platform was denied for seven years, despite numerous court rulings in C7's favour.

Due to the termination of the Optus contract (following the loss of the AFL pay television rights) C7 was no longer able to provide a pay television outlet for the NSL games.

Ultimately, in March 2003 Seven agreed to relinquish the NSL rights in order that the NSL could take the product and deal with it unencumbered by a long term contract.

In 2002, Seven also offered the NSL rights to Austar on a no-charge basis. However, this was refused.

Winter Olympics

The 2006 Winter Olympics were acquired by Seven in 1996. The Winter Olympics was only added to the anti-siphoning list with effect from 2006. As the event was acquired over 10 years before future Olympics were listed, it is not clear how Seven's coverage in 2006 is relevant to anti-siphoning. The event was not acquired with any of the advantages that may apply to listed events. When it was acquired, it was unlisted.

However, despite the lack of relevance to the anti-siphoning provisions, to set the record straight, Seven provided extensive coverage of all 16 days of the 2006 Torino Winter Olympics. Seven's coverage included over 59 hours of specific event coverage and more than 20 additional hours of edited highlights packages. Seven provided live coverage of the opening and closing ceremonies and the women's aericals, where Alissa Camplin was competing as well as reshowing these events on delay at a more accessible time for viewers.

Seven's coverage was broadcast every evening of the Games in prime time and more than 5 hours per day on weekends. Seven took the decision to provide delayed coverage in prime time and on weekends to deliver the best and most accessible programming schedule for Australian viewers. The 10 hour time difference between Italy and Australia meant that most events would occur between 11pm and 9pm, when viewers were asleep.

Seven's schedule was intended to provide coverage at the time when the largest number of people would be able to access it rather than in the middle of the night when most Australians are asleep.

Given our experience with the rights for the Athens Olympics in 2004, where Seven was unable to conclude a deal for complementary coverage on Foxtel, Seven did not pursue negotiations with Foxtel for this event. In the case of the Athens Olympics, although the Olympic channels offered by C7 for the 2000 Sydney Olympics had the highest take-up of any additional channel offerings ever, Foxtel offered Seven a rights fee that was less than the cost to Seven of providing the feed for the Olympics coverage. It did so on the basis that with C7 no longer in existence and Fox Sports now the only possible outlet for pay TV sports rights, Seven would have no other options to dispose of the rights and would take any price. Ultimately, Seven concluded a deal with SBS which saw Australians provided with two free channels of Olympics.

At no time was Seven approached by Fox Sports or Foxtel in relation to acquiring the Torino Winter Olympics for coverage on pay TV in Australia.

Rugby Union

Like Rugby League, Rugby Union is more popular in NSW and Queensland than in other Australian states. Seven has provided live coverage into Melbourne, Adelaide and Perth of numerous Rugby Test matches, including most recently the Australian Wallabies match against England on 11 June 2006. Viewing figures for these games invariably

indicate significantly less interest in Victoria, South Australia and Western Australia than in NSW and Queensland. For example, 371,000 viewers watched the game in Sydney compared with 102,000 in Adelaide.

In the case of the Bledisloe Cup on 29 July 2006, live coverage of the match was provided by Seven in NSW and Queensland. The game was also shown on delay in Melbourne, Adelaide and Perth.

However, the game was also shown live in every state on Fox Sports. It is difficult to see how Seven's coverage could be considered to be hoarding. Seven deliberately did not acquire exclusive rights to the game, knowing it would not be able to justify the loss in advertising revenue that would undoubtedly follow from a live broadcast in those states where the game is of low interest. The game was therefore available to be broadcast on live on pay TV in every state.

It is not clear how this is an example of the anti-siphoning list operating to prevent pay TV or Australian viewers from accessing the event.

Seven acquired non-exclusive rights to the game. The game was available to be shown live on pay TV in every state. In addition, hundreds of thousands of people were able to watch the game live or on delay in every market, for free. If the event were to be taken off the list, these viewers would be forced to pay or would miss out. It is not clear how this could be in the best interests of Australian viewers.

There is no evidence that the rights holder was disadvantaged. They had complete control of the process. When Seven indicated that it could not commit to live national coverage, the ARU (controlled by News Limited) would not licence the game on other than a non-exclusive basis.

ASTRA's use of the Bledisloe Cup as an example of a sport that should be delisted only serves to highlight their real agenda. Although they say they are interested in bringing more sports to Australians, this is not the case. They are really interested in replacing free coverage of events like the Bledisloe with exclusive coverage that viewers must pay for.

Tennis

In 2006, Seven provided coverage of the Australian Open over the 14 days of the tournament from 11am the close of day's play – usually around midnight or later. Seven has been associated with the tournament for over 30 years and has worked closely with Tennis Australia to build the tournament into a world class event attracting the best players and commentators.

In 2006, Seven showed over 157 hours of coverage over the two week tournament. 81 games received dedicated coverage, with many more covered in highlights. Seven has only one channel to provide coverage of the tournament. It provided dedicated coverage for the whole of day's play each day of the event. Seven's coverage delivered Australians with a high quality choice of the best of each day's play on every court. It is physically impossible to provide more hours of tennis than Seven does for the Australian Open on a single channel outlet.

There are a total of 411 games in the tournament. This figure includes mens' and womens' singles and doubles, and mixed doubles. However, only 230 of these games are made available for broadcast by Tennis Australia. Consistent with the practice at most major tournaments around the world, only 6 courts are actually filmed during the tournament. This is the choice of tennis Australia which controls the host broadcaster arrangements. The other courts are not available for broadcast by any broadcaster the world because they are simply not covered.

Subject to footage being available, Seven has the rights to show all matches in the tournament. However, it only acquires two courts on an exclusive basis – Rod Laver Arena and Vodafone Arena.

Seven has no rights to sub-licence to pay TV. Pay TV contracts directly with the sporting body. Fox Sports acquires the rights to show every match in the tournament. Its only restriction is that it may not show live coverage of the matches on Rod Laver and Vodafone Arena acquired by Seven. However it may show these matches on delay and every other game in the tournament is available live to pay TV.

Every match in the tournament is currently available to pay TV on a live or exclusive basis. But despite having the ability to offer multiple programming streams, they show only a fraction of what is available to them. Similar to the figures in relation to Wimbledon, Seven estimates that Fox Sports shows about 15% of the total number of games already available to them.

Their calls for delisting of the Australian Open simply show that pay TV is not interested in bringing Australians more tennis – they could do that already by showing all the games they have available to them. What they are really interested in is replacing the free coverage of the most popular games with coverage that viewers will have to pay for.

While this might be an excellent business strategy for Fox Sports and Foxtel to drive subscribers, it is difficult to accept that this would be in the interests of the 75% of Australians who currently cannot afford or choose not to subscribe to pay TV.

AFL

In their joint appearance before the Committee and in the Foxtel submission, Foxtel and ASTRA claim that "Channel Seven and Channel Ten have bought under the cover of the anti-siphoning list all matches to the AFL 2007-2011 season. This means that Foxtel has to negotiate with two of its major competitors for the rights to the games that the FTAs do not propose to broadcast on FTA. Foxtel has not been able to secure these rights."

This issue has nothing to do with the anti-siphoning list. Channels Seven and Ten were able to acquire the rights because they had a contractual right to make a matching offer to any other offer accepted by the AFL. Seven and Ten merely matched the PBL offer that had been accepted by the AFL on 24 December 2005 which was drafted with a "poison pill", so that the only person to whom the pay TV rights can be sub-licensed is a pay television broadcaster. Because Seven and Ten can only act within the exact same terms as contained in the PBL offer and because Foxtel has a monopoly in pay television, Foxtel is the only party to whom these rights can be offered. Foxtel offered Seven and Ten less than half the current 2002-06 pay television rights fee for seasons

2007-11, despite being offered a better overall package. The rights are clearly worth more in 2007 than they were in 2002. If a deal has not been forthcoming, it is clearly a matter in Foxtel's own hands.

In any event, the contract requires all 8 games per round to be broadcast, and if this is not achievable through a combination of free and pay broadcasts, then all games will be available free. It is hard to see how this could be anything other than to the benefit of Australian viewers, who will have all games available to them free of charge if this occurs.